



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

REPORT

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

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1. FOREWORD

The 2018 Report of the Commissioner for Information of Public Importance and Personal Data Protection is the 14th annual report on the implementation of the Law on Free Access to Information of Public Importance, and the 10th such report on the implementation of the Law on Personal Data Protection submitted by the Commissioner for Information of Public Importance and Personal Data Protection (hereinafter referred to as: the Commissioner) to the National Assembly of the Republic of Serbia.

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

As observed by the Commissioner in the 2017 Report, this year was probably the most difficult one for the work of the institution. However, the situation and developments in 2018, including the treatment on the part of public authorities and their representatives, proved to be most challenging in the work of the Commissioner's office in the 14 years of its existence. It was also the year which involved the most extensive work for the Commissioner. By refusing to cooperate, the competent or supervised authorities often made it difficult, even impossible, for the Commissioner to either undertake legal measures or these measures had no effect. Moreover, unjustified public reactions from authorities, even senior state officials and politicians, were often responses to those activities and measures taken by the Commissioner in line with the law aimed at those who were responsible for them, which were not in favour of state bodies. Such pressures made the Commissioner's work difficult and deflected attention from the issues related to the violation of right at hand.

The Commissioner's office handled 14,388 cases in 2017 making it a record year in terms of its workload. In 2017, its employees also worried about whether they would receive all their salaries since the 2018 budget funds allocated for this purpose were insufficient even for the existing number of employees, despite the fact that all programme documents of the Government and the National Assembly and the Action Plan for Chapter 23 proclaimed beefing up staff for the institution. The funds were provided from the budget reserves at the last moment, when the payments were 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 line with the budget funds is of no practical significance.

The Ministry of Finance approved the funds in the 2019 budget for the existing employees, but without the possibility of more hires despite the fact that the new Law on Personal Data Protection gives the Commissioner a great number of new tasks on top of it already being overstretched with ongoing cases.

The situation with the Commissioner's work in 2018 can be summarised in the following manner:

The right to free access to information of public importance in Serbia is largely exercised, but it is still difficult to realise it without the Commissioner's interventions, which is demonstrated by a large number of complaints and petitions filed by the citizens (4,842). At the same time, there is an increase in the number of cases in which information was denied

even after a complaint had been lodged and after the Commissioner had made a binding decision.

In the cases of complaints handled by the Commissioner (3,974), the success rate of the interventions measured by the level of obtaining the information compared to the number of justified complaints was relatively high (at around 89%). That percentage, however, starting from 2015, is dropping and keeps confirming the occurrence of negative trends in the realisation of the right of the public to know. A bigger concern is caused by the delicate nature of the information denied to the public.

The established practice is also present in 2018 that after the Commissioner, upon receiving the complaint, requested from the first-instance body to make a statement, the procedures with the Commissioner are largely terminated since the bodies, even without the formal Commissioner's decision, provide the previously denied information, which proves that the complaint should not have occurred.

The level of enforcement of Commissioner's decisions has been visibly reduced in recent years dropping to the lowest level in 2018 since the beginning of the Commissioner's work (around 70%). The decline in exercising the right to access information in the last three years has interrupted the continuous progress made in this field previously, and the main cause for this is the absence of support other state bodies were obliged to provide to the Commissioner, the absence of liability and the non-functioning of the mechanism put in place for executing the Commissioner's decisions.

The liability for violating the right to access information was a symbolic one compared to the mass violation of the law by state authorities. Misdemeanour procedures were initiated only by the citizens as the injured party, while the Administrative Inspectorate as the competent authority did not file any requests for initiating misdemeanour procedures in 2018, even though several thousand of justified complaints i.e. cases of offenses due to the violation of the right were registered. Only 5.8% of the verdicts resulted in convictions, imposing the lowest statutory penalty. It also remains unpunished that the bodies to a large extent fail to enforce other legal obligations, such as to proactively publish certain information i.e. work information booklets, to provide annual reports to the Commissioner and to conduct training for their employees, and to maintain the information medium.

The absence of liability for the violation of the law is the main reason for a very large number of complaints lodged with the Commissioner. The Commissioner's objective inability to resolve all the complaints within the deadline set by the law is often the reason for instituting administrative dispute proceedings against the Commissioner, in which the Administrative Court rules that the costs of the procedure should be covered by the plaintiff from the state budget.

The Republic Public Prosecutor's Office, authorised to file complaints against the Commissioner's decisions in case of the violation of public interests, used this authorisation in some cases when, as assessed by the Commissioner, it was clear that withholding the requested information was not to protect the public interest but in the service of private, illegitimate interests.

In 2018, the Serbian Government also failed to fulfil its legal obligation that when the Commissioner could not enforce his decisions by applying available measures, the

Government would ensure the execution of the decision by direct enforcement. Since the mechanisms of fines in the procedure of administrative enforcement of decisions were not applicable until mid-2017, at the request of the applicants in 2018, the Commissioner requested from the Government to ensure the enforcement of 65 decisions and he did not receive any response in connection with these cases.

In 2018, after a long delay, the amendments to the Law on Free Access to Information of Public Importance (hereinafter referred to as: Law on Free Access to Information) are in the procedure. Along with certain improvements, such as the law applying to larger number of entities and proactive publishing of information, some of the proposed amendments directly lead to a significant reduction on transparency of the work and fail to eliminate the obstacles in the present implementation of the Law. In particular, this refers to the exemption of state companies from applying the Law, but because they have considerable financial and material assets this information has always been in the public interest, the exemption of the National Bank of Serbia from the protection of the right before the Commissioner, and the improper resolving of the issue of administrative enforcement of Commissioner's decisions and limiting the Commissioner's existing authorities in connection with inspecting the information medium.

The situation, in particular with regard to denying information about large economic operations in the country and important activities of state authorities, along with the proposed amendments to the Law have already and will continue to have unfavourable consequences in anti-corruption drive, on the process of European integration and the country's ranking in the world list on the rule of law and democracy.

In the field of personal data protection in Serbia, the key issue in the past 10 years has been the legal framework, which particularly reflects the incomplete harmonisation of the internal legal framework with the corresponding international standards, incomplete mutual harmonisation of the laws, the laws with the bylaws, and the lack of organisation and improper organisation of certain issues in the laws, etc.

A significant development in the field of personal data protection in Serbia in 2018, which should have led to substantial changes in this field, was the adoption of the Law on Personal Data Protection¹ (hereinafter referred to as: LPDP). This served as a formal fulfilment of the obligation to adopt the new law which had not been fulfilled for couple of years, even though the process of adopting the law was unfortunately not transparent enough, and legal solutions provided in it may be subject to a lot of criticism.

LPDP largely assumes the provisions of the Regulation 2016/679 of the European Parliament and of the Council on the protection of individuals with regard to the processing of personal data and free movement of data, and repealing Directive 95/46/EC (hereinafter referred to as: the General Regulation of Personal Data),² applied since 25 May, 2018, which was significant in the field of personal data protection at an international level in 2018.

The main shortcomings of the new LPDP are reflected in its content which is largely in conflict with the legal system of the Republic of Serbia, with numerous provisions being extensive and too general, containing a large number of limitations, with some areas and

¹ "Official Gazette of RS ", No. 87/18.

² Regulation 2016/679 of the European Parliament and of the Council of 27 April, 2016.

issues remaining unregulated or regulated inadequately, etc. Also, a direct transposition of provisions from the General Data Protection Regulation is in collision with the principle of this regulation.

Due to the reasons above, it remains to be seen to what extent the new LPDP can be applied in practice, i.e. whether the necessary amendments to the text will eliminate its obvious shortcomings before its implementation starts (on 21 August, 2019). From the Commissioner's experience, it can be anticipated that there will be many challenges in the implementation of this law, which could have been prevented if competent authorities had been ready to thoroughly consider the proposals and suggestions put forward by the Commissioner, or to accept a model of the Law proposed by the Commissioner.

Due to these obstacles in the normative aspect and the absence of strategic measures and the lack of support by other public authorities in the field of personal data protection, the Commissioner's activities, regardless of how numerous they were, could not bring about substantial improvements in this field, i.e. prevent numerous cases of unauthorised, excessive or unprotected data processing, including the abuse of data for political purposes, which was common in 2018. Unfortunately, state authorities are among those who violated and breached the law in data handling. In 2018, the citizens frequently turned to the Commissioner to report instances of unauthorised data processing or asking whether such data processing was unauthorised, which stands as a positive change when it comes to the attitude of the citizens to their own privacy and their personal data. This can be attributed to the publicity of the Commissioner's work and raising awareness on the risks of neglecting personal data, as well as the individual cases of mass violation of the right to data protection.

In 2018, the Commissioner processed 7,616 cases in the field of data protection, up 60% compared with 2017, which points to the extent of unlawful actions by data controllers. There were 1,452 supervision procedures, which were terminated with a warning issued to data controllers, which were to a large extent accepted (around 89%), but also lodging criminal charges (6) or requests for launching administrative procedures (19). Data controllers acted in line with the Commissioner's decisions made in the complaints on the violation of the right to a lesser extent (87.4%) in 2018 than in 2017 (94.2%).

It is relevant to mention that in 2018 the Commissioner gave over 80 opinions on the drafts and bills of bylaws and other general acts, but unfortunately, in many cases competent authorities did not consider them. The Commissioner's advisory activities were also very extensive.

The vast majority of criminal charges lodged by the Commissioner were rejected, even though the Commissioner believes to have provided enough elements in these complaints for them to be processed further and to identify perpetrators and punish them accordingly. In terms of the requests for launching misdemeanour procedures due to violation of provisions of the LPDP, most procedures at the misdemeanour courts ended with convictions while a small number of cases were terminated. However, it must be noted that the penalty policy of the misdemeanour courts is extremely mild, especially when it comes to accountable individuals, who were given, as a rule of thumb, sentences at the level of the legal minimum. All this appears to be discouraging for the compliance with the laws and fails to contribute to strengthening the rule of law.

Unfortunately, contrary to the law and its own Rules of Procedures, the National Assembly has failed to consider the Commissioner's annual reports for the fourth year in a row.

Bearing in mind the situation and the issues covered by this report, it is crucial that the National Assembly reviews the Commissioner's reports in plenary sessions since it has not done so in the past four years.

2.2. THE SITUATION WITH AND OBSTACLES FOR EXERCISING THE RIGHT TO FREE ACCESS TO INFORMATION OF PUBLIC IMPORTANCE AND THE RIGHT TO PERSONAL DATA PROTECTION

Failure to Consider the Commissioner's Reports and Recommendations

Based on the Commissioner's assessment, the situation with exercising the right to free access to information of public importance and the right to personal data protection in 2018 cannot be described as satisfactory. This is largely due to the fact that the Commissioner's reports and proposals have not been considered by the National Assembly of the Republic of Serbia, by which it is failing to exercise its oversight of the executive branch. From the beginning of his work in 2005, the Commissioner has submitted 14 reports to the National Assembly on the implementation of the laws which are under his remit, 13 regular and one extraordinary report, in line with the law. The National Assembly held plenary sessions for only three of these reports for 2010, 2012 and 2013, which means that in the **past four years (2014-2017), the Commissioner's reports had not been subject of debate in the National Assembly.**

Six Commissioner's reports out of 14 of those submitted were discussed only by the competent or one of the responsible Assembly Committees, and five reports were not discussed at all.³ Reports of independent public authorities protecting human rights, according to the Rules of Procedures of the National Assembly,⁴ are first considered by the relevant committees and then submitted to the National Assembly, with proposed conclusions, i.e. recommendations with measures to improve the situation in those fields. The National Assembly, according to the Rules of Procedures, considers the report of the independent public authority and the report of the competent committee, with the proposed conclusions i.e. recommendations, and after the end of the discussion, a decision is made on the proposed conclusions, i.e. recommendations of measures to improve the situation in those fields, with the majority of votes of MPs at a session where a majority of MPs are present.

³ The 2014 Report was discussed by the Committee on Judiciary, Public Administration and Local Self-Government, the Committee on Culture and Information, and the Committee on Human and Minority Rights and Gender Equality. The 2015 Report was discussed by the Committee on Judiciary, Public Administration and Local Self-Government and the Committee on Human and Minority Rights and Gender Equality. The 2016 Report was discussed only by the Committee on Human and Minority Rights and Gender Equality, and the 2017 Report only by the Committee on Judiciary, Public Administration and Local Self-Government.

⁴ Article 238 of the Rules of Procedures of the National Assembly of the Republic of Serbia "Official Gazette of RS", No. 20/12).

The consequence of the failure of the National Assembly to consider the Commissioner's reports, apart from the lack of its oversight function of the Government, i.e. executive power, and missing the opportunity to eliminate the obstacles for these rights to be exercised, also has other implications. By failing to consider the Commissioner's reports, the opportunity and obligation is missed also for the MPs to familiarise themselves better in the process of adopting or amending the laws, with the situation in personal data protection and inadequate regulations, as well as the field of access to information, and with the relevant proposals and suggestions given by the Commissioner to improve the situation. Discussions on the Commissioner's reports, recommendations and opinions would definitely contribute to a better-quality legal regulation and a better protection of human rights.

The Commissioner was not invited to any of the sessions of the competent Assembly Committees when the issues or regulations in connection with his competences were discussed.

In 2018, not only did the National Assembly fail to cooperate or to provide support for the Commissioner's work, but the Commissioner was also personally exposed to ungrounded comments and accusations made by some MPs of the largest ruling party, including the accusations for abuse of budget funds, which were entirely refuted by the inspection and findings of the State Audit Institution.⁵ Such an attitude of the National Assembly has negative effects on the work of the Commissioner as a state body, the behaviour of other bodies under its remit, and it is harmful for the rights of the citizens and the reputation of the National Assembly itself.

2.A. The Right to Free Access to Information of Public Importance

2.A.1. Brief Overview of the State of the Right to Free Access to Information

The situation with exercising and protecting the right to free access to information of public importance in 2018, as assessed by the Commissioner, cannot be described as satisfactory. **Negative trends were established in connection with the implementation of the Law on Free Access to Information in Serbia. They are particularly reflected in fewer activities of public authorities to act in line with the Commissioner's decisions to make the information publicly available, to a smaller extent of accountability for violating the law, hindering the Commissioner in applying legal powers in terms of identifying the facts important for a procedure for deciding on a complaint, an absolute blockade of the mechanism for the enforcement of the Commissioner's decision, i.e. fines, and the absence of the Government's support to execute the decision by direct enforcement.**

The Commissioner received 3,346 complaints in connection with protecting the rights in 2018, which corresponds to the average number of complaints in the past couple of years, though, compared to 2017, the number of complaints is lower by 10%. However, the Commissioner resolved around 13% more complaints in 2018 than in 2017, including the non-resolved complaints carried forward from previous years. The large number of

⁵ SAI Report, number 400-2090/2018-03/25 on 3 December, 2018.

complaints still confirms that the right to free access to information of public importance is exercised with difficulty, to a large extent without filing a complaint and engaging the Commissioner, which, at the same time, underlines the citizens' trust in the work of this independent state body. The largest number of complaints in 2018, 1,846 of them, were filed against the ministries and other state bodies and organisations in administration, which is by some 200 complaints more than in 2017, even though the number of requests submitted to these bodies was far smaller.

2018 is the third consecutive year that no progress was made in the realisation of the right to access to information, which otherwise was made from the time the Law on Free Access to Information was adopted in 2004 until 2015, as well as the rise of the efficiency level of the measures taken by the Commissioner in terms of protection of rights, expressed in the number of cases in which the right was exercised i.e. the information received compared to the number of justified complaints. In this way, the efficiency level of protection of rights was almost at 96% in 2015, 92% in 2016, 93% in 2017, and at 89% in 2018.

The so-called administrative silence was also used widely in 2018 and was only marginally lower than in 2017. "Administrative silence" is when state authorities either fully ignore a request by an applicant or give a negative response, without explanation, which was often the case. In this way, out of 3,974 resolved complaints in total in 2018, only 684 complaints (17.24%) were filed against a decision or a conclusion of a public authority, and all other complaints, 3,290 complaints (82.76%), were filed due to the failure of authorities to act on the request or a negative response, without explanation.⁶

The complaints filed by the citizens were largely justified. Out of 3,974 resolved complaints by the Commissioner in 2018, **3,444 complaints or 86.66% were justified, similar to 2017 (86.4%)**. The high percentage of justified complaints by the citizens is the best illustration of the inadequate attitude of public authorities to human rights.

In 2018, public authorities dismissed the requests citing secrecy of information, and then abuse of rights and privacy violation more often, even when the requested information related to state agreements, public procurements, operational costs of authorities, investments, undertaking official actions, criminal proceedings against officials, etc. Authorities often responded by saying that they did not have the requested information, which can be only verified under the supervision of the Administrative Inspectorate.

The inability for the Commissioner's decisions to be enforced was also prevalent in 2018 since such execution was not possible from the second half of 2017 due to the lack of cooperation of other state bodies, their rejection of jurisdiction, and the manner in which they interpreted the relevant regulations.

The Commissioner's inability to enforce the prescribed measures for the enforcement of his decisions, in the absence of the Government's support in ensuring the enforcement and the absence of the adequate liability for the violation of rights are the greatest obstacles to exercising these rights. More details of this are provided later.

⁶ Fully ignoring the requests was recorded in 2,117 resolved cases (53.3%), in 1,173 cases (29.5%) the complaint was filed against a negative response by the authorities and in 684 cases (17.2%) the complaints were filed against the decision or conclusion made by the authorities.

The consequence of the above is a **significant rise in the number of unenforced decisions of the Commissioner by public authorities compared to 2017, which was up 7.56%.** Out of 1,286 decisions ordering the provision of the information to the applicants, **382 decisions were not enforced (29.7%).**⁷ The largest number of unenforced decisions were those by the ministries and local self-government bodies.

The same conduct of public authorities in recent years is best illustrated by information that after the submission of the complaints and requested statement of the Commissioner in 2018, the public authorities acted upon the requests in **1,889 cases or 54.85% compared to the number of justified complaints, so that the complaint proceedings were suspended.** This confirms that denying information was not based on essential reasons, so that the irresponsible and irrational attitude of public authorities towards the citizens and public resources could have been avoided, as well as the complaints themselves.

Bearing in mind the ratio between the number of cases in which the complainants exercised their rights and the number of justified complaints, the conclusion is that, apart from numerous obstacles to the implementation of the Law on Access to Information, there is a high level of efficiency of the Commissioner's work, which stood at 88.91%, though it was down 4.42% compared to 2017 and by some 7% compared to 2015.

In 2018, there were 101 legal actions against Commissioner's decisions, of which 49 legal actions were filed by the Republic Public Prosecutor's Office and other state bodies, and 54 legal actions were filed by information requesters. In 2018, the Administrative Court resolved 89 legal actions against the Commissioner and the largest number of the Commissioner's decisions were confirmed. More details on this are provided in the section headlined "Protection of Rights Before the Administrative Court". At the same time, 18 legal actions were filed before the Administrative Court against six authorities against which complaints cannot be lodged with the Commissioner, and the Court resolved eight legal actions, of which two were upheld against the Government, while others were rejected or dismissed.

The Commissioner's decisions overturned by the Administrative Court and returned to a repeated process of decision-making, except for one case, refer to the cases in which the complainant was the Humanitarian Law Centre against the Ministry of Defence, in which the requested information related to the professional hiring of individual members of the Ministry of Defence in the Armed Forces of Yugoslavia during the Kosovo conflict in 1999, and their status today, i.e. their movement in the Serbian Armed Forces (if they are still active). One case involved a journalist's complaint against the Higher Public Prosecutor's Office in connection with the proceeding against Siniša Mali, the current Minister of Finance.

There has been slight progress regarding the compliance of the statutory duty of public authorities in terms of the implementation of measures to improve the transparency of their work, as requested by the Law on Access to Information, mainly to conduct training for the implementation of this law, in which the Commissioner largely participated or organised them. Many public authorities, which have a statutory duty to publish information booklets about their work, to provide staff training, maintain

⁷ Data on 1 February, 2019.

information medium and to submit reports on implementation of this Law to the Commissioner have brazenly refused to do so for years without any liability or repercussions. This is repeatedly happening despite the fact that the failure to comply with these duties is a punishable violation, and the Commissioner regularly informs the Administrative Inspectorate of them with the purpose of initiating liability procedures.

Liability for the breach of the law in 2018, as in the past years, is merely symbolic and is the result of proceedings launched solely at the request of the citizens as injured parties who have been denied information. The Administrative Inspectorate did not file any requests for such proceedings to be launched in 2018, even though the Commissioner himself initiated the launch of the proceedings in all the cases where his decisions were not acted upon, as well as those where other legal obligations were not fulfilled.

2.A.2. Basic Obstacles to Exercising the Right to Access to Information

The right to free access to information in 2018 was burdened by the same obstacles as in 2017, only this time some of them were more evident. **The obstacles to the right to access to information being exercised boils down to the absence of the support by competent authorities, in the following manner:**

2.A.2.1. Inability of Administrative Enforcement of the Commissioner's Decisions

In 2018, there was a problem of administration of the Commissioner's decisions which dates back from the previous year. The reason for this is the rejection of the jurisdiction and cooperation of other bodies in providing the data necessary for the enforcement of these decisions, and different interpretation of relevant norms on enforcement. This problem is evident in the implementation of the new Law on General Administrative Procedure stipulating high fines, which the Commissioner should order in the form of penalties in the process of administrative enforcement procedure, to the public authorities as executors, in order to force them to execute a decision.

The root of this problem is presented in more detail in the Commissioner's 2017 Annual Report. The Ministry of Public Administration and Local Self-Government has concluded that the issue of execution of Commissioner's decisions should be resolved through the amendments to the Law on Access to Information in an "accurate and applicable" manner. However, the Draft Law on Amendments to the Law on Free Access to Information of Public Importance prepared by the Ministry, with a public debate held in 2018, failed to tackle the problem of administrative enforcement of the Commissioner's decisions in a proper manner. The Commissioner submitted his written opinion on the Draft Law to the Ministry stating this, as well as in further communication with the Ministry, expecting that the Ministry would accept the Commissioner's recommendations based on the facts and years of experience.

Another mechanism envisaged for the execution of Commissioner's decisions, by which public authorities are obliged to provide the requested information to the complainant and that falls under the jurisdiction of the Serbian Government, was also not applied in 2018. It is a legal obligation of the Government to ensure at the request of the

Commissioner the execution of his decisions⁸ by direct enforcement. Out of 238 requests in total⁹ the Commissioner has submitted to the Government since 2010 to ensure the execution of his decisions, it has not done so in any single case. In 2018 alone, the Commissioner made execution requests in 65 cases.

Some of the cases in 2018 for which the Government refused to ensure the execution of Commissioner's decisions refer to the following: *the amounts of state financial subsidies and written-off claims for Air Serbia and bonuses given by this company, etc; act on job systematisation in the City of Belgrade's City Administration; proceedings initiated by the Higher Public Prosecutor's Office against Siniša Mali, the current Minister of Finance; engaging certain MPs 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 Interior in connection with the 2016 case in Hercegovačka street in Belgrade, the so-called Savamala case, etc.*

2.A.2.2. Difficult Enforcement of the Commissioner's Authorities

In 2018, in the procedure for resolving complaints referring to the violation of the right to access to information, the Commissioner applied the authorisation referred to in Article 26 of the Law on Access to Information in 17 cases, giving him the authority to request from public authorities the documents with the information requested by the complainants to identify if the information in question can be made available or not.

In 2018, of the 17 requests made by the Commissioner to be provided with the information with integral texts for inspection, public authorities provided the Commissioner with the requested documents in 12 cases, which the Commissioner, after the inspection, duly returned applying the stipulated safety measures if the documents were classified.

Five public authorities refused to provide the Commissioner with the requested documents for inspection.

One of the listed cases referred to the procedure upon the journalist's complaint against the **Ministry of Defence of the Republic of Serbia** in connection with the information on the value of the procurement of certain helicopters and aeroplanes from the Russian Federation and the Republic of Belarus. In the procedure, the Ministry failed to provide the Commissioner with the documents for inspection even after the Commissioner repeated the request three times. The Ministry requested from the Commissioner to first "justify" his request¹⁰ for inspection and familiarise the Ministry with the procedure for inspection of the requested documents¹¹. The Commissioner pointed out to the Ministry¹² his authorisation referred to in Article 26 of the Law on Free Access to Information and the provision of the Data Secrecy Law, and that in the Commissioner's office all requirements had been met in connection with handling classified information, and that access to the secret information was only allowed to persons holding the relevant certificates. After this reply, the Ministry again

⁸ Article 28, paragraph 4 of the Law on Free Access to Information of Public Importance.

⁹ Information refers to the situation on 31 December, 2018.

¹⁰ Commissioner's Letter no. 071-04-3381/2018-03 since 30 October, 2018.

¹¹ Letter of Ministry of Defence, Department for Material Resources, no. 3585-10 dated 8 November, 2018.

¹² Commissioner's Letter no. 071-04-3381/2018-03 dated 20 November, 2018.

refused to provide the Commissioner with the requested document, demanding that the Commissioner should inspect the documents in person on the premises of the Ministry.¹³ The Commissioner asked the Ministry once again, for the third time, to act in line with his request so that he could establish the facts important for making a decision on the complaint, which the Ministry has not done to date.

The second case referred to the *Prosecutor's Office for Organised Crime*, which refused to provide the report of the Security Information Agency from 19 December, 2015 in connection with the allegations of the "coup d'etat" against Dragan J. Vučićević, the editor-in-chief of the daily *Informer* presented in the morning show on TV Pink on 21 November, 2015, with the explanation that the document was marked as "strictly classified", i.e. it required the classification marking to be removed by the Security Information Agency.¹⁴

The Higher Public Prosecutor's Office in Belgrade justified the failure to provide the official note of the prosecutor in charge of the criminal case against Sinisa Mali based on the report by the Anti-Corruption Agency, with the accompanying documentation, by saying that they had been marked as "classified", pursuant to the Data Secrecy Law, and that another body had marked them as secret,¹⁵ and that the provisions of Article 26, paragraph 2 of the Law on Free Access to Information refers only to this form (information medium), and not to the content of the information,¹⁶ and therefore denying the Commissioner's ability to inspect this data. This misinterpretation of the listed norm by the Prosecutor's Office would bring to the absurd situation in which every second-instance body, including the Commissioner, could only "take a look" at the notes provided by the first-instance body in any form, without opening and reading the content. In addition, the Commissioner's decisions made in an appeal procedure (both on the access to information and personal data protection) constitute one of possible legal basis to declassify data (Article 25 of the Data Secrecy Law). It is therefore logical that he has the right to inspect all the documents marked as classified data given it is necessary for him to make legal decisions.

The Ministry of Finance of the Republic of Serbia and the Money Laundering Prevention Administration failed to act in line with the Commissioner's request for submitting a letter of the Higher Public Prosecutor's Office in Belgrade sent to the Administration in connection with the proceeding with the Prosecutor's Office against Sinisa Mali based on the report of the Anti-Corruption Agency, and the response of the Administration to that letter, with the accompanying documents.¹⁷

Public company Jugoimport SDP failed to act in line with the Commissioner's request for submitting the donation contract the Company had concluded with the donation beneficiaries in the January 1, 2012 – July 26, 2017 period.¹⁸

¹³ Letter of Ministry of Defence, Department for Material Resources, no. 3585-12 dated 13 December, 2018.

¹⁴ The letter of Prosecutor's Office for Organised Crime, no. 14/18 on 1 June, 2018.

¹⁵ The letter of Public Prosecutor's Office, ПИ no. 8/18 on 31 December 2018.

¹⁶ The letter of Public Prosecutor's Office, ПИ no. 8/18 on 28 January 2018.

¹⁷ The Commissioner's Letter, no. 071-01-4221/2017-03 on 28 February 2018.

¹⁸ The Commissioner's Letter no 071-01-3199/2017-03 on 2 November 2017.

2.A.2.3. Improper Liability

Violation of the right to free access to information, including the most drastic forms of totally ignoring citizens' requests and failure to comply with the executive and binding decisions of the Commissioner to the lack of fulfilment of other legal obligations of the public authorities, also remained unpunished in 2018.

The situation regarding the liability for the violation of the right to access to information is best illustrated by the Administrative Inspectorate failing to request the launch of a misdemeanour procedure with the misdemeanour courts in 2018,¹⁹ whereas about three and a half thousand justified complaints were resolved by the Commissioner in the same year. Also, the degree of implementing other legal obligations in connection with publishing the information booklets on the work of public bodies, submission of the report to the Commissioner and training provided is slightly over 20%, and these obligations apply to 3.8 thousand public authorities, which means that a vast majority of authorities have ignored this obligation, without being punished.

It is important to mention here that the Administrative Inspectorate failed to submit the requests for the misdemeanour procedure to be initiated despite the fact that the Ombudsman issued the Recommendation²⁰ in the Air Serbia case, which refused to act in line with 20 of the Commissioner's final decisions and to provide the requested information to the complainant.

The absence of liability for the violation of this right, and not only the misconduct liability, undoubtedly encourages those responsible within public authorities to continue to behave in such a way, convinced that they will not suffer any consequences. In addition, the long-term absence of full liability for the violation of rights is the main cause of a very large number of complaints with the Commissioner. The Commissioner's objective inability to resolve all the complaints within the deadline defined by the law is often the reason for lodging the complaints and causing unnecessary budget expenditures and other costs. This justifies the dissatisfaction of the citizens and additionally burdens the operations of the Commissioner's office to prevent the expenditures of administrative proceedings financed from the budget.

The citizens whose rights were violated filed 380 requests for the initiation of misdemeanour proceedings in 2018,²¹ themselves as the injured party, the outcomes of which will be discussed further in this report.

Apart from the lack of liability, there is also a problem with the unequal practices of some misdemeanour courts. More information on this was provided in the Commissioner's 2017 Report.

In cases where sentences were imposed, they are on average closer to the legal minimum, and very often in the appeal proceedings, there was a suspension of proceedings because the statute of limitations had expired.²² In this respect, it is important

¹⁹ The letter of the Administrative Inspectorate number 021-02-00017/2018-01 on 18 January, 2019.

²⁰ Act by the Ombudsman, no. 36625 from 22 November, 2018.

²¹ Data from misdemeanour courts in Serbia provided at the Commissioner's request.

²² Data from misdemeanour courts in Serbia provided at the Commissioner's request, shown hereunder.

to mention that in the process of amending the Law on Misdemeanours, the Ministry of Justice did not accept the Commissioner's initiative to increase the limitation period for the offenses defined by the Law on Access to Information given its anti-corruption potential.

2.A.2.4. Amendments to the Law on Free Access to Information and Other Laws

The very necessary amendments to the Law on Access to Information, which would eliminate the biggest obstacles in its implementation and exercising the citizens' rights, have been in the process for seven years, i.e. since 2012, when the Bill on Amendments to the Law on Free Access to Information of Public Importance was withdrawn from the parliamentary procedure.

The competent authorities have committed themselves to the adoption of the amendments to the Law on Access to Information in almost all of their strategic documents (anti-corruption, the public administration reform, the country's accession to the European Union, integrations – Chapter 23, the implementation of the internationally accepted idea of the Open Government Partnership, etc.), underlining the need for greater transparency of all processes of the public authorities, expanding the powers and resources available to the Commissioner, and the obligation to respect the decisions and instructions of the Commissioner. The last defined deadline for the adoption of the amendments to the Law on Access to Information expired in the second quarter of 2018.²³

Adoption of the amendments to the Law on Access to Information is necessary in order to increase the level of their implementation, eliminate evident obstacles in exercising the rights, primarily those which refer to the execution of the Commissioner's decisions, but also to improve the proactive publication of information, greater transparency and the liability of public authorities and to empower the anticorruption potentials of this law.

However, the Draft Law on Amendments to the Law on Free Access to Information of Public Importance prepared by the Ministry of Public Administration and Local Self-Government, which was subject of a public debate in 2018, if adopted in the proposed text, will lead to a serious reduction of the existing level of the right of the public to know. Apart from certain improvements, for example in expanding the scope of implementing the Law to some new subjects and improvement in the proactive publication of information, some of the proposed solutions will result in a reduced transparency of the operations and failure to eliminate the existing obstacles in the implementation of the Law. This primarily refers to the exclusion of state-owned companies from the scope of the Law that have large financial and material assets, the reason why the information they have has always been in the tremendous public interest, as well as the exemption of the National Bank of Serbia from the protection of the right before the Commissioner, along with the existing six bodies, whose exclusion is seen as problematic in the opinion of the professional public, 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). According to SIGMA, the proposed solution in terms of state companies "is not sustainable, is in conflict with the principles of openness and transparency, comparative law and narrows down the level of

²³ Draft of the reviewed Action Plan for Chapter 23, <https://www.mpravde.gov.rs/tekst/22159/prvi-nacrtr-revidiranog-akcionog-plana-za-poglavlje-23.php>.

right to access to information” because of which, as stated in its comments,²⁴ it is necessary to consider the possibility of giving up on the proposed solution.

When it comes to the legal regulation for the right to access to information to be exercised, it is important to underline that with the adoption of some sector-specific laws, the problem of violating the unity of the legal order became more pronounced when it comes to this matter. In that way, for example, the Law on amendments to the Law on Defence²⁵ was adopted in 2018, which, contrary to the Law on Free Access to Information, prescribes an absolute exemption from the right of the public to know when it comes to certain type of information, without the possibility of applying the test of the public interest. This led to the Commissioner to submit the proposal to the Constitutional Court for the legality of the provision of Article 102 of the Law on Defence to be assessed, and similar, disputable provisions on protected information referred to in Article 45 of the previously adopted Law on Protection of Competition.²⁶ Such decisions, contrary to the Constitution, reduce the level of the right defined by the Law on Free Access to Information.

2.A.3. Typical Cases of Thwarting the Right to Free Access to Information in 2018

2.A.3.1. Denying Access to Information on Media Financing and Their Property

An illustrative example of the violation of the right to free access to information of public importance are the cases where public authorities “keep silent” or when they unjustifiably refer to the abuse of the right or secrecy of data in the situations when journalists request information about funding for media outlets and the use of their property. The information which refers to financing of the media by public authorities must be transparent, not only when it comes to public money spending but also because public authorities may in this way indirectly influence the media’s editorial policy, and consequently affect media freedom.

The State-Run News Agency Tanjug Case

In 2018, the Commissioner initiated the appeal proceedings based on the appeals filed by journalists who were denied the information on the property and deferral of the tax debt repayment by state-owned news agency Tanjug. The agency should have ceased to exist in 2015, pursuant to the decision by the Serbian Government, and which, according to the information on the members in the register on companies of the Business Registers Agency is 100% “state-owned capital”.

Citing the abuse of rights, Tanjug unjustifiably refused to provide the daily paper Danas journalist with the information, i.e. documents containing this information, which can provide the evidence on the property, based on which Tanjug had pledged artworks to the City of Belgrade’s Secretariat for Public Revenues as a way of deferring the property tax debt

²⁴ The comments by SIGMA on the Draft Law on amendments to the Law on Access to Information of Public Importance (19 December, 2018).

²⁵ “Official Gazette of RS”, no. 36/18.

²⁶ “Official Gazette of RS”, no. 51/09 and 95/13.

repayment; the information on Tanjug's movable and immovable property; the amount of the debt claimed from Tanjug is based on the unpaid taxes to the relevant public authorities at the city and national level, with the period to which the debt refers, in particular the debt to all the ministries and the Secretariats of the City of Belgrade's City Administration.

The Commissioner's decision ordering Tanjug to make the requested information available to the applicant was not complied with.

Moreover, the Commissioner's decision ordering the City of Belgrade's City Administration to provide the journalist of the Centre for Investigative Journalism of Serbia with the information relating to Tanjug, i.e. a copy of the documents containing the information (decisions, minutes, agreements, etc.) on the repayment of the tax debt was deferred, the tax type and the amount of deferred payment as of 19 March, 2018, was not complied with. In the appeal proceeding with the Commissioner, the City of Belgrade's City Administration unjustifiably said the data was confidential. The Commissioner did not accept these reasons given that neither formal nor material conditions were met to consider this information as secret, or that their disclosure could cause severe legal harm or other consequences for the interest protected by the law, which prevail over the interest of the free access to information. Particularly so because the requested information deals with fulfilling a legal obligation by a taxpayer and public authorities in performing the activities under their remit. Such information should be made available to the public since it is related to the legal obligations and it is in the interest of improving our tax discipline.

The Case of Project Co-Financing for the Media Outlets' Content in the Territory of Belgrade

The City of Belgrade's City Administration refused to provide a journalist from the Centre for Investigative Journalism of Serbia with the information on co-financing of a project on production of media content in the field of public information on the territory of the City of Belgrade, stating that, inter alia, the requested documents are extensive. The information was made available after the complaint had been filed and after the Commissioner's decision ordering the provision of the information to the journalist, i.e. the copies of the documents containing: contracts concluded in 2016 and 2017 based on the public calls for co-financing projects on creation of media content in the field of public information on the territory of the City of Belgrade, applications for project co-financing in the field of public information submitted by the media outlets with whom the co-financing contract had been concluded, minutes from the sessions of the Public Call Committee for evaluating the project applications, regular narrative and financial reports on project realisation signed by authorised persons and verified with a stamp in line with the law and the concluded contract; as well as other contracts concluded by the City of Belgrade (the City Assembly, Mayor, the City Council, the City Administration) concluded in 2016 and 2017 dealing with public information, advertising or marketing (public procurements, public calls, direct contracting, etc.).

The sheer volume of the requested documents in itself cannot be the reason to limit or deny the right to access, but it can give a public authority the possibility to act in line with the request within the extended period of time – no longer than 40 days from the day the request was submitted - in case there are justified reasons for that.

The Public Broadcasting Company Radio and Television of Pančevo Case

A journalist from Cenzolovka filed a complaint with the Commissioner against the Economy Ministry because of the “silence of a public authority”, i.e. failure to act in line with her request to access the requested information on the privatisation of the public broadcaster Radio and Television of Pančevo. The Commissioner issued an order to the Ministry to make information available to the applicant as well as the documents related to the contract of the purchase of its capital, concluded on 15 October, 2015 between the Privatisation Agency and Radoica Milosavljević, specifically the evidence of payment of the selling price for 100% of the capital of the Company; annual reports for 2015, 2016 and 2017 the purchaser, Radoica Milosavljević, was obliged to send to the Regulatory Authority of Electronic Media in line with the mentioned purchase contract, information about the share of programmes time in certain languages for national minorities, the share of its news, education, scientific, cultural-artistic, children, leisure, sport and other programmes in the public interest in certain languages of national minorities in the broadcasted content of the provider of the media service for the previous year (RTV Pančevo), based on which the Agency determines whether obligations under that contract have been met and the audit reports provided by the purchaser Radoica Milosavljević to the Agency in line with the aforementioned purchase contract; assessment by an expert on the investment subject; extraordinary auditor’s review; findings of the Agency if the purchaser failed to provide the auditor’s review; and the expert assessment on the investment subject in order to identify contractual responsibilities.

This Commissioner’s decision was not executed.

2.A.3.2. Denying Access to Information on Spending Public Funds

In principle, all the information which refers to the use of public funds and spending of public funds in public procurement procedures, payments on various grounds (salaries of public officials and civil servants, royalties under copyright contracts and service contracts, etc.), donations to various entities, subsidies and surety made with public funds etc. must be available to the public, even proactively.

Unfortunately, much of this data is denied to the public by unjustifiably making a reference to data secrecy or by making access to the data difficult as a result of “silence” of a public authority. The data is only made available after the Commissioner intervenes.

The Christmas Tree Procurement in Belgrade Case

A number of journalists made a complaint with the Commissioner due to the lack of action (“administrative silence”) of the City of Belgrade’s City Administration for requests about the public procurement of a Christmas tree JH 7/2017 and the requests for the minutes from opening of the bids in the public procurement procedure on the Christmas tree with decorations. The Commissioner ordered the public authority, against which the complaints were filed, to make the information available but the authority in question did not act on the Commissioner’s decision.

The Reconstruction of Seven Small Hydroelectric Power Plants Case

Public company Elektroprivreda Srbije refused to provide the Centre for Investigative Journalism of Serbia journalist with the information about a project on reconstruction of seven small hydroelectric power plants, i.e. with a copy of the document containing the minutes from bids opening, reports of the Evaluation Committee on the bids, decisions on the selection of the most attractive bid and the contract with the annexes, with the explanation that the requested information was commercially sensitive. The Commissioner overturned this decision of the public authority and ordered that the requested information be provided to the journalist.

The Commissioner did not accept the allegations of the first-instance authority stating that making the requested documents available would involve disclosing commercially sensitive information. The principle of a transparent procedure, one of the basic legal principles in carrying out public procurements, defines transparency at all stages of the public procurement procedure, from planning, conducting and executing the contract and it, undoubtedly, contributes to eliminating irregularities and possible corruption, which speaks in favour of the publication of the information on awarding the contract in the public procurement procedure, except when there are specific justified reasons against the disclosure of the information at a certain stage of the procedure, and when the contracting authority can provide evidence of this, which was not the case here. Moreover, the requested information refers to the public procurement procedure of a public authority in relation to a contract that was concluded with the selected bidder, so if the selected bidder had already been provided with the information on the prices of the works and equipment mentioned then this information should be made available to other bidders. The principle of equal treatment is one of the basic legal principles in conducting public procurements, based on which the contracting party is obliged to ensure an equal treatment of all bidders at all stages of the procedure.

This decision was not executed.

The Election Guarantee Case

The Anti-Corruption Agency refused the request filed by the Centre for Investigative Journalism of Serbia journalist, asking to ensure the inspection and provision of copies of the documents (blank bill of exchange, surety contract, pledge in the form of a mortgage, etc.) used by political entities as means to ensure loans and credits for election campaigns at all levels in 2014, 2016, 2017 and 2018. The Agency cited a breach of the bank's legal duty to protect the confidentiality of its customers and the right to peacefully enjoy property as the reasons for its refusal to provide this information. The Commissioner overturned the Agency's decision and issued an order asking it to provide the requested information, but that it should first protect personal data (such as place of residence, personal identification number, number of the bank account of the individual, etc.) before ensuring the access to the documents if the documents contained such personal data.

Justifying its decision, the Commissioner underlined, *inter alia*, that in this specific case, the requested information refers to financing of the electoral campaigns which, in terms of the Law on Financing Political Activities, is a set of activities of a political entity starting from the day of calling elections until the announcement of the final results of the elections, which are controlled at all stages of the electoral process for the purpose of the necessary

transparency of the electrical process, and thus prevents violations of different laws. In addition to this, the requested information refers to the election guarantee by which is it guaranteed that taxpayers' money will be used in line with the law, and that there is an undisputed strong public interest in making this information public.

The argument of the Agency, that this involves personal data whose disclosure to the public would require a written consent of the bank's client, did not change the Commissioner's mind because the complainant had not even requested the personal information of persons who appeared as guarantors, provided surety, pledgors or mortgage debtors, or the bank accounts used for transactions, etc., and that the journalist had not requested any personal data of the bank's clients.

The Commissioner's decision was not executed and the Republic Public Prosecutor's Office lodged legal actions against it before the Administrative Court.

2.A.3.3. Obstructing and Denying Access to Information on Privatisation Processes

Privatisation procedures, where the ownership of the capital and the property of legal entities operate with socially-owned and public capital and assets naturally cause a strong public interest. Public authorities often obstruct the access to information which relate to the privatisation process, unjustifiably referring to data secrecy (business secret, classified data, etc).

The PKB Privatisation Case

The Ministry of Economy of the Republic of Serbia refused the request of a journalist working at Insajder, who asked for the document containing the assessment of the value of the privatisation subject Belgrade Agriculture Corporation (PKB), offered for sale in a tender issued in 2018, and which had previously been put up for privatisation in 2015, with the reference to the fact that it was a secret in terms of the Law on Privatisation defining that, inter alia, interested persons may obtain the documents under the conditions and in the manner defined by the Law on Privatisation and bylaws; for the subjects of privatisations which are privatised through the model on capital sale, the interested persons may obtain the tender documents only if they have previously signed a confidentiality agreement and paid a fee.

The Commissioner overturned this decision of the first-instance body and issued an order to provide the journalist with the requested information. Justifying his decision, the Commissioner pointed out that the justification of the request for the access to the information of public importance must be assessed by taking into account provisions of the Law on Free Access to Information of Public Importance, which in the matter of availability of information is *lex specialis* compared to the Law on Privatisation. In addition, the principle of transparency of the procedure, as one of the basic legal principles stipulated by the Law on Privatisation in the privatisation process, which includes transparency at all the stages of the procedure, undeniably contributes to eliminating irregularities and possible corruption and speaks in favour of the disclosure of the requested information, except from the cases when there are specifically justified reasons against the disclosure of the information at a certain stage of the procedure, and when public authorities provide evidence of this, which was not the case here.

When making the decision, the Commissioner first had in mind the nature and importance of the requested documents since they refer to the sale of the assets of PKB for which there is a big public interest as it is a state-owned company. Based on the requested assessments, the government had formed the price and sold it to UAE-based Al Dahra Agricultural Company; the fact that in the public call PC 184/15 for the sale of PKB's assets, the assessed value of the fixed assets was around 303 million euros, while in the public call PC 8/18 the assessed value of the fixed assets was around 208 million euros, some 100 million euros less than in the first one. Given that PKB was sold for around 105 million euros (immovable assets of PKB), it is in the public interest to know if the privatisation process was carried out in line with the law and based on what circumstances the assets lost their value.

The Commissioner's decision was not executed.

The 24 Controversial Privatisations Case

The information relating to the 24 controversial privatisations and criminal proceedings opened in connection with these controversial privatisations is a common subject of the requests for the access to information, which the Commissioner has already reported about.

In 2018, the Commissioner overturned two decisions by the Ministry of Interior dismissing the requests by a journalist of Insajder, i.e. of the CIJS for the access to the information, and ordered the Ministry to provide the requesters with the information on when, against whom and how many persons, and on what grounds, due to the suspicion of committing which criminal offenses and before which prosecutor's office or court, the Ministry filed criminal actions, reports and other acts reporting illegalities during the investigation of the so-called 24 controversial privatisations.

The Commissioner did not accept the reasons of the first-instance body stating that the interest of the investigation procedure prevails that of the requesters to be provided with the data, because it failed to provide the evidence to support that claim. As there is a suspicion that illegal actions by legal entities i.e. responsible persons at these legal entities and others, in the procedures of the so-called 24 controversial privatisations has caused several billion dinars in damage to the state coffers, and since several procedures were initiated before the competent authorities to determine their liability, the outcome of which is still unknown despite the fact that the proceedings were initiated a long time ago. Given that the investigations into these controversial privatisations were also dealt with by the Anti-Corruption Council and that in several reports it has pointed out to the public authorities i.e. the Serbian Government, the illegalities in conducting the privatisations, and that the EU bodies requested the investigation of the controversial privatisations, it is undisputed that there is a strong public interest both domestic and international to be familiarised with the mentioned information, because of which the Commissioner found that making this information public would contribute to eliminating concerns in connection with legality of work of the relevant authorities.

The Ministry of Interior executed both Commissioner's decisions.

2.A.3.4. Denying and Obstructing Access to Information on the Control of the Legality of Operations of Public Authorities

The public often uses the instruments defined by the Law on Free Access to Information of Public Importance to verify the legality of work of public authorities i.e. to check whether public authorities exercise their competences and authorisations in line with the law.

Unfortunately, it is common that exercising the right of the public is denied or obstructed either by unjustified reference to data secrecy or by fully ignoring the requests. Apart from the significant efforts made by the Commissioner through various measures and decisions ordering the provision of the information, in many cases the information which should be made public is withheld.

The Savamala Case

Many details concerning demolition of facilities on Hercegovačka street in Belgrade on the night of 25 April 2016 have remained unavailable. The Commissioner elaborated on this case in the last year's annual report.

The follow-up of the case, which continuously draws a strong public attention, is the fact that the Ministry of Interior's official G. Stamenković was convicted for unprofessional conduct in the service – failing to act on reports by the citizens during the illegal demolition in Belgrade's central neighbourhood of Savamala. In relation to this, a journalist of KRIK requested the information from the Ministry of Interior which refers to G. Stamenković, a shift manager of the Police Command Centre, i.e. the documents which can show if a disciplinary proceeding for it was initiated, and if so, when it was launched and how it was terminated, whether he was imposed a disciplinary measure and what type, i.e. whether his employment had been terminated due to a serious violation of his official duty, and the report on the initiated disciplinary proceedings and the decision on the imposed disciplinary measure.

The Ministry of Interior ignored the journalist's request, without any reply. Also, the ministry did not respond to the Commissioner when the journalist's complaint on this case had reached the Commissioner's office. After the completion of the proceeding, the Commissioner ordered the Ministry of Interior to provide the KRIK journalist with the information within three days from the day of receiving the Commissioner's decision.

The Commissioner's decision was not enforced.

The Case of Illegal Construction of a Facility at Pančić's Peak on Mt. Kopaonik

The construction of the illegal facility on Mt. Kopaonik's Pančić's Peak and its unsuccessful demolition attracted a lot of attention in the public. A journalist of Insajder requested from the Ministry of Finance's Administration for the Prevention of Money Laundering information about the person publicly known as the project investor, i.e. S. Matković. The requested information refers to the analysis of the transactions in the accounts of this individual, and the information on which basis and on whose request the Administration had performed the analysis, what was determined by the said analysis, and to which prosecutor's office the data was sent for further action. The Administration remained

silent about the request and noted in a statement on the appeal that the access to the requested information would make other ongoing proceedings difficult in terms of Article 9, paragraph 2 of the Law on Free Access to Information of Public Importance.

After the complaint procedure was conducted, the Commissioner ordered the Prevention of Money Laundering Administration to provide the complainant with the requested information and documents, but to protect and withhold the personal data, such as: the names and surnames of all persons except from officials, addresses, the citizens' personal identification number, etc, if contained in those documents. The Commissioner based his decision on the fact that the specific case involves information which refers to S. Mitković, the person publicly known as the investor of the illegal facility built on the Pančić's Peak located in the Kopaonik National Park. The entire case received a lot of attention in the public because of the location of the facility, the size of its area (1,000 square meters), and other circumstances regarding the construction and removal of the illegal facility. So, the media outlets reported that S. Mitković was given the green light by public authorities to set up a ski bar spanning 150 square meters, but that instead of a prefabricated facility, a concrete facility was constructed in the zone of military interests and on the very border with Kosovo; that in the requests for the necessary approvals she signed herself as both Matković and Mitković; that the municipality of Brus, on behalf of the investor, allegedly submitted a request to the Ministry of Construction, Transport and Infrastructure for the legalisation of the facility in 2014, even though there is evidence that the construction of the facility started in 2017; that the Ministry filed charges against the aforementioned person, and that the state Construction Inspectorate made a decision on 12 July 2018 for the mentioned facility to be demolished but that this has not happened to date; that in the accounts of the mentioned person the Prevention of Money Laundering Administration did not find the funds by which she could finance the construction of the facility and that the data obtained were for this reason sent to the Higher Public Prosecutor's Office in Kraljevo. Also, the requested information refers to the actions of the Prevention of Money Laundering Administration in connection with the case, which leads to suspicion of money laundering. Based on these reasons, the requested information was additionally in the public interest, and the requirement referred to in Article 14, item 2 of the Law on Free Access to Information of Public Importance was met, that the requested information, though it involves a certain individual should be made public.

This Commissioner's decision was also not enforced.

The Siniša Mali Case

The Commissioner wrote about the Sinisa Mali case in more detail in the last year's report. Since the case involves a public official, former Mayor of Belgrade and the current Minister of Finance, it is clear that the information on the work of public authorities regarding the suspicion of him acting contrary to the law is in the public interest. In 2018, a number of complaints were filed with the Commissioner regarding this case. The Commissioner overturned all the decisions of first-instance bodies (the First Basic Public Prosecutor's Office in Belgrade, the Higher Public Prosecutor's Office in Belgrade, the Tax Administration and the Prevention of Money Laundering Administration), ordering them to provide the requesters with the information on activities of the involved bodies in the case. None of the Commissioner's decision were enforced, and the Republic Public Prosecutor's Office filed legal actions against two decisions before the Administrative Court.

Those decisions refer to the following:

1. The Higher Public Prosecutor's Office was ordered to provide the Centre for Investigative Journalism of Serbia (CIJS) journalist with the information, i.e. copies of all the documents sent by the Prosecutor's Office to other public authorities while working on the Sinisa Mali case based on the report of the Anti-Corruption Agency dated 4 August, 2016, and in particular, the documents and requests sent to the Anti-Corruption Agency, the Prevention of Money Laundering Administration and the Ministry of Interior, as well as the documents by which the Prosecutor's Office determined that there was no evidence to indicate that the actions of the Belgrade Mayor Sinisa Mali contain any elements of criminal acts within the competences of the Prosecutor's Office, and by which it made the decision to send the entire case documents to the First Basic Public Prosecutor's Office in Belgrade for further action. In his second decision, the Commissioner ordered the same body to provide a journalist of Insajder with information i.e. copies of the documents containing the information as follows: the official notes on terminating the proceeding in the criminal case against the Mayor of Belgrade Sinisa Mali based on the Anti-Corruption Agency report on his property, as well as the documents based on which it was made. The state Public Prosecutor's Office launched legal actions against both of the Commissioner's decisions before the Administrative Court.

2. The Commissioner ordered the First Basic Public Prosecutor's Office in Belgrade to provide a journalist of the Crime and Corruption Reporting Network – KRIK - with the insight into the case files, which refer to the proceeding initiated by the Prosecutor's Office against Siniša Mali, the current Minister of Finance because of a possible criminal offense involving the failure to report property or reporting false information on the property referred to in Article 72 of the Law on the Anti-Corruption Agency, which was terminated on 3 October, 2018.

3. The Ministry of Finance and the Tax Administration in Belgrade were ordered to provide the journalist of the Centre for Investigative Journalism of Serbia (CIJS) with the copies of the report sent by the Anti-Corruption Agency to the Tax Administration for further action on 27 January, 2015 after the performed control of data from the report on the property and income data of the then Belgrade mayor had been checked, as well as the documents which can support what the Tax Administration did regarding the report; what is the outcome of the conducted proceeding and whether the proceeding has been completed, otherwise – the status of the proceeding and the reasons why it has not been completed.

4. The Ministry of Finance's Administration for the Prevention of Money Laundering was ordered to provide the CIJS journalist with the requested information i.e. copies of the letter of the Higher Public Prosecutor's Office in Belgrade sent to the Administration, in connection with the case against Siniša Mali with the Public Prosecutor's Office based on the report of the Anti-Corruption Agency, and the response of the Administration to the letter with the accompanying documents.

2.B. The Right to Personal Data Protection

2.B.1. Legal Framework

The legal framework in the field of personal data protection has been regulated improperly in Serbia, which is primarily reflected in the insufficient harmonisation of the internal legal framework with the relevant international standards, mutually incomplete harmonisation of the laws, and the laws and bylaws, non-regulated or insufficiently regulated issues, etc.

The issue of personal data protection should be systemically regulated, which would imply putting in place a strategy, as an official document, and a relevant action plan. Also, it is necessary in line with the new LPDP to pass i.e. adopt amendments to a large number of laws regulating the issue of data processing, and it is also necessary to regulate a number of organisational issues with bylaws.

It is important to underline that the right to privacy and personal data protection cannot fall under the jurisdiction of one body or only certain bodies. At the same time, personal data is valuable for all companies so it is crucial that they handle personal data in a responsible manner.

2.B.1.1. International Legal Framework

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 (Article 81)²⁷. Moreover, the country's EU candidate status implies the external and internal political policy in line with the policy of the European Union and the *acquis communautaire* of this supranational organisation.

As a member of the Council of Europe, the Republic of Serbia participates in the creation of the European Law on Human Rights, and the standards of human rights expressed, in the judgements of the European Court of Human Rights, among others, are an integral part of the internal law as a generally accepted rule of international law.

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

In the European Union, significant changes have occurred in the field of personal data protection. 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 very slight deviations. As of 25 May 2018, the implementation started of the new Regulation²⁸ 2016/679 of the European Parliament and of the Council on the protection of individuals with regard to the processing of personal data and on the free movement of

²⁷ The Law on the Confirmation of the Stabilisation and Association Agreement between the European Union and its Member States, on the one hand, and the Republic of Serbia, on the other ("Official Gazette of RS - international agreements", no 83/2008).

²⁸ <https://www.poverenik.rs/sr/pravni-okvir-zp/medjunarodni-dokumenti/2502-uredba-2016679.html>.

such data, and repealing the Directive 95/46/EC. The Regulation considerably differently, fully and precisely regulates the field of personal data protection, not only in the European Union, but almost globally. In addition to the said Regulation, Directive 2016/680 has been adopted of the European Parliament and the Council on the protection of individuals with regard to the processing of personal data by competent authorities to prevent, investigate, detect or prosecute criminal offences or to execute criminal penalties, and the free movement of such data, and repealing the Council Framework Decision 2008/977 (hereinafter: the “Police Directive”). 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 25, 2018) 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 amendments to the Convention on the Protection of Individuals with regard to Automatic Processing of Personal Data, the first binding international data protection document in the field of data protection, adopted back in 1981. The aim of this new document is to improve the protection of personal data and to harmonise the legal systems of a broad range of countries given it is open to non-member States of the Council of Europe. By the end of 2018, more than twenty Member States to the Convention signed this Protocol. Unfortunately, the Republic of Serbia is not among them so it is necessary to start the relevant procedure as soon as possible.

It is necessary to emphasise that the Commissioner, in accordance with his authorities and as an independent state body, expresses readiness at all times and provides assistance, support and opinions from his scope of work to the competent bodies in the process of stabilisation and accession of Serbia to the European Union. In 2018, the Commissioner submitted several documents on this matter to the Serbian Government, the Ministry of Public Administration and Local Self-Government, the Ministry of European Integration and the Council for the implementation of the Action Plan for Chapter 23.

2.B.1.2. Internal Legal Framework

Adoption of the New Law on Personal Data Protection

The National Assembly of the Republic of Serbia adopted the new Law on Personal Data Protection on 9 November 2018, which entered into force on 21 November, 2018, and will be applied as of 21 August, 2019.

As stated, the process of adoption of the new law itself was not fully transparent despite a public debate being formally organised, which reflected on the final content of the text of the Bill on Personal Data Protection. The public was not familiar with the names of the members of the Working Group of the Ministry of Justice, and one of the foreign experts was publicly presented as an expert of the Council of Europe, even though that person does not hold the mentioned title and this organisation was not familiar with this expert. Also, the Ministry failed to provide the public with complete information on the opinion of the representatives of the European Committee on the Draft Law. In the end, in the report on the public debate on the Draft Law, the Ministry stated that only one event had been organised by a citizen association, to which the Ministry had not been invited as one of the participants. Neither in the course of the public debate nor later, had the Ministry organised an event on its own on the Draft Law. The only event organised by the Ministry had taken place a while ago,

before November 2017, and then the public had not been not familiar with the content of the document.

The Commissioner repeatedly submitted to the Ministry of Justice his opinion on the Draft Law, and he did this in the procedure governed by the Rules of Procedure of the Government in August 2018. The Ministry adopted only a small number of Commissioner's suggestions. 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 Data Protection Regulation and the "Police Directive", and the lack of regulation of certain forms of processing and important issues regarding the oversight and procedure of right protection before the Commissioner.

The Commissioner also pointed out that the adoption of an important law should not only be a question of fulfilling obligations towards an international organisation, but also an opportunity to re-examine the society's needs 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. Among other things, this conclusion can be made also based on the General Data Protection Regulation in the part which refers to special forms of processing of, the identification number, for example. Just to illustrate this, Article 87 of this Regulation underlines that this issue may further be determined in detail by the Member States, and that the provision of the national regulation should not enumerate all the laws which are applied since it is clear that in a legal system all valid regulations are applied, unless it is specifically defined that certain regulation is not applied.

After the adoption of the Draft Law and the launch of the procedure for the adoption of the law in the National Assembly, the Commissioner sent a special letter to the MPs, 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 seems inconsistent with the Constitution of the Republic of Serbia. This law was promptly adopted without a significant discussion and the group rejecting all proposed amendments. Just to illustrate the point, while the EU General Regulation of Data Protection was being prepared, not only did the adoption process take some time, but a record number of amendments was provided to this document in the European Parliament.

New Law on Personal Data Protection

The new LPDP, which is due to be implemented on August 21, 2019, naturally prescribes a lot of novelties in this area. Following the example of the General Data Protection Regulation, this law contains provisions on the rights of persons whose data is processed, and thus the new obligations of the data controllers and data processors, and it also changes the role of the Commissioner by introducing numerous new obligations for the Commissioner.

The opinion of the Ministry of Justice that the national law contains the translation of one regulation, as a regulation of the European Union which is directly implemented by Member States and in the European Union and represents unified rules, as well as the "Police Directive", the regulation which includes the process of harmonisation and represents only the minimum of set standards makes the new LPDP text difficult to understand since it

contains a number of provisions on exceptions, provisions general in character, while numerous provisions are redundant.

If we take into account the interest of the economy for new obligations and how many of these entities there are, public attention was mostly geared at those provision of the Law which refer to the General Regulation on Data Protection. In this way, t attention is fully shifted away from the very important provisions which give great powers to the unspecified circle of bodies, but also legal entities to interfere in the right to personal data protection guaranteed by the Constitution. When it comes to the conciseness of a legal provision, the LPDP leaves a lot of room for different understanding and interpretation.

This Law leaves unregulated the area of video surveillance, which represents an unregulated field in Serbia, and since the adoption of the Law on Personal Data Protection in 2008, the supporting argument of the Ministry of Justice has been that the matter should be subject to a special law. As a result, unfortunately, the use and often abuse of surveillance cameras takes place in Serbia. As a counterargument to the Ministry, it was stated that the General Regulation on Data Protection did not contain the provision on surveillance cameras. However, the fact that something which should be regulated within the internal legal order, and not explicitly stated in the General Regulation, is not an obstacle for the government to stipulate it in the national law, which has been done, for example, in Germany and Croatia.

Although the new LPDP has assumed 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, i.e. persons' rights are largely absent or symbolic. With the misdemeanour courts overburdened and a certain percentage of cases whose statute of limitations expired, on the one hand, and the fact that there is almost no prosecution for committing criminal acts of unauthorised collection of data on the other , is just another argument in favour of harmonising the national regulation with the General Regulation on Data Protection, in the part which refers to administrative measures and which, in the legal system, are stipulated by the Law on Protection of Competition. The Law does not clearly and precisely regulate the issues which refer to using surveillance technology and the procedure of data protection with the Commissioner.

2.B.2. Illustrative Cases of Violating the Right to Personal Data Protection Identified in the Supervision Procedure in the Implementation and Execution of the Law on Personal Data Protection

1. Abuse of a third-party data in concluding contracts with Belgrade-based mobile operator VIP Mobile Ltd. Belgrade

In early 2018, the Commissioner was contacted by a number of citizens stating that their data, including the citizen's unique identification number, had been used by a third party to conclude contracts on services and purchase of mobile phones with VIP Mobile Ltd. Belgrade (hereinafter referred to as: Vip Mobile).

The Commissioner carried out an inspection procedure over the implementation of the LPDP by VIP Mobile in which it was identified that there were instances of this abuse in concluding contracts on the premises of the legal entity Hendi-tel Ltd. Belgrade, which concluded contracts with individuals on behalf of and for the account of VIP Mobile, and when it comes to online contracts VIP Mobile's webpage. In both cases the deliveries of mobile phones and SIM cards were performed to the persons who were unauthorised to use other people's personal data while concluding these contracts with VIP Mobile.

After establishing the facts, the Commissioner warned VIP Mobile about the irregularities in processing personal data since it concluded contracts with persons who were using personal data about third parties, which is not allowed pursuant to Article 8, items 1 and 8 of the LPDP, since the processing is carried out without legal authority or consent of the individual whose data is used, by collecting data in the manner which is not based on a credible source, and for the processing of which the requirements referred to Article 14 of the LPDP regarding the collection of data from other persons were not met. Data processors – Hendi-tel, which concluded the contracts with individuals and City Express Ltd., which delivered mobile phones to individuals who had ordered them online, failed to identify the credibility of the provided personal data, i.e. the use of citizen's unique identification number was not confirmed by the inspection of the ID of the individuals in question.

As a result of the warning issued by the Commissioner, VIP Mobile informed the Commissioner that it initiated the revision of its cooperation with the legal entity City Express, which delivered mobile phones and SIM cards to individuals who ordered them VIP Mobile's webpage, while Hendi-tel Ltd. ceased to operate. Since the Commissioner was not provided with the evidence that these irregularities have been eliminated by the end of the reporting period, the Commissioner will take the measures defined by the law in the coming period.

2. Publishing Citizens' Data in the Telekom Srbija Directory Without Phone Numbers

In late 2018, the Commissioner was contacted by a number of citizens stating that their personal data was available in Telekom Srbija directory JSC Belgrade (hereinafter: Telekom) despite their requests to have their data deleted..

The Commissioner conducted the inspection procedure by doing a search of a phone directory, the Data controller named White Pages on the web page <http://www.11811.rs/BeleStrane/Index>, which is available to members of the public. The search was done for the surname Jovanovic with residence in Belgrade. In the course of the inspection procedure it was established that Telekom had published the data on the names, surnames, place of residence and address of 200 individuals, with six entries excluding their phone numbers. The Commissioner requested from the data controller to explain the situation. It was established that Telekom deleted the phone numbers of individuals, but not other personal data.

Telekom stated that it keeps an updated public phone directory with the data of its customers and that it provides its customers with the access to the notification services and public phone directories in line with the Law on Electronic Communication and the Rulebook on the conditions to use the data from a public phone directory. Telekom also said that the

relevant department had been informed about the statement from the Commissioner's letter, and that an inspection procedure was underway. It said that if it established that such errors had been made that the company would rectify them and inform the Commissioner of the outcome.

Telekom sent a new letter to the Commissioner informing him that it had updated the data in its directory, after which the Commissioner established that Telekom had also deleted the names, surnames, the place of residence and addresses of persons whose phone number had not been published.

3. Joint Stock Company for Air Traffic Air Serbia Belgrade, Transfer of Data from the Passenger Name Record (PNR) and Other Persons Who Book and Purchase Tickets in the USA, Without the Commissioner's Permission

On 4 October 2018, Air Serbia, through its attorney, filed a request with the Commissioner for obtaining the permission to transfer data out of the Republic of Serbia to the U.S. in order to store the data from the Passenger Name Record (PNR) and other persons who book and purchase tickets in the server provided by the data processor (Sabre Rocrade AB headquartered in Stockholm, Sweden).

As in the course of online payment in September 2018, the purchaser received a return email on the transaction sent from Air Serbia's and Sabre Rocrade's email addresses, which raised suspicions that Air Serbia had already started to transfer data out of the Republic of Serbia to the U.S. A letter was sent to Air Serbia requesting that it respond to the questions regarding the data processing in question.

Air Serbia explained that it had started with the realisation of the Master Agreements, concluded with the foreign data processor Sabre Rocrade in Sweden on 26 January, 2015, and that it was still in progress, and that the data, apart from Air Serbia's server in the Republic of Serbia were also stored on the data processor's server, which was located on the U.S. territory, and that the data was transferred out of the Republic of Serbia to that country.

As it was established that Air Serbia, without permission transferred the data out of the Republic of Serbia to the servers of the data processor Sabre Rocrade, located on the U.S. territory, which are not Members of the Council of Europe Convention for protection of individuals on automatic processing of personal data, a request was filed with the Misdemeanour Court in Belgrade to initiate a misdemeanour proceeding because Air Serbia violated Article 53 of the LPDP.

4. "GP of Your Choice" App

The Ministry of Health announced the launch of its mobile app "GP of Your Choice", where the citizens would be able to make appointments with their chosen GP, and with the history of their appointments provided on it. This app was to be downloaded from the Google Play store for free, and it was downloaded by tens of thousands of the citizens by the end of 2018, according to the data from Google Play Store.

The inspection of the terms of use of this app established that the company first marked as the owner of the app was a non-existent company, also named GP of Your Choice App Ltd., and then Nis-based Sorsix International Ltd. The terms of use of the app were fully removed on the same day the inspection was carried out. The inspection of the terms of use of this app established that the app processed personal data of the users both for the purpose of making appointments for medical check-ups and for direct marketing and advertising purposes.

The users would activate this app by entering their personal insurance number by which they would access their user's account and receive information on their name and surname, list of previous medical check-ups, the name of the institution, name and surname of their chosen GP, and chosen specialists, the dates and time of performed medical check-ups, check-up codes, available appointments, and the status of their health insurance. At a press conference, the Commissioner presented in great detail how personal data can be compromised with the use of third-party personal insurance number and the ways in which one can have access to a large number of valid personal insurance numbers.

The Ministry of Health and the Institute for Public Health – Batut - did not give any clarification to the questions raised by the Commissioner or provide the requested documents even after being urged to do so. Legal actions against them were launched as a result of this. The only data controller who, in the course of the process, responded to the Commissioner was the National Health Insurance Fund, which confirmed that it had no information in connection with the app.

The Commissioner made a decision to prohibit the company Sorsix International Ltd. to process personal data through the “GP of Your Choice” app, because it violated the provisions of Article 47, paragraph 2 of the LPDP, until the irregularities in data processing were eliminated. Due to the failure to comply with the decision, a misdemeanour proceeding was also initiated against the company. (It was subsequently established that it did not have a legal representative for two months).

5. The President's Letter to Pensioners

A number of the citizens of the Republic of Serbia have contacted the Commissioner stating that, as pension beneficiaries, they received a letter addressed to them (stating their name, surname and address), and that its content confirmed that the letter was addressed to pension beneficiaries, signed by President of the Republic of Serbia, with the Serbian Progressive Party's logo on the envelope. Some of these persons said that the letter was also addressed to their underage children who are beneficiaries of family pensions.

The Commissioner launched the supervision process of the National Pension and Disability Insurance Fund (hereinafter referred to as: NPDIF), the President of the Republic of Serbia and the Serbian Progressive Party. General Secretariat of the President responded to the Commissioner saying it had not obtained such data, while the Serbian Progressive Party responded that the data... *“was obtained from the database of its members, as well as through the VDV actions and at stands carried out in the past ten years”*. NPDIF, despite the sent urgency letter, failed to respond to the Commissioner and legal actions were initiated against NPDIF.

On 16 November 2018, the Commissioner was anonymously provided with the text of an internal act of Post of Serbia, stating that: *“The service user – the Serbian Progressive Party - has informed us on shipping around 1,700,000 letters of addressed direct post, to be successively provided”*. With the inspection of Post of Serbia it was established that the document was valid, while the NPDIF’s webpage showed that the total number of pension beneficiaries (age, disability and family pensions) is 1,712,869. For this reason, due to justified suspicion of committing the offense of unauthorised collection of personal data pursuant to Article 146, paragraph 3 in relation to paragraph 1 of CC, the Commissioner initiated legal actions against the unknown official at NPDIF.

6. Publishing Birth Certificates and Certificate of Nationality in Media Outlets

On 21 June 2018, in the printed issue and on the webpage of the daily Informer, an article was published containing: the Birth Certificate for A.A. issued on 21 June, 2018 by the relevant service of the City Administration of the city of Vranje; the Birth Certificate for B.B. issued on 21 June, 2018 by the relevant service of the City Administration of the city of Kraljevo; the Certificate of Nationality for B.B. issued on 21, June 2018 by the relevant service of the City Administration of the city of Kraljevo. Persons whose documents were published were foreign national team football players, born in Serbia, the Province of Kosovo and Metohija.

In the supervision procedure, the City Administration of the city of Valjevo informed the Commissioner under its act on 28 June 2018, it issued the birth certificate for AA to the Police Administration in Gnjilane, located in Vranje, based on their official request from the same date. Under its act on 29 June, 2018, the City Administration of the city of Kraljevo informed the Commissioner that the birth certificate and certificate of nationality for BB were issued by the Police Administration for Kosovska Mitrovica, located in Kraljevo based on their official request on the same date.

The Commissioner initiated legal actions against the unknown official at the Interior Ministry since this involved all elements of a criminal offence of unauthorised collection of personal data, referred to in Article 146, paragraph 3 in relation to paragraph 1 of the Criminal Code.

Subsequently, the Interior Ministry provided the Commissioner with the explanation, stating that the data had been collected at the request of the Office for Kosovo and Metohija, which was also provided. From the content of the provided request it cannot be concluded that the documents in question were requested, but only the data on these two persons.

7. The Faculty of Medical Sciences University of Kragujevac Published a Scanned Employment Booklet of AA, PhD on Facebook and Twitter Social Networks

On 8 February 2018, the Commissioner received an application from AA, PhD from Belgrade because scanned pages of this person’s employment booklet were published on the Facebook and Twitter accounts of a citizen.

As the mentioned AA was employed by three employers, in the course of the supervision, with the insight into the personal files of the mentioned AA at all three

employers, the Commissioner established that the employment booklet was located in the personal file at the Faculty of Medical Sciences University of Kragujevac, while the copies of it were found at the other two employers.

As the scanned pages of the employment booklet of AA published on social networks were in colour, based on the facts identified in the supervision, the Commissioner initiated legal actions with the Higher Public Prosecutor's Office in Belgrade (Department for Cybercrime) because of the existence of reasonable grounds to suspect that the unknown perpetrator with the capacity of an official, employed at the Faculty of Medical Sciences University of Kragujevac, in exercising his/her duty, without the authorisation, scanned and used personal data for the purpose they were not intended for, which as a data controller, in the capacity of employer, it may collect, process and use in line with the law, by which the unknown perpetrator committed a criminal offence of an unauthorised collection of personal data referred to in Article 146, paragraph 3 in relation to paragraph 1 of the Criminal Code.

8. Prize Scams

In 2018, the Commissioner was contacted by several dozen citizens concerning prize scams on the Internet (on social networks, via mobile apps, etc.). The organisers behind such schemes used a name of a well-known company or brand and invited participants to send their own photographs, mainly their ID or passport photos. The webpage or a social network account where the false prize-winning game was placed was shortly deleted.

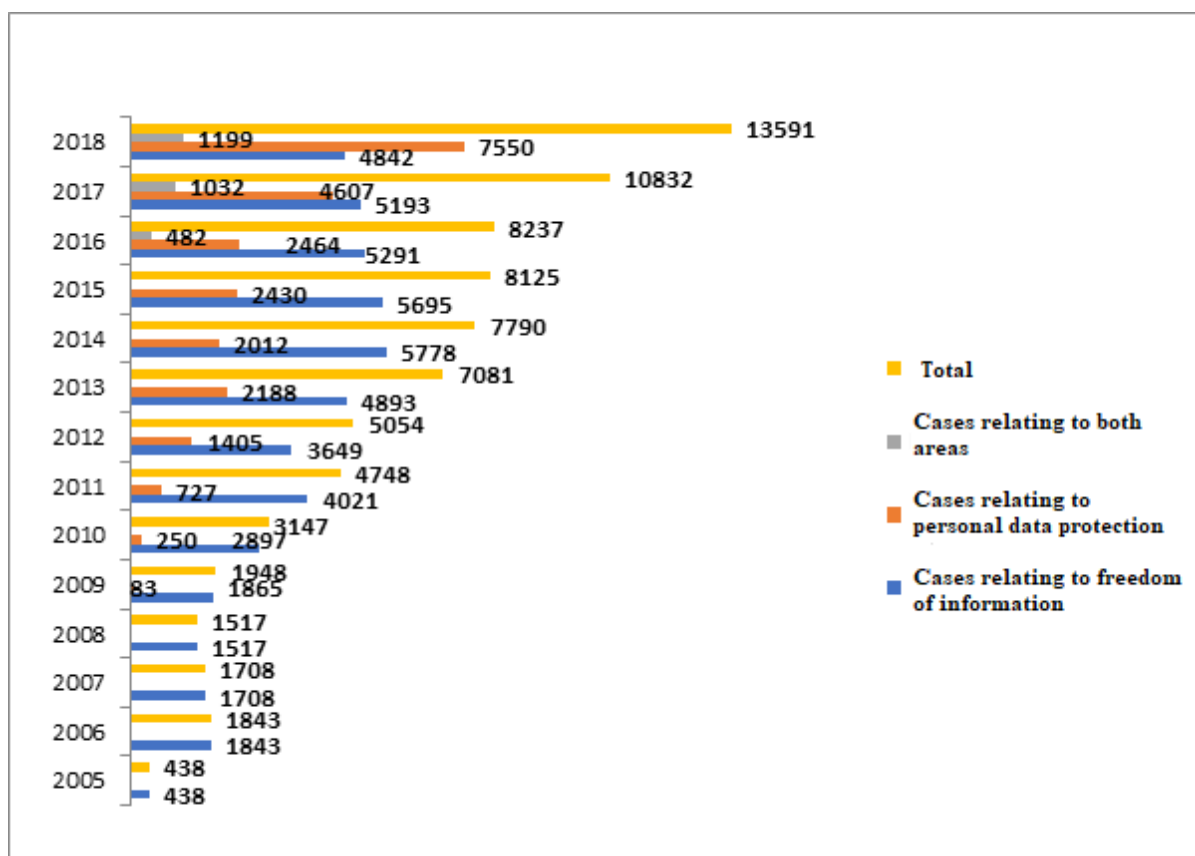
It is not possible to establish the organisers of such games from the webpages or to carry out supervision on the implementation of the Law on Personal Data Protection by their organisers. These activities contain elements of several possible criminal offenses which are prosecuted ex officio, and which are committed on the Internet (fraud, unauthorised use of someone else's business name and other special marks of goods or services). This is why the Commissioner was only able to send a letter to Public Prosecutor's Office suggesting that a special attention should be paid to this request, while also instructing the citizens to file criminal charges to the Department for Cybercrime at the Higher Public Prosecutor's Office in Belgrade.

In November 2018, the Interior Ministry announced that a six-member group behind these prize-winning games was arrested.

3. THE COMMISSIONER'S ACTIVITIES

3.1. Summary of Overall Activities

The workload of the Commissioner has increased over the years. It is best illustrated by statistics on the received and resolved cases. The increase in the number of resolved cases compared to the number of received cases is visible.

Graph 1 – Number of received cases per year and fields

In 2018, the Commissioner **had the total number of 17,700** cases, including 4,109 pending cases carried forward from the previous period. Out of that number, around 77%, or 13,591 cases were received by the Commissioner in 2018 (4,842 – free access, 7,550 – personal data protection and 1,199 – for both areas of the Commissioner’s scope).

During 2018, the Commissioner **terminated proceedings in 14,388** cases, out of which **5,562** in the field of freedom of information, **7,616** in the field of personal data protection, and **1,210** cases relating to both fields. There were **3,312** pending cases carried forward into 2019 (2,875 – relating to freedom of information, 416 – relating to personal data protection, and 21 – relating to both fields of competence).

In 2018, the Commissioner also worked on improving the functioning of his office. The largest part of activities was carried out under a project resulting from bilateral agreements between the Government of the Republic of Serbia and Norway’s Ministry of Foreign Affairs (which is addressed in more details in the chapter “Project Activities”).

Of particular importance for this institution and other bodies are staff trainings and obtaining the highest certification level for the implementation of data safety standards – SRPS ISO/IEC 27001. In addition to the previously certified auditors (the highest level of certification for SRPS ISO/IEC 27001) and managers for data safety, in 2018, another seven employees were certified for data safety managers.

In 2018, the director of the Office of the National Security Council and Classified Information Protection, also issued to the former Commissioner Rodoljub Šabić (whose term of office expired on 22 December, 2018) the security certificate for the access and use of classified information of the highest level – “State Secret”. This was for the third time that the Commissioner was issued the certificate since the entry into force of the Data Secrecy Law. The Commissioner’s Office has 24 employees certified to access classified data so that they can smoothly perform their duties.

The increase in the visibility of the role and work of the Commissioner is an ongoing task, which is realised through the media, internet presentations, the Portal of Open Data on the Commissioner’s Work, social networks, etc.

Apart from numerous awards and recognitions previously received by the Commissioner’s office and the former Commissioner himself for the work they do, in 2018 they received the April award for developing democratic values and respect of human rights (city of Šabac) and the Award for a special contribution to human rights (Human Rights and Democracy House).

The largest part of the Commissioner’s activities in 2018 dealt with:

- **Handling of individual cases pursuant to complaints against violations of the right** to free access to information and the right to personal data protection, and in this context the total **4,235 complaints were resolved** (3,974 complaints – free access to information and 261 personal data protection).

- **Supervision** of implementation of and compliance with the Law on Personal Data Protection - the Commissioner initiated 1,450 procedures, including: 1,238 pursuant to the citizens’ reports, 86 at the Commissioner’s own initiative and 1,126 in connection with personal data files. The Commissioner closed a total of **1,452 inspection procedures** as follows: for 16 cases petitions for institution of misdemeanour proceedings were filed, for six cases criminal reports were filed, 956 cases were closed after it was established that it had been acted in line with an issued warning or a decision, 397 cases were closed by notification according to Article 50 of LPDP, and in 77 cases it was established that LPDP had not been violated and they were closed by official notes.

- **Opinions on draft laws and bills and other regulations** – the Commissioner issued 59 opinions on draft laws, out of which six were at his own initiative. Out of all the opinions, 28 were issued from the aspect of LPDP only, 22 from the aspect of both the Law on Free Access to Information and LPDP, and nine were issued from the aspect of the status-related issues of the Commissioner as a state body. Also, proposals for the assessment of legality of four laws were sent to the Constitutional Court, as follows: the Law on Protection of Competition; the Law on Defence, the Law on Security Information Agency and the Law on National DNA Register. In addition to that, a letter was sent to the National Assembly of the Republic of Serbia (to all MP groups and independent MPs), in which the Commissioner expressed his opinion that Article 40 of the Bill on Personal Data Protection was illegal.

- **Provision of assistance to individuals and legal entities and public authorities, i.e. data controllers, in exercising rights or proper implementation of LFAIPI and LPDP** through explanation of unclear issues and procedures - he provided **1,344 opinions and**

answers concerning proper implementation of both laws, of which 1,140 on the implementation of LPDP and 148 on the implementation of LFAIPI.

- **Provision of assistance to citizens in connection with their requests** for free access to information or personal data protection **referred to the Commissioner** by those authorities that do not hold the requested information, to ensure that their requests are forwarded to those who might be able to provide the required information on exercise of the right to access to information and the right to personal data protection (690 cases);

- **Provision of assistance to government bodies and taking measures** in connection with the implementation of regulations on improving the publicity of work, the creation and publication of work information booklets - **226 cases** which contribute to the continuous improvement of the proactive publication of information, an increase in the number of published work information on the webpages of the bodies, and their active role in ensuring the exercise of rights.

- Activities relating to **Serbia's EU accession process** - 28 addendums and reports submitted to the Ministry of Justice, the Ministry of Public Administration and Local Self-government, the Ministry of European Integration and the Council for Implementation of the Action Plan for Chapter 23;

- **Public announcements** through which the Commissioner communicated with the public on **96** occasions;

- Activities in connection with **recording data files entered into the Central Register from 1 January, 2018 through to 21 November, 2018, 1,279 data controllers entered records on 3,056 personal data files they maintain into the Commissioner's Central Register**. This information is from 21 November, 2018 given that the Commissioner's Central Register was discontinued on the same day in compliance with the new Law on Personal Data Protection, which came into force on 21 November, 2018 (Article 98). As on 21 November, 2018, **the total of 3,561 data controllers** submitted to the Commissioner's Central Register the records on **12,914 personal data files** they maintain.

- **Responses to the requests for free access to information of public importance** in connection with the Commissioner's work and **the requests for access to personal data processing** handled by the Commissioner - **194** cases.

- Activities in connection with **enforcement of the Commissioner's decisions** (**212** cases closed and a total of **331** enactments passed);

- **Responses submitted to the Administrative Court with regard to legal actions** in administrative proceedings (**82 cases**) against the Commissioner's decision and failure to resolve complaints within the statutory limitations, the so-called administrative silence.

- Responses to the **citizens' petitions**, most of which relate to issues outside the Commissioner's area of competence (**460 cases**).

- **Copying case files and submissions made to the Administrative Inspectorate pointing to the need for inspection** in cases where public authorities do not comply with the Commissioner's decisions (**489 cases**).

- The Commissioner received **35,673** calls from citizens, journalists and members of the media, as well as employees of public authorities, for consultations on issues related to the exercise of the rights within the Commissioner's remit.

3.2. The Commissioner's Activities in Connection with Protection and Improvement of Right to Free Access to Information

In the field of freedom of information, the Commissioner handled 8,437 cases in connection with the protection and improvement of rights in 2018. Of these cases, 3,595 were carried forward from 2017, while 4,842 were received in 2018. In 2018, the Commissioner resolved 5,562 cases, while the remaining 2,875 cases have been carried forward into 2019.

With regard to the structure of resolved cases, the majority of complaints were lodged because of authorities' failure to act on requests for access to information or their failure to provide information. The majority of the Commissioner's activities and measures involved protection of rights in specific situations and communication with the government bodies and parties in connection with actions in a specific case and enforcement of the law.

Other Commissioner's activities included the following: provision of assistance to citizens in exercising their rights by giving opinions, clarifications for acting, etc. to public authorities in implementation of laws, particularly through providing trainings; monitoring of compliance with a legal duty of authorities in connection with proactive publishing of information and their work information booklets and undertaking measures in that regard; provision of opinions in connection with the passing of regulations and other legislative initiatives; measures in connection with administrative enforcement of decisions; organising trainings for employees of public authorities; preparation of publications and other forms of publishing Commissioner's views from the practice; participation in conferences and other expert meetings; communication relating to requests of information requesters filed with or forwarded to the Commissioner, etc. The Commissioner also handled requests for access to information by which citizens and representatives of the media requested information of public importance concerning the Commissioner's work. In addition, he also replied to petitions relating to actions taken by other authorities and issues which were largely outside the Commissioner's sphere of competence.

3.2.1. Statistics on Activities and Measures

Table 1 – Types and volume of the Commissioner's activities and measures in 2018

No.	Types of activities and measures	Number
1.	Cases received	4,842
2.	Pending cases carried forward from the previous year	3,595
3.	Total cases handled	8,437
4.	Cases resolved	5,562
5.	Complaints received	3,346
6.	Complaints resolved	3,974

7.	Opinions on implementation of LFAIPI ²⁹	148
8.	Opinions on draft laws and bills and other regulations ³⁰	84
9.	Responses to complaints to the Administrative Court	75
10.	Responses to requests for information about the Commissioner's work ³¹	193
11.	Responses to the requests for information on the process of the proceedings on complaints	65
11.	Acting on requests for access to information relating to the operations of/held by other public authorities – the Commissioner informed the requesters about the procedure	163
12.	Motions for enforcement of the Commissioner's decisions	212
13.	Motions for enforcement of the Commissioner's decisions	112
14.	Conclusions on penalties issued in the process of enforcement of decisions	7
15.	Total amount of fines imposed in the process of enforcement of decisions, expressed in RSD	460,000
16.	Requests sent by the Commissioner to the Government for assistance/enforcement of his decisions	65
17.	Cases in which the Commissioner requested the administrative inspectorate to carry out a supervision and initiate misdemeanour proceedings	489
18.	Number of conclusions on termination of the enforcement of decisions	146
19.	Written communication with public authorities in connection with the implementation of LFAIPI (advisory and instructional communications to authorities with the aim of increasing the transparency of their work and other communication)	747
20.	Replies to petitions against the work of public authorities unrelated to the Commissioner's scope	174

3.2.2. Protection of Right to Free Access to Information by the Commissioner

3.2.2.1. Deliberation of Complaints

The number of complaints formally lodged with the Commissioner has ranged between 3,000 and 4,000 annually in the last four years. In 2018, the Commissioner **received 3,346 complaints**, while 3,086 pending complaints were carried forward from 2017, so a **total of 6,432 complaints were deliberated in 2018**.

In 2018, the Commissioner resolved 3,974 complaints, up by 12.9% compared with 2017. In 2018, there was again a large number of cases where public authorities ignored the requests for free access to information or replied they could not provide information. **Such cases of the so-called administrative silence accounted for 82.76% of resolved cases, which is by 2.64% more than in 2017.** Only 530 complaints, or 13.34% of resolved complaints, were filed against decisions of public authorities which dismissed the requesters' freedom of information requests as unjustified. The complaints were mainly **justified**, namely 3,444 complaints or **86.66%** of the total number of resolved complaints (3,974).

Again in 2018 as in the previous years, a trend continued where a large number of justified complaints, the proceeding with the Commissioner ended in termination of the proceedings, **in 1,889 cases (54.8%)** because public authorities acted upon the information

²⁹ The Law on Free Access to Information of Public Importance.

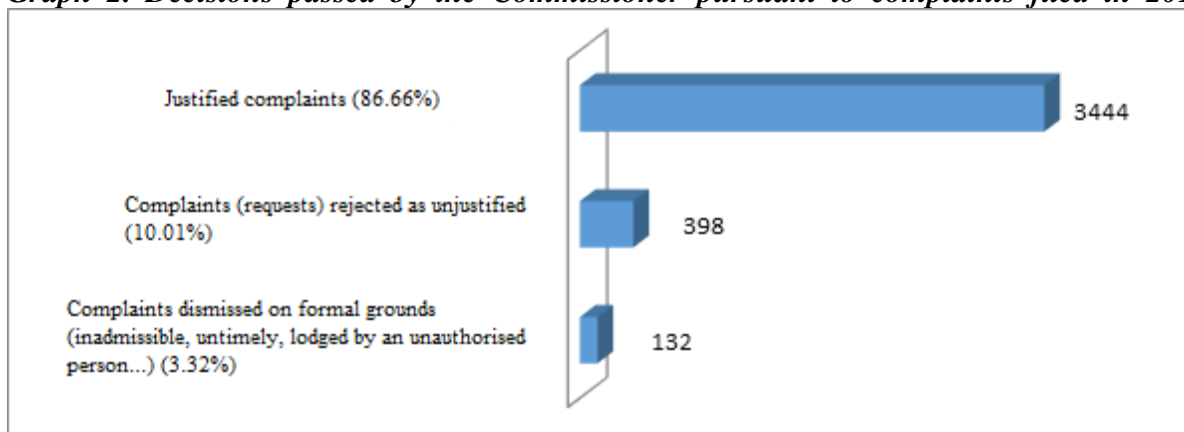
³⁰ The information refers to the total number of opinions from the Commissioner's scope.

³¹ It is the total number of cases, regardless of the field of work of the Commissioner the information refers to.

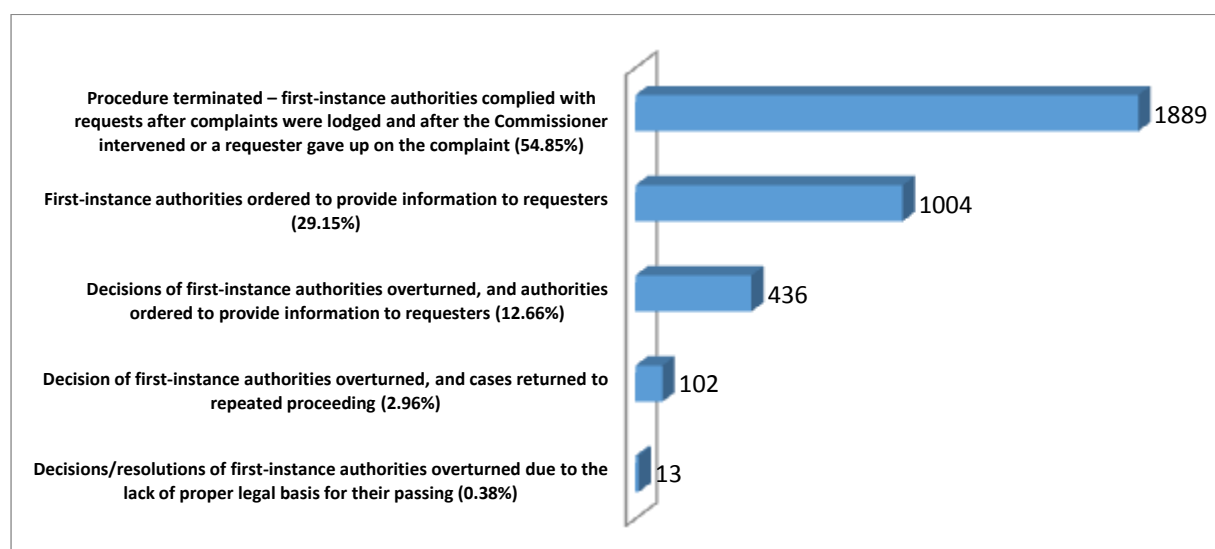
requester in the meantime, upon learning of a complaint and after the Commissioner's intervention, before the Commissioner passed a decision pursuant to a complaint, and applicants formally gave up on the complaint in 1,098 cases. This shows that public authorities treat citizens poorly, have no accountability, disrespect laws and spend public funds irrationally.

According to the data of those bodies which provided the report to the Commissioner, it was established that in 2018, 24,331 requests had been lodged with these bodies for the exercise of the right to free access to information of public importance.³² The graphs below show which information was subject of the requests, i.e. complaints filed by the requesters in 2018, who they were, against which authorities the complaints were lodged, what reasons public authorities when dismissing the information requests, the decisions passed by the Commissioner in deliberating the complaints and how public authorities complied with the Commissioner's decisions.

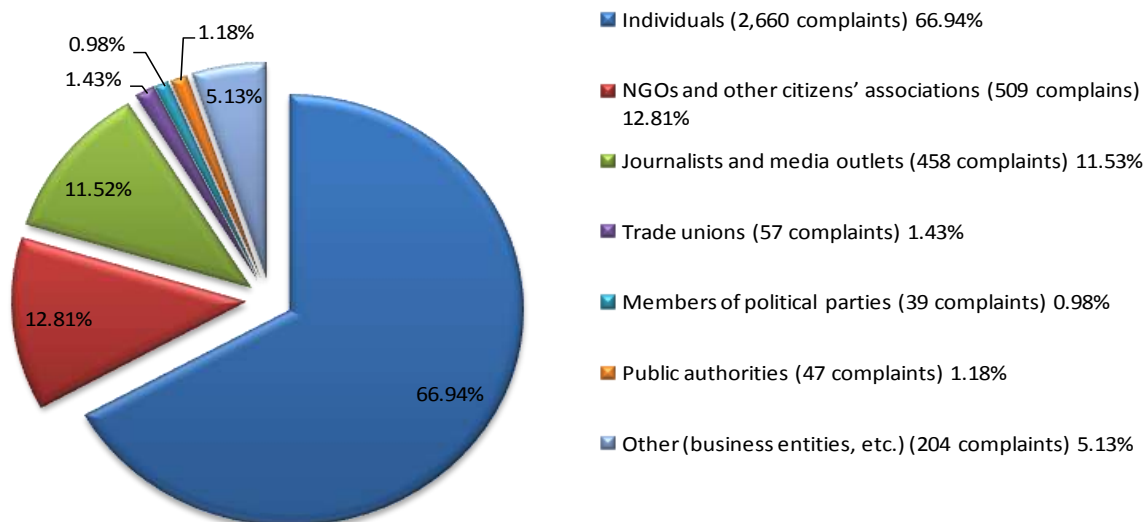
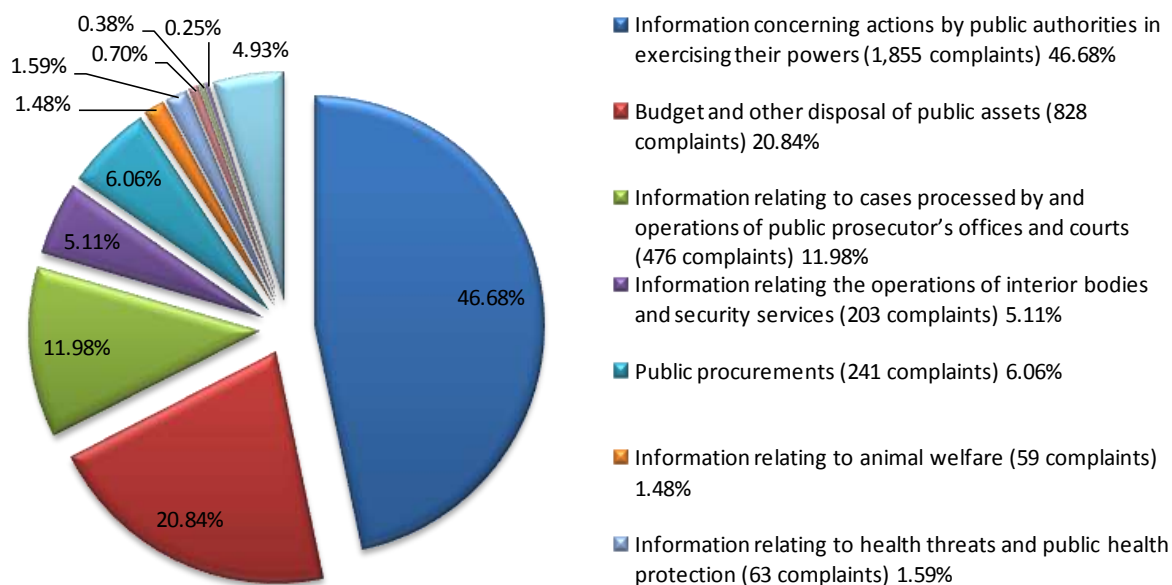
Graph 2. Decisions passed by the Commissioner pursuant to complaints filed in 2018



Graph 3. The Commissioner's decisions pursuant to justified complaints

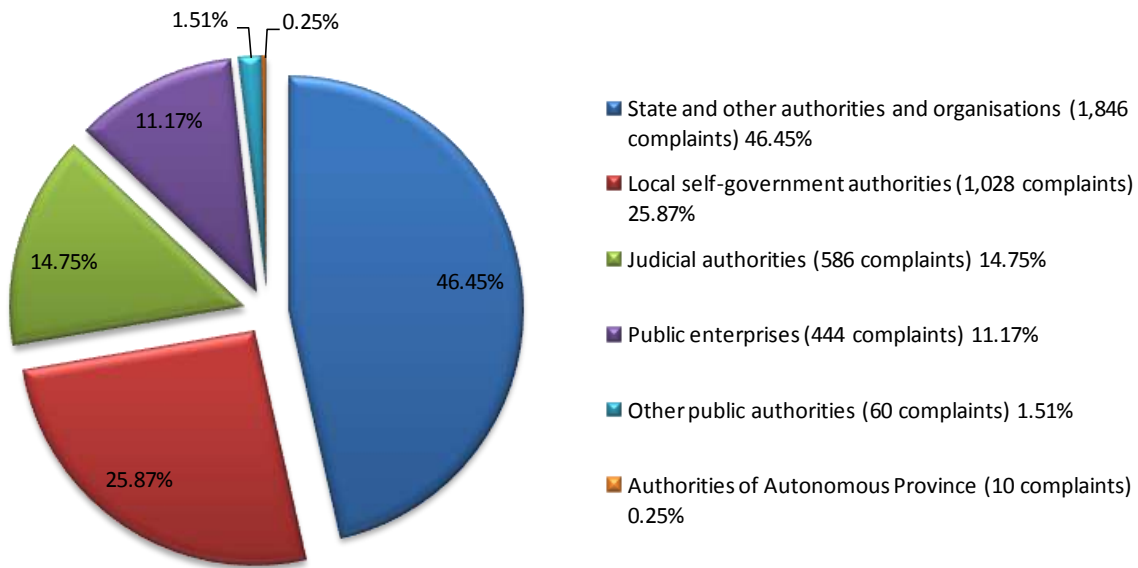


³² The Annual Report to the Commissioner for 2018 was provided by less than one third of the authorities having this legal obligation, i.e. the total of 1,079 out of the total of 3,808 authorities provided the report.

Graph 4. Complaints lodged with the Commissioner**Graph 5. Types of requested information that was the subject of complaints**

In 2017 again, there was a high percentage of complaints lodged by the citizens as clients of public authorities in connection with acting on their submissions for exercising certain rights or in connection with their reports of certain issues that require interventions by competent authorities. In addition, the citizens have difficulties in obtaining information on spending of funds from public sources.

About one half of the complaints were lodged against the government and other authorities and organisations, of which 44.6% were lodged against the ministries and bodies subordinate to them.

Graph 6. Number of complaints by types of authorities**Table 2. Overview of requests and complaints filed in 2018 against the ministries with bodies subordinate to them**

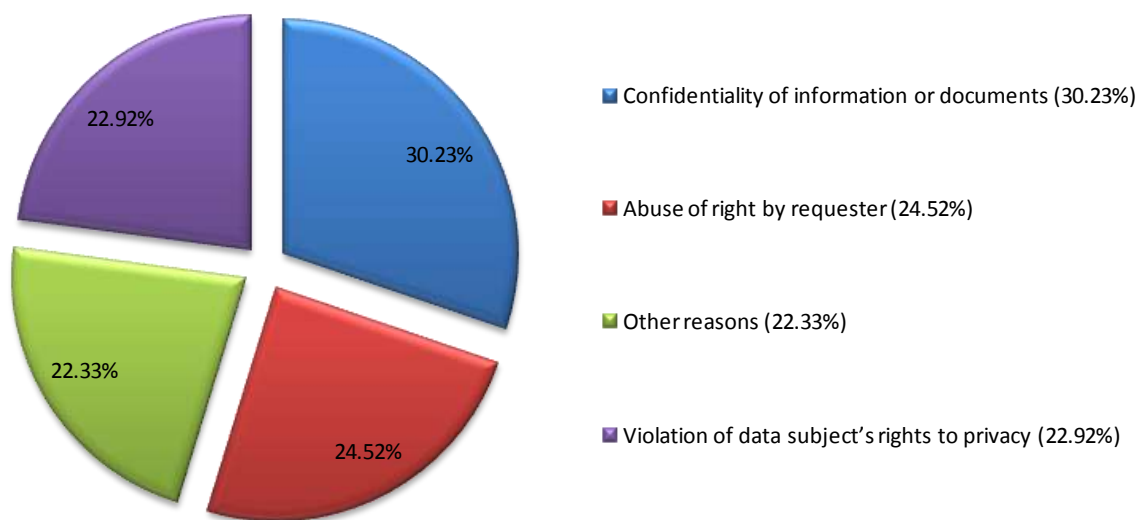
No.	Ministries	No. of requests	No. of complaints
1.	The Ministry of Interior	1,515	413
2.	The Ministry of Finance	623	128
3.	The Ministry of Agriculture, Forestry, and Water Management ³³	231	49
4.	The Ministry of Justice ³⁴	230	46
5.	The Ministry of Construction, Transport, and Infrastructure	182	34
6.	The Ministry of Education, Science, and Technological Development	214	13
7.	The Ministry of Defence	98	46
8.	The Ministry of Health	186	18
9.	The Ministry of Economy	287	9
10.	The Ministry of Public Administration and Local Self-Government	153	17
11.	The Ministry of Labour, Employment, Veteran and Social Affairs ³⁵	255	28

³³ Report was not provided by the Forest Directorate.³⁴ Report was not provided by the Directorate for the Administration of Seized Assets and Department for Execution of Criminal Sanctions.³⁵ Report was not provided by the Directorate for Safety and Health at Work.

12.	The Ministry of Trade, Tourism and Telecommunications	78	1
13.	The Ministry of Culture and Information	62	0
14.	The Ministry of Youth and Sport	27	5
15.	The Ministry of Mining and Energy	72	6
16.	The Ministry of Foreign Affairs ³⁶	42	2
17.	The Ministry of Environment Protection	137	8
18.	The Ministry of European Integration	12	0
TOTAL		4,404	823

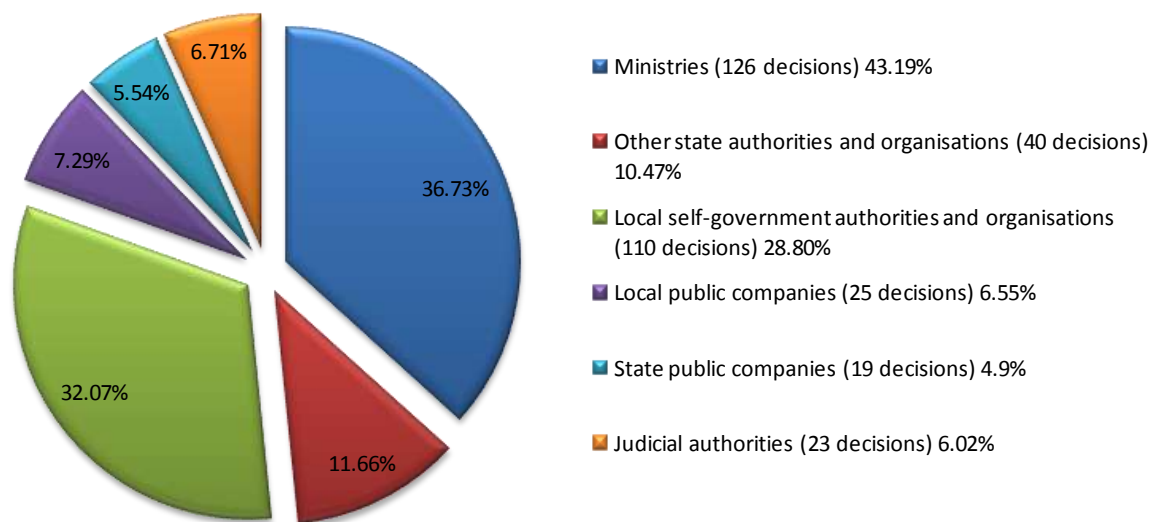
Information in the table above shows that in 2018 for every 5.35 requests filed to the ministries, the requester complained to the Commissioner because he/she did not receive the requested information. This ratio was better in 2016, when one complaint was filed for every 9.5 requests, with one complaint filed for every 7.7 requests in 2017.

Graph 7. Reasons for dismissing requests filed by applicants



³⁶ Report was not provided by the Directorate for Diaspora and Cooperation with the Serbs in the Region.

Graph 8. Number of Commissioner's decisions passed in 2018 (382 of 1,286 passed decisions ordering the access to information) ³⁷

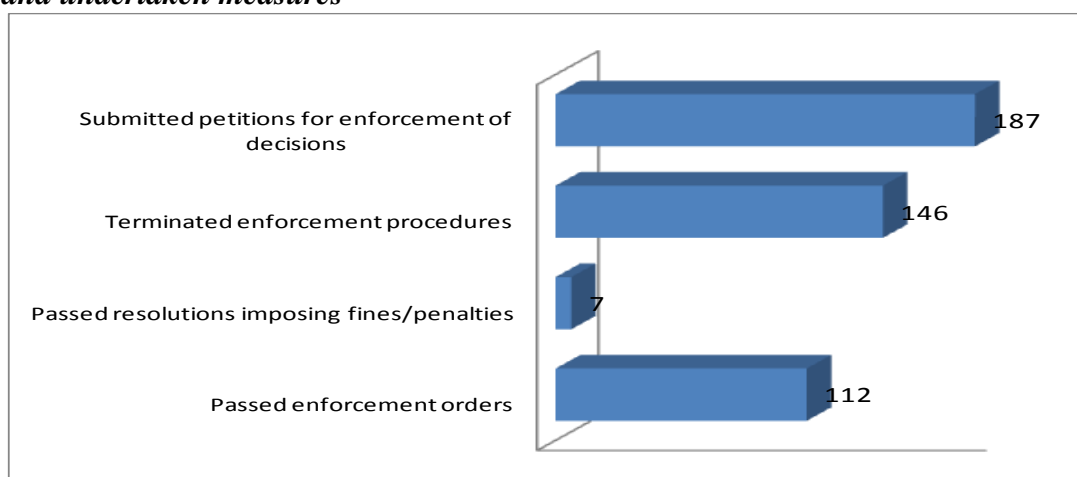


3.2.2.2. Enforcement of the Commissioner's Decisions

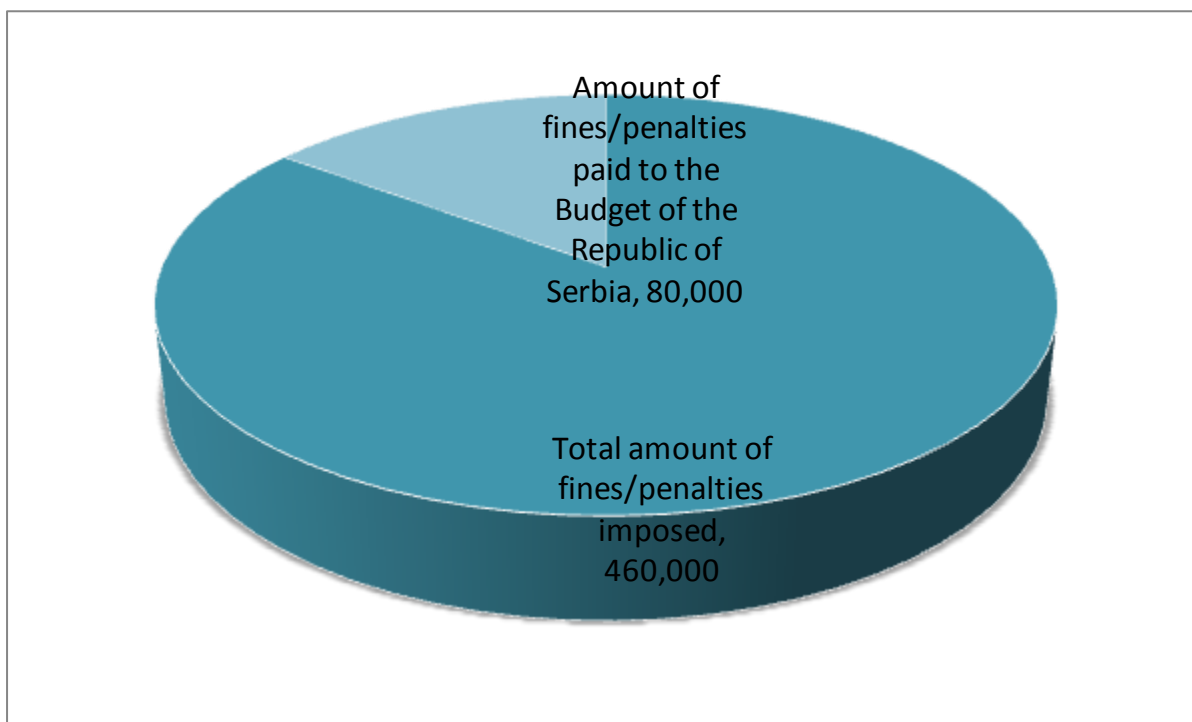
In 2018, at the request of an applicant-information requester, the Commissioner could perform the enforcement of his decisions with the use of fines i.e. penalties only for the cases initiated before the entry into force of the new Law on General Administrative Procedure. As for the new cases, the procedures were terminated by the request filed to the Government to ensure enforcement of the decisions since the penalty mechanism by the Commissioner was not applicable any longer due to aforementioned reason.

The graphs below show an overview of taken measures.

Graph 9. Overview of petitions for enforcement of the Commissioner's decisions in 2017 and undertaken measures



³⁷ Integral part of the Report is the Overview of pending cases of the Commissioner passed in 2018 as of 1 February, 2019.

Graph 10. Overview of imposed and collected fines³⁸

3.2.3. Protection of Rights Before the Administrative Court and Other Courts

Judicial protection of the freedom of information **before the Administrative Court** in administrative proceedings is ensured in terms of the legality of decisions passed by the Commissioner and the six authorities against which complaints with the Commissioner were not admissible and exempted from protection before the Commissioner (the National Assembly, the President of the Republic of Serbia, the Government, the Serbian Supreme Court of Cassation, the Constitutional Court and the Republic Public Prosecutor).

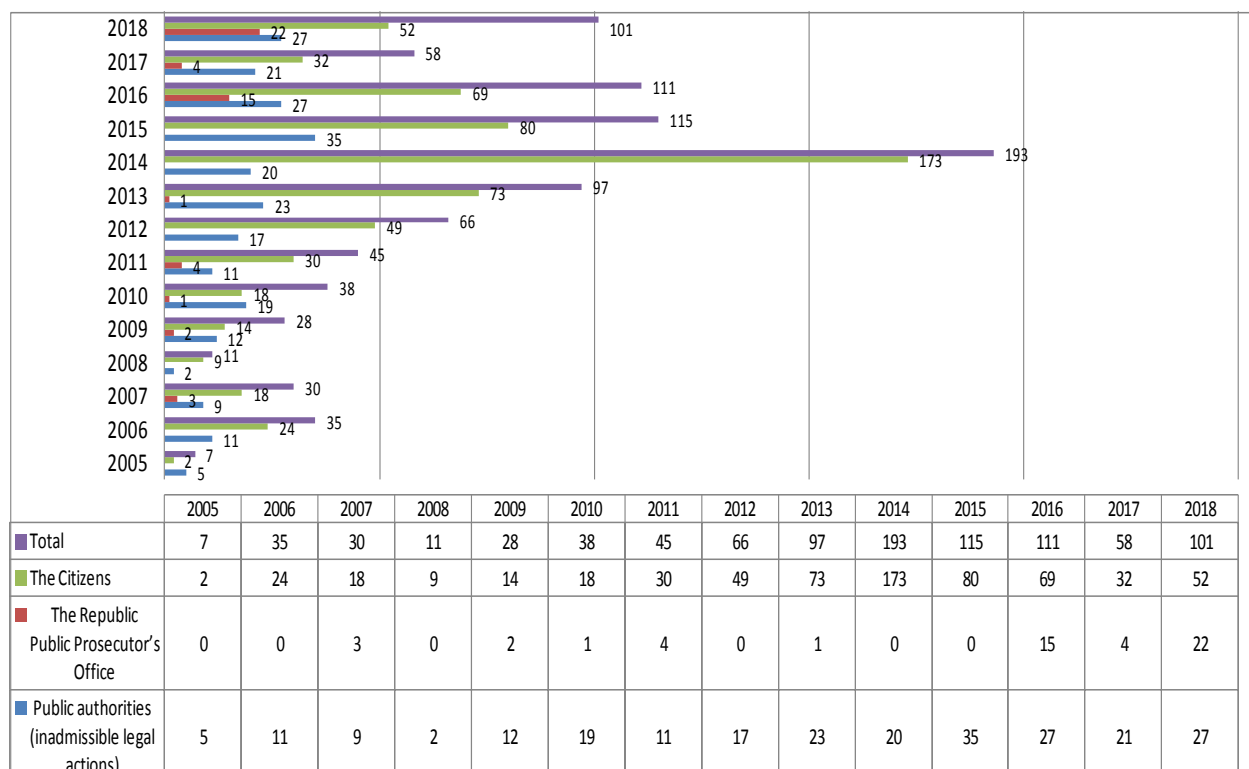
A complaint may be lodged with the Administrative Court by a party which is not satisfied with a decision and by the Republic Public Prosecutor in cases where a decision harms a public interest.

A party and the competent public prosecutor may file a motion **for review of a judicial decision to the Supreme Court of Cassation** against a final and enforceable decision of the Administrative Court. In 2018, six requests were filed to **the Supreme Court of Cassation** to review a judicial decision, where two requests were rejected and four were dismissed.

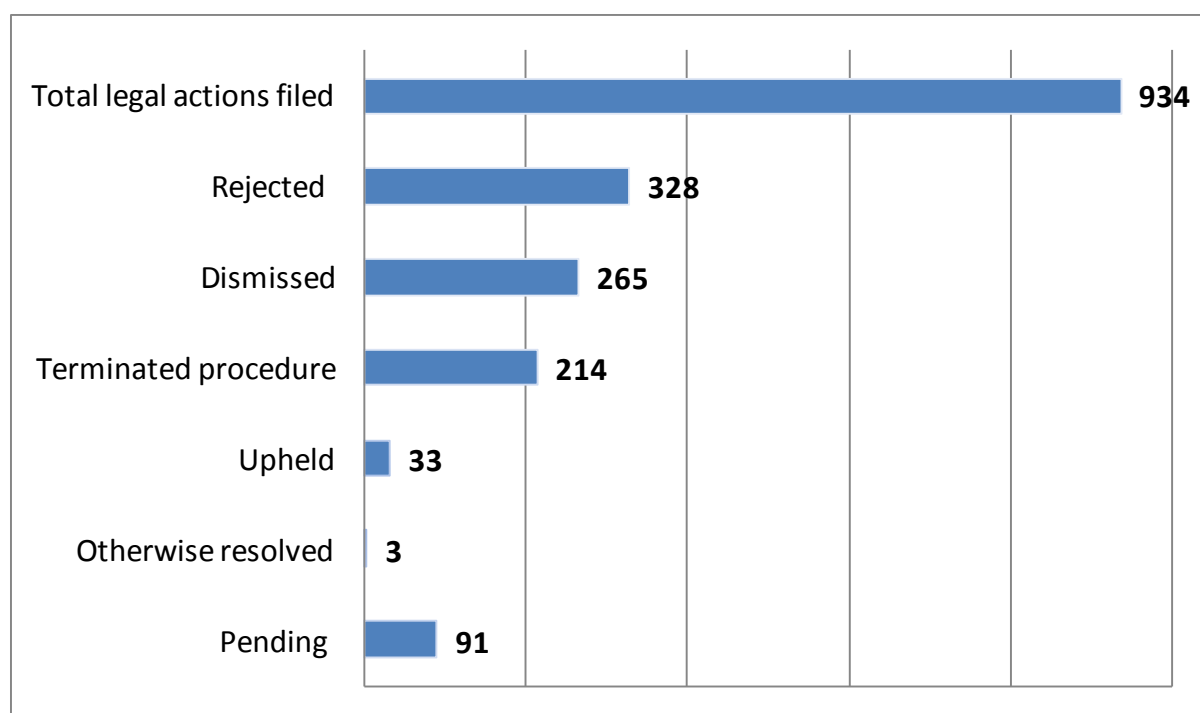
In 2018, seven constitutional appeals were filed to the **Constitutional Court** was filed against the Commissioner's decisions and the Court has not decided on them yet.

³⁸ Percentage of voluntary payment of fines in 2016 amounted to 73.5%, and in 2017 it was 27.1%, and in 2018 only 17.4%.

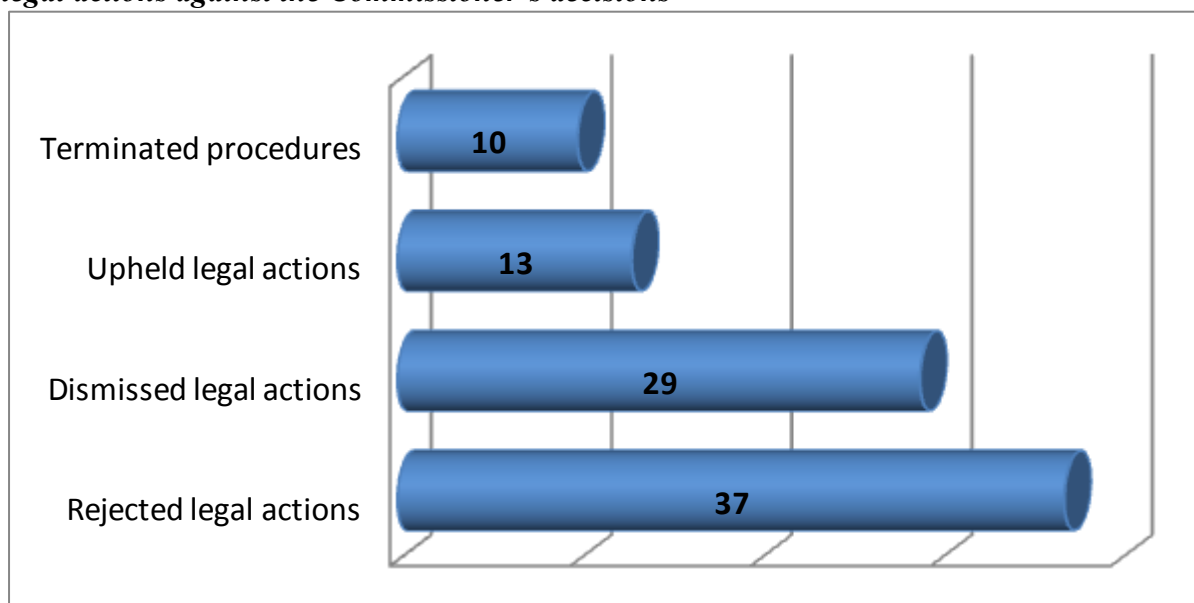
Graph 11. Overview of legal actions initiated before the Supreme and Administrative Court against the Commissioner's decisions by complainants in the 2005-2018 period



Graph 12. Decisions of the Supreme or Administrative Court passed pursuant to legal actions against the Commissioner's decisions in 2005-2018 period



Graph 13. Overview of decisions of the Administrative Court passed in 2018 pursuant to legal actions against the Commissioner's decisions



None of the Commissioner's decisions were amended by the Administrative Court.

The Administrative Court overturned and returned to a repeated process of decision making 13 Commissioner's decisions based on complaints of the Republic Public Prosecutor's Office, out of which 12 decisions refer to the subjects in which the complainant is the Humanitarian Law Centre (HLC) against the Ministry of Defence, in which the information requested mostly involved professional hiring of individual members of the Ministry of Defence in the Armed Forces of Yugoslavia during the Kosovo conflict in 1999, and their status today, i.e. movement in the Serbian Armed Forces (if they are still active).

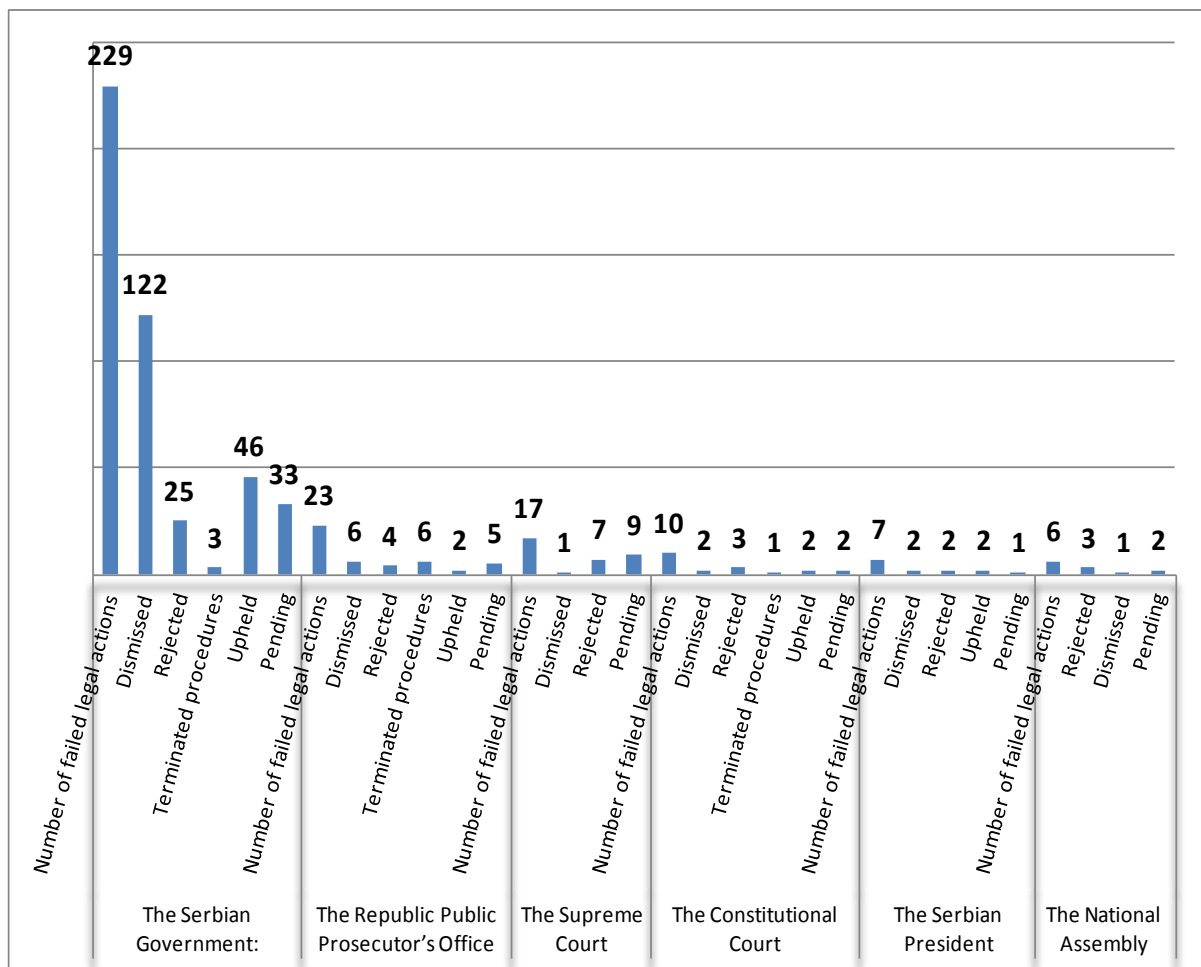
The Commissioner's decisions in the cases of HLC were based on facts that the Ministry of Defence, contrary to the Law on Access to Information, proved that the documents containing the requested information were defined and marked as classified in line with the provision of Article 105, paragraph 2 of the Data Secrecy Law, and contrary to the previous regulations, which is one of two cumulatively proscribed requirements to be met in order to access the information with reference to classified documents. Also, the Ministry failed to prove that other legal requirement was met – that the occurrence of serious consequences in case of access to information was certain, and not only hypothetically possible.

The Administrative Court based the judgements in the cases of HLC on the provisions of Article 105 of the Data Secrecy Law bearing in mind only the provision in paragraph 1 of that Article, which prescribes that starting from the day of entry into force of this law, the data and documents marked as classified pursuant to the previously passed regulations, shall keep the type and level of secrecy defined by previous regulations. It ignored the provision of paragraph 2 of the same Article, defining that the heads of public authorities shall review the marks on the data and documents referred to in paragraph 1 of this Article within two years from the day of entry into force of the Law, in line with the provisions of the Article and that the mentioned time period expired seven years ago, on 24 December, 2011.

One case in which the Administrative Court overturned the Commissioner's decision and returned the proceeding to a repeated process of decision making refers to the complaint of a journalist against the Higher Public Prosecutor's Office in connection with the proceeding against Siniša Mali, the current Minister of Finance. The subject of the journalist's request for information, i.e. copy of the official note on the termination of the proceeding in the criminal case against Siniša Mali, initiated based on the report of the Anti-Corruption Agency about his property, as well as on the document based on which this official note had been made. As an argument for annulment of the Commissioner's decision, the Administrative Court stated that the request of the applicant failed to precisely state which official note was requested by the journalist, even though this fact was not a contentious issue to the Public Prosecutor's Office when it dismissed the request and explained its decision.

The largest number of complaints filed against the decisions or the failure to act of six highest state authorities against which complaints with the Commissioner were not admissible in the 2005-2018 period were filed against the Serbian Government, shown in the graph below. Out of the total of 196 resolved legal actions against the Government, 46 were accepted.

Graph 14. Overview and outcome of legal actions brought before the Supreme or Administrative Courts against decisions or failure to act of six highest state authorities against which complaints with the Commissioner were not admissible in the 2005-2018 period



3.2.4. Compliance with Legal Duties by Public Authorities, Supervision and Accountability

The level of compliance with legal duties in terms of publishing work information booklets, organising trainings on the implementation of the Law on Access to Information for employees of public authorities which are legally obliged to submit annual reports to the Commissioner improved in 2018 in terms of compliance with the legal duty of carrying out trainings as a result of the Commissioner's activities in that field throughout the year. Submission of reports by public authorities only improved slightly even though the Commissioner made this procedure easier by introducing a portal for submitting reports electronically. The absence of accountability over the years has allowed public authorities to ignore this legal duty. Data analysis only for the actions of administrative authorities and special organisations shows that the level of compliance with these legal duties was higher than the overall level of compliance by all authorities that are subject to them.

Table 3. Data in reports of public authorities in general sense (authorities referred to in Article 3, paragraph 1, item 1) of the Law on Access to Information, on compliance with legal requirements

Public authority	Number of public authorities	Report submitted Number and %	Information booklet published number and %	Information booklet prepared but not published number and %	Training carried out Number and %	Maintenance of information medium. number and %
Authorities referred to in Article 22 of the Law (the National Assembly, the President, the Supreme Court of Cassation, the Constitutional Court, the Government, and the Republic Public Prosecutor)	6	6 (100%)	6 (100%)	/ (0%)	5 (83.33%)	6 (100%)
Ministries (without bodies subordinate to them)	18	18 (100%)	17 (94.4%)	1 (5.55%)	15 (83.33%)	18 (100%)
Other public authorities and organisations (agencies, directorates, institutes, funds, chambers...)	306	171 (55.88%)	112 (36.6%)	45 (14.7%)	123 (40.2%)	147 (48%)
Courts	158	136 (86%)	104 (65.8%)	32 (20.25%)	105 (66.4%)	131 (82.9%)
Prosecutors' Offices	89	79 (88.8%)	64 (71.9%)	15 (16.85%)	64 (71.9%)	73 (82%)
Authorities and organisations of the Autonomous Province of Vojvodina	50	31 (62%)	27 (54%)	3 (6%)	25 (50%)	31 (62%)

Local self-governments (cities/towns and municipalities and their organisations) ³⁹	1043	452 (43.3%)	413 (39.6%)	30 (2.9%)	339 (32.5%)	433 (41.5%)
Public companies (Republic and Provincial level) required to submit reports	32	22 (68.75%)	21 (65.6%)	1 (3.1%)	17 (53.1%)	22 (68.75%)
Other public authorities (educational institutions)	106	164 (7.8%)	118 (5.6%)	42 (2%)	130 (6.2%)	163 (7.7%)
Total	808	1079 (28.3%)	882 (23.2%)	169 (4.4%)	823 (21.6%)	1024 (26.9%)

Table 4. Data from reports of public administration authorities on compliance with the duties

Public authority	Number of public authorities	Report submitted number and %	Information booklet published number and %	Information booklet prepared but not published number and %	Training carried out number and %	Maintenance of information medium number and %
Ministries (without bodies subordinated to them)	18	18 (100%)	17 (94.4%)	1 (5.55%)	15 (83.33%)	18 (100%)
Other public authorities and organisations (agencies, directorates, institutes, funds...)	306	170 (55.55 %)	111 (36.3 %)	45 (14.7 %)	122 (39.9 %)	146 (47.7 %)
Total	324	188 58.02 %	128 39.5 %	46 14.2 %	137 42.28 %	164 50.6%

The Administrative Inspectorate of the Ministry of Public Administration and Local Self-government, responsible for supervision of the implementation of Law on Access to Information, informed⁴⁰ the Commissioner that administrative inspectors conducted 186 inspections on the implementation of the regulations on free access to information of public importance and that the “inspected authorities were ordered to take 64 measures to eliminate the identified irregularities, illegalities and mistakes in the implementation of this law”, as follows: seven measures in connection with the appointment of a person responsible for exercising the rights, 23 measures in connection with acting upon the requests within the defined timeframe, 27 measures in connection with the duty to write, publish and regularly update the Work Information Booklet, five measures in connection with the duty to submit an annual report to the Commissioner, and two measures which refer to other issues regulated by

³⁹ Bodies of local self-government units (assembly, president, council, etc.) submitted individual reports in 2018, unlike in previous years when the data was summarised in a joint report, which reflected on the total number of submitted reports and the number of authorities to which this duty refers.

⁴⁰ Letter of Administrative Inspectorate no 021-02-00017/2018-01 on 18 January, 2019.

the regulations in this field. Also, the Report of the Administrative Inspectorate states that the administrative inspection performed inspections in 341 cases on which it had been informed by the Commissioner regarding the failure to comply with Commissioner's decisions, and in 59 petitions related to the implementation of regulations in this field. The outcome and the effects of the mentioned measures were not shown in the Report of the Administrative Inspectorate.

Based on the report it can be concluded that the Administrative Inspectorate did not file any requests in 2018 for misdemeanour proceedings to be launched either for a violation of rights or non-compliance of public authorities with the defined obligations relating to the implementation of the Law on Access to Information. Ignoring these legal obligations largely remains unaccountable.

According to the data by 41 misdemeanour courts in Serbia, which provided the data to the Commissioner, the misdemeanour courts in 2018 had a total of 382 requests for misdemeanour proceedings to be launched based on violation of the right to access to information⁴¹, of which 380 requests had been filed by information requesters as injured parties, and two requests were filed by the Administrative Inspectorate in 2017.

⁴¹ Unresolved requests from the previous period were also covered.

Table 5. Overview of requests for initiation of misdemeanour proceedings for infringements under the Law on Access to Information and outcomes before first-instance misdemeanour courts in 2018

Misdemeanour court	Applicant	Legal qualification	Number of requests submitted	Convictions	Cautions	Terminations	Rejections	Acquittals	Termination due to expiration of statute of limitations	Resolved by other means
Belgrade	Injured party	Article 46	314	14 ⁴²		30	38	20	23	23
		Article 47								
		Article 48	1							
	Administrative Inspectorate	Article 46	1							
		Article 47								
Bečej	Injured party	Article 46	1	4					3	
Valjevo	Injured party	Article 46	17			3	13			
Kraljevo	Injured party	Article 46	1		1					
Šabac	Injured party	Article 46	1				1 ⁴³			
Pančevo	Injured party	Article 46	1					1 ⁴⁴		
Pirot	Injured party	Article 46	3							
Novi Sad	Injured party	Article 46	2							

⁴² The court did not specify whether the defendant was fined or issued a caution.⁴³ Dismissed due to the expiry of statute of limitations for initiation of misdemeanour proceeding.⁴⁴ The Misdemeanour Court of Appeal in Belgrade overturned the judgements and returned the case for a repeated process of decision making.

Požarevac	Injured party	Article 46	2	1 ⁴⁵						
Leskovac	Injured party	Article 46	3			2				
Niš	Injured party	Article 46	1							
	Administrative Inspectorate	Article 46	1						1	
Leskovac	Injured party	Article 46	3			2				
Požega	Injured party	Article 46	1							
Bačka Palanka	Injured party	Article 46	3		1				1	
Loznica	Injured party	Article 46	10							
Vršac	Injured party	Article 46	1	1						
Lazarevac	Injured party	Article 46	1	1						
Subotica	Injured party	Article 46	17	1 ⁴⁶	1		1	2		2
Total	Injured party	Article 46	379	22	3	35	53	23	27	25
		Article 47								
		Article 48	1							
	Administrative Inspectorate	Article 46	2						1	
		Article 47								

⁴⁵ Fine in the amount of RSD 10,000.⁴⁶ Fine in the amount of RSD 5,000.

In 2018, the misdemeanour courts which did not receive any requests for initiation of misdemeanour proceedings from the Administrative Inspectorate or from the information requester (23): Trstenik, Kragujevac, Zrenjanin, Kikinda, Sombor, Arandjelovac, Gornji Milanovac, Smederevo, Zaječar, Negotin, Sremska Mitrovica, Prijepolje, Čačak, Novi Pazar, Kruševac, Ruma, Sjenica, Prokuplje, Raška, Mladenovac, Obrenovac and Preševo.

The misdemeanour courts which did not provide the reports (4) are: Vranje, Jagodina, Paraćin and Užice.

Table 6. Overview of data of Misdemeanour Court of Appeal regarding complaints in 2018⁴⁷

Applicant	Legal qualification	Number of filed complaints	Convictions	Caution	Termination	Rejection	Acquittals	Termination due to expiration of statute of limitations	Resolved by other means
Complainant	Article 46 ⁴⁸	203	16		1	4	60	10	
	Article 47 ⁴⁹	2					1	1	
	Article 48 ⁵⁰	1							
Total		206	16		1	4	61	11	

⁴⁷ The Report of the Misdemeanour Court of Appeal, Su.no.II-17a 6029/18-1 dated 14 December, 2018 and on 31 December, 2018.

⁴⁸ Complaints in the misdemeanour cases subject to fine referred to in Article 46 of the Law, filed by legal entities (46) and individuals (157).

⁴⁹ Complaints in the misdemeanour cases subject to fine referred to in Article 47 of the Law, filed in one case by a legal entity, and in other by an individual.

⁵⁰ Complaints in the misdemeanour cases subject to fine referred to in Article 48 of the Law, filed by legal entities and individuals.

The data on the fine amounts imposed by the misdemeanour courts submitted to the Commissioner show that **the maximum imposed fine is around RSD 10,000**, which is at the lower limit of fines prescribed by the Law on Access to Information, ranging from RSD 5,000 to RSD 50,000.

According to the Misdemeanour Court of Appeal's data, in 2018 this court handled 169 cases based on appeals against decisions of misdemeanour courts in the field of freedom of information, and 34 cases are in procedures. The court decided on the complaints in the following manner: it **upheld** 60 first-instance acquittals, one on termination, four on rejection of the requests and 10 on termination due to expiry of statute of limitations; **amended** 13 convictions and one decision on termination; rejected four complaints against convictions; **terminated** 13 cases due to expiration of statute of limitations in misdemeanour courts and **revoked** decision in 47 cases pursuant to appeals against decisions of misdemeanour courts.

The stated data shows that total of 16 sentences were upheld or 10% of the total of 169 complaints resolved by the Misdemeanour Court of Appeal, and that most of them were acquittals.

3.2.5. The Commissioner's Activities in connection with Publishing of Work Information Booklets

In line with the provisions of the Law on Free Access to Information and the Instructions on Preparation and Publication of Work Information Booklets of Public Authorities ("Official Gazette of RS"; number 68/10), the duty of proactive publishing of the information implies preparation and publishing of the work information booklets by public authorities on their official websites. The aim of publishing information booklets and to regularly update them (at least once a month) is to make available to the citizens, the media, public authorities and other users the most important information on activities of authorities, their human resources and other capacities, organisation of authorities, their powers, assets, spending of public resources, salaries, state aid, subsidies, grants, international and other projects and their implementation, public procurements, the types of services they render and procedures for exercising rights, available remedies in case of negative outcomes before the authority concerned, types of information available to the authorities, etc.

In the process of monitoring the compliance with the legal obligation of publishing the work information booklet, the Commissioner, in line with the work plan in 2018, examined the work information booklets of the ministries, without the administration bodies subordinate to the ministries.

It was identified that all ministries have and actively use their own websites and that the inspected information booklets contained the mandatory information, have good structure and to a large extent were aligned with the Instructions on Preparation and Publication of Work Information Booklets of Public Authorities.

No irregularities were identified in six out of 18 ministries. These are: the Ministry of Culture and Information, the Ministry of Education, Science, and Technological Development, the Ministry of Economy, the Ministry of Mining and Energy, the Ministry of

Construction, Transport and Infrastructure, and the Ministry of Trade, Tourism, and Telecommunications. These Information Booklets are also updated in a timely manner, contain all the mandatory information defined in item 19 of the Instructions, they are thematic and organised, so there were no grounds to take measures by the Commissioner.

Some of the mentioned ministries **were awarded by the Commissioner for compiling the best Work Information Booklet of Public Authorities** (the Ministry of Culture and Information received the award for the best work information booklet in 2018 and in 2013, the Ministry of Mining and Energy in 2017, the Ministry of Education, Science and Technological Development in 2015), while the Ministry of Construction, Transport and Infrastructure received it in 2016 for the contribution to promoting the right to access to information of public importance and transparency of work in the category of public authorities at the state level.

As for the Ministry of Culture, **there is a visible continuity in the quality fulfilment of the publication and updating of the work information booklet.** The Work Information Booklet is a source of a lot of data on the operation of this ministry, it is thematic, organised and contains all the chapters defined by the Instructions. A large part of the information is focused on the chapter on services provided by the Ministry. The list of information held by the Ministry is presented in detail. A number of regulations implemented by the Ministry in its operations is also included. In the data on revenues and expenses, in addition to the data for 2017 and 2018, the Ministry proactively presented the financial plan for 2019. There are details on state aid as well. These are the reasons why the Commissioner recognised this ministry for the best work information booklet in 2018.

The inspection of all work information booklets was performed in the first half of 2018, after which 12 warnings were issued with the identified shortcomings. These shortcomings were largely the consequence of irregular updates of either the information booklet in general or its individual mandatory parts. The negligence mostly referred to those parts of the information booklet, which according to the Instructions, need to contain comparative data from the current year and previous year, such as the data on the budget, the data on public procurements, overview of the data on provided services; i.e. the data from the previous month (the data on the number of employees, paid salaries and other payments).

After the designated period to correct the identified shortcomings, **the Commissioner again reviewed the information booklets of the ministries and identified that (out of 12 of them) 10 ministries acted in line with the Commissioner's warning and fully eliminated them.** These are: the Ministry of Agriculture, Forestry and Water Management, the Ministry of Environmental Protection, the Ministry of European Integration, the Ministry of Justice, the Ministry of Health, the Ministry of Labour, Employment, Veteran and Social Affairs, the Ministry of Youth and Sport, the Ministry of Interior, the Ministry of Finance, and the Ministry of Public Administration and Local Self-Government.

Therefore, after the repeated inspection and analysis of the work information booklets of the ministries, two decisions were made ordering the Ministry of Defence of the Republic of Serbia and the Ministry of Foreign Affairs to align the content of their information booklets with the instructions and to regularly update them.

When it comes the ministries, it can be concluded that the level of compliance with the obligation to publish work information booklet in line with the Law and the Instruction is satisfactory in general, with a visible improvement of activities regarding some obligatory parts after the Commissioner had taken certain measures.

Bearing in mind that the maintenance of the quality of information booklets and the proactive publishing of the information require continuous monitoring and measures, which is practically impossible given the capacities of the Commissioner and the number of bodies which are subject to the implementation of the legal obligation, it is highly important to adopt the amendments to the Law on Free Access to Information as soon as possible, in line with the Commissioner's initiative, and then with the Commissioner's Instructions. These amendments would lead to the publication of the information booklets of state authorities in the digital form, on a joint electronic platform, which is expected to bring a higher level of transparency, comparability and greater usefulness of the data, and it would be easier to monitor the implementation of this legal obligation.

3.3. The Commissioner's Activities in connection with Personal Data Protection

3.3.1. The Commissioner's Supervision Activities

In the course of 2018, there was an increase in the number of initiated and terminated supervision procedures in the implementation and execution of the Law on Personal Data Protection compared to the previous year. This year-on-year increase has been present since the Commissioner's office has been set up.

In 2018, the Commissioner closed 1,452 inspection procedures, of which 1,199 were launched in 2018 and 253 of them earlier. Supervisions (1,452 procedures) were completed in the following manner: 956 cases were closed after it was identified that it had been acted in line with the previously performed inspection; 397 cases were closed with the notification in accordance with Article 50 since no irregularities have been found, 77 cases were closed with official notes since no violations of the LPDP were identified, i.e. there were no elements to carry out inspection oversight procedures; 16 cases were closed by filing misdemeanour proceedings, and six by filing criminal charges.

In cases where the Commissioner found violations of the provisions of the LPDP (792), the Commissioner:

- issued 760 warnings;
- issued seven decisions;
- filed 19 requests for initiating misdemeanour proceedings for violations of LPDP;

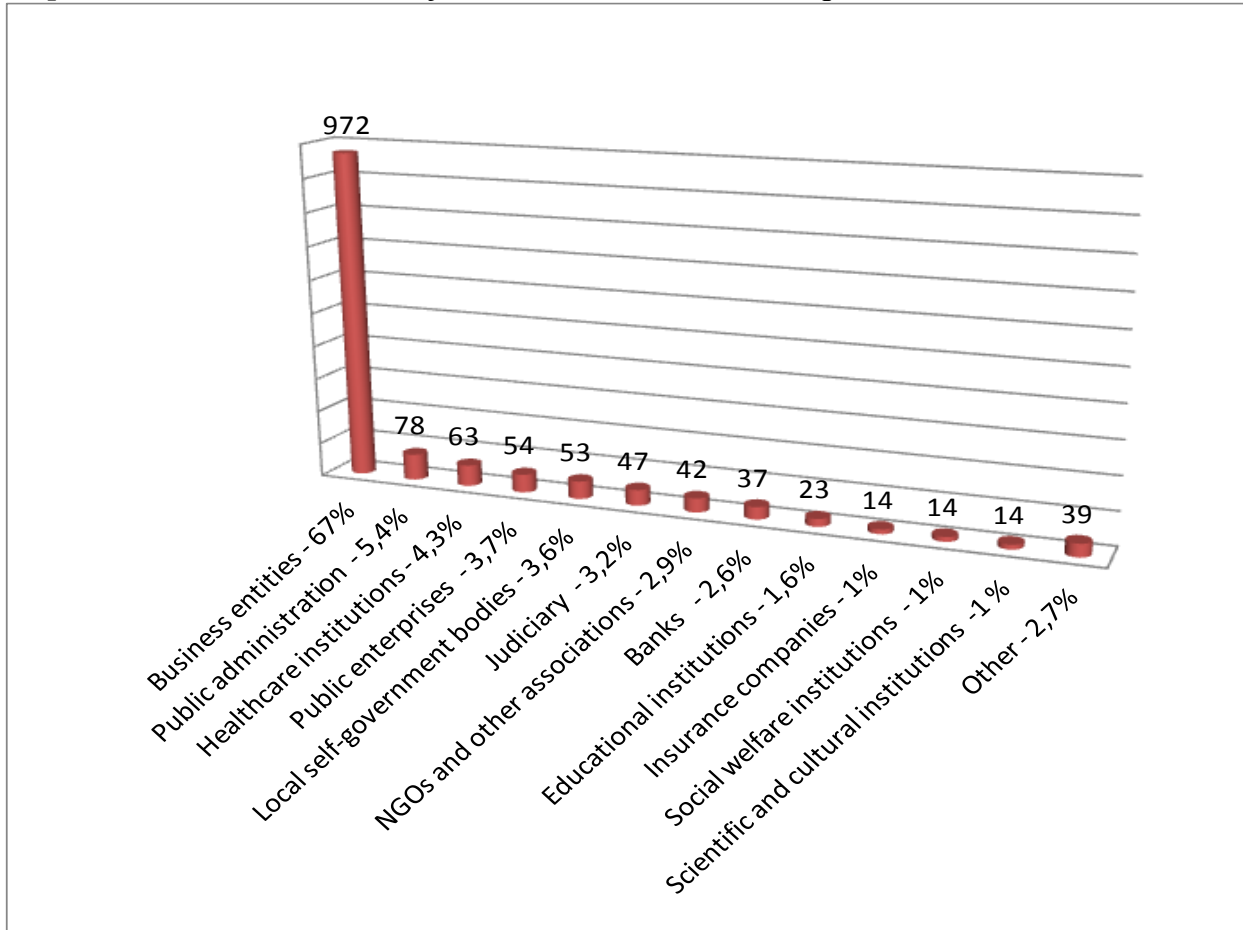
and

- filed six criminal charges.

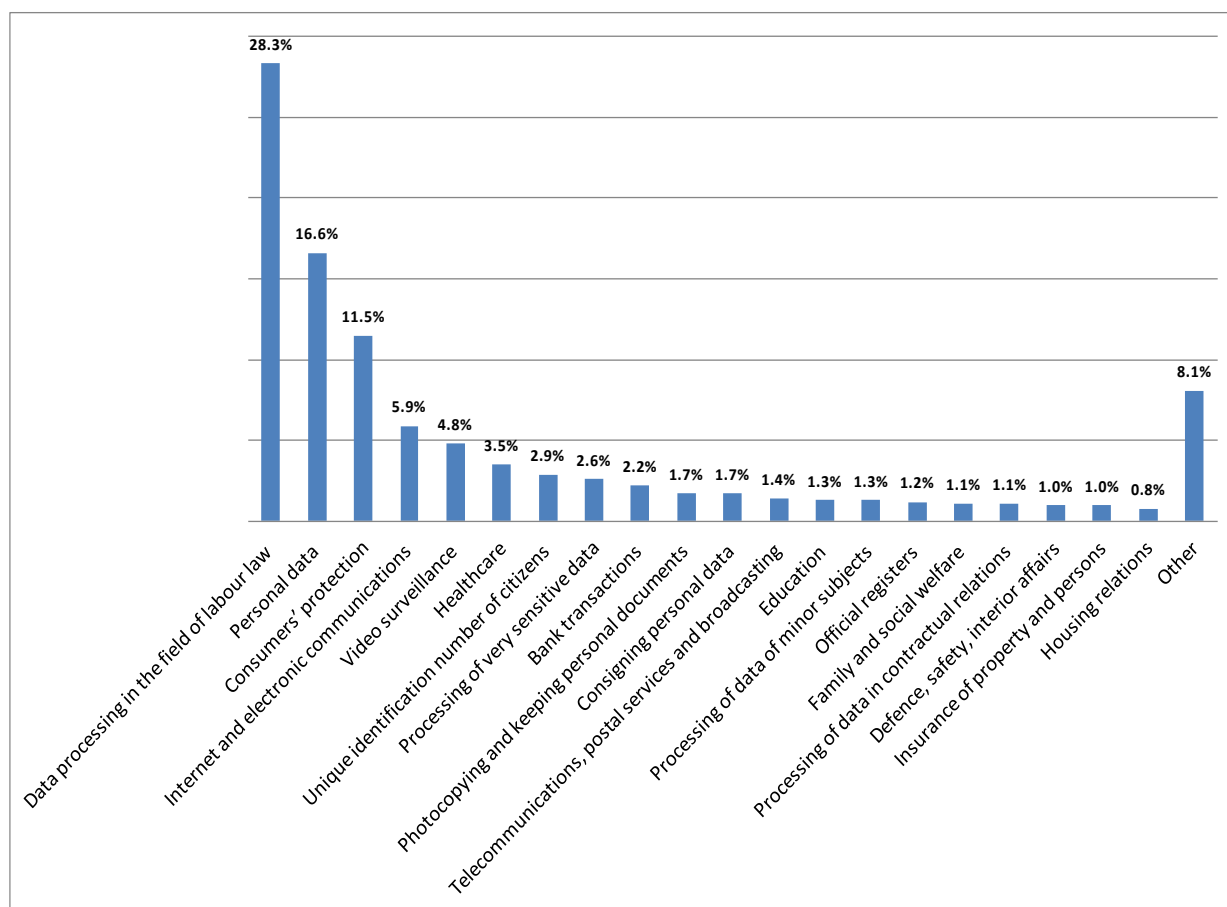
Data controllers subject to the Commissioner's oversight procedures are: companies (private companies and entrepreneurs) - 972 (67.3%), public administration - 78 (5.4%), healthcare institutions - 63 (4.3%), public enterprises - 54 (3.7%), local self-government bodies - 53 (3.6%), judiciary bodies - 47 (3.2%), NGOs and other citizen associations - 42

(2.9%), banks - 37 (2.6%), educational institutions - 23 (1.6%), insurance companies - 14 (1%), social welfare institutions - 14 (1%), institutions in the field of science and culture - 14 (1%) and other 39 - (2.7%).

Graph 15 – Data Controllers subject to the Commissioner’s Supervision Procedures

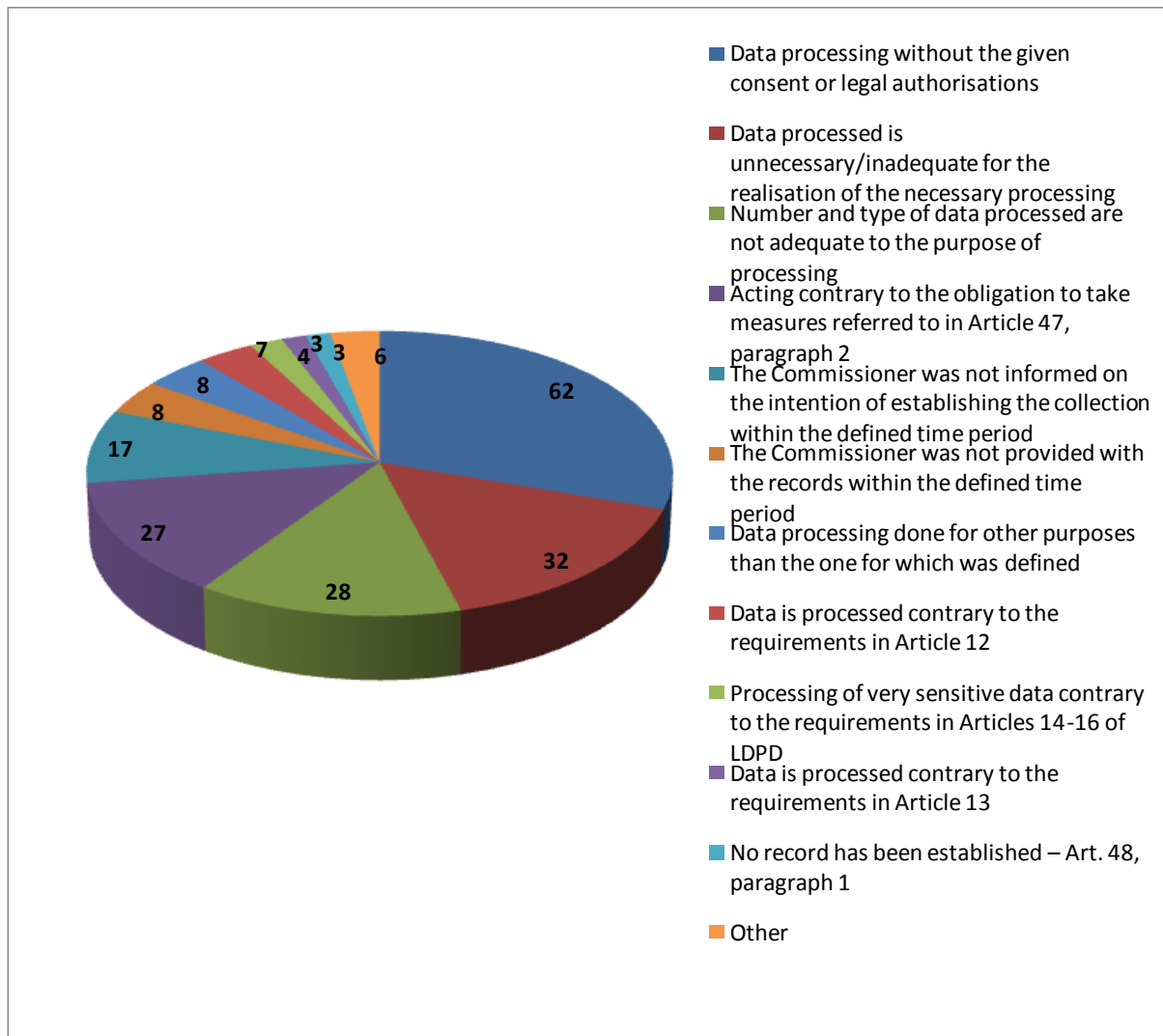


The most frequent reasons for initiating supervision procedures were: data processing in the field of labour law (28.3%), personal data (16.6%), consumer protection (11.5%), the Internet and electronic communications (5.9%), video surveillance (4.8%), health (3.5%), unique personal identification number of citizens (2.9%), processing of particularly sensitive data (2.6%), banking operations (2.2%), personal documents (photocopy, keeping, etc.) (1.7%), giving personal data to data users (1.7%), telecommunication, postal services and radio broadcasting (1.4%), education (1.3%), processing of data on underage persons (1.3%), official registers containing personal data (1.2%), family and social protection (1.1%), data processing in contractual relations between individuals and legal entities (1.1%), defence, security, interior affairs (1%), property and people insurance 19, housing issues 15 (0.8%), and other (8.1%).

Graph 16 – Reasons for initiating supervision procedures

The Commissioner issued warnings in 760 cases resulting from contraventions of provisions of the LPDP, of which 659 warnings pursuant to Article 50 of the LPDP (prior verification for processing) and 101 warning pursuant to Article 56 (the Commissioner's powers to take certain measures upon identifying law violations through supervision).

Particular attention is given to 101 warnings issued pursuant to Article 56 of the LPDP, in which 250 irregularities were found, with the Commissioner establishing one or more violations of the law in certain cases.

Graph 17 – Most frequent irregularities pursuant to Article 54, paragraph 1 of the LPDP

During the reporting period, out of 659 warnings issued pursuant to Article 50 of the LPDP, 584 were complied with, 11 were partially complied with, i.e. the percentage of compliance was 90.3%, and 20 warnings were not complied with, while the remaining 44 are pending. Of 101 warnings issued pursuant to Article 56 of the LPDP, 78 were complied with, two were partially complied with, i.e. the percentage of compliance was 79.2%, eight warnings were not complied with, while the remaining 13 warnings are pending.

During the reporting period, the Commissioner passed seven decisions, including: four decisions ordering that collected data be deleted or made anonymous, one decision ordering deletion of the data collected and temporary ban on data processing, one decision ordering that the data collected be deleted and irregularities removed within the specified timescale, and one decision on temporary ban on data processing and removing irregularities within the specified time limit. Under these decisions, the Commissioner ordered 11 measures, as follows: in six cases he ordered the deletion of the data collected without a clear legal basis for doing so, in three cases he ordered a temporary ban on data processing violating the provisions of the LPDP, and in three cases he ordered that irregularities be removed within the specified time limit.

By the end of the reporting period, the Commissioner was informed that in the seven of his decisions above, the data controllers had acted as follows they demonstrated the full compliance in five cases, partially complied in one case, and did not respond to the Commissioner's decision in one case.

3.3.2. The Commissioner's Activities in Connection with Complaints

In 2018, the Commissioner received **232 complaints in total**.

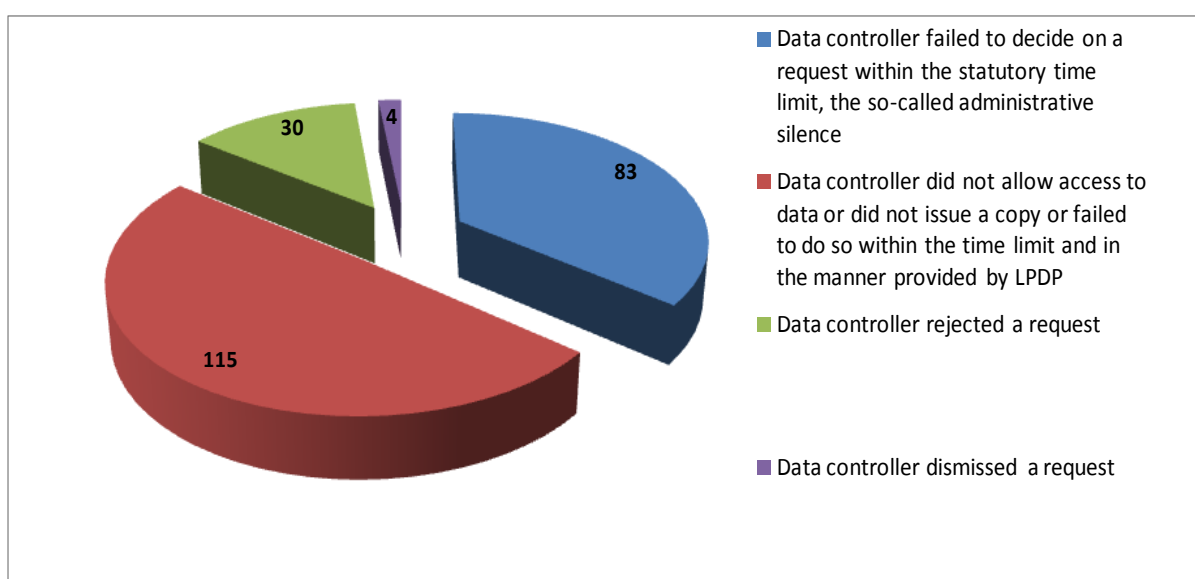
In 2018, the Commissioner handled 299 complaints, of which 232 were received in 2018, while the remaining 67 were carried forward from 2017.

The most frequent reason for lodging the complaints with the Commissioner was the fact that **data controllers did not allow access to the data or did not issue copies of the data or failed to do so within the time limit and in the manner stipulated in the LPDP (115)**. Compared with 2016 and 2017, when 51.2% of all complaints i.e. 46.3% of the total number of complaints were related to such issues, there were 49.6% of them in 2018, which represents almost an equal continuation of the negative trend when it comes to controllers' actions.

The next most frequent reason for lodging the complaints with the Commissioner **was the failure of data controllers to act on requests within the statutory time limit**, the so-called administrative silence (83). Compared with 2017, when 40% of all complaints received by the Commissioner were lodged for this reason, there were 35.8% of them in 2018, which is still indicative of an equal continuation of the negative trend when it comes to the data controller's actions.

In 2018, the Commissioner received 34 complaints i.e. 14.7% of the total number of complaints related to **dismissal (30) or rejection (4) of requests by data controllers**. The Commissioner received approximately the same level of complaints concerning these matters in 2017.

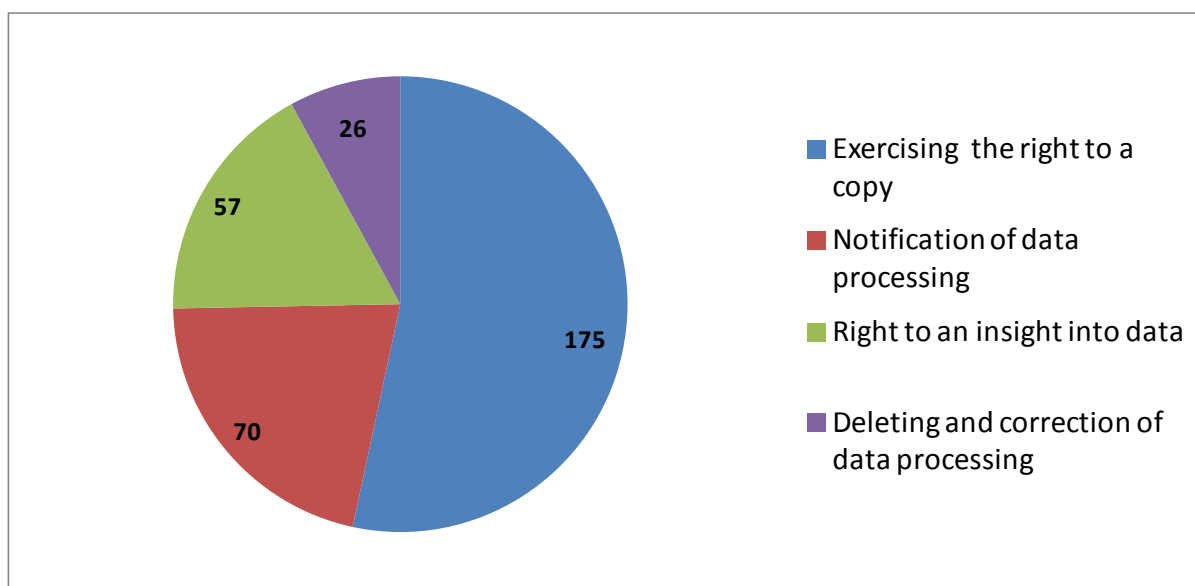
Graph 18 – Reasons for lodging complaints with the Commissioner in 2018



Complaints lodged with the Commissioner related to data from: police records, human resources, records kept by educational institutions, records in the fields of pension and disability insurance and health insurance, court case files, case files of social welfare centres, medical documentation, records kept by banks, public utility companies, public employees, political parties, criminal correctional institutions, etc.

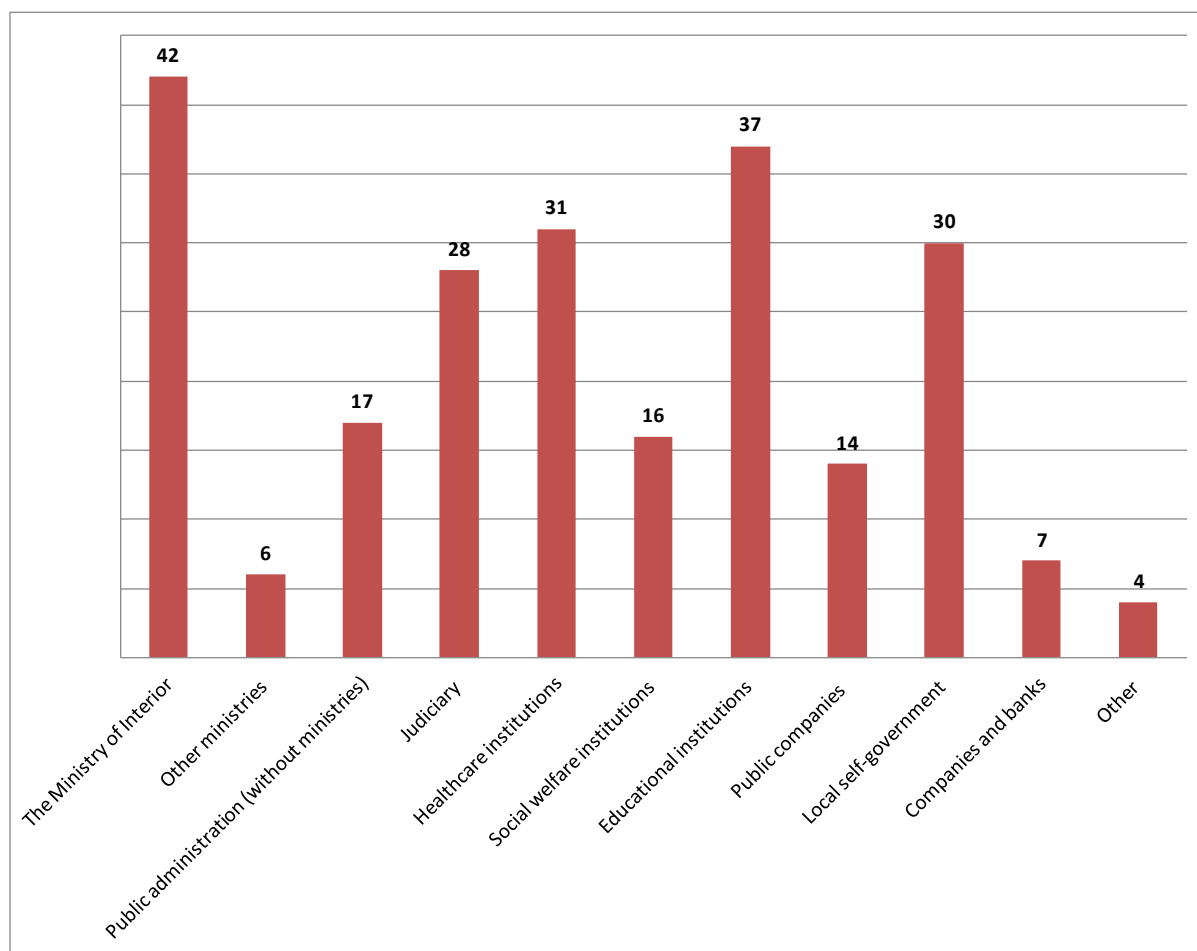
Reasons for lodging a complaint with the Commissioner, due to inadequate actions of data controllers, included: the right to a copy (53.4%); the right to notification of data processing (21.3%), the right of access (17.4%); and right to delete and correct processed data (7.9%). The majority of complaints received by the Commissioner in 2018, as in previous years, included the right to a copy (175, i.e. 53.4%), which shows that this is the most frequent request submitted to data controllers, while the lowest number of complaints concerned deleting, updating, correcting and terminating data processing, which indicates that the citizens are less interested in exercising these rights.

Graph 19 –Reasons for lodging complaints with the Commissioner in 2018



The largest number of complaints, as many as 221, were lodged due to inadequate actions of public authorities, i.e. bodies and organisations entrusted with public authority, and publicly-owned companies. The largest number (65) were lodged due to the failure of the ministries and bodies carrying out functions of public administration to act as data controllers. There were 48 complaints lodged against the ministries, of which 42 were against the Ministry of Interior, and six complaints due to the lack of compliance of other ministries, while 17 complaints dealt with public administration bodies.

Graph 20 – Data controllers whose actions (or failure to act) resulted in complaints in 2018



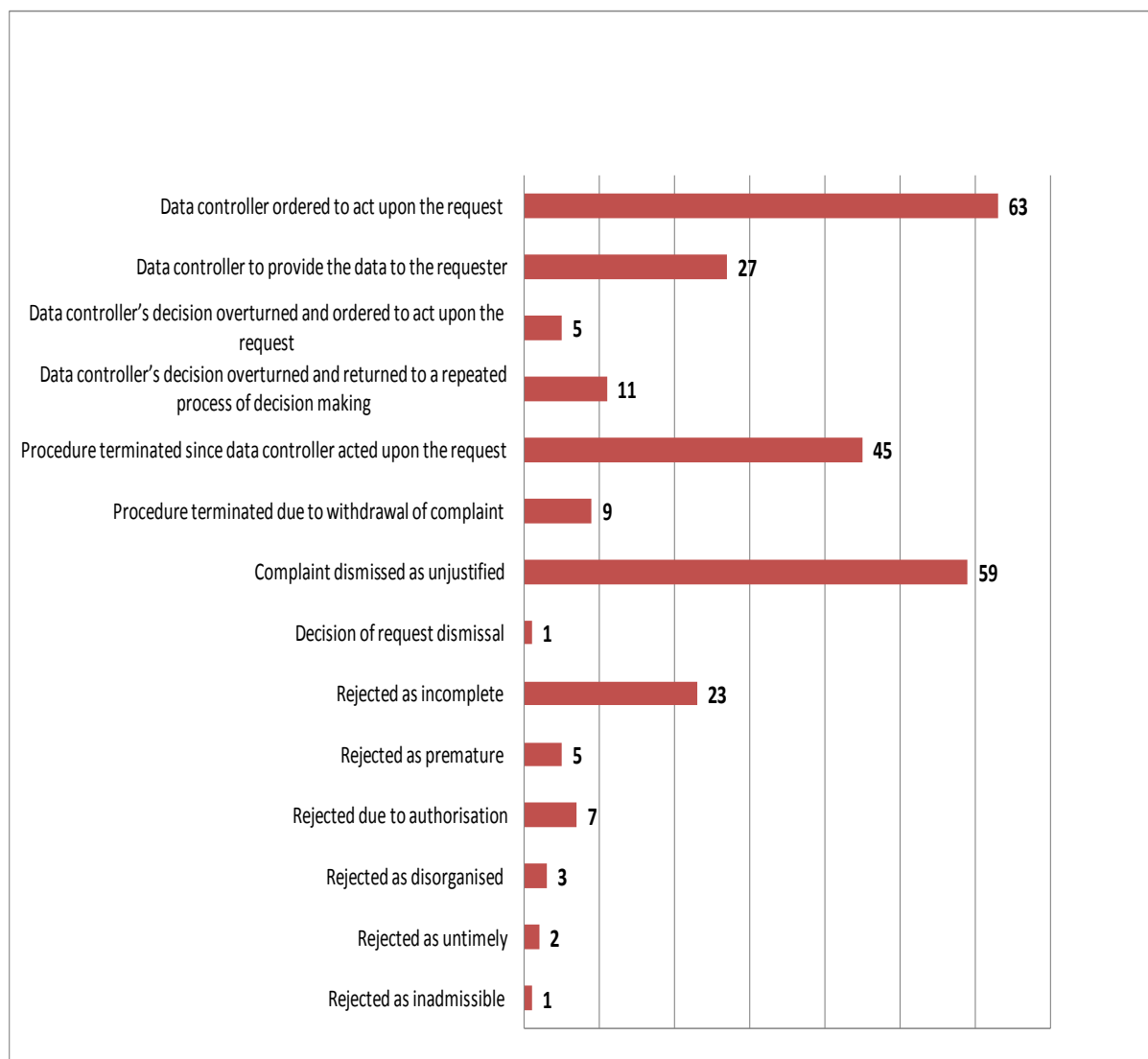
A large number of complaints lodged against the Ministry of Interior (48) account for 20.7% of all complaints (232) lodged with the Commissioner. This is due to the fact that the Ministry keeps a large number of records and it equally receives a large number of requests, to which the Ministry of Interior is clearly failing to act upon fully, i.e. failing to act upon them in a timely manner.

Out of 299 complaints acted upon by the Commissioner in 2018, he completed the proceedings for 261 complaints (194 from 2018, and all 67 from 2017), while 38 complaints were carried forward to 2019.

With respect to the decisions made on filed complaints, the Commissioner established that the complaint was justified in 106 cases, 40.6%, out of which in 95 cases a decision was made with an order issued to the data controller (order issued to data controller to act upon – decide on the request (63), issued an order to data controller to provide the requester with the data (27), overturned the decision of a data controller with an order to act upon the request (5), overturned the decision of a data controller and returned it to the data controller for a repeated process of decision making (11). The Commissioner made a decision to terminate the proceeding in 54 cases, 20.9%, since the data controller acted upon the request or the requester gave up on the complaint before the Commissioner

made his decision. The remaining 38.5% of the total number of all resolved complaints, **the Commissioner resolved the total of 60 cases, 23%, by dismissing the complaints as unjustified (59) or by dismissing the request as unjustified (1), and in 41 cases, 15.7%, the Commissioner rejected the complaint due to formal reasons** (as incomplete, premature, untimely, disorderly, not allowed and due to the lack of competences).

Graph 21 – The Commissioner’s decisions on the complaints in 2018



During the reporting period, the Commissioner issued a total of 95 binding and final decisions ordering data controllers to decide on the requests, and to inform him about the compliance with decisions. Of the number, **83 data controllers, 87.4%,** fully complied with the Commissioner's decisions and informed him accordingly. Other data controllers failed to inform the Commissioner whether they have taken steps to ensure compliance or are in the process of doing so.

3.3.3. Maintaining the Commissioner's Central Register

The Commissioner's Central Register ceased to exist when the new Law on Personal Data Protection went into effect on 21 November, 2018.

Namely, the Central Register was abolished under the new LPDP, by defining in transitional and final provisions of Article 98, that it shall cease to exist on the day the law comes into effect, and that the data it contains shall be handled in line with the regulations pertaining to handling archives. For this reason, **the part which refers to the Central Register in the annual report covers 1 January 2018 – 21 November 2018 period.**

According to the Commissioner's rough estimate, there are about **350,000** personal data controllers in Serbia, including public authorities, territorial autonomies and local self-government units and other authorities or organisations with delegated public powers, legal entities and individuals who process personal data.

As of 21 November 2018, **a total of 3,561** data controllers submitted records of **12,914 personal data files** they keep to the Commissioner's Central Register.

This practically means that, **ten years after LPDP entered into force**, of assumed 350,000 data controllers, only **3,561**, or **1.02% of the total number of data controllers**, have undertaken their statutory duties in respect to registering with the Commissioner's Central Register.

However, in addition to the aforementioned, compared to the previous period when there was a falling number of data controllers and number of data files registered with the Central Register, **for the period of 10 months and 21 days in 2018, there was an increase in the registration of both data controllers and provided data files.**

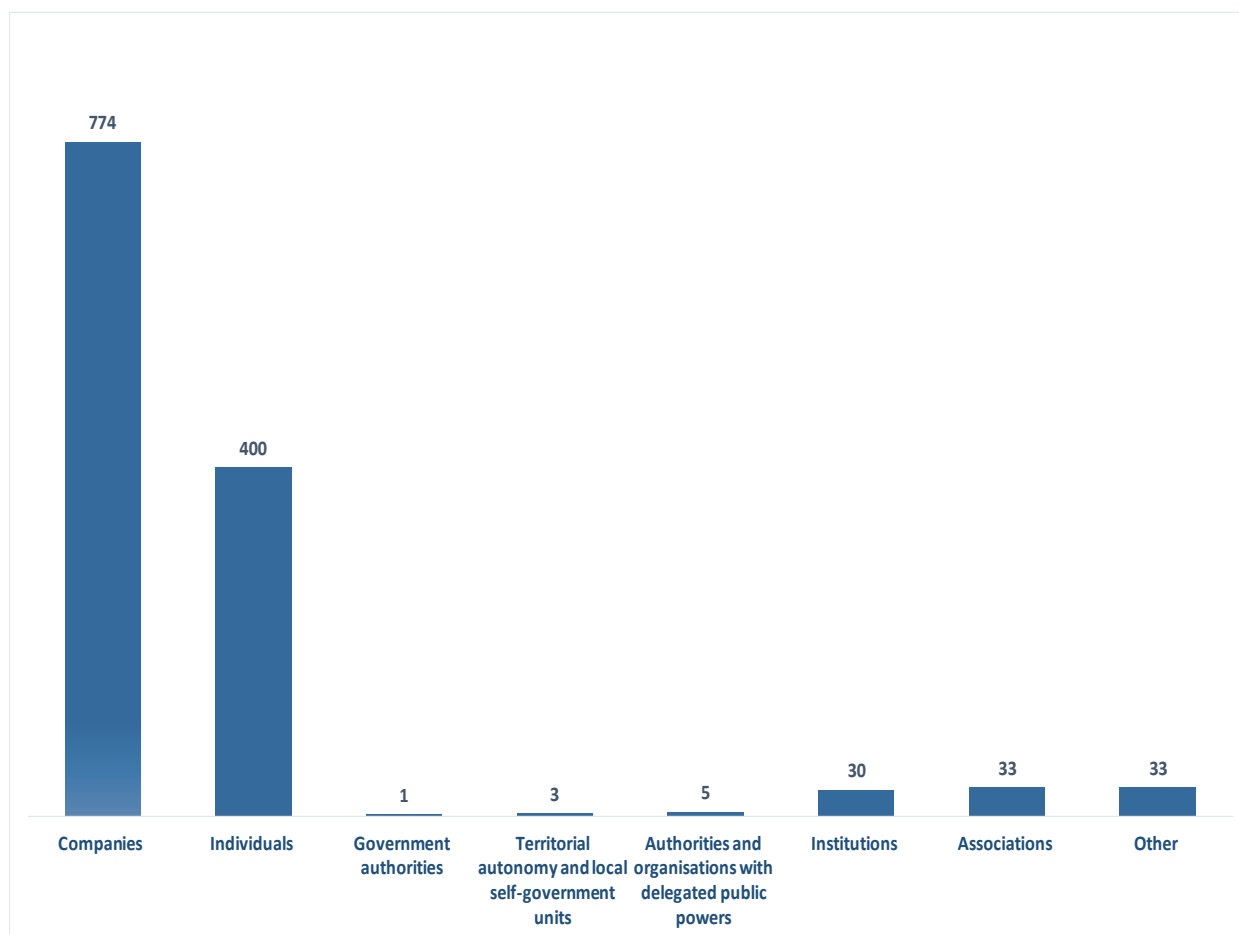
In 2018 (including 21 November), **1,279 data controllers recorded 3,056 of their data files with the Commissioner's Central Register.**

In 2018, companies submitted the largest number of data files as data controllers to the Commissioner. This, above all, can be attributed to the fact that the largest number of data controllers are companies, but also to the fact that this category of data controllers contains a large number of companies whose international and foreign parent companies require compliance with this obligation defined by the law, with which they are very familiar in the countries of their establishment.

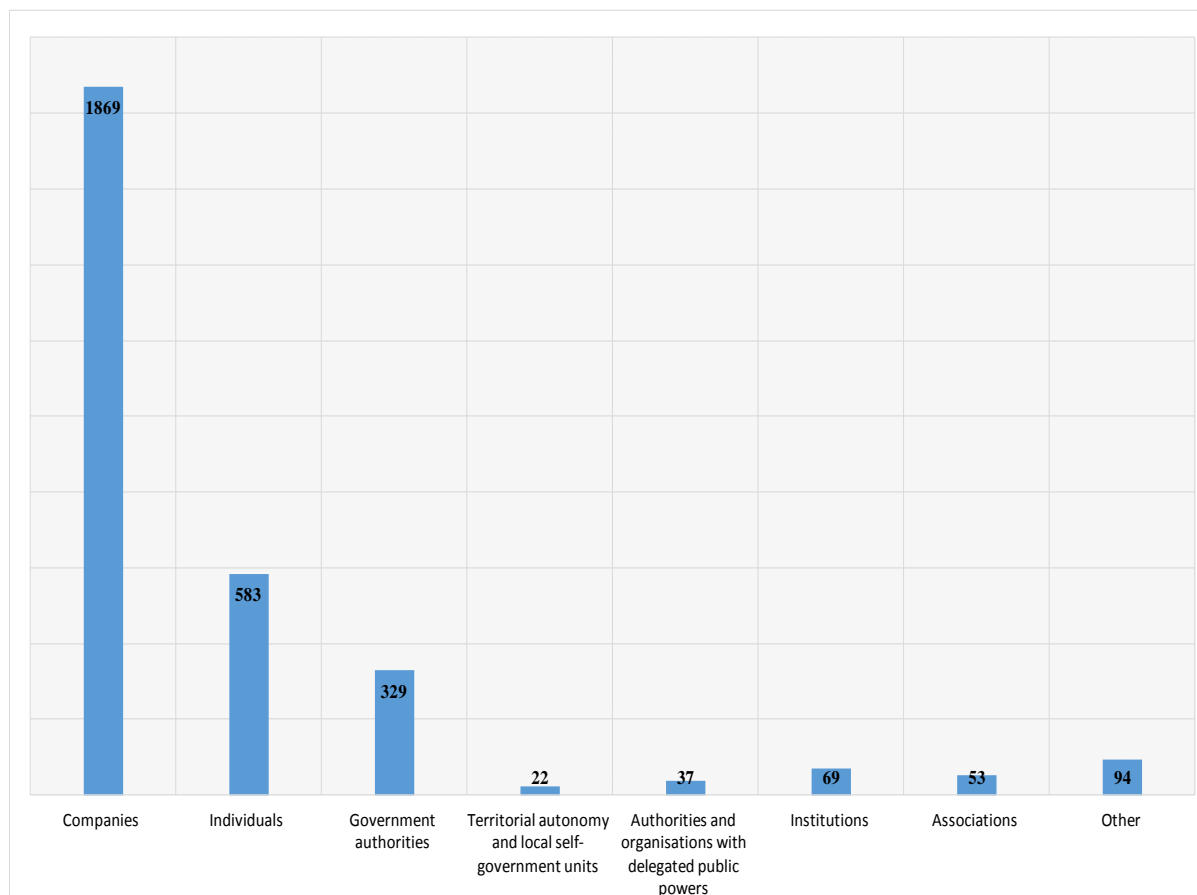
The trend of companies being the most numerous data controllers registered with the Central Register is also evident from the fact that since the Central Register was set up on 14 May, 2010 through to 21 November, 2018, out of the 3,561 data controllers that submitted records of data files to the Commissioner, 1,926 were companies, while 1,635 are all other data controllers combined (individuals - 561, institutions - 292, public authorities – 264, territorial autonomies and local self-government units - 198, associations - 152, bodies or organisations vested with public powers – 46, and others - 122).

As with the entry into force of the new LPDP until its implementation (nine months from the day of entry into force), the obligation of the data controllers to create, maintain and update the records on data processing, the requirement to submit a notification to the Commissioner about the intention to create data files, and the obligation to provide the Commissioner with the records on data files, i.e. on changes made to these records did not cease to exist, it is interesting to note that in a relatively short period of time of 40 days (from 21 November, 2018, when the Central Register ceased to exist until 31 December, 2018), **there was no reduction in submitting the records on personal data files and registration of new data controllers.**

Graph 22 – Data controllers registered in the Central Register in 2018 (including 21 November, 2018) by types of data controllers



Graph 23 – Records of data files registered with the Central Register in 2018 (including 21 November, 2018) by types of data controllers



Companies are not only the most numerous data controllers registered with the Commissioner's Central Register (774), but they also provided the largest number of records on data files (1,869), with around 2.4 records on average per company. This is followed by individuals (entrepreneurs) - 400, who provided 583 records on data files, with some 1.5 records on average per entrepreneur, state authorities provided 329 records, and institutions 69 records, etc.

During this period, the Commissioner also received 180 requests for changes to be made to the existing records in the Central Register, of which 177 were complied with and three requests were closed with an official note.

3.3.4. The Commissioner's Activities In Connection with Transfer of Data outside of the Republic of Serbia

In 2018, the Commissioner acted upon 20 requests for transfer of personal data outside Serbia, of which seven were submitted in 2018, and the remaining 13 were carried forward from the previous period. The Commissioner made 14 decisions, of which seven approved data transfers, one allowing transfer of partial data, and six decisions where the requests were turned down.

The countries to which the transfer of personal data was requested are: the US, New Zealand, India, Philippines, and Israel.

The requesters were mostly business corporations requesting transfer of personal data from Serbia to a country which is not a member of the Council of Europe Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data, and the provision of those data to the contracted data processors, i.e. users in these countries, for the purpose of establishing the centralised data base (e.g. on employees) and the corporative managing of those data at the level of an international group.

Such cases require that all relevant facts are established to allow transfer of personal data outside the Republic of Serbia based on the submitted requests and provided documents. In making a decision, all the circumstances are considered regarding the personal data processing performed by data controller intending to transfer data outside of the Republic of Serbia, and in particular: the purpose of data processing; the basis for data processing; type of personal data; the basis for personal data transfer; notifying and getting consent from the person whose data the request involves; duration of processing for which the data is transferred; implementing protection measures for data before, during and after the possible data transfer; protecting the right of the person whose data the request involves, as well as other facts of importance for making a decision on the requests.

3.3.5. How Other Public Authorities Responded to the Commissioner's Acts on Personal Data Protection

3.3.5.1. The Prosecutor's Offices on Criminal Reports filed by the Commissioner

In 2018, the Commissioner filed six criminal reports related to the criminal offense referred to in Article 146 of the CC (unauthorised collection of personal data). In the work starting from 2010 until the end of the reporting period, the Commissioner filed 39 criminal reports for several criminal offenses referred to in: Article 143 (unauthorised wiretapping and recording), Article 144 (unauthorised photographing), 146 (unauthorised collection of personal data), 299 (computer sabotage), Article 302 (unauthorised access to computer, computer network or electronic data processing), (unauthorised access to protected computer, computer network or electronic data processing), Article 329 (impersonation), Article 355 (document forgery) and Article 359 (abuse of office) of the CC.

According to data available to the Commissioner, based on 39 criminal reports filed by the Commissioner so far, only two criminal information were filed which resulted in one final verdict (the person was sentenced to six months of probation) and one acquittal. Of the overall number, 19 criminal reports were rejected, of which 14 were rejected due to the application of opportunity principle, three due to the expiration of the statute of limitations, and two were rejected because they were criminal offenses prosecuted ex officio. Proceedings in the remaining 18 criminal reports are still underway.

The Commissioner believes that he provided enough evidence in the criminal reports filed with the public prosecutor's offices for them to be further processed so that the perpetrators of these criminal acts can be identified and duly sanctioned.

3.3.5.2. Misdemeanour Courts on Petitions filed by the Commissioner

In 2018, the Commissioner filed 19 requests for initiating misdemeanour proceedings for the violation of provisions of the LPDP. Regarding all misdemeanour requests filed so far, the Commissioner received 23 decisions from the misdemeanour courts in 2018 (22 first-instance and one second-instance decisions), as follows: 18 convictions (of which one was partial conviction convicting the legal persona while exempting from liability the responsible person of the legal entity), one acquittal (which received the clause of the final judgement) and four decisions terminating the proceedings.

As for the termination of misdemeanour proceedings, one was terminated due to the absolute statute of limitations of two years for initiating and instituting a misdemeanour proceeding, two were terminated due to the lack of requirements necessary for making the final judgement and the execution of the first-instance decision because it was not submitted to the parties in the proceeding, and one misdemeanour was terminated because the defendant did not have reports on previous sanctions.

Misdemeanour courts issued fines in the total amount of RSD 755,000 and in three judgements issued warnings to the law offenders. The sanction policy of misdemeanour courts has been extremely mild given that fines imposed on legal entities are often in the amount of RSD 50,000, which is the legal minimum, while the fines imposed on responsible persons are almost as a rule RSD 5,000, which is also the legal minimum.

The Commissioner has made several unsuccessful attempts, including in the process of drafting and adopting the Misdemeanour Law, to point out that the deadline of two years for absolute statute of limitations was too short and the reason behind a number of procedures in cases to be terminated over the years.

3.3.5.3. The Administrative Court on Legal Actions against the Commissioner's Decisions

In 2018, the Administrative Court received seven legal actions against the Commissioner's decisions. Most of the legal actions (5) were filed against decisions dismissing the complaint as unjustified, one legal action was filed by data controller who was ordered to comply with the request, one legal action was filed by data controller who was ordered to delete i.e. anonymise data and a temporary ban on data processing.

In 2018, the Administrative Court ruled on eight legal actions initiated against the Commissioner's decisions (two legal actions were launched in 2018 and six of them in 2017) by dismissing five cases and rejecting three of them.

3.4. The Commissioner's Initiatives and Opinions relating to Regulations

3.4.1. Opinions on Draft Laws and Bills and Bylaws

In 2018, the Commissioner issued a large number of opinions on drafts and bills and bylaws dealing with the rights under his remit.

The Commissioner issued 59 opinions on drafts and bills, out of which 53 upon request, and six on his own initiative. Out of all opinions, 28 were issued concerning LPDP only, 22 dealt with both laws, i.e. LPDP and LFAIPI, and nine were issued regarding status issues of the Commissioner as a public authority.

These are:

1. To the Ministry of Justice, an opinion was given on his own initiative (in principle and for individual provisions) on the Draft Law on Personal Data Protection;
2. To the Ministry of Construction, Transport and Infrastructure, an opinion was given on the Draft Law on Roads with regard to LFAIPI and LPDP on three occasions;
3. To the Ministry of Defence, an opinion was given on the Draft Law on Production and Trade in Weapons and Military Equipment with regard to LFAIPI and LPDP;
4. To the Ministry of Education, Science, and Technological Development, an opinion was given on the Draft Law on Textbooks, with regard to LPDP;
5. To the Ministry of Education, Science and Technological Development, an opinion was given on the Draft Law on the National Qualification Framework with regard to LPDP;
6. To the Ministry of Construction, Transport and Infrastructure, an opinion was given on the Draft Law on Roads with regard to LPDP;
7. To the Ministry of Education, Science and Technological Development, an opinion was given on the Draft Law on amendments to the Law on Patents with regard to LPDP;
8. To the Ministry of Public Administration and Local Self-Government, in the course of public debate on the text of Draft Law on amendments to the Law on Free Access to Information of Public Importance, an opinion was given on his own initiative on the Draft Law on amendments to the Law on Free Access to Information of Public Importance concerning Commissioner's competences;
9. To the Ministry of Public Administration and Local Self-Government, an opinion was given twice on the Draft Law on amendments to the Law on Registers with regard to LPDP;
10. To the Ministry of Finance, an opinion was given on the Draft Law on amendments to the Law on Tax Procedure and Tax Administration with regard to LPDP;
11. To the Ministry of Justice, on his own initiative an opinion was given on the Draft Law on Lobbying with regard to LPDP;
12. To the Ministry of Health, an opinion was given on the Draft Law on Sanitary Supervision with regard to LPDP;
13. To the Ministry of Labour, Employment, Veteran and Social Affairs, an opinion was given on the Draft Law on amendments to the Law on Requirements for Temporary Assigning Employees to a Foreign Country and Their Protection with regard to LFAIPI and LPDP;

14. To the Ministry of Labour, Employment, Veteran and Social Affairs, an opinion was given on the Draft Law on amendments to the Law on the Prohibition of Discrimination with regard to LFAIPI and LPDP;

15. To the Ministry of Public Administration and Local Self-Government, an opinion was given on the Draft Law on amendments to the Law on National Councils of National Minorities with regard to LPDP;

16. To the Ministry of Education, Science, and Technological Development, an opinion was given on the Draft Law on amendments to the Law on Legal Protection of Topography of Semiconductor Product with regard to LFAIPI and LPDP;

17. To Ministry of Labour, Employment, Veteran and Social Affairs, an opinion was given to the Draft Law on Simplified Work Engagement on Seasonal Jobs in Certain Activities with regard to LPDP;

18. To the Ministry of Interior, an opinion was given on the Draft Law on Disaster Risk Reduction and Emergency Management with regard to LFAIPI and LPDP;

19. To the Ministry of Labour, Employment, Veteran and Social Affairs, an opinion was given on the Draft Law on War Memorials with regard to LFAIPI and LPDP;

20. To the Ministry of Labour, Employment, Veteran and Social Affairs, an opinion was given on the Draft Law on Strike with regard to LFAIPI and LPDP;

21. To the Ministry of Justice, an opinion was given on the Draft Law on Lobbying with regard to LFAIPI and LPDP;

22. To the Ministry of Interior, an opinion was given on the Draft Law on amendments to the Law on Prevention of Violence and Misbehaviour at Sport Events with regard to LPDP;

23. To the Ministry of Health, an opinion was given on the Draft Law on amendments to the Law on Psychoactive Controlled Substances with regard to LFAIPI and LPDP;

24. To the Ministry of Interior, an opinion was given on the Draft Law on amendments to the Law on Detective Activity with regard to LPDP;

25. To the Ministry of Interior, an opinion was given on the Draft Law on amendments to the Law on Private Security with regard to LPDP;

26. To the Ministry of Trade, Tourism and Telecommunications, an opinion was given on the Draft Law on Hospitality with regard to LPDP;

27. To the Ministry of Trade, Tourism and Telecommunications, an opinion was given on the Draft Law on Tourism with regard to LPDP;

28. To the Ministry of Interior, an opinion was given on the Draft Law on Voluntary Firefighting with regard to LPDP;

29. To the Ministry of Construction, Transport and Infrastructure, an opinion was given on the Draft Law on amendments to the Law on Maritime Navigation with regard to LPDP;

30. To the Ministry of Construction, Transport and Infrastructure, an opinion was given on the Draft Law on amendments to the Law on National Affiliation and Registration of Vessels with regard to LFAIPI and LPDP;

31. To the Ministry of Public Administration and Local Self-Government, on his own initiative, an opinion was given on the Draft Law on amendments to the Law on Civil Servants with regard to the Commissioner's competences;

32. To the Ministry of Public Administration and Local Self-Government, on his own initiative, an opinion was given on the Draft Law on Salaries of Civil Servants and General Service Employees with regard to of the Commissioner's competences;

33. To the Ministry of Justice, an opinion was given on the Draft Law Personal Data Protection, in general and on individual provisions with regard to the Commissioner's competences;

34. To the Ministry of Justice, an opinion was given on the Draft Law on Free Legal Aid with regard to LPDP;

35. To the Ministry of Public Administration and Local Self-Government, an opinion was given on the Draft Law on amendments to the Law on Civil Servants with regard to the Commissioner's competences;

36. To the Ministry of Public Administration and Local Self-Government, an opinion was given on the Draft Law on Salaries of Civil Servants and General Service Employees with regard to the Commissioner's competences;

37. To the Ministry of Justice, an opinion was given on the Draft Law on Prevention of Corruption with regard to LFAIPI and LPDP;

38. To the Ministry of Education, Science, and Technological Development, an opinion was given on the Draft Law on amendments to the Law on Higher Education with regard to LPDP;

39. To the Ministry of Health, an opinion was given on the Draft Law on Items of General Use with regard to LFAIPI and LPDP;

40. To the Ministry of Education, Science, and Technological Development, an opinion was given on the Draft Law on Professions of Special Importance for the Republic of Serbia with regard to LPDP;

41. To the Ministry of Interior, an opinion was given on the Draft Law on Critical Infrastructure with regard to LFAIPI and LPDP;

42. To the Ministry of Labour, Employment, Veteran and Social Affairs, an opinion was given on the Draft Law on amendments to the Law on Social Protection with regard to LPDP;

43. To the Ministry of Construction, Transport and Infrastructure, an opinion was given on the Draft Law on amendments to the Law on Planning and Construction with regard to LFAIPI and LPDP;

44. To the National Assembly of the Republic of Serbia, an opinion was given on the Bill on Central Register of Compulsory Social Insurance with regard to LPDP;

45. To the Ministry of Education, Science, and Technological Development, an opinion was given on the Draft Law on amendments to the Law on Primary Education and Upbringing with regard to LPDP;

46. To the Ministry of Education, Science, and Technological Development, an opinion was given on the Draft Law on amendments to the Law on the Fundamentals of the Education System with regard to LPDP;

47. To the Ministry of Construction, Transport, and Infrastructure, an opinion was given on the Draft Law on amendments to the Law on Working Hours of the Crew of Public Transport Vehicles and Tachographs with regard to LFAIPI and LPDP;

48. To the Ministry of Public Administration and Local Self-Government, an opinion was given twice on the Draft Law on the Central Register of the Population with regard to LFAIPI and LPDP;

49. To the Ministry of Public Administration and Local Self-Government, an opinion was given on the Draft Law on amendments to the Law on Inspection Supervision with regard to LFAIPI and LPDP;

50. To the Ministry of Finance an opinion was given on the Draft Law on the Budget of the Republic of Serbia for 2019 with regard to the Commissioner's competences;

51. To the Ministry of Public Administration and Local Self-Government, an opinion was given on the Draft Law on amendments to the Law of Free Access to Information of Public Interest with regard to the Commissioner's competences;

52. To the Ministry of Labour, Employment, Veteran and Social Affairs, an opinion was given on the Draft Law on Social Entrepreneurship and Work Integration in Social Enterprises with regard to LFAIPI and LPDP;

53. To the Ministry of Labour, Employment, Veteran and Social Affairs, an opinion was given on the Draft Law on Agency Employment, from the aspect of the LPDP;

54. To the Ministry of Interior, an opinion was given on the Draft Law on Asylum and Temporary Protection with regard to LPDP;

55. To the Statistical Office of Serbia, an opinion was given on the Draft Law on amendments to the Law on Official Statistics with regard to LPDP;

56. To the Constitutional Court of the Republic of Serbia, a proposal was given for the assessment of constitutionality of the Law on Protection of Competition;

57. To the Constitutional Court of the Republic of Serbia a proposal was given for the assessment of constitutionality of the Law on Defence;

58. To the Constitutional Court of the Republic of Serbia a proposal was given for the assessment of constitutionality of the Law on Security Information Agency; and

59. To the Constitutional Court of the Republic of Serbia a proposal was given for the assessment of constitutionality of the Law on the National DNA Register.

The Commissioner also gave 24 opinions on bylaws and other general acts, as follows:

1. To the Ministry of Finance, an opinion was given on the Proposal of the Rulebook on Types of Payment Codes and Manner and Procedure of Provision of Data to the Tax Administration, with the Technical Instructions;

2. To the Ministry of Foreign Affairs, an opinion was given on the Draft of the executive programme on cooperation in the field of culture, education, and science for the 2018 – 2021 period, provided by the Embassy of Poland;

3. To the Ministry of Foreign Affairs, an opinion was given on the Proposal to use note exchange with Bosnia-Herzegovina for the collection of a penal record certificate for the citizens of the Republic of Serbia and Bosnia-Herzegovina through diplomatic channels;

4. To the Ministry of Education, an opinion was given on the Proposal of the Strategy of Intellectual Property Development for the 2018-2022 period, with the Action Plan for the 2018-2022 period, for the implementation of the Strategy;

5. To the Oncology Institute, an opinion was given on the Rulebook on Security of Information and Communication Systems of the Oncology and Radiology Institute of Serbia;

6. To the Ministry of Trade, Tourism, and Telecommunications, an opinion was given on the Proposal of the Detailed Regulation of the Requirements that must be Fulfilled by Electronic Identification Schemes for Certain Levels of Reliability;

7. To the Ministry of Trade, Tourism, and Telecommunications, an opinion was given on the Proposal of the Regulation of Detailed Requirements for the Provision of Qualified Trust Services;

8. To the Ministry of Public Administration and Local Self-Government, an opinion was given on the Proposal of the Strategy for Public Administration Reform in RS;

9. To the Ministry of Health, an opinion was given on the Strategy of Public Health of the Republic of Serbia and the Action Plan for the 2018-2026 period;

10. To the Ministry of Public Administration and Local Self-Government, an opinion was given on the Rulebook on amendments to the Rulebook on the Manner of Registration and Maintenance of the Register of National Councils;

11. To the Ministry of Public Administration and Local Self-Government, an opinion was given on the Rulebook on amendments to the Rulebook on the Form and Content of the Form for the Collection of Signatures of Voters who Support Electors;

12. To the Ministry of Public Administration and Local Self-Government, an opinion was given on the Catalogue of Jobs;

13. To the Ministry of Public Administration and Local Self-Government, an opinion was given on the Proposal of the Instructions on amendments to the Instructions for the implementation of the Law on the Single Electoral Roll;

14. To the Ministry of Trade, Tourism and Telecommunications, an opinion was given on the Proposal of the Regulation on the requirements for preparation of documents for reliable electronic storage and document formats convenient for permanent storage;

15. To the Ministry of Public Administration and Local Self-Government, an opinion was given on the Proposal of detailed requirements for creation and maintenance of the websites of authorities, with explanation, for obtaining the opinions on the proposed act;

16. To the Ministry of Public Administration and Local Self-Government, an opinion was given on the Proposed Regulation on the manner of work of the Portal of Open Data, with an explanation of obtaining the opinions on the proposed act;

17. To the Ministry of Public Administration and Local Self-Government, an opinion was given on the Proposed Regulation on the manner for maintaining the Metaregister, the manner for processing, suspension, and revocation of the access to Service Bus of the Authorities and the manner of operation on the Portal;

18. To the Ministry of Public Administration and Local Self-Government, an opinion was given on the Proposed Regulation on detailed requirements for establishing an electronic governance, with an explanation;

19. To the Ministry of Public Administration and Local Self-Government, an opinion was given on the Proposed Rulebook on the manner in which authorities inspect, collect, process and concede i.e. provide data on facts on which official records are kept;

20. To the Ministry of Public Administration and Local Self-Government an opinion was given on the Proposed Regulation on organisational and technical standards for maintaining and improving the Single Information and Communication Network of electronic governance and connecting authorities to this network, with an explanation;

21. To the Ministry of Public Administration and Local Self-Government an opinion was given on the Proposed Regulation on evaluation of work performance of civil servants;

22. To the Ministry of Public Administration and Local Self-Government an opinion was given on the Proposed Regulation on internal and public call for filling vacancies in state authorities;

23. To the Ministry of Public Administration and Local Self-Government an opinion was given on the Proposed Conclusion for the adoption of the Action Plan for the implementation of the initiative Open Government Partnership in the Republic of Serbia; and

24. To Serbian Government, an opinion was given on the Draft Regulation on definition of competences for the work of civil servants.

Also, the Commissioner in one case requested on his own initiative from the Ministry of Public Administration and Local Self-Government and received the opinion on the expiration of the term of the Commissioner Rodoljub Šabić.

3.4.2. The Commissioner's Proposals Submitted to the Constitutional Court

The Commissioner's proposals to the Constitutional Court to determine the laws' constitutionality are especially important as a measure taken by the Commissioner since the previously provided opinions on drafts and bills were not accepted, and those laws were not aligned with the provisions of the Constitution. In 2018, the Commissioner submitted four such proposals to the Constitutional Court, two of which refer to the constitutional guarantees of a free access to information of public importance, and two refer to the non-compliance with constitutional guarantees for personal data protection. Also, the Commissioner sent a letter to the National Assembly of the Republic of Serbia (to all parliamentary groups and independent MPs), stating his opinion regarding the unconstitutionality of Article 40 of the Bill on Personal Data Protection.

The Commissioner submitted the following proposals to the Constitutional Court:

1. Proposal for assessing constitutionality of Article 10, paragraph 3 of the Law on National DNA Register

The Proposal for assessing constitutionality is based on the fact that despite the rather clear provision of Article 42 of the Constitution, and previously clearly expressed opinion of the Constitutional Court that data processing is regulated only by the law, the legislator defined that detailed requirements for data exchange and transfer from the DNA Register are regulated by the Government's bylaw. Given that data exchange and transfer fall under personal data processing, this provision is in a direct conflict with the constitutional provision. As the publication and termination of the validity of Article 10, paragraph 3 of the Law on National DNA Register is not sufficient to protect the right of persons, the Commissioner proposed to the Constitutional Court to issue a special opinion to the National Assembly on the following issues which must be regulated by law:

- Requirements for entry and deletion of the data in the DNA Register, keeping in mind the difference between a suspect, defendant, and a convicted person, as well as the type and gravity of a committed criminal offense;
- Timeframe for keeping data in the DNA Register, which cannot be indefinite as defined by provisions 41, 43, 44, 45 and 46 of the Law on Records and Data Processing in the Area of Internal Affairs;
- Requirements for data processing in the DNA Register, especially for entering and deleting data on minors and victims of criminal offenses; and
- Exchange of data from the DNA Register with other countries and international organisations which can only be regulated by law, i.e. through ratifying international agreements which have the force of law and are part of internal legal order, and defining clear rules for such processing.

2. The proposal for Assessing Constitutionality of Certain Provisions of the Law on Defence and Constitutionality of Certain Provisions of the Law on Security Information Agency (SIA)

After the adoption of the Law on Amendments and Changes to the Law on Defence and the Law on Amendments to the Law on SIA, the Commissioner submitted to the

Constitutional Court Proposals for assessing the constitutionality of certain articles of both of these laws. After changes were made to the two laws, the Ministry of Defence, the Armed Forces and SIA were practically exempted from the single system of free access to information regulated by the Law on Free Access to Information of Public Importance as a single system of protection of classified data regulated by the Law on Data Secrecy.

Provisions which define that, at the proposal of the Ministry of Defence, the Government “closely defines” data to be “classified”, i.e. “data which cannot be made available to the public”, as well as the provisions which classify certain SIA’s documents per type and not per content, not only are in conflict with the provisions of both laws, which violate the unity of the legal system, but also contravene Article 51 of the Constitution of Serbia, which defines that the right to access the information kept by the state bodies is exercised in line with the law.

The controversial provision of Article 102 of the Law on Defence is not in line with Article 51 of the Constitution of Serbia, which proclaimed that the Serbian Armed Forces are under democratic and civilian control because it paves the way for the rights in the public interest to be limited, even excluded, contrary to the criteria and requirements defined by the Law on Free Access to Information and the Data Secrecy Law.

Provisions of Article 20c of the Law on SIA regulating personal data processing in the process of security inspection, which define *inter alia* that the director of the SIA practically regulates data processing, are in conflict with Article 42 of the Serbian Constitution which defines that personal data processing shall only be regulated by law.

3. The proposal for Assessing Constitutionality of Article 45, paragraph 4 of the Law on Protection of Competition

The Law on Protection of Competition envisages that information “protected” by the Commission for Protection of Competition “does not have the status of information of public importance in terms of the law governing free access to information of public importance”. The information is wanted to be fully, independent of the circumstances, to be excluded from the access to the public, which is completely in conflict with the decisions referred to in the Law on Free Access to Information of Public Importance, which uniquely regulates the exercise of the right of the public. International standards recognise the Law on Free Access to Information of Public Importance as “*lex specialis*” i.e. the regulation which superimposes other laws, and the provisions of our Law on Free Access to Information define that the rights from that law may exceptionally be subject to certain restrictions defined only by that law. In every specific case the possibility of restricting the public rights must be appreciated, and this right can never be excluded in advance. The presence of this provision of the Law on Protection of Competition in the legal order objectively results in a conflict between the laws and questions the unity of the legal system guaranteed by the Constitution, and therefore causes concrete dilemmas in the authorities who execute the law. Apart from these issues, the Commissioner’s opinion is that the existence of this provision in the legal order is inevitably associated with possible abuse, i.e. using the provision for the purpose of illegal interests, e.g. corruption.

3.5. The Commissioner's Activities Aimed at Promoting Rights

During 2018, the Commissioner organised and held a number of trainings in the field of free access to information of public importance and personal data protection. Numerous activities were realised under the project "Building the Commissioner's Capacities for Information of Public Importance and Personal Data Protection for the efficient and adequate performance of his legal powers to ensure that the right to free access to information and the right to data protection are exercised in line with the European standards" funded from the grants under Norway's Bilateral Programme based on the Agreement with the Serbian Government. More details about this are provided in the section entitled "*Project Realisation*" hereunder.

Trainings for the implementation of the Law on Access to Information of Public Importance and LPDP, as legal obligation of public authorities, the Commissioner carried out independently or as a lecturer in trainings organised by other bodies or organisations for the needs of employees in the public administration bodies. The lectures were held for the representatives of various institutions and target groups, including the students of the Faculty of Law of Union University, under the programme "Scientific Seminar", third-year students at the Faculty of Organisational Sciences, attendees of the educational programme "PolitiKAS" (organised by Belgrade Open School), students and PhD candidates at the Faculty of Political Sciences, fourth-year students at the Faculty of Security Studies, students of ELSA association of the Faculty of Law University of Belgrade, attendees of autumn school for students of journalism and communication under the project "Future of Information Freedom in Serbia", Partners for Democratic Change, students of the fourth generation of the Legal Clinic for Environmental Law within University of Belgrade's Faculty of Law and OSCE Mission to Serbia, attendees of Human Rights School, students of the Faculty of Political Sciences in Belgrade, attendees of the Democracy Academy as part of the module "Power(lessness) of the Fourth Branch of Power" organised by the Centre of Research, Transparency and Accountability (CRTA), with the support of the OSCE Mission to Serbia, and the students of the Academy of Criminalistic and Police Studies.

The employees of the Commissioner's office held trainings in the Law on Free Access to Information of Public Importance and Law on Personal Data Protection, in two-day trainings organised for public authorities in five cities across Serbia. The trainings were held in Novi Pazar, on 20-21 June 2018, the City Hall of Cultural Centre in Šabac on 26-27 June 2018, the Centre for Professional Development in Zrenjanin on 3-4 July 2018, the City House, Multimedia Hall, in Vranje on 17-18 July 2018, the Big Hall of the Municipality of Vranje, and the Town Hall of the city of Požarevac on 10-11 September. The main aim of these two-day trainings was to train employees of public authorities outside Belgrade to properly implement the Law on Free Access to Information and LPDP.

In addition to these trainings, another two trainings, also lasting two days, were held for employees of state bodies entitled "Law on Free Access to Information of Public Importance in Practice". The first training was held on 8-9 August 2018, and the second training was held on 13-14 August 2018. In addition to the practical implementation of the law, these employees were trained to use the new application for creating and updating the work information booklets in electronic form once it becomes operational.

The employees of the Commissioner's office participated as lecturers in trainings on the implementation of LPDP organised by the Human Resource Management Service of the

Republic of Serbia. The assistant to Secretary General held a lecture on personal data protection for civil servants at the National Academy for Public Administration. The Commissioner also held three trainings on personal data protection for civil servants.

The Commissioner organised a multimedia exhibition entitled “Development and Importance of the Institution of the Commissioner for Information of Public Importance and Personal Data Protection” with the aim to familiarise the wider public, primarily the citizens, but also state bodies, organisations, domestic and foreign companies, the historical development of the Commissioner’s institution, the results of its work, aimed at further strengthening and maintaining the power of this institution. The conference was held from 28 May to 2 June 2018 in the atrium of the Serbian National Library.

The Commissioner also held a press conference in June on the risks and dangers of personal data processing on the “GP of Your Choice” app.

A two-day training for employees of the Commissioner’s office in the field of personal data processing in the sector of finances was held on 27-28 August 2018. Two two-day trainings “Law on Free Access to Information of Public Importance in Practice” were held for the representatives of more than 50 government bodies.

With the aim to strengthen and raise the awareness about personal data protection, an International Conference on the General EU Regulation on personal data protection was held on 17-18 April 2018. More details about this are provided in the section “*Project Realisation*”.

The Commissioner organised a series of lectures for employees of the Commissioner’s office on the new LPDP and the rights of individuals and legal entities. Four lectures were given on the General Data Protection Regulation – the manual on persons for data protection, the manual on transparency, the opinion on processing data at work, and guidelines for giving consent and new duties for data controllers. A two-day lecture on the new LPDP was given by Bojan Maršićanin, a representative of Telenor company.

At the event organised to celebrate Personal Data Protection Day on 26 January, the Commissioner presented the situation in this field and the main challenges in the work of this institution. The publication number 3 was presented to inform the wider and professional public about how this right is exercised: [*Personal Data Protection in Labour Relations: Commissioner’s Views and Opinions*](#) (available in Serbian).

Also, as a contribution to promoting this right, with a special overview on the General Regulation on Personal Data Protection, the Commissioner translated the manual on [*Data Protection and Powers of EU Institutions*](#), and published it (in electronic form) [*Frequently Asked Questions in connection with the General Data Protection Regulation \(GDPR\)*](#) (available in Serbian).

With regard to promoting freedom of information of public importance, the Commissioner organised a conference dedicated to International Right To Know Day on 26 September. This conference has been organised every year since 2006 in cooperation with and support of the OSCE Mission to Serbia, the Independent Journalists’ Association of Serbia, the Association of Serbian Journalists and the Freedom of Information Coalition. This year again, different bodies were awarded with acknowledgments for the achieved results and their contribution to exercising the right of the public to know, and a special award for the

best Information Booklet on the work of public bodies. A special acknowledgment, an award and a statuette for the best contribution to the affirmation of the right to access information and transparency in the work, was given to the Centre for Research, Transparency and Accountability (CRTA). On this occasion the publication number 7: [Free Access to Information: Commissioner's Views and Opinions](#) (available in Serbian) was presented.

In 2018, the Commissioner continued with the established practice of student internships aimed at giving them practical knowledge in the field of free access to information of public importance and personal data protection. As a result of cooperation between University of Belgrade's Faculty of Law and the Commissioner, 15-day internships were organised on the premises of the Commissioner's office for two groups of students of the third and fourth year of Legal Clinic for Environmental Law. At the same time, a trainee recommended within the Programme of practice on the educational programme "Study of the Future" by Belgrade Open School took part in this. There were also 20 participants of the programme of the School of Human Rights for the Youth organised by the Initiative of the Youth for Human Rights and Helsinki Council for Human Rights, who visited the Commissioner's Office on 13 July, 2018, and were presented with the Commissioner's work and its results.

A special attention of the Commissioner was placed on the professional development of the Commissioner's employees through strengthening the capacities of individuals, their professional, leadership and management skills, connecting them with the colleagues from the region and the EU, all under the Programme for Civil Servants of the European Fund for the Balkans. Thanks to a scholarship, one employee at the Commissioner's office attended a professional development programme at the Austrian Data Protection Authority in Vienna from 1 September until 30 November, 2018. The objective of the Programme was to contribute to the efficient development of state administration in the region, by providing training programmes for highly-qualified experts from the highest state bodies in the Western Balkan countries. Under the programme, the Commissioner's employee participated in two seminars: Kick-Off Seminar in Berlin and Potsdam, through a lecture and training in the rule of law, European integration in the Western Balkans, presentation and communication skills, good governance in public administration and the Final Seminar with the aim to assess the experience of the service, additional training on leadership and the preparation for sharing this knowledge with colleagues at the Commissioner's office.

3.6. Project Realisation

In 2018, the Commissioner completed work on the project "Building the Commissioner's Capacities for Information of Public Importance and Personal Data Protection for the efficient and adequate performance of his legal powers to ensure the right to free access to information and the right to data protection are exercised in line with the European standards", realised under the Bilateral Agreement between the Serbian Government and Norway's Ministry of Foreign Affairs.. **Under this project, due to the savings realised in the first two years of project's duration, with a letter of the Ministry of European Integration 337-00-154/2015-03 on 12 January, 2018, the existing activities were modified and new ones introduced in the third year of the project's implementation, under which the project budget funds were reallocated the project extended until 30 November, 2018 (*More details about it can be found under 5.3.2. Project Funds*).**

Within the Project, and with the aim to strengthen the capacities, the International Conference on General Personal Data Regulation was held at the MPs' Club in Belgrade. 17-18 April 2018. The objective of the conference was to acquaint the general public with the importance of the General Personal Data Regulation and raise the awareness on how this act will influence individuals, economy, and public authorities, and to underline the need for the national laws to be aligned with the EU acquis. Experts in the field of personal data protection in the EU Member States and also those from the non-EU countries took part in the conference, along with local experts in the field of personal data protection.

Under the Project, the representatives of the Commissioner's office went on two study visits to Croatia: a study visit to strengthen cooperation and exchange know-how with the Croatian Personal Data Protection was organised for six employees on 20–22 August 2018, and Deputy Commissioner and six employees at the Commissioner's office participated in a study visit to the Croatian Commissioner for Information to strengthen cooperation and exchange know-how with the Croatian Personal Data Protection on 9-12 September 2018.

Under the Project, the Commissioner issued three publications with the aim to contribute to raising awareness on importance of personal data protection and the right to free access to information of public importance. Under the activities related to the creating and publishing the materials aimed at informing the public of their rights and practice, the manual [*Data Protection and Powers of EU Institutions*](#) (available in Serbian) was translated and published, whose authors are Natasa Pirc Musar and Tina Kraigher Misic. The Second publication was published to celebrate International Personal Data Protection Day on 26 January, 2018, [*Personal Data Protection in Labour Relations, Commissioner's Views and Opinions, publication number 3*](#) (available in Serbian). A third publication was issued as part of activities to mark International Right To Know Day on 28 September, 2018, [*Free Access to Information: Commissioner's Views and Opinions, publication number 7*](#) (available in Serbian).

Upon carrying out all the project activities, an audit of the financial part of the Final Report of the Project for the 18 September 2015 – 30 November 2018 period was carried out by an independent auditor. The Final Report of the independent auditors was submitted to the Commissioner on 16 November, 2018, concluding that in all important aspects, it truly and objectively represented the use of received funds in line with the provisions of the Project Implementation Agreement.

At the session of the Project Steering Committee held on 22 November 2018, the Project Final Report for the 18 September 2015 – 30 November 2018 period was adopted, as well as the Report of the independent auditor on the audit of the financial section of the Project Final Report for the 18 September 2015 – 30 November 2018 period. On 28 November 2018, the Project Final Report and the Report of the independent audit were forwarded to the Ministry of European Integration. The Project formally ended on 30 November 2018.

4. THE COMMISSIONER'S COOPERATION

4.1. Cooperation with state authorities, civil society organisations and business associations

The Commissioner primarily cooperated with state authorities and other public authorities in 2018 by participating in conferences, round tables, meetings and professional gatherings organised by these bodies (independently or in cooperation with other national, international and non-governmental organisations) including: the Serbian Government, i.e. its professional services, the Public Policy Secretariat of Serbia, the Ministry of Public Administration and Local Self-Government, the Ministry of Economy, Ministry of European Integration, the Ministry of Culture, Ministry of Environmental Protection, the Ministry of Trade, Tourism and Telecommunications, the Ministry of Interior, the Ministry of Justice, the Ombudsman, the State Audit Institution, the Commissioner for the Protection of Equality, the Office of the National Security Council and Classified Information Protection, the Office for Information Technologies and Electronic Government, the Human Resources Management Service, the Judiciary Committee, the State Administration and Local Self-Government and the Committee on Administrative, Budget and Mandate and Immunity Issues of the National Assembly, the Standing Conference of Towns and Municipalities, the Institute of International Policy and Economy, the Faculty of Political Sciences, and the Serbian Chamber of Commerce.

In 2018, the Commissioner's cooperation with civil society organisations, as a well-established practice, was primarily based on the participation in numerous training activities and advocacy for both the right of the public to know and the right to personal data protection. The Commissioner took part in many conferences, debates and other similar events organised by civil society organisations, either alone or in cooperation with government institutions and/or international organisations. Some of them are: Transparency Serbia, Belgrade Centre for Human Rights, European Movement in Serbia, Partners for Democratic Changes Serbia, Share Foundation, Aarhus Centre, Belgrade Open School, Belgrade Centre for Security Policy, Balkan Investigative Reporting Network (BIRN), Bečej Youth Society, the National Alliance for Local Economic Development (NALED), Lawyers' Committee for Human Rights, Civic Initiatives, Education Centre, Centre for Free Elections and Democracy (CeSID), Autonomous Women Centre, IT Society of Serbia, Human Rights House, Open Society Foundation, European Movement in Serbia, Southern News Association, Serbian Association of Corporate Security Managers, SeConS Development Initiative Group, Humanitarian Law Centre, the Association of Serbian Banks, Forum for Ethnic Relations Citizen Association Pešcanik, the Independent Journalists' Association of Vojvodina, Centre for Research, Transparency and Accountability – CRTA, Centre for Investigative Journalism of Serbia (CINS), RS Press, Register of National Internet Domain of Serbia (RNIDS), Association e-Safety, National Convent on the European Union, Crime and Corruption Reporting Network (KRIK), vocational association Ambassadors of Sustainable Development and Environment, Online Media Association, the Serbian Association of Constitutional Law, Independent Association of Journalists of Serbia (NUNS), Journalists' Association of Serbia (UNS), Bureau for Social Research (BIRODI), the Centre for Investigative Journalist (CINC), Coalition preEUgovor, the Association for Computing, Informatics, Telecommunications and New Media of Serbia, Child Rights Centre, New

Economy, Initiative for Economic and Social Rights A11, the CRA Academy, and PricewaterhouseCoopers (PwC Serbia).

Cooperation with commercial associations was realised through similar activities undertaken by the Commissioner, which involved: the American Chamber of Commerce (AmCham) in Serbia, the Slovenian Business Club in Belgrade, Mokra Gora School of Management, the Foreign Investors Council (FIC), but also with law firms as representatives of the companies regarding the transfer of personal data outside the country.

4.2. Cooperation with the Media and Media Reporting on the Commissioner's Activities

In 2018, as in the years prior to this, the Commissioner had good cooperation with the media and journalists' associations. In the "Journalist – Your Friend" research, conducted by Pragma PR agency, analysing the quality of relations with the media, organizations and public figures in several categories, the Commissioner's office was in the group of state institutions that have the best channels and means of communication with the journalists, with Commissioner Šabić among the most "communicative" state officials.

The Commissioner made 96 public statements during the year. However, his statements were broadcasted by certain media only, and those which were not in favour of public authorities were mostly ignored by TV stations with national frequency. The Commissioner has not appeared as a guest on state broadcaster Radio-Television of Serbia (RTS) in the last couple of years of his term, even though some of the programme topics were directly linked to the work of this institution. The Commissioner was asked to give statements for the daily paper Danas, the weekly NIN, and other media outlets such as Vreme, CINS; KRIK, BIRN, Blic, Insajder, Beta, Tanjug, Radio Free Europe, N1, Andria Media Group, Politika, List Zrenjanin, Novi Magazin, Nedeljnik, Južne vesti, Kurir, Ekspres, VOICE. The Commissioner was often asked to provide information on topical cases and measures taken.

The Commissioner's statements attracting media attention referred to the cases on the adoption of the General Personal Data Protection Regulation and its importance for Serbia, discussions on the new Law on Personal Data Protection, and controversial proposals in the Draft amendments to the Law on Free Access to Information of Public Importance. Apart from that, there was media coverage on individual cases of violation of the right to access to information or data protection, some of which are presented in this report.

On the other hand, there was a negative campaign against the Commissioner's office and the Commissioner himself. For example, there were false allegations on used funds for travel costs presented as travel costs for Commissioner Rodoljub Šabić, and not for the Commissioner's office as an institution, even though this information is public and can be easily checked (information is published in the Commissioner's Work Information Booklet, which is regularly updated). The audit of the budget realisation did not find any irregularities in funds spending.

The Commissioner's Open Data Portal and Twitter Account (*more details on this can be found under 5.2. Development of Commissioner's office*) contributed to making the work of this institution transparent and helped the media to easily find the relevant information.

4.3. The Commissioner's International and Regional Cooperation

The Commissioner's international cooperation was successful in 2018, just like in earlier years. In addition to the already established cooperation with offices of international and supranational organisations in Serbia (OSCE, United Nations Development Program – UNDP, the Delegation of the European Union to the Republic of Serbia, the Council of Europe, USAID, Project for Responsible Government), the Commissioner also established cooperation with other organisations and public authorities.

Thus, the Commissioner cooperated with competent institutions in the region and in the countries of former Yugoslavia. This cooperation was established both in the field of personal data protection and freedom of information. Apart from regional cooperation, the Commissioner also cooperated with the information commissioners and other freedom of information and data protection authorities in Europe and internationally, particularly through participating in important international conferences and meetings.

The Commissioner's representatives also participated in the following international and regional events and meetings dedicated to freedom of information and personal data protection:

- International Conference on personal data protection “European cities conference, Data protection 2018, Data & Democracy - Digital challenges for the cities”, organised by the City of Vienna and held in Vienna, 5-6 March;
- 44th meeting of the Bureau of the Consultative Committee of the Convention for the Protection of Individuals with regard to Automated Processing of Personal Data T-PD, in Paris, 26-28 March;
- Meeting “Privacy Days – 4th day of the right to privacy and freedom of expression”, held in Mokrice, Slovenia 12 – 13 April;
- Second Meeting “Initiative 20i7” gathering the representatives of the institutions in charge of personal data protection from Bosnia-Herzegovina, Croatia, Kosovo, Macedonia, Montenegro, Slovenia and Serbia, held in Ohrid, Macedonia, 22-24 April;
- 28th Spring Conference on Personal Data Protection entitled “Data Protection – Better Together”, organised in Tirana, Albania, 3-4 May;
- Constitutive Session of the European Data Protection Board held in Brussels on 25 May;
- 36th Plenary Session of the Consultative Committee of the Convention 108, held in Strasbourg on 19-21 June;
- Meeting of the Bureau of the Consultative Committee on Personal Data Protection with regard to Automated Processing of Personal Data, held in Paris on 24-26 September;
- 40th International Conference on Data Protection and Privacy Commissioners (ICDPPC) held in Brussels on 22-23 October;
- IX International Conference on Personal Data Protection, held in Moscow on 8 November, 2018. The conference was organised by the non-governmental organisation Radio

Frequency Spectrum (АНО Радиочастотный спектр), with the support of the Ministry of Digital Development, Communications and Mass Media of the Russian Federation and the Federal Service for Supervision of Communications, Information Technology and Mass Media (Roskomnadzor);

- Annual European Event “Kaspersky Next” in Barcelona on 28 - 31 October;
- Work of the 37th Plenary Session of the Consultative Committee of the Convention 108, held in Strasbourg on 20-22 November;
- workshop on free access to information of public importance, held in Budapest on 26-28 November, organised by the Hungarian national body in charge of free access to information;
- 20th Meeting of the bodies in charge of personal data protection of the Central and South-East Europe (CEEDPA) held in Kiev, Ukraine, on 29 – 30 November;
- 46th meeting of the Bureau of Consultative Committee of the Convention on Protection of Persons with regard to Automated Processing of Personal Data, held in Strasbourg on 17-19 December;

Under the Project, there were two study visits to the Croatian Personal Data Protection Agency, on 20–22 August and to the Croatian Commissioner for Information on 9-12 September;

The European Data Protection Board (EDPB) granted observer status to the Commissioner on 16 November.

The expenses of the Commissioner’s participation in the conferences, meetings and other events were covered by their organisers (5), covered fully by the Commissioner (9) and partially by the Commissioner (3).

During the reporting period, the Commissioner met on several occasions with other representatives of European and international institutions and those in neighbouring countries, in particular to discuss how improvements can be made in human rights and the fight against corruption and personal data protection.

The Commissioner met with representatives of the diplomatic corps in Serbia, including Britain’s Ambassador Denis Keefe, US Ambassador Kyle Scott, Dutch Ambassador Henk van den Dool, Swedish Deputy Ambassador Joachim Wearn, Austrian Ambassador Nikolaus Lutterotti, Belgium Ambassador Arne Sannes Bjornstad, the Council of Europe Commissioner for Human Rights Nils Muiznieks, Deputy Head of the EU Delegation Mateja Norcis Stamcar, Head of the Council of Europe Office in Belgrade Tobias Flessenkemper, and Head of the Political Section of the EU Delegation Noora Hayrinen. The Commissioner also met with delegations from Morocco and Tunisia, which came on a study visit under the organisation of the IREX Europe and UNESCO Maghreb Office, and a group of members of the organisations of civil society, activists and experts from Kenya. The Commissioner received Muhamed Djokaj, the president of the Council of the Agency for Personal Data Protection and Free Access to Information of Montenegro, and its director Čedomir Mitrović, while the Special Advisor to the Commissioner received Eduard Raducan, the director of National Centre for Personal Data Protection in Moldova.

Most of the talks focused on the current situation in protecting the right to access the information and personal data protection, and the specifics related to the Draft Law on Personal Data Protection and Draft Law on Amendments to the Law on Free Access to Information of Public Importance. The topics also covered were the relations between the executive and legislative branches of the government and the Commissioner's office, and the National Assembly's failure to review the Commissioner's annual reports. The sides also held talks on Serbia's EU integration process, mainly the tasks defined in the action plans for Chapters 23 and 24.

5. THE COMMISSIONER'S OFFICE AND ASSETS

5.1. Number of the Commissioner's Office Employees

The Commissioner's office should have 94 employees to be able to exercise its powers under the Law on Access to Information and the Law on Personal Data Protection. This number had been set by the previous job classification rules of 2014 and remained unchanged in the currently applicable internal organisation and job classification rules of 2017, which were adopted by the competent committee of the National Assembly.⁵¹

In the proposed staff plan for the Commissioner's office for 2018, number 119-00-8/2017-04/1 on 25 December, 2017, the Commissioner confirmed that three persons need to be appointed to carry out the Commissioner's duties (the commissioner and two deputies) and that it needs 94 employees. The same letter was sent to the Ministry of Finance, act number 119-00-8/2017-04/2 on 25 December, 2017 to obtain approval.

The Commissioner's proposed staff plan was not approved by the Ministry.

With the letter number 119-00-82017-04/4 on 28 June 2018, the Commissioner addressed the Ministry of Finance with the Proposed Staff Plan of the Commissioner for 2018, with Addendum 1 – planned funds for salaries in 2018 with the dynamics of filling the vacancies. He did not receive any response.

The National Assembly's Committee on Administrative, Budget and Mandate and Immunity Issues made the Decision 21 number 112-265/18 on 23 May, 2018, defining the maximum number of employees on permanent job contracts at the Commissioner's office for the Information of Public Importance and Personal Data Protection in 2018. The committee confirmed the number of 94 employees for 2018, but that it would hinge on available funds for salaries.

In early 2018, the Commissioner's office had 78 full-time employees on permanent job contracts. During 2018, eight people were employed for an indefinite period of time, with the same number terminating their employment. **As of 31 December, 2018, the Commissioner's office had the same number (78) of employees on permanent job contracts, which is 83% of the total number of employees defined by the job**

⁵¹ Rulebook on Internal Organisation and Job Classification No. 110-00-4/2017-04 of 21 February 2017 was approved by the Committee on Administrative, Budgetary, Mandate and Immunity Issues of the National Assembly by its enactment 21 No 112-402/14 of 10 May, 2017.

systematisation act. During the year, to make up for the absent temporary staff, and due to increased workload in some periods of the year, several people were hired for a definite period of time (during the year 10 people were hired in different periods). As of 31 December, 2018, the Commissioner's office had two persons employed for a definite period of time.

During 2018, two persons were hired under contract to perform activities beyond the job descriptions of systematised jobs in the Commissioner's office.

5.2. Development of Commissioner's Office

Throughout 2018, the Commissioner organised numerous activities aimed at improving the work of this institution, knowledge and skills of its employees. Most of these activities were implemented as part of a three-year project⁵² from 2015, under the bilateral agreement between the Serbian Government and Norway's Ministry of Foreign Affairs.

Thus, in 2018 activities continued to be aimed at strengthening the information security management system used by the Commissioner in his work in accordance with the requirements of the SRPS ISO/IEC 27001:2013 due to the importance of these activities, not only for the security of information available to the Commissioner, but for the supervision of implementation of LPDP by data controllers who have been certified for this standard. In September 2017, the Commissioner received the Certificate on the introduction of the information security management system, which met the requirements of the ISO 27001:2013. In September 2018, a year after the introduction of the SRPS ISO/IEC 27001:2013, there was a supervision audit (inspection) on the improvement and maintenance of the information security system of the Commissioner by the leading auditor company CIS - Certification & Information Security Services GmbH/Quality Austria Centre Ltd, Belgrade. The inspection established that the Commissioner's office had successfully responded to all the certification requirements and thus acquired the right to extend the validity period of the certificate on the information security management system in line with the SRPS ISO/IEC 27001:2013. The Commissioner was issued the certificate by Belgrade-based Quality Austria Centre on 4 October, 2018 (the second audit is scheduled for September 2019).

As part of these activities and the continued implementation of staff training, another seven employees acquired certificates for managers of data security in 2018, in addition to eight auditors who were previously certified for information security (the highest level of certification SRPS ISO/IEC 27001) and 10 managers in the same field. Under the project, two-day training sessions were held for improving the knowledge of the Commissioner's office employees in the field of protection of financial data in 2018. The training was organised for two groups of employees in the Commissioner's Office aimed at more efficient monitoring and guaranteeing of the implementation of the Law on Personal Data Protection. International experts under the service contracts were hired for this purpose.

⁵²Act of the Ministry of European Integration number: 337-00-154/2015-03 on 12 January, 2018, extended the duration of the project "Building the Commissioner's Capacities for Information of Public Importance and Personal Data Protection for the efficient and adequate performance of his legal powers to ensure the right to free access to information and the right to data protection are exercised in line with the European standards", marked POV-01-2015, dated 30 November 2018.

In 2018, another two employees at the Commissioner's Office underwent security clearance checks, and were issued the required certificates by the Office of the National Security Council, which allows them to access data classified as "top secret", in accordance with the Law on Data Secrecy, and for one person an application was submitted for the access to data classified as "top secret", which is in the process of security clearance check. The Commissioner's office with 21 employees who had been certified in the previous period (three employees with the certificate for access to classified data in 2018 terminated their employment) there are now 23 employees certified to access classified data, and one employee who is currently under the process of security clearance check for a smooth execution of activities under their scope.

Bearing in mind the requirements for state bodies posed by the new regulation on electronic transactions and digitalisation process of public administration (Law on Electronic Governance, Law on Electronic Documents, Electronic Identification and Trust Services in Electronic Business, and other numerous bylaws), the Commissioner strengthened the computer network infrastructure in 2018, both by carrying out works on the regulation, installation and replacement of old network devices, and by ensuring the redundancy of the entire information system and ensuring higher capacities for storage of electronic data.

A big contribution to the affirmation of the right to free access to information of public importance and personal data protection was achieved by the procurement of three new software solutions. The procurement of one software was performed with the aim to adjust the Commissioner's portal, i.e. to make it available to the blind and visually impaired persons. The procurement of the second software ensured that the Commissioner's practice is faster and more easily published on a daily basis through an easy and fast search by different parameters. The procurement of the third software has finally enabled state authorities with the obligation to provide annual reports on their activities under the Law on Free Access to Information of Public Importance, to provide these reports through the programme which ensures electronic entry of the data, and for the Commissioner's office to conduct the statistical processing of this data through the programme.

In 2018, the Commissioner continued to maintain the [Open Data Portal](#), through which various data, is made available to the entire public on the Internet in mechanically readable format and through visualisations. This data pertains to the Commissioner's work, the current issues regarding free access to information of public importance worldwide, the right of the public to know, open data, open administration, personal data protection, information security, privacy, etc.

Recognised in the aforementioned manner, the Open Data Portal was followed by more than **4,200** (four thousand and two hundred) **members** in the three (3) years of its existence.

The value of the Portal has been recognised by the citizens and all other users, which is illustrated by the statistics on the number of visits to data.poverenik.rs also in 2018:

- Total number of single visitors to the Portal: **2,638**;
- Opened pages: **10,532**;
- Visits to pages with visualisations: **579** single visitors;
- Percentage of visits from the territory of the Republic of Serbia: **92%**;
- Downloading of data sets: total of **1,192** downloads.

- Average time of stay of visitors on a visited page: **1 minute and 36 seconds**.

In late 2018, the [Portal for submitting annual reports by public authorities](#) started operating with the aim to facilitate the provision of reports by authorities which have provided them in hard copy.

Along with providing the necessary information, the Commissioner's official Twitter account aims to promote positive social values, primarily in the field of protection of basic human rights.

5.3. Allocated Funds and Expenses for Work of Commissioner's Office

5.3.1. Allocations from Budget of the Republic of Serbia

The work of the Commissioner and his office is funded from the budget of the Republic of Serbia.

The Law on Budget of the Republic of Serbia for 2018⁵³ granted to the Commissioner funds for finance source 01 – budget revenue amounting to RSD **199,039,000, which is 16% less than compared to the Commissioner's Draft Financing Plan. In 2018, RSD 180,805,429.43 or 90.84% of the approved budget funds were spent on the Commissioner's work.**

The budget funds and the expenses approved for the Commissioner's office are shown in the tables below:

Table 7 – Execution of the Commissioner's budget for 2018

Function	Source of fina.	Programme	Project	Economic class.	Description	Funds approved under the Law on the Budget of RS for 2018 ("Official Gazette of RS, no. 113/2017)	Executed	% of execution
160	1	001	011	411	Salaries and fringe benefits	126,700,000.00	126,249,453.36	99.64
				412	Social contributions payable by employer	22,706,000.00	22,614,856.47	99.60
				413	Compensation in kind	300,000.00	296,100.00	98.70
				414	Social benefits to employees	1,400,000.00	536,332.70	38.31
				415	Compensation for employees	2,650,000.00	2,559,400.04	96.58
				416	Rewards and bonuses	300,000.00	255,993.73	85.33
				421	Recurrent expenses	6,000,000.00	3,956,836.69	65.95
				422	Travel expenses	4,500,000.00	2,118,547.62	47.08
				423	Contracted services	19,100,000.00	13,712,220.30	71.79
				425	Repairs and maintenance	2,500,000.00	1,569,428.73	62.78
				426	Material	4,400,000.00	2,831,676.17	64.36

⁵³The Law on the Budget of RS for 2018 ("Official Gazette of RS", number 113/2017).

				482	Taxes, statutory charges and fines	400,000.00	346,979.00	86.74
				512	Machines and equipment	6,000,000.00	3,264,236.62	54.40
				515	Intangible assets	2,083,000.00	493,368.00	23.69
				TOTAL 01 Budget revenues		199,039,000.00	180,805,429.43	90.84
60	5	001	011	422	Travel expenses	0.00	0.00	0.00
				423	Contracted services	3,626,135.33	2,238,221.53	61.72
				426	Material	0.00	0.00	0.00
				TOTAL 05 Donations from foreign countries		3,626,135.33	2,238,221.53	61.72
60	5	001	011	421	Recurrent expenses	370,000.00	235,089.23	63.54
				422	Travel expenses	450,000.00	369,702.41	82.16
				423	Contracted services	9,315,000.00	7,866,293.41	84.45
				512	Repairs and maintenance	665,000.00	662,826.00	99.67
				515	Intangible assets	800,000.00	339,840.00	42.48
				TOTAL 15 Unspent donation funds from previous years		11,600,000.00	9,473,751.05	81.67
				TOTAL FOR FUNCTION 160:		214,265,135.33	192,517,402.01	89.85

The largest part of the Commissioner's expenses in 2018 from the source of finance 01 – Budget revenues, not including personal income of employees, i.e. salaries, contributions and fringe benefits, refers to the communication, computer, , administration, information and professional services, followed by expenses for the repairs and maintenance of the equipment, petrol costs, administrative equipment and the renewal of licenses necessary to increase the security of the computer network of the Commissioner's office as a precondition for the introduction of ISO/IEC 27001.

Table 8 – Overview of major expenses

Description	Funds spent – source of finance 01 Budget revenues
Recurring expenses	
Communication services (Internet costs, mobile and landline phone services, postal services)	3,453,863.76
Travel expenses	
Expenses for business trips abroad (obligation of the Commissioner to co-finance the activities on project "Building of Commissioner's Capacities" POV-01-2015)	1,862,545.39
Contracted services	
Administrative services (translation and interpretation services and other administrative services)	1,080,444.47
Computer services (computer and software maintenance services)	6,375,000.00
Information services	1,176,634.99
Professional services	2,300,881.38
Services for hospitality and catering (organisation of conferences, round tables, meetings)	1,267,724.00
Current repairs and maintenance	
Current repairs and maintenance of the equipment (equipment for transport and administrative equipment)	1,222,951.58
Materials	
Material for transport (petrol and other materials for vehicles)	1,882,156.25
Machines and equipment	
Administrative equipment (computer equipment, in-built equipment, furniture)	3,264,236.62

To ensure optimum conditions for the employees to work on the implementation of both laws under the Commissioner's remit, the Commissioner's office also from the source of finance 01 – budget revenues, purchased administrative equipment, mainly computer equipment, totalling RSD 2,412,840 and in-built equipment at the cost of RSD 591,717.61 necessary for the installation of the access control system to official premises of the Commissioner's Office in order to improve the information security system in line with the SRPS ISO/IEC 27001:2013 (27000:2013), as well as intangible assets in the total amount of RSD 493,368 to renew licenses for the improvement of the security of the Commissioner's computer network.

Table 9 - Overview of the purchased equipment and intangible assets

Number	Fixed assets	Source of finance	Quantity	Price per item, inclusive of VAT	Total
1	Power controller ASC1204C-S	01	1	33,998.30	33,998.30
2	Power controller ASC1204C-D	01	1	67,998.00	67,998.00
3	Battery for Backup controller	01	3	2,052.75	6,158.25
4	MIFIRE card reader type ASR1101A	01	8	4,165.00	33,320.00
5	Panic taster G000SG	01	4	2,326.45	9,305.80
6	Hydraulic door seal type TS68	01	4	4,926.60	19,706.40
7	El. Mag. locks	01	3	4,394.67	13,184.01
8	Cylinder lock	01	3	1,755.25	5,265.75
9	IP camera AS-0280B	01	3	15,053.50	45,160.50
10	Stand PFA136	01	3	595.00	1,785.00
11	Receptacle for opening double winged wooden doors	01	10	3,213.00	32,130.00
12	Sticker "Room under video surveillance" A4	01	20	238.00	4,760.00
13	Mikro Tik S+850LCD30+modul to multimode 300m	01	8	8,089.20	64,713.60
14	Mikro Tik S+31DLC10D+modul single-mode to 10km	01	8	20,030.40	160,243.20
15	Mikro Tik S+2332LC10D+modul 10GB/s	01	2	46,994.40	93,988.80
16	Metal shelf 2000x820x320/5	01	5	4,542.86	22,714.30
17	Metal shelf 2000x920x550/5	01	2	8,142.85	16,285.70
18	NS chair Mirage/black	01	1	28,690.01	28,690.01
19	Apple iphone X 256GB black	01	1	179,999.00	179,999.00
20	Storage QnapTS-1273U-RP	01	1	919,920.00	919,920.00
21	Superserver SYS TS-6028R-WTR	01	1	834,000.00	834,000.00
22	Mikrotik CRS326-24G-2S-RM	01	16	26,040.00	416,640.00
23	Mikrotik CCR1016-12S-1S	01	2	47,400.00	94,800.00
24	Mikrotik CCR1036-8G-2S	01	1	88,800.00	88,800.00
25	Cable Extralink SFP-10G	01	6	3,060.00	18,360.00
26	Cable Moxa Opt. 8D CBL-M62M9x8	01	1	6,240.00	6,240.00
27	UTP PACH CORD Cable CAT 6 1m (200 pcs)	01	1	23,520.00	23,520.00
28	UTP PACH CORD Cable CAT 6 0,5m (100 pcs)	01	1	10,560.00	10,560.00
29	Web camera HD Logitech C920, 15Mpix	01	1	11,990.00	11,990.00
Total					3,264,236.62

Table 10 – Overview of the purchased intangible assets

Number	Intangible assets – licenses	Source of finance	Quantity	Price per item, inclusive of VAT	Total
1	Basic Support VMware	01	1	110,986.80	110,986.80
2	Mdaemon Renewal 150 users	01	1	48,246.00	48,246.00
3	Mdaemon Antivirus Renewal 150 users	01	1	49,304.40	49,304.40
4	Mdaemon Outlook connector 150 users	01	1	29,830.80	29,830.80
5	Archab Mdaemon arhiver Rnw Archab 150 users	01	1	75,000.00	75,000.00
6	ESET Endpoint Protection Standard 250 users	01	1	180,000.00	180,000.00
Total					493,368.00

Part of the administrative equipment, i.e. computer equipment in the amount of RSD 662,826 and intangible assets totalling RSD 339,840 were purchased from donations (source of finance 15 – unspent donations from previous years) according to the planned Commissioner's activities under the project "Building of Commissioner's capacities" POV-01-2015 under the Bilateral Programme with Norway, according to the Agreements on Implementation of Projects number 337-00-00018/2015-04/1 of 18 September, 2015, extended by the act of the Ministry of European Integration number 337-00-154/2015-03 of 12 January, 2018 to 30 November, 2018. The activities relate to the procurement of the storage server and external hard disc for storing data copies on a separate location as a necessary measure aimed at improving the SRPS ISO/IEC 27001:2013 and procurement of software to enable blind and visually impaired persons to access the Commissioner's website.

Table 11 – Overview of the procured equipment from the donations

Number	Fixed assets	Source of finance	Quantity	Price per item, inclusive of VAT	Total
1	Storage server TS-1273U-RP-64G	15	1	648,453.60	648,453.60
2	External hard disc 2TB	15	1	14,372.40	14,372.40
Total					662,826.00

Table 12 – Overview of the intangible assets from the donations

Number	Fixed assets	Source of finance	Quantity	Price per item inclusive of VAT	Total
1	Annual license of TTC server	15	1	169,920.00	169,920.00
2	Annual license for the sound system of the web portal	15	1	56,640.00	56,640.00
3	Annual license for document synthesis in word, pdf and html	15	1	113,280.00	113,280.00
Total					339,840.00

In 2018, the State Audit Institution conducted an audit of the financial reports and regularity of operations of the Commissioner for Information of Public Importance and Personal Data Protection for 2017 (Audit Report number 400-2090/2018-03/25 of 3 December 2018). According to the opinion of the State Audit Institution, the Commissioner's financial reports were prepared, and the activities, financial transactions, information and decision regarding the revenues, income, expenses and costs of the Commissioner, for all

financially important issues were carried out in line with the law, other regulations, entrusted authorisations and fit for the purpose. The State Audit Institution gave the Commissioner four recommendations with the aim to improve the procedures and the work processes and therefore improve the work of the Commissioner's office. Pursuant to Article 40, paragraph 1 of the Law on the State Audit Institution⁵⁴ the Commissioner provided the State Audit Institution with the evidence on the measures taken through the response report number 404-01-35/2018-04/3 of 14 January 2018. The response report was accepted by the State Audit Institution as confirmed later in the audit report dated 31 January, 2019.

5.3.2. Project Funds

The Commissioner and the Serbian European Integration Office concluded an Agreement on the Implementation of the Project No. 337-00-00018/2015-04/1 on 18 September, 2015 (hereinafter referred to as "the Agreement") entitled "Building of the Commissioner's Capacities for Efficient and Effective Exercise of Legal Powers and Ensuring of Exercise of Freedom of Information and Right to Personal Data Protection, in accordance with the European Standards", reference number POV-01-2015.⁵⁵ It is financed from grants under the Bilateral Programme with Norway for 2015 on the basis of the Bilateral Programme Agreement with the Government of the Republic of Serbia signed on 18 November, 2013, in Belgrade.

The total project budget was worth RSD 53,086,375, of which **RSD 46,123,875.00 is provided from the grants under the Bilateral Programme with Norway, and the rest, amounting to RSD 6,962,500 is provided by the Commissioner.**

The Project was launched on 18 September, 2015, when the Agreement was signed between the Commissioner and the Serbian European Integration Office. According to the Agreement on the project implementation, the Commissioner, received RSD 17,764,334.94 in the first year of its implementation, RSD 24,239,001.60 in the second and RSD 4,120,538.46 in the third year under the grants from Norway.

The Agreements envisaged for the Project to last 26 months, but after receiving the Commissioner's annual report on the implementation of the activities in the second year, the Ministry of European Integration held a session of the Project Steering Committee attended by a representative of that ministry. The sides concluded that after all performed payments under the project, there would be significant savings from the reallocated funds for the implementation of the activities in the first and the second year, and that it would be necessary that the Commissioner, due to the significance of the implemented activities for strengthening the Commissioner's capacities and the amount of saved funds, to address the Ministry of European Integration with a proposal to extend the Project and with new activities in line with the defined project results. The project duration was extended from 26 to 38 months, i.e. until 30 November, 2018.

The Ministry of European Integration transferred the funds to the Commissioner for all three years of the project implementation totalling RSD 43,291,536.40, which is RSD 2,832,338.60 less than the funds defined by the Agreement for the project due to a difference

⁵⁴ The Law on State Audit Institution ("Official Gazette of RS", number 101/05, 54/07, 36/10 and 44/18).

⁵⁵ Code POV is the abbreviation of the word Commissioner.

in exchange rate for RSD into NOK at the time of Project approval and the transfer of the funds.

The Commissioner independently carried out all the activities under the project “Building Commissioner’s capacities” POV-01-2015 and spent RSD 41,903,622.60 out of the grants under the Bilateral Programme and RSD 6,041,644.54 out of the Commissioner’s own budget for the implementation of the project.

Project Name:	Building of the Capacities of the Commissioner for Information of Public Importance and Personal Data Protection for Efficient and Effective Exercise of Legal Powers and Ensuring of Exercise of Freedom of Information and Right to Personal Data Protection, in accordance with the European Standards
Project code:	POV-01-2015
Project start data:	18 September 2015
Project duration:	38 months (until 30 November 2018) (initial time period: 26 months)
Total project budget under Agreement:	Total: RSD 53,086,375 (Norwegian funds: 46,123,875 / Co-financing: 6,962,500)
Total received funds (Norway):	Total: RSD 43,291,536.40
Total funds spent:	Total: RSD 47,945,267.14 (Norwegian funds: 41,903,622.60/Co-financing: 6,041,644.54)

In 2018, after obtaining the approval for amending the existing and adding new activities for the third project year, and the extension of the time period for their implementation until 30 November, 2018, with the act of the Ministry of European Integration number 337-00-154/2015-03 of 12 January 2018, the Commissioner continued with the project activities.

The largest part of the projects funds in 2018 was spent on the organisation of the conference on General EU Regulation on Personal Data Protection, aimed at familiarising the public about the importance of this regulation and raising awareness about how it will affect individuals, but also various stakeholders, primarily Serbia’s economy and public authorities whose duty is to protect the rights of individuals. A significant part of the funds was spent on the organisation of the conference on the Commissioner’s office, as a multimedia exhibition entitled “Development and Importance of the Commissioner’s Office for Information of Public Importance and Personal Data Protection”, and for the organisation of five two-day training sessions for public authorities in charge of free access to information of public importance and personal data protection in the cities outside Belgrade, where public authorities are less aware of their duties under the Law on Free Access to Information and the Law on Personal Data Protection. Here the primary focus was on the funds used for professional services of the natural and legal persons hired to carry out activities under the project (project team, local and international experts both in the field of personal data protection and free access to information of public importance, and the legal entities participating in the organisation of the conference on the Commissioner’s office) in the total amount of RSD 7,538,621.94 and the funds used for hospitality and catering services amounting to RSD 952,531.81.

Part of the funds were spent on computer services in the total amount of RSD 696,000 for design a software to search the Commissioner's web presentation and for designing a software for electronic submissions of annual reports, while RSD 496,000 was spent on a English language course for the employees due to the role the Commissioner's office in the European integration process. According to the Commissioner's duty under Article 7 of the Agreements on the project implementation to provide the Ministry of European Integration with the report on the Project implementation which refers to the overall timeframe for the Project implementation, as well as the report of the independent auditor on performed financial audit of the Project, the funds in the amount of RSD 456,000 were spent on the services of the Project financial audit.

In the session of the Project Steering Committee on 22 November, 2018, the Final Project Report for the 18 September 2015 – 30 November 2018 period was adopted, as well as the Report of the Independent Auditor on performed audit of the financial part of the Final Project Report for the 18 September 2015 – 30 November 2018 period. On 28 November 2018, the Final Project Report and the Report of the Independent Auditor were forwarded to the Ministry of European Integration. The Project officially ended on 30 November, 2018.

6. THE COMMISSIONER'S PROPOSALS AND RECOMMENDATIONS

To improve the existing situation in the field of free access to information of public importance and personal data protection in Serbia, all based on and in line with the statements given in this report, the Commissioner hereby defines the proposals and recommendations to the National Assembly of the Republic of Serbia and the Serbian Government.

6.1. The Commissioner's Recommendations to the Serbian National Assembly:

1. To in a timely manner (before 21 August 2019 – the implementation start date for the new Law on Personal Data Protection), adopt the Bill on amendments to this law, prepared in cooperation and in line with the suggestions of the Commissioner, so that the Law can be implemented;

2. To adopt the Bill on amendments to the Law on Free Access to Information of Public Importance, prepared in cooperation and in line with the suggestions of the Commissioner, with the text which would contribute to the improvement of the rights defined by the Law, without any delays;

3. The competent National Assembly committees should consider the Commissioner's 2018 Report and, based on the recommendations in this Report, define the proposed conclusions with the recommendations and measures to improve the situation and send them to the National Assembly for consideration;

4. To open a discussion on the Report and proposed conclusions of the competent committees and make relevant conclusions aimed at exercising and further improving the

right to access the information of public importance and personal data protection and eliminating the obstacles outlined in this report;

5. To ensure a constant supervision of the implementation of its conclusions with available control mechanisms in connection with the work of the Serbian Government, i.e. executive branch, and to insist on the accountability for the mistakes in the work of public authorities;

6. The competent committees and professional services of the National Assembly, when enacting laws, should give due consideration to Commissioner's views regarding the compliance, and possible effects of these laws on exercising the right to access to information of public importance and the right to personal data protection.

7. The National Assembly should provide full support in a timely and adequate manner to the Commissioner as an independent body for realisation of his duties.

6.2. The Commissioner's Recommendations to the Serbian Government are:

1. To timely prepare the text and define the Bill on amendments to the Law on Personal Data Protection, in cooperation with the Commissioner and in line with the Commissioner's suggestions, as well as in line with the statements given in this report so that the Law can be implemented;

2. To prepare the text and define the Bill on amendments to the Law on Free Access to Information of Public Importance, in cooperation with the Commissioner and in line with the Commissioner's suggestions, as well as in line with the statements given in this report, in the text which would contribute to the situation in the field regulated by the Law;

3. Pursuant to its own duties defined by the Law on Free Access to Information of Public Importance, to establish adequate mechanism for execution of the final, enforceable and binding decision of the Commissioner, as well as a more efficient supervision of the implementation of this law;

4. Pursuant to its own duties defined by the Law on Personal Data Protection, to establish a strategic plan of the harmonisation process of sectoral laws in terms of personal data protection, with the aim to harmonise the provisions of the Law on Personal Data Protection so that this legal duty could be realised in a timely manner (by the end of 2020);

5. Pursuant to its own duties defined by the Law on Personal Data Protection, to publish in the Official Gazette of the Republic of Serbia the list of countries, parts of their territories or one or more sectors of certain activities in those countries and international organisations for which it is considered that ensure a suitable level of protection, i.e. for which the Serbian Government has established do not ensure a suitable level of protection;

6. That the Serbian Government and competent ministries, when preparing the law and other regulations, should consider with due care the Commissioner's views regarding the harmonisation, and possible effects of those regulations on exercising the right to access to information of public importance and the right to personal data protection;

7. That the Serbian Government and the competent ministry ensure adequate financial funds for a smooth operation of the Commissioner as an independent body, particularly when it comes to extending the powers of this body defined by the new Law on Personal Data Protection and the increasing workload which untimely execution incurs costs of court proceedings payable from the budget;

8. To undertake measures to establish the accountability of the authorities, especially officials, who failed to comply with the obligations in line with the law;

9. To ensure, in consultations with the Commissioner, that the competent ministries, as well as other bodies of the executive branch, improve the knowledge in the field of the right to access to information of public importance and the right to personal data protection to improve the level of exercising these rights in the Republic of Serbia.

DEPUTY COMMISSIONER

Stanojla Mandić

25 March, 2019, Belgrade

Number: 073-10-1772/2018-01