SUMMARY OF THE REPORT

ON IMPLEMENTATION OF THE LAW ON FREE ACCESS
TO INFORMATION OF PUBLIC IMPORTANCE
AND THE LAW ON PERSONAL DATA PROTECTION
IN 2015

The Commissioner for Information of Public Importance and Personal Data Protection (hereinafter referred to as "the Commissioner") has a statutory remit to protect and promote the right of free access to information of public importance and the right to personal data protection and to monitor the lawfulness of processing personal data performed by public authorities and all other entities which deal with personal data processing, entirely in keeping with the Constitution and laws governing these two human rights.

The Commissioner's activities in 2015, within the competences established by the Law on Free Access to Information of Public Importance (hereinafter referred to as: Law on Access to Information) and the Law on Personal Data Protection (hereinafter referred to as: LPDP) concerned the following:

- handling, as a second-instance authority, of individual complaints against violations of the right to free access to information and the right to personal data protection; supervision, ex officio or upon reports, of the processing of personal data; responses to citizens' requests asking how to exercise their right to information or the right to personal data protection; acting on requests for tranborder transfer of personal data out of Serbia; issuing of legislative initiatives to state authorities and opinions about the implementation of the law; organization of or participation in numerous seminars and lectures, primarily for employees of public authorities and data controllers; preparation and publishing of publications containing positions from own experience and practice; maintenance of the Central Register of Data Files; taking part in events relevant to the Commissioner's work, both international and regional, as well as in the country's activities related to the EU accession process etc.

The volume of the Commissioner's activities, reflected in the number of cases handled and their complexity, continued to increase also in 2015. Thus, the Commissioner handled a total of 11 880 cases (9 012 cases in the field of free access to information and 2 868 cases in the field of personal data protection), which is 4.3% higher than in 2014. The caseload increased by 3.2% compared to 2014, as the Commissioner completed 8 016 cases, namely 5 646 in the field of freedom of information and 2 370 cases in the field of personal data protection.

The workload of the Commissioner in 2015, statistically, by number of closed cases, was higher by 3.2% compared to 2014. It would be, however, significantly higher, if other activities, which are not presented numerically, included, such as affirmation of rights, assistance to citizens in exercising their rights, training for law implementation, the exercise of other Commissioner's powers.

A. Access to Information

A1. Legal Framework

There is a real need to improve the so-called legal framework for exercise the right to access to information, particularly the Law on Access to Information. Although this Law is based on high standards in terms of exercising the public's right to know, it needs to be amended due to new changes in other fields of the Serbian legal system and in practice after its adoption. **These amendments to the Law shall eliminate obstacles arising in its implementation, and strengthen accountability mechanisms and mechanisms for more transparent work of public authorities,** as proof of the sincerity of the state declared in adopting strategic documents on public administration reform, the fight against corruption, the formal accession of the country to the international initiative for the so-called open administration, EU accession etc.

More specifically, these amendments to the Law on Access to Information shall: cover all entities vested with public powers (including notaries public and bailiffs); increase the level of proactive publishing of information and regulate legal concept of re-use of information; expand the Commissioner's powers to include advising in adopting regulations and filing of requests for initiation of infringement proceedings for violation of the rights; eliminate ambiguities, or prescribe the manner of execution of Commissioner's conclusions on serving monetary penalties; harmonise amounts of fines with the Law on Misdemeanours; arrange that revenues from collected costs of access to information belong to authorities acting upon requests, which actually had costs; eliminate the scope for different interpreting certain provisions to the detriment of the Law.

Preparation of amendments to the Law on Access to Information is under the responsibility of the ministry in charge of administrative affairs. This process started five years ago. At the beginning of 2012, the amendments were before the Parliament, just to be adopted, but the procedure was aborted by pulling the Bill together with all others, after the constitution of the new Government and the Assembly. The current Government has repeatedly extended the time limits for its adoption. The last specified time limit for adopting these amendments is the second quarter of 2016, according to the latest version of the Draft Action Plan of the Ministry of Justice from September 2015, for joining the EU for Chapter 23 – Judiciary and fundamental rights. Time limits specified in strategic documents, or action plans for their implementation (for the fight against corruption, for public administration reform, for implementing the Open Administration Partnership initiative), which are conflicting with one another, have expired, even though they were extended several times. These documents stress the need to improve the transparency of public authorities' work, the necessity of expanding the powers and resources available to the Commissioner, the obligation to comply with decisions and instructions issued by the Commissioner.

Б.2. Figures on Caseload in the Field of Access to Information

The right to free access to information was used to a large extent in Serbia also in 2015. This is confirmed by data of about 30 000 requests sent to public authorities, and this is only from the authorities that communicated a 2015 report to the Commissioner[1]. Continuing the trend from previous years, the most requests for access to information (**39.31%)** were filed by **citizens as clients of public authorities** in relation to proceedings upon their briefs for the exercise of certain rights or their reports of certain occurrences and irregularities which require intervention by competent authorities. This was information whether government and other authorities operated in keeping with the law, how they acted and what measures they took/did not take in specific cases, in particular ministries, cadastre service offices, local self-government authorities, the police, public prosecutors' offices and courts, public enterprises etc., how competent authorities treated the environment, human health and animal welfare etc.

As in the previous years, a large number of information requesters **(33.91%)** wanted to know **how public authorities managed public funds**, through budget implementation, conducting public procurements, privatization etc.

Individual citizens and citizens' association, journalists, and media representatives were in most cases information requesters in 2015. The right to access of information was also exercised by public authorities themselves, representatives of political parties, trade unions, lawyers, companies and etc.

In 2015, the Commissioner, **in the field of free access to information** of public importance**, closed 5 646 cases,** of a total of 9 012 handled during this year (5 695 received in 2014 and 3 317 pending cases were carried forward from 2014). 3 366 pending cases which have not been closed were carried forward to 2016.

Most of the Commissioner's activities involved handling of individual cases for not receiving information from a public authority. In 2015, the Commissioner received 3 821 complaints for denial of an authority to access to information. The Commissioner was simultaneously resolving the backlog of complaints, so in 2015 **the total number of resolved complaints was 3 764, out of which 3 227 complaints (85.7%) were found to be justified. The most frequent reason generating complaints (87.7%) was the so-called "administrative silence", namely situations where an authority either fully ignores a freedom of information request or answers stating it cannot comply with a request** without providing proper justification, in spite of the fact that failure to conform to freedom of information requests is an infringement punishable under the Law on Access to Information.

Nearly half the complaints, namely **48.18%, were filed** against **national authorities, and almost half** of them **against ministries**. However, it should be taken

[1] Data from the Report - 778 authorities (27%) which communicated their Annual Report to the Commissioner of 2 871 authorities obligated to communicate such report.

into account the fact that the ministries in 2015 received 25.5% more requests for access to information than in the previous year.

Invoking the confidentiality privilege (24.08%), an abuse of the right (22.99%) and potential violation of the right to privacy for delivering information (19.96%) were the most frequent reasons for denial of requests. Other reasons were also seen for unjustified denial of information, such as that a request does not contain a precise description of information requested (even when the requester indicates the precise title of the document), that an authority does not dispose of such information, without providing proper justification, etc.

Public authorities continued to act on requests only after receiving a complaint from the Commissioner. Therefore, the proceedings were **terminated in 2 162 (67%) cases.** This only indicates that there was no fundamental reason for denial in a large number of cases, but it was irresponsible behaviour towards citizens, which also caused unnecessary administrative actions.

As regards justified complaints, the Commissioner's action enabled the requesters to exercise their rights in 95.8% of the cases. In some cases, however, **in which the Commissioner ordered the respondents to make the information available, the authorities failed to comply in 135 cases,** out of which: ministries in 26 cases, other national authorities in 21 cases, judiciary authorities in 9 cases, local self-government authorities in 17 cases, state-owned enterprises and other enterprises majority-owned by the state in 35 cases and local public enterprises in 27 cases.[2]

At the request of parties, the Commissioner carried out 189 enforcement procedures, within which he issued 126 enforcement notices and decisions on fining, as well as 164 resolutions on termination of proceedings in cases where it was complied with the decision. **Securing the enforcement of Commissioner's decisions remained an evident problem, which is the responsibility of the Government, as well as the execution of Commissioner's resolutions on collection of fines by certain courts.**

The Commissioner asked the Government to, in accordance with the law, secure execution of his decisions in 24 cases but to no avail, except in one case where a public authority complied with a decision after it. The monetary penalties served by the Commissioner in enforcement procedures secured an inflow of **RSD 3 120 000 to the budget.** The outstanding amount of RSD 1 260 000 from served penalties could not have been compulsory collected because the competent court in Belgrade declined jurisdiction in these cases, while all other courts in Serbia accept jurisdiction. Such divergent practice of courts is highly detrimental to the exercise of the rights and calls for an urgent response by competent authorities, which the Commissioner also emphasized in his previous reports. The Tax Administration also declined competence for collection of these public revenues several years ago[3].

[2] Enclosed to the Report – List of pending decisions pending, as at 10 February 2016.
[3] Letters of the Tax Administration, Nos. 037-00089/2010-08 from 4 November 2010 and 27 January 2011.

In 2015, review of legality of decisions passed by the Commissioner was requested in 115 cases before the Administrative Court but it did not uphold a single claim.[4]

In 2015, **the Constitutional Court** ruled on **8 constitutional appeals** lodged by appellants in respect to the implementation of the Law on Free Access to Information of Public Importance[5], where two appeals were against Commissioner's decisions, four appeals against decisions of the Administrative Court and one appeal against the Ministry of Finance and the Ministry of Education, Science and Technological Development. **The Constitutional Court dismissed all claims**.

After four years of almost complete absence of responsibility for violating the right of access to information[6], **the Ministry of Public Administration and Local Self-Government, or more specifically the Administrative Inspectorate within it,** in charge of supervising the implementation of the Law on Access to Information and initiating infringement proceedings against responsible public authorities, **in 2015 supervised the implementation of this Law and initiated 49 requests for initiation of infringement proceedings** against responsible persons in public authorities **for failure to comply with Commissioner's decisions, 7 requests for failure to develop and publish information booklets and 2 requests for failure to communicate Annual Report to the Commissioner.** Data on the outcome of these proceedings are not shown in the Report of the Administrative Inspectorate. The number of filed requests for initiation of infringement proceedings is almost symbolic compared to the number of justified complaints in 2015 (3 227) and 306 cases in which the Commissioner requested the initiation of infringement proceedings because authorities failed/refused to comply with a binding decision of the Commissioner and in respect of more than 2 000 authorities which, year after year, fail to respect the obligation to communicate a report to the Commissioner, or those which fail to carry out training or publish information booklets in keeping with the law.

Infringement proceedings initiated at the request of citizens, in the capacity of wronged parties for not getting information, in a large number were discontinued before the Misdemeanour Appellate Court due to the expiration of the statute of limitations or first-instance decision were cancelled and referred back for retrial during which the statute of limitations will expire. Sentences served are, in a number of judgements, closer to prescribed statutory minimum for offence (RSD 5 000) or warning.[7]

[4] In 2015 the Administrative Court also ruled on 10 complaints lodged in 2013 (6 complaints were denied, 2 proceedings were discontinued), and 71 complaints lodged in 2014 (13 complaints were denied, 12 were dismissed, 44 proceedings were discontinued, and for two complaints which were accepted, cases were referred back for retrial where the proceedings were amended and the same decisions were passed).

[5] Letter of the Constitutional Court No. 86/1 from 27 January 2016.

[6] Excluding a small number of infringement proceedings initiated at the request of citizens as a wronged party.

[7] Letter of the Misdemeanour Appellate Court, IIICy No.19/16-18/1 from 12 February 2016: 165 cases completed in the field of freedom of information in 2015 in the following manner: 62 confirmed first instance decisions, 50 decisions were overruled, 8 decisions were overturned, in 27 cases the proceedings was discontinued due to expiry of the statute of limitations.

To conclude all this, **years of lack of accountability for violations of the Law on Access to Information, non-functioning mechanisms for securing the execution of Commissioner's decisions by the Government and impossibility of compulsory collection of monetary penalties for the execution of Commissioner's decisions, are a serious warning that this situation encourages the violation of the Law so it should be immediately changed through amendments, but also through actual action of all competent authorities.**

National strategic documents regarding the public administration reform, fight against corruption, formal accession of the country to the international initiative for the so-called open administration and the European integration process itself, require consistent respect and performance of the legal duties towards the public and citizens in real life and not only though regulations.

Apart from handling complaints and taking action in relation to the review of legality of decisions passed in administrative proceedings and the execution of passed decisions in 2015, the Commissioner's activities also included the provisions of assistance to authorities in implementing the law and citizens in exercising their rights, provision of **opinions and explanatory instructions (170 cases),** issuing a publication containing positions from the Commissioner's practice, **measures for improving proactive publication of information (73 cases)**, **training of** employees with public authorities in charge of the implementation of the law, **legislative initiatives and opinions in connection with the enactment of regulations** (23), **communication in connection with requests** by information requesters filed or forwarded to the Commissioner **(583**), replies to **requests for access to information addressed to the Commissioners (122**), acting on **memorandums** that are largely outside the scope of the Commissioner's powers **(451**), participation in numerous discussions and other events relevant to the Commissioner's work, etc.

Activities and measures of the Commissioner on the consistent implementation of the 2015 Instructions for Production and Publishing of Information Booklets on the work of state authorities has led to progress in the publication of information on the so-called proactive basis, primarily in quantitative and partly qualitative terms, but it is still insufficient unsolicited commitment of authorities in this matter, without the Commissioner's intervention.

Considering all above facts on the lack of adequate enforcement mechanisms, the results the Commissioner achieved in protecting the right of access to information have to be specially valued. Fines i.e. monetary penalties served by the Commissioner in decision enforcement procedures, even when they are collected, they are not an effective means of enforcement, not only due to inadequate amounts, but because they are paid from an individual budget of an authority to the joint account of the Treasury.

A3. Main challenges for the Commissioner in the field of free access to information

The main objective of the Commissioner in the coming period regarding handling complaints for the violation of the right of free access to information is to reduce the time taken to resolve complaints, i.e. the time between complaints being filed and decisions being completed. Although the Commissioner completes a large number of cases during a year (almost four thousands), which is as much as the inflow of new complaints during a year, the Commissioner's work is burdened by the backlog of around 3 000 cases only in the field of access to information, from the period when the Commissioner's Office was understaffed. The Commissioner's Office started significantly to expand only the last two years, after the competent authorities of the Government in 2013 provided necessary premises, in which the Commissioners moved in late 2013. Today, with existing, but still insufficient number of staff, the Commissioner is doing everything in his power to improve promptness of resolving complaints, thus providing faster protection of rights and avoiding complaints often filed by citizens for not reaching a decision within the statutory time limit of 30 days.

B. Personal Data Protection

B.1. Legal Framework

The Commissioner is forced to point out also in this Report, as in his reports delivered to the National Assembly last several years, that the existing legal framework and actual state in the field of personal data protection, are not just inadequate and worrying, but also that the Government of Serbia continues not to take necessary measures to improve the legal framework and overcome the existing problems.

The essential problem is a chronic lack of strategic approach in this field, and it is not realistic to expect any serious progress in the field of protection of personal data without it. It is the implementation of the Personal Data Protection Strategy. This document, which every transition country in the process of approaching to European standards must have, the Government of Serbia did not adopt it, as it would be logical, before or simultaneously with the adoption of the Law on Personal Data Protection in 2008.

The Government adopted the Strategy only after the initiative of the Commissioner, in the text he prepared, even though it was the Government's duty, two years later, in summer 2010. A necessary prerequisite for the implementation of the Strategy is an Action Plan for its implementation which, as it was envisaged, should have been adopted within three months. The need and deadlines for adopting the Action Plan were, of course, confirmed later, in several planning documents, but to no avail. The adoption of this document has been "persistently" prolonged although our reality "argues" for the need of it in a literally dramatic way. Not a day goes by that we are not witnessing grave violations of citizens' privacy from, too frequently, those who should protect it – state authorities. The need to adopt the Action Plan for implementing the Personal Data

Protection Strategy was also a subject of talks between the Commissioner and the Prime Minister. As the Prime Minister fully agreed that the Action Plan is essential and announced "accelerated procedure", it is incomprehensible and confusing, that regardless of that, this document for which the Government is five and a half years in delay, has not still been passed, and that the final version of the Action Plan for Chapter 23 in EU negotiations "Judiciary and fundamental rights" does not even mention it!

The Commissioner considers that the existing legal framework of personal data protection is inadequate, both from the standpoint of international law and international relations, and the standpoint of domestic law, which is a reason why it cannot provide unobstructed exercise of the right to privacy and personal data protection in all spheres of an individual's life. From the standpoint of international law and international relations, the harmonisation of national legislation with the EU law is an international obligation of the Republic of Serbia taken by the Stabilisation and Association Agreement, where the status of candidate country for EU accession indicates that European integrations are vital for foreign and domestic politics of the country. LPDP is not fully compliant with relevant international documents, in particular with the Directive of the European Parliament and Council of the European Union from 1995, but also with the Council of Europe Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data from 1981. Significant changes and improvement of these international documents have already been prepared and published, and their adoption and coming into effect are expected in the coming period.

Certain court decisions produced, however, no less significant changes of international, European legal framework in the field for personal data protection. For example, the European Court of Human Rights has, to some extent, departed from the concept of privacy in the workplace, because in the case of Barbulescu v. Romania ruled in favour of the employer that he has the right to monitor electronic communications of employees in certain situations[8]. Huge changes at the international level caused the ruling of the European Court of Justice, also made only in one case, but with far-reaching consequences, that "Safe Harbour" agreement between Europe and the USA[9] is no longer valid. Until now, under this Agreement, personal data were transferred between EU and the USA without major formalities, while now authorities are trying to quickly fashion a new legal framework – with working titled "Privacy Guard", which should be in line with existing EU data privacy standards, a scheme which would protect privacy of data subjects in a more comprehensive and reliable manner than "Safe Harbour" and provide legal security to business.

From the standpoint of domestic law, it is essential to indicate that numerous provisions of LDPD are inadequate, or incomplete, while some matters are not even regulated by LPDP, as not being also regulated, in a systematic manner, under other special laws. The most important matters that are not regulated by LPDP are video-surveillance, processing of biometrics data. The matters that are inadequately or

[8]http://hudoc.echr.coe.int/eng#{"documentcollectionid2":["GRANDCHAMBER","CHAMBER"],"itemid":["001-159906"]}

[9] http://curia.europa.eu/jcms/upload/docs/application/pdf/2015-10/cp150117en.pdf

incompletely regulated by LPDP are viewed in, for example: inadequately regulated procedure for exercising the right to personal data protection; unregulated procedure for transborder transfer of personal data out of Serbia; insufficiently regulated procedure for supervision; insufficiently regulated Commissioner's powers; the lack of technological neutrality and impossibility of application in existing information and communication technologies whose use is becoming almost inevitable; incomplete regulation of accountability for violations of rights of persons, as well as for failure of meeting legal obligations. Furthermore, data security is not sufficiently and adequately regulated, and there is no obligation to analyse the risk to the rights of persons in case of individual processing which may seriously endanger the rights of persons, and obligation of data controllers to report the Commissioner any breach in data security. In this regard, new concepts need to be introduced in data protection scheme, primarily related to the existence of persons in charge of data protection with certain data controllers (special types or who process personal data of a large number of persons or special types of data), etc.

The Commissioner repeatedly pointed out to shortcomings of LPDP and problems they cause in practice, for example in his Annual Activity Report, directly to the RS Government, the media, at events in which he participated, on his Internet site. The Commissioner also pointed out, on several occasions, which provisions of LPDP are necessary to be urgently changed, and he even formulated a text of them, but, however, there was no reaction of the RS Government.

Numerous provisions of LDPD are inadequate, or incomplete, while some matters are not even regulated by LDPD, as not being regulated, in a systematic manner, under other special laws. Faced with numerous problems in practice arising from the said inadequate legal framework, the Commissioner prepared a new LDPD Model in October 2014, which, after receiving suggestions during discussion, subsequently improved and communicated to the Ministry of Justice, and published it on his official Internet site, where it is still available[10]**.**

The Action Plan for Chapter 23[11] **provides for that a new Law on Personal Data Protection shall be developed "in keeping with" a LPDP Model developed by the Commissioner. In addition, the Action Plan proposes the adoption of a new LPDP in the fourth quarter of 2015. Firstly, however, the Draft Law on Personal Data Protection prepared by the Ministry of Justice almost has nothing in common with the Commissioner's Model. Secondly, a new LPDP not only was not adopted in the fourth quarter of 2015, but it has not been by the end of this Report. Such acting of the Government of Serbia, i.e. the Ministry of Justice, practically indicates that the Action Plan for Chapter 23, which is harmonized with the EU, was breached before this Chapter was opened.**

Apart from not being harmonized with LDPD Model prepared by the Commissioner, the Draft LPDP prepared by the Ministry of Justice is far below

[10] http://www.poverenik.rs/sr/model-zakona-o-zastiti-podataka-o-licnosti.html
[11] http://www.mpravde.gov.rs/files/Akcioni%20plan%20PG%2023%20Treci%20nacrt%2026.08.2015..pdf

required professional level, fails to provide solutions for any of a number of large, in practice identified problems, and it can be reasonably assumed that its adoption, and then application, would produce a series of new problems.

In addition to adopting a new LPDP in line with the Commissioner's LPDP Model, it is also **necessary to significantly improve** regulatory solutions and their application in a number of sectoral laws. This duty arises from Serbian Constitution (Article 42 (2)) stating that collection, keeping, processing and use of personal data shall be regulated by the law, which means not by pieces of secondary legislation.

A huge problem is also the lack of some pieces of secondary legislation which the RS Government should have been adopted a while ago, but it has not done so. Only regulations for whose adoption is in charge the Commissioner have been passed so far. The Commissioner reminded several times that the non-adoption of the Instrument on the manner of filing and safeguard measures for particularly sensitive data provided for in Article 16 (5) of LPDP, which should have been adopted by the Government within six months after the date of the entry into force of LPDP, i.e. by 4 May 2009, but the Government has still not done do, represents a drastic example for which there is no excuse. Due to almost 7-year delay, (although the Commissioner reminded of this obligation on numerous occasions) the protection of particularly sensitive data proclaimed by LPDP remains a dead letter.

It can be concluded that the above described inadequate legal framework directly results in low level of implementation of LPDP in practice, which means that citizens cannot fully exercise their constitutional right to personal data protection in all spheres of life, and to freely exercise the right to privacy, therefore competent authorities, in particular the RS Government, are necessary to take all required measures to enable them it.

Б.2. Figures on Commissioner's activities in the field of personal data protection

In 2015, the Commissioner, in the field of personal data protection, closed 2 370 cases, which is an increase of 8% compared with 2014 when he closed 2 200 cases.

Inspection Supervision

In 2015, the Commissioner closed 882 inspection procedures as follows: 533 cases were closed by finding that previous Commissioner's act was complied with (warning, decision, after conducted inspection procedure); 245 cases were closed by issuing notifications pursuant to Article 50 that there is no irregularities; 82 cases were closed by official notes; 19 cases were closed by filing a request for initiation of infringement proceedings and 3 cases were closed by filing criminal complaint.

In 434 cases where the Commissioner found violations of the provisions of LPDP, he issued 376 warning notices, 36 rulings, filed 19 requests for initiation of infringement

proceedings and 3 criminal complaints. Compliance of data controllers with Commissioner's decisions (36) is following: 30 decisions were fully or partially complied with (83.3 %), 1 decision was not complied with, and the remaining 5 decisions are pending.

The data controllers that were most frequently subjected to inspection procedures were: companies - 315 (35.6 %), banks - 150 (17 %), public administration authorities - 68 (7.7%), public enterprises - 54 (6.1 %), etc. The most frequent reasons were: data processing in the field of employment law - 200 (14 %), banking transactions 155 (11 %), consumer protection 98 (6.9 %), Internet and electronic communications – 92 (6.5 %), personal data 90 (6.3 %), etc.

In the reporting period, of 219 warnings issued pursuant to Article 50 of LPDP, 155 data controllers complied with a warning, i.e. 71%. Based on 157 warnings issued pursuant to Article 56 of LPDP, 139 data controllers (some data controllers were issued several warnings) was requested to notify the Commissioner of compliance with warning, where 119 data controllers acted in such manner (103 within the time limit, 16 after the expiry of time limit), i.e. 75%, 24 data controllers partially complied with, and 6 data controllers failed to comply with warning.

Acting on complaints

In 2015 the Commissioner received 307 complaints, which is an increase of 27.8% compared to 2014. The Commissioner acted on 362 complaints, of which 307 were received in 2015, while the remaining 55 were carried forward from 2014. The most frequent reason generating complaints with the Commissioner was failure by data controllers to allow access to data or to issue copies of data or to act so within the prescribed time limit and in the manner provided for by LPDP (144).

The majority of the complaints were filed for acting or failing to act by: data controllers in the field of judiciary (40), the Ministry of Internal Affairs (39) and all other ministries all together (27), local self-government (30), public administration, excluding ministries (29), etc. In 2015 the Commissioner acted on 362 complaints, out of which he closed 262 cases, and 100 complaints were forwarded to 2016.

Acting on these 262 complaints, the Commissioner found the following: 171 complaints were justified or 65.3%, 52 complaints were denied as unjustified or 19.8%, and in 39 cases or 14.9% complaints were dismissed for formal reasons (for non-jurisdiction, incomplete complaint, and premature complaint or unpermitted complaint).

The Commissioner issued a total of 95 binding and final decisions ordering data controllers to comply with request or give requested information to information requester, as well as to notify the Commissioner of compliance. During this reporting period, 82 data controllers complied with a decision of the Commissioner and notified the Commissioner of it, or 86.3%, while 8 data controllers failed to comply with decision,

and 5 data controllers failed to notify the Commissioner of whether they complied with decision or not.

Issuing of opinions

In 2015 the Commissioner issued a total of 923 reasoned opinions and responses (an increase of 32 % compared to 2014), out of which 557 to individuals, 142 to legal entities and 224 to national authorities and local self-governments.

86 opinions, of 224 which were issued to public and local self-government authorities, related to laws (79 to draft laws and 7 to bills). The mentioned 86 opinions the Commissioner issued at the request of state authorities (59) and on his own initiative (27).

Central Register

A general decrease in the entry of number of data controllers and data files they maintain into the Central Register remained in 2015, where 227 data controllers submitted records of 1 197 data files they maintain. In addition, the Commissioner also acted on 92 requests for changes in current data files maintained within the Central Register.

Transborder data transfer

In 2015 the Commissioner acted on 11 requests for transborder transfer of data out of Serbia and passed 9 decisions, including 7 decisions allowing transfer of data out of the country and two conclusions on discontinuance of proceedings. Two remaining requests were carried forward to the following year. USA, China, Mexico, Czech Republic and India are the countries to which transfer of personal data was requested. Requesters were usually business corporations.

Other activities

In addition to the mentioned activities, the Commissioner also ruled on 91 memorandums, 43 requests for access to information, provided 24 responses to appeals lodged with the Administrative Court, ruled on 2 forwarded requests, issued 15 instructions on improvement of protection and prevention, ruled on 3 requests for exercise of the right with regard to personal data processing, completed 18 cases in connection with other communication with data controllers and requesters, completed 6 cases in the field of international cooperation, published the publication titled "Decisions and positions of the Commissioner on complaints filed in the procedure of personal data protection".

In 2015, the Commissioner also continued numerous activities on promotion and affirmation of the right to personal data protection. As an example, the Commissioner took part in numerous educational seminars and trainings, round tables, conferences etc.

The Commissioner also informed the public and indirectly certain data controllers through the media, Internet presentation, social networks and other manners of communication on the exercise and obstacles in the exercise of the right to personal data protection.

As regards acting of prosecutors' offices on criminal complaints filed by the Commissioner, during 2015, the Commissioner filed 3 criminal **complaints for criminal offence under Article 146 of CC.**

As regards acting of Misdemeanour Courts, in 2015 the Commissioner filed 35 requests for initiation of infringement proceedings for violations of provisions of LDPD. Based on these requests filed so far, the Commissioner received 35 judgements of Misdemeanour Courts (of first instance and second instance), as follows: 20 convictions, 1 acquittal, 11 proceedings were discontinued and 3 claims were accepted and the cases were referred back to the court of first instance for retrial.

As regards acting by the Administrative Court, in 2015 the Administrative Court received 24 claims against Commissioner's decisions, which it communicated to the Commissioner for explanation. The majority of claims (12) were filed against decisions rejecting complaint as unjustified, 4 claims were against decisions on discontinuation of proceedings, 3 complaints were against resolution on complaint dismissal, 4 claims were filed for ordering data controller to comply with request and 1 claim was filed against Commissioner's letter informing the customer that data controller complied with the Commissioner's decision to eliminate irregularities in personal data processing, thus closing the inspection procedure.

In 2015 the Administrative Court ruled on 23 cases, by dismissing 20, rejecting 1, upholding 2 (in these cases Commissioner's decisions were overturned and cases referred back for retrial).

B. Compliance with recommendations

The analysis of compliance with recommendations from the 2014 Commissioner's Report, in the light of facts presented in this Report, **shows that also in 2015 the majority of recommendations were not complied with, primarily those related to the Government of the Republic of Serbia and competent ministries.**

The fact that the National Assembly did not consider the 2014 Commissioner's Report at the plenary session[12], and it did not adopt conclusions to this Report, indicates that supervisory function of the National Assembly was not exercised with regard to considering the Report of this independent authority. In this regard, the Commissioner concludes that also competent committees of the National

[12] Three competent committees of the National Assembly in May 2015 considered the 2014 Commissioner's Annual Report and established draft conclusions which have been delivered the National Assembly for adoption.

Assembly did not use suggestions and opinions of the Commissioner that he delivered them during the procedure of considering and adopting the law where he (as opposed to the Government's Rules of Procedure) was excluded from giving opinions in the stage of establishing the draft law and bill.

Consequently, the Commissioner in the 2015 Report reiterated to competent authorities all recommendations that have not been complied with.