



Republic of Serbia

**COMMISSIONER FOR INFORMATION OF PUBLIC IMPORTANCE AND
PERSONAL DATA PROTECTION**

REPORT

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

B e l g r a d e

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1. FOREWORD

This Report is the eleventh annual report submitted by the Commissioner for Information of Public Importance and Personal Data Protection to the National Assembly of the Republic of Serbia and the seventh such report since the Commissioner's powers have been expanded to include personal data protection.

As in previous six years, the Report will present very different situations in these two fields.

In the field of freedom of information, the process has been one of continual progress over the years, from the very beginning to this date. Of course, we cannot underestimate the fact that in 2015 many problems have still been evident and some of them have persisted for years, as explained later on in this Report. What should particularly not be underestimated and deserves most attention is recurrence of certain issues regarding exercise of freedom of information which seemed to be resolved and settled. This is in particular the case with the issues in exercise of freedom of information in connection with some large, economic moves of the state and public authorities and information on management of large financial or material resources. These issues, in addition to resulting in serious violations of the right to know in several cases, also had other undesirable consequences, in the first place for the reputation in the anti-corruption context, which is also evident from Serbia's worsened score on the Corruption Perceptions Index. It is paramount to reverse this trend, otherwise it could even call into question what has been repeated several times in previous annual reports, namely that in the field of freedom of information we have an irreversible, continual, positive process.

The situation in the field of personal data protection is significantly and qualitatively different: it is much worse and very worrying.

As regards personal data protection, our country is objectively at the very beginning of the process of implementing European standards in the legal system and practice. This process needs to be expedited and advanced. Unfortunately, there is enough evidence to suggest that this necessity is still not sufficiently recognised and understood. This is best seen from the fact that, as early as in the summer of 2010, after seemingly endless procrastination, the Government of Serbia, acting on initiative from the Commissioner for Information of Public Importance and Personal Data Protection on the basis of a draft prepared by his staff in cooperation with European Commission experts, adopted a Personal Data Protection Strategy, but failed to adopt an Action Plan for its implementation. It is now five and a half years since the period of three months in which this Action Plan had to be adopted expired but the Action Plan has still not been passed. Of course, because of this the Strategy remains a "dead letter", without any effects in practice.

Competent public authorities have done precious little, in fact almost nothing, to further harmonise the legal framework, in particular the Law on personal Data Protection, with the European standards, even though Serbia lags far behind in this regard. In mid-2012, the Government had already formed a Working Group to draft amendments to the Law on Personal Data Protection. However, after almost 4 years, there are still no tangible results to speak of coming from this Working Group. In his efforts to help Government and the

Ministry of Justice, the Commissioner, together with his associates and in cooperation with civil society and the academia, drafted a relevant Model Law and made it available to the Ministry of Justice. And the Government itself had stated in its Action Plan for Chapter 23 that the new law would be enacted by the end of 2015 on the basis of the Model Law prepared by the Commissioner. However, the law has not been enacted; there has not even been any formal bill, while the “working version” of the Draft Law presented by the Ministry of Justice has almost nothing in common with the Commissioner’s Model Law. Thus, we have violated the Action Plan for Chapter 23, which had been harmonised with the EU, even before the Chapter is opened.

A direct consequence of such inappropriate and irresponsible treatment of personal data protection legislation is the fact that there is as yet no law that would regulate certain areas which are essential for personal data protection – video surveillance, biometrics, security checks, private security etc., which carries many potential and actual risks of violation of many citizens’ rights.

The numerous breaches and violations of the right to personal data protection, some of which are major in scope or significance, make an imperative case for a thorough and fundamental shift in the attitude of the society and the government towards personal data protection and privacy in general. The fact that the volume of the Commissioner’s activities to protect rights has seen a manifold increase provides little comfort; indeed, it is a warning sign. Efforts of all who are in charge are necessary and much better results are needed. This necessity stems both from the reasoning behind the country’s EU integration processes and, even more importantly, from the need to improve the protection of human rights guaranteed by the Constitution of Serbia.

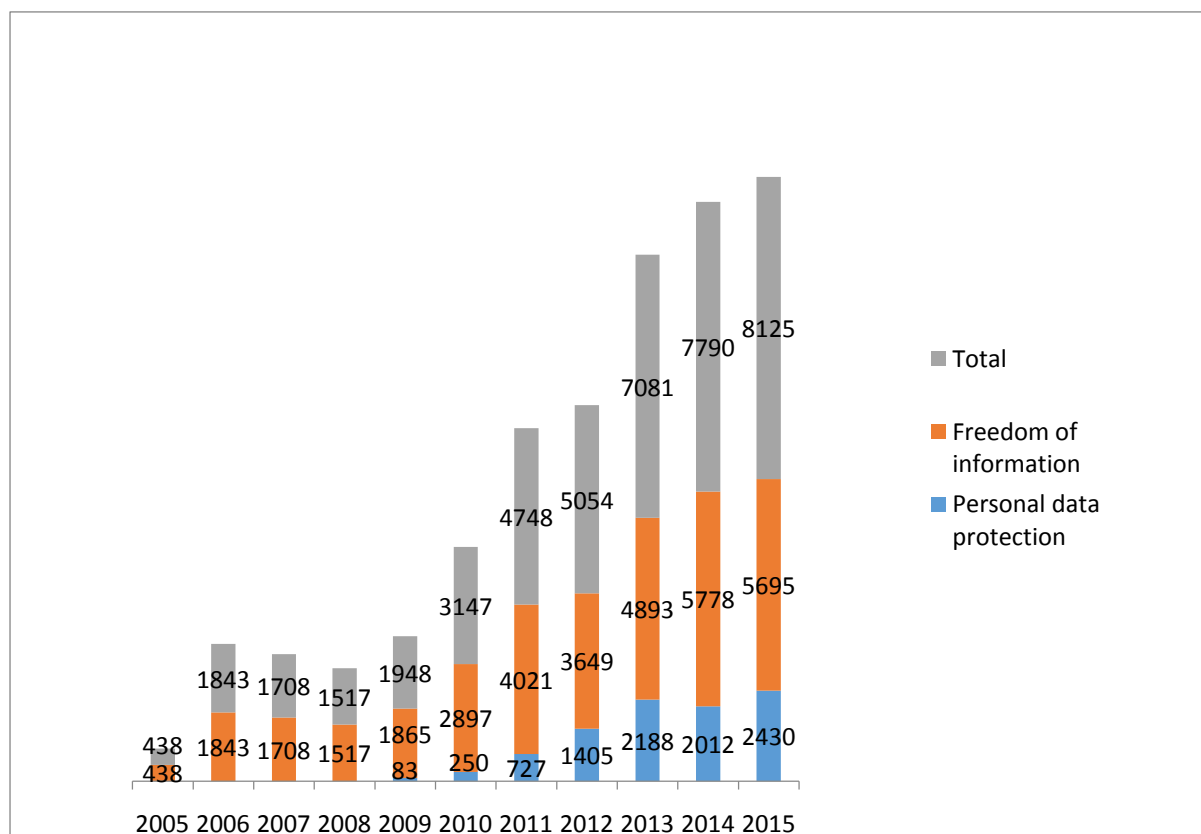
2. SUMMARY OF ACTIVITIES OF THE COMMISSIONER FOR INFORMATION OF PUBLIC IMPORTANCE AND PERSONAL DATA PROTECTION

The scope of work of the Commissioner for Information of Public Importance and Personal Data Protection (hereinafter referred to as “the Commissioner”) is defined by the Law by the Law on Free Access to Information of Public Importance (hereinafter referred to as “the Law on Access to Information”) and by the Law on Personal Data Protection (hereinafter referred to as “LPDP”).

The Commissioner protects the freedom of information and the right to personal data protection in second-instance proceedings pursuant to complaints lodged by citizens against violations of those rights. In addition, he is vested with oversight powers with regard to protection of personal data during processing.

Activities of the Commissioner have been increasing and becoming more complex year after year. Thus, in 2015 the number of cases received was 18.5 times higher than in 2005, the initial year of the Commissioner’s work, as can be seen from the following graph.

Graph 1. Number of cases received in 2005-2015 by years



In 2015, the Commissioner handled a total of 11,880 cases (9,012 cases in the field of freedom of information and 2,868 cases in the field of personal data protection), which was 4.3% higher than in 2014.

Of that number, about 70%, or more precisely **8,125 cases** were received by the Commissioner in 2015 (**5,695 cases in the field of freedom of information and 2,430 cases in the field of personal data protection**), while the remaining 3,755 cases were carried forward from the previous period (3,317 relating to freedom of information and 438 relating to personal data protection).

In the course of 2015, the Commissioner closed the proceedings in **8,016 cases**, including 5,646 in the field of freedom of information and 2,370 cases in the field of data protection, which was 3.2% higher than in 2014. 3,864 pending cases were carried forward to 2016 (3,366 relating to freedom of information and 498 relating to data protection).

The scope of implemented activities of the Commissioner in 2015, measured by the number of cases, was 3.2% higher than in 2014, but the number of the activities was actually much higher, given that other activities are not included in these figures, including those relating to affirmation of rights, provision of assistance to citizens in the exercise of rights, training on implementation of laws and exercise of other Commissioner's powers.

The majority of the Commissioner's activities in 2015 concerned the following:

- **Handling of cases pursuant to complaints** against violations of the freedom of information and violations of the right to personal data protection; in this context, the Commissioner ruled on a total of **4,026 complaints** (3,764 in the field of freedom of information and 262 in the field of data protection), of which **85.74% complaints against violation of freedom of information were found to be justified**, while **65.26% complaints against violation of the right to personal data protection were justified**. With regard to justified complaints in the field of freedom of information, the Commissioner's interventions had a positive outcome in **95.8% cases**. As regards decisions issued by the Commissioner ordering public authorities to comply with the requests and enable the citizens to exercise their rights, the rate of compliance is **86.31%**, although it is possible that this figure is even higher, assuming that some of the authorities failed to provide feedback on their compliance to the Commissioner¹;

- **Supervision** of implementation of and compliance with the Law on Personal Data Protection, to prevent any processing of personal data without proper legal basis. **The Commissioner has initiated 886 supervision procedures**, including: 236 pursuant to citizens' reports; 124 on the Commissioner's own initiative and 526 in connection with personal data files. In addition, the Commissioner also made 464 prior verifications of personal data processing activities. **The Commissioner closed a total of 882 inspection procedures**, initiated this year or in the previous period, as follows: 19 cases were closed by filing petitions for institution of infringement proceedings, 3 cases were closed by criminal reports; 533 cases were closed because it was found that previous inspection, warning or resolution was complied with, 245 cases were closed by notification according to Article 50 of LPDP and in 82 cases it was found that LPDP was not violated and they were closed by official notes.

- **Opinions on draft laws and bills and other regulations** issued to public authorities, on request of authorities or on the Commissioner's initiative, (**117 opinions**, including 91 concerning personal data protection, 23 concerning freedom of information

¹ According to LPDP, personal data controllers do not have a duty to notify the Commissioner about compliance with orders in his decisions.

and three concerning status-related issues in connection with the Commissioner and employees), the aim of which was to improve regulations, particularly compliance with the basic principles on which freedom of information and personal data protection are based and international standard, as well as principles regarding the status of independent public authorities, of which many were accepted;

- Provision of **assistance to individuals and legal entities and to public authorities**, i.e. personal data processors, in the exercise of rights or proper implementation of the Law on Free Access to Information and LPDP, through explanation of unclear issues and procedures (**979 opinions and answers concerning proper implementation of the Law on Access to Information and LPDP**, of which 832 opinions on implementation of LPDP and 147 on implementation of the Law on Access to Information, **as well as 15 instructions on compliance with LPDP**),

- Provision of **assistance to citizens** in connection with their **requests** for 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 the exercise of freedom of information or personal data protection (**793 cases**);

- Provision of **assistance to public authorities and taking measures in connection with implementation of regulations on the improvement of transparency of work**, in connection with preparation and publication of information booklets (**73 cases**) which contribute to continual improvement of proactive publishing of information, more information on work published on official websites of public authorities and a more active role of authorities in ensuring the exercise of rights;

- **Assistance in the training of employees** in public authorities and data controllers through the organisation of and participation in seminars, activities taken by the Commissioner to affirm the freedom of information and the right to personal data protection through **lectures** for students and other persons enrolled in university schools, academies and other institutions; **publishing activities** (the fourth annual publication presenting the views and opinions from the Commissioner's practice in the field of freedom of information has been published and the first publication presenting the Commissioner's decisions and views on complaints lodged in personal data protection procedure), as well as **posting of decisions** of Serbian and international courts and relevant decisions, views and opinions from the Commissioner's practice **on the website of this authority**;

- Activities within the framework of **international and regional cooperation**, as part of which representatives of the Commissioner took part in conferences and expert meetings of relevance for freedom of information and protection of personal data; the Commissioner also had several meetings and talks with representatives of other European and international institutions and neighbouring countries in connection with his sphere of competence; the Commissioner took part in the Advisory Committee of Convention 108 and has a member serving as the deputy chairperson in the Bureau of the Advisory Committee of Convention 108 for the Protection of Individuals with regard to Automatic Personal Data Processing; the Commissioner took part in the Article 29 Working Party of the European Commission;

- Activities relating to Serbia's **EU accession process**; in this context, the Commissioner's representatives take part in the meetings under Enhanced Permanent Dialogue between the Republic of Serbia and the European Commission and present the

activities within their spheres of competence. Also, the Commissioner issues opinions in writing to competent authorities in connection with any issues that arise in the course of the accession process, to the extent that they fall under the Commissioner's mandate and submits requested information;

- **Public announcements** through which the Commissioner communicated with the public (**on 94 occasions**), in an effort to draw the attention of the professional community and the competent officials in public authorities to certain occurrences or actions of those authorities that prejudice the rights protected by the Commissioner, in cases where these can be of instructional value to the citizens;

- Activities in connection with recording of data files entered in the **Central Register** of data files maintained by the Commissioner in accordance with the law y (**during the year, 227 data controllers submitted to the Commissioner 1,197 records of the data files they keep**), and on 31 December 2015 a total of 1,619 data controllers and 8,404 data files have been registered with the Register. This means that only about 0.5% personal data controllers in Serbia have complied with LPDP, taking into account the approximate number of those subject to this duty;

- **Responses to freedom of information requests** in connection with **the Commissioner's work** and responses to requests for access to personal data processing handled by the Commissioner (**168 cases**);

- Activities in connection with **enforcement of the Commissioner's decisions**, which includes passing of enforcement orders, passing of resolutions on penalties, requests for assistance in enforcement set to the Government, petitions for the assistance of courts in the enforcement of resolutions on imposition of fines, objections and complaints to court decisions and resolutions on termination of procedures by the Commissioner in cases of compliance (**315 enactments passed in 189 cases**);

- **Responses submitted to the Administrative Court with regard to legal actions** in administrative disputes (**107 cases**) against the Commissioner's decisions and resolutions;

- Activities in connection with **transborder transfer of personal data** (**9 cases**);

- Responses to **the citizens' petitions**, most of which relate to issues outside the Commissioner's sphere of competence (**542 cases**);

- Assistance to citizens through regular **updating of information** on public authorities published by the Commissioner on his website **in the Catalogue of Public Authorities**;

- Copying of case files and **notifications to the Administrative Inspectorate of the need for inspection** in cases where public authorities do not comply with the Commissioner's decisions (**306 cases**);

- The Commissioner also received **22,109 calls from citizens** 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 sphere of competence.

It should be noted that the Commissioner's Office began developing significantly only in the last two years, after the competent services of the Government provided the required office space for the Commissioner in 2013, to which the Commissioner's Office moved in October 2013; however, it is still limited by the Government's measures and resources for

2016 in the amount that satisfies its needs have been allocated to it only after subsequent Commissioner's intervention.

3. LEGAL FRAMEWOK

3.1. Legal Framework in the Field of Freedom of Information

The Constitution of the Republic of Serbia (2006) guarantees to everyone the right to be informed accurately, fully and timely about issues of public importance and the right to access information kept by public authorities and organisations with delegated public powers, in accordance with the law.

The exercise and protection of freedom of information are regulated by the Law on Free Access to Information of Public Importance (hereinafter referred to as “the Law on Access to Information”) enacted in late 2004. According to this Law, freedom of information is not absolute because it is subject exclusively to legal exemptions specified by this Law, while the exemptions set out by this Law do not automatically limit the rights; instead, this should be evaluated by a public authority handling a request of an information requester in a specific case.

The Law has been amended in 2007, when more stringent requirements for the appointment of the Commissioner have been introduced, then in 2009 through amendments to procedural and penal provisions and in 2010 when enforcement powers in connection the Commissioner’s decisions have been specified.

For several years, the Commissioner has been reminding the competent authorities – and reminds them also through this Report – of the need to amend the Law on Access to Information because of the changes that have been made in the meantime in the Serbian legal system and in practice. Amendments to the Law are necessary to eliminate the identified obstacles in its implementation and to strengthen its anti-corruption potential. The EU integration process also requires that the relevant European Community directives relevant for freedom of information be transposed into the Law.

The ministry responsible for administrative affairs is in charge of drafting amendments to the Law on Access to Information. The process of amending this Law began in 2011. In early 2012, amendments to the Law had been in parliamentary procedure and were about to be adopted, but the process had been stopped following the withdrawal of the Bill, together with all other bills, after the new Government and new convocation of the National Assembly took office. The current Government has extended the time limits for its enactment on multiple occasions. The most recent time limit for adoption of amendments to the Law on Access to Information is the second quarter of 2016². The time limits set by strategic documents and action plans for their implementation (anti-corruption, public administration reform, implementation of the Open Government Partnership initiative), which are not harmonised, have expired, although they have been extended on several

² According to the latest version of the Draft Action Plan for EU Accession for Chapter 23 – Judiciary and Fundamental Rights of the Ministry of Justice of September 2015, the time limit for enactment of the Law on Access to Information is the second quarter of 2016. Under the previous versions of this draft document, the time limit was the fourth quarter of 2015.

occasions.³ These documents emphasise the need to improve transparency of work of public authorities, the necessity to extend the powers and resources available to the Commissioner and the duty to comply with the Commissioner's decisions and instructions.

Amendments to the Law on Access to Information would ensure in particular:

- A wider and more clearly defined scope of this Law so that all entities with delegated powers would have to comply with the Law, including notaries public and bailiffs, as well as entities majority-owned by the state,
- Higher transparency of work of the authorities through publishing and making available to citizens any important and updated information on official websites of authorities and in their information booklets, on the basis of the statutory duty to develop and maintain official websites of public authorities, with specified minimum content, in accordance with the Commissioner's initiative of 2011, which was repeated in 2014, and the current needs,
- More stringent responsibility for violation of the law (through granting of additional powers to the Commissioner to file petitions for infringement proceedings against violation of rights and bringing the amount of fines in compliance with the Law on Misdemeanours),
- A legal framework that would improve the exercise of freedom of information through mandatory obtaining of the Commissioner's opinion when enacting new of legislation and putting in place a protection mechanism to ensure that the level of rights guaranteed by the Law on Access to Information and the achieved level of rights is not lowered by amendments of other regulations,
- Elimination of ambiguities in provisions on enforcement of the Commissioner's decisions and ensuring that the statutory mechanisms of enforcement of the Commissioner's decisions and resolutions would be actually applicable in practice when necessary⁴.
- That income from collected costs of access to information become income of authorities for which the costs actually incurred in acting on requests, instead of being income to the budget as specified by the applicable legislation, while costs specified by the Government's Decree of 2006 have not been changed and adjusted to inflation⁵.

³ Under the Action Plan on implementation of the National Anti-Corruption Strategy of the Republic of Serbia for the period 2013-2018, adopted by the Government in 2013 on proposal of the Ministry of Justice, the time limit for amending of the Law on Access to Information is September 2014 (Resolution of the Government No. 021-3092/2015 of 19 March 2015 on adoption of the Action Plan).

Under the Action Plan on implementation of the Public Administration Reform Strategy in the Republic of Serbia for the period 2015 - 2017, adopted by the Government in early 2015 on proposal of the Ministry of Public Administration and Local Self-Government, the time limit for amending of the Law on Access to Information is the fourth quarter of 2015 (Resolution of the Government No. 021-3092/2015 of 19 March 2015 on adoption of the Action Plan).

Under the Action Plan on implementation of the Open Government Partnership initiative in the Republic of Serbia for 2014 and 2015, adopted by the Government in late 2014 on proposal of the Ministry of Public Administration and Local Self-Government, the time limit for amending of the Law on Access to Information is the third quarter of 2015 (Resolution of the Government No. 021-16514/2014 of 25 December 2014 on adoption of the Action Plan).

⁴ Issues in connection with enforcement of the Commissioner's decisions are described in section 4.1.3 of the Report.

⁵ According to the Report of the Treasury Administration of the Ministry of Finance, in 2015 a total of RSD 501,177.93 was paid to the specified account of the Treasury No. 840-742328843-30 for costs of exercise of freedom of information, i.e. making and sending copies of documents pursuant to requests submitted to public authorities.

- Adoption and transposition in the Serbian legal system of the Directive on Re-use of Public Sector Information - Directive 2003/98 EC of the European Parliament and the Council of 17 November 2003 and its amendments - Directive 2013/37 EU of 26 June 2013, with the aim of implementing the open data activities, as well as Directive 2003/4/EC of the European Parliament and the Council of 28 January 2003 on Public Access to Environmental Information, in accordance with Serbia's EU integration process.

The Republic of Serbia signed in 2009 the Council of Europe Convention on Access to Official Documents, which is the first legally binding document of the Council of Europe regarding access to official documents; however, the country has not ratified this Convention. Since certain aspects of the Serbian Law on Access to Information provide for a higher level of rights than the minimum specified by the Convention, its adoption would require putting in place certain reservations concerning its scope.

The subject matter of freedom of information in the Serbian legal system lacks uniformity and consistency with regard to the provisions governing the exercise of freedom of information. The Commissioner has warned the National Legislation Secretariat of this fact, underscoring the need to dedicate more attention to it in enactment of regulations; he has also brought this matter to the attention of the ministry in charge of public administration as the backer/processor of the Law on Access to Information and the authority responsible for its enforcement. Lack of compliance between the legislative provisions governing the freedom of information mainly relates to provisions of procedural laws, but also to other laws regulating the right of a party and other persons to access case files.

In 2015, there was a tendency to reduce the level of freedom of information through amendments to regulations within the spheres of competence of certain ministries to levels below those required by the Law on Access to Information which systemically regulates this subject matter, i.e. below the level achieved in practice through many years of implementation of this Law. The Commissioner warned the Government and the Minister of Public Administration about this⁶, noting that, where ministers or the Government consider there are justified reasons to make requirements for freedom of information more stringent, this must be done exclusively through amendments to the Law on Access to Information itself.

The most striking attempt to pass regulations that contain provisions which would prejudice the exercise and protection of freedom of information is **the case of the Law on Investments**. The draft version of this Law (of August 2015), which was not submitted to the Commissioner for an opinion, introduced a special regime of access to information, including a provision that excludes this area from the Commissioner's mandate, which means citizens would not be able to lodge complaints with the Commissioner against violations of the right of access to information in case of an investment programme or a special investment agreement. This provision was deleted after the Commissioner's intervention and a public outcry.

Enactment of the new Law on General Administrative Proceedings is particularly important from the aspect of exercise of freedom of information, taking into account that it is subsidiarily applicable to matters that are not regulated by the Law on Access to Information.

⁶ The Commissioner's instrument No.: 011-00-01120/2015-02 of 4 September 2015.

3.2. Legal Framework in the Field of Personal Data Protection

The Commissioner would like to underscore once again on this occasion, as he has done each time when he was submitting his reports to the National Assembly in several previous years, that not only is the current legal framework in the field of personal data protection unsuitable, but the Serbian Government persistently fails to take necessary steps to improve this legal framework.

The Commissioner considers that the existing legal framework for personal data protection is unsuitable, both from the aspect of international law and international relations and from the aspect of internal law, which is why it cannot provide for free exercise of the right to privacy and the right to personal data protection in all spheres of individuals' lives. From the aspect of international law and international relations, harmonisation of the national legislation with *acquis communautaire* is the international law commitment of the Republic of Serbia assumed under the Stabilisation and Association Agreement and the country's EU candidate status shows that European integration is of key importance for its foreign and internal policies. LPDP is not fully compliant with the relevant international documents, including in particular the Directive of the European Parliament and the Council of 1995 and Council of Europe Convention for the Protection of Individuals with Regard to Automatic Processing of Personal Data of 1981. Significant amendments which would improve these international documents have already been prepared and published and their enactment and coming into force is expected in the following period.

However, equally important amendments to international and European legal frameworks in the field of personal data protection have already resulted in certain court decisions. For example, the European Court of Human Rights derogated from the workplace privacy concept to a certain extent, because in the case of *Barbulescu v. Romania* it passed a judgement affirming the employer's right to supervise electronic communication of employees in certain situations⁷. Huge changes at the international level have resulted from a judgement of the European Court of Human Rights, also passed in a single case, but with global consequences, which ruled the Safe Harbor agreement between the EU and the USA invalid⁸. So far, personal data have been transferred between the EU and the USA without any major formalities, but the competent authorities have stepped up their efforts to put in place a new legal framework, provisionally named "Privacy Shield", which should contain the same privacy standards as the current EU standards, but would offer more comprehensive and reliable protection for the privacy of persons whose data are being transferred compared with Safe Harbor and would ensure legal certainty in commercial transactions.

From the aspect of domestic law, the main concerns include the fact that numerous provisions of LPDP are inappropriate and/or incomplete, while certain issues are not even regulated by the LPDP or regulated systematically by other, special laws. Examples of the most important issues which are not regulated by LPDP are video surveillance and processing of biometric data. The issues inappropriately or incompletely regulated by the LPDP include, among others: inappropriately regulated procedure for the exercise of the right to personal data protection; unregulated procedure for transborder transfer of personal data; insufficiently regulated supervision procedure; insufficiently regulated powers of the Commissioner; lack

⁷[http://hudoc.echr.coe.int/eng#{"documentcollectionid2":\["GRANDCHAMBER","CHAMBER"\],"itemid":\["001-159906"\]}}](http://hudoc.echr.coe.int/eng#{"documentcollectionid2":["GRANDCHAMBER","CHAMBER"],"itemid":["001-159906"]}})

⁸ <http://curia.europa.eu/jcms/upload/docs/application/pdf/2015-10/cp150117en.pdf>

of technology neutrality and inability to apply this concept to the existing information and communication technologies, the use of which is becoming increasingly unavoidable; incomplete regulation of accountability in case of violation of individuals' rights and in case of failure to comply with legal duties. Furthermore, data security is regulated completely inappropriately and there are no provisions in place that would impose a duty to analyse risks for individuals' rights in case of certain kinds of processing which may seriously prejudice individuals' rights, as well as a duty of data controllers to report to the Commissioner any breaches of data security. In this context, it is necessary to introduce new institutes in the data protection regime, including in particular designation of persons responsible for data protection by certain data controllers (special types of data controllers or data controllers processing personal data of a large number of individuals or processing special data categories) etc.

LPDP has been amended only two times since its adoption – the first time pursuant to a judgement of the Constitutional Court that declared certain provisions of LPDP unconstitutional, which was passed following a motion by the Commissioner, and the second time by an amendment regarding permissibility of change of the purpose of personal data processing, which, contrary to the legislator's intention, proved to be a provision that makes implementation more difficult, rather than facilitating it.

The inappropriate legal framework for personal data protection is not reflected only in the missing arrangements and inappropriate and/or incomplete provisions of LPDP, but also in inappropriate sector-level laws. Namely, it is necessary to amend numerous sector-level laws which as a rule incompletely regulate personal data processing in specific sectors, while certain sector-level laws do not regulate this subject matter at all. It is well known that pursuant to Article 8, item 1 of LPDP, the legal basis for data processing can be either the law or an individual's freely given consent. A majority of the laws, especially those enacted before LPDP, do not contain provisions that govern in an appropriate manner the subject matter of personal data collecting, keeping, processing and use, although this is a constitutional duty; instead, the subject matter is often regulated by secondary legislation. In this context, the Commissioner has continued issuing relevant opinions within his sphere of competence.

For several years now, the Commissioner has been drawing the attention of the Government, including in particular the Ministry of Justice, to the fact that numerous provisions of the LPDP are inappropriate and/or incomplete, while certain issues are not even regulated by the LPDP nor regulated systematically by other, special laws. In this context, the Commissioner has proposed specific arrangements to remedy this situation, but has so far received no reply.

Faced with numerous problems encountered in practice due to this inappropriate legal framework, in October 2014 the Commissioner prepared a new Model LPDP, which he further fine-tuned based on the suggestions received in a debate, submitted it to the Ministry of Justice and published it on his official website, where it is still available⁹. However, only about a year after this, the Ministry of Justice announced that it prepared a Draft Law on Personal Data Protection and that the Draft Law would be up for public debate for 30 days. A roundtable was held in connection with this Draft Law on 19 November 2015, which was attended by Serbian and international experts. On that occasion, many comments were made in connection with the text of the Draft Law were

⁹ <http://www.poverenik.rs/sr/model-zakona-o-zastiti-podataka-o-licnosti.html>

expressed, both by the Commissioner and by other participants (representatives of legal entities and citizens' associations and lawyers). As of the time of writing of this Report, no new version of the Draft Law has been made available to the public that would take into account the comments and suggestions made at that roundtable, so the Commissioner has no information on the current stage of development of this Draft LPDP prepared by the Ministry of Justice.

The Action Plan for Negotiations on Chapter 23¹⁰ provides that the new Law on Personal Data Protection would be drafted "in accordance" with the Model LPDP prepared by the Commissioner. Furthermore, the Action Plan also specifies that the new LPDP would be enacted in the fourth quarter of 2015. However, none of this happened. Firstly, looking at the Draft Law on Personal Data Protection prepared by the Ministry of Justice compared with the Model LPDP prepared by the Commissioner, it is more than obvious that this Draft Law has almost nothing in common with the Commissioner's Model Law. Secondly, not only was the new LPDP not enacted in the fourth quarter of 2015: it was not even enacted by the time of writing of this Report. Such actions of the Serbian Government, in particular the Ministry of Justice, clearly show that the Action Plan for Negotiations for Chapter 23, harmonised with the EU, has been violated even before the opening of the Chapter. Finally, what may be seen as even more important, the Draft Law prepared by the Ministry of Justice falls short of the required level of technical expertise: it does not provide solutions to any of the numerous major issues identified in practice and its possible enactment and subsequent implementation may in fact create a host of new issues.

Apart from enactment of the new LPDP in accordance with the Commissioner's Model LPDP, it is also **necessary to significantly improve the regulatory arrangements and their implementation in several sector-level laws**. As an example, the Law on Data Confidentiality contains controversial arrangements which render it virtually unenforceable in practice. With the aim of ensuring the necessary level of personal data protection in accordance with the Constitution and LPDP, it is necessary to improve arrangements in the Law on Data Confidentiality and to enact a number of pieces of supporting secondary legislation to this Law. Also, it is necessary to regulate security checks by a law in the complete security sector and in that context the Commissioner submitted an initiative with appropriate proposal for arrangements to the Serbian Government, but no response on behalf of the Government has followed it either so far.

The same issues have been identified in connection with secondary legislation in the field of personal data protection. Namely, **secondary legislation often governs subject matter which should be governed exclusively by a law, in direct violation of the applicable provision of the Serbian Constitution** (Article 42, paragraph 2) which provides that personal data collection, keeping, processing and use must be regulated by laws, rather than by implementing regulations. Furthermore, secondary legislation often contains insufficient or incomplete arrangements governing technical and similar issues concerning data processing operations, although this is in fact the point of its existence.

Another huge issue is the lack of certain implementing regulations the Serbian Government should have passed a long time ago, but still has not done so. So far, the only implementing regulations passed on time were those which were under the responsibility of the Commissioner.

¹⁰ <http://www.mpravde.gov.rs/files/Akcioni%20plan%20PG%2023%20Treci%20nact%2026.08.2015..pdf>

As an example, the Commissioner has pointed time and again to the need to adopt an instrument on the manner of filing and the measures for the protection of particularly sensitive data provided for in Article 16, paragraph 5 of LPDP, which should have been adopted by the Serbian Government within six months of the effective date of LPDP, i.e. by 4. May 2009. The Government has still not done so (after almost seven years, although the Commissioner had warned about this duty on a number of occasions). This means that the protection of particularly sensitive data proclaimed by the law remains a dead letter.

In addition, the Government should have adopted an Action Plan on Implementation of the Personal Data Protection Strategy, which would set out activities, expected effects, implementers of specific tasks and periods for their completion, within 90 days of publication of that Strategy in the *Official Gazette of the Republic of Serbia*, i.e. by 20 November 2010. And yet, this has still not been done (after more than five years, although the Commissioner had warned about this duty as well on a number of occasions). Here it is particularly important to emphasise that the Personal Data Protection Strategy of 2010 is obsolete and that a new strategy should be passed.

From these facts it follows that a direct result of inappropriate legal framework is poor implementation of LPDP in practice, which means that individuals are not able to fully exercise the constitutional right to personal data protection in all spheres of life and to freely enjoy the right to privacy.

4. IMPLEMENTATION OF THE LAW ON FREE ACCESS TO INFORMATION OF PUBLIC IMPORTANCE

4.1. Commissioner's Activities aimed at Protecting Freedom of Information

4.1.1. Types and Volume of Activities

In 2015, the Commissioner handled 9,012 cases in the field of freedom of information, which was three percent higher than in 2014. Of these cases, 5,695 were received in 2015 and 3,317 were carried forward from 2014¹¹. In 201, the Commissioner resolved 5,646 cases, while 3,366 pending cases have been carried forward to 2016.

Most of the activities and measures (about 67%) involved protection of rights in specific situations when the Commissioner decided **on complaints** lodged by persons who did not receive information from public authorities.

Other Commissioner's activities included affirmation of rights through **provision of assistance to citizens** in the exercise of rights by giving opinions, clarifications for acting etc., **provision of assistance to authorities** in the implementation of laws and implementation of measures aimed at improving the transparency of public authorities, provision of **opinions** in connection with the passing of regulations, organisation of **trainings**, participation in conferences and other expert meetings, preparation of publications and other forms of publishing Commissioner's views from the practice, **execution**

¹¹ The total number of cases carried forward includes 130 pending cases which were restored to the active status in 2015 after the information requesters petitioned for enforcement of the decisions because they were not satisfied with the information they received.

procedures pursuant to the Commissioner's decisions or procedures related to **judicial protection, 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 generated in the Commissioner's work.

With regard to freedom of information, the Commissioner's Office has processed 451 **petitions** relating to actions taken by other authorities and issues mostly outside the Commissioner's sphere of competence, while the number of petitions increased more than 32% compared to the previous year.

Table 1 contains a breakdown of the number of cases received and resolved by the Commissioner in 2014 by types of activities, with comparative indicators from the previous year.

Table 1 – Types and volume of activities and measures

Types of activities and measures		2014	2015
1.	Number of cases received	5,779	5,695
2.	Number of pending cases carried forward from previous year	2,971	3,317
3.	Total cases handled	8,750	9,012
4.	Number of resolved cases	5,563	5,646
5.	Number of complaints received	3,929	3,821
6.	Number of complaints resolved	3,739	3,764
7.	Responses to complaints to the Constitutional Court	177	83
8.	Opinions and initiatives for amendments to regulations and opinions on implementation of LFAIPI	175	170
9.	Responses to requests for information about the Commissioner	93	122

10.	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	313	281
11.	Number of motions received for enforcement of the Commissioner's decisions	199	189
12.	Number of enforcement orders issued	92	67
13.	Number of resolutions on penalties issued in the process of enforcement of decisions	59	59
14.	Number of requests sent by the Commissioner to the Government for assistance / enforcement of his decisions	13	24
15.	Number of cases in which the Commissioner requested the administrative inspectorate to carry out an inspection and initiate infringement proceedings	350	306
16.	Number of resolutions staying the enforcement of decisions	124	164
17.	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)	555	583
18.	Petitions against the work of public authorities unrelated to freedom of information	341	451

4.1.2. Commissioner's Acting on Complaints relating to Violation of Freedom of Information

4.1.2.1. Statistics on Complaints and Outcomes of Complaint Procedures

In 2015 the trend of lodging a large number of complaints with the Commissioner against public authorities that failed to provide information on submitted requests continued. During the year, **3,821 new complaints were received, while 2,970 unenforced decisions**

on complaints were carried forward from the previous period. In 2015, the Commissioner resolved 3,764 complaints, which was slightly more than in 2014.

Of a total of 3,764 complaints resolved in 2015, 87.7% were lodged with the Commissioner either against the so-called classic “administrative silence”, i.e. ignoring of requests, or against replies in which authorities claim they cannot comply with requests without providing proper justification or indeed any justification at all. The number of cases of the so-called “administrative silence” was 5.8% lower than in 2014, which shows that practice of public authorities’ acting on citizens’ requests has improved by the same percentage, but that inadmissible ignoring of requests, sanctioned as an infringement under the subject matter of freedom of information, is still widely used.

Only 461 complaints or 12.2% of the total number of resolved complaints were filed against decisions of public authorities which rejected the requesters’ freedom of information requests as unjustified.

3,227 complaints were found to be **justified**, which accounted for **85.7%** of the total number of resolved complaints (3,764), while 537 complaints (14.3%) were unjustified or had formal deficiencies. Compared to 2014, **the percentage of justified complaints was 4.9% lower, which shows a slight improvement in acting of public authorities.**

The Commissioner resolved the unjustified complaints (537) by passing:

- 328 decisions (8.7%) rejecting complaints as unjustified,
- 186 resolutions (4.9%) dismissing complaints on formal grounds as untimely (lodged too late or prematurely) or inadmissibility or because the Commissioner lacked jurisdiction to act on them, and
- 23 requests (0.6%) pursuant to which an authority of first instance did not pass a decision were rejected as unjustified.

The outcome of proceedings before the Commissioner pursuant to the justified complaints (3,227) was as follows:

- **In 725 cases (22.5%) the Commissioner ordered the public authorities to comply with the requests and give the requesters access to the requested information**, in doing so, he passed 653 decisions, because 72 cases were joined with other cases, so that a single decision was passed pursuant to two or more complaints against a single authority,
- **In 197 cases (6.1%) he overturned the decisions of the authorities of first instance and ordered the public authorities concerned to provide information to the requesters,**
- **In 2,162 cases (67%) he terminated the proceedings** because the public authorities in the meantime complied with the freedom of information requests after the Commissioner intervened, so the proceedings in all these cases were closed by passing resolutions on termination of the proceedings,
- **In 136 cases (4.2%) he overturned the decisions of the authorities of first instance and returned the cases for repeated proceeding** and decision-making, and

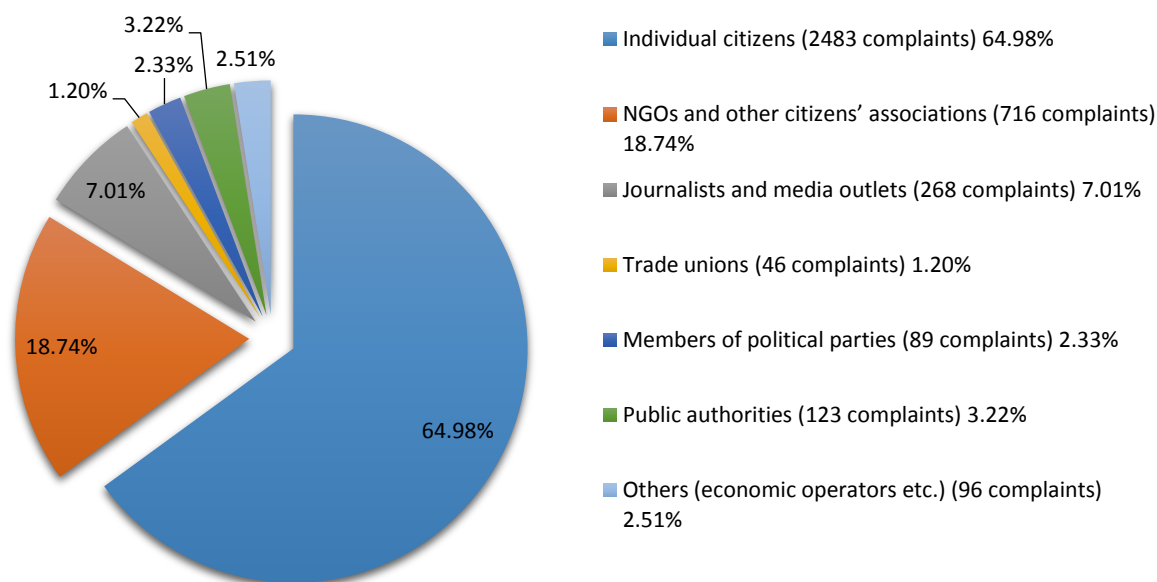
- In 7 cases (0.2%) he overturned the decisions of the authorities of first instance passed without proper legal basis.

The figures quoted above show that in 2015, as in previous years, justified complaints by citizens in a large number of cases (67%) ended in termination of the proceedings because the public authorities honoured the request made by the requester in the meantime upon learning of a complaint, before the Commissioner passes a decision. **Such high percentage of procedures terminated due to subsequent compliance of public authorities upon learning of the complaints filed and after the Commissioner's interventions (7% higher than in the previous year) shows that public authorities for the most part still do not comply with the main principles of good governance, particularly responsibility and cost-effectiveness of operations, in their dealings with the citizens.**

4.1.2.2. Who lodged complaint and which information they requested

The Commissioner received 3.821 complaints against public authorities relating to violations of the freedom of information in 2015. Graph 2 shows the structure of complainants.

Graph 2. Complainants addressing the Commissioner



The majority of complainants in 2015 were from Belgrade (47.31%), followed by Novi Sad, Nis and Subotica and other cities and towns in Serbia. 52 complaints were lodged by persons outside Serbia.

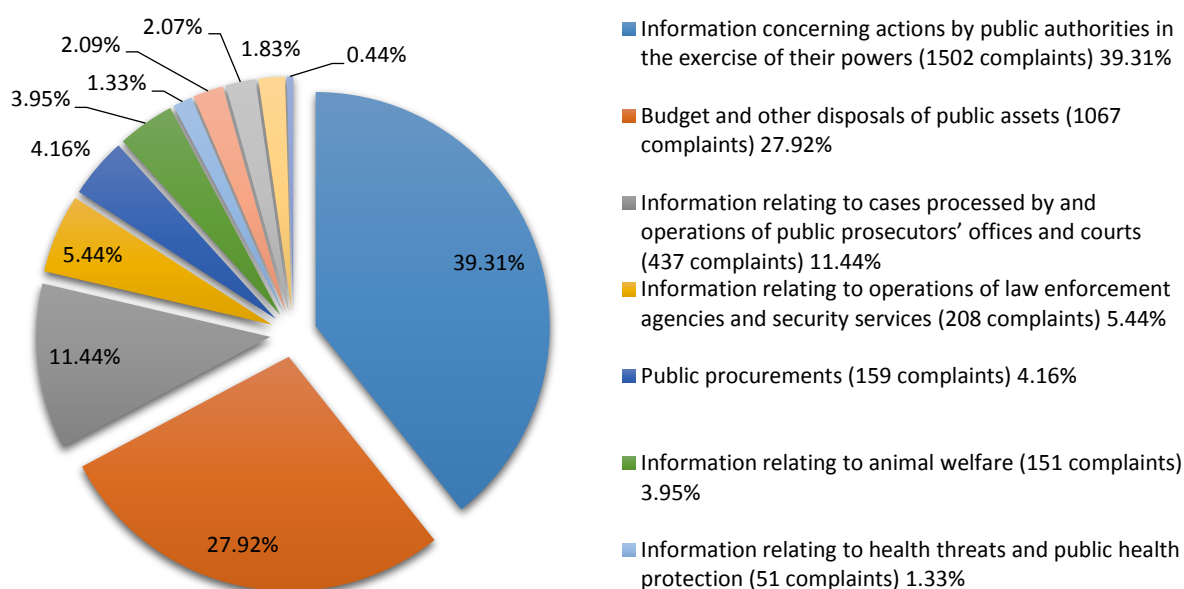
In 2015, **the number of complaints lodged with the Commissioner by citizens, journalists and complaints lodged by public authorities against other authorities increased** compared to 2014. On the other hand, **the number of requests for access to**

information filed by journalists and other representatives of the media to the ministries in 2015 was **17% lower** than in 2014.

A worrying trend is that public authorities are also forced to use the institute of freedom of information in communication with other authorities. The number of requests filed by public authorities to other public authorities in 2015 was **44.6% higher** than in 2014. Such is the case of the Anti-Corruption Council (a service of the Government), which lodged 65 complaints with the Commissioner in 2015 alone against public authorities that failed to provide requested information. The Commissioner would like to underscore once again that it is embarrassing for the state and for public authorities that a Government's service is forced to use the freedom of information institute and the mechanism for lodging complaints with the Commissioner, instead of receiving the information it needs from other public authorities within the framework of their regular communication.

The number of complaints lodged with the Commissioner by non-governmental organisations and other citizens' associations was **1.5% lower** than in 2014 and reduction of the number of complaints was also observed in complaints lodged by members of trade unions and political parties.

Graph 3. Types of requested information that were the subject of complaints



The figures in graph 3 show there is still a **high percentage of complaints lodged with the Commissioner (39.31%)** by citizens as clients of public authorities in connection with acting on their submissions for the exercise of certain rights or in connection with their reports of certain issues that require interventions by competent authorities. In addition, citizens have difficulties in obtaining **information on spending of funds from public sources, including public procurements and privatisation (33.91%)**. An increase in the number of complaints was also observed in **information concerning environmental protection and animal welfare**.

In 2015, the number of complaints relating to failure to obtain information concerning the status of cases processed by courts and public prosecutors' offices decreased (by 5,5%), as well as the number of complaints relating to operations of law enforcement agencies (by 0.5%).

4.1.2.3. Public authorities against which requesters lodged complaints with the Commissioner and reasons for complaints

The majority of complaints – 1,841 complaints (48.18%) of the total of 3,821 lodged in 2015 – were filed against national authorities, which was about 2% more than in 2014. Of that number, 846 complaints (46%) were filed against ministries, which was 3.67% higher than in the previous year. These are followed by complaints against local self-government authorities, judicial authorities and public enterprises. Compared to 2014, a slight increase in the number was also observed in complaints lodged against local self-government authorities and public enterprises, while the number of complaints against judicial authorities was reduced by 3.6%.

Graph 4. Number of complaints by types of authorities (3,929 complaints)

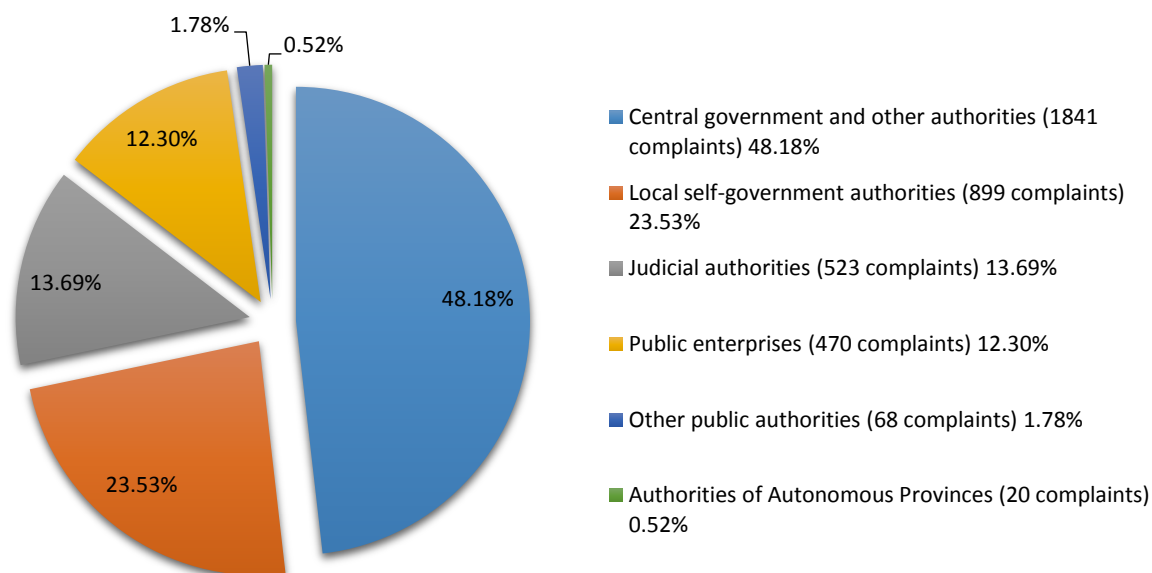


Table 2. Overview of requests and complaints filed in 2015 against ministries with bodies subordinated to them¹²

¹² The number of requests is taken from reports of the ministries and bodies subordinated to them which submitted reports to the Commissioner, while the number of complaints has been determined on the basis of records of the Commissioner's Office.

No.	Ministry	No. of requests	No. of complaints
1.	Ministry of Internal Affairs	3020	254
2.	Ministry of Finance	778	109
3.	Ministry of Agriculture and Environmental Protection	415	111
4.	Ministry of Justice	234	81
5.	Ministry of Construction, Transport and Infrastructure	214	34
6.	Ministry of Education, Science and Technological Development	234	18
7.	Ministry of Defence	486	102
8.	Ministry of Health	325	32
9.	Ministry of Economy	80	8
10.	Ministry of Public Administration and Local Self-Government	132	10
11.	Ministry of Labour, Employment, Veteran and Social Affairs	149	53
12.	Ministry of Trade, Tourism and Telecommunications	84	13
13.	Ministry of Culture and Information	57	1
14.	Ministry of Youth and Sport	52	1
15.	Ministry of Mining and Energy	70	5

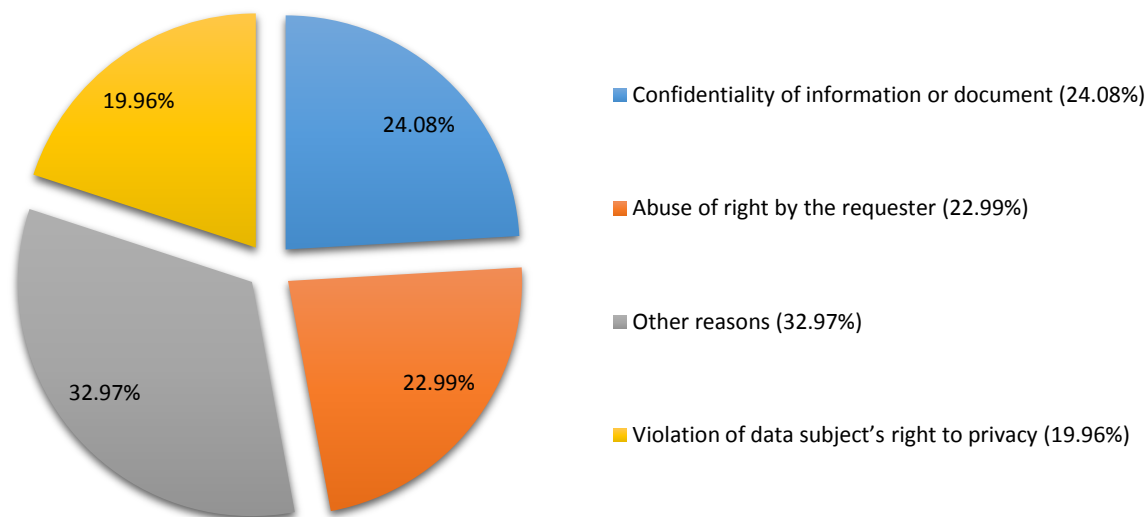
16.	Ministry of Foreign Affairs	42	14
TOTAL		6372	846

In 2015, ministries received a total of 6,372 requests for access to information, while a total of a 846 complaints were lodged in connection with those requests, which means that on each 7.5 requests a requester complained to the Commissioner because he/she did not receive information for a ministry. This is an obvious improvement compared with 2014, when one in six requesters complained and compared to 2013 when one in five requesters complained.

Information requesters contacted ministries in 2015 more often than in 2014 because 1,295 more requests were filed, while there were only 30 more complaints lodged than in the previous year.

The highest increase of the number of requests is observed in the Ministry of Internal Affairs, which received 459 requests more in 2015 than in 2014, while there were 56 fewer complaints against this Ministry than in 2014. Increase in the number of requests and decrease in the number of complaints was also observed in the case of the Ministry of Education, Science and Technological Development, the Ministry of Culture and Information, the Ministry of Trade, Tourism and Telecommunications, the Ministry of Public Administration and Local Self-Government and the Ministry of Economy. A significant increase in the number of requests with a corresponding increase in the number of complaints was observed in the case of the Ministry of Defence, the Ministry of Finance and bodies subordinated to it, the Ministry of Health, the Ministry of Labour, Employment, Veteran and Social Affairs and the Ministry of Mining and Energy. The Ministry of Construction, Transport and Infrastructure received the same number of requests as in the previous year (214), while there were 11 fewer complaints lodged against that Ministry.

Graph 5. Reasons for rejection of freedom of information requests



Year after year, including in 2015, the most frequent reason used by public authorities to deny access to information to requesters has been confidentiality of information. However, the number of such cases was halved in 2015 and decreased from 48% to 24.8% of the total number of complaints lodged with the Commissioner, which could be seen as a good sign, regardless of the fact that this percentage is still very high.

The practice of including confidentiality clauses in investment contracts or other forms of business cooperation in Serbia was continued in 2015, although this is contrary to the law and imperative provisions of the Serbian legal system. The decision to make available those pieces of information that an authority considers to be secret is as a rule still left to the Commissioner. This is justified by fear of the consequences of disclosure, incongruence between specific provisions of the regulations they apply within their spheres of competence and the freedom of information legislation etc.

When they deny information by invoking data confidentiality, public authorities as a rule do not even provide evidence that documents or information are actually properly classified as confidential, in accordance with the Law on Data Confidentiality, and they rarely bother to prove a substantive reason and evidence for their decisions to deny access to information. They tend to *a priori* reject a request without applying the so-called harm test and public interest test, which is necessary for determining the overriding interest – whether it is the public's right to know or the interest to protect another right or public interest that is protected as secret and that could be seriously jeopardised through disclosure of information.

The Commissioner emphasizes again in this Report, as in the previous years, that the fact that many of the cases in which public authorities denied access to information by invoking data confidentiality have in the meantime resulted in prosecution due to misappropriation of public funds, malfeasance in office or other forms of corruption points to the conclusion that such cases of denial of access to information, while not

necessarily indicative of any of the above offences, should always be subject to careful scrutiny.

Such actions of public authorities can partially be attributed to many years of the absence of enforcement of the Law on Data Confidentiality by the Ministry of Justice (the Law was enacted at the end of 2009) and the huge delay in the adoption of its implementing regulations.

The most drastic case in 2015 when information was denied not only to the public, but also to the Commissioner by invoking confidentiality of documents is the case of “Zelezara Smederevo” (Serbian steel manufacturing company) and the actions taken by the Ministry of Economy.

The document in question is the Management and Consultancy Services Agreement for the “Zelezara Smederevo” Company of 25 March 2015, entered into between the Republic of Serbia, “Zelezara Smederevo” d.o.o. company, HPK MANAGAMENT d.o.o. of Belgrade and HPK ENGINEERING B.V. of Amsterdam, the Netherlands.

Transparency Serbia filed a request to access information of public information on 25 March 2015 to the Ministry of Economy, requesting a copy of the above Agreement;

Upon expiry of the time limit specified by the law, the Ministry of Economy notified Transparency Serbia in its communication of 6 April 2015 that it cannot honour the request within the period of 15 days and that it will do so within maximum 40 of the date of receipt of the request;

After expiry of the 40-day period, on 8 May 2015, the Transparency Serbia lodged a complaint with the Commissioner against the Ministry’s failure to act on the request;

The Commissioner forwarded the complaint to the Ministry for a reply with his communication of 13 May 2015;

In its reply to the complaint of 19 May 2015, the Ministry stated that the Republic of Serbia and HPK MANAGAMENT, as a service provider, submitted on 3 April 2015 a petition to the Competition Commission in connection with (non-)existence of concentration and joint control of the “Zelezara Smederevo” company and that the Commission submitted to petitioners on 6 April 2015 its opinion that change of management in “Zelezara Smederevo” did not constitute concentration within the meaning of the law; it furthermore stated that the petitioners¹³ had applied for protection of data contained in the Agreement in this procedure and that the Agreement could not be made available until the procedure in accordance with Article 45 of the Law on Protection of Competition is completed and until the Commission pass a decision regulating data anonymization.

Finding that it is necessary to examine the Agreement in question to be able to decide on the complaint, in his communication of 26 May 2015 the Commissioner requested the Ministry, on the basis of the power vested in him under Article 26 of the Law on Access to Information, to grant him access to the Agreement and documents showing the data for which classification had been sought before the Commission. The Ministry replied on 4 June 2015 that the Competition Commission had upheld the Ministry’s request to protect data by its resolution of 2 June and that the Agreement could not be provided;

In his communication of 12 June 2015, the Commissioner repeated his request to the Ministry and to the Minister in person to grant him access to the Agreement and documents according to the request of 26 May 2015 so that he could be able to decide on the complaint, but he received no reply;

¹³ The Ombudsman’s instrument No. 6-34-2335/15 of 29 January 2016 on the facts and recommendations regarding this case states that the request was submitted to the Commission by the Ministry on 18 May 2015.

On 29 June 2015, the Commissioner passed decisions and ordered the Ministry to provide a copy of the Agreement in question to Transparency Serbia, noting there was an indisputable public interest in making the Agreement in question available and that the Ministry had provided no evidence of possible harmful effects of disclosure of the Agreement: that the founder and 100% owner of the “Zelezara Smederevo” company was the Republic of Serbia; that the Resolution of the Competition Commission No. 6/0-02-315-5 of 2 June 2015, according to which information in the Agreement was designated as so-called protected data within the meaning of Article 45 of the Law on Protection of Competition, was a decision of the Commission that had been passed and was effective only in the procedure conducted before that Commission, which fact had been confirmed by the Commission itself¹⁴; that the justifiability of requests for free access to information was assessed in accordance with the Law on Free Access to Information of Public Importance, which was a lex specialis governing matters of freedom of information and took precedence over any other laws that may restrict that right, according to Article 8 of the Law.

At the proposal of the information requester, the Commissioner conducted an enforcement procedure and imposed two fines to enforce the decision. The Ministry paid these two fines to the budget, but since this had no effect either, the Commissioner requested from the Government to enforce the decision in accordance with the law; however, the Government failed to do so.

On the Commissioner’s initiative, the Ombudsman initiated a review of lawfulness and regularity of operations of the Ministry of Economy and the Administrative Inspectorate in this case. The Administrative Inspectorate notified the Ombudsman that it had filed a petition for institution of infringement proceedings against the Minister of Economy as the responsible person within the Ministry.¹⁵

The Ombudsman found¹⁶ that in this specific case the Ministry of Economy had made multiple violations of the Law on Free Access to Information of Public Importance, that a provision of the Law on Protection of Competition had been abused and that the right of the public to access data held by public authorities, guaranteed by the Constitution of the Republic of Serbia, had been violated and he issued relevant recommendations to the Ministry, including the recommendation to comply with the Commissioner’s decision which is final, binding and enforceable.

In the total number of complaints filed with the Commissioner in 2015, **the share of those** filed for denial of the freedom of information **justified by a reference to the right to privacy** was 5.5% higher compared with the previous year. Public authorities invoke possible invasion of privacy even when requests relate to information on civil servants or public officials in connection with or of importance for the exercise of their office or powers, including information on salaries paid from public funds, although this cannot be a justified reason to deny such information, particularly when they pertain to public or political office holders.

The number of complaints against rejections of information requests under the guise of **abuse of the right has also increased**. Public authorities usually justified this by the large volume of requested information or that requesters submitted a large number of requests. The fact remains that the existing legal provision on the possible limitation of the right by invoking abuse of the right by requesters is not precise enough and its strictly linguistic interpretation outside the context of the entire law and the applicable international standards encourages authorities to deny information to requesters by invoking such provision. The view that the legal definition of abuse of the right to access information is too broad has also been presented in the SIGMA Baseline Measurement Report against the Principles for Public

¹⁴ Instrument of the Commission No.1/0-02-497/2015-2 of 23 June 2015.

¹⁵ The Ombudsman’s instrument No. 6-34-2335/15 of 21 October 2015.

¹⁶ The Ombudsman’s instrument No. 6-34-2335/15 of 29 January 2016.

Administration in 2015 and the SIGMA Baseline Measurement Reviews against the Principles of Public Administration in the Serbian public administration.

On the other hand, as noted in the Commissioner's Report for 2014, certain situations which essentially leave scope for abuse of the right are not regulated by the law, such as when an authority makes copies of a large number of documents with requested information, but a requester refuses to pay costs of copies and does not take documents etc.

It has also been observed that in 2015 public authorities, including the highest executive authorities, denied information requested under explanation that **a request for exercise of the right is allegedly "not clear" or "formally deficient"**, requiring from requesters to "make the request compliant with the requirements" or to "state precisely" which information they requested when it is obviously not necessary, even in cases when the title of the document or information requested was clearly stated in a request.

The Commissioner also notes that **authorities often reply they do not hold the requested information**, while such **replies are as a rule neither substantiated nor supported by evidence**, e.g. of expiration of the statutory limit for keeping the document by presenting evidence of destruction of documents from case files or evidence that a case has been forwarded to a higher authority for decision-making etc. This – quite rightly – causes requesters to doubt the veracity of such allegations. Situations such as these call for oversight by the competent authority, i.e. the administrative inspectorate, which would involve actual verification of facts on the spot.

It is evident that there are cases when **authorities actually do not hold the requested information, or at least do not hold all pieces of it, but are not willing to confirm this to requesters** because by the nature of their tasks or according to an explicit legal duty they should hold them. Such situations always result in complaints and the Commissioner's order to honour the requests and provide information and only when the Commissioner decides on a complaint, authorities notify him they do not hold the requested information.

A frequently cited and unjustified reason for denial of access to information is the allegation put forth by public authorities that requesters **do not have what is known as "justified interest"**, i.e. that they are not a party to proceedings in connection with which information is requested, although freedom of information of public importance is guaranteed to everyone under equal conditions, that parties to administrative or other proceedings are not exempted from freedom of information and justified interest is presumed to exist until an authority provide evidence demonstrating otherwise.

It is also evident that a frequent reason for lodging complaints with the Commissioner is still **incompleteness of provided information**. Authorities in certain cases resort to selecting the pieces of information they provide to requesters, without formally adhering to the relevant request. Thus, as a rule, they tend to provide only information that shows the institution concerned in a positive light, or they provide only extracted information, without copies of the requested documents, which is contrary to the essence of the freedom of information of public importance, which implies the right to obtain a copy of the document containing the requested information.

The Commissioner notes once again in this Report that eleven years after the Law on Access to Information has been enacted and took effect, there are cases of refusal of application of this Law by certain entities which constantly claim that they do not have the status of a public authority and that **they are not subject to the Law at all**. Examples are

enterprises majority-owned by the state, such as Telekom Srbija (Serbian telecommunications company), which has been refusing to apply this Law for several years, in spite of the fact that the Administrative Court backed the Commissioner's opinion that Telekom Srbija had the status of a public authority within the meaning of this Law due to the fact that it was formed and is managed by the Government of Serbia.

4.1.3. Enforcement of Commissioner's Decisions and Resolutions

In 2015, the Commissioner's proceedings pursuant to justified complaints (3,227) were closed in 922 cases (**28.6%**) by passing of decisions or issuing of the Commissioner's orders to make the information available to the requesters. In these cases, the Commissioner passed 829 decisions, because 83 cases were joined with other cases, so that a single decision was passed pursuant to multiple complaints against a single authority.

As regards cases where access to information was ordered by the Commissioner's decisions (829 decisions), from the feedback the Commissioner received, **in 2015 public authorities complied with the orders in 83.7% cases, meaning that percentage of compliance with the Commissioner's decisions was 5.8% higher in 2015 than in 2014. A significant number of cases of compliance with decisions were ensured in the enforcement procedure by the Commissioner and after the Administrative Inspectorate intervened.**

In 2,162 cases, or **67% of justified complaints**, proceedings pursuant to complaints lodged with the Commissioner **were terminated** because the public authorities honoured the request immediately upon learning of a complaint, before the Commissioner passed a decision.

In the remaining 136 cases (**4.2%**) of justified complaints, the Commissioner **quashed the decisions of the public authorities and returned the cases for renewed procedure** and deciding, while in 7 cases (0.2%) he quashed the decisions of first-instance authorities as illegal.

According to the data on the outcomes of complaints filed with to the Commissioner, **of the total justified complaints (3,227), the share of successful interventions by the Commissioner was 95.8%**, which is an improvement of 2.7% compared with 2014. **This result is noteworthy because the Commissioner achieved it in spite of the numerous obstacles presented in this Report, including non-functional legal mechanisms for the enforcement of the Commissioner's decisions and resolutions, non-enforcement of the Commissioner's decisions by the Government and many years of lack of accountability for violation of the Law on Access to Information.**

In 2015, in 189 cases the Commissioner received petitions from information requesters for enforcement of his decisions. Acting on those petitions, the Commissioner passed 315 enactments, including: 67 enforcement orders relating to his decisions and 59 resolutions **imposing fines** – the so-called penalties - in the total amount of **RSD 4,380,000** (39 fines of RSD 20,000.00 and 20 fines of RSD 180,000.00), which constitute **public revenue and are payable to the budget of Serbia**. In 164 cases he terminated enforcement because the authorities concerned had in the meantime complied with the Commissioner's orders or enforcement orders relating to his decisions. According to the Treasury Administration, the resolutions on imposition of fines resulted in **the collection of RSD**

3,120,000 for the national budget until completion of this Report, which was over one million dinars more than in 2014.

The remaining amount of RSD 1,260,000 in imposed fines was not paid voluntarily by public authorities pursuant to the Commissioner's resolutions on imposition of fines. In such situations, the Commissioner filed petitions with competent courts for judicial enforcement of the imposed fines in the previous period. However, the First Basic Court of Belgrade declined jurisdiction, contending the Commissioner himself was in charge of enforcing the fines he imposed on public authorities, unlike other courts, which had accepted jurisdiction in identical cases. The Tax Administration also declined jurisdiction for collection of these public revenues several years ago¹⁷.

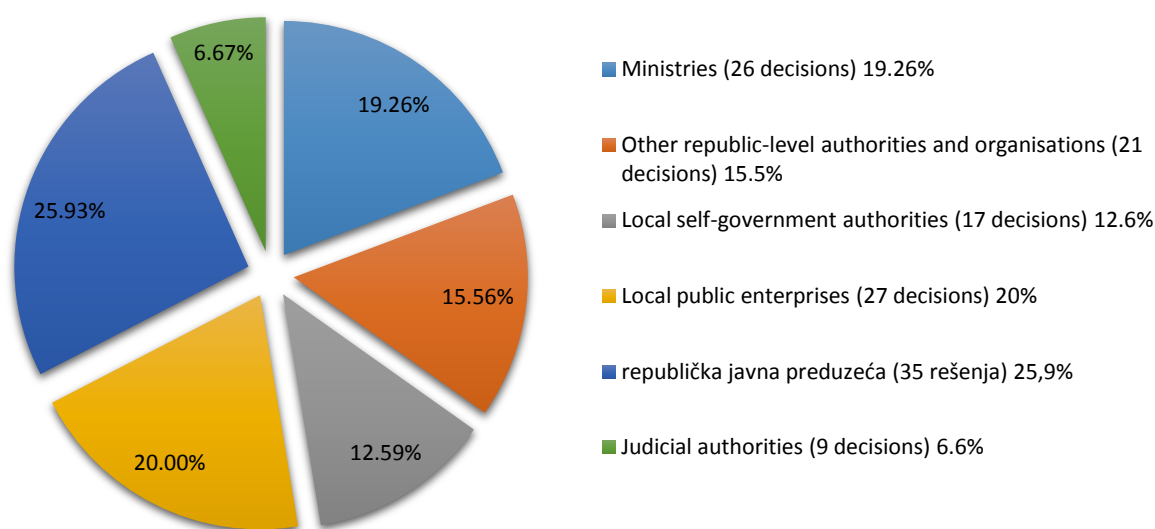
The Commissioner addressed in his annual reports for 2012, 2013 and 2014 the issue of divergent jurisprudence of different courts in Serbia in connection with the enforcement of the Commissioner's resolutions on the imposition of fines, i.e. the declining of jurisdiction by the First Basic Court of Belgrade since 2012, although this court has territorial jurisdiction over the majority of the cases where enforcement is necessary. In this regard, there have still been no improvements in 2015, in spite of all the measures taken by the Commissioner in this context in his contacts with the competent institutions.

Imposition of measures available to the Commissioner for enforced execution of his decisions through fines as a rule results in compliance with his orders and provision of information to requesters. However, in some cases even those measures produced no effect; the Commissioner was therefore forced, on initiative of the complainants **to ask the Government to enforce his decisions in 24 cases by imposing measures available to it, including direct enforcement action, as provided by the Law. In this context, the Government gave no feedback on enforced execution of his decisions in any of those cases,** nor is such information contained in the Government's Report on Implementation of the Law on Access to Information for 2015. Such measures by the Government have obviously produced no results, except in one case, since all decisions of the Commissioner except one for which the Government's intervention was sought still remain unimplemented.

The Commissioner points out again in this Report to the National Assembly that the current situation **with regard to enforced execution of the Commissioner's decisions calls for immediate implementation of the mechanism provided for in Article 28 of the Law on Free Access to Information. Alternatively, if the Government's General Secretariat needs any clarifications concerning the application of that Article, the ministry competent for administration issues should provide such clarification by amending the Law.** If the situation remains as it is, the reputation of these institutions might suffer and the exercise of the right itself might suffer even more.

¹⁷ Communications of the Tax Administration, No. 037-00089/2010-08 of 4 November 2010 and of 27 January 2011.

Graph 6. Number of Commissioner's decisions passed in 2015 that have not been complied with



This Report contains **ANNEX 1. - Overview of public authorities which failed to comply with the Commissioner's orders issued in 2015**, with a brief description of the requested information.

Of the total of 135 Commissioner's decisions passed in 2015 that have not been complied with¹⁸, the majority (45.9%) were issued to republic-level and local public enterprises, followed by ministries and other executive authorities (34.8%). The number of the Commissioner's decisions that have not been complied with by public enterprises in 2015 was 13% higher than in 2014.

According to the overview of the Commissioner's decisions passed in 2015 that have not been complied with, full information in contracts on large public investments and on management of public funds was denied to the public, such as the abovementioned *case of the "Železara Smederevo" company, the Belgrade Waterfront project, lease purchase of airplanes for Air Serbia (airline of Serbia), construction of the Zezelj bridge, information on cooperation with the United Arab Emirates in the field of mining and energy, large public procurements by Elektroprivreda Srbije (state-owned electric utility power company) for pumping floodwater out of Tamnava West Field in the Kolubara mine and hiring of the Energotehnika-Juzna Backa company for these tasks, as well as public procurements by the public enterprise Elektromreza Srbije (state-owned transmission system operator company), information on the amounts of money state-owned enterprises paid for marketing services, sponsoring, advertising, donations etc. (Telekom Srbija, Srbijagas (state-owned natural gas provider)).*

¹⁸ 135 decisions that have not been complied with as at 10 February 2016.

This Report for 2015 and the special extraordinary report to the National Assembly submitted by the Commissioner in November 2013 draw attention to the worrying lax attitude of many state-owned enterprises to their obligations under the Law on Free Access to Information, as well as to the harmful consequences of such attitudes for human rights and the undermining of the rule of law, the National Assembly as the institution that enacted the Law and ultimately the country itself. The Commissioner points out again on this occasion that such attitude is rather telling from the aspect of anti-corruption efforts as well. While this may not be true in each individual case, past practice in connection with complaints filed with the Commissioner both generally and in particular those filed by the Anti-Corruption Council of the Government of Serbia has shown that issues with transparency are in a large number of cases belied by issues associated with wastefulness, unlawfulness of operations and corruption. The National Assembly has not reviewed the above Commissioner's extraordinary report.

4.2. Commissioner's Activities aimed at Promoting Proactive Publication of Information, Improvement of Legislation and Affirmation of Rights

4.2.1. Information Booklets

The Law on Access to Information sets out the duty to proactively publish information for a certain category of public authorities. According to the Law and the Instructions on Preparation and Publication of Information Booklets on the Work of Public Authorities, the duty of proactive publishing of information implies preparation and publishing of the document named information booklet on official websites of authorities. The aim of publishing information booklets and the duty to regularly update information (at least once monthly) to make available to citizens, the media, public authorities and other users the most important information on operations of authorities, human resources and other capacities of authorities, 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 the exercise of rights, available remedies in case of negative outcome before the authority concerned, types of information available to the authorities etc.

Information booklets, as standardised documents of public authorities, are very important from the aspect of comparability of published data. Preparation and publishing of information booklets is also important for institutions that prepare and publish them in terms of affirmation of their work, encouraging maintenance of the medium, internal communication and improvement of procedures and organisation of work.

Proactive publishing of information by public authorities which implies voluntary, continual publishing of accurate and up-to-date information easily accessible to citizens and other users without formal requests for access to information is a very important precondition for good and responsible e-government. The large number of freedom of information requests sent to public authorities and the large number of complaints filed with the Commissioner bespeak a need for a much more hands-on approach of public authorities in the publication of information on their official websites and in other manners.

Publishing of information booklets on the work of public authorities is just one of the ways to demonstrate the Government's commitment to building a new administration based on the open government principles, in accordance with the Government's Action Plan on

Implementation of the Open Government Initiative in the republic of Serbia for 2014 and 2015 and strategic documents on the public administration reform.

This Report will address only this segment of proactive publishing of information, which falls within the Commissioner's scope of competences and relates to publishing of information booklets.

Throughout 2015, the Commissioner monitored proactive publication of information and information booklets on the websites of public authorities, exerting influence on public authorities to enhance the transparency of work. This was done either *ex officio* or pursuant to reports made by the citizens, within available capacities.

The Commissioner's activities and measures aimed at consistent implementation of the Instructions for Preparation and Publication of Information Booklets on the Work of Public Authorities result in progress in terms of publication of information on the so-called proactive basis, primarily in terms of quantity, but also to a certain extent in terms of quality; however, the level of engagement of authorities in this regard on their own initiative, without the Commissioner's intervention, is still insufficient. The initial negative attitude of authorities towards regular publishing of information about their work, updating of data and presenting them in a form easily accessible to the public has changed to a large extent owing to the Commissioner's persistent interventions aimed at improving the quality of information booklets to meet the level specified in the Instructions, which set really high standards appropriate for a democratic society.

As has been emphasised in previous reports by the Commissioner, **the statutory obligation to publish information booklets does not apply to many public entities whose operations are undoubtedly of much interest to the public.** Thus, for example, the now formalised obligation to prepare an information booklet on its work does not apply to a single local public enterprise, or to those Republic-level public enterprises that are not vested with public powers under the law, despite the fact that they are fully or majority owned by the state, e.g. PTT Srbija (Serbian Post), Telekom Srbija, health care institutions, pre-school institutions etc. Because of that, **the issue of the authorities subject to the statutory duty to publish information booklets should be reviewed in detail within future amendments to the Law on Access to Information.**

In 2015, the Commissioner reviewed the information booklets of public enterprises, companies and entities with delegated public powers, the information booklets of local self-government authorities in the city of Belgrade and its municipalities, as well as those of six public authorities referred to in Article 22, paragraph 2 of the Law on Access to Information, information booklets of special organisations and completed review of information booklets of bodies subordinate to ministries initiated in 2014 (the Ministry of Agriculture).

Review of information booklets by the Commissioner, provision of very clear written and oral suggestions for improvement of their content, passing of decisions ordering to bring the content of information booklets in compliance with the statutory content and submission of initiatives to the administrative inspectorate to file petitions for institution of infringement proceedings against those authorities which failed to comply with the statutory duty provide results in terms of volume of presented information and standardisation of information booklets, but the effects have still not achieved the necessary level. The main cause for this is inadequate liability, i.e. insufficient supervision by the administrative inspectorate which is competent for

enforcement of the Law on Access to Information, as well as filing petitions for institution of infringement proceedings. The Commissioner is not vested with these powers.

An example of inadequate supervision and acting of the Administrative Inspectorate is the case of the information booklet of the Budget Inspectorate of Nis. Pursuant to reports submitted by a journalist, the Commissioner found that this public authority had not published its information booklet in accordance with the law, although the Commissioner took measures in that regard, so he requested from the Administrative Inspectorate to carry out an inspection and undertake measures to determine responsibility. He received a reply that the Budget Inspectorate of Nis had notified the Inspectorate it had published its information booklet in accordance with the Instructions on Preparation and Publication of Information Booklets on the Work of Public Authorities. After the Commissioner received the notification, he inspected the information booklet in question and found that 17 of 21 statutory and compulsory parts of information booklets were missing, while the remaining parts did not contain information specified by the Instructions.

In 2015, the Commissioner **analysed the information booklets of 24 public enterprises, companies and entities with delegated public powers** and on that occasion he found that none of the 24 enterprises had prepared information booklets compliant with the requirements specified by the Instructions on Preparation and Publication of Information Booklets. All these entities received communications with specific findings of shortcomings and suggestions for their elimination and they were requested to provide a reply in connection with their failure to comply with this legal duty. Upon expiry of the time limit necessary to remedy the shortcomings, the Commissioner reviewed these information booklets again and found that only five enterprises considerably improved their information booklets.

In connection with these findings, the Commissioner passed 19 decisions and ordered these authorities to prepare their information booklets and post them on their official websites within 30 days. Upon expiry of the time limit specified to comply with the Commissioner's decisions it was found that nine of them had not complied with orders in decisions and petitions for institution of infringement proceeding against the following institutions were submitted to the Administrative Inspectorate of the Ministry of Public Administration and Local Self-Government: public enterprise Srbijagas (state-owned natural gas provider), public enterprise Nuclear Facilities of Serbia, the public water management enterprise Srbijavode, public enterprise National Park Kopaonik, public enterprise National Park Fruška Gora, public enterprise Textbook Institute, public enterprise Roads of Serbia, joint-stock company Serbian Railways and the Red Cross of Serbia. In the case of public enterprises within Elektroprivreda Srbije (state-owned electric utility power company) which were subject to organisational changes, the Commissioner suspended all action pending the completion of these processes.

It can be concluded that, in case of public enterprises and companies with delegated public powers, the level of compliance with the duty to publish information booklets under the Law on Access to Information and the abovementioned Instructions is still worryingly low.

In 2015, the Commissioner analysed 18 information booklets **of local self-government authorities in the city of Belgrade and its municipalities**. It was found that none of these information booklets were compliant with the Instructions and all these authorities received communications with specific findings of shortcomings and suggestions for their elimination and were requested to provide a reply in connection with their failure to

comply with this legal duty. After this it was found that 9 city municipalities failed to comply with the issued suggestions and warnings and the Commissioner passed 9 decisions ordering the shortcomings to be remedied. Through a follow-up review of the information booklets it was found that 4 city municipalities had failed to comply with the Commissioner's decisions; as a result, petitions for institution of infringement proceedings against city authorities of Belgrade and municipalities of Obrenovac, Sopot and Surcin were filed with the Administrative Inspectorate.

The Commissioner analysed the information booklets of **six public authorities referred to in Article 22, paragraph 2 of the Law on Free Access to Information of Public Importance** (the Government of the Republic of Serbia, the National Assembly of the Republic of Serbia, the President of the Republic of Serbia, the Republic Public Prosecutor's Office, the Constitutional Court and the Supreme Court of Cassation). It was found that only one authority, the Supreme Court of Cassation, had prepared the information booklet compliant with the Instructions in all important aspects and that the remaining five authorities had not presented information on assets, three authorities had not presented information on salaries, four authorities had not presented complete information on public procurements and four of these six authorities had not presented information on the budget for the current year in accordance with the Instructions. Since the Commissioner is not authorised under the law to take measures against these authorities, he sent to all of the above authorities, except the Supreme Court of Cassation, a communication and reminded them of the duty, the importance and the need to proactively publish information on the work of public authorities as a measure aimed at improving transparency of work of authorities.

In 2015, the Commissioner analysed information booklets of **ten special organisations formed under the Law on Ministries** and found that none of the information booklets of special organisations were compliant with the Instructions. The main shortcoming was that data in information booklets had not been updated. As in previous cases, detailed suggestions have been provided on ways to improve the content of information booklets of these authorities and the procedure will be continued in 2016.

In 2015, the Commissioner also conducted an analysis of the information booklets of authorities within the Ministry of Agriculture, after he ordered the Ministry (without bodies subordinate to it) during the year by a decision to comply with this legal duty and the Ministry complied with the Commissioner's decision. Since 7 of eight reviewed information booklets of administrative authorities within this Ministry did not comply with the statutory requirements, suggestions for elimination of shortcomings were provided to all these authorities. In two cases decisions were passed with formal order to publish information booklets with all statutory elements. In one case (the Forest Directorate), the Commissioner also filed a petition for institution of infringement proceedings because this authority failed to comply with its duties even after the Commissioner passed the decision.

4.2.2. Initiatives and Opinions Concerning Legislation

The Commissioner lacks power to propose enactment of laws. According to the Government's Rules of Procedure, backers must obtain opinions of authorities, organisations and bodies authorised to provide opinions in accordance with special regulations. The Law on Free Access to Information of Public Importance does not explicitly specify the power of the Commissioner to provide opinions from the aspect of this Law in the procedure of proposing and enactment of laws and other regulations.

Nevertheless, **in 2015 the Commissioner once again made initiatives for the adoption of new regulations or the amendment of existing ones on multiple occasions or supported similar initiatives coming from other entities and provided opinions in the procedure of proposing and enactment of regulations on request of public authorities, always with the aim to improve legislative provisions relating to the exercise of the freedom of information. Following requests from public authorities, as well as the citizens, the Commissioner also gave opinions aimed at improving implementation of the Law on Access to Information.** A total of **170 such opinions** were prepared (147 on implementation of the Law on Access to Information and 23 to draft regulations and bills). As there is no formal obligation to obtain the Commissioner's opinion in the process of passing or amendment of legislation, the Commissioner could give his opinions concerning the enactment or amendments of legislation only after learning of such activities through informal means or after relevant authorities published the draft versions of legislative provisions on their websites, while in some cases he was able to respond only after specific pieces of legislation were published.

Below is a selection of **opinions on draft laws and bills and other draft regulations, as well as on strategic documents of public authorities** the Commissioner prepared and submitted to competent authorities in 2015, on their request or on his own initiative:

- An opinion relating to the Draft Law amending the Law on Environment Protection for the Ministry of Agriculture and Environment Protection (on several occasions),
- An opinion relating to the Draft Law on General Administrative Proceedings for the Ministry of Public Administration and Local Self-Government (on several occasions),
- An initiative to the competent committees of the National Assembly of the Republic of Serbia and the Ombudsman for submission of amendments to Article 24 of the Law on Investments,
- An opinion relating to the Draft Law on Housing and Maintenance of Buildings for the Ministry of Construction, Transport and Infrastructure,
- An opinion relating to the Draft Law on Civil Servants for the Ministry of Public Administration and Local Self-Government,
- An opinion relating to the Draft Resolution endorsing the Joint Declaration on Open Government for the Implementation of the 2030 Agenda for Sustainable Development for the Ministry of Public Administration and Local Self-Government,
- An opinion relating to the Draft Criteria for Evaluation of Websites of Public Authorities for the Directorate for e-Government of the Ministry of Public Administration and Local Self-Government
- An opinion relating to the Draft e-Government Development Strategy in the Republic of Serbia for the period 2015-2018 and the Action Plan on implementation of the Strategy for the period 2015-2016 for the Ministry of Public Administration and Local Self-Government,
- An opinion relating to the Draft Law on Archive Material and Archiving Activity for the Ministry of Culture and Information,
- An opinion relating to the Draft Law on Organisation and Powers of Public Authorities in the Fight against Organised Crime, Terrorism and Corruption for the Ministry of Justice,

- An opinion relating to the Draft Law on Free Legal Aid for the Ministry of Justice,
- Proposals for necessary amendments to the Law on Misdemeanours for the President of the Misdemeanour Appellate Court, as the head of the Working Group on amendments to the Law on Misdemeanours,
- An opinion relating to the Draft Law on Public Enterprises for the Ministry of Economy,
- An opinion relating to the Draft Law on Records and Data Processing in Internal Affairs for the Ministry of Internal Affairs,
- An opinion relating to the Bill on Voluntary Financial Restructuring for the Government of the Republic of Serbia,
- An opinion relating to the Draft Law on Information Security for the Ministry of Trade, Tourism and Telecommunications,
- An opinion relating to the Draft Law on Patents for the Ministry of Education, Science and Technological Development,
- An opinion relating to the Draft Law on Innovation Activity to the Ministry of Education, Science and Technological Development,
- An opinion relating to the Draft Law amending the Law on Mining and Geological Researches for the Ministry of Mining and Energy,
- An opinion relating to the Draft Law on Recovery from Natural Disasters for the Ministry of Construction, Transport and Infrastructure,
- An opinion relating to the Draft Law amending the Law on Research and Development for the Ministry of Education, Science and Technological Development,
- An opinion relating to the Bill amending the Law on Defence for the National Assembly and its competent committees.

The competent authorities accepted a significant part of the Commissioners suggestions for the listed regulations and strategic documents.

Furthermore, pursuant to individual requests by the citizens or public officials, **Commissioner prepared and issued 147 opinions and replies on contentious issues relating to implementation of the Law on Access to Information.** Typical opinions and views are posted on the Commissioner's website.

4.2.3. Trainings, Seminars, Publications

In 2015, the Commissioner published [publication number 4 titled "Freedom of Information – Views and Opinions of the Commissioner"](#). As had been the case with earlier publications, this publication was presented as part of commendation of the Right to Know Day. This is a very useful manual for citizens, the media and all officials in public authorities who implement the Law on Access to Information.

The Commissioner provided his contribution to trainings on implementation of the Law on Access to Information, which is a legal duty of public authorities, through organisation of seminars or participation in trainings organised by other authorities in 2015 for the needs of employees in public authorities.

Thus the Commissioner, through his associates, **with the participation of judges of the Administrative Court, on request of the Ministry of Public Administration and Local Self-Government**, held a **one-day training** on open issues in connection with implementation of the Law on Access to Information **for persons authorised to** handle requests for access to information of public importance in republic-level public authorities.

The Commissioner took part as a lecturer in **two trainings on implementation of the Law on Access to Information organised by the Human Resource Management Service of the Republic of Serbia for civil servants and persons authorised to** handle requests for access to information of public importance.

In the course of 2015, the Commissioner also delivered **numerous lectures** within the scope of his work, including: a lecture for students in the Faculty of Law and the Faculty of Philosophy in Nis, a lecture for students at the faculty of Law in Belgrade, a lecture for the participants in a one-semester knowledge innovation course titled “Parliament and Democracy” at the Faculty of Political Sciences; a lecture for students at the Faculty of Organisational Sciences; a lecture on the right of access to environmental information at the School of Environmental Law for students in the final years of undergraduate studies and students in master studies of faculties of law in Serbia, graduate lawyers and representatives of civil society organisations dealing with environment protection issues; a lecture for students at the School of Human Rights “Vojin Dimitrijevic”; a lecture for students at the Faculty of Orthodox Theology titled “Freedom and Privacy in Digital Age”; a lecture for coordinators for Roma issues and Roma NGOs; a lecture for the sixth generation of students in the Politics II module intended for party-political activists titled “Personal Data Protection and Freedom of Information – the case of Serbia”, organised by the Belgrade Open School etc.

The Commissioner and representatives of the institution of Commissioner affirmed freedom of information by active **participation in numerous debates**, conferences, round tables and other public meetings organised by other public authorities or civil society organisations.

Other events relevant from the aspect of affirmation of rights include **conferences** hosted by the Commissioner, such as the conference **dedicated to the World Right to Know Day**, which has been held every year since 2006, with the cooperation and support of the OSCE Mission to Serbia, the Independent Association of Journalists of Serbia, the Journalists’ Association of Serbia and the Coalition of Free Access to Information. These conferences traditionally include the presentation of awards to public authorities for their performance and contribution to the exercise of the right to know, as well as a special award for the best Information Booklet on the work of public authorities, for which participants have to enter in a competition and presentation of a new publication with the Commissioner’s views in practice.

For more details on the Commissioner’s participation in international conferences and other meetings organised in the country or abroad, see more in the [Section 6](#) of the Report which deals with the Commissioner’s cooperation.

4.3. Protection of Freedom of Information before the Administrative Court, the Supreme Court of Cassation and the Constitutional Court

Judicial protection of the freedom of information **before the Administrative Court** is a remedy for reviewing the legality of decisions passed by the Commissioner and the six authorities against which complaints with the Commissioner are not admissible and which are exempted from protection before the Commissioner/under the Commissioner's authority (the National Assembly, the President of the Republic, the Government, the Supreme Court of Cassation, the Constitutional Court and the Republic Public Prosecutor).

A complaint may be lodged with the Administrative Court by a party who 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 2015, in only one case a party filed such motion, but the Court has not decided on it yet.

A party may also lodge a constitutional complaint with the Constitutional Court.

For these reasons, these Courts together with the Commissioner play pivotal roles in the exercise and protection of the freedom of information.

In 2015, the Administrative Court received legal actions against only two of the six listed highest public authorities, including the Government and the Republic Public Prosecutor's Office. A total of 47 legal actions were brought (13 legal actions more than in 2014). Legal actions against the so-called administrative silence (7) and rejection of requests for access to information (40) were brought against the following authorities:

- 45 against the Government (6 for failure to honour requests and 39 legal actions against decisions rejecting requests) of which 7 were adjudicated as follows: one legal action was rejected, two were dismissed on formal grounds and 4 were upheld;
- 2 legal actions against the Republic Public Prosecutor's Office (one for failure to honour a request and the other against a decision rejecting a request), of which one was adjudicated by rejecting the legal action as unjustified;

The Commissioner would like to underscore once again in this Report that a small number of legal actions against the above six authorities, in spite of the quantity, type and importance of information available to them by nature of their work, serves a reminder that, at the time of enactment of the Law and on many subsequent occasions, the validity of this legislative arrangement by the legislator was called into question by numerous Serbian and foreign experts in the fields of freedom of information, good governance and fight against corruption. Exemption of certain public authorities from a general procedure, especially where exercise of a fundamental human right is concerned, is not common in comparative practice. However, this legislative provision has remained unchanged through several amendments of the Law.

In 2015, the Administrative Court received 115 legal actions against the Commissioner's decisions (78 legal actions less than in 2014), of which 90 were brought against the Commissioner's decisions and resolutions, while 25 legal actions were

brought because the Commissioner failed to decide on complaints within the statutory 30-day period.¹⁹ The number of legal actions brought because the Commissioner failed to decide on complaints within the statutory time limit significantly decreased in 2015 (from 123 legal actions in 2014 to 25 in 2015).

Of the 115 legal actions filed against the Commissioner's decisions 2015, the Administrative Court adjudicated 83 as follows: 28 legal actions were rejected, 43 were dismissed and in 12 legal actions the procedure was terminated. This means that **the Administrative Court did not overturn any decision of the Commissioner in 2015. From the aspect of judicial control of the legality of the Commissioner's work, this result is indeed praiseworthy.**²⁰

In 2015, **first-instance public authorities continued filing legal actions against the Commissioner's decisions (35)**, despite the fact that such legal situations are inadmissible because public authorities are not authorised under the law to file legal actions. The Administrative Court dismissed 34 legal actions and has not decided on one legal action. Instead of filing legal actions themselves, pursuant to the Law on Administrative Disputes, public authorities have at their disposal an option to initiate filing of legal action with the Republic Public Prosecutor when they believe that the Commissioner's decisions violate the public interest, which did not happen in 2015 according to information available to the Commissioner.

Inadmissible legal actions against the Commissioner's decisions in 2015 were filed by the following public authorities: *"Telekom Srbija" (13), "Elektroprivreda Srbija" (8), the municipality of Doljevac (3), Banka Postanska stedionica (Postal Savings Bank) (2), „Lola" Institute Belgrade (2), while the following authorities filed one legal action each: the city of Zajecar, "Elektromreza Srbija", the Republic Chamber of Commerce and Industry in Subotica, Yugoslav River Shipping, Tourism Organisation of Novi Sad, Medical Centre Subotica and public enterprise Directorate for Urbanism and Construction Medvedja.*

The persistency displayed by public authorities, such as Telekom Srbija a.d. (this authority filed a total of 47 legal actions in 2010), in their efforts to avoid or delay the execution of the Commissioner's binding and enforceable decisions by filing inadmissible legal actions, is highly detrimental to the reputation of those authorities and the competent public authorities which failed to take measures to determine responsibility and penalise those responsible for such actions.

The Commissioner underscores in this Report again that the situation in which representatives of public authorities and public fund spending units willingly ignore their duties, using illegitimate means to thwart the constitutional rights of Serbian citizens and

¹⁹ The main reasons why the Commissioner exceeds the 30-day time limit when deciding on complaints are a constant large inflow of new cases and the backlog of cases from the eight years in which the Commissioner waited for the Government to provide his institution with adequate office space and thus allow him to hire sufficient staff, which finally happened in 2013.

²⁰ In 2015, the Administrative Court also adjudicated 10 legal actions brought before this Court in 2013 (6 legal actions were rejected, in 2 legal actions the procedure was terminated), as well as 71 legal actions brought before this Court in 2014 (13 legal actions were rejected, 12 were dismissed, in 44 legal actions the procedure was terminated and in two legal actions which were upheld cases were returned for renewed procedure where procedures were supplemented and the same decisions were passed).

taxpayers and, in doing so, waste the taxpayers' money, must not be tolerated.²¹ Obviously, the imposition of relatively small fines by the Commissioner, which the authorities more often than not refuse to pay voluntarily and which certain courts still refuse to collect by forcible means, cannot be the only path available to counter such practice. All responsible parties, including the Government, the National Assembly and the High Judicial Council, are therefore urged to take due note of this issue and to respond.

In 2015, **the Constitutional Court adjudicated 8 constitutional legal actions** filed by parties in connection with implementation of the Law on Access to Information²², of which two legal actions were filed against the Commissioner's decisions, four against decisions of the Administrative Court and one legal action was filed against actions of the Ministry of Finance and the Ministry of Education, Science and Technological Development. **The Constitutional Court dismissed all legal actions.**

4.4. Supervision of Compliance with the Law and Liability for Violations of Rights

As from 24 December 2009, supervision of implementation of the Law on Access to Information has been the responsibility of the ministry of charge of public administration, more specifically the Administrative Inspectorate. The authority responsible for supervision also has the power to make requests for initiation of infringement proceedings before the competent magistrates' court.

The amounts of fines provided by the Law on Access to Information are not harmonised with subsequently enacted Law on Misdemeanours, although the penal provisions themselves have been improved compared with the main text in the amendments of December 2009. The person responsible for an infringement is now the head of the authority concerned, rather than the authorised officer who handles freedom of information requests.

According to the Report of the Administrative Inspectorate of the Ministry of Justice and Public Administration²³, in 2015 that body conducted 882 inspections of implementation of the Law on Access to Information. As stated in the Report, in 251 regular and 266 follow-up inspections the Administrative Inspectorate proposed 260 measures to remedy the identified unlawfulness, irregularities and omissions in work in implementation of this Law. In 286 inspections of compliance with the Commissioner's decisions, the Administrative Inspectorate found that public authorities complied with the Commissioner's decisions in 181 cases, while 56 cases are pending. 79 inspections of compliance with the legal duties to publish information booklets and to submit annual reports on implementation of the Law were carried out. **Administrative inspectors filed 49 requests for initiation of infringement proceedings against responsible officers in public authorities for failure to comply with the Commissioner's decisions, 7 requests against failure to comply with the duty to prepare and publish information booklets and two requests against failure to**

²¹ Only six state-owned enterprises and enterprises majority-owned by the state paid in 2015 in enforcement of the Commissioner's resolutions 30 fines in the total amount of RSD 2,360,000, of which only Telekom Srbija paid 12 fines in the total amount of RSD 1,200,000.

²² Communication of the Constitutional Court Su No. 86/1 of 27 January 2016.

²³ Communication of the Administrative Inspectorate of the Ministry of Public Administration and Local Self-Government No. 021-02-38/2015-03 of 13 January 2016.

submit annual reports to the Commissioner. The Report of the Administrative Inspectorate does not contain outcome of these procedures.

These data show that, after the Commissioner publicly commented on numerous occasions and addressed in writing the competent public authorities in connection with the complete lack of any liability for violation of the Law on Access to Information, supervision of compliance with this Law by the Administrative Inspectorate was intensified in 2015 compared with 2014, when inspectors filed only 4 requests for initiation of infringement proceedings or than in the period 2011 – 2013, when the Administrative Inspectorate had not filed a single request for initiation of infringement proceedings against violation of duties under this Law by public authorities.

Taking into account the number of justified complaints in 2015 (3,227) and the 306 cases where the Commissioner requested the initiation of infringement proceedings because authorities refused to comply with his binding decisions and a large number of authorities which fail to comply with the duty to submit reports to the commissioner year after year or do not organise trainings or publish information booklets in accordance with the law, the number of processed cases does not reflect the actual situation and the need for accountability.

In a situation marked by years of non-existent or insufficient liability for violations of the law, the results of interventions by the Commissioner in protection of freedom of information emerge as even more praiseworthy.

According to the data received from the Misdemeanour Appellate Court²⁴, in 2015 this court handled 170 cases pursuant to legal actions for apportioning infringement liability for infringements provided for in the Law on Access to Information. Those were procedures initiated on requests of citizens as injured parties because they did not obtain information. 165 cases were adjudicated as follows: in 62 cases decisions of the authorities of first instance were upheld, in 50 cases decisions of the authorities of first instance were cancelled, in 8 cases decisions of the authorities of first instance were overturned, while in 27 cases the proceeding were terminated due to expiration of the statute of limitation for infringement proceedings. The amount of fines imposed by most of these judgements was closer to the minimum amount set out for these infringements (RSD 5,000) or the offenders were let off with a warning.

The annex to this Report includes an overview of the Commissioner's decisions that have not been complied with, i.e. the cases in which those who violated the freedom of information were not held to account.

As an illustration, the table below presents the level of compliance with the duty of public authorities to submit annual reports, publish information booklets on their work and provide training to their employees.

²⁴ Communication of the Misdemeanour Appellate Court III Su No.19/16-18/1 of 12 February 2016.

Table 3. Figures showing compliance of all public authorities with their duties (as at 10 February 2016)

Public authority	No. of public authorities	Report submitted - number and %	Information booklet published - number and %	Information booklet prepared, but not published – number and %	Training implemented – number and %	Maintenance of data storage media – number and %
Authorities referred to in Article 22 of the Law (National Assembly, President, the Supreme Court of Cassation, the Constitutional Court, Government, and the Republic Public Prosecutor)	6	6 (100%)	6 (100%)	/ (0%)	3 (50 %)	6 (100 %)
Ministries (without bodies subordinated to them)	16	16 (100%)	16 (100%)	/ (0%)	12 (75 %)	15 (93.7%)
Other public authorities and organisations (agencies, directorates, institutes, funds...)	306	173 (56.5%)	137 (44.7%)	17 (5.5%)	140 (45.7%)	153 (50%)
Courts	158	150 (94.9%)	131 (82.9 %)	9 (5.6 %)	83 (52.5 %)	123 (77.8 %)
Prosecutors' Offices	89	86 (96.6 %)	21 (23.6 %)	55 (61.8 %)	55 (61.8 %)	66 (74.1 %)
Authorities and organisations of the Autonomous Province of Vojvodina	36	23 (63.8%)	20 (55.5 %)	2 (5.5%)	17 (47.2%)	21 (58.3 %)
Local self-governments (cities/towns and municipalities)	205	163 (79.5 %)	155 (75.6 %)	4 (1.9 %)	102 (49.7 %)	148 (72.2 %)
Public enterprises (Republic and Provincial level) required to submit reports	35	31 (88.6 %)	21 (60 %)	/ (0%)	20 (57.1 %)	22 (62.8 %)
Other public authorities (educational institutions)	2052	145 (7 %)	113 (5.5 %)	9 (0.4 %)	74 (3.6 %)	109 (5.3%)

Total	2903	793 (27.3 %)	620 (21.3 %)	96 (3.3 %)	506 (17.4 %)	663 (22.8 %)
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If we analyse **compliance with legal duties** only at the level of classic public authorities and organisations, without judicial authorities (**Table 3**), it can be concluded that **compliance with the law is significantly higher than the presented average values at the general level**, which includes all public authorities subject to legal duties to submit reports, publish information booklets, organise trainings and maintain data storage media, including a large number of educational institutions (2,052), public enterprises with delegated public powers, courts, prosecutor's offices, local self-government authorities etc.

Table 4. Figures showing compliance of classic public authorities and organisations with their duties (as at 10 February 2016)

Public authority and organisation	No. of public authorities and organisations	Report submitted - number and %	Information booklet published – number and %	Information booklet prepared, but not published – number and %	Training implemented – number and %	Maintenance of data storage media – number and %
Ministries (without bodies subordinated to them)	16	16 (100%)	16 (100%)	/ (0%)	12 (75 %)	15 (93.7%)
Other public authorities and organisations (agencies, directorates, institutes, funds...)	306	173 (56.5%)	137 (44.7%)	17 (5.5%)	140 (45.7%)	153 (50%)
Total	322	189 (58.7 %)	153 (47.5 %)	17 (5.3 %)	152 (47.2 %)	168 (52.2 %)

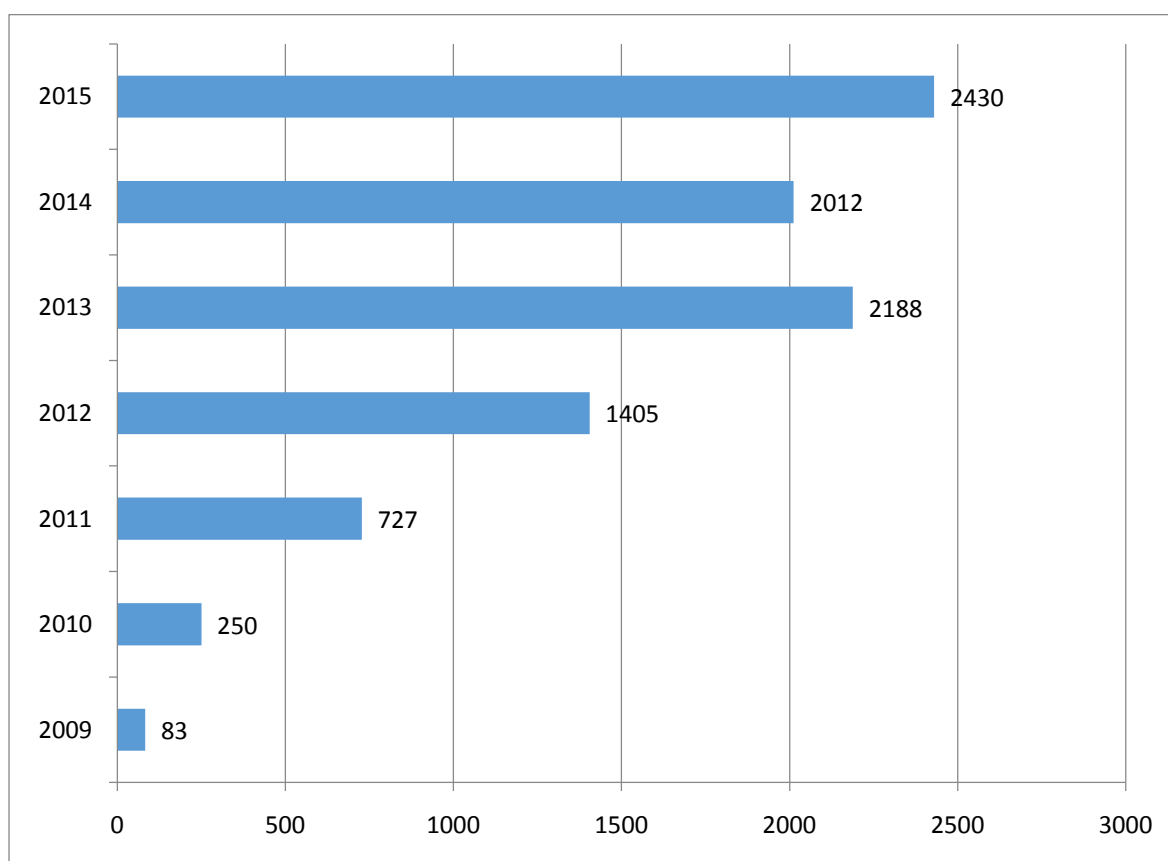
5. IMPLEMENTATION OF THE LAW ON PERSONAL DATA PROTECTION

5.1. Commissioner's Activities in the Field of Personal Data Protection

5.1.1. Summary of Commissioner's Activities in the Field of Personal Data Protection

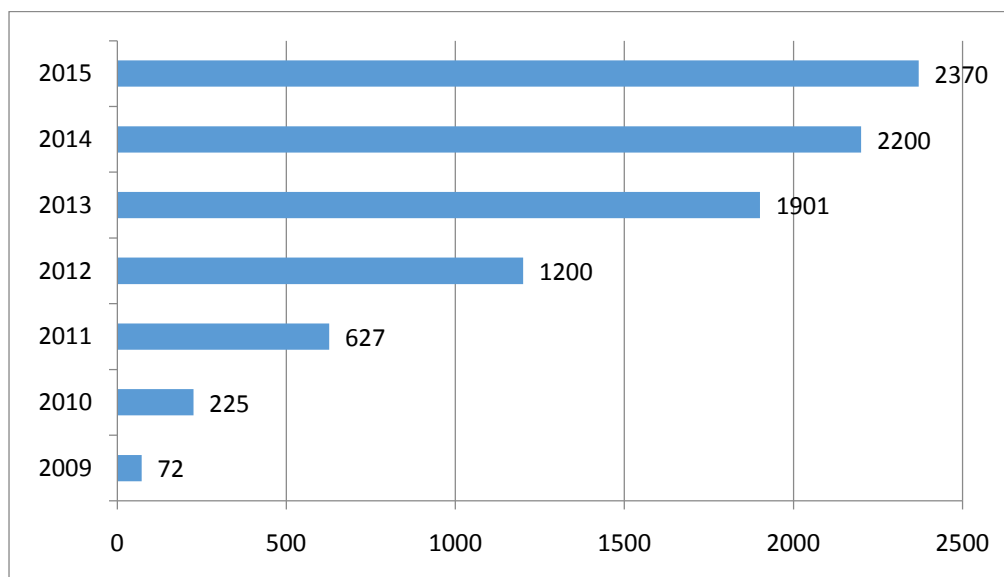
In the course of 2015, the Commissioner received 2,430 cases in the field of personal data protection, which was 21% higher than in 2014 when he received 2,012 cases. As a comparison, in 2009 the Commissioner received 83 cases, in 2010 he received 250 cases, in 2011 he received 727 cases, in 2012 he received 1,405 cases and in 2013 he received 2,188 cases.

Graph 7. Overview of cases received in the field of personal data protection by years



As 438 pending cases had been carried forward from 2014, **the total number of cases handled in this field in the course of 2015 was 2,868. Of those cases, the Commissioner closed 2,370**, which was an increase of about 8% compared with 2014, when he closed 2,200 cases. 498 pending cases are carried forward to 2016.

Graph 8. Overview of cases closed in the field of personal data protection by years



The structure of 2,370 closed cases was as follows:

- 882 completed inspections;
- 262 complaints ruled on;
- 923 opinions issued;
- 91 petitions ruled on;
- 43 freedom of information requests ruled on;
- 24 responses issued to legal actions filed with the Administrative Court;
- 2 forwarded requests ruled on;
- 15 instruction issued for improved protection and prevention;
- 9 requests for transborder transfer of data ruled on;
- 3 requests for exercise of rights in connection with personal data protection ruled on;
- 18 cases pertaining to other communication with data controllers and requesters ruled on;
- 6 cases in the field of international cooperation closed, and
- 92 requests for changes in the Central Register ruled on.

In addition, 1,197 records of data files maintained by 227 data controllers were registered with the Central Register.

5.1.2. Supervision of Personal Data Protection

In the course of 2015, the Commissioner initiated 886 inspection procedures, including: 236 pursuant to citizens' reports; 124 on his own initiative; and 526 in connection with personal data files. The Commissioner also carried out 464 preliminary checks of personal data processing activities, during which no irregularities were found in 245 cases, while in 219 cases irregularities were identified, which he pointed to the attention of the data controllers concerned by issuing warnings under Article 50 of the Law on Personal Data Protection.

During the course of 2015, the Commissioner closed a total of 882 inspection procedures, initiated during that year or in the previous period, as follows: 533 cases were closed because it was found that an instrument previously issued by the Commissioner was complied with (warning, decision, after inspection); 245 cases were closed by notifications that no irregularities were found under Article 50; 82 cases were closed by official notes; 19 cases were closed by filing petitions for institution of infringement proceedings and 3 cases were closed by criminal reports.

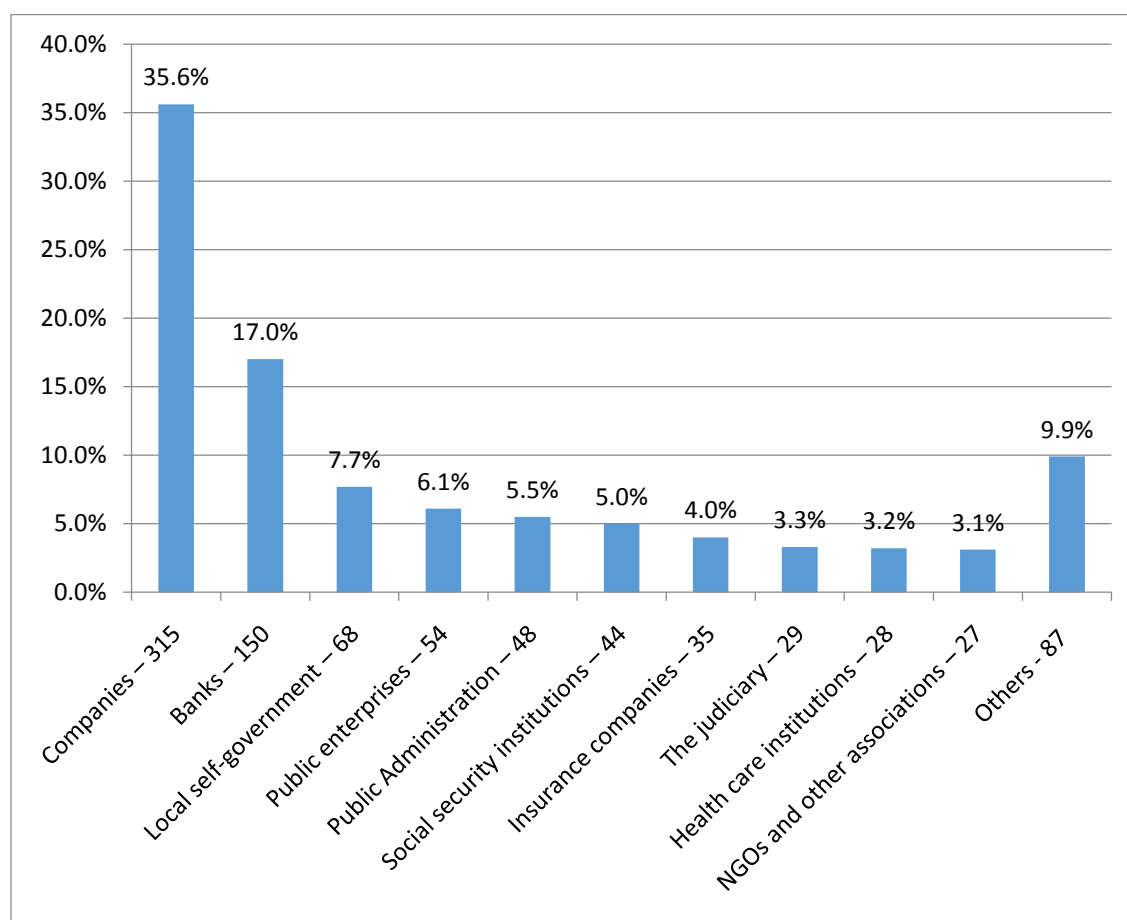
In cases where the Commissioner found violations of LPDP (434), he:

- **Issued 376 warnings;**
- **Issued 36 decisions;**
- **Filed 19 petitions for institution of infringement proceedings for violations of LPDP, and**
- **Filed 3 criminal reports.**

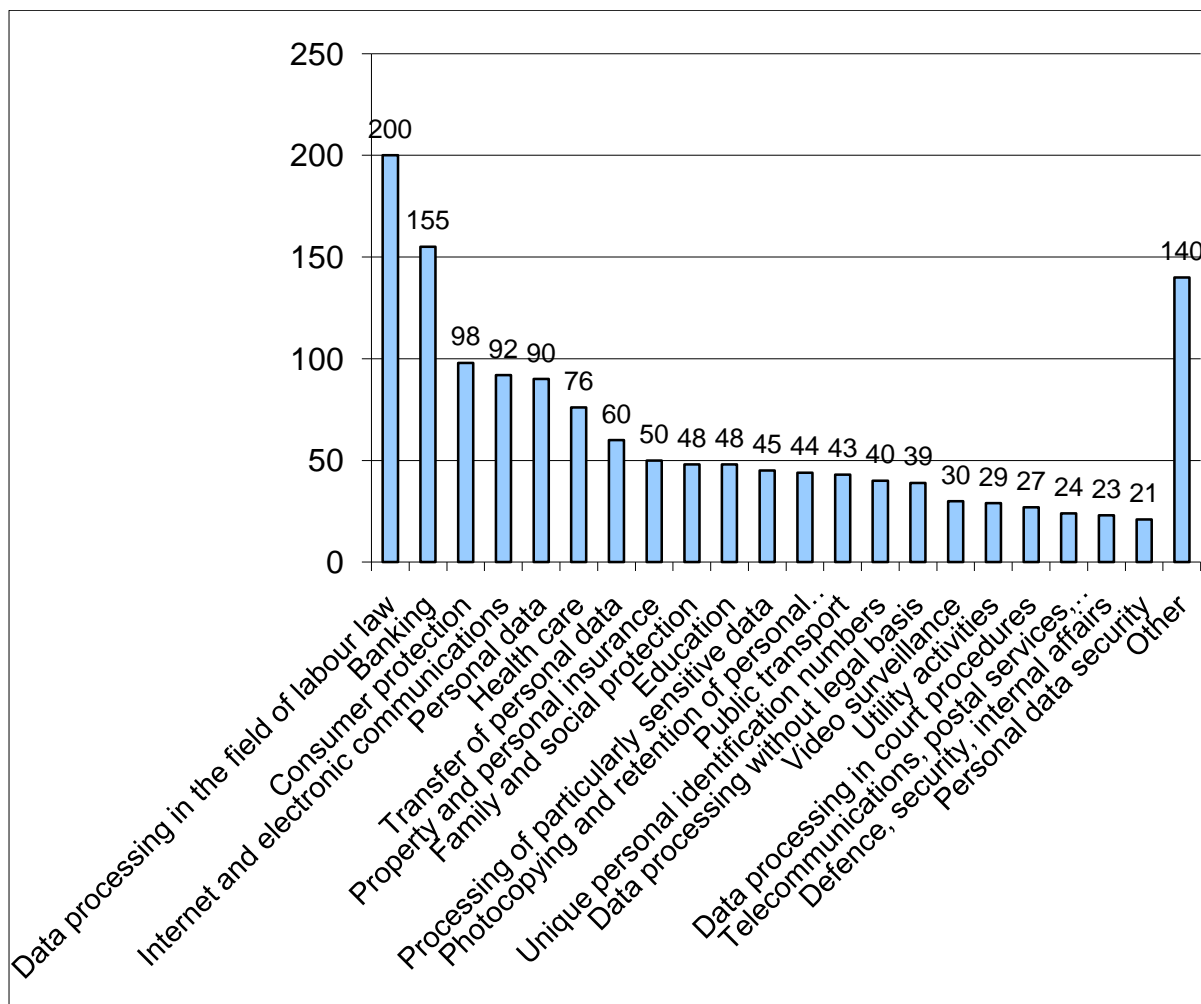
As regards data controllers inspected by the Commissioner in 2015, their structure and reasons for initiation of inspection are significantly different compared with the previous period.

Thus, data controllers inspected by the Commissioner in the 886 inspection procedures were as follows: companies - 315 (35.6%), banks - 150 (17%), local self-government authorities - 68 (7.7%), public enterprises - 54 (6.1%) etc. The most frequent reasons for inspection were: processing of data in the field of labour law - 200 (14%), banking 155 (11%), consumer protection 98 (6.9%), the Internet and electronic communications – 92 (6.5%), personal data 90 (6.3%), health care 76 (5.3%), transfer of personal data 60 (4.2%), property and personal insurance 50 (3.5%), family and social protection 48 (3.4%), education 48 (3.4%), processing of particularly sensitive data – 45 (3.2%), retention and photocopying of personal documents 44 (3.1%) etc.

Graph 9. Structure of data controllers inspected in 2015



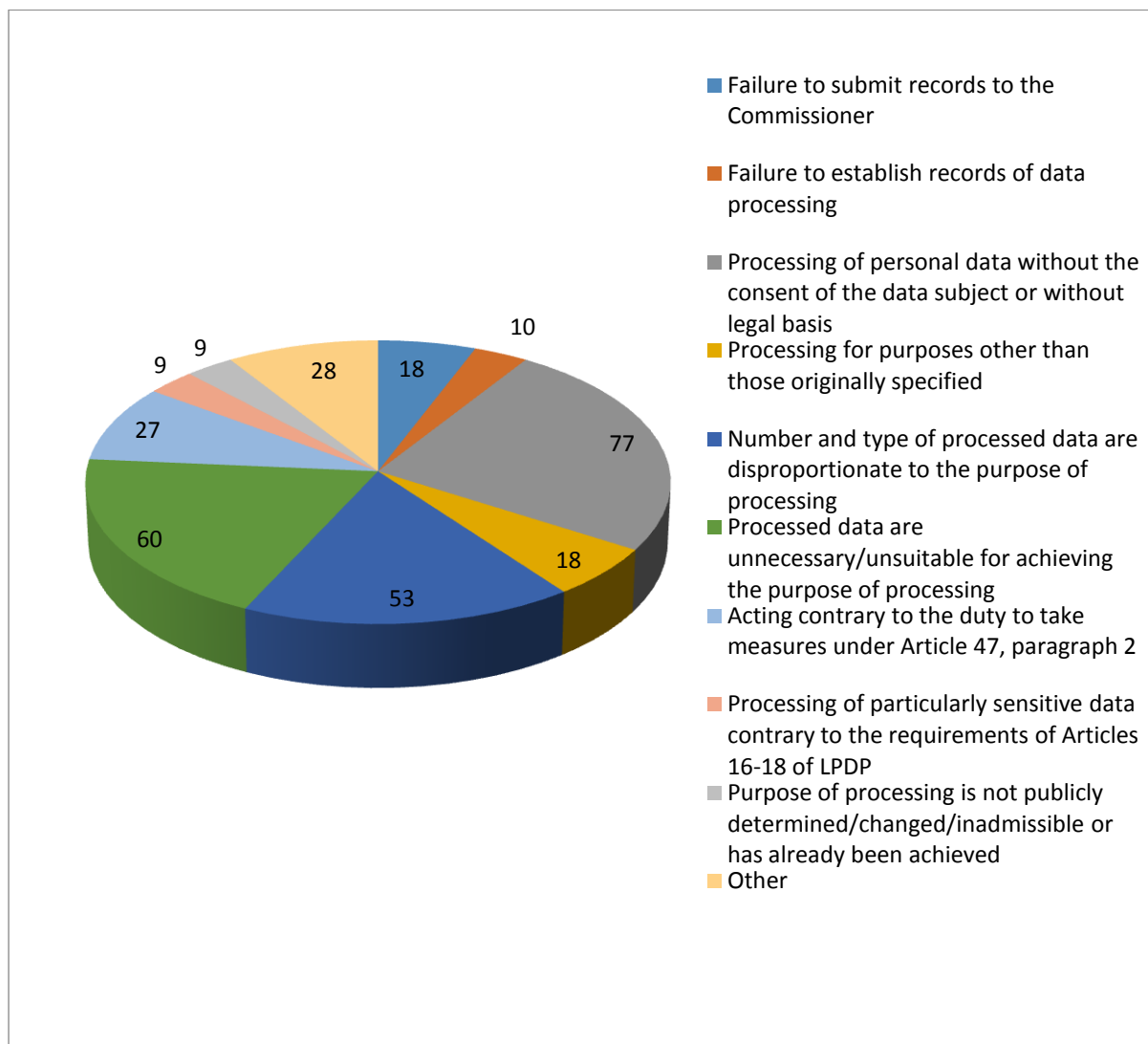
Graph 10. Most frequent reasons for initiation of inspection procedures pursuant to reports (236) or on own initiative (124)



In 376 cases the Commissioner issued warnings after he found violations of LPDP, including 219 warnings under Article 50 of LPDP (preliminary check of processing activities) and 157 warnings under Article 56 of LPDP (Commissioner's powers to take certain measures after he finds violations of the law during inspections).

On this occasion, we would particularly like to emphasise 157 warnings issued under Article 56 of LPDP, in which 312 irregularities were identified, which means that in certain cases the Commissioner found one or more violations of the law.

Graph 11. Most frequent irregularities identified in the warnings issued pursuant to Article 56, paragraph 1 of LPDP



During the reporting period, of 219 warnings issued under Article 50 of LPDP, data controllers complied with 155, or 71%. Of 157 warnings issued under Article 56 of LPDP, 139 data controllers (some data controllers received several warnings) were requested to inform the Commissioner about compliance with warnings and 119 of them did so (103 within the specified time limit, 16 upon expiry of the specified time limit), or 75%, 24 data controllers partially complied with warnings, while 6 data controllers failed to comply with warnings. The Commissioner took other measures within his powers against data controllers who failed to comply or did not fully comply with his warnings. **The Commissioner believes that failure to comply with warnings and failure to inform the Commissioner of compliance with warnings constitutes inadmissible disrespect of the law and the right guaranteed under the Serbian Constitution.**

During the reporting period, the Commissioner issued 36 decisions, including: 6 decisions ordering deletion of collected data, 20 decisions ordering deletion of collected data and rectification of irregularities within the specified time limit, 3 decisions ordering deletion of collected data, rectification of irregularities within the specified time limit and temporary ban on processing, 4 decisions on ordering deletion of collected data and temporary ban on

processing, 2 decisions ordering rectification of irregularities within the specified time limit and 1 decision ordering temporary ban on processing and rectification of irregularities within the specified time limit. Under these decisions (36) the Commissioner ordered 67 measures, including: in 26 cases he ordered rectification of irregularities within the specified time limit, in 8 cases he ordered temporary ban on processing performed contrary to the provisions of LPDP and in 33 he ordered deletion of data collected without a proper legal basis. **By the end of the reporting period, the Commissioner was informed that compliance with 36 decisions by data controllers was as follows: 30 decisions were fully or partially complied with (83.3%), 1 decision has not been complied with, while the remaining 5 decisions are pending.**

Examples:

1. The Commissioner inspected *ex officio* the implementation of and compliance with LPDP by the Ministry of Internal Affairs of the Republic of Serbia because in previous inspections he found that this Ministry kept data on imposed disciplinary measures on Criminal Records and the Records stated that the disciplinary measures had been imposed by judgements rather than by decisions and were in effect penalties.

In the course of inspection it was found that Article 37 of the Law on Underage Perpetrators and Criminal Law Protection of Underage Persons provides for keeping of criminal records for underage persons and states that the court which ruled in the first instance is the authority in charge of keeping such for these records, while Article 7, paragraph 2 of the Bylaw on the Manner of Keeping Records of Imposed Disciplinary Measures and Juvenile Prison Sentences provides that records of disciplinary measures imposed on underage persons which have been kept by a competent law enforcement authority as part of criminal records are to be retained by that authority exclusively for internal use. In its reply, the Ministry of Internal Affairs stated that, before the above Law entered into force, it had kept records of information on disciplinary measures imposed on underage persons and that since this Law entered into force (1 January 2006) it had not kept these records and had not entered newly-imposed measures against underage persons, but that it still processed information on imposed disciplinary measures it collected until 1 January 2006 within the Criminal Records. The Ministry of Internal Affairs stated the provisions of Article 1 of the Bylaw on Criminal Records as a legal basis for such data processing.

The Commissioner issued a warning pursuant to Article 56, paragraph 1 of LPDP in which he warned the Ministry of Internal Affairs as a data controller about the irregularities identified in the processing of personal data of persons against whom disciplinary had been imposed before 1 January 2006, because it processed the personal data in question without a legal basis, contrary to the provision of Article 8, item 1 of LPDP.

The Ministry of Internal Affairs sent a reply to the Commissioner, in which it stated it had complied with the Commissioner's warning by expunging and deleting all data on disciplinary measures imposed on underage persons from the Criminal Records.

2. The Commissioner inspected the implementation of and compliance with LPDP by the Public Utility Enterprise "Infostan", with registered offices in Belgrade, as a data controller. The aim of the inspection was to find facts about processing of personal data of users of utility services relating to a home insurance item for the benefit of the

insurance company “Generali osiguranje Srbija” insurance company which had been inserted in the consolidated utility bills sent to citizens in October 2015, together with the insurance offer of this insurance company.

In the course of inspection it was found that the data controller had stated the home insurance item in the amount of RSD 200.00 for the benefit of “Generali osiguranje Srbija” in the consolidated utility bills for September 2015; that the consolidated utility bills with the home insurance item in the amount of RSD 200.00, together with the insurance offer of “Generali osiguranje Srbija”, had been distributed to users of utility services starting from 1 October 2015; that the data controller sent the bill in question with the insurance offer to all users of utility services who had not had any other insurance policy included in their consolidated utility bills of utility services – 383,000 home addresses of users of utility services in total. During the inspection it was also found that the data controller had not obtained valid consent of data subjects in the manner and under the conditions set out in Articles 10 and 15 of LPDP for processing of personal data in questions of users of utility services (name, surname, address information, IDENT number) for the purpose of collecting home insurance premiums for the benefit of “Generali osiguranje Srbija”, i.e. for the purpose other than specified, which means that processing was performed without a legal basis.

On the basis of the facts found, the Commissioner issued a decision pursuant to Article 56, paragraph 2 of LPDP ordering the Public Utility Enterprise “Infostan” as a data controller to undertake the following actions: 1. to eliminate the irregularities in processing of personal data of users of utility services, including their names, surnames, address information and IDENT number, which it had carried out without a legal basis, i.e. without statutory authority or valid consent of the data subjects, for the purpose of collecting home insurance premiums for the benefit of “Generali osiguranje Srbija”, i.e. for purposes other than those originally specified; 2. to stop the personal data processing in question, which had been done contrary to provisions of the Law on Personal Data Protection.

The data controller informed the Commissioner in writing that it had complied with the above decision and that all activities in connection with the execution of the Agreement concluded between the Public Utility Enterprise “Infostan” and the “Generali osiguranje Srbija” insurance company were discontinued and that all issued bills were reversed.

The Commissioner also filed a petition for institution of infringement proceedings against the data controller as a legal entity and against the responsible person in the legal entity for the infringement provided for in Article 57, paragraph 1, item 2 of LPDP.

3. The Commissioner inspected the implementation of and compliance with LPDP by the Ministry of Internal Affairs of the Republic of Serbia as a data controller. The inspection was initiated pursuant to a petition filed to the Commissioner which stated that inadmissible data processing of six police officers employed at the border crossing Sremska Raca had been performed by their senior officer when filing a motion for a disciplinary action.

In the course of inspection the Commissioner found the following: that the commanding officer of the Border Police Station “Sremska Raca”, as the head of the organisational unit and an authorised person, had *ex officio* examined recordings made by the video surveillance system at the border crossing Sremska Raca, on which occasion he found that, in his opinion, certain police officers employed in the Ministry of Internal Affairs at

this border crossing had not performed their duties and tasks in connection with control of crossing of the state border in the manner required by the law; that, in December 2014, when filing a motion for a disciplinary action against these police officers, the commanding officer of the Border Police Station “Sremska Raca” had collected their personal data, including: names and surnames of police officers, names of their fathers, mothers and maiden names of their mothers, place and date of birth, permanent place of residence and address, unique personal identification numbers, job positions, information on their civil status and number of children, completion of military service, educational and vocational qualifications, the starting date of their employment at the Ministry of Internal Affairs and at the Border Police Station “Sremska Raca” and information on any past disciplinary action taken against them; that the commanding officer of the Border Police Station “Sremska Raca” had collected the personal data in question from police officers themselves and from the records kept by the Police Station and then recorded them in the “Minutes of Hearing of the Responsible Officer” and the “Performance Evaluation of Police Officers”, as well as in the “Motions for Disciplinary Action”, after which he submitted these documents to the chief of the Border Police Directorate of the Ministry of Internal Affairs, proposing that the recordings be used as evidence in the disciplinary action; and that the commander in charge of disciplinary action had passed resolutions to take disciplinary action against those police officers.

On the basis of the facts found, the Commissioner issued a warning pursuant to Article 56, paragraph 1 of LPDP, by which he warned the Ministry of Internal Affairs about the irregularities in personal data processing, including the fact that in the course of December 2014, for the purpose of filing motions for disciplinary action against six police officers employed in the same Border Police Station, the commanding officer of the Border Police Station “Sremska Raca” had collected and subsequently processed video recordings made by technical devices for video surveillance relating to these police officers and performed this processing for purposes other than those specified by the law, within the meaning of Article 8, item 2 of LPDP and that he had also collected and subsequently processed their personal data, including: names of their fathers, mothers and maiden names of their mothers, date and place of birth, information on their civil status and number of children, completion of military service, educational and vocational qualifications, the starting dates of their employment at the Ministry of Internal Affairs and at the Border Police Station “Sremska Raca” and information on any past disciplinary action taken against them, which data were not necessary to achieve the purpose of processing within the meaning of the provisions of Article 8, item 6 of LPDP.

The data controller submitted to the Commissioner a report on measures taken and activities planned in elimination of the identified irregularities in data processing stating that: the authorised commander in charge of disciplinary action of the Border Police Directorate who carries out disciplinary actions against the police officers at the Border Police Station “Sremska Raca” and the commanding officer of the Border Police Station “Sremska Raca” who had filed motions for disciplinary action had read the content of the Commissioner’s warning in order to exclude the video recordings from the case filed in the disciplinary action, on which occasion the commanding officer was ordered to take all necessary measures to ensure consistent compliance with the warning; that the Border Police Directorate would undertake necessary measures in the future to inform all case officers about the Commissioner’s warning and that working meetings would be organised at the regional centres of the Border Police with heads of regional centres, commanding officers of border police stations and case officers which would address the issue of regular and lawful processing of personal data; that the Border Police Directorate

would prepare a document with instructions, in which it will specify in detail the actions of data controllers in the performance of procedures within the sphere of competence of the Ministry of Internal Affairs set by the law, including personal data processing; and that the head of the Border Police Directorate had issued a dispatch to all organisational units within this Directorate ordering consistent compliance with the above warning and provisions of LPDP when collecting and processing personal data. In addition, the report proposed that the subject matter of the Law on Personal Data Protection be included in the study course *Theoretical Training* in order to provide for additional education on this subject.

4. The Commissioner inspected the implementation of and compliance with LPDP by the City Administration of the municipality of Zemun, as a data controller, because it had published on its official website the unique personal identification numbers of citizens/developers under the heading *Consolidated Building Permit Procedure – Register of Passed Decisions*.

In the course of inspection, the Commissioner found that the data controller had not protected (anonymised) this information when it was published, i.e. it had not taken appropriate technical, human resource and organisational measures for data protection in accordance with the set standards and procedures.

On the basis of the facts found, the Commissioner issued a warning pursuant to Article 56, paragraph 1 of LPDP, in which he warned the City Administration of the municipality of Zemun about the irregularities in processing of personal data within the meaning of Article 8, paragraph 1, items 1 and 6 of LPDP because it had published on its official website, under the heading *Consolidated Building Permit Procedure – Register of Passed Decisions*, certain decisions which contained, among other things, unique personal identification numbers of developers, without a proper legal basis, i.e. without statutory authority or the consent of the data subject, and thus made this information available to other persons, although this was unnecessary or inappropriate for the achievement of the specified purpose of processing.

The City Administration of the municipality of Zemun timely complied with the Commissioner's warning and protected (anonymised) the data in question.

In addition, the Commissioner also inspected *ex officio* the implementation of and compliance with LPDP by the Administration of the municipality of Mladenovac and the Administration of the municipality of Surcin. These Administrations also timely complied with the Commissioner's warnings and protected (anonymised) unique personal identification numbers of developers when they published this information on their official websites.

5. The Commissioner inspected the implementation of and compliance with LPDP by the Republic Geodetic Authority, as a data controller, to examine the legal basis, the purpose and the volume of processing of personal data contained in title deeds, as well as the practice of making these data available to third persons who filed requests for access, a copy or copy of the title deed.

During the course of inspection, the Commissioner found, through direct examination of the Request Form for issuing of a copy of the plan, a copy of the title deed and a copy of the land registry certificate, that this Form did not include a field in which third party applicants could state the purpose or explain their legal interest within the meaning of the

provision of Article 173, paragraph 3 of the Law on State Survey and Cadastre. He also found that, when access had been granted or a copy or transcript of the title deed had been issued to third party applicants who did not hold title to the property concerned, the existence of their legal interest had not been verified in practice. Since the data controller did not require from third party applicants to demonstrate their legal interest when filing requests for access to or a copy or transcript of the title deed, the data processing in question had been done without a proper legal basis, had not been done for the specified purpose and had been disproportionate within the meaning of Article 8, paragraph 1 of the law on Personal Data Protection. It was also found that the formation and maintenance of the cadastre, including issuing of information contained in the cadastre, was regulated by the Bylaw on Preparation and Maintenance of Cadastres, i.e. by secondary legislation, which was contrary to provisions of the Serbian Constitution and the Law on Personal Data Protection.

On the basis of the facts found, the Commissioner issued a warning pursuant to Article 56, paragraph 1 of LPDP, by which he warned the Republic Geodetic Authority about the irregularities in personal data processing within the meaning of Article 8, paragraph 1 of the Law on Personal Data Protection, because when this authority provided access to or issues a copy or a copy of the title deed, it made all personal data of the title holder named in the title deed available to third party applicants without a proper legal basis and did not take account of the stated purpose and proportionality of data processing.

The data controller complied with this warning and notified the Commissioner that it had begun requesting from third party applicants to demonstrate their legal interest when they submit requests for access to or a copy or transcript of a title deed.

In addition, the Commissioner also submitted an initiative to the Ministry of Construction, Transport and Infrastructure to harmonise the applicable regulations with provisions of the Serbian Constitution and the Law on Personal Data Processing, taking into account in particular the fact that collecting, keeping, processing and use of personal data must be regulated by a law and that secondary legislation (bylaws etc.) can only provide for technical and similar issues of data processing.

6. The Commissioner inspected the implementation of and compliance with LPDP by the company “SVEA FINANCE” d.o.o. Beograd as a data controller pursuant to a petition in which the petitioner stated that he had been receiving harassing phone calls on his landline phone number every day from the data controller warning him to pay debt which the petitioner contested and does not want to pay.

In the course of the inspection, it was found that the data controller had obtained the petitioner’s personal data on the basis of a debt assignment agreement signed with the company “VIP mobile” d.o.o. Beograd, with which the petitioner had had an Internet Provider Contract which had given rise to the claim contested by the petitioner. For the purpose of collecting the contested claim, the data controller had hired another legal entity, “CrediExpress” d.o.o. Beograd, with which it had signed an agency agreement under which that legal entity became a personal data processor in the case in question. It was found that this data processor had sent letters to debtors to remind them to pay their debt and called them on the phone numbers they provided. According to the reply of the data controller, the petitioner had been contacted by the data controller for debt collection purposes, but he contested the debt and refused to pay; however, the petitioner failed to provide “exonerating oral or written evidence.”

In his warning issued pursuant to Article 56 of LPDP, the Commissioner warned the data controller that it had carried out inadmissible data processing within the meaning of Article 8, item 3 of LPDP, because it continued calling the petitioner even after writing off the contested claim, since the purpose of data processing had already been achieved. The Commissioner further informed the data controller that it must comply with the principles of proportionality and purposefulness in processing of personal data, which implied that a data controller can process only those personal data which are necessary and appropriate to achieve the specified purpose of processing and that any data processing contrary to these principles was inadmissible. This meant that processing of information including the debtor's phone number by the creditor for the purpose of voluntary payment of debt was admissible and lawful until such time as the debtor refuses to pay the debt, contests the claim or otherwise makes it unambiguously clear to the creditor that voluntary debt payment would not be possible in the specific situation. When any of these situations occur, further processing of information including the debtor's phone number for the purpose stated by creditor or persons acting on his/her behalf and for his/her account is inadmissible under Article 8, item 6 of LPDP, because from that moment on this data is inappropriate for achieving the stated purpose of processing. Furthermore, the only bodies vested with the power to enforce debt collection are courts and private bailiffs, depending on the specific case, and they are allowed to process data specified by the law for this purpose.

7. The Commissioner inspected the implementation of and compliance with LPDP by the Preschool Institution "Vracar" in Belgrade as a data controller pursuant to a petition which stated that it published on the door of its facility "Biser" in Svetozara Markovica 14-18 in Belgrade a list of users who did not pay their debt owed to this institution.

In the course of the inspection, it was found that the data controller actually did so. It was also found that employees in this institution asked parents of the children who used this institution to pay their debt on several occasions to enable normal and regular teaching, provision of health care for children and appropriate care and meals, which this institution must provide under the Law on Preschool Education.

In his warning issued pursuant to Article 56 of LPDP, the Commissioner warned the data controller of the following: contrary to the provisions of Article 8, item 1 of LPDP, without statutory authority or consent for processing, the data controller had performed inadmissible processing of personal data of service users under contracts for day care of children at preschool institutions by publicly displaying over an unspecified number of days at the doors to its facility "Biser" at Svetozara Markovica 14-18 in Belgrade the "Notification on Users Who Have Not Paid Their Debts to This Institution" and the list titled "Debtors" which was incorporated in that notification and contained the names and surnames of eight children enrolled in this institution, with figures showing the nominal amount of debt; contrary to the provisions of Article 47 of LPDP, the data controller had failed to take technical, human resource and organisational measures to protect the personal data of service users it holds in the capacity of an education institution, in accordance with the applicable standards and procedures; contrary to the provisions of Articles 51 and 61, paragraph 2 of LPDP, the data controller had failed to present to the Commissioner the records of data files it kept on the basis of imperative regulations or data subjects' consent to register them with the Central Register.

The data controller sent timely notification to the Commissioner of its compliance with the warning and provided evidence in that regard.

8. The Commissioner inspected the implementation of and compliance with LPDP by the Republic Pension and Disability Insurance Fund as a data controller pursuant to a petition stating that in its branch office at Nemanjina 30 in Belgrade the data controller provided insurance beneficiaries on their request with a listing (M4 form) which contained information on their years of employment covered by insurance benefits, salaries, salary compensations, insurance calculation base, fees provided for by contracts and other fees and the amount of contributions paid by the applicant/employee for the purpose of enrolment of their children in preschool institutions.

In a field inspection of the data controller's facility at the above address, the Commissioner found that, instead of the certificates provided for in Article 142, paragraph 1 of the Law on Pension and Disability Insurance, the data controller had issued a listing containing all information on insurance beneficiaries' years of employment covered by insurance benefits, salaries, salary compensations, insurance calculation base, fees provided for by contracts and other fees and the amount of contributions paid by the applicant/employee for the purpose of enrolment of their children in preschool institutions.

Upon inspection, the Commissioner warned the data controller in accordance with Article 56, paragraph 1 of LPDP of irregularities in the processing of personal data due to the fact that, in its acting upon applications filed by individual insurance beneficiaries for the purpose of obtaining a certificate they need for the purpose of enrolling their children in preschool institutions, the data controller issued a listing (M4 form) which contained a full set of data relating to the employee concerned, including years of employment covered by insurance benefits, salaries, salary compensations, insurance calculation base, fees provided for by contracts and other fees and the amount of paid contributions, which was contrary to the provisions of Article 142, paragraph 1 of the Law on Pension and Disability Insurance, meaning that the data controller had processed personal data without a legal basis under Article 8, item 1 of the Law on Personal Data Protection.

The data controller timely notified the Commissioner of its compliance with the warning.

9. The Commissioner inspected the implementation of and compliance with LPDP by the Republic Pension and Disability Insurance Fund as a data controller in connection with collecting of evaluations made by medical committees relating to insurance beneficiaries/employees at all employers in the Republic of Serbia for the purpose of disbursement of salary compensation during temporary incapacitation.

In the course of the inspection, it was found there was no legal basis for this processing of personal data because it was not provided for by any law and could not be done on the basis of consent given by an employee as a data subject because such consent could not be deemed to have been freely given since it was stated as a condition that had to be met for the employee to be able to exercise the entitlement to salary compensation. Namely, Article 170 of the Law on Health Insurance provides that salary compensation is paid on the basis of a report on temporary incapacitation issued by an expert medical authority in the relevant procedure, which means that processing of personal data of health insurance beneficiaries contained in an evaluation made by a medical committee is inadmissible. In

addition, such processing is also inadmissible within the meaning of Article 8, items 6 and 7 of LPDP, because it implies processing of personal data that are unnecessary and inappropriate for achievement of the purpose of processing, while their volume and type are disproportionate to this purpose.

Upon inspection, the Commissioner warned the data controller pursuant to Article 56, paragraph 1 of LPDP that such data processing was inadmissible and noted in particular the need to take urgent and comprehensive measures to rectify these irregularities in personal data processing, taking into account the huge volume of data processing performed in such manner, the possible serious consequences of their potential abuse, as well as the inability to exercise the entitlement to salary compensation in case employees did not provide their employers with the evaluations made by medical committees.

After being served with the warning, the Republic Health Insurance Fund informed the Commissioner in writing it had ordered all its organisational units not to demand of employers to present assessments made by medical committees for their employees.

10. The Commissioner inspected the implementation of and compliance with LPDP by Erste Bank of Belgrade as a data controller pursuant to a number of complaints relating to renewal of authorised current account overdraft. Namely, when renewing the authorised current account overdraft of its clients, Erste Bank requested them to provide, in addition to their personal data, also the unique personal identification numbers of their household members and to specify the degree of kinship for the purpose of filling out the compulsory Related Party Information Registration Form for Retail Customers.

In the course of the inspection, the Commissioner found that the data controller performs inadmissible data processing under Article 8, items 1, 6 and 7 of LPDP in this manner, because there was no legal basis for the processing in question and natural persons whose unique personal identification numbers were provided had not given their consent to this type of processing. This means that unique identification personal numbers of household members were not necessary and appropriate data to achieve the purpose of processing and were also disproportionate to the purpose of processing.

In his warning issued pursuant to Article 56 of LPDP, the Commissioner warned the data controller of this irregularity in personal data processing and the data controller notified the Commissioner within the statutory time limit that it had complied with the warning and changed the content of the form filled out by its clients who are natural persons immediately upon receiving the warning and that it no longer collects unique personal identification numbers of family household members of its clients.

5.1.3. Commissioner's acting on Complaints

The Commissioner is vested with powers to act on complaints as the authority of second instance pursuant to complaints against violations of rights in connection with personal data protection and/or in connection with access to personal data. The procedure of ruling on complaints by the Commissioner is governed by the Law on General Administrative Procedure, unless the LPDP provides otherwise.

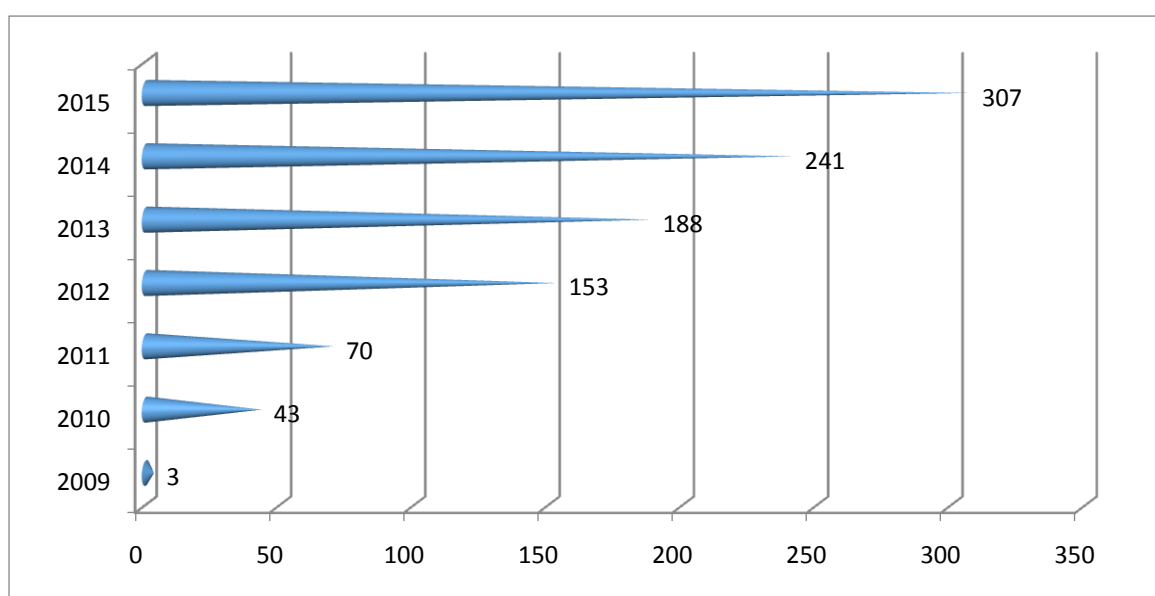
A person who previously addressed a data controller with a request for the exercise of rights in connection with data processing and/or in connection with access to personal data

may lodge a complaint with the Commissioner in accordance with LPDP. The Commissioner forwards a complaint to the data controller concerned for a reply and then decides on the complaint. The Commissioner's decisions on complaints are binding, final and enforceable and, if necessary, they are enforced by the Government.

In the course of 2015, the Commissioner received 307 complaints, which was 27.8% more than in 2014, 63.9% more than in 2013, 101.3% more than in 2012 and 616.3% more than in 2010.

In 2015, the Commissioner handled 362 complaints, of which 307 were received in 2015, while the remaining 55 were carried forward from 2014.

Graph 12. Complaints lodged with the Commissioner by years



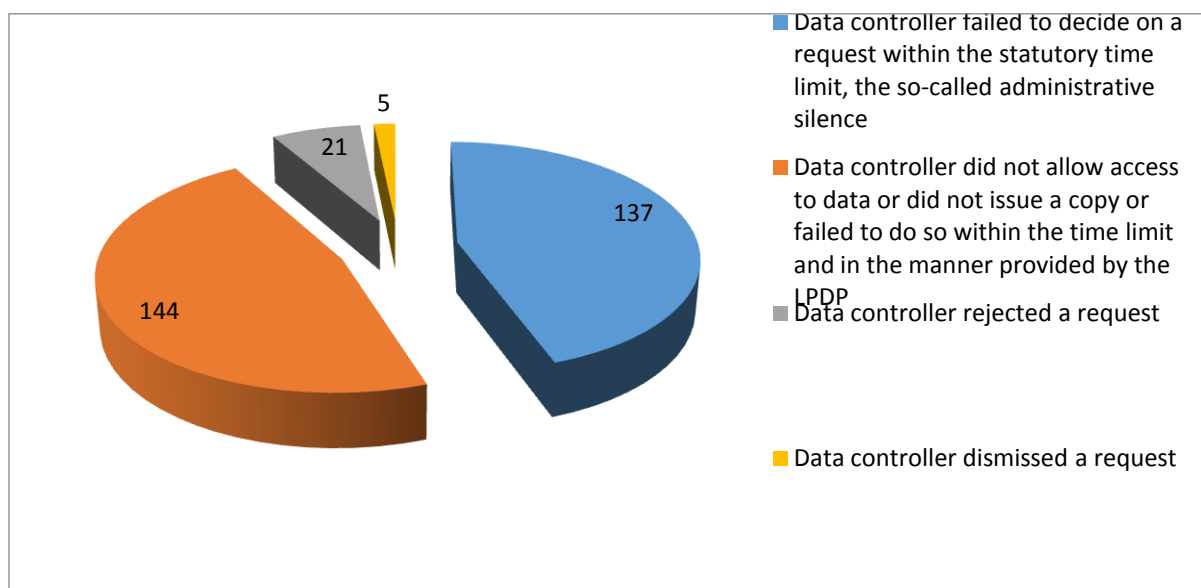
The most frequent cause for lodging of complaints with the Commissioner was the fact that data controllers did not allow access to the data or did not issue copies of the data or failed to do so within the time limit and in the manner provided for by the LPDP (144). Compared with 2014, when this reason accounted for 43.6% of all complaints, in 2015 this reason accounted for 46.8% of complaints lodged, which is indicative of a negative trend of increase.

The second most frequent cause for lodging of complaints with the Commissioner was failure of data controllers to decide on requests within the statutory time limit, the so-called administrative silence (137). Compared with 2014, when 40.2% of all complaints received by the Commissioner were lodged for this reason, in 2015, 44.8% complaints were lodged for this reason, which is indicative of increased ignoring of requests by data controllers and this is also a negative trend of increase.

In 2015, the Commissioner received 26 complaints against rejections (21) or dismissal (5) of requests by data controllers. These two reasons for lodging of complaints with the Commissioner were less frequent than in 2014, when a total 39 complaints were

lodged with the Commissioner for these reasons, including complaints against rejections (35) or dismissal (4) of requests by data controllers.

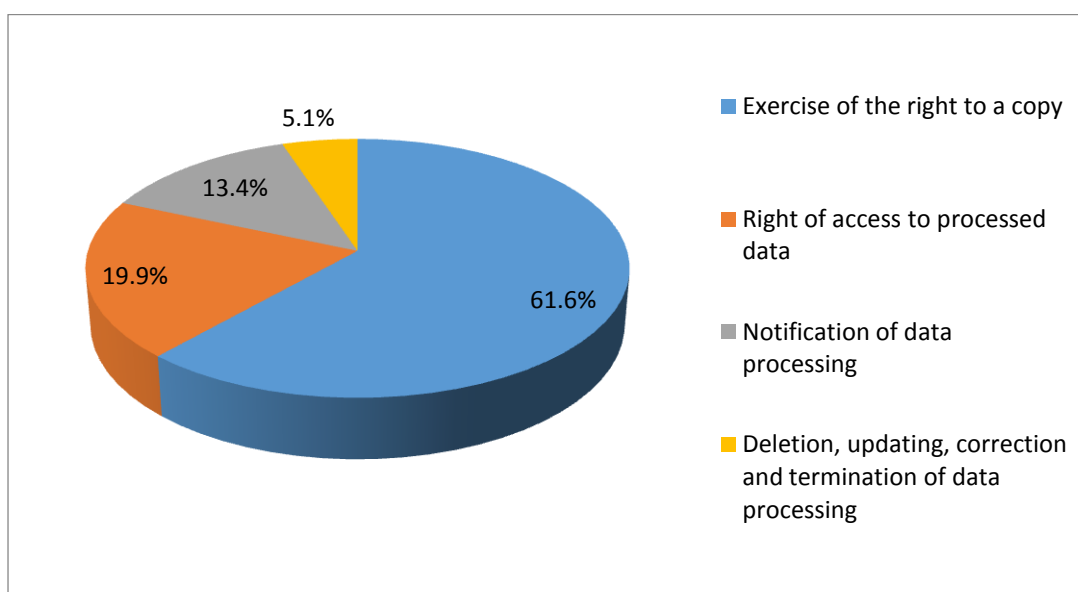
Graph 13. Reasons for lodging of complaints with the Commissioner in 2015



Complaints lodged with the Commissioner related to data contained in: police records, human resource records, records in the fields of pension and disability insurance and health insurance, court case files, case files of social welfare centres, registers of births, marriages and deaths, medical documentation, phone listings etc.

The requests which resulted in the lodging of complaints with the Commissioner due to inadequate actions of data controllers included the exercise of: the right to a copy (61.6%); the right of access (19.9%); the right to notification of data processing (13.4%) and deletion, updating, correction and termination of data processing (5.1%). The majority of complaints received by the Commissioner included the right to a copy (61.6%), which shows that this is the most frequent request submitted to data controllers, while the lowest number of complaints included deletion, updating, correction and termination of data processing, which is indicative of low citizens' interest in correction of their data processed by data controllers.

Graph 14. Requests which resulted in lodging of complaints with the Commissioner in 2015

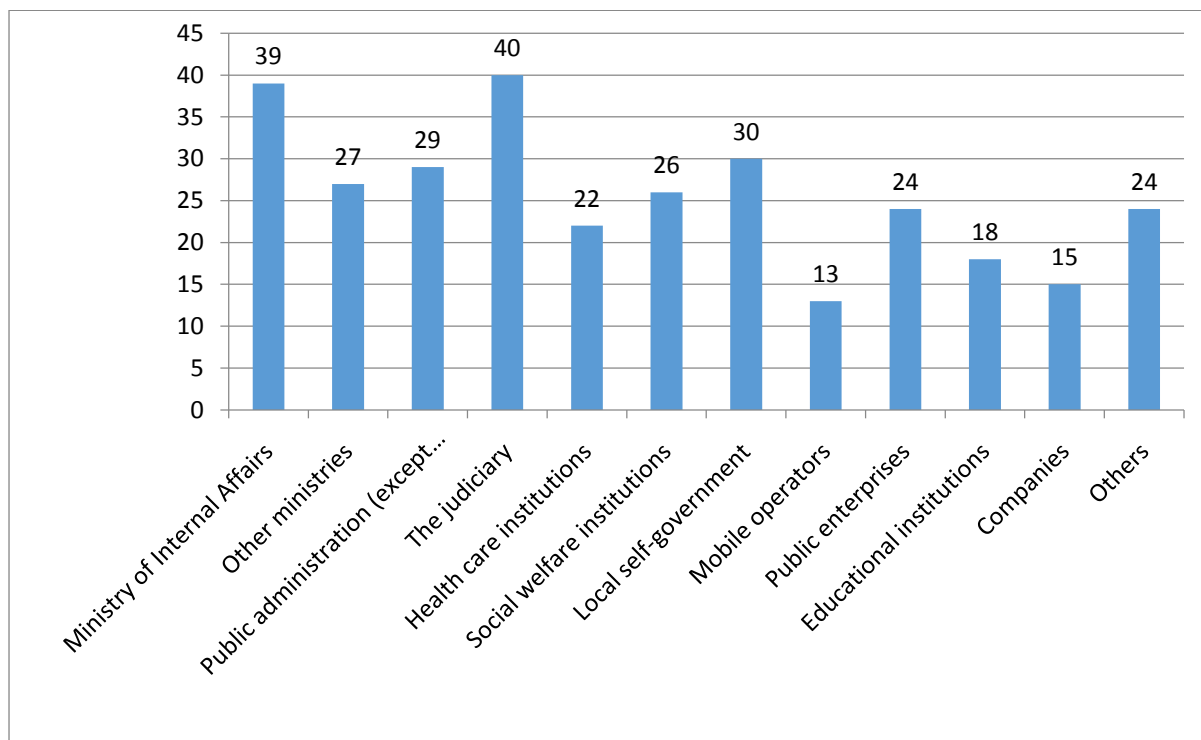


The majority of the complaints – as many as 281 – were lodged due to actions of public authorities or their failure to act.

Of a total of 307 complaints lodged in 2015, the largest (40) were lodged against (in)action of data controllers in the field of the judiciary, which was 55% higher than in 2014 when 22 complaints were lodged. 39 complaints were lodged against (in)action of the Ministry of Internal Affairs, while 27 complaints against (in)action of all other ministries put together.

It is noticeable that almost all data controllers, regardless of their type, almost equally (fail to) act on requests which result in lodging of complaints with the Commissioner.

Graph 15. Data controllers whose actions or failure to act were causes for lodging of complaints



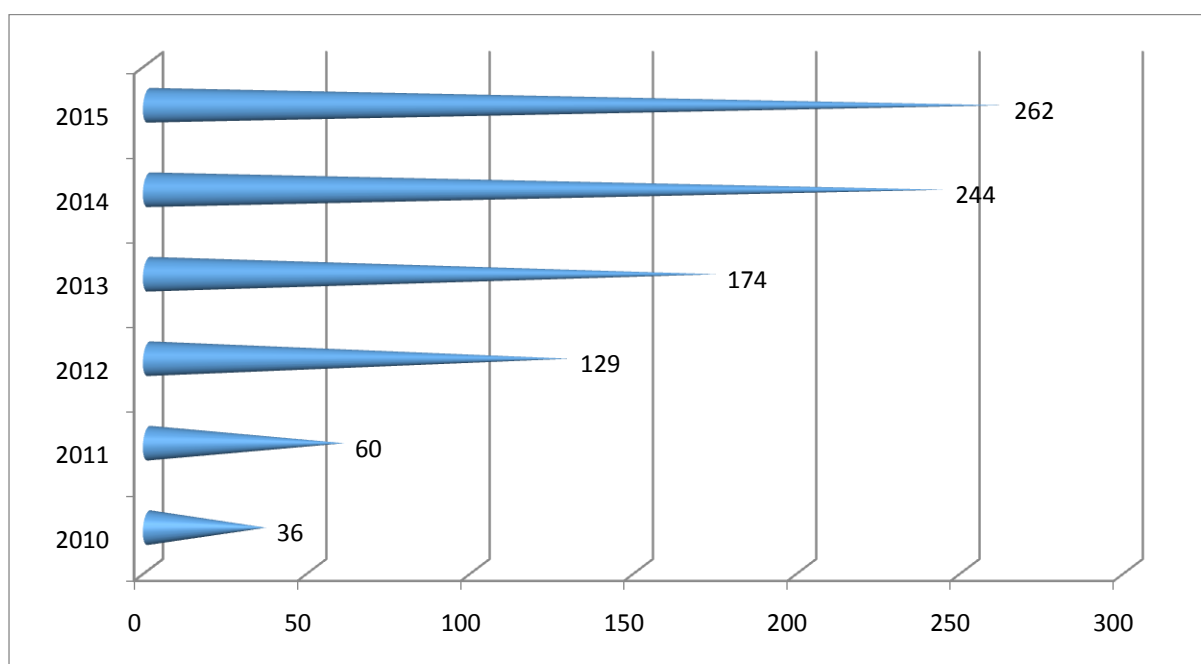
Complaints lodged against the Ministry of Internal Affairs accounted for 13% of all complaints (307) lodged with the Commissioner. These complaints were lodged against acting, failure to act or belated acting of the Ministry of Internal Affairs on citizens' requests for exercise of the rights in connection with data contained in the numerous records kept by the Ministry of Internal Affairs.

By recent internal reorganisation of the Ministry of Internal Affairs, the former Bureau for Information of Public Importance and Personal Data Protection, which operated within the Minister's Office, was replaced by the Unit for Information of Public Importance and Personal Data Protection within the Secretariat of the Ministry of Internal Affairs and it is too early to evaluate whether this change will result in the improvement in acting on citizens' requests and in the field of personal data protection in general.

In the course of 2015, the Commissioner acted on 362 complaints, of which 307 were received in 2015, while 55 were carried forward from 2014. Of those 362 complaints, in 2015 the Commissioner closed the proceedings pursuant to 262 complaints (207 from 2015 and all 55 from 2014), while 100 complaints were carried forward to 2016.

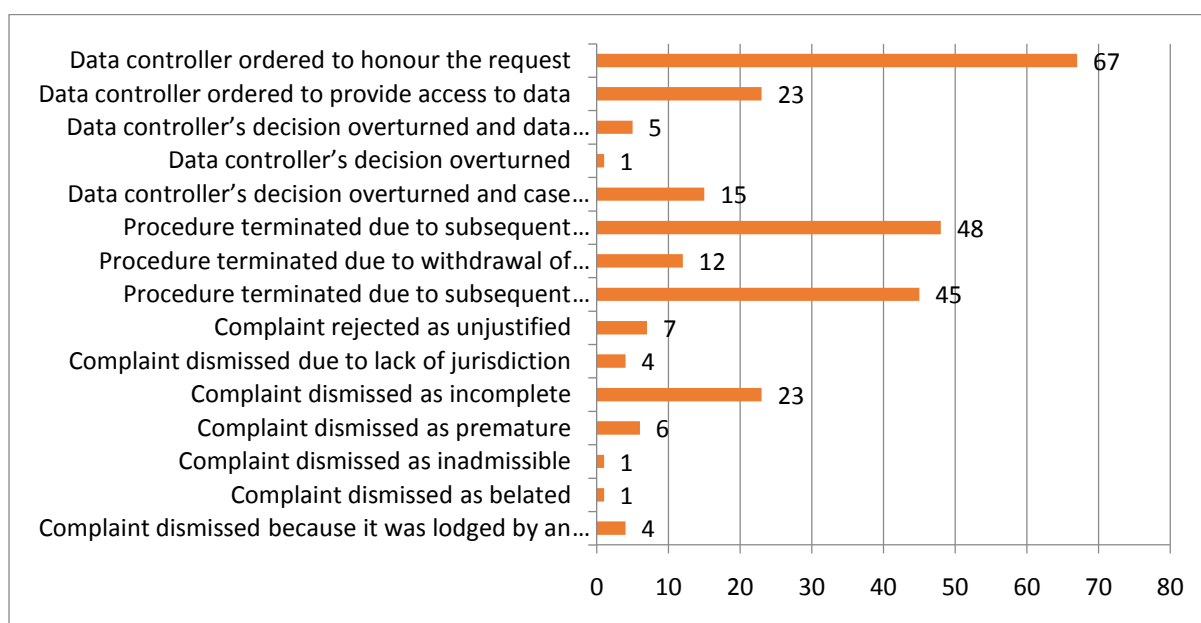
The number of proceedings pursuant to complaints closed has been increasing year after year, in accordance with the increase of complaints lodged with the Commissioner.

Graph 16. Proceedings pursuant to complaints closed by the Commissioner by years



On the basis of the Commissioner's decisions passed pursuant to complaints, the Commissioner found that complaints were justified in 171 cases, or 65.3%, of which in 111 cases, or 42.4%, decisions with orders for data controllers were issued. The Commissioner ordered the data controller to honour the request (67), ordered the data controller to provide information to the requester (23), overturned data controller's decision and ordered honouring the request (5), overturned data controller's decisions (1) and overturned data controller's decision and returned the case to the data controller for renewed procedure (15). In 60 cases, or 22.9%, the Commissioner terminated procedures by passing resolutions because data controllers honoured the requests before the Commissioner passed decisions pursuant to complaints or requesters withdrew complaints. The Commissioner closed other complaints, or 34.7% of total complaints closed, by rejecting complaints as unjustified (45) in a total of 52 cases, or 19.8%, or rejected requests as unjustified (7), while in 39 cases, or 14.9%, he dismissed complaints on formal grounds (due to lack of jurisdiction, incomplete complaint, premature complaint or inadmissible complaint).

Graph 17. Commissioner's decisions on complaints in 2015



During the reporting period, the Commissioner issued a total of 95 binding and final decisions ordering data controllers to honour the requests or to provide access to data to requesters and ordering data controllers to inform him about compliance with decisions. **82 data controllers, or 86.3%,** that complied with the Commissioner's decisions **informed the Commissioner about this**, 8 data controllers failed to comply with decisions and 5 data controllers have not informed the Commissioner whether they complied with his decisions.

Examples:

1. A requester had filed a request for the exercise of rights in connection with personal data processing to the data controller "Piraeus Bank" ad Beograd, in which he requested notification of all data about him processed by the data controller. The data controller did not reply to the request within the statutory time limit; instead, it referred the requester to the Commissioner's Central Register on the Commissioner's official website and to the data file titled "Data of Bank Product and Service Users", stating that he could find answers to all his questions in this data file. Dissatisfied with the data controller's reply, the requester lodged a complaint with the Commissioner, who passed a decision ordering the data controller to send the requester a notification on all personal data about him it processes without delay or within five days of the receipt of the decision at the latest. The explanation to the decision stated that the requester had an indisputable right under Article 19 of LPDP to be fully informed by the data controller which data about him it processed and that the data controller's statement that it had honoured the request because it referred the requester to the Commissioner's Central Register cannot be accepted since the records on data files which data controllers report to the Commissioner for the purpose of registration with the Central Register do not contain personal data for individual natural persons, which was why the data controller must honour the request and notify the requester on the data about him it processes.

2. A requester had filed a request for the exercise of rights upon access to personal data with the Ministry of Internal Affairs of the Republic of Serbia, as a data controller, in which he requested deletion of data from the security check made when he applied for enrolment in the Basic Police Training Centre. More specifically, he requested deletion of the

information that “he often provides security services in hospitality and catering establishments and at private parties.” The data controller rejected the request, claiming those were not personal data within the meaning of LPDP because an individual cannot be identified on the basis of the data the deletion of which had been requested, they did not grant access to personal data and it was impossible to identify the data subject. The requester filed a complaint with the Commissioner against this decision of the data controller, claiming this information was false because he has never provided security services, which was why he had demanded that it be deleted. In proceedings pursuant to the complaint, the Commissioner quashed the first-instance decision and returned the case for renewed procedure, explaining that the appealed document did not fully state clear and unambiguous reasons on the basis of which it could be concluded whether fact-finding in this case had been done lawfully and whether substantive law had been correctly applied. The reason for this was the fact that it remained unclear on what basis the data controller had recorded the following piece of information: “he often provides security services in hospitality and catering establishments and at private parties” as a result of a security check of the requester’s personal data; whether those data had been recorded on the basis of specific evidence, i.e. specific documents maintained by the data controller in its data files, or had been taken from the records kept by another data controller authorised to collect personal data the accuracy of which can be verified by a search, or whether those data had been recorded on the basis of statements and opinions of other persons. In his decision, the Commissioner ordered the data controller to determine in a renewed procedure whether these constituted personal data within the meaning of Article 3 of LPDP and to determine accordingly whether requirements for deletion of data under Article 22 of LPDP had been met.

3. A requester had filed a request with the Republic Pension and Disability Insurance Fund in which he requested a copy of data on the years of employment covered by insurance benefits for his ex-spouse, her earnings from all sources (employment contract, additional work contract, service contract and copyright contract), data on payment of salary contributions, as well as registration and deregistration for insurance during a specified period. In handling the request, the authority of first instance sent a document to the requester stating that the data controller issues data on years of service, salary, hours of work and registration and deregistration for insurance only on personal request of a data subject or pursuant to a court order. The requester lodged a complaint against this document with the Commissioner, who found that the complaint to be unjustified because, under the LPDP, only the data subject can exercise the rights in connection with personal data processing (information, access and copy) and the rights pursuant to access to personal data (correction, modification, updating, deletion, termination and suspension of processing); as the requester filed a request for data relating to another person, this was not a case of exercising the rights in connection with personal data processing within the meaning of the LPDP.

4. A requester had filed a request for the exercise of rights in connection with personal data processing to the Serbian Chamber of Commerce and Industry, as a data controller, in which he requested a copy of the M4 form for the period 1975-1986. As the data controller failed to honour the request within the statutory time limit, the requester lodged a complaint with the Commissioner. Since the data controller had allowed the requester to exercise his right to a copy after the requester lodged the complaint against failure to honour the request, but before the Commissioner decided on the complaint, the Commissioner passed a resolution and terminated proceedings pursuant to the complaint.

5. A requester had filed a request for the exercise of rights in connection with personal data processing with the Telekom Srbija a.d. Beograd (Serbian telecommunications company), in which he sought a copy of a listing of outgoing phone calls for his landline and mobile phone for a specific period. In handling the request, the data controller issued a document rejecting the request, claiming that, according to the General Customer Service Instructions of the Customer Care Function of the “Telekom Srbija” mobile telephony operator, itemised phone bills can be issued for maximum six previous months and that data demanded by competent institutions (police, courts etc.) can be provided in accordance with the available information in a database of the data controller exclusively on their request. The requester lodged a complaint with the Commissioner against this document. In proceedings pursuant to the complaint, the Commissioner quashed the data controllers’ document by his decision and ordered the data controller to inform the requester whether it processed data on outgoing and incoming calls from his landline and mobile phone numbers during the specified period and, if so, to provide him with a copy of a listing of outgoing calls for the requested period. The explanation of the decision states that the data controller did not appropriately find facts and misapplied substantive law, i.e. did not handle the request in accordance with the provisions of LPDP and did not provide the requester with a full notification of his data which were being processed, while the claims made in the appealed document are contradictory. Taking into account that the request had been filed in accordance with LPDP and not in accordance with the right of the requester as a user of the data controller’s services, the data controller also had to handle the request in accordance with the scope of the requester’s right under LPDP, instead of handling the request in accordance with the provisions of the Instructions it referred to in the appealed document, i.e. the data controller had to inform the complainant whether it processed the requested data and whether it could issue a copy of those data and, if it considered there were justified reasons to restrict those rights, it had to pass relevant decisions in that regard. Since the data controller failed to do so, the Commissioner upheld the complaint and the requester’s undisputable right to be accurately and fully informed by the data controller whether it processed data on telephone communication made from his landline and mobile phone numbers, and if so, to provide him with a copy of a listing of outgoing calls for the specific period covered by the request because the Commissioner did not find any reasons to restrict these rights within the meaning of Article 23 of LPDP.

5.1.4. Keeping of Central Register

All controllers of personal data files are required under the law to submit to the Commissioner records of their data files and/or any changes thereof for the purpose of registration with the Central Register within 15 days of creation or change of such files, as the case may be.

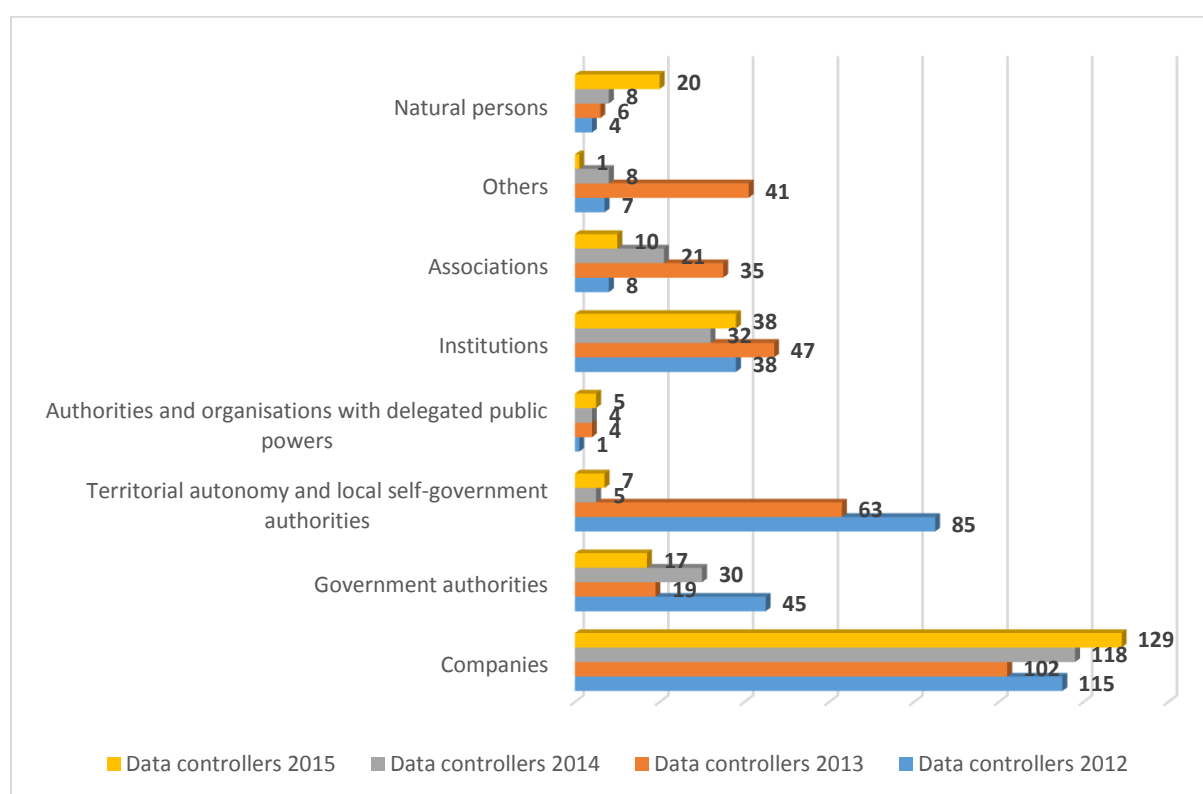
According to the Commissioner’s rough estimate, there are about 350,000 controllers of personal data in Serbia, including public authorities, territorial autonomy and local self-government bodies and other authorities or organisations with delegated public powers, legal entities and individuals who process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

The situation as regards registration with the Central Register as at 31 December 2015 shows that a total of 1,619 personal data controllers submitted to the Commissioner records of the 8,404 personal data files they keep. This practically means

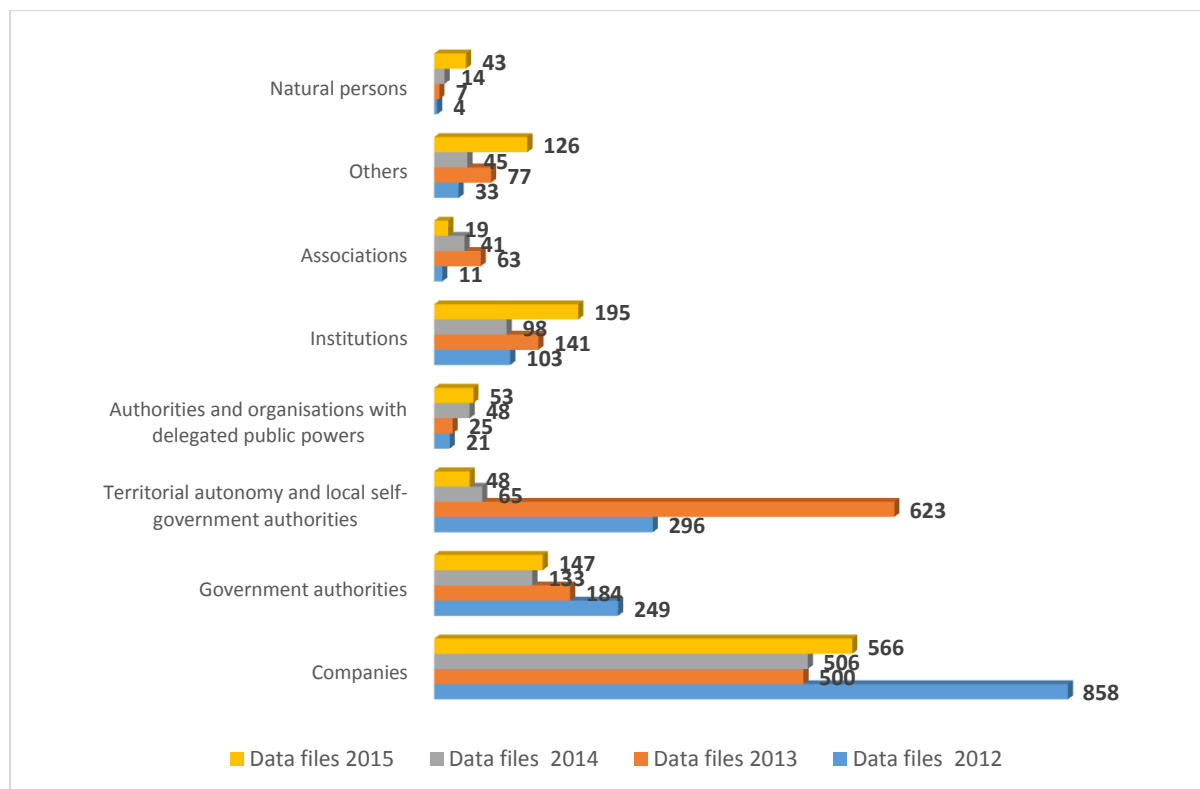
that seven years after LPDP entered into force only 1,619, or about 0.5%, of about 350,000 data controllers in Serbia have complied with LPDP. There is absolutely no justification for ignoring and disrespect of this statutory obligation *en masse*.

In addition, the negative global trend of fewer and fewer data controllers submit fewer and fewer records of their data files with the Central Register, with minor yearly oscillations. Thus, in 2011, 394 data controllers submitted records of 2,083 data files they maintain, in 2012, 303 data controllers submitted records of 1,575 data files they maintain, in 2013 - 317 data controllers and 1,620 data files and in 2014 - 226 data controllers and 950 data files. **Such trend continued in 2015, when 227 data controllers submitted records of 1,197 data files they keep.**

Graph 18. Overview of registered data controllers in the period 2012-2015 by types of data controllers



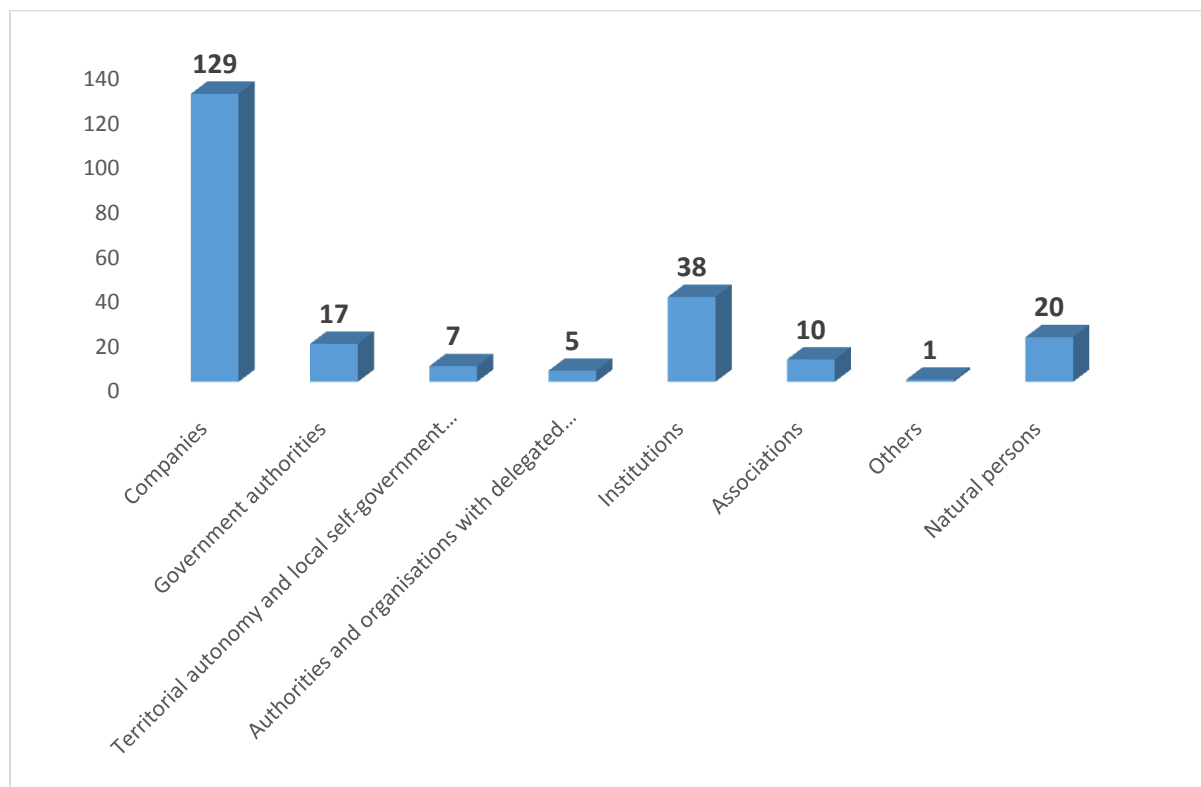
Graph 19. Comparative overview of registered records of personal data files in the period 2012-2015 by types of data controllers



As regards submission of records of data files to the Commissioner for the purpose of registration with the Central Register in 2015, the highest response was among companies – 129, which submitted 566 records of personal data files. The response rate was lower for public authorities – 29 (government authorities – 17, territorial autonomy and local self-government authorities – 7 and bodies exercising delegated public powers – 5) which submitted a total of 248 records of data files (government authorities – 147, territorial autonomy and local self-government authorities – 48 and bodies exercising delegated public powers – 53). Somewhat higher response was observed for institutions – 38, which submitted 195 records of personal data files. All other categories of data controllers fared even worse in terms of compliance. Also, the above categories of data controllers submitted the highest number of records of data files to the Commissioner (companies – 566, an average of 4.4 data files per company, public authorities – 248, an average of 8.6 records per public authority and institutions – 195, an average of 5.1 records per institution).

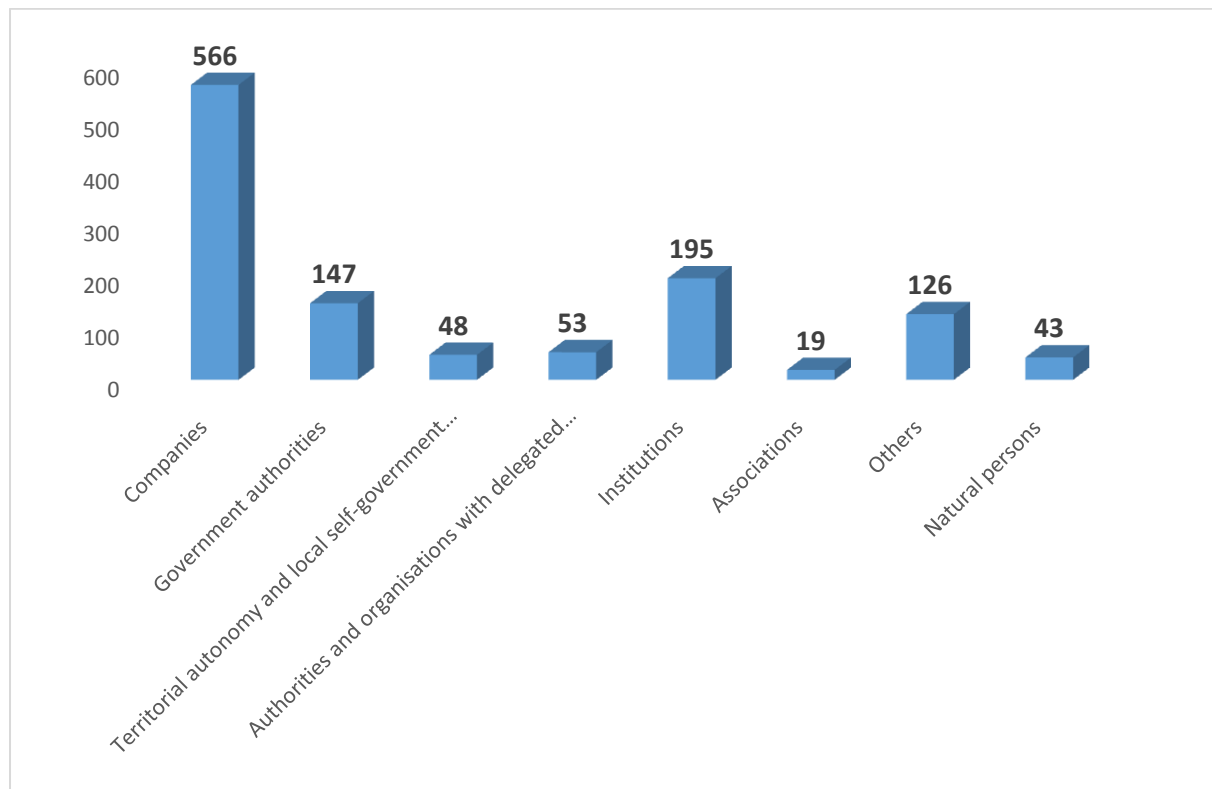
In addition to records of 1,197 data files maintained by data controllers, during the course of 2015 the Commissioner also received 97 requests for changes in the existing records of data files they maintain, of which 90 received a positive reply, 2 were closed by official notes and 5 were carried forward to the following year.

Graph 20. Data controllers registered with the Central Register in 2015 by types of data controllers



In 2015, the majority of data controllers registered with the Central Register were companies, which was expected, since this group includes the highest number of data controllers having their head offices in foreign countries and are well aware of compliance with this duty in their countries. They are followed by territorial autonomy and local self-government authorities, institutions, government authorities etc. In this regard, it is necessary to take into account the fact that the number of companies significantly exceeds the number of government authorities. The following data controllers submitted the highest number of records of data files they maintain: “Leoni wiring systems southeast”, Prokuplje (89), the National Bank of Serbia (85), the Directorate for Public Transport of the City Administration of Belgrade (34), “Nestle Adriatic”, Belgrade (25), the Special Hospital for Chemodialysis “Fresenius medical care” (23) etc.

Graph 21. Data files registered with the Central Register in 2015 by types of data controllers

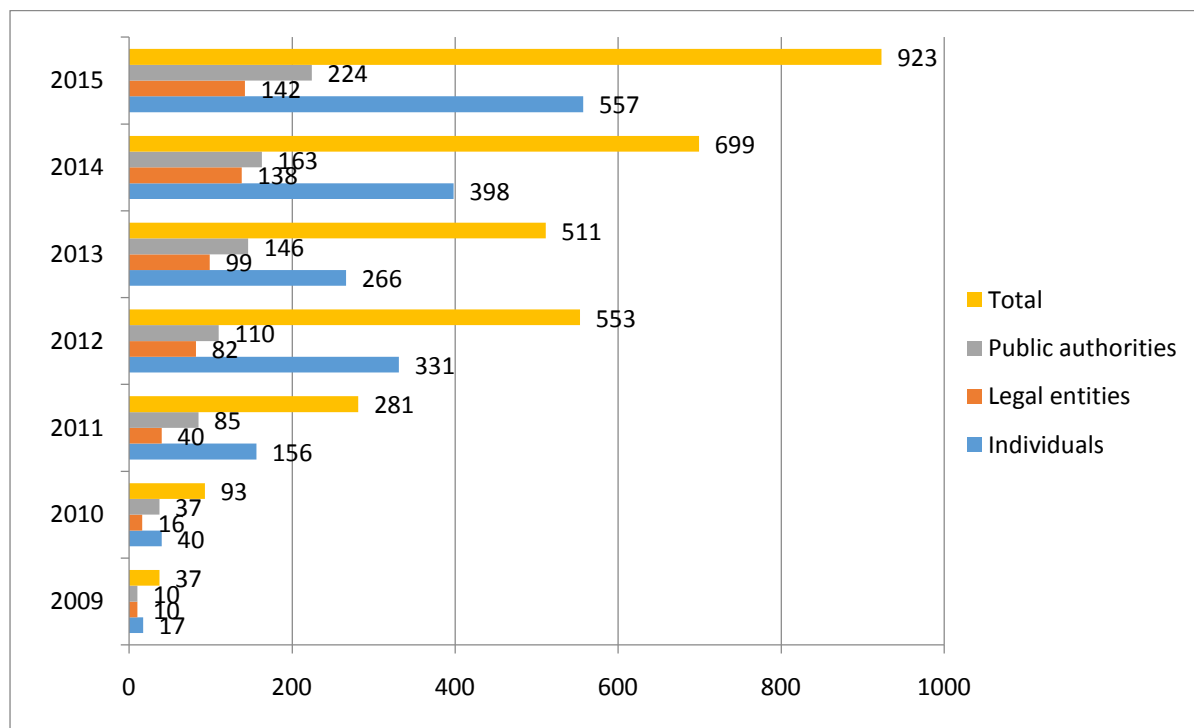


The Commissioner continues to make efforts and calls for compliance with this duty under LPDP, primarily through warnings sent to data controllers, presentation of legislative provisions, education of large data controllers' staff and filing of requests for initiation of infringement proceedings.

5.1.5. Issuing of Opinions

In 2015, the Commissioner issued a total of 923 reasoned opinions and responses, including 557 to individuals, 142 to legal entities and 224 to governmental authorities and local self-government authorities.

Graph 22. Number of opinions issued by the Commissioner by years



The number of opinions issued by the Commissioner is constantly increasing. As an example, in 2009, the issued 37 opinions (17 to individuals, 10 to legal entities and 10 to public authorities), in 2010 he issued 93 opinions (40 to individuals, 16 to legal entities and 37 to public authorities), in 2011 he issued 281 opinions (156 to individuals, 40 to legal entities and 85 to public authorities), in 2012 he issued 523 opinions (331 to individuals, 82 to legal entities and 110 to public authorities), in 2013 he issued 511 opinions (266 to individuals, 99 to legal entities and 146 to public authorities), while in 2014 he issued 699 opinions (398 to individuals, 138 to legal entities and 163 to government authorities and local self-government authorities). **The number of opinions issued in 2015 (923) is 32% higher compared with 2014 when the Commissioner issued 699 opinions.**

Of 224 opinions issued to governmental authorities and local self-government authorities, 86 related to laws, including 79 to draft laws and 7 to bills. The Commissioner issued these 86 opinions on request of government authorities (59) and on his own initiative (27).

The Commissioner issued opinions relating to the following draft laws on request of government authorities and local self-government authorities: the Draft Law on Police, the Draft Law amending the Law on Emergencies, the Draft Law amending the Law on Road Traffic Safety, the Draft Law on Records and Data Processing in the field of Internal Affairs on two occasions, the Draft Law on Public Order, the Draft Law on Public

Assembly (to the Ministry of Internal Affairs), the Draft Law on Organisation and Powers of Public Authorities in the Fight against Organised Crime, Terrorism and Corruption, the Draft Law on Free Legal Aid, the Draft Law amending the Law on Notaries Public, the Draft Law Seizure and Confiscation of the Proceeds from Crime, the Draft Law Enforcement and Security on two occasions (to the Ministry of Justice), the Draft Law on Sports on three occasions (to the Ministry of Youth and Sports), the Draft Law on Housing and Building Maintenance on two occasions, the Draft Law on Legalisation of Buildings on two occasions, the Draft Law on Working Hours of Crews of Vehicles Engaged in Road Transport and Tachographs on three occasions, The Draft Law on Reporting and Recording of Permanent Tenants in Apartments Owned by Citizens, Endowments and Foundations on two occasions, the Draft Law on Investigation of Accidents in Air, Rail and Water Transport (to the Ministry of Construction, Traffic and Infrastructure), the Draft Law on Temporary Limitation of Rights of Economic Operators, the Draft Law on Cooperatives on two occasions (to the Ministry of Economy), the Draft Law on Civil Servants, the Draft Law on General Administrative Proceedings on two occasions, the Draft Law Setting the Maximum Number of Employees in the Public Sector, the Draft Law on Register of Persons Employed, Selected, Appointed, Designated and Hired in the Public Sector (to the Ministry of Public Administration and Local Self-Government), the Draft Law on Patents, the Draft Law on Textbooks on two occasions, the Draft Law amending the Law on Research and Development Activities (to the Ministry of Education, Science and Technological Development), the Draft Law amending the Law on Waters, the Draft Law amending the Law on Waste Management, the Draft Law on Spirits (to the Ministry of Agriculture and Environment Protection), the Draft Law on IT Security on two occasions (to the Ministry of Trade, Tourism and Telecommunications), the Draft Law on Manufacturing and Sales of Weapons and Military Equipment (to the Ministry of Defence), the Draft Law amending the Law on Mining and Geological Researches (to the Ministry of Mining and Energy), the Draft Law on Register of Persons Employed, Selected, Appointed, Designated and Hired in the Public Sector, the Draft Law on Deposit Insurance Agency on two occasions, the Draft Law on Deposit Insurance on two occasions, the Draft Law amending the Law on Mortgage (to the Ministry of Finance), the Draft Law on Memorials (to the Ministry of Labour, Employment, Veteran and Social Affairs), the Draft Law amending the Law on Old and Rare Library Material, the Draft Law amending the Law on Library IT Activities, the Draft Law amending the Law on Mandatory Copies of Publications, the Draft Law amending the Law on Culture (to the Ministry of Culture and Information), the Draft Law on Gender Equality (to the Serbian Government), the Draft Law amending the Law on State Survey and Cadastre on two occasions (to the Republic Geodetic Authority).

The Commissioner issued opinions relating to the following draft laws on his own initiative: the Draft Law on Personal Data Protection, the Draft Law amending the Law Seizure and Confiscation of the Proceeds from Crime, the Draft Law on Organisation and Powers of Public Authorities in the Fight against Organised Crime, Terrorism and Corruption (to the Ministry of Justice), the Draft Law Draft Law on Public Order, the Draft Law amending the Law on Law on Emergencies, The Draft Law amending the Law on Road Traffic Safety (to the Ministry of Internal Affairs), the Draft Law amending the law on Waters, the Draft Law amending the Law on Forests, the Draft Law on Spirits (to the Ministry of Agriculture and Environment Protection), the Draft Law on Basic Elements of Education System, the Draft Law on Innovation Activity, the Draft Law amending the Law on Research and Development Activities (the Ministry of Education, Science and Technological Development), the Draft Law on IT Security, the Draft Law on Advertising, the Draft Law amending the Law on Tourism (the Ministry of Trade, Tourism and

Telecommunications), the Draft Law amending the Law on Geological Researches (to the Ministry of Mining and Energy), the Draft Law amending the Law on Patents (to the intellectual Property Office), the Draft Law on Manufacturing and Sales of Weapons and Military Equipment (to the Ministry of Defence), the Draft Law Working Hours of Crews of Vehicles Engaged in Road Transport and Tachographs (to the Ministry of Construction, Transport and Infrastructure), the Draft Law Rights of Veterans, Disabled Veterans, War-Disabled Civilians and Members of Their Families (to the Ministry of Labour, Employment, Veteran and Social Affairs), the Draft Law amending the Law on Medical Chambers (to the Ministry of Health), the Bill on Passenger Cable Cars, the Bill amending the Law on Banks, the Bill amending the Law on the National Bank of Serbia, the Bill amending the Law on Real Estate Sales, the Bill amending the Law on Defence, the Bill amending the Law on Serbian Army and the Bill on Weapons and Munitions (to the National Assembly).

The Commissioner also issued opinions relating to the bills adopted by the Serbian Government on his own initiative (the Bill on Passenger Cable Cars, the Bill amending the Law on Banks, the Bill amending the Law on the National Bank of Serbia, The Bill amending the Law on Real Estate Sales, the Bill amending the Law on Defence, the Bill amending the Law on Serbian Army and the Bill on Weapons and Munitions). The Commissioner issued these opinions to presidents of competent committees of the National Assembly because backers did not request the Commissioner's opinion during preparation of these Bills.

In his opinions relating to draft laws and bills the Commissioner pointed to constitutional guarantees of personal data protection and the duty to regulate processing of these data by the law instead by secondary legislation in terms of the following minimum issues: the purpose of data processing, the type of data being processed, the manner of the use of data, the type of users who will have access to data and time limits for keeping of data. He also noted that processing of personal data performed as part of security and other checks must be regulated by the law and that only the volume of data necessary to achieve the relevant purpose can be processed (the Commissioner's opinions relating to the Bill amending the Law on Serbian Army, the Draft Law on Textbooks and the Draft Law on Enforcement and Security). In addition, in his opinion relating to the Draft Law on Enforcement and Security the Commissioner pointed to the need to appropriately regulate publishing of data on the Internet, emphasizing that its nature provides unlimited possibilities to download and copy the data published in this manner. Finally, the Commissioner also emphasised that audio and video recording can put at risk citizens' safety and privacy and that processing of personal data collected in this manner must be appropriately regulated by the law (opinion relating to the Draft Law on Public Order).

The Commissioner also issued opinions on secondary legislation and strategic and other instruments from the aspect of his powers. In that context, the Commissioner issued opinions on seven such documents on request of competent authorities or on his own initiative, including: the Draft Platform for Negotiations and Conclusion of a Social Security Agreement between the Republic of Serbia and the People's Republic of China, the Confidentiality and Non-Disclosure Statement signed by experts included in data migration process under the Tax Administration project financed from IPA 2011 fund, the Draft Analysis of the Law on Data Confidentiality performed by the Centre for Euro-Atlantic Studies, the Bylaw on Records in the field of Private Investigation Activities, the Bylaw on Applications for Devices and Software Support for Lawful Interception of Electronic Communications and Retention of Data on Electronic Communications, the Financial

Investigation Strategy, the Draft Action Plan on Implementation of the Public Administration Reform Strategy of the republic of Serbia.

In his opinions relating to implementation of the Law on Personal Data Protection, the Commissioner presented his views on the use of data for research and development purposes, the use of video surveillance systems for the purpose of recording employee attendance, publishing of lists of individuals on official websites of public authorities to ensure transparency of procedures, publishing of photos and other personal data in information brochures, treatment of personal data processed in connection with whistleblowing etc.

5.1.6. Commissioner's Activities in connection with Transborder Transfer of Data out of Republic of Serbia

In the course of 2015, the Commissioner acted on eleven requests for transborder transfer of personal data out of Serbia, of which nine were received in 2015, while two were carried forward from the previous year. The Commissioner passed nine decisions pursuant to the requests, including seven decision allowing the transborder transfer of personal data and two resolutions to terminate the procedure, while the remaining two requests have been carried forward to the following year. It should be noted that in early 2016 the proceedings pursuant only one of these two requests was closed by a decision allowing the transborder transfer of data.

Countries to which transborder transfer was requested included the USA, China, Mexico, the Czech Republic and India. In most cases, applicants were large business corporations which sought to transfer personal data from Serbia to their contractual processors for the purpose of creating centralised databases (e.g. of employees) and corporate management of those data on international group level.

One of requests which the Commissioner handled and allowed transborder transfer of data to the USA was filed by a hotel established in the territory of the Republic of Serbia which belongs to an international hotel chain. The request included personal data of hotel guests relating to their consumer demands, while the purpose of transborder transfer was to make these data available to other hotels in this hotel chain, which would then be able to adjust in advance the service they provide to preferences of a specific guest.

The procedure in those cases is to find all facts that may be relevant in decision-making before transborder transfer of data out of Serbia is permitted on the basis of requests and enclosed documents. In decision-making, the Commissioner takes into account all circumstances of personal data processing by the data controller that intends to transfer those data from Serbia. The Commissioner takes into account in particular: the purpose of processing; the basis for processing; the type of personal data; the duration of processing for which transborder transfer is requested; safeguards put in place before, during and after the transfer; protection of data subjects' and other facts relevant for decision-making in such cases. After this procedure, the Commissioner decides whether transborder transfer of personal data from the Republic of Serbia is allowed or not. A decision passed by the Commissioner may be challenged in an administrative dispute initiated pursuant to a complaint.

Judging by the requests received so far, most of them are not sufficiently substantiated and supporting documents tend to lack sufficient evidence for fact-finding for the purpose of deciding on transborder transfer of data from Serbia. On the one hand, this

further complicates decision-making in these cases, while on the other hand it shows that data controllers also find it difficult to understand their obligations in connection with transborder transfer of data due to insufficient regulation of the procedure. These primarily include relevant facts in connection with: legal basis for processing and transfer; identity of data controllers responsible for processing and transfer of such data; identity of data processors, data recipients and other persons to whom the data controller intends to make those data available; the manner in which rights, duties and responsibilities of the data controller and the processor in connection with further processing and safeguards are regulated; the manner in which the rights of individuals with regard to processing are protected etc. Due to these and other shortcomings, parties in procedures are often ordered (sometimes repeatedly) to make their requests compliant and to provide complete and proper documentation. For the purpose of clarification of the procedure and overcoming the shortcomings of LPDP in this regard, the Commissioner gives expert opinions in connection with transborder transfer of data and provides support to parties to enable them to prepare proper and duly reasoned requests and supporting documents.

However, the practice so far has shown that the procedure of deciding on admissibility of transborder transfer of personal data out of Serbia is insufficiently regulated, which is why it is necessary to regulate this issue in more detail and properly by the law, in accordance with the arrangements contained in relevant international documents in this field.

5.1.7. Commissioner's Activities aimed at Affirming of the Right to Personal Data Protection

In 2015, as in the previous period, the Commissioner continued carrying out a number of activities on the promotion and affirmation of the right to personal data protection. These activities for example included the Commissioner's participation in educative seminars and trainings and also in round tables, conferences, issuing of expert publications etc. In addition, the Commissioner addressed data controllers by communications in which he pointed to irregularities in implementation of LPDP and the necessity to rectify those irregularities. The Commissioner also informed the public or only the expert community 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. Finally, the Commissioner was providing formal, and often also informal, assistance and advice to citizens for efficient implementation of LPDP.

Trainings/Seminars

The Commissioner delivered a number of lectures in the field of personal data protection, including in particular:

- A lecture at a seminar organised by the Prosecutors' Network of the Western Balkans – International Cooperation in Criminal Justice, with support from the Republic Public Prosecutor's Office, in Belgrade and in Nis;
- A lecture at the expert advisory meeting titled "Challenges of Video Surveillance at Workplace and in Public Areas" organised by the Serbian Corporate Security Managers' Association, in cooperation with the Southeast Europe Corporate Security Association

(SECSA), Business School “Integrated Security and Development” (Zagreb) and the Chamber of Industry and Commerce of Belgrade;

- A lecture at expert training “Strengthening Civil Servants’ Capacity for Implementation of the Law on Personal Data Protection” organised by the Human Resource Management Service of the republic of Serbia;

- A lecture delivered at a seminar organised by the German-Serbian Serbian Business Association on the topic “How to apply the Law on Personal Data Protection”;

- A lecture at XV Symposium on Forensics in Occupational Health, organised by the Association of Forensic Experts in Occupational Health, which was held in Vrnjacka Banja;

- A lecture in security and security challenges in the field of personal data protection organised by the Forum Medija company;

- A lecture in personal data safety organised by the Karanovic-Nikolic law office;

- Lectures for: students at the Faculty of Law of the University of Belgrade, held at the Commissioner’s premises, the aim of which was to inform the students in detail about the powers, the duties and the scope of work of this institution, as well as about the problems the Commissioner faces in his work; students and other participants enrolled in the School of Human Rights “Vojin Dimitrijevic”; students at the Faculty of Orthodox Theology; students at the Faculty of Law of the University of Nis; students at the Faculty of Philosophy of the University of Nis; and students at the Faculty of Organisational Sciences of the University of Belgrade;

- An interactive lecture for the participants in the one-semester knowledge innovation course titled “Parliament and Democracy”. The course was organised as part of the project “Strengthening the Oversight Function and Transparency of the Serbian National Assembly” implemented by the UNDP in cooperation with the National Assembly of the Republic of Serbia and was held at the Faculty of Political Sciences of the University of Belgrade;

- A lecture titled “Personal Data Protection and Freedom of Information – the case of Serbia” for the sixth generation of students in the Politics II module, the “PolitiKas” educational programme intended for party-political activists who share the values advocated by the Konrad Adenauer Foundation;

- A lecture on the powers and work of the Commissioner for coordinators for Roma issues and Roma NGOs, which was organised by the Office for Roma Inclusion and was held in Palic;

- A lecture in data confidentiality in patients’ medical documentation organised by the Psychiatry Clinic of the Clinical Centre of Serbia.

Conferences/Round Tables

As part of commendation of the International Data Protection Day, 28 January, the Commissioner organised a conference for the public, at which he presented the main challenges and obstacles in the field of personal data protection and in his work.

The Commissioner presented the Report on Supervision of Implementation of and Compliance with the Law on Personal Data Protection by Electronic Communications Operators providing Internet Access and Online Services at a conference he organised for the media on 2 July. In his Report the Commissioner emphasised that the situation with regard to personal data protection in the field of electronic communications, including in particular internet services, was far from satisfactory and a matter of grave concern. The main culprit for the underlying causes of this state of affairs (lack of legislative provisions and appropriate measures) is the government. On the basis of this and with a view to remedying the situation

in this field the Commissioner issued recommendations, some of which have already been given, including: passing of a new Personal Data Protection Strategy and an Action Plan on its implementation; enactment of a new Law on Personal Data Protection; enactment of a new Law on Electronic Communications or amendment of the existing one; putting in place an effective inspection system to enforce the Law on Electronic Communications; passing of relevant amendments to legislative provisions in order to put in place a system for interception of electronic communications and access to retained data through the formation of a single national register to which all competent government authorities authorised to lawfully intercept and access retain data would submit their requests for interception of communications or access to retained data in real time, based on court orders. This national centre would integrate the existing parallel technical functionalities of different agencies and the police into a single national agency that would act as a provider of sorts of all those services that are necessary to intercept communications and other signals and access retained data to all authorised users.

In addition, the Commissioner took part in numerous other conferences, round tables and other meetings in the field of personal data protection, such as:

- The round table titled “Security Checks System in Serbia in Disagreement with the Constitution” organised by the Centre for Euro-Atlantic Studies as part of the project “Enactment of the Law on Security Checks – Towards Greater Compliance with the Constitution”, supported by the OSCE Mission to Serbia;
- Presentation of a survey of who collects data about us, where are such data kept and who has access to the carried out by the Share Foundation;
- A meeting to commend the International Data Protection Day, 28 January, organised by the IT Society of Serbia and the Serbian Chamber of Commerce and Industry;
- The international conference “Alternatives to Incarceration – the Path towards Reducing Overpopulation of Penal and Correctional Institutions”, organised by the Belgrade Centre for Human Rights;
- A round table on implementation of the Law on Misdemeanours with presidents and judges of magistrates’ courts, which addressed in particular the issues and dilemmas which arose in preparation of amendments to this Law;
- The international conference organised by the Ombudsman titled “Ombudsmen/Human Rights Institutions – Challenges in Exercise of Human Rights in the Refugee/Migrant Crisis”;
- The work of the working party organised within the framework of the TAIEX Expert Mission for the purpose of final harmonisation of the Law on Personal Data Protection with *acquis communautaire*;
- The work of the Bizit conference, held for the second time, with the aim of raising awareness of the professional community on the importance of use of the modern information technologies in business operations;
- The Child Online Protection Conference, which is a part of the Global Programme to Build Capacity to Tackle Online Child Sexual Exploitation and is implemented by the relevant national partners with the support of UNICEF and the UK Government;
- The conference titled “Statistical Population Register” held in Sabac, which was organised by the Statistical Office of the Republic of Serbia;
- The conference titled “Effective Strategies to Deal with Cyber/ICT Security Threats” organised as part of Serbia’s OSCE Chairmanship-in-Office, with participation of representatives of the OSCE Secretariat in Vienna;

- The third regional conference on freedom of expression on the Internet, which addressed the strategies to tackle legal, regulatory and technological challenges of the digital media environment. The conference was organised by the OSCE Mission to Serbia, the OSCE Representative on Freedom of the Media, the School of Public Policy at the Central European University in Budapest and the Share Foundation;
- The conference titled “Information Security and Large Data Files” organised by the Ministry of Trade, Tourism and Telecommunications in cooperation with the US Embassy in Belgrade, the Ministry of Defence and the Ministry of Internal Affairs;
- A public hearing titled “Cyber Security in the Republic of Serbia” organised by the Defence and Internal Affairs Committee of the National Assembly with the aim of informing members of the Committee and interested members of the public on threats for cyber security in Serbia;
- The Belgrade Security Forum titled “Can Europe Redefine Itself?”. This fifth Forum was organised by the Belgrade Fund for Political Excellence, the Belgrade Centre for Security Policy and the European Movement in Serbia;
- A meeting of the Subcommittee on Justice, Freedom and Security which addressed the current situation in Serbia regarding implementation of *acquis communautaire* in connection with 23 and 24. The meeting was organised by the European Integration Office;
- The conference and exhibition Infotech 2015 organised by the Association for Computing, IT Technologies, Telecommunications, Automatization and Management of Serbia, under the auspices of line ministries of the Serbian Government;
- A meeting organised by the Ministry of Internal Affairs as part of activities under the project “Towards the National Framework for Cyber Security in Serbia: Building the Multi-Partner Platform”;
- The round table titled “Law on Security Checks – Towards Greater Compliance with the Constitution” organised by the Centre for Euro-Atlantic Studies;
- A meeting dedicated to formation of the National Cyber Incident Response Centre (CIRT) and the national multi-partner cyber security body, organised by the Diplo Centre and the OSCE Mission to Serbia;
- A meeting dedicated to establishment of the Geographic Information System for Roma Settlements in Serbia organised by the OSCE Mission to Serbia as part of the project European Support for Roma Inclusion;
- Presentation of the Feasibility Study of New Business Models of Digital Economy Based on Transborder Transfer of Personal Data for Central and East Europe, organised by the KPMG;
- The round table titled “The Role of the Media in Awareness Rising of Personal Data Protection” organised by the IT Society of Serbia and the Chamber of Commerce and Industry of Belgrade;
- The round table titled “Draft Law on Personal Data Protection” organised by the Ministry of Justice;
- An advisory meeting titled “Security of News Websites” organised by the Ministry of Culture and Information in cooperation with the Ministry of Internal Affairs and the Republic Public Prosecutor’s Office;
- The conference titled “Protection of Security and Integrity of Journalists in the OSCE Region” organised by the Ministry of Culture and Information and the Ministry of Foreign Affairs with support of the OSCE Representative on Freedom of the Media;

- An international conference where working version of the text of the Draft Law on General Administrative Proceedings was presented, with exchange of experiences in acting of public administration both in Serbia and in the region. The meeting was organised by the Ministry of Public Administration and Local Self-Government, in cooperation with the Regional School of Public Administration;
- A public debate on the Draft Bylaw on Applications for Devices and Software Support for Lawful Interception of Electronic Communications and Retention of Data on Electronic Communications organised by the IT Society of Serbia and the Serbian Chamber of Commerce and Industry;
- A public debate on the Draft Law on enforcement and Security organised by the Ministry of Justice, as well as other meetings.

Publication

The Commissioner published the publication titled **“Commissioner’s Decisions and Views on Appeals Lodged in Procedure of Personal Data Protection”**, which contains about 40 Commissioner’s decisions and views. The publication has been designed as an instructive manual which provides an opportunity for citizens to learn about their rights under LPDP through examples from the Commissioner’s practice. In addition to contributing to education and awareness rising of citizens of their rights, this publication should also provide assistance to data controllers in full and consistent implementation of LPDP in practice and thus contribute to more efficient exercise of citizens’ rights in connection with personal data protection.

5.2. Acting of Judicial Authorities in the field of Data Protection

5.2.1. Acting of Prosecutor’s Offices on Criminal Reports filed by the Commissioner

During the course of 2015, the Commissioner filed 3 criminal reports for the criminal offence referred to in Article 146 of the Criminal Code. In his practice so far, from 2010 to the end of the reporting period, the Commissioner filed a total of 29 criminal reports for the criminal offences under Articles 146, 355 and 359 of the Criminal Code.

Of all criminal reports filed by the Commissioner so far, one final and enforceable judgment has been passed, while eight were rejected due to expiration of the statute of limitation applicable to persecution or application of the principle of opportunity. The remaining criminal reports are still pending. The Commissioner believes that the criminal reports he filed with the public prosecutor’s offices build strong enough cases for further prosecution, to ensure the detection and appropriate punishment of the committers of those criminal offences.

5.2.2. Acting of Magistrates’ Courts on Petitions for Initiation of Infringement Proceedings filed by the Commissioner

In 2015, the Commissioner filed 19 petitions for initiation of infringement proceedings against violations of LPDP. During the course of 2015, the Commissioner

received 35 judgements of Magistrates' Courts (first instance and second instance) pursuant to petitions for infringement proceedings he filed. Of these judgements, 20 were convictions, 1 was exonerating judgements, 11 proceedings were terminated and 3 complaints by indicted persons were upheld and cases were returned for repeated decision-making to the first-instance court.

Infringement proceedings were terminated due to expiration of the statute of limitation or unavailability of the responsible person. An exonerating judgement (first instance) was passed in the case of infringement liability of the Clinical Centre of Serbia, the Director of the Clinical Centre of Serbia and the Director of the Emergency Department of the Clinical Centre of Serbia in connection with publication of information on a patient's health status, which generated much public interest. The Commissioner lodged an appeal against this judgement because it contains omissions in the facts found and is based on misapplication of substantive law. No decision has been passed pursuant to the appeal as of the time of writing of this Report.

The Commissioner notes that an analysis of these 35 judgements delivered by Magistrates' Courts reveals that certain cases with identical factual and legal basis often resulted in opposite decisions by different Magistrates' Courts. Based on the foregoing, the Commissioner believes Magistrates' Courts do not treat the issue of personal data protection with the attention it deserves as a right guaranteed by the Constitution of Serbia. If we analyse the majority of these judgements, i.e. 20 convictions, it can be seen that in five judgements the indicted persons received only a caution, while in the remaining 15 convictions fines were imposed on indicted persons in the total amount of RSD 624,000, which means that an average fine imposed amounted to RSD 41,600. If we compare this to the range of fines specified by the law, it is quite obvious that the amounts of fines imposed are much closer to the statutory minimum than the statutory maximum. Finally, of eleven terminated procedures, seven were terminated due to the expiration of the absolute statute of limitations applicable to the initiation and conduct of infringement proceedings, which is two years. The Commissioner has pointed out on several occasions in the process of drafting and enactment of the new Law on Misdemeanours that the time limit of two years for expiration of the absolute statute of limitations is too short and will result in termination of procedures in many cases, which is the case in practice.

5.2.3. Acting of Administrative Court on Legal Actions against the Commissioner's Decisions

In the course of 2015, the Administrative Court received 24 legal actions against the Commissioner's decision, which it submitted to the Commissioner for reply. The majority of legal actions (12) were filed against decisions rejecting the complaint as unjustified, 4 legal actions were filed resolutions to terminate acting on complaints, 3 were filed against resolutions dismissing the complaints, 4 were filed against ordering data controllers to honour the requests and 1 was filed against the Commissioner's communication informing the party that the data controller complied with the Commissioner's decision ordering rectification of irregularities in personal data processing and that the inspection was closed.

In the course of 2015, the Administrative Court ruled on 23 legal actions, by rejecting 20, dismissing 1 and upholding 2 and overturning the Commissioner's decisions for procedural reasons and returning the cases for renewed procedure.

On this occasion, it is not necessary to present in detail the judgements by which the Administrative Court rejected or dismissed legal actions against the Commissioner; instead, we would like to point to two judgements of this Court by which it upheld the legal actions against the Commissioner and returned the case for renewed procedure.

In one of these two cases, the Commissioner rejected by a decision as unjustified the complaint lodged by the complainant/plaintiff against a document of the City Administration of Belgrade rejecting the plaintiff's request for issuing of an excerpt from the register of births, the register of marriages and the register of deaths for his deceased uncle, with an explanation that this specific case is not a case of issuing of a copy of data pursuant to a request filed to the data controller in connection with personal data processing because the plaintiff did not file such request; instead this is as request for issuing of excerpts from registers of births, marriages and deaths which are classified as public documents under Article 3 of the Law on Registers of Births, Marriages and Deaths and the competent authority handles such request in accordance with the law providing for general administrative proceedings.

The Commissioner's resolution rejecting the complaint was appealed by a legal action before the Administrative Court, which upheld the legal action, overturned the Commissioner's resolution and returned the case for renewed procedure. In the statement of reasons of the judgement the Administrative Court explained that the defendant (the Commissioner) rejected the plaintiff's complaint as unjustified by the operative part of the contested decision and that in explanation of the contested decision the defendant stated that the plaintiff did not file a request under LPDP but a request for issuance of excerpts from registers of births, marriages and deaths. However, the Court found that the explanations stated in the contested decision did not justify the decision made in the operative part, which is why the case was returned to the Commissioner for renewed procedure.

In the renewed procedure, the Commissioner issued a decision dismissing the complaint as incomplete because the complainant did not enclose the request for exercise of rights in connection with data processing submitted to the data controller in accordance with LPDP.

In the other case, the Commissioner rejected by a decision as unjustified the complaint lodged by the complainant/plaintiff against a decision of the Higher Prosecutor's Office in Krusevac and a document by which the plaintiff was informed that this Prosecutor's Office has not processed any of the cases to which the plaintiff requested access and a copy of his data contained in it, with an explanation that in this specific case the data controller acted on the submitted request and informed the plaintiff in accordance with Article 25, paragraph 1 of LPDP that it is not able to honour his request because the cases in question are cases of other data controllers.

The Commissioner's resolution rejecting the complaint was appealed by a legal action before the Administrative Court, which upheld the legal action, overturned the Commissioner's resolution and returned the case for renewed procedure. In the statement of reasons of the judgement the Administrative Court explained that that the plaintiff's complaint is unclear because he stated that he lodged the complaint against two decisions of the Higher Prosecutor's Office in Krusevac, which were not the subject of the request for exercise of rights in connection with data processing, instead of stating that he complained against the document he received from this Prosecutor's Office in connection with the submitted request, so the defendant (the Commissioner) should have ordered the plaintiff to

rectify this shortcoming of the complaint pursuant to Article 581 taken in conjunction with Article 222, paragraph 1 of the Law on General Administrative Proceedings. It is further stated that, due to ambiguity of the plaintiff's complaint which was not rectified, the operative part of the contested Commissioner's decision did not rule on the subject matter of the complaint in its entirety and the case was returned to the Commissioner for renewed procedure.

In the renewed procedure, after the plaintiff precisely stated that he lodged the complaint against the document of the Higher Prosecutor's Office in Krusevac by which he was informed that this Prosecutor's Office does not hold the requested data, the Commissioner passed a decision rejecting the complaint as unjustified.

6. COMMISSIONER'S COOPERATION

6.1. Cooperation in the Country

Cooperation with Public Authorities and Organisations

The relations between the National Assembly of the Republic of Serbia and the Commissioner are defined by laws providing for their powers and status. Cooperation between the National Assembly of the Republic of Serbia and the Commissioner in 2015 took place in accordance with the practice which has been established and applied for several years. This part of the Report contains several major cooperation aspects.

The Commissioner submitted his Report on Implementation of the Law on Free Access to Information of Public Importance and the Law on Personal Data Protection for 2014 to the National Assembly of the Republic of Serbia on 30 March 2015, in accordance with the law. The Report was also submitted to the President of the Republic, the Ombudsman and the Government of the Republic of Serbia and was published on the Commissioner's official website. The Commissioner's Report for 2014 was reviewed by the Culture and Information Committee on its 25th session held on 18 May 2015. The Committee on the Judiciary, Public Administration and Local Self-Government and the Committee on Human and Minority Rights and Gender Equality reviewed the Commissioner's Report on their sessions held on 2 July 2015. In connection with the Report, the Committees adopted draft conclusions for the National Assembly. **The National Assembly has not reviewed the Commissioner Report for 2014 in a plenary session until completion of this Report.**

The next level of relations between the Assembly and the Commissioner is achieved through **direct cooperation between the Commissioner and the competent parliamentary committees, particularly when committees review bills or amendments to laws** which among other things regulate the issues from the Commissioner's sphere of competence. Since the Commissioner often does not receive draft laws from the backers before the review and adoption of laws by the Government and he does not have the power to directly submit legislative initiatives, he is forced to submit opinions within his sphere of competence directly to the competent parliamentary committees, which as a rule do not accept the Commissioner's opinions. During the reporting period, the Commissioner did so in cases of

several laws (see more in this Report under: [5.1.5. Issuing of Opinions](#) (LPDP) and [4.2.2. Initiatives and Opinions Concerning Legislation](#) (Law on Access to Information)).

As an example, the Commissioner issued to the competent committees of the National Assembly and to the Ombudsman an initiative to submit amendment to Article 24 of the Law on Investments, which essentially changed and introduced a special regime of freedom of information of public importance compared to the one regulated under the Law on Free Access to Information of Public Importance, excluding the right to lodge complaints with the Commissioner in connection with contracts on investments. In that regard, the Government endorsed this amendment to its Bill.

In addition, the Commissioner issued opinions on several bills to presidents of the competent committees of the National Assembly, including: the Bill on Passenger Cable Cars, the Bill amending the Law on Banks, the Bill amending the Law on the National Bank of Serbia, the Bill amending the Law on Real Estate Sales, the Bill amending the law on Defence, the Bill amending the Law on Serbian Army and the Bill on weapons and Munitions, since his opinion was not requested in preparation of these bills.

At the initiation of certain parliamentary committees, **the Commissioner attended certain parliamentary committee sessions and took part in public hearings and other events they organised in 2015**, dealing with the issues of the role of independent public authorities in the protection and promotion of human rights, improvement of the legislative framework, public information and other issues of relevance for the Commissioner's sphere of competence.

The Commissioner also talked on several occasions with the Serbian Prime Minister Aleksandar Vucic about the current issues in the Commissioner's work and on the manners of establishing close cooperation between the Commissioner and the Government and other public authorities. Prime Minister Vucic emphasised the need to ensure more frequent communication between the Commissioner and members of the Serbian Government and agreed that monthly meetings with the Ombudsman and the Commissioner should be introduced as a regular practice. Two such meetings were held in 2015.

As regards the relations between the Commissioner and the Government, it should be emphasised that the Commissioner has drawn the attention of the Government and its members on several occasions to specific issues of relevance for his scope of work, such as the issue of the proposed Draft LPDP prepared by the Ministry of Justice, amendments to the Law on Access to Information, an attempt to reduce the level of freedom of information and non-compliance with the Government's Rules of Procedure in proposing and passing of regulations in terms of obtaining the Commissioner's opinions, enactment of an implementing regulation on keeping and archiving of particularly sensitive personal data, passing of the Action Plan on Implementation of the Personal Data Protection Strategy etc. In addition, in view of the facts found in the course of inspection of implementation of and compliance with LPDP by electronic communication operators which provide Internet access and online services, which revealed a worryingly poor situation that should be changed, the Commissioner prepared draft relevant recommendations for improvement of the situation in this field and submitted it to the Government, but has received no feedback.

The Commissioner has been pointing to some of these issues year after year, since the reasons for which he originally sent these communications are still relevant.

The Commissioner's relations with ministries, other public authorities and local authorities were based on relations of the authority of the second instance to the authority of the first instance, **provision of assistance through education seminars and other expert meetings, provision of opinions and initiatives in connection with enactment and amendments to regulations and regular consultations between the representatives of these authorities and the Commissioner's Office.** By the nature of his work, **the Commissioner had intensive cooperation with the Administrative Court and magistrates' courts and independent public authorities,** the Ombudsman, the State Audit Institution, the Commissioner for Protection of Equality, the Anti-Corruption Agency, as well as **with certain faculties** in the form of education and students' practical training at the Commissioner's premises.

Cooperation with Civil Society Organisations

A well-established Commissioner's cooperation with civil society organisations in 2015 took place primarily **through participation in various expert meetings for the purpose of training and affirmation of the right to know and the right to personal data protection.**

Thus, the Commissioner took part in many conferences, debates and other similar events organised in 2015 by civil society organisations and associations, either alone or in cooperation with government institutions and/or international organisations, including: Transparency Serbia, Belgrade Centre for Human rights, European Movement in Serbia, Partners for Democratic Change Serbia, Share Foundation, Aarhus Centre, Victimology Society, Belgrade Open School, Centre for Euro-Atlantic Studies, Belgrade Centre for Security Policy, Balkan Investigative Reporting Network, Centre for European Integration, Becej Youth Society, Media Centre-Nis, Lawyers' Committee for Human Rights, Autonomous Women Centre, IT Society of Serbia, Human Rights House, Foundation for Development of Parliamentarism, Open Society Foundation etc.

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

In the course of 2015, the Commissioner continued building on the already good cooperation with the media and journalists' associations such as the Independent Association of Journalists of Serbia (NUNS), the Association of Journalists of Serbia (UNS), the Association of Independent Electronic Media (ANEM), the Independent Journalists' Association of Vojvodina and online media. Journalists often requested from the Commissioner information relating to the cases he handled and the measures he took. Public comments on the Commissioner's activities were overall highly. According to journalists, the Commissioner personally was one of the five most communicative government officials in 2015.

6.2. International and Regional Cooperation

The Commissioner's international cooperation in 2015 was successful, just like in previous 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, United States Agency for International Development - USAID), 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 in the field of 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.

Through participation in important international conferences the Commissioner established cooperation with authorities of other states responsible for both or one of his spheres of competence.

The Commissioner's representatives also participated in the following international and regional meetings dedicated to freedom of information and personal data protection and in meetings of working groups or bodies of the European Commission in the field of data protection:

- Meetings of the Article 29 Working Party of the European Commission held on 3 – 4 February and 22 -23 September in Brussels and the plenary meeting of this Working Party held on 17 – 19 November 2015 in Budapest,
- The Conference titled “Privacy and Data Protection Implications of the Civil Use of Drones” held in Budapest on 5 – 6 February 2015,
- The annual meeting of national data protection authorities in Central and Eastern European Countries held in Durrës on 29 – 30 April 2015,
- the conference titled “European Data Protection Law: Recent Developments” held on 11 – 12 May in Brussels,
- The European conference of national data protection authorities (Spring Conferences) held on 19-20 May in Manchester, which was organised by the UK Information Commissioner's Office,
- A round table at the Personal Data Protection Agency of Bosnia and Herzegovina held on 10 June 2015 in Sarajevo,
- The conference on challenges to privacy organised by the Directorate for Personal Data Protection, which was held on 21 – 22 June 2015 in Skopje,
- The Conference titled “Freedom of Information and the Economy – Global Divisions” held on 8 July 2015 in Berlin,
- The meeting titled “Use of Intrusive Investigation Methods in Southeast Europe” held on 14 July 2015 in Ljubljana,
- A study visit to Oslo as part of the Project approved for the Directorate for Personal Data Protection of the FYR Macedonia, which took place on 7 – 10 September 2015,
- The round table of the Council of Europe titled “Freedom of Expression and Media Freedom” held on 29 September 2015 in Azerbaijan,
- The 37th International Privacy Conference held on 26 – 29 October in Amsterdam,

- The conference titled “Proactive Publishing of Public Domain Information as Part of Open Government Partnership – Principles and Practices” held in Banja Luka on 5 – 6 November 2015,

- The International Conference on Personal Data Protection held on 9 – 11 November 2015 in Moscow,

- The international conference titled “Trust, Privacy and Security of Personal Data in the Digital Age” held on 18 – 19 November in Sofia,

- The conference titled “Freedom of Information – Regional Experiences and International Cooperation” on invitation of the Agency for the Protection of Personal Data and Free Access to Information of Montenegro, which was held on 19 – 20 November 2015 in Podgorica,

- A session of the Bureau of the Advisory Committee of the Convention 108 for the Protection of Individuals with regard to Automatic Personal Data Processing held in Strasbourg on 8-11 December,

- The Internet Governance Forum held in Georgia on 14 and 15 December, which was organised by the Council of Europe,

- A meeting of the Working Group on Data Protection within the framework of the Police Cooperation Convention for Southeast Europe held on 16 – 18 December in Ljubljana.

On invitation of the British Embassy in Serbia, the Commissioner visited London as their guest. The Commissioner talked to Ms Baroness D'Souza, Lord Speaker of the House of Lords of the UK Parliament, Mr. Lord Boswell, Chairman of the of the House of Lords European Union Committee, M. Jenkins, Chairperson of the Scrutiny Unit of the House of Commons of the UK Parliament and with a group of representatives of the British Foreign and Commonwealth Office about the need for continual assistance and support to our country, the situation in the field of rights protected by the Commissioner and reasons why Chapters 23 and 24 in accession negotiations between Serbia and the EU should be opened.

The costs of the Commissioner’s participation in these conferences and other events (13 of a total of 23) were covered by their organizers.

During the reporting period, the Commissioner also met on several occasions and had several talks with other representatives of European and international institutions and of neighbouring countries about the improvement of human rights and the fight against corruption and personal data protection.

The Commissioner was a host and talked to ambassadors and representatives of international organisations and states, such as Head of the Delegation of the European Union to the Republic of Serbia, Head of the OSCE Mission to Serbia, Head of the Council of Europe Office in Belgrade, Head of the country unit of the EC Directorate Enlargement, the Commissioner for Human Rights of the Council of Europe, representatives of the United States Defense Attaché Office of the US Embassy to Serbia, ambassadors of the U.K., Norway, the Netherlands, Austria and Croatia, the Director of the Directorate for Personal Data Protection of the FYR Macedonia etc. The Commissioner together with the Ombudsman, the Commissioner for Protection of Equality and representatives of the civil society organisations met with Mr. Philip Hammond, the U.K. Secretary of State for Foreign and Commonwealth Affairs. At the meeting held at the British embassy in Belgrade they talked about the Action Plan for Chapter 23, primarily about the progress in the field of human rights in the context of Serbia’s EU integration and about the rule of law.

The Commissioner was a host to Ms Mojca Prelesnik, Slovenian Information Commissioner, her deputies and the Secretary General. During their two-day visit, they talked about the specific issues within their scope of work and cooperation.

Cooperation on Projects

The Commissioner for Information of Public Importance and Personal Data Protection concluded with European Integration Office the Agreement on Implementation of the Project No. 337-00-00018/2015-04/1 of 18 September 2015 titled “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” with designation POV-01-2015²⁵. **The project is financed from grants under the Bilateral Programme of the Kingdom of Norway for 2015 on the basis of the Agreement with the Government of the Republic of Serbia relating to the Bilateral Programme, which was concluded on 18 November 2013 in Belgrade, and Annex 2 of the Agreement between the Government of the Republic of Serbia and the Ministry of foreign Affairs of the Kingdom of Norway relating to the Bilateral Agreement, which was concluded in Belgrade on 3 August 2015.**

The objective of the project is to build and strengthen capacities of the Commissioner for Information of Public Importance and Personal Data Protection in exercise of his powers, which will contribute to the improvement of exercise of freedom of information and the right to personal data protection, as well as to the Serbia’s EU integration process in certain fields (e.g. political criteria and negotiation chapters: Information Society and Media (Chapter 10), Judiciary and Fundamental Rights (Chapter 23) and Justice, Freedom and Security (Chapter 24).

The duration of the project is 26 months and its implementation started on 18 September 2015, on the date of signing of the Agreement between the Commissioner and the European Integration Office.

The total budget of the project, inclusive of VAT, amounts to RSD 53,086,375.00, of which RSD 46,123,875.00 is financed from grants under the Bilateral Programme, while RSD 6,962,500.00 is financed from the budget of the Commissioner for Information of Public Importance and Personal Data Protection.

The European Integration Office transferred to the Commissioner funds in the amount of RSD 15,996,605.83 from the part of the budget financed from the funds under the Bilateral Programme for the first year of implementation of the project.

Information on the project is available on the Commissioner’s official website.

²⁵ The designation “POV” is short for the Commissioner in the Serbian language.

7. ABOUT THE COMMISSIONER'S ASSETS AND OFFICE

7.1. Assets – Funds Received and Expenses Incurred by the Commissioner

7.1.1. Premises and Equipment

The official premises in Bulevar Kralja Aleksandra 15 allocated to the Commissioner in late 2013 satisfy the needs of the current capacities of the Commissioner's Office. However, the consequences of the lack of appropriate office space still affect the promptness in handling of cases, due to the backlog of several hundreds of cases from the period when the Office operated with a very small number of employees.

The equipment which the Commissioner has at his disposal is also sufficient to cover the existing capacities of the Office. The available equipment was financed from the Commissioner's budget funds. In 2015, equipment worth RSD 4,891,743.03 was purchased from the Commissioner's budget allocation for new employees and to replace the existing equipment which was no longer functional or was not appropriate for increasing needs. This includes primarily computer equipment, including antivirus software, electronic and audio and video equipment for a hall at the Commissioner's premises where press conferences, trainings, presentations and the Commissioner's announcements for all interested individuals and media are held, as well as some of the missing furniture for the Commissioner's premises.

7.1.2. Approved Budget Allocations

The work of the Commissioner and his Office is financed from the budget of the Republic of Serbia.

The Law on Budget of the Republic of Serbia for 2015 (Official Gazette of RS, Nos. 142/2014 and 94/2015) approved an allocation of RSD 168,224,000.00 to the Commissioner, in accordance with the Commissioner's Draft Financing Plan. In 2015, RSD 127,658,739.01 or 75.89% of the approved budget funds was spent on the Commissioner's work.

This under-utilisation of the approved funding for 2015 by the Commissioner can primarily be attributed to the fact that the human resource plan for hiring of the necessary number of employees, according to which funds for salaries were planned, was not achieved.

Table 5: Execution of the Commissioner's budget for 2015

Function	Source of finance	Program me	Project	Economi c classifica tion	Description	Funds approved under the Law on the Budget of the Republic of Serbia (Official Gazette of RS Nos. 142/2014 and 94/2015)	Executed	% of execut ion
160	01	1001	0011	411	Salaries and fringe benefits	115,000,000.00	86,901,369.85	75.57
				412	Social contributions payable by employer	20,595,000.00	15,554,516.77	75.53
				413	Compensations in kind	300,000.00	296,000.00	98.67
				414	Social benefits to employees	700,000.00	122,426.07	17.49
				415	Compensation for employees	3,000,000.00	2,069,435.80	68.98
				416	Rewards and bonuses	430,000.00	415,087.25	96.53
				421	Recurrent expenses	4,050,000.00	2,810,960.10	69.41
				422	Travel expenses	3,200,000.00	2,186,718.40	68.33
				423	Contracted services	9,524,000.00	7,651,081.37	80.33
				425	Repairs and maintenance	2,000,000.00	1,737,054.42	86.85
				426	Material	3,700,000.00	2,710,107.98	73.25
				482	Taxes, statutory charges and penalties	405,000.00	312,238.00	77.10
				512	Machines and equipment	5,200,000.00	4,771,915.83	91.77
				515	Intangible assets	120,000.00	119,827.20	99.86
TOTAL 01 Budget revenues						168,224,000.00	127,658,739.04	75.89
160	05	1001	0011	422	Travel expenses	750,000.00	0.00	0.00
				423	Contracted services	15,188,480.83	1,508,844.22	9.93
				465	Other grants and transfers	58,125.00	0.00	0.00
TOTAL 05 Donations from foreign countries						15,996,605.83	1,508,844.22	9.43
TOTAL FOR FUNCTION 160:						184,220,605.83	129,167,583.26	70.12

Apart from staff salaries, fringe benefits and contributions, the largest share of the Commissioner's expenses in 2015 was attributable to computer services, administrative equipment, communication services, fuel costs and current maintenance and repairs of equipment.

7.1.3. Funds from Projects

The Commissioner and the European Integration Office concluded the Agreement on Implementation of the Project No 337-00-00018/2015-04/1 of 18 September 2015 (hereinafter referred to as "the Agreement") titled "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" with designation POV-01-2015²⁶, which is financed from grants under the Bilateral Programme of the Kingdom of Norway for 2015 on the basis of the Agreement with the Government of the Republic of Serbia relating to the Bilateral Programme, which was concluded on 18 November 2013 in Belgrade, and Annex 2 of **the Agreement between the Government of the Republic of Serbia and the Ministry of foreign Affairs of the**

²⁶ The designation "POV" is short for the Commissioner in the Serbian language.

Kingdom of Norway relating to the Bilateral Agreement, which was concluded in Belgrade on 3 August 2015.

The objective of the project is to build and strengthen capacities of the Commissioner in exercise of his powers, which contribute to the overall improvement of exercise of freedom of information and the right to personal data protection, as well as to the Serbia's EU integration process in relevant fields (e.g. political criteria and negotiation chapters: Information Society and Media (Chapter 10), Judiciary and Fundamental Rights (Chapter 23) and Justice, Freedom and Security (Chapter 24)).

Under the Agreement, the total budget of the project amounts to RSD 53,086,375.00, of which **RSD 46,123,875.00 is financed from grants** under the Bilateral Programme, while RSD 6,962,500.00 is financed from the Commissioner's budget. **The value of project funding is inclusive of VAT, while the duration of the project is 26 months.**

In mid-October 2015, the European Integration Office transferred to the Commissioner funds in the amount of RSD 15,996,605.83 from the part of the budget financed from the funds under the Bilateral Programme for the first year of implementation of the project. During the course of 2015, the Commissioner carried out certain activities on implementation of this project. The largest portion of expenses financed from the transferred donation funds included payment of fees for expert services to persons hired on implementation of project activities (project team, Serbian consultants for evaluation of the training needs in the field of freedom of information and personal data protection and operational capacity), as well as organisation of trainings in connection with introduction of the information security system, in the total amount of RSD 1,508,844.22.

Implementation of the project has been continued in 2016.

7.2. Commissioner's Office

According to the Bylaw on Internal Organisation and Job Classification No. 110-00-00004/2014-04 of 4 November 2014, which was approved by the Committee on Administrative, Budgetary, Mandate and Immunity Issues of the National Assembly by its enactment 21 No. 02-4056/14 of 21 November 2014 and which entered into force on 2 December 2014, the Commissioner's Office should have 94 employees. This number of employees has not been changed compared with the previous instrument on job classification of 2013 and the Commissioner plans to carry out staffing successively.

In early 2015, the Commissioner's Office had 56 full-time employees. In the first half of 2015, two employees left the Commissioner's Office, while a third employee had his employment terminated due to retirement. 10 persons had been transferred other public authorities and employed pursuant to a public call for job applications, meaning that as at **31 December 2015 the Commissioner's Office had 63 full-time employees, its staffing level was 67% of the total classified number of employees.** Employment pursuant to the public call for job application was completed at the end of the year, while three employees left the Office in the first half of the year, which means that most of the year the Commissioner's Office virtually operated with 53 employees.

According to the Commissioner's Human Resources Plan for 2015, the Commissioner's Office should have 83 employees, excluding the officials appointed by the National Assembly (the Commissioner and two Deputy Commissioners), to which the Ministry of Finance has given its approval in terms of allocation of budget funds, meaning that the actual staffing level is below the number set by the Human Resources Plan for 2015.

In 2015, the Commissioner concluded 3 service contracts: one for audit of public procurements for 2014 and two for organisation of trainings planned under the project "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".

8. COMMISSIONER'S PROPOSALS AND RECOMMENDATIONS

8.1. Draft Resolutions of Competent Committees of the National Assembly in connection with the Review of the Commissioner's Report for 2014

The National Assembly has not reviewed the Report on Implementation of the Law on Free Access to Information of Public Importance and the Law on Personal Data Protection for 2014, including the Commissioner's recommendations, at its plenary session. The Report was reviewed by the competent parliamentary committee.

The Committee on the Judiciary, Public Administration and Local Self-Government of the National Assembly of the Republic of Serbia reviewed on its 41st session held on 14 May 2015, in accordance with Article 238, paragraph 1 of the Rules of Procedure of the National Assembly, the Report on Implementation of the Law on Free Access to Information of Public Importance and the Law on Personal Data Protection for 2014²⁷ and on its 45th session held on 2 July 2015 it adopted the Draft Resolution which it submits to the National Assembly for the review and adoption. The proposed Resolution is as follows:

"1. The National Assembly finds that of the Report on Implementation of the Law on Free Access to Information of Public Importance and the Law on Personal Data Protection for 2014 presented in an analytical manner the situation in the fields of freedom of information of public importance and personal data protection, concluding that significant results have been achieved in protection and affirmation of freedom of information and personal data protection, but that situation in these fields must be further improved.

The National Assembly support activities of the Commissioner for Information of Public Importance and Personal Data Protection in connection with the exercise and protection of freedom of information and the right to personal data protection and the efforts he invests in their improvement.

The National Assembly emphasised that under the Law on Free Access to Information of Public Importance and the Law on Personal Data Protection, the Commissioner is an independent and autonomous public authority authorised to propose measures for improvement of work to public authorities, to submit initiatives for enactment or amendments to regulations for the purpose of exercise and improvement of freedom of information, as

²⁷ The report of the Committee on Judiciary 07 No. 02-861/15 of 2 July 2015.

well as to supervise compliance with statutory duties by public authorities and to inform the public and the National Assembly about this.

The National Assembly puts an obligation on the Government and competent ministries to take necessary measures for implementation of the Commissioner's recommendations and resolutions of the National Assembly passed in connection with the review of the Commissioner's Annual Report, particularly taking into account the Commissioner's statement that majority of the resolutions the National Assembly passed in this regard has not been complied with.

2. The National Assembly supports the Commissioner's opinion that the condition for further progress in the exercise of citizens' rights is to change passive treatment of citizens' requests by the competent governmental bodies and emphasizes that it is necessary to establish through increased transparency a practice of publishing as many pieces of information as possible on the work of public authorities even without special citizens' requests, particularly taking into account the modern technology and the means of electronic communications which can significantly contribute in that regard.

3. Taking into account the Commissioner's opinions and recommendations, the National Assembly draws the attention of the Government to the need to review the applicable and propose new arrangements of the Law on Free Access to Information of Public Importance to bring the legal arrangements in compliance with changes in other fields of the legal system and legislation of the European Union.

4. The National Assembly points to the Government the duty to ensure implementation of the law providing for data confidentiality through new arrangements of the Law on Personal Data Protection and other sectoral laws and through passing of secondary legislation and thus ensure the exercise of citizens' constitutional right to personal data protection in accordance with the international standards. The National Assembly particularly emphasised that the Action Plan on implementation of the Personal Data Protection Strategy has not been enacted yet.

5. The National Assembly emphasizes that the Government must enforce the Commissioner's final, enforceable and binding decisions, in accordance with the relevant legal provisions, and apply measures from its sphere of competence, using the existing legal mechanisms, through the competent ministry, by initiating procedure for determination of accountability for omissions in the work of governmental bodies, as well as accountability of officials who failed to comply with their duties in accordance with the law.

6. The National Assembly made a commitment to make every effort in its legislative activities to ensure respect of the main principles of freedom of information and personal data protection in proposed individual legal arrangements, particularly when the Commissioner for Information of Public Importance and Personal Data Protection points to that.

7. The National Assembly puts an obligation on the Government to submit a report on implementation of these resolutions to the National Assembly within six months.

8. This Resolution shall be published in the Official Gazette of the Republic of Serbia."

The Committee on Human and Minority Rights and Gender Equality of the National Assembly reviewed on its 30th session held on 19 May 2015 the Report on Implementation of the Law on Free Access to Information of Public Importance and the Law

on Personal Data Protection for 2014²⁸ and on its 32nd session held on 2 July 2015 **it adopted the Draft Resolution which it submits to the National Assembly for the review and adoption.** The proposed Resolution is as follows:

“1. The Commissioner for Information of Public Importance and Personal Data Protection (hereinafter referred to as “the Commissioner”) presented his overall activities in his Report on Implementation of the Law on Free Access to Information of Public Importance and the Law on Personal Data Protection for 2014.

2. The National Assembly finds that the Government should propose amendments to the Law on Free Access to Information of Public Importance as soon as possible to eliminate obstacles in its implementation and exercise of rights, as well as a new text of the Law on Personal Data Protection which would ensure more efficient protection of rights.

The National Assembly invites the Government to enact the Action Plan on Implementation of the Personal Data Protection Strategy without delay, as well as to enact secondary legislation on the manner of filing and the measures for the protection of particularly sensitive data.

3. The National Assembly concludes that it is necessary for all competent governmental authorities to take necessary measures to ensure implementation of the Commissioner’s recommendations as thoroughly as possible.

4. The National Assembly concludes that it is in the interest of the exercise of citizens’ rights to provide sufficient human resources for the Commissioner’s Office within the approved job classification to ensure timely handling and deciding within statutory time limits.

5. This Resolution shall be published in the Official Gazette of the Republic of Serbia.”

The Culture and Information Committee of the National Assembly reviewed at its 25th session held on 18 May 2015 the part of the Report on Implementation of the Law on Free Access to Information of Public Importance and the Law on Personal Data Protection for 2014 relating to implementation of the Law on Free Access to Information of Public Importance²⁹ and **adopted the Draft Resolution which it submits to the National Assembly for the review and adoption.** The proposed Resolution is as follows:

“1. The Commissioner for Information of Public Importance and Personal Data Protection (hereinafter referred to as “the Commissioner”) presented in his Report for 2014 his activities in the exercise of his legal powers in the field of freedom of information and in supervision of the work of public authorities competent for the protection of freedom of information of public importance in all fields.

2. The National Assembly finds that executive authorities must implement legislation relating to the provision of freedom of information of public importance.

²⁸ The Report of the Committee on Human and Minority Rights and Gender Equality, 08 No. 02-861/15 of 2 July 2015.

²⁹ The Report of the Culture and Information Committee, 01 No. 02-861/15 of 21 May 2015.

3. It is recommended that the government of the Republic of Serbia submits to the National Assembly information on the number of recommendations issued by the Commissioner to public administration authorities and holders of public powers at the national level, on the field of freedom of information, the number of implemented and unimplemented recommendations, as well as the reasons for failure to comply with the Commissioner's recommendations."

8.2. Recommendations Contained in Draft Resolutions of Competent Committees of the National Assembly in connection with the Review of the Commissioner's Report for 2014 and Situation in the Commissioner's Spheres of Competence in 2015

This Commissioner's Report shows the situation in the Commissioner's spheres of competence and the activities and measures he took in 2015. Judging by the reported data, significant results have been achieved again in 2015 in affirmation and protection of freedom of information and the right to personal data protection.

However, in both of these spheres of competence, a key precondition for continued work of the Commissioner and improvement of the situation is a change in the practice of slow or absolutely passive response from the competent authorities to identified obstacles in the Commissioner's work which hinder the exercise of the rights year after year, but are beyond the Commissioner's control.

The analysis of implementation of the recommendations contained in the Commissioner's Report for 2014, in connection with which the competent parliamentary committees adopted the above draft resolutions, in the light of the factual situation presented in this Report shows that in 2015 again the majority of recommendations have not been implemented, primarily those relating to the Government of the Republic of Serbia and the competent ministries.

The fact that the National Assembly has not reviewed the Commissioner's Report for 2014 and has not adopted resolutions relating to the Report shows that the National Assembly has not exercised its supervisory function in connection with the review of the Report of this independent public authority. In addition, the Commissioner finds that in 2015 again the competent committees of the National Assembly insufficiently used suggestions and opinions he submitted them in the process of the review and enactment of laws, while the situation is such that the Commissioner is excluded from provision of opinions at the stage of preparation of draft laws and bills and does not have the power to submit amendments.

In view of the foregoing, the Commissioner repeats in this Report all recommendations that have not been complied with.

8.3. Commissioner's Recommendations Based on Situation in 2015

Taking into account Article 58 of the Law on the National Assembly and Articles 237-241 of the Rules of Procedure of the National Assembly, **the Commissioner proposes the following to the National Assembly:**

1. The competent Committees of the National Assembly should review the Commissioner's Report for 2015 and, on the basis of the Recommendations contained herein, adopt draft resolutions with recommendations and measures aimed at improving the situation, which would then be forwarded to the National Assembly for the review,
2. The National Assembly should open a debate on the Report and the draft resolutions submitted by competent committees and pass a resolution on their implementation, thereby supporting the Commissioner's efforts and activities in the exercise and further improvement of freedom of information and the right to personal data protection and elimination of the obstacles highlighted in this Report,
3. The National Assembly should ensure continual supervision of compliance with its resolutions by making use of the available mechanisms to control the work of the Government, i.e. the executive branch, in connection with the recommendations made by independent governmental bodies, including the Commissioner, with particular focus on responsibility for omissions in the work of public authorities;
4. The competent committees and technical services of the National Assembly, when enacting laws, should give due consideration to the need to ensure respect for the core principles of freedom of information and the right to personal data protection, in consultation with the Commissioner,
5. The National Assembly should continue with the practice of providing appropriate support for the Commissioner's independence.

The Commissioner hereby makes the following recommendations to the Government of the Republic of Serbia:

1. To ensure without delay a radical change of treatment of the situation in the field of personal data protection by the executive authorities, including urgent preparation of the adequate regulatory framework and ensuring conditions for its consistent implementation in practice.

2. To innovate without delay the applicable Personal Data Protection Strategy (adopted in 2010 and obsolete to a very high extent) or to pass a completely new Strategy and to adopt as soon as possible the Action Plan on implementation of this Strategy (with specified activities, including in particular the relevant regulations that need to be adopted and/or amended, the expected effects, the bodies responsible for implementing specific duties and the clear timeframe for implementation of those duties).

3. To prepare without delay the text of and adopt the Bill on Personal Data Protection, in accordance with the Model Law which the Government prepared and submitted to the Government,

4. To continually support the Commissioner's efforts to ensure compliance with the constitutional provision which stipulates that collecting, keeping, processing and use of personal data must be regulated by laws, rather than by secondary legislation and in that regard should propose adequate amendments to a number of sector-specific laws and make every effort to ensure their full implementation,

5. With respect to the situation concerning protection for privacy in the sectors of security and electronic communications, the Government should ensure full implementation of the "package" of 14 measures, which the Commissioner and the Ombudsman developed to alert the competent authorities and the public about the worrying situation in this field and which they proposed in order to address this situation,

6. To prepare without delay the text of and adopt the Bill amending the Law on free Access to Information of Public Importance, in consultation with the Commissioner,

7. The Government should, in accordance with relevant legislation, enforce final, enforceable and binding Commissioner's decisions and should, using the existing legal mechanisms, through the competent ministry, consistently take measures within its sphere of competence by initiating the procedure to determine liability for omissions in the work of public authorities in implementation of the Law on Free Access to Information of Public Importance and liability of officers who failed to comply with their legal duties.

COMMISSIONER

Rodoljub Sabic

Done in Belgrade, on 30 March 2016

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