



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 2016

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1. FOREWORD

This Report is the twelfth 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 eighth such report since the Commissioner's powers have been expanded to include personal data protection.

As in the previous seven years, the Report Implementation of the Law on Free Access to Information of Public Importance and the Law on Personal Data Protection will demonstrate that the situations in these two fields are very different.

Unfortunately, it will also reveal an absolutely undesirable, worrying phenomenon in the field of freedom of information for the first time.

The continual progress in this field that had been observed year after year since the very beginning of implementation of the Law on Free Access to Information of Public Importance has been stopped. Indeed, not only has this process been stopped: it has also been reversed.

In 2016, the percentage of successful interventions by the Commissioner, which had been increasing year after year, saw a decline for the first time – from 96% in the previous year to 92%. Although the success rate can still be seen as relatively high, a 4% decline during a single year is definitely a matter of concern. It is particularly worrying with regard to formal decisions by which the Commissioner orders the disclosure of information. Namely, once the Commissioner intervenes pursuant to a complaint, procedures are in many cases (61%) terminated because the respondent authority chooses to provide the previously withheld information even without a formal decision by the Commissioner. However, in cases where it was necessary to pass formal decisions, the rate of compliance with them in 2016 compared with the previous year (when it stood at almost 85%) was 10,1% lower at only 73,6%

This decline in effectiveness of protecting the public's rights can for the most part be attributed to the lack of support that other state authorities should have provided to the Commissioner. Neither the Administrative Directorate within the Ministry of Public Administration and Local Self-Government, which is in charge of initiating infringement proceedings against those who breach the law, nor the judicial authorities showed anything resembling a proper response to the widespread violations of the law. Infringement proceedings were far fewer than the actual infringements; they were initiated rarely and selectively and most of them were closed because the statutes of limitation had expired.

However, even more important was the lack of necessary and expected support that the highest authorities should have provided in the process of promoting the right to know.

In 2016, the Commissioner was forced to demand of the Government to enforce his decisions in far more cases than in earlier years (61 in total), but the Government failed to do so in every single one of those cases.

In 2016, the National Assembly did not review the Commissioner's Annual Reports for the second year in a row, in violation of the law and its own Rules of Procedure. Indeed, for the first time in the 12 years of existence and operation of the institution of the Commissioner, the Commissioner's report was not even reviewed by the "parent" parliamentary Committee on Culture and Information.

Furthermore, an issue that should not be underestimated is the persistence of some chronic issues regarding exercise of freedom of information and recurrence of issues which seemed to be resolved and settled. This is the case in particular with certain issues identified in the exercise of freedom of information regarding certain major economic transactions involving 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, primarily reputational, in the anti-corruption context, which is also evident from Serbia's repeatedly poor score on the Corruption Perceptions Index in 2016.

In his last year's Report, the Commissioner expressed his concern that continued disregard for the issues he had raised could put a question mark on a fact that had been stated repeatedly in earlier annual reports, namely that an irreversible, continual positive process had been observed in the field of freedom of information. Unfortunately, the facts presented in this year's Report would seem to indicate that this is exactly what has happened.

The situation in the field of personal data protection is chronically poor 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 an initiative of 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 six 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; also, taking into account how much time have passed, the Strategy is outdated and a new one should be passed.

In the absence of a serious Strategy and actual willingness to implement it, 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 five 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 and did not contain solutions to any of the important current issues encountered in practice.

A direct consequence of such inappropriate and irresponsible treatment of personal data protection legislation is also 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. SITUATION WITH AND OBSTACLES FOR EXERCISE OF FREEDOM OF INFORMATION OF PUBLIC IMPORTANCE AND RIGHT TO PERSONAL DATA PROTECTION

A. Freedom of Information of Public Importance

2.1 Summary of Situation regarding Exercise and Protection of Freedom of Information

In the field of freedom of information, Serbia has seen an upward trend in the number of freedom of information requests¹ submitted by citizens to public authorities, coupled with a large number of complaints with the Commissioner for Information of Public Importance and Personal Data Protection (hereinafter referred to as “the Commissioner”) due to difficulties in obtaining information. **The number of complaints formally lodged with the Commissioner has ranged between three and four thousand in the previous four years**, which is ten times more compared with the first year of implementation of the Law on Free Access to Information of Public Importance (hereinafter referred to as the “Law on Access to Information”).

This is proof that information is still difficult to obtain from public authorities in many cases without the Commissioner’s intervention and shows that citizens trust this independent state body when seeking protection of their rights. The high level of exercise of citizens’ freedom of information was in no small part due to the Commissioner’s efforts to affirm this freedom, including media presence and social network activities, opening of data about the work of the institution etc., which is discussed in more detail below.

Since the enactment of the Law on Access to Information (2004), Serbia had seen continual progress in the exercise of this freedom until 2015. In parallel with this, the level of efficiency of the Commissioner’s interventions to protect this freedom also increased, measured by the number of cases in which requesters exercised their right and received the requested information relative to the number of justified complaints: in 2015, it stood at 95.8%.

Unfortunately, **the positive trend in the exercise of the freedom of information was reversed in 2016, as multiple negative trends had been observed in the treatment of this citizens’ right by public authorities.** For the first time since the beginning of the Commissioner’s work, **the increasing efficiency of his work measured by the number of cases in which the requesters received the requested information was reduced in 2016 by 3.8%, while the number of justified complaints was increased by 2%.** Of particular concern is the fact **that the rate of compliance with the Commissioner’s decisions by which he ordered public authorities to make information available was reduced by 10.1% in 2016 to 73.6% of the passed decisions**². The highest rates of non-compliance with the decisions were seen among local self-government authorities and organisations, public enterprises (national and local) and Ministries.

¹ In 2005 there had been approximately two thousand requests, while in 2016 there were about thirty thousand. This figure is based on the 811 reports by those public authorities (about 28%) that submitted their annual reports to the Commissioner out of the total of 2,906 public authorities which are subject to mandatory reporting.

² Out of 864 decisions passed, 228 have not been complied with.

Notwithstanding these figures, in 2016 **the Commissioner's interventions pursuant to justified complaints once again resulted in information requesters receiving the requested information in a high percentage of cases (92%).** After the Commissioner's intervention pursuant to a complaint, **in most cases where the complaints were found to be justified (60.8%), the procedures were terminated** because the public authorities subsequently provided the requested information to the complainants. In many situations, the information was made available to the requesters only after the Commissioner has used all available mechanisms of coercion, i.e. enforcement procedures and fining of public authorities. Adding to this, **the mechanism for enforcing the Commissioner's decisions, which is the Government's responsibility, did not function in 2016, similarly as in earlier years, while oversight by the Administrative Inspectorate failed to yield the expected results in terms of inevitable liability for violations of this right.**

Below is a selection of illustrative figures that best show the situation in the field of freedom of information in Serbia in 2016:

There were many cases in which public authorities failed to act on received freedom of information request or replied they were unable to provide the requested information, without passing decisions with proper reasoning, as requested by the law; **thus, the Commissioner received a high percentage of complaints against the so-called administrative silence (84.4%) which was only 3.3% lower than in 2015.**

The number of complained lodged with the Commissioner due to citizens' inability to exercise their freedom of information in 2016 was slightly lower than in the previous year, but nevertheless remained very high at almost 3,500. Nearly half of all complaints were lodged against Republic-level national and other authorities and organisations and some 46% of those were complaints against Ministries and their subordinated bodies. **The share of justified complaints lodged with the Commissioner remains high at 87.7%.**

Compared with the previous year, public authorities denied freedom of information requests more frequently by citing abuse of the right (about 5%) or by invoking confidentiality of information (3.7%), even when the requested information related to public spending, investments, official actions etc.

At the initiative of public activities, in 2016 alone the Republic Public Prosecutor's Office filed 15 legal actions against the Commissioner's decisions citing protection of public interest and in some cases demanding a stay of execution of the Commissioner's decisions. This was more than the total number of legal actions filed during all 11 previous years, when the same Prosecutor's Office filed 11 legal actions against the Commissioner's decisions.

None of the Commissioner's decisions passed in 2016 were annulled by the Administrative Court³, or under legal actions by citizens/information requesters or by the Republic Public Prosecutor. 111 legal actions were lodged against the Commissioner's decisions in 2016, of which 90 were resolved. In parallel with this, **126 legal actions were filed with the Administrative Court against the six authorities against which complaints cannot be lodged with the Commissioner,** including 123 legal actions against the Government and one legal action against the National Assembly, the President of the Republic

³ The Administrative Court overturned one Commissioner's decision passed in 2015 for procedural reasons and returned the case for renewed.

of Serbia and the Constitutional Court respectively. **Out of the 40 resolved legal actions, 31 were upheld, all of which had been lodged against the Serbian Government.**

Progress regarding compliance with the statutory duty of public authorities to improve the transparency of their work, as required by the Law on Access to Information, has been symbolic at best. Many public authorities which have a statutory duty to publish information booklets about their work, provide staff trainings, maintain data storage media and submit reports on implementation of this Law to the Commissioner have brazenly refused to do so for years without any liability or repercussions, although failure to comply with each of these duties is penalised as an infringement.

Liability for violations of the law is lacking or is merely symbolic in great many cases given the number of such violations; furthermore, most of the infringement proceedings were instituted pursuant to petitions filed by information requesters as harmed parties and the number of such cases was many times higher than the number of cases initiated by the Administrative Inspectorate. This absence of liability is a direct consequence of the scope and quality of oversight of compliance with the Law by the Administrative Inspectorate and the divergent practice of magistrates' courts.

2.2 About Obstacles to the Exercise of Freedom of Information

The described situation in the field of freedom of information was largely due to the following obstacles:

2.2.1. Non-functioning of the Mechanism for Enforcement of the Commissioner's Decisions

The Government has a duty, when asked to do so by the Commissioner, to undertake direct enforcement measures in accordance with the rules of general administrative procedure which apply to administrative enforcement in order to ensure the enforcement of the Commissioner's decisions in cases where public authorities fail to do so voluntarily, even after the Commissioner has applied direct enforcement measures (fines/penalties). The Commissioner's decisions are final, binding and enforceable under the law and failure to comply with those decisions is punishable under the law as an infringement.

In 2016, the Commissioner was forced to demand of the Government to enforce his decisions in much more cases (61) than in earlier years⁴; however, the Government failed to do so in a single case. For reasons of full disclosure, it should be noted that public authorities complied with the Commissioner's decisions after the Commissioner sent requests to the Government in only three cases, which can be attributed more to public pressure and media reports than to any intervention by the Government. Notwithstanding the statutory duty, the Commissioner's requests for enforcement have been ignored since 2010, when this duty was first introduced; to date, the Government has failed to act on 135 such requests in total.

As an example, in 2016 the Government refused to enforce the decision to grant the Anti-Corruption Council and journalists access to information about the agreements entered

⁴ In 2015, the Commissioner submitted 24 requests for enforcement of his decisions to the Government.

into by Public Enterprise Srbijagas, the company Telekom Serbia and the company Air Serbia in 2015 in connection with marketing, advertising and public relations services, sponsorships/donations, promotional and media campaigns etc.; information about the loans granted by the Development Fund of the Republic of Serbia to the steel mill “Zelezara Smederevo” from 2012 to 2015; agreements entered into by the Serbian Export Credit and Insurance Agency with “Pink international company” and evidence of execution of those agreements; transaction documents of Air Serbia and Etihad (Shareholders’ Agreement, Support Services Agreement, long-term commercial agreements with the Belgrade Airport, the oil company NIS and “Tehnika”, the agreement on funding of the company Air Serbia by the Government, travel services and training agreements etc.), as well as information held by the Pension and Disability Fund on the total years of service of the Serbian President and the Serbian Prime Minister etc.

The public has also been denied access to information about several important agreements and events, which are discussed in more detail below, such as the Management and Consulting Services Agreement for the operations of the company “Zelezara Smederevo” of 25 March 2015, agreements on purchase of raw materials and termination of the Agreement; information on measures, if any, the competent state authorities undertook and other circumstances surrounding the events of 25 April 2016 when buildings were demolished in Hercegovacka street in Belgrade, the so-called “Savamala” case, as well as information contained in the official notes and the explanation of the decision made by the competent prosecutor’s office not to investigate the crash of a military helicopter in March 2015, when seven persons were killed.

Another issue in addition to the non-functioning mechanism of enforcing the Commissioner’s decisions is the divergent jurisprudence of regular courts in connection with the enforcement of the Commissioner’s resolutions on the imposition of fines/penalties in the enforcement procedure, which exacerbates the problems with enforcement of the Commissioner’s decisions. Pursuant to an initiative filed by the Commissioner, in 2012 the Supreme Court of Cassation took its legal stand No. Spp 6/12 of 1 October 2012, ruling that courts did not have jurisdiction to enforce the Commissioner’s resolutions, that this matter was governed by specific provisions of the Law on Access to Information and that resolutions by which the Commissioner imposed fines did not constitute enforceable documents within the meaning of Article 13, paragraphs 1 and 2 of the Law on Execution and Security and it was incumbent upon the Commissioner to enforce his own decisions by seizing funds from the accounts of public authorities. Such interpretation by the Court could not be further from the truth, because the Law on Access to Information governs only the issue of enforcement of the Commissioner’s decisions and not his resolutions. This puts a question mark over the said legal stand, while court jurisprudence has remained divergent even after the legal stand; thus, the Basic Courts in the territory covered by the Court of Appeals of Belgrade, unlike other Serbian courts, have declined jurisdiction for enforcing the said resolutions. **One of the consequences of this was the inability to forcibly collect the outstanding fines of two and a half million dinars in 2016 alone for the national budget.**

2.2.2. Lack of Accountability for Violations of the Law

For many years, the Commissioner’s reports have expressed his **concern about the lack of proper accountability for violations of the freedom of information and have been**

warning that such attitude of the competent bodies encourages public authorities to continue doing so, safe in the belief that they would never suffer any consequences.

A direct consequence of this lack of accountability for violations of the freedom of information is the unacceptably large number of complaints lodged with the Commissioner and the Commissioner's inability to resolve all complaints within the statutory timeframe, which often leads to legal action and causes expenses and unnecessary budget expenses. Quite understandably, this causes dissatisfaction among citizens and additionally strains the Commissioner's Office.

Any form of violation of the freedom of information is punishable as infringement under the Law on Access to Information, including failure to act on a freedom of information request, provision of incomplete or inaccurate information, failure to comply with the Commissioner's decisions to grant access to information and non-compliance of public authorities with their duties regarding publication of information booklets about their work, submission of reports to the Commissioner and provision of trainings.

Oversight of compliance with the Law is the responsibility of the Ministry of Public Administration and Local Self-Government. According to the report submitted to the Commissioner, in 2016 the Administrative Inspectorate conducted inspections only in cases of non-compliance with the Commissioner's orders and, to a lesser extent, in cases of failure to publish the information booklets. **Taking into account that, on the one hand, the fact that almost three thousand complaints were found to be justified provides proof of violations of the freedom of information pursuant to submitted requests and the level of compliance of public authorities with their duty to improve the transparency of their work, and taking into account on the other hand the number of infringement proceedings initiated pursuant to petitions by the Administrative Inspectorate in 2016 (46) and especially their outcomes, the glaringly apparent conclusion is that, in most cases, accountability is either completely lacking or symbolic at best.** Because of this inspection policy, which had not seen a single infringement proceeding initiated for violation of the freedom of information in several years (2011-2015), certain state-owned companies, like Srbijagas, have paid dozens of fines in the executory procedures conducted by the Commissioner, but still refuse to provide information to requesters.

Appallingly, given this state of affairs, the number of infringement proceedings were instituted pursuant to petitions filed by citizens whose rights had been violated as harmed parties was many times higher than the number of cases initiated by the Administrative Inspectorate, as evident from the figures presented below. In this context, in practice it has been observed that the jurisprudence of magistrates' courts has been divergent regarding the ability of harmed parties to file petitions for infringement proceedings, in particular if they had not previously exhausted the option of lodging a complaint with the Commissioner. It should be noted that **the Supreme Court of Cassation, acting on an initiative filed by the Commissioner, took legal stand No. II Su - 17157-16 on 6 December 2016, according to which denial of a proper response to an information requester constitutes a violation of a personal right, which means the information requester, as the harmed party, is always entitled to file a petition for initiation of infringement proceedings himself, as the Commissioner had maintained from the beginning.**

Even when fines were imposed, they were close to the statutory minimum amount and appellate proceedings were often terminated because the statute of limitation had

expired. In this context, it should be noted that, in the process of amending the Law on Misdemeanours, the Ministry of Justice rejected the Commissioner's initiative to extend the statute of limitations on infringements under the Law on Access to Information, taking into account their anti-corruption potential.

2.2.3. Postponed Amendments to the Law on Access to Information

Since 2011, when the process of amending the Law on Access to Information was initiated and then suspended in 2012, its amendments have not been passed and the timeframe for doing so has been extended year after year without proper reason. As a result, the obstacles that should be eliminated by amendments to the Law hamper the exercise of the freedom of information and impede the Commissioner's work.

The competent authorities, initially the Ministry of Public Administration and Local Self-Government and now the Ministry of Justice, have set a new timeframe for passing amendments to the Law on Access to Information with every amendment or new version of strategic documents, including documents on the fights against corruption, public administration reform, EU accession (Chapter 23) and implementation of the internationally accepted concept of the Open government Partnership, notwithstanding the fact that all authorities without exception have identified a need for increasing transparency in all processes conducted by public authorities, expanding the powers and the resources available to the Commissioner and ensuring mandatory compliance with the Commissioner's decisions and instructions, as well as a need for upgrading this Law. The most recent timeframe for adoption of amendments to the Law on Access to Information is the fourth quarter of 2017.⁵

This delay in amending the Law on Access to Information has stopped the sorely needed improvement of standards of proactive disclosure of information and of the anti-corruption potential of this law. Delay could be explained by lack of willingness of competent authorities to increase the anti-corruption potential of this Law; to ensure higher transparency of the work of all public authorities; to include all entities vested with public powers in provisions of this Law, including notaries public and bailiffs, as well as entities majority-owned by the state; to introduce more stringent responsibility for violation of the law through granting of additional powers to the Commissioner to file petitions for infringement proceedings; to ensure functioning of the enforcement mechanism for the Commissioner's decisions; to improve legal framework for the exercise of freedom of information through mandatory obtaining of the Commissioner's opinion when enacting new 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; to ensure authorities can collect costs of access to information as own-source revenues, instead of paying them on a joint budget account as set out by the applicable legislation, while costs specified by the Government's Decree of 2006 have not been changed and adjusted to inflation.

Delay of amendments to Law on Access to Information also results in delay of the European integration process in the field of freedom of information, namely transposition 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.

⁵ National Programme for Adoption of the *Acquis* – Second Revision, November 2016.

2.3 Typical Cases and Ways in which Freedom of Information was thwarted in 2016

Below is a summary of some of the illustrative examples of the way public authorities treated the right to know in 2016:

2.3.1. The “Savamala” Case

Information about the actions that had or had not been undertaken by the competent public authorities and other circumstances surrounding the events of the night of 25 April 2016, when a group of perpetrators wearing balaclavas demolished buildings in Hercegovacka street in Belgrade under unusual circumstances, the so-called “Savamala” case, has remained inaccessible to the public notwithstanding all measures and formal decisions undertaken by the Commissioner pursuant to citizens’ petitions and complaints.

Immediately after the event, the Commissioner sent a letter to the mayor of Belgrade, asking him to disclose all relevant information about this case. The mayor replied he had informed the public he had no knowledge of the event other than the fact that competent city services had been involved, so he instructed the Commissioner “to contact the competent authorities.”

Other telling developments include the actions of the Higher Public Prosecutor’s Office in Belgrade and the methods used by that office to avoid having to provide the public with information about the conduct of a pre-trial investigation in the “Savamala” case.

Out of the five decisions passed by the Commissioner pursuant to citizens’ complaints, in which he ordered the Higher Public Prosecutor’s Office in Belgrade (HPPO) to provide the requested information, only one decision has been complied with and the name of the case prosecutor has been disclosed. Even this was done only after the Commissioner spoke with the Republic Public Prosecutor and drew attention to the unlawful actions of the HPPO, after the HPPO had previously, instead of complying with the Commissioner’s decision, notified the Commissioner that it had forwarded the case to the Republic Public Prosecutor’s Office.

The HPPO justified its refusal to provide the requested information by alleging it was not information of public importance, i.e. that the public did not have an interest to know, or that disclosure of the requested information could jeopardise the pre-trial investigation; after the Commissioner issued his binding decisions pursuant to complaints, the HPPO forwarded the cases to the Appellate Public Prosecutor’s Office for an opinion and for instructions on the further course of action within the meaning of Article 51 of the Bylaw on Administration of Public Prosecutors’ Offices and within the meaning of Articles 39, 16 and 18 of the Law on Public Prosecutors’ Offices.

There can be absolutely no justification for the fact that the HPPO chose to forward the cases to the superior prosecutor’s office instead of complying with the Commissioner’s binding decision, because in this specific situation the HPPO had acted as the authority of first instance in a matter of freedom of information, rather than as a prosecutorial authority, in which case it would have to seek the instructions of a superior prosecutor’s office. Such actions of the HPPO cannot be seen as anything else but an attempt to avoid making the information accessible to the public.

Also, the claims offered by the HPPO as justification for its denial of a request should be seen in the context of the fact that the requested information related to an event in relation to which the Protector of Citizens⁶ had found that human rights violations and serious omissions and failures had occurred in the acting of the competent authorities had occurred, which shows that the public's interest to know in this case is paramount, as evident from the fact that citizens have constantly been publicly protesting about this case in Belgrade.

Indeed, in the case in which the requesters had requested the reference numbers of documents passed by the deputy public prosecutor working on the case, the Republic Public Prosecutor's Office had asked the Commissioner for case files in order to determine whether filing legal action with the Administrative Court against the Commissioner's decision at the proposal of the HPPO would be justified.

The HPPO still refuses to comply with the Commissioner's orders and provide the public with relevant information about the "Savamala" case, including:

- Information about whether the HPPO had filed criminal reports against authorised officers of the Ministry of Interior of the Republic of Serbia for refusal to act pursuant to orders and urgings by the HPPO (four orders and urgings) in case No. KTN – 60/16 and, if so, to provide copies of those criminal reports;

- Information from case No. KTH-60/16 about the reference numbers of the documents sent by the deputy public prosecutor in charge of the case due to refusal of the police to comply with the orders and urgings to the public prosecutor at the Higher Public Prosecutor's Office in Belgrade, the Minister of Interior and the competent body of the National Assembly of the Republic of Serbia, as well as the reference numbers of the disciplinary action reports filed against the persons who disregarded the requests and urgings sent by the Prosecutor's Office, in accordance with Article 44 of the Criminal Procedure Code;

- Curriculum vitae of the deputy public prosecutor in charge of the "Savamala" case.

The Commissioner is currently enforcing the decision, pursuant to a petition by the information requester.

Information relating to the "Savamala" case has also been requested from the Republic Geodetic Authority (RGA), including copies of title deeds or provisional title deeds for all cadastral parcels in Hercegovacka street in Belgrade that were valid on the date of the "Savamala" events. After the requester lodged a complaint with the Commissioner because of the authority's refusal to respond to the request, the RGA notified the requester it did not hold the requested information.

2.3.2. The "Helicopter" Case

⁶ Findings and recommendations of the Protector of Citizens No. 13-32-2147/2016 of 9 May 2016 and No. 13-37-2526/2016 of 10 June 2016, <http://www.ombudsman.rs/index.php/2012-02-07-14-03-33?limit=50&start=50>

An illustrative example of how the right to know is treated can be found in the actions of the Higher Public Prosecutor's Office of Belgrade in connection with the "Helicopter" case, in which the HPPO refused to give the public access to information concerning the pre-trial investigation of the fall of a military helicopter in March 2015 near the "Nikola Tesla" airport. The helicopter had been sent to rescue a patient in Raška and its crash killed seven persons, but the HPPO did not investigate the crash.

In the case in which a journalist had requested from the HPPO a copy of the official note which contained reasoning for the decision not to investigate the fall of the military helicopter, the HPPO rejected the request, claiming that information about it had already been made publicly available, which was not true. While it was true that other information in connection with this case had been made available, including the report of the expert committees of the Serbian Armed Forces, the official note made by the HPPO⁷ had never been made available. For this reason, the Commissioner, acting pursuant to the complaint, ordered the HPPO to make the requested note available to the journalist.

In a different case, a journalist demanded of the HPPO to grant him access to copies of the case files of the pre-trial investigation of the same event. The HPPO rejected the request by invoking confidentiality and once again claiming that the information had been made available to the public.

The HPPO informed the Commissioner in both cases that it had filed a petition for an administrative dispute with the Republic Public Prosecutor's Office and asked for a stay of execution of the decision by which the Commissioner, acting pursuant to a complaint, had ordered the HPPO to make the information available to the requester.

2.3.3. Denial of Access to Information because of so-called "Protected Data" and Contractual Confidentiality Clauses

In 2016, invoking data confidentiality as a reason to deny access was again very often used by authorities. In such cases, 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 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 in case of publishing of information 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.

While the reason for such behaviour can be found in the decades-long lack of oversight of implementation of the Law on Data Confidentiality under the responsibility of the Ministry of Justice, it was certainly much more the result of an intent to cover up illegal disposal of public funds, malfeasance in office or other forms of corruption.

Below are some of the typical cases in which access to information was denied because of the so-called "protected data" and contractual confidentiality clauses:

⁷ <http://www.mod.gov.rs/cir/8067/izvestaji-komisija-za-utvrđivanje-uzroka-pada-helikoptera-8067>

Agreements relating to the operations of “Zelezara Smederevo”

A typical example of thwarting the application of the Law on Access to Information by invoking data confidentiality – indeed, confidentiality that had been established in a procedure before a different authority and only for the duration of such procedure (procedure before the Commission for the Protection of Competition), was the case of “Zelezara Smederevo” (Serbian steel manufacturing company) and information about its management, raw material purchases, agreement termination etc.

The Ministry of Economy acted in an identical manner pursuant to all requests in 2016 and invoked the same arguments, rejecting the request submitted by the information requester in this case, although it had already been aware of the Commissioner’s position on inadmissibility of the claims made in the same case in 2015⁸, when the Administrative Inspectorate of the Ministry of Public Administration and Local Self-Government filed a petition for an infringement proceeding against the then Minister of Economy⁹ after the Protector of Citizens found that the Ministry had committed multiple violations of the Law on Access to Information in multiple instances, that a provision of the Law on the Protection of Competition had been abused and that the right of the entire public to access information held by public authorities, guaranteed by the Constitution of the Republic of Serbia, had been violated, so the Protector of Citizens issued relevant recommendations to the Ministry, including the recommendation to comply with the Commissioner’s final, binding and enforceable decision, which has not happened.

The Ministry of Economy claimed that the Commission for the Protection of Competition of the Republic of Serbia had passed an official document in accordance with its statutory power to designate the said agreement and information relating to it as an official secret, that the Commission’s resolution identified the said Management and Consultancy Services Agreement and its enclosures as protected data within the meaning of Article 45 of the Law on the Protection of Competition and that the protected data in question could not be made available.

In 2016, the Ministry of Economy and the Steel Production and Processing Company Radinac refused to provide the Anti-Corruption Council of the Government of Serbia with information contained in the said Agreement and in the report of HPK MANAGEMENT d.o.o. and HPK ENGINEERING B.V. about the performance of the said agreement, information contained in the agreement of 22 April 2015 entered into by and between the company “Zelezara Smederevo” d.o.o. and the Company “Pikaro” and all other agreements arising from the said agreement entered into between the said companies, as well as the reasons for termination of the management agreement for “Zelezara Smederevo”.

The public was also interested in two sales agreements between “Zelezara Smederevo” d.o.o. and the company Bremer International Limited, as well as annexes and amendments to those agreements and information about mutual payments between “Zelezara Smederevo” d.o.o. and the said company. The company “Zelezara Smederevo” d.o.o., as a public

⁸ 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 MANAGEMENT d.o.o. of Belgrade and HPK ENGINEERING B.V. of Amsterdam, the Netherlands.

⁹ The Minister was cleared of any wrongdoing in the infringement proceeding.

authority,¹⁰ refused to provide a journalist with this information, alleging that the agreements were commercial in their nature and usually contained a nondisclosure clause which binds the parties to treat any commercial information contained in the Agreement as a trade secret and such information could therefore not be made available to third parties, which is inadmissible from the viewpoint of the Law on Access to Information, because the Law requires public authorities to demonstrate the harmful consequences that would ensue from disclosure of such information.

Neither the Ministry of Economy nor “Zelezara Smederevo” d.o.o. complied with the Commissioner’s decisions passed pursuant to requesters’ complaints.

This case also reaffirms the opinion that absence of any liability – political, infringement liability etc. – encourages public authorities to repeatedly violate the law and citizens’ guaranteed rights.

Agreements entered into by Joint-Stock Company AIR SERBIA

Air transport joint-stock company AIR SERBIA of Belgrade also invoked the so-called protected data as a reason for denial of access to information pursuant to a freedom of information request in a procedure before the Anti-Corruption Commission, rejecting the request of the Anti-Corruption Council for copies of agreements and transaction documents signed between Air Serbia and Etihad, as discussed in the chapter of this Report discussing enforcement of decisions, because the Government once again failed to enforce the Commissioner’s decisions.

Initial Memorandum of Understanding between “Elektroprivreda Srbije” and the Company Amplex Emirates LLC

In 2016, the Commissioner asked the Government of Serbia to enforce his decision by which he had ordered the Ministry of Mining and Energy to make the memorandum publicly available already in December 2014. The Ministry refused to enforce the decision and filed legal action against the Commissioner’s decision, which the Administrative Court dismissed. The Ministry paid fines in the total amount of RSD 200,000 in the execution procedure, but it still refused to provide the information.

In this case, the Ministry invoked the provisions of the Memorandum which stipulate that disclosure of information is subject to mutual consent of both parties, although the Commissioner had already taken the stand that such provisions were inadmissible. In general, provisions of commercial agreements cannot exclude the application of imperative provisions of the Serbian law in violation of the Serbian Constitution. In this specific case, even the Memorandum itself stipulates that the confidentiality and consent clauses do not apply to decisions passed in the application of laws which govern the matters of freedom of information in the Republic of Serbia for the purpose of exercising and protecting public interests.

2.3.4. Protection of the Right to Privacy as an Excuse for Denial of Access to Information

¹⁰ According to the information available to the Business Registers Agency, the company “Zelezara Smederevo” was formed by the Republic of Serbia, which holds 100% of its capital stock, and has the status of a public authority.

The Case of Accessibility of a Court Expert's Diploma

The City Institute of Expert Witnesses in Belgrade refused to provide a requester with information about the number of cases in which forensic evidence was presented by expert witness L.M., an employee of that Institute, the names of courts and court case file numbers and a copy of the diploma provided by the said person when she began her employment at the Institute. The Institute justified its refusal to provide the information by invoking the expert witness' right to privacy and possible obstruction of judicial proceedings.

The Commissioner upheld the requester's complaint and ordered the respondent to make the information available, noting it was unacceptable that the Institute justified its decision by citing threats to privacy in a situation where the requested information related to an employee and her work on behalf of a public authority, which was paid for by public money, and the work in question was that of a court expert witness; he noted the information did not relate to the person's private life and the statutory requirement for waving the protection of the right to privacy for the benefit of the right to know was therefore met. Furthermore, the Institute had failed to provide any evidence of potential obstruction of judicial proceedings.

In this case, the Institute made the information available only after the Commissioner conducted an enforcement procedure and imposed two fines to enforce the decision, which fines the Institute paid to the national budget; after he had reminded the Ministry of Public Administration and Local Self-Government about its oversight obligations under the Law on Access to Information; after he asked the Government to enforce his decision; and after numerous media reports about this case because the diploma was suspected to be a forgery.

2.3.5. Frequent Legal Actions by the Competent Prosecutor's Office against the Commissioner's Decisions

Under the law¹¹, the competent public prosecutor may file legal action in an administrative dispute if an administrative decision violates the law and prejudices public interest. On these grounds, in 2016 alone the Republic Public Prosecutor's Office filed 15 legal actions with the Administrative Court against the Commissioner's decisions invoking protection of public interest and even demanding a stay of execution of the Commissioner's decisions in some cases; for reference, in the past 11 years it had filed 11 legal actions in total.

One such legal action was filed against a decision by which the Commissioner ordered the Military Security Agency (MSA) of the Ministry of Defence to grant a journalist access to a document relating to the incident that occurred during the 2014 Pride Parade, marked Top Secret No. 44-123 of 07 October 2014. The Commissioner ordered that personal data be protected before making the document accessible, including the names and surnames of all persons other than law enforcement officers, addresses, Unique Personal Identification Numbers etc.

When making this Decision, the Commissioner weighed the facts that the incident involved officers of the Ministry of Interior and the Military Police, as well as the brother of the Serbian Prime Minister and the brother of the Belgrade mayor; that the public has also been

¹¹ Article 11, paragraph 3 of the Law on Administrative Disputes (Official Gazette of RS, No. 111/09)

presented with video footage of the event; and that the Protector of Citizens had conducted an investigation of legality and regularity of work of the Ministry of Defence, the Military Security Agency and the Ministry of Interior with regard to respect for citizens' rights in connection with this case and found certain omissions, which were recorded in a document posted on the website of the Protector of Citizens, all of which added to the legitimacy of the public's interest to know the particulars of this case.

The Commissioner rejected the allegations by the MSA that access to the document would compromise safety because it would reveal the method of obtaining security intelligence, since the law governing the actions of the authority in question¹² already clearly stipulates from whom and in what way the MSA may obtain data, including conditions for secret data collection using special procedures and measures (operational infiltration of organisations, groups and institutions; secret obtaining and purchase of documents and items; secret access to data records; secret tracking and surveillance of persons etc.). Furthermore, the Commissioner was guided by the fact that the inspection findings of the Protector of Citizens stated that the document covered by the freedom of information request had been made in connection with the "operational interviews" held on 4 October 2014, according to MSA officers; the fact that the Director of the MSA had said the document had not been presented to the public prosecutor because the commander of the operational team who had conducted the interview subsequently concluded that the statements obtained from citizens were irrelevant for the criminal proceeding and contained nothing that had not already been seen in the video footage; and the fact that the Protector of Citizens had had access to the Operational Note and found that it contained the statements of at least three citizens given to an MSA officer, with their personal recollection of the beginning, development and end of the incident. All of this seems to indicate that allowing access to the requested document could not result in such severe consequences as threats to the security system of the Republic of Serbia and it was therefore not warranted to restrict access to the information. Indeed, the MSA had even failed to document compliance with the formal requirement for potential restriction of the right to access the information under the law, namely that the document must be classified in accordance with the Law on Data Confidentiality, i.e. it was not explained what decision had classified the requested document, which officer had made that decision and if any such decision had been passed at all.

Based on the foregoing facts, it is impossible to see how the Commissioner's decision breached public interest, which is a requirement for filing legal action. The Administrative Court passed a decision to stay the execution of the Commissioner's decision in a proceeding pursuant to an appeal lodged by the Republic Public Prosecutor to annul the said decision and the judgement in this administrative matter is still pending.

The Republic Public Prosecutor's Office filed the remaining 14 legal actions against the Commissioner's decisions in proceedings pursuant to appeals by the Humanitarian Law Centre against the Ministry of Defence.

The contested decisions of the Commissioner had ordered the Ministry of Defence to make available information about the names of commanding officers of certain units of the Yugoslav Army, as well as on the deployment of certain members of the Ministry of Defence in the Yugoslav Army during the 1999 armed conflict in Kosovo and their status today, i.e.

¹² Articles 7 to 23 of the Law on the Military Security Agency and the Military Intelligence Agency (*Official Gazette of RS* Nos. 88/09, 55/12 – Constitutional Court Decision and 17/13).

their progress in the Serbian Armed Forces. When making the decision, the Commissioner took into account the fact that the Ministry had failed to demonstrate in accordance with the Law on Access to Information that the information in question was actually classified in accordance with and in the manner provided for in the Law on Data Confidentiality or what harmful consequences could stem from the disclosure of such information that would warrant the denial of access to such information. According to Article 108 of the Law on Data Confidentiality, the provisions of laws governing the work of public authorities as it pertains to the system of data classification and protection of classified data, insofar as they were not contrary to the provisions of the Law on Data Confidentiality, could have been applied solely until the effective date of this Law, i.e. by 1 January 2010. This, it was unacceptable for the Ministry to invoke regulations that no longer applied to the matters of data confidentiality.

The Commissioner found unacceptable the Ministry's claim that classified data relating to the country's Defence Plan, containing data about wartime deployment and use of units of the Armed Forces, constituted state secret, because the requester had not requested the current version of the Defence Plan of the Republic of Serbia, but only information relating to the deployment of the Yugoslav Army in 1999.

2.3.6. Denial of Access to Information due to Lack of Requested Information

Public authorities often state that they do not hold the requested information, while such replies are as a rule neither substantiated nor supported by evidence, e.g. of the statutory limit for keeping of documents, forwarding documents to archives or destruction of documents, rules of operation of services 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.

As an example, a freedom of information request submitted to the City Administration of the City of Belgrade asked for a list of e-mail addresses of the mayor, the mayor's office, the city architect, the office of the city architect, the city manager and the office of the city manager which had been used in official communication relating to city affairs and the Belgrade Waterfront project, as well as information on the number and content of e-mails exchanged in connection with this project between members of public authorities and with third parties.

The City Administration of the City of Belgrade did not comply with the request. When the requester lodged a complaint, the City Administration informed him it did not have the requested information.

Another illustrative example is a case in which a journalist requested from the Ministry of Interior information about an investigation of the incumbent Minister of Health because of his alleged ties to the Zemun criminal group in connection with the murder of one V.B. The Ministry informed the journalist, and subsequently also the Commissioner pursuant to a complaint, that it had not undertaken any action against the incumbent Minister of Health during operation "Sabre" and noted that the investigating judge had been in charge of conducting investigations at the time.

Taking into account the Minister's press release in connection with this event, in which he claimed to have taken three polygraph tests during operation "Sabre" to prove his innocence, the Commissioner once again asked the Ministry to once again state whether it had the requested information and the Ministry confirmed it did not have such information.

B. Right to Personal Data Protection

2.1. Legal Framework – Main Issues in Personal Data Protection

As regards the legal framework in the field of personal data connection, the situation appears to be very bad, indeed alarming. Due to the deficient legal framework, many issues are either not regulated at all or are improperly regulated, which in practice leads to numerous violations of the right to personal data protection, some of which are major in scope or significance.

In view of this, it is imperative to fundamentally change the attitude of the state and the society towards personal data protection and towards privacy in general. Any country that treats personal data protection seriously does this in a systemic way. This means that the first step must be to determine the objectives, measures and activities that need to be undertaken to protect and grant the enjoyment of the right to personal data protection. The next step would be to define the roles and responsibilities of all stakeholders in the exercise of this right, including the legislative branch, the executive branch and the judicial branch of the government. Then it is necessary to define specific activities that need to be undertaken to attain the intended objectives and achieve the desired effects. Of course, it is also necessary to designate the implementers of specific duties and to define a timeframe for the completion of those duties.

The key reason for the lack of systematic regulation of personal data protection in Serbia is the fact that the competent state authorities, in particular the Serbian Government, have inexplicably, but persistently, refused for eight years now to take the necessary steps to regulate the legal framework for personal data protection, thus creating the associated adverse consequences.

In view of the foregoing, the Commissioner must point out again in this Report, as he did while submitting his reports to the National Assembly in several previous years and on numerous other occasions, 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.

2.1.1. International Legal Framework

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 Agreement¹³, and the country's EU candidate status shows that European integration is of key importance for its foreign and internal policies. The fact that LPDP has not yet been fully harmonised with old international documents, in particular Directive 95/46/EC¹⁴ of the European Parliament and the EU Council of 1995, and the Council of Europe Convention for the Protection of Individuals with Regard to Automatic Processing of Personal Data¹⁵ of 1981 best shows how alarming situation in this field is. Of course, LPDP has also not been harmonised with the recently passed Regulation¹⁶ 2016/679 of the European Parliament and the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC. As seen from the name of this Regulation, it repeals Directive 95/46/EC, the former key European document in this field, with which LPDP has not been harmonised although it was passed 13 years after adoption of the said Directive. This Regulation entered into force on 24 May 2016 and will take effect on 25 May 2018¹⁷, meaning that Member States have two years to harmonise their national legislations with the Regulation.

In addition to the above Regulation, Directive 2016/680 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data by competent authorities for the purposes of the prevention, investigation, detection or prosecution of criminal offences or the execution of criminal penalties, and on the free movement of such data, and repealing Council Framework Decision 2008/977/JHA¹⁸ was also passed in 2016. This Directive entered into force on 5 May 2016, while EU Member States must transpose arrangements of the Directive in their national legislations until 6 May 2018.

Another important international document in the field of personal data protection passed in 2016 is Directive (EU) 2016/681 of the European Parliament and of the Council of 27 April 2016 on the use of passenger name record (PNR) data for the prevention, detection, investigation and prosecution of terrorist offences and serious crime¹⁹, which entered into force on 24 May 2016.

It is also necessary to mention the EU-US data protection "Umbrella Agreement" signed on 2 June 2016, which should put in place high binding standards for the protection of personal data exchanged between police and judicial authorities on both sides of Atlantic. The Agreement does not constitute a legal framework for data transfer; instead, it should provide for the protection for personal data (e.g. name and surname, address, data from criminal records etc.) exchanged between EU and the USA for the purpose of prevention, detection, investigation and prosecution of criminal offences, including terrorism.

Significant changes in the international legal framework in the field of personal data protection have also been introduced with the controversial "Privacy Shield", which the European Commission and the US Department of Commerce signed on 12 July 2016, after

¹³ <http://www.seio.gov.rs/src/srbija-i-eu/sporazum-o-stabilizaciji-i-pridruzivanju/>

¹⁴ <http://www.poverenik.org.rs/sr/pravni-okvir-zp/medjunarodni-dokumenti/699--9546-24101995-.html>

¹⁵ <http://www.poverenik.org.rs/sr/pravni-okvir-zp/medjunarodni-dokumenti/1359-konvencija-o-zastiti-lica-u-odnosu-na-automatsku-obradu-podataka.html>

¹⁶ <http://www.poverenik.org.rs/sr/pravni-okvir-zp/medjunarodni-dokumenti/2502-uredba-2016679.html>

¹⁷ http://eurlex.europa.eu/legalcontent/EN/TXT/?uri=uriserv:OJ.L_.2016.119.01.0001.01.ENG&toc=OJ:L:2016:119:TOC

¹⁸ http://eurlex.europa.eu/legalcontent/EN/TXT/?uri=uriserv:OJ.L_.2016.119.01.0089.01.ENG&toc=OJ:L:2016:119:TOC

¹⁹ http://eurlex.europa.eu/legalcontent/EN/TXT/?uri=uriserv:OJ.L_.2016.119.01.0132.01.ENG&toc=OJ:L:2016:119:TOC

long and hard negotiations. “Privacy Shield” has replaced “Safe Harbour”, which had been approved by the EU Court of Justice in 2015, after the well-known Schrems case.²⁰ “Privacy Shield” is based on a decision of the European Commission on adequacy of data protection arrangements which is based on the assumption that legal entities in the USA afford an identical level of protection to transferred personal data as the one applied in the EU, which provides additional legal certainty for businesses. Several EU Member States have challenged this decision of the European Commission, as they believe that the USA does not provide an adequate level of personal data protection comparable to that of the EU, and call for this decision to be annulled and for the Commission to be ordered to pay all expenses.

The vigorous legislative activity in the EU in 2016 in the field of personal data protection, the decisions of other authorities and bodies, including judicial decisions, as well as the positions and opinions of the Article 29 Working Party, place a serious and demanding task before EU Member States to adapt to the new standards in this field. For Serbia, as a country on the path of EU accession, this requires large and very serious changes in the national legal order, including not only the enactment of a new LPDP, but also harmonisation of numerous other laws and implementing regulations with the European standards.

It should also be noted that the Commissioner, in line with his powers and status of an independent state body, has used every opportunity to reiterate his unconditional commitment and offer assistance and support to the competent bodies and authorities in Serbia’s EU stabilisation and association process. In this context, in 2016 the Commissioner submitted multiple contributions (15) to the Serbian Government, the Ministry of Justice, the Ministry of Public Administration and Local Self-Government, the Serbian European Integration Office and the Council on Implementation of the Action Plan for Chapter 23.

2.1.2. Internal Legal Framework

The internal legal framework in the field of personal data protection in Serbia is completely unsuitable and thus completely non-functional. There are many reasons for this. First, numerous provisions of the Law on Personal Data Protection (hereinafter referred to as “LPDP”) are inappropriate and/or incomplete, while certain issues are not even regulated by the LPDP, or regulated systematically by other, special laws. It is necessary to appropriately regulate a number of questions, such as: video surveillance, processing of biometric data, the procedure for exercise of the right to personal data protection, the procedure for transborder transfer of personal data, the supervision procedure, the Commissioner’s powers, data security, analysis of risks for individuals’ rights in case of certain kinds of processing which may seriously prejudice individuals’ rights, 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.

The LPDP has been amended three times since its adoption, the first time when the Law on Data Confidentiality (Official Gazette No. 104/2009) has been enacted, on the basis on which provisions of Article 45, paragraphs 2-4 of LPDP were repealed, the second time pursuant to a judgement of the Constitutional Court that declared certain provisions of LPDP

²⁰ <http://www.poverenik.rs/sr/izvestaji-poverenika/2328-izvestaj-poverenika-za-2015-godinu.html>

unconstitutional, which was passed following a motion by the Commissioner, and the third time in a form of 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. In addition, the inappropriate internal 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 number of 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 (Article 42, paragraph 2 of the Serbian Constitution); instead, the subject matter is often regulated by secondary legislation. In addition, implementing regulations often insufficiently or incompletely regulate technical and similar issues in connection with data processing activities, which should be regulated exactly by such enactments.

Another 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.

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 eight years, although the Commissioner had warned about this duty on a number of occasions). This means that the protection of particularly sensitive data regulated by LPDP remains a dead letter.

In addition, the Government should have adopted an Action Plan on Implementation of the Personal Data Protection Strategy, with specified 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 six 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.

2.1.3. (Non-)Enactment of a New LPDP

For several years, the Commissioner has on numerous occasions drawn the attention of the Government, in particular the Ministry of Justice, to the fact that numerous provisions of LPDP are inappropriate or incomplete and that certain issues are not even regulated by LPDP or systematically regulated by other laws and proposed specific solutions to overcome such situation. In the past, such solutions proposed by the Commissioner included the regulation of specific issues (e.g. video surveillance); however, the backlog of unresolved issues observed in practice which resulted from the unsuitable legal framework and the resulting failure of competent public authorities, including in particular the Serbian Government, to act properly

have forced the Commissioner to independently draft a new Model LPDP (in October 2014). The Commissioner then submitted the Model Law to the Ministry of Justice, but a mere year later the Ministry of Justice prepared the Draft Law on Personal Data Protection which unfortunately has almost nothing in common with the Commissioner's Model Law, although this is a duty defined under the Action Plan for Negotiations for Chapter 23²¹ (September 2015). In addition, the said Action Plan stipulates that the new LPDP will be adopted in the fourth quarter of 2015, which did not happen, so the new text of the Action Plan for Negotiations for Chapter 23²², adopted at the Government's session held on 27 April 2016 delayed this time limit to the fourth quarter of 2016.

However, new LPDP has not been adopted in the fourth quarter of 2015, nor in 2016, nor until completion of the work on this Report. Also, a new time limit for adoption of the new Law on Personal Data Protection is still unknown.

Such (in)action 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, was violated both before the opening of this Chapter and after its opening. The Commissioner has complied with all of his duties relating to implementation of the Action Plan for Negotiation of Chapter 23; indeed, he has even gone beyond strict compliance with his statutory duties by preparing the Model LPDP, although he lacks the power to propose laws or their amendments. Proof of this can be found in the Statistical Report on Efficiency of Implementation of the Action Plan for Chapter 23 by the Fourth Quarter of 2016²³, adopted in December 2016 (p. 55), which explicitly states that "the Commissioner has fully implemented all activities provided for in the Plan" (unlike certain other state authorities, including in particular the executive, as well as the legislature).

In the working draft of the Serbia Progress Report of 9 November 2016, the European Commission stated, among other things, that "a new law on personal data protection in line with EU standards needs to be adopted urgently. Processing and protection of sensitive personal data, biometrics and video surveillance, security of data on the internet and direct marketing remain inadequately regulated, leaving significant scope for abuse." However, this conclusion presented in the Report has not been implemented either, i.e. a new Personal Data Protection harmonised with EU standards has not been enacted. An additional aggravating circumstance is the fact that there is still no law that would systemically and comprehensively regulate numerous areas that are crucial in terms of personal data protection, including video surveillance, biometrics, security clearance checks etc.

Because of significant amendments to the international legal framework for personal data protection, in 2016 the Commissioner prepared a new Model LPDP, fully harmonised with the relevant standards set out in the new European documents, including in particular the said Regulation (EU) 2016/679 of the European Parliament and the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC. As of the time of completion of this Report, the Commissioner has posted the text of this Model on his website and has invited all stakeholders, the expert community and the general public to discuss it in a hearing.

²¹ <http://www.mpravde.gov.rs/files/Akcioni%20plan%20PG%2023%20Treci%20nacrt-%20Konacna%20verzija1.pdf>

²² <http://www.mpravde.gov.rs/tekst/12647/akcioni-plan-za-pregovaranje-poglavlja-23-usvojen-na-sednici-vlade-srbije-27-aprila-2016.php>

²³ <http://www.mpravde.gov.rs/files/Statisticki%20izvestaj%20o%20sprovedenju%20Akinog%20plana%20za%20PG%2023.pdf>

After the hearing, which will take more than a month, the Commissioner will host a roundtable to discuss the Model. After adapting the text of the Model to the results and conclusions of the hearing, the Commissioner will make the Model available to the Government and the Ministry of Justice, just like in 2014, of which the public will again be informed by appropriate means. The Commissioner believes that this Model, unlike the Model of 2014, will be subject to serious deliberation by the Government and the Ministry of Justice and will subsequently be adopted by the National Assembly. He also hopes its full and unreserved implementation would help improve and protect the human rights guaranteed by the Constitution.

The lax attitude of the competent Serbian authorities, including in particular the Government, towards personal data protection is inexplicable and unconceivable, not least because our country is still in an early stage of implementing European standards in its internal legal order and especially in real life. This process should be made far more efficient and sound, with full respect for the principle of accountability.

2.2. Typical and Illustrative Cases of Thwarting the Right to Personal Data Protection Identified by the Commissioner

- Distribution of the Daily Bulletin of Events of the Ministry of Interior, as a specific issue regarding personal data processing by the Ministry of Interior, was subject to inspection by the Commissioner

The Commissioner found in an inspection that the Ministry of Interior had been compiling a data file titled “Daily Events”, in which it processed data about reported criminal offences and misdemeanours, police interventions to restore public order, traffic accidents, harm to lives and property caused by natural disasters and all other events within the mandate of the police, i.e. events and circumstances of relevant for public safety. Among other things, this data file also contained citizens’ personal data. On the basis of this file, the Ministry of Interior compiled **Daily Bulletins of Events, which it sent not only to authorised recipients within the Ministry of Interior, but also to a wide circle of external recipients, as had been customary at the Ministry of Interior for years.** Most of those external recipients were not authorised to request or receive such information and did not need it to perform their respective duties, and even if it was necessary for some of the external users to receive those data or if they were authorised to request and receive them, that should have been done through official correspondence, rather than through Daily Bulletins. After a Letter of Warning sent by the Commissioner, the Ministry of Interior abolished the practice of sending personal data to external recipients.

- Body cameras worn by Municipal Police

The Commissioner conducted an inspection of compliance with the Law on Personal Data Protection by the Municipal Police of the City of Belgrade (as an internal organizational unit within the City Administration of the City of Belgrade as a single authority), after learning that the Municipal Police had so-called body cameras which were worn by municipal police officers on their uniforms. The aim of the inspection was to find facts

about the legal grounds and purpose of processing of the personal data generated in the recording process. The Commissioner found that the legal basis was contained in a piece of secondary legislation, the Instructions on the Use of Official Cameras, and the Municipal Police had never actually used the cameras; instead, officers wore them “as a precaution to protect the integrity of municipal police officers” because citizens allegedly “treat them differently when they know they are being recorded.” **The Commissioner warned the Municipal Police about the identified irregularities and sent a letter to the mayor of Belgrade, in which he underscored that city authorities had to pay much more attention to citizens’ privacy, improve their attitude to processing of citizens’ personal data and process any such data in full observance of the constitutional and legal guarantees relating to the right to personal data protection. This form of data processing was terminated after the Commissioner’s Warning.**

- Ticket inspectors “verifying the identity” of citizens in public transport

In connection with amendments to Decision on Scheduled Public Transport adopted by the City Assembly, the Commissioner sent letters (identical in content) to the Mayor of the City of Belgrade and the Chairperson of the Belgrade City Assembly. The Commissioner focused in particular on those parts of the Decision which **granted ticket inspectors in public transport the power to process personal data by verifying citizens’ identity even without the presence of a police officer or a municipal police officer and stipulated that citizens have a duty to provide the requested information. In this context, the Commissioner pointed out that grounds for personal data processing must be provided by a law, rather than a piece of secondary legislation. Accordingly, a decision passed by the City Assembly cannot provide grounds for the ticket inspectors to verify citizens’ identity, i.e. to process citizens’ personal data, or for the citizens’ duty to provide such data.** These matters were also brought to the attention of the Ministry of Construction, Transport and Infrastructure, which was advised to undertake the necessary measures to amend and supplement the Law on Road Transport. Without questioning the importance of ensuring orderly payment of public transport fares, the Commissioner noted that this should and must be done exclusively within the boundaries imposed by the Constitution and the applicable laws and explained that the said Decision, as it pertained to personal data processing, clearly overstepped those boundaries, which rendered its unconstitutional and illegal. For this reason, the Commissioner expects the competent authorities of the City of Belgrade to refrain from enforcing this Decision, to avoid potential unwanted reactions from citizens, to avoid any future actions by the Commissioner in accordance with his powers in this regard and to notify the Commissioner of its compliance.

- Polygraph testing of employees

In the field of employment relations, specifically industrial relations between employers and workers, **the Commissioner was informed that certain employers subject their employees to polygraph tests, for example if they are suspected of having committed a criminal offence.** Such was e.g. the case of “Perutnina Ptuj”, which was advised by the Commissioner that it lacked proper legal grounds for the inadmissible processing of personal

data of 17 of its employees who had been subjected to polygraph tests and explained such processing was disproportionate to the intended purpose. He gave similar advice to other employers as well.

- Data “leaks”

The Commissioner initiated and conducted *ex officio* an inspection of compliance with and implementation of the LPDP by the Tax Administration of the Ministry of Finance (TA) and the Public Revenue Administration within the Secretariat for Finance, Local Tax Administration for the City of Belgrade (LTA). The inspection found that the data in question were definitely data contained in the official tax records controlled by the Local Tax Administration, but which could also be accessed by the Tax Administration as a recipient. The facts and circumstances found during the inspection raise suspicion that **an unidentified individual at the TA abused his/her access privileges for the computer application “Local Tax Administration” to retrieve, print out and make available personal data of citizen T.R. to a media outlet, which subsequently published those data. As the tax returns and tax debt in question dated several years back, finding exactly who and when made these data available to third parties without authorisation will require the use of crime investigation methods and resources and an investigation will have to be conducted, which is the responsibility of the Prosecutor’s Office. Managers and staff at both inspected institutions were cooperative. For example, the Commissioner welcomes the fact that the Director of the Tax Administration ordered to immediately, even as the inspection was in progress, replace the passwords used by TA staff to access local tax administration data and to form a new Register of staff authorised to access those data. **Upon conducting the inspection, the Commissioner found that a data “leak” had occurred, because the personal data contained in a natural person’s tax return had been published by a media outlet as they appeared on the records of the Tax Administration. The Commissioner warned that appropriate safeguards to protect taxpayers’ personal data had not been undertaken, which resulted in an abuse of the said data, and he filed a criminal report with the Higher Public Prosecutor’s Office against an unnamed individual at the Tax Administration for the criminal offence punishable under Article 146 paragraph 3 of the Criminal Code.****

- Video surveillance

The lack of proper legal grounds for personal data processing is also evident in video surveillance, the use of which is still not systemically regulated by any law. The Commissioner undertook measures on multiple occasions in connection with inadmissible processing of personal data using video surveillance systems, which are as a rule used without proper legal grounds and in a disproportionate way.

In his inspections, the Commissioner came across a bizarre case involving video surveillance: namely, the Belgrade Bus Station had installed cameras inside toilet cubicles, allegedly for security reasons, while the sanitation department was in charge of monitoring(!). This processing was terminated pursuant to the Commissioner’s Letter of Warning.

After conducting an inspection of the Republic Geodetic Authority (RGA) and subsequently also the Faculty of Law of the University of Belgrade, the Commissioner issued a letter of warning to these institutions because they processed personal data by

video surveillance and streamed it online. After the Commissioner's warning, both institutions terminated such data processing: the RGA stopped streaming the footage, while the Faculty of Law reduced the resolution of the video to such an extent that it rendered the recorded persons unidentifiable, thus stopping the processing of personal data.

After conducting an inspection of compliance with and implementation of the LPDP by the Ministry of Interior, the Commissioner found that the Ministry of Interior was conducting inadmissible processing of personal data through video recording of candidates who took driver education examinations, because such processing was provided for by three bylaws passed by the Minister, rather than by a law; the Commissioner also found that such personal data processing involved the creation of new large personal data files, including data created through audio and video recording and use of software. The Commissioner warned the Ministry of Interior that, if it nevertheless believed the use of audio and video surveillance was indeed necessary in such situations and to such an extent, it should be governed by relevant provisions of a law.

- Integrated Health Information System (IHIS) and processing of particularly sensitive personal data

Lack of proper legal grounds for the processing of personal data, as particularly sensitive data, has been identified in the field of health care. Thus, for example, after conducting an inspection of compliance with and implementation of the a LPDP at the Ministry of Health, the Commissioner found that it had established without proper legal grounds the Integrated Health Information System (IHIS), as a centralised electronic collection of personal data. In this data file, the Ministry of Health processed the personal data of employees and patients at 451 health care institutions in the Republic of Serbia, including information about patients' health. The Commissioner found that 69,359 natural persons had access to personal data within the IHIS, which constituted a very real threat of potential compromising of information about citizens' health, to which he drew the attention of the Ministry of Health. **The Commissioner subsequently found that appropriate safeguards had still not been applied to this data, ordered the Ministry of Health to undertake all necessary measures to protect the personal data it processes under the IHIS from abuse, destruction, loss, tampering or unauthorised access.**

Lack of proper legal grounds for processing particularly sensitive personal data was identified e.g. in the case of the City Centre for Social Work of the City of Belgrade, because one unit of the Centre had made personal data of soup kitchen users available to unauthorised recipients, due to which the Commissioner undertook measures against this Centre within his sphere of competence.

The Commissioner also warned the Ministry of Education because it had processed data about trade union membership of educators, as particularly sensitive personal data, without proper legal grounds. He advised the Ministry it must fully comply with Article 16 of the LPDP.

- Processing of nursing mothers' personal data based on "signed" consent

After conducting an inspection of compliance with and implementation of the LPDP by the company *Care Direct*, **the Commissioner found that this company had cooperation**

agreements with 45 medical institutions in Serbia under which it is granted the use of premises and human resources at those institutions. Under service contracts, health care professionals distribute material to nursing mothers and obtain data from them on a supplied form, but “always subject to obtaining their signature.” The Commissioner’s inspection did not find any inadmissible processing of personal data, but he notified the Ministry of Health and the Republic Public Prosecutor’s Office about these facts and about the existence of agreements between this company and maternity clinics and the potential forging of many consents to personal data processing. The results of this inspection seem to indicate that in quite a few cases the signatures of nursing mothers on the personal data processing forms might be unauthentic, i.e. forged. As an example, in the case of personal data of women who gave birth in just one obstetrics and gynaecology clinic in the city of Novi Sad, one the sample of 398 signed forms it was found that as many as 116 of them were only initialled, ostensibly by the women themselves. This fact, together with the statements of certain nursing mothers whose “signed” forms were found in the inspection procedure and who categorically insisted they had never signed anything, seems to indicate that multiple criminal offences may have been committed in connection with the processing of personal data of nursing mothers. As it would be reasonable to assume that similar instances have occurred in some of the other 45 obstetrics and gynaecology clinics across Serbia, which are under the jurisdiction of many public prosecutors’ offices, **the Commissioner reported the case to the Republic Public Prosecutor’s Office, expecting it to determine whether and to what extent it should act on this information within its mandate.**

- Disease codes are unnecessary information for employers

In 2016, the Commissioner once again called for amendments to the implementing regulation which governs the content of certificates of temporary incapacitation, because it contains a disease code and this personal data is excessive and unnecessary to employers. Namely, the content of the certificate is governed by the Bylaw on the Manner of Issuing and Content of Certificate of Temporary Incapacitation, passed by the Minister in 2002 pursuant to a Labour Law that has been repealed more than 10 years ago(!). This means that personal data processing in this case is governed by secondary legislation, rather than by law, which is contrary to the Serbian Constitution. An additional issue is that, under the said Bylaw, the certificates must include, among other things, information about diagnosis, i.e. a code of the disease (which is treated as particularly sensitive information under the law). This particular piece of information is not necessary for employers: all they need to know is that an employee is incapacitated and how long he/she would be absent from work. Furthermore, as the codebook of diseases is available online to an unlimited number of persons, it carries a risk of serious and unnecessary invasion of employees’ privacy. In this context, the Commissioner notes he had sent a letter back in 2013 to the Ministry of Labour, Employment, Veteran and Social Affairs in which he pointed to this and a host of other issues which needed to be addressed as soon as possible, but his efforts fell on deaf years and have not yet been met with an appropriate response.

- A member of the RHIF’s Managing Board posted online personal data of an underage beneficiary contained in that Fund’s central records

The Commissioner conducted an inspection of the Republic Health Insurance Fund (RHIF) after a member of the RHIF’s Managing Board had posted online personal

data of an underage beneficiary contained in that Fund's central records. The Commissioner issued a relevant Letter of Warning and initiated an infringement proceeding. During the inspection, he found irregularities in the actions undertaken by the RHIF when processing personal data of insurance beneficiaries, both because it had made personal data from the central records available to a member of its Managing Board without proper legal grounds and because it had failed to put in place the required technical, HR and organisational measures to safeguard personal data, as required by Article 47 of the LPDP.

- Access to so-called retained data is possible only with a court decision

The Commissioner has pointed out on a number of occasions that access to data about electronic communications, the so-called retained data, is possible only with a court decision. Although the Commissioner has already warned state authorities and the public about this obligation, which is also guaranteed by the Constitution of the Republic of Serbia, public prosecutors' offices have continued with the practice of demanding such data from electronic communication network operators even without court decisions. In connection with this, the Commissioner has sent another letter to the Republic Public Prosecutor.

- Security clearance checks

The Commissioner sent a letter to the Prime Minister of Serbia, asking him to repeal the part of the National Aviation Security Programme relating to the manner in which security clearance checks are to be performed, as a document that undermines legal certainty and contributes to violations of constitutional guarantees of personal data protection. In this context, the Commissioner once again reiterates that security clearance checks, as a particularly sensitive form of personal data processing, are not uniformly and coherently governed by the law, which gives rise to arbitrary interpretation of these issues and creates the lack of legal certainty in this field.

- Personal data of bank clients thrown to garbage

The Commissioner inspected compliance with and implementation of the LPDP by Eurobank EFG and found that the said bank had not put in place appropriate organisational, technical and HR measures to protect its clients' data, which resulted in personal data of its clients being left next to a garbage disposal bin in the immediate vicinity of a branch of that bank. In connection with this, the Commissioner issued a warning to the bank, initiated an infringement proceeding and submitted the documentation to the National Bank of Serbia for further processing within its sphere of competence.

- "Black lists"

Also, in connection with the reports by certain media outlets that the mayor of the City of Niš had announced the formation of records of citizens who sued the city for any reason while having unpaid bills from local utilities, the Commissioner sent a letter in

which he warned that creation of such files of citizens' personal data was not allowed because there was no legal basis for it.

- “Usual” abuse of personal data during the election process

Just like during every election cycle, many citizens have contacted the Commissioner during the election process to report cases of data abuse by party-political activists. In connection with this, the Commissioner pointed to the statutory duties and responsibility towards data processed pursuant to the law, with infringement and criminal penalties for non-compliance. In this context, the Commissioner once again called on political parties to refrain from any unlawful treatment of the personal data they hold.

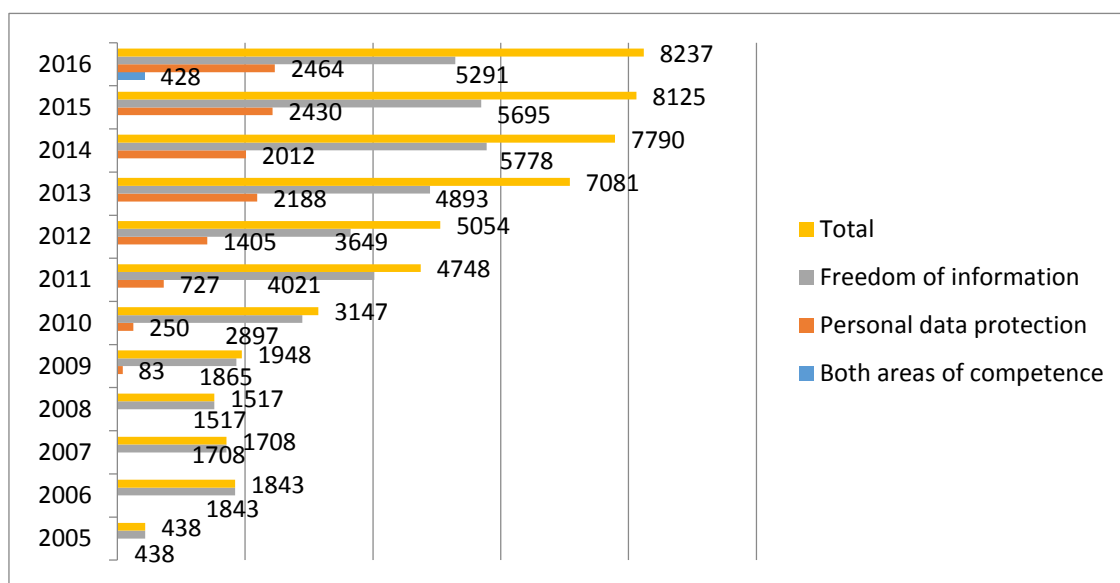
3. COMMISSIONER'S ACTIVITIES

3.1. Summary of Overall Activities

The constant increase in the number of cases within the Commissioner's purview since the beginning of his work has continued in 2016. In 2016, the Commissioner received 8,237 new cases, including 5,291 cases relating to freedom of information, 2,464 cases relating to personal data protection and 428 cases relating to both areas of the Commissioner's work. Together with the pending cases carried forward from the previous period (3,864), in 2016 the Commissioner worked on 12,101 cases in total.

The increase in the number of cases handled by the Commissioner is shown in the following graph.

Graph 1. Number of cases received by years



During 2016, the Commissioner closed 8,061 cases, including 5,135 cases in the field of freedom of information, 2,454 cases in the field of personal data protection and 472 cases relating to both fields. There were 4,040 pending cases carried forward to 2017 (3,522 relating to freedom of information, 500 relating personal data protection and 18 relating to both areas of competence).

In addition, in 2016 the Commissioner also worked towards improving the functioning of his office, primarily within the framework of the two-year project launched in 2015 under an agreement between the Government of the Republic of Serbia and the Ministry of Foreign Affairs of the Kingdom of Norway, which is addressed in more detail in the chapter on the Commissioner's Office.

Of particular importance for this institution and other bodies are staff trainings and the obtaining of the highest certification level for the implementation of data safety standards –

SRPS ISO/IEC 27001, as well as other preparations for the implementation of this standard in the Commissioner's work, which is scheduled to be completed by the end of 2017.

Also, 21 employees at the Commissioner's Office underwent security clearance checks in 2016 and were issued with the requisite certificates by the Office of the National Security Council which allow them to access classified data in accordance with the Law on Data Classification; three of them have received security clearance to access data with the highest classification level, "state secret", while 18 have received security clearance to access data classified as "top secret", which they need for the normal exercise of their respective duties.

The Commissioner's activities in 2016 concerned the following:

- **Handling of individual 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 **3,660 complaints** (3252 complaints in the field of freedom of information and 408 in the field of personal data protection);

- **Supervision** of implementation of and compliance with the Law on Personal Data Protection - the Commissioner has initiated 828 procedures, including: 260 pursuant to citizens' reports, 121 on the Commissioner's own initiative and 447 in connection with personal data files. The Commissioner closed a total of **835 inspection procedures**²⁴ as follows: 9 cases were closed by filing petitions for institution of infringement proceedings, 1 was closed by a criminal report, 534 cases were closed because it was found that previous inspection, warning or resolution was complied with, 217 cases were closed by notification according to Article 50 of LPDP on initiation of processing or formation of data files and in 74 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 - a total of **75** (70 opinions concerning freedom of information and personal data protection and 5 opinions concerning status-related issues in connection with authorities and employees);

- **Provision of assistance to individuals and legal entities and to public authorities, i.e. data processors, in the exercise of rights** or proper implementation of LFAIPI and LPDP, through explanation of unclear issues and procedures - **1,104 opinions and answers** concerning proper implementation of both laws were issued, of which 944 on implementation of LPDP and 160 on implementation of LFAIPI, as well as 30 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 of public importance or information in connection with personal data processing (**802 cases**);

- **monitoring compliance with a legal duty to publish information booklets, undertaking of measures** and provision of assistance to public authorities in connection with implementation of regulations on the improvement of transparency of work- **105 cases**;

²⁴ The number of closed inspection procedures also includes procedures initiated in 2016 which were not closed in that year.

- **Assistance in the training of employees** in public authorities and personal 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; **publications** with the views and opinions from the Commissioner's practice, as well as **posting of court decisions** 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, expert meetings and study visits 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 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 etc.;

- Activities relating to **Serbia's EU accession process** - **15 contributions** to reports submitted by the Serbian Government, the Ministry of Justice, the Ministry of Public Administration and Local Self-government, the European Integration Office and the Council for Implementation of the Action Plan for Chapter 23;

- **Public announcements through which** the Commissioner communicated with the public on **98** occasions;

- Activities in connection with **recording of data files entered in the Central Register** maintained by the Commissioner in accordance with the law (during 2016, 332 data controllers submitted 1300 personal data files) and on 31 December 2016 a total of 1951 data controllers and 9704 data files have been registered with the Register;

- **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 - **229** cases;

- Activities in connection with **enforcement of the Commissioner's decisions** (**245** cases closed and a total of **503 enactments** passed);

- **Responses submitted to the Administrative Court with regard to legal actions** in administrative disputes (**111 cases**) against the Commissioner's decisions and failure to resolve complaints within the statutory time limit на;

- Responses to the **citizens' petitions**, most of which relate to issues outside the Commissioner's sphere of competence (**557 cases**);

- **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 (**319 cases**);

- The Commissioner received **23,979 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.

3.2. Commissioner's Activities in connection with Protection and Improvement of Freedom of Information

In the field of freedom of information, the Commissioner handled 8,657 cases in connection with the protection and improvement of rights in 2016. Of those cases, 3,366 were carried forward from 2015, while 5,291 were received in 2016. In 2016, the Commissioner resolved 5,135 cases, while the remaining 3,522 pending cases have been carried forward to 2017.

As regards the structure of resolved cases, the majority of complaints were lodged against authorities' failure to act on requests for access to information or against failure to provide information, so the majority of the Commissioner's activities and measures involved protection of rights in specific situations and enforcement of decisions passed pursuant to proposals submitted by citizens.

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

3.2.1. Statistics on Activities and Measures

Table 1 – Types and volume of Commissioner's activities and measures in 2016

Types of activities and measures		Number
1.	Cases received	5,291
2.	Pending cases carried forward from previous year	3,366
3.	Total cases handled	8,657
4.	Resolved cases	5,135
5.	Complaints received	3,474

6.	Complaints resolved	3,252
7.	Opinions on implementation of LFAIPI	160
8.	Opinions on draft laws and bills and draft other regulations ²⁵	65
9.	Responses to complaints to the Constitutional Court	87
10.	Responses to requests for information about the Commissioner's work ²⁶	223
11.	Acting on requests for access to information relating to the operations of/held by other public authorities – the Commissioner informed the requesters about the procedure	257
12.	Motions for enforcement of the Commissioner's decisions	245
13.	Enforcement orders issued	106
14.	Resolutions on penalties issued in the process of enforcement of decisions	148
15.	Total amount of fines imposed in the process of enforcement of decisions, in RSD	13,200,000
16.	Requests sent by the Commissioner to the Government for assistance / enforcement of his decisions	61
17.	Cases in which the Commissioner requested the administrative inspectorate to carry out an inspection and initiate infringement proceedings	318
18.	Number of resolutions staying the enforcement of decisions	188
19.	Written communication with public authorities in connection with the implementation of LFAIPI (advisory and instructional communications to authorities with the aim of increasing the transparency of their work and other communication)	639
20.	Replies to petitions against the work of public authorities unrelated to freedom of information	488

²⁵ This information relates to a total number of opinions from the aspect of the Commissioner's sphere of competence.

²⁶ This includes a total number of complaints, regardless of the fact to which Commissioner's sphere of competence they relate.

3.2.2. Protection of freedom of Information by the Commissioner

3.2.2.1. Handling of Complaints

The number of complaints formally lodged with the Commissioner has ranged between three and four thousand annually in the previous four years. In 2016, the Commissioner **received 3,474 complaints**, while 2,843 pending complaints were carried forward from 2015, so a **total of 6,317 complaints were handled in 2016**.

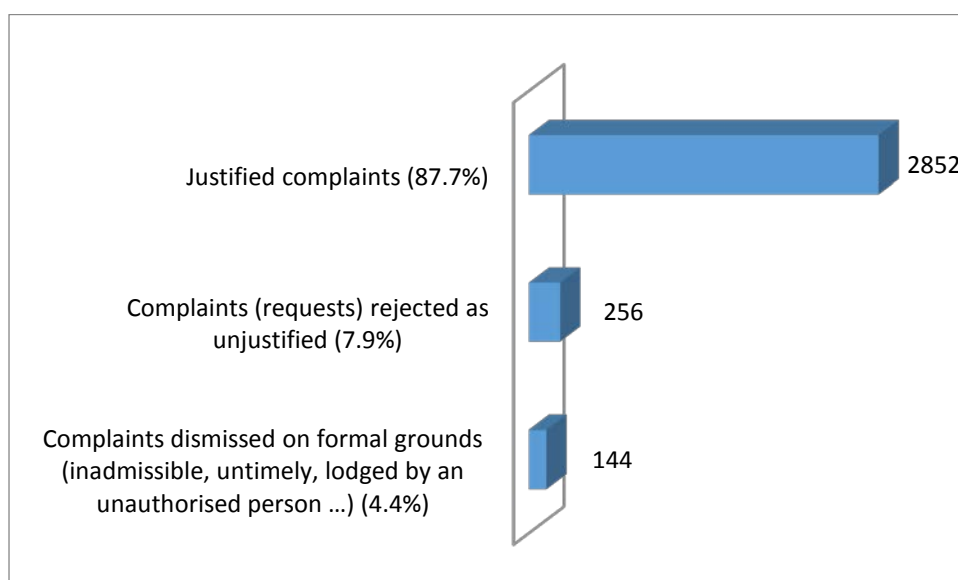
In 2016, the Commissioner resolved 3,252 complaints. In 2016 again there was a large number of cases where public authorities ignored received requests for free access to information or replied they cannot provide information, without proper justification or indeed any justification at all. **Such cases of the so-called “administrative silence” accounted for 84.4% of resolved cases**, which is 3.3% less than in 2015, which shows improvement of at least formal acting of authorities on replying to requests. Only 508 complaints, or 15.6% of resolved complaints, were filed against decisions of public authorities which rejected the requesters’ freedom of information requests as unjustified.

Complaints were mainly **justified**, namely **2,852 complaints** or **87.7%** of the total number of resolved complaints (3,252). The number of complaints found to be justified by the Commissioner was 2% higher compared with 2015.

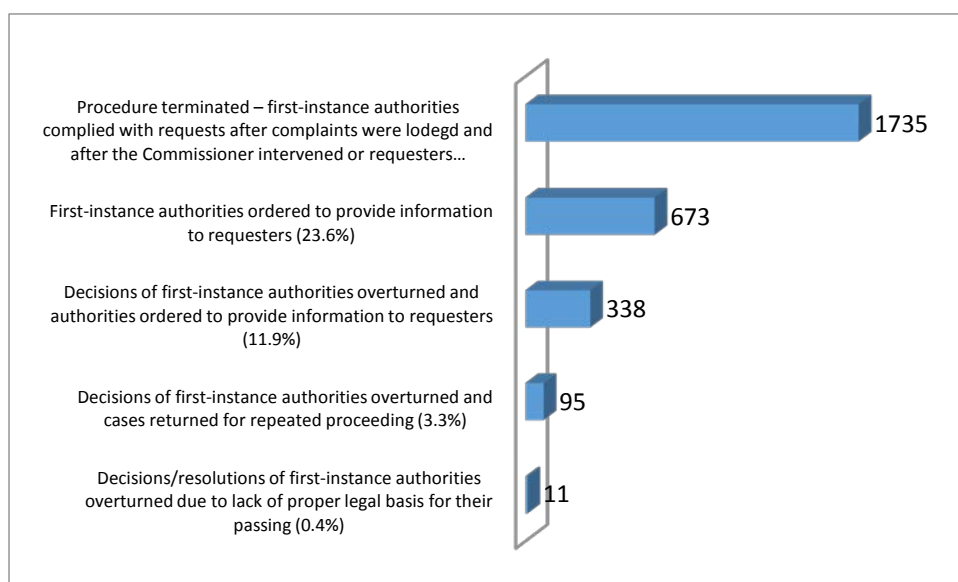
In 2016 again justified complaints by citizens in a large number of cases ended in **termination of the proceedings (60.8%)** because the public authorities honoured the request made by the requester in the meantime upon learning of a complaint and after the Commissioner’s intervention, before the Commissioner passed a decision pursuant to a complaint. This shows that public authorities treat citizens poorly, have no accountability, disrespect laws and waste public funds.

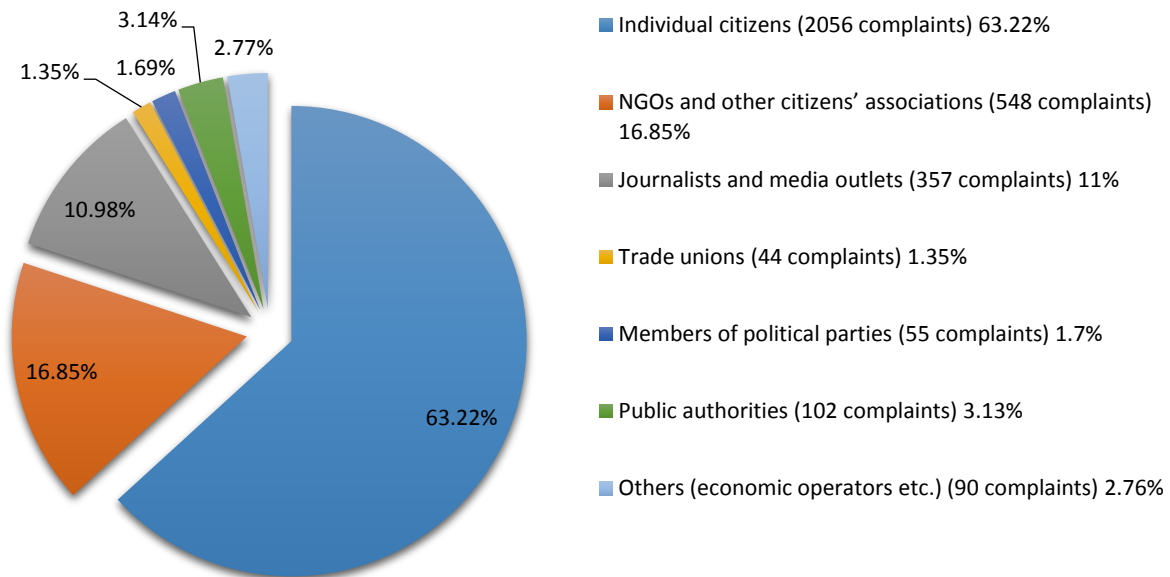
The graphs below show to which information requests and complaints filed by requesters related in 2016, who requested information, against which authorities the complaints were lodged, what reasons public authorities invoked when they passed decisions rejecting information requests, decisions passed by the Commissioner in handling of complaints and how public authorities complied with the Commissioner’s decisions.

Graph 2. Decisions passed by the Commissioner pursuant to complaints in 2016

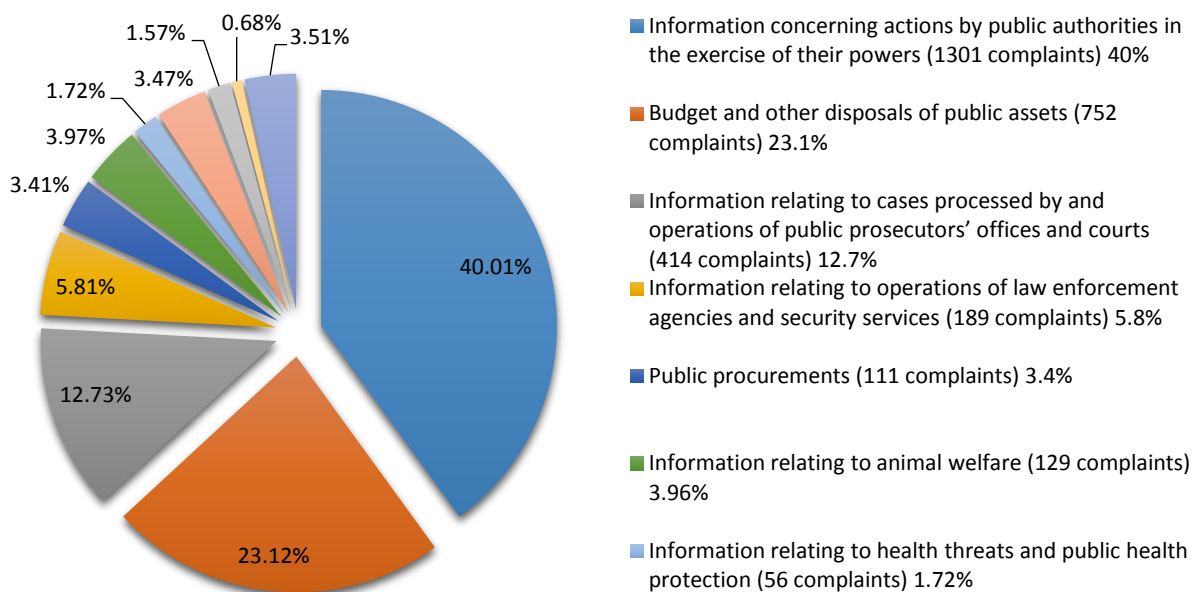


Graph 3. Commissioner's decisions pursuant to justified complaints



Graph 4. Complainants addressing the Commissioner

Information on complainants shows that users of the rights are unfortunately also public authorities themselves, which are often forced to use the institute of freedom of information in communication with other authorities.

Graph 5. Types of requested information that were the subject of complaints

In 2016 again there was a high percentage of complaints lodged 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.

About one half of complaints were lodged against national government and other authorities and organisations, of which 45.9% were lodged against ministries and bodies subordinated to them.

Graph 6. Number of complaints by types of authorities (3,252 complaints)

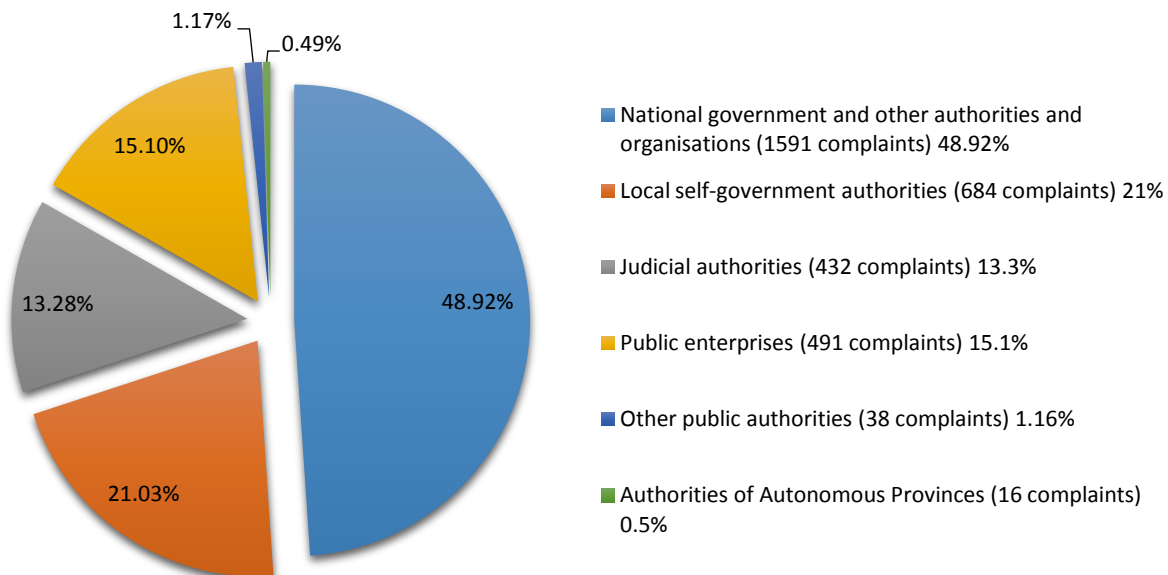


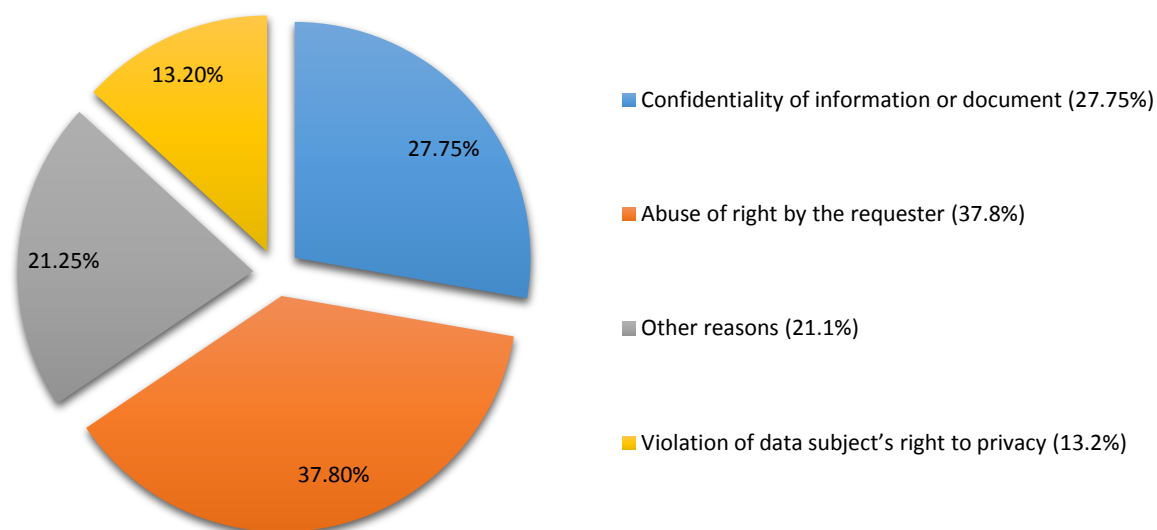
Table 2. Overview of requests and complaints filed in 2016 against ministries *with bodies subordinated to them*

No.	Ministry	No. of requests	No. of complaints
1.	Ministry of Interior	3887	293
2.	Ministry of Finance	704	102
3.	Ministry of Agriculture and Environment Protection	344	81
4.	Ministry of Justice	316	66
5.	Ministry of Construction, Transport and Infrastructure	234	16
6.	Ministry of Education, Science and Technological Development	231	12
7.	Ministry of Defence	288	50

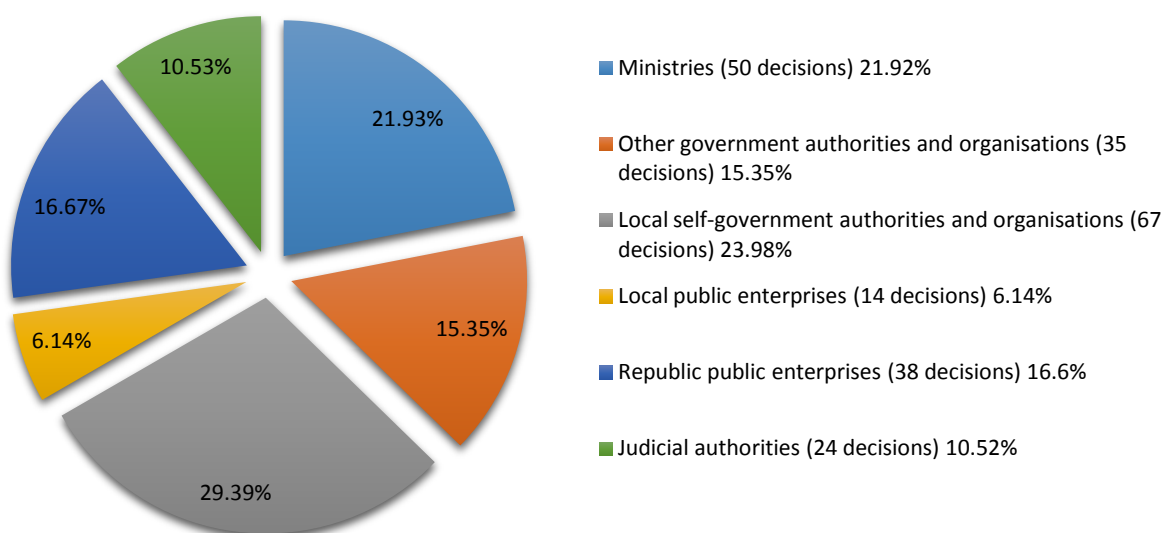
8.	Ministry of Health	184	12
9.	Ministry of Economy	158	22
10.	Ministry of Public Administration and Local Self-Government	147	16
11.	Ministry of Labour, Employment, Veteran and Social Affairs	149	43
12.	Ministry of Trade, Tourism and Telecommunications	86	1
13.	Ministry of Culture and Information	64	3
14.	Ministry of Youth and Sport	44	1
15.	Ministry of Mining and Energy	69	2
16.	Ministry of Foreign Affairs	51	10
TOTAL		6956	730

Information in the table above shows that in 2016 on each 9.5 requests filed to ministries a requester complained to the Commissioner because he/she did not receive information.

Graph 7. Reasons for rejection of requests



Graph 8. Number of Commissioner's decisions passed in 2016 that have not been complied with (228)²⁷

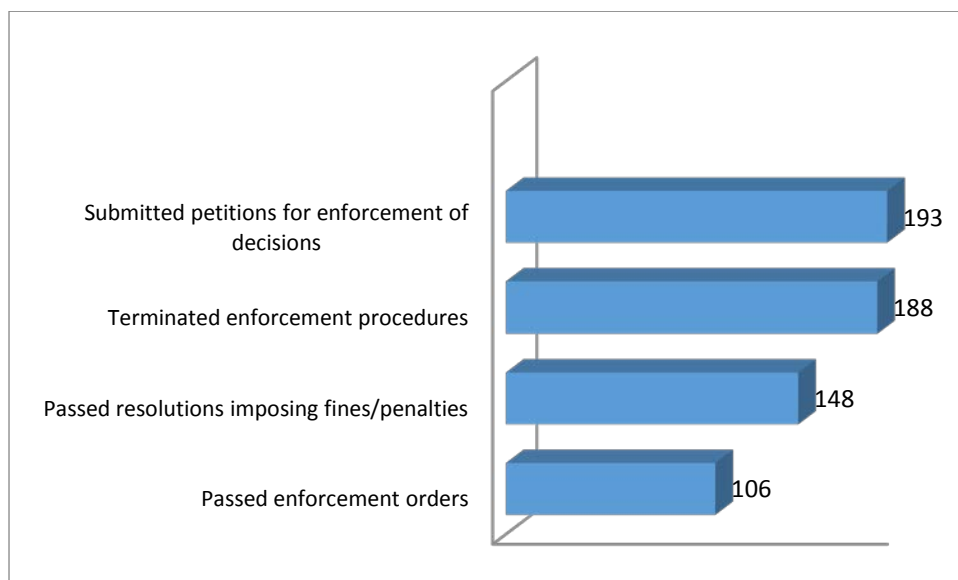


3.2.2.2. Enforcement of Commissioner's Decisions

²⁷ An overview of the Commissioner's decisions passed in 2016 that have not been complied with as at 10 February 2017 constitutes an integral part of the Report.

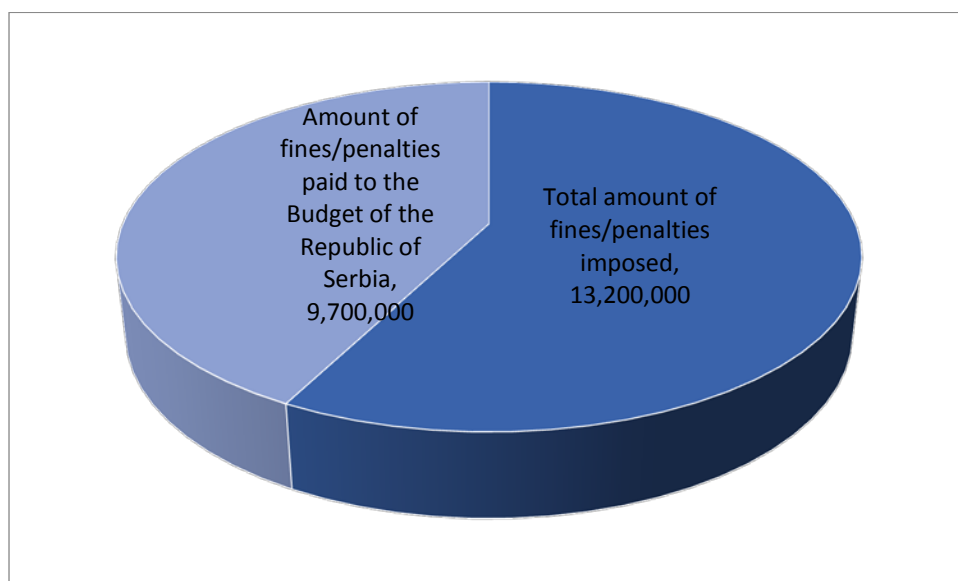
In 2016, the Commissioner received much more petitions from information requesters for enforcement of his decisions when public authorities refused to do so and three times more fines were imposed in these procedures than in 2015. The graphs below show overview of measures undertaken.

Graph 9. Overview of petitions for enforcement of the Commissioner's decisions in 2016 and undertaken measures



Information on terminated procedures and resolutions and orders passed include cases in 2016 and previous years.

Graph 10. Overview of imposed and collected fines



3.2.3. Protection of Rights before the Administrative Court

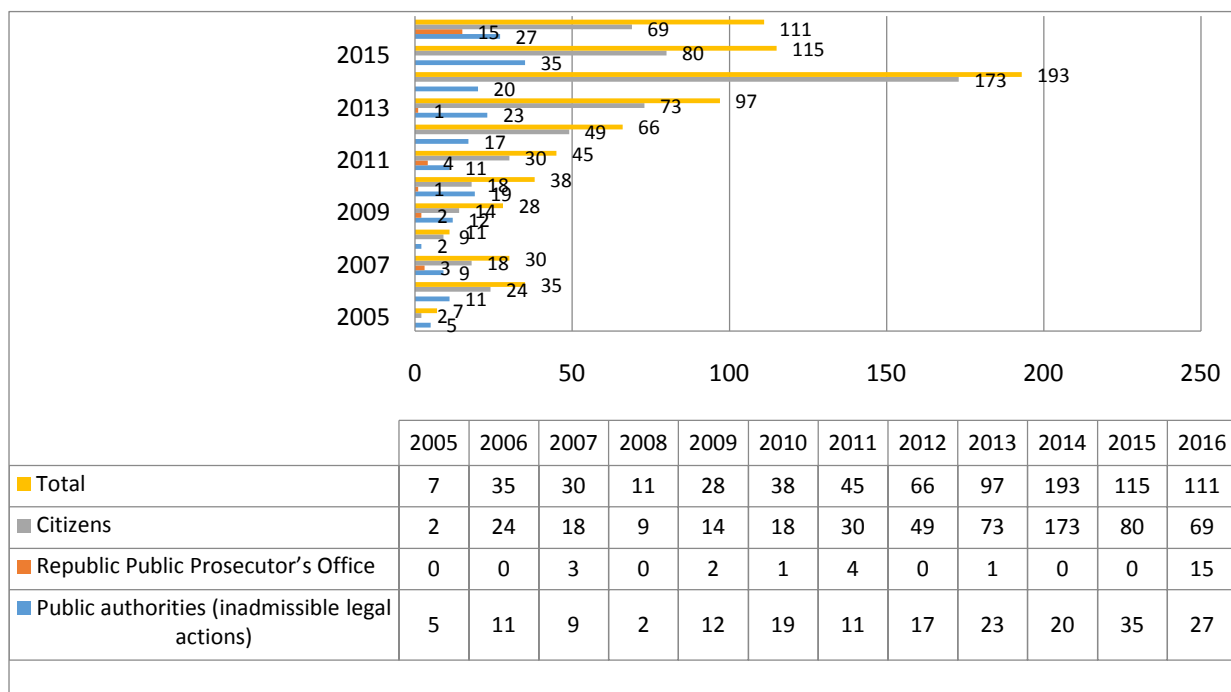
Judicial protection of the freedom of information **before the Administrative Court** in administrative proceedings is a remedy for reviewing the legality of decisions passed by the Commissioner and the six authorities against which complaints with the Commissioner are not admissible and which are exempted from protection before the Commissioner (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.

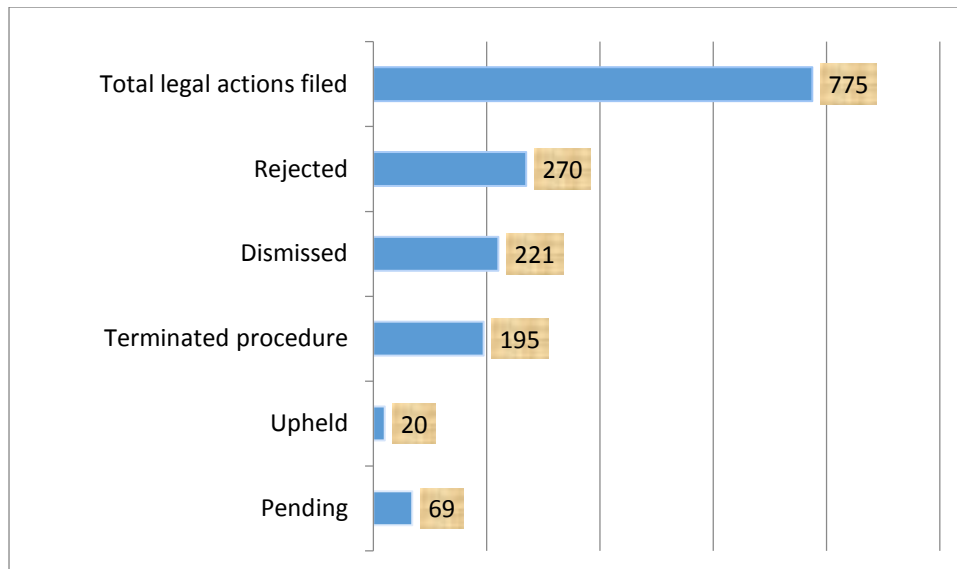
A party and the competent public prosecutor may file **a motion for review of a judicial decision to the Supreme Court of Cassation** against a final and enforceable decision of the Administrative Court. In 2016, this Court passed a decision in one case rejecting motion of a party for review of a judgement by the Administrative Court.

In 2016, **the Administrative Court** received 4 constitutional appeals against the Commissioner's decisions, but the Court has not decided on them yet.

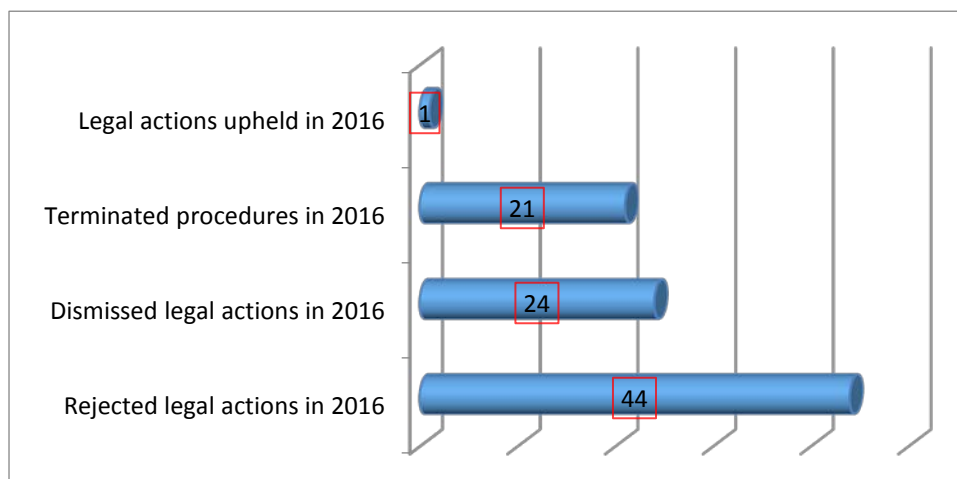
Graph 11. Overview of legal actions brought before the Administrative Court against the Commissioner's decisions by complainants, 2005-2016



Graph 12. Decisions of the Administrative Court passed pursuant to legal actions against the Commissioner's decisions 2005-2016



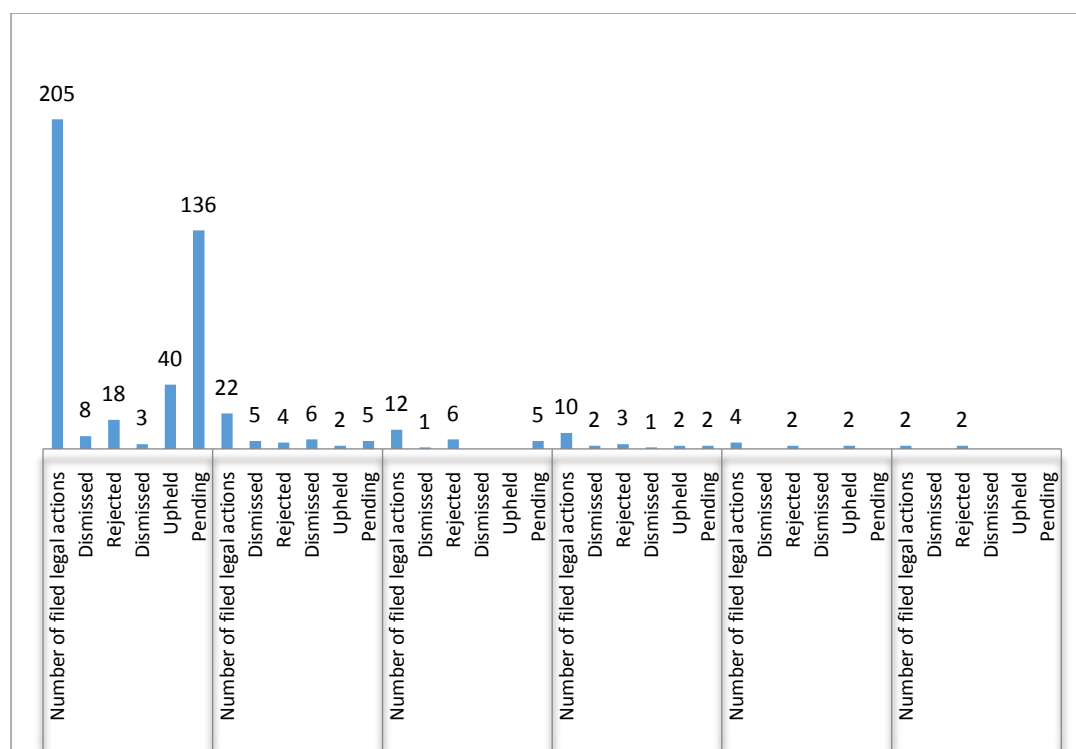
Graph 13. Overview of decisions of the Administrative Court passed in 2016 pursuant to legal actions against the Commissioner's decisions



The outcomes of decisions against the Commissioner are indicative of a high level of legality and regularity of the Commissioner's decisions passed in 2016. The Administrative Court overturned and returned for renewed procedure only one decision of the Commissioner passed in 2015 in enforcement procedure.

Most of the legal actions against decisions or failure to act of the six highest state authorities against which complaints with the Commissioner are not admissible in the period 2005-2016 were filed against the Government, against which the most complaints were also justified and upheld. The Republic Public Prosecutor's Office follows by the number of legal actions filed, as can be seen from the graph below.

Graph 14. Overview and outcome of legal actions brought before the Administrative Court against decisions or failure to act of six highest state authorities against which complaints with the Commissioner are not admissible, 2005-2016.



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

The level of compliance with legal duties in terms of submission of reports, publishing of information booklets, organisation of trainings in implementation of the Law on Access to Information for employees of public authorities which are subject to the legal duty to submit annual reports to the Commissioner was slightly improved in 2016 compared with previous years.

Looking only at the actions of administrative authorities and special organisations, the level of compliance with these legal duties was higher than the overall level of compliance by all authorities that are subject to them.

Table 3. Figures in reports of public authorities in general sense (authorities referred to in Article 3, paragraph 1, item 1) of the Law on Access to Information on compliance with legal duties - as at 10 February 2017

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%)	11 (68.75 %)	16 (100%)
Other public authorities and organisations (agencies, directorates, institutes, funds, chambers...)	307	173 (56.3%)	129 (42%)	20 (6.5%)	117 (38.1%)	157 (51.1%)
Courts	158	152 (96.2%)	134 (84.8 %)	13 (8.2 %)	82 (51.9 %)	126 (79.7 %)
Prosecutors' Offices	89	85 (95.5 %)	22 (24.7 %)	54 (60.6 %)	49 (55 %)	65 (73 %)
Authorities and organisations of the Autonomous Province of Vojvodina	36	26 (72.2%)	26 (72.2 %)	0 (0%)	16 (44.4%)	23 (63.8 %)
Local self-governments (cities/towns and municipalities)	205	164 (80 %)	155 (75.6 %)	2 (0.97 %)	102 (49.7 %)	152 (74.1 %)
Public enterprises (Republic and Provincial level) required to submit reports	33	29 (87.8 %)	25 (75.7 %)	/ (0%)	22 (66.6 %)	24 (72.7 %)
Other public authorities (educational institutions)	2056	160 (7.8 %)	114 (5.5 %)	8 (0.4 %)	88 (4.3 %)	119 (5.8%)
Total	2906	811 (27.9%)	627 (21.6 %)	97 (3.3 %)	490 (16.9%)	688 (23.7%)

Table 4. Figures from reports of public administration authorities on compliance with duties (as at 10 February 2017)

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 %
Ministries (without bodies subordinated to them)	16	16 (100%)	16 (100%)	/ (0%)	11 (68.75 %)	16 (100%)
Other public authorities and organisations (agencies, directorates, institutes, funds...)	307	173 (56.3%)	129 (42%)	20 (6.5%)	117 (38.1%)	157 (51.1%)
Total	323	189 (58.5%)	145 (44.9 %)	20 (6.2 %)	128 (39.6%)	173 (53.6%)

The Administrative Inspectorate of the Ministry of Public Administration and Local Self-government, responsible for supervision of implementation of Law on Access to Information, informed the Commissioner that administrative inspectors conducted 381 inspections of acting of public authorities on requests to access information, pursuant to Commissioner's decisions ordering provision of information to requesters and in connection with publishing of information booklets. Of 319 inspections of compliance with decisions, in 181 cases administrative inspectors found that the Commissioner's decisions were complied with, while 92 procedures are ongoing. In 2016, administrative inspectors filed 38 requests for initiation of infringement proceedings against failure to comply with decisions and eight against failure to publish information booklets.

There is still no liability for non-compliance with legal duties, while liability in public authorities for failure to act on information requests is almost symbolic compared with the level of ignoring of requests and the number of justified complaints lodged with the Commissioner.

According to the data of 44 misdemeanour courts in Serbia, in 2016 initiation of infringement proceedings against violation of freedom of information was much more often requested by requesters as injured parties (435 requests) than by the Administrative Inspectorate (54 requests), which supervises implementation of the Law on Access to Information under the law.

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

Petitioner	No. of requests handled in 2016	Procedure terminated	Request rejected	Cautious	Convicting judgment	Exonerating judgment	Termination due to expiry of statute of limitation	Resolved by other means	Decisions passed	Pending
Injured party	435	17	19		13	19	6		87	348
Administrative Inspectorate	54	-	-		13	-	-		15	39
Total	489	17	19		26	19	6		102	387

According to the data of the Misdemeanour Appellate Court, in 2016 this court handled 155 cases pursuant to legal actions against decisions of misdemeanour courts in the subject matter of freedom of information and adjudicated as follows:

- 2 legal actions were dismissed, 54 legal actions were rejected, 41 decisions were overturned, in three cases the penalties were reduced and in two cases they were increased, 21 procedures pursuant to legal actions were terminated because the statute of limitations had expired in the first-instance procedure, while in 32 cases the first-instance decisions were reversed for other reasons.

3.2.5. Commissioner's Activities in connection with Publishing of 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, this duty 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 a month) is 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.

In 2016, the Commissioner analysed the preparation and publishing of information booklets of all city and municipal authorities in the territory of the Autonomous Province of Vojvodina.

Local self-government authorities (mayors/presidents of municipalities, city/municipal assemblies, city/municipal councils and city/municipal administrations) in almost all cases chose to prepare joint information booklets, except in the case of the city of Novi Sad.

Upon analysis of a total of 64 information booklets, 190 letters containing findings about identified shortcomings (59 information booklets) or a warning that an information

booklet could not be found at official website of an authority (1) were sent to public authorities. Only four information booklets were fully compliant with the law. The most frequent omission was failure to regularly update information booklets, making them unreliable as sources of information. Just under one half of the analysed information booklets (29) did not even contain all statutory parts.

The least complete parts of the information booklets were those relating to budget execution, public procurement and information about salaries, wages and other emoluments paid.

Out of the 64 inspected information booklets, only 12 contained full information on budget for 2016, including approved budgets and budget execution, while in 2015 this information was presented by only 16 authorities.

In addition, public procurement plans for the current year were presented by 18 authorities, while information on executed public procurements was presented by 13 authorities. Public procurement plans for 201 were presented by 23 authorities, while data on conducted procurements were presented by 20 authorities. Information booklets which contained both of these pieces of statutory information were even fewer: only 13 authorities presented both public procurement plan and execution of public procurements.

Information on paid salaries, wages and other emoluments was often omitted. Out of the 63 information booklets reviewed, only 13 contained information about salaries. Only information booklets containing information for the current year were taken into account for this purpose.

After a sufficient period in which the authorities could remedy the identified shortcomings, the Commissioner once again reviewed the information booklets of the same authorities and found that one third of authorities had not fully remedied the shortcomings. He therefore issued 81 decisions ordering the public authorities to comply.

The main cause for this situation is the lack of accountability for compliance with this legal duty.

In 2016, the Commissioner analysed the information booklets of 34 local self-governments²⁸. It was found that three municipalities had not published their information booklets, while 16 information booklets, or more than one third of the total number, did not contain one or more statutory parts. Full information on the 2015 budgets, including information on the approved revenue and expenditures and information on budget execution, was presented by only two authorities. The situation is even worse in the current year. Full information on the 2016 budget was presented by only two municipalities; 11 information booklets did not contain any information on the 2015 or 2016 budgets, or indeed any information on public procurements in the previous and the current years. 32 authorities presented no information on public procurements in 2015, while only one municipality

²⁸ Municipalities included in the “European Progress” development programme: Priboj, Nova Varos, Prijepolje, Sjenica, Ivanjica, Raska, Novi Pazar, Tutin, Brus, Blace, Kursumlija, Prokuplje, Zitoradja, Aleksinac, Merosina, Doljevac, Gadzin Han, Svrlijig, Knjazevac, Bela Palanka, Babusnica, Medvedja, Bojnik, Lebane, Leskovac, Vlasotince, Crna Trava, Vladicin Han, Surdulica, Bosilegrad, Trgoviste, Vranje, Bujanovac and Presevo.

presented full information on public procurements in 2016. Information on paid salaries is generally not updated, while 16 local self-governments presented no such information at all.

To encourage public authorities to publish proper information booklets, in 2016, as in previous years, the Commissioner announced and conducted a competition for the best information booklet. Only six authorities applied and the award for the best information booklet was presented to the Ministry of Interior.

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

3.3.1. Commissioner's Actions in Oversight

A direct consequence of the inadequate legal framework is the low level of compliance with the LPDP in real life, which means natural persons are unable to fully exercise their constitutional right to personal data protection in all spheres of life, i.e. to fully enjoy their right to privacy. Moreover, such lack of legal regulation leaves scope for many potential, but very realistic risks of breaches of rights of many citizens.

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 .

One of the most drastic examples of violation of the right to personal data protection of Serbian citizens has unfortunately not had its epilogue in a court of law. The statute of limitations on infringement liability has expired in the case of the Privatisation Agency. It is rather telling that the Privatisation Agency had been dissolved on 1 February 2016, in accordance with the Law amending the Privatisation Law, but the magistrates' court hearing the case had not been aware of this fact until it heard a representative of the Commissioner on 15 November 2016, who presented this information to the court(!). In connection with the criminal report filed in the same case, in 2016 the Commissioner twice asked the Higher Public Prosecutor's Office in Belgrade for information about the outcome, but has received no answer to this date. Magistrates' courts have continued with the practice of not acting on time pursuant to the Commissioner's petitions for infringement proceedings in other cases as well, which results in expired statutes of limitation and lack of infringement liability.

The number of cases handled by the Commissioner has been increasing year after year. In the past three years, this number saw only a modest increase, by about 10%, but it had been much higher before that. However, this does not mean that the situation in the field of personal data protection has improved and there is no reason for increase in the number of cases or more intervention by the Commissioner; instead, this is a consequence of a higher number of employees available to the Commissioner. The Commissioner has used the human resources available at his Office to the maximum, but the fact remains that the number of closed cases would be even higher with more employees at the Office.

In the course of 2016, the Commissioner initiated 828 inspection procedures, including: 260 pursuant to citizens' reports, 121 on his own initiative and 447 in connection

with personal data files. The Commissioner also carried out 391 preliminary checks of personal data processing activities, during which no irregularities were found in 217, while in 174 cases irregularities were identified, which he pointed to the attention of the data controllers concerned by issuing warnings under Article 50 of LPDP.

During the course of 2016, the Commissioner closed a total of 835 inspection procedures, of which 584 were initiated in 2016 and 251 were initiated in the previous period, as follows: in 534 cases it was found that the inspected entity complied after the inspection; 217 cases were closed with notifications pursuant to Article 50 because no irregularities were found; 74 cases were closed with official notes because it was found that no violations of the LPDP had been committed and no grounds existed for conducting inspections; 9 cases were closed by petitions for initiation of infringement proceedings; and 1 case was closed by filing criminal charges.

In cases where the Commissioner found violations of LPDP (356), he:

- **Issued 316 warnings (174 pursuant to Article 50 of LPDP and 142 pursuant to Article 56),**
- **Issued 30 decisions,**
- **Filed 9 petitions for institution of infringement proceedings for violations of LPDP, and**
- **Filed 1 criminal report.**

In 316 cases the Commissioner issued warnings after he found violations of LPDP, of which 174 violations pursuant to Article 50 of LPDP (preliminary check of processing activities) and 142 warnings pursuant to Article 56 (Commissioner's powers to take certain measures after he finds violations of the law during inspections).

In this context, we would like to draw attention in particular to the 142 warnings issued pursuant to Article 56 of LPDP, where 261 irregularities were identified, which means that in certain cases the Commissioner identified one or more violations of the law.

As regards data controllers inspected by the Commissioner in 2016, their structure and reasons for initiation of inspection are significantly different compared with the previous period. This was on the one hand due to the regular inspection schedule prepared in advance for 2016, which included utility companies in the city of Belgrade, the inspections of which found instances of inadmissible processing of personal data in the form of obtaining of photocopies of citizens' identity cards without proper legal grounds, for which the Commissioner issued those companies with letters of warning. In addition, scheduled inspections in 2016 covered also the supermarket chains that operate in Serbia, namely: DELHAIZE SERBIA d.o.o. Beograd; DIS d.o.o. Krnjevo - Velika Plana; MERCATOR-S d.o.o. Novi Sad; UNIVEREXPORT d.o.o. Novi Sad; C- MARKET AD Beograd and GOMEX d.o.o. Zrenjanin. These inspections have been completed and the Commissioner will undertake measures within his sphere of competence in 2017. Extraordinary inspections were continually conducted during the reporting period on the basis of intelligence and information obtained by the Commissioner.

Data controllers inspected by the Commissioner in the 828 inspections were as follows: companies - 372 (44.9%), banks - 73 (8.8%), public enterprises - 64 (7.7%), public administration - 62 (7.5%), citizens' associations - 61 (7.4%) etc.

The most frequent reasons for inspection were: processing of data in the field of labour law (10.9%), personal data (10.8%), consumer protection (8.1%), the Internet and electronic communications (7.8%), banking operations (5.1%), unique personal identification number (5%), health care (4.9%), processing of particularly sensitive data (4.4%), education (3.8%).

Irregularities identified by the Commissioner during the course of inspections have been mostly the same as in the previous period, such as: data processing without legal basis, i.e. without legal authorisation or a person's consent; data being processed is not necessary and/or appropriate for achieving the purpose of processing and data being processed are not proportionate to the purpose of processing.

One of the most frequent forms of data processing without proper legal basis is the retention and/or obtaining of photocopies of citizens' identity documents, which has become customary practice over the years. Although many data controllers (e.g. in particular utility companies and banks) have complied with the Commissioner's letter of warning, the Commissioner has once again drawn the attention of private security companies to the fact that they are not allowed to retain citizens' identity documents for identification purposes, because they lack the legal authority to do so, just like the police.

By the end of the reporting period, out of the 174 warnings issued by the Commissioner under Article 50 of the LPDP, 156 warnings were complied with, in one case there was partial compliance and one warning has not been complied with, while the remaining 16 are pending, which means that, as of 31 December 2016, the percentage of compliance was 89.6%. *(By the time of completion of this Report, on 1 March 2017, six more warnings were complied with, making a total of 162, which increased the percentage of compliance with the warnings under Article 50 of the LPDP to 93.7%)*

Furthermore, by the end of the reporting period, of the 142 warnings passed by the Commissioner under Article 56 of the LPDP, 108 were complied with, in 9 cases the warnings were partially complied with, in 6 cases they were not complied with, while the remaining 19 warnings were pending, which means that, as of 31 December 2016, the percentage of compliance was 82.4%. *(By the time of completion of this Report, on 1 March 2017, four more warnings were complied with, making a total of 112, which increased the percentage of compliance with the warnings under Article 56 of the LPDP to 85.2%)*

During the reporting period, the Commissioner passed 30 decisions, including: 10 decisions ordering deletion of collected data, 3 decisions ordering deletion of collected data and rectification of irregularities within the specified time limit, 16 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 (30) the Commissioner ordered 34 measures, as follows: in 20 cases he ordered rectification of irregularities within the specified time limit, in 1 case he ordered temporary ban on processing performed contrary to the provisions of LPDP and in 13 he ordered deletion of data collected without a proper legal basis. **By the end of the reporting period, the Commissioner was informed that the controllers have fully or partially complied with 8 decisions passed by the Commissioner, 1 decision was not complied with, while the remaining 21 decisions were pending, which means that, as of 31 December 2016, the percentage of compliance was an absolutely unsatisfactory 30%. *(By the time of completion of this Report, on 1 March 2017, the Commissioner was informed that one more controller had complied with a decision, which means a total of 9 controllers fully or***

partially complied with the Commissioner's decisions, thus marginally improving the percentage of compliance with the Commissioner's decisions to 33.3%). Nearly all of the Commissioner's decisions that have not been complied with – 19 out of 20 – related to commercial banks, which have continued delaying their compliance with the Commissioner's orders and destroying copies of certain documents containing numerous personal data of their clients which they had unlawfully collected.

3.3.2. Commissioner's acting on Complaints

In the course of 2016, the Commissioner received 422 complaints, which was 37,5% more than in 2015. In 2016, the Commissioner handled 522 complaints, of which 422 were received in 2016, while the remaining 100 were carried forward from 2015. The continuing upward trend in the number of complaints lodged with the Commissioner since the effective date of the LPDP seems to indicate that citizens' knowledge of the LPDP is improving and they are becoming more aware of the rights afforded to them under the law.

However, the increase in the number of complaints lodged with the Commissioner does not mean that more data controllers committed more irregularities. Namely, the increase in the number of complaints was in part also due to the fact that just two persons/complainants lodged 115 complaints with the Commissioner against decisions of data controllers in 2016 (the Commissioner found most of those complaints to be unjustified).

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 (216). Compared with 2015, when this reason accounted for 46.8% of all complaints, in 2016 this reason accounted for 51.2%, which is indicative of a slight negative trend.

The next 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 (152). Compared with 2015, when 44.8% of all complaints received by the Commissioner were lodged for this reason, in 2016, 36% complaints were lodged for this reason, which is indicative of more diligent acting by data controllers. However, there is no room for satisfaction with this modest increase, because the percentage of ignoring of citizens' requests is still unacceptably high.

In 2016, the Commissioner received 52 complaints against rejections (49) or dismissals (3) of requests by data controllers. Complaints lodged with the Commissioner for these two reasons were more frequent than in 2015, when a total of 26 such complaints were lodged, including complaints against rejections (21) or dismissals (5) of requests by data controllers. Also, in 2016 the Commissioner received 2 complaints against data controllers who obstructed or prevented the exercise of rights in violation of the law.

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 (65.5%); the right of access (21.9%); the right to notification of data processing (11%) and deletion, updating, correction, stay and termination of data processing (1.6%). The majority of complaints received by the Commissioner included the right to a copy (65.5%), 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.

Of a total of 422 complaints lodged in 2016, the majority (175) were lodged against (in)action of public administration authorities as data controllers on submitted requests, which was 92.3% higher than in 2015 when 91 complaints were lodged. To say this trend was negative would be an understatement, not least because the entities in question were public administration authorities, which should be setting an example for other data controllers to follow.

124 complaints were lodged against (in)action of ministries in submitted requests, including 103 complaints against the Ministry of Interior (MIA) alone, while a 21 complaints were lodged against all other ministries together. The complaints lodged against the MIA accounted for 24.4% of all complaints (422) lodged with the Commissioner. The reason for this on the one hand is the fact that the MIA, as one of the largest data controllers with many data records, is under constant pressure from numerous requests by citizens. On the other hand, the increase in the number of complaints against MIA can be attributed to the Bylaw amending the Bylaw on Internal Organisation and Job Classification of 1 December 2015, which led to an increase in the number of employees' requests for information on processing of their personal data in certain records maintained by MIA, usually because of their reassignment to a different position. Finally, the lack of appropriate human resource capacities, their internal distribution, as well as organisational or any other issues in MIA can in no way be an excuse for the fact that MIA has not fully implemented a practice of proper and timely responding to citizens' requests, where the necessary legal requirements are met.

In the course of 2016, the Commissioner acted on 522 complaints and closed the proceedings pursuant to 408 complaints (308 from 2016 and all 100 from 2015), while 114 complaints were carried forward to 2017.

On the basis of the Commissioner's decisions passed pursuant to complaints (408), the Commissioner found that complaints were justified in 197 cases, or 48.3%, which was significantly lower than in 2015, when the Commissioner found that 65.3% complaints were justified. In cases where the Commissioner found complaints were justified - in 108 cases or 54.8% - he passed decisions with orders for data controllers (ordered data controllers to honour requests (75), ordered data controllers to provide information to requesters (23), overturned the data controller's decision and ordered honouring the request (10)). Also, the Commissioner overturned data controllers' decisions (2), overturned data controllers' decisions and returned cases to data controllers for renewed procedure (18) and, in 69 cases (16.9%), 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 remaining complaints (211), or 51.7% of total complaints closed, by rejecting complaints as unjustified (145) or the request as

unjustified (1) in a total of cases, or 35.8%, while in 65 cases, or 15.9%, the Commissioner dismissed complaints on formal grounds (due to lack of jurisdiction, incomplete complaint, premature complaint, complaint lodged by an unauthorised person or inadmissible complaint). **A significant increase of complaints rejected as unjustified, 35.8% in 2016 compared with 19.8% in 2015, shows that data controllers implement LPDP more regularly and also that numerous citizens are still insufficiently informed about the content of rights and the procedure for lodging of complaints in accordance with LPDP. In addition, more citizens complain to the Commissioner about issues outside his sphere of competence, because they obviously often see this institution as a public authority which protects rights and freedoms in general.**

Also, the fact that in 2016 **the Commissioner terminated procedures by passing resolutions in 16.9% cases**, which was 6% less than in 2015, shows a positive trend, but it should nevertheless be borne in mind that acting of data controllers after complaints have been lodged is belated and every effort should be made to act on requests within the statutory time limit.

During the reporting period, the Commissioner issued a total of 108 binding and final decisions pursuant to the lodged complaints 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. As of 31 December 2016, 97 data controllers fully complied with the Commissioner's decisions, 3 data controllers partially complied with the decisions and notified the Commissioner accordingly, while 8 data controllers failed to notify the Commissioner within the specified timeframe whether they had complied with the decisions or not, **which means the percentage of compliance with the binding and final decisions passed by the Commissioner pursuant to complaints was 92.6% by the end of the reporting period. This relatively high percentage of compliance with the Commissioner's decisions is improving, because several more data controllers complied belatedly or notified the Commissioner of compliance subsequently upon expiry of the statutory time limit. (By the time of writing of this Report, on 1 March 2017, the Commissioner was notified 101 data controllers fully complied with decisions, 3 data controllers partially complied with the decisions and notified the Commissioner accordingly, while 4 data controllers failed to notify the Commissioner within the specified timeframe whether they had complied with the decisions or not, which increased the percentage of compliance with the binding and final decisions passed by the Commissioner pursuant to complaints increased to 96.3%)**

3.3.3. Keeping of Central Register

According to the Commissioner's rough and already outdated estimate, there are about **350,000 personal data controllers** 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.

As at 31 December 2016, **a total of 1,951 personal data controllers** submitted records of **9,704 personal data files** they keep to the Commissioner's Central Register.

This practically means that, **eight years after the LPDP entered into force**, only 1,951 data controllers, or **0.6% of the total number of data controllers**, have complied with the statutory duties regarding registration with the Commissioner's Central Register.

There is absolutely no justification for ignoring and disrespect of this statutory obligation *en masse*.

In addition, there has been a negative **overall trend of fewer and fewer** data controllers submitting fewer and fewer records of their data files with **the Central Register**, with minor annual fluctuations. **In 2016, 332 data controllers submitted to the Commissioner records of 1,300 data files they maintained.**

In 2016, companies submitted the largest number of records of data files to the Commissioner (200) – 813 records of personal data files, which was about 4.1 records of data files per one company. They are followed by natural persons (sole traders), with 59 natural persons submitting 110 records of personal data files, which was about 1.9 records per one natural person etc. The fact that companies are the majority of data controllers registered with the Central Register is understandable, not least because they are the most numerous data controllers. Also, this category includes a large number of data controllers whose international and foreign parent companies require compliance with this duty, with which they are very familiar in the countries of their establishment. Finally, the multi-annual trend of companies being the most numerous data controllers registered with the Central Register is also evident from the fact that since the establishment of the Central Register (14 May 2010) until 31 December 2016, out of the 1,951 personal data controllers that submitted records of data files to the Commissioner, 889 are companies, while 1,062 are all other data controllers together (public authorities - 302, institutions - 232, territorial autonomy and local self-government authorities - 196, associations - 115, natural persons - 101, bodies vested with public powers - 37 and others - 79).

The number of registered records of data files maintained by bailiffs and bookkeeping agencies increased in 2016.

In addition to receiving records of 1,300 data files from data controllers in 2016, in the same period the Commissioner also received 128 requests for changes in the existing records in the Central register, of which 120 received a positive reply, 3 were closed by official notes, while 5 were carried forward to 2017.

The Commissioner continues to make efforts and calls for compliance with this duty under the LPDP, in particular through warnings sent to data controllers, through presentation of legislative provisions, through training of the staff of large data controllers and through statements in his annual reports.

With regard to maintenance of the Central Register and undertaking of activities to facilitate compliance of data controllers with their statutory duty, it should be noted that **the web service of the Business Registers Agency (BRA) became operational in 2016. This step forward in cooperation directly contributed to better operation of the Central Register and allowed new data controllers to retrieve predefined, accurate and updated data sets in real time directly from BRA's information system when registering with the Central Register by entering company identification numbers, subject to all security measures and safeguards that should be in place to protect such data transfer.**

By increasing this type of cooperation to the highest possible level, in 2016 the Commissioner became the only public sector user to fully exploit all functionalities of the technology implemented in the development of that web service.

Together with the Commissioner's improved software, this web service of the BRA, in addition to facilitating the procedure of registration with the Central Register, also guarantees that the processed data are accurate and up to date. Furthermore, this web service has enabled the Commissioner to update his existing database, which had been developed before the signing of the said agreement and the establishment of mutual cooperation, primarily in respect of those data controllers that have already been registered.

The possibility of fast retrieval of different predefined data sets from the BRA's database will be a powerful tool that will further increase the Commissioner's efficiency across all segments of his work where data from the BRA's database are needed, including in particular the segment of personal data protection, for the purpose of planning and effective implementation of inspection activities.

It was not by accident that this qualitative enhancement in data exchange coincided with partial implementation of the new Law on General Administrative Procedure, which enshrined the exchange of data contained in official records as a principle, primarily in the interest of citizens, many of whom access the Commissioner's Central Register, either as controllers or as representatives of controllers, and retrieve data from the official records of the BRA for registration purposes.

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

In 2016, the Commissioner acted on 18 requests for transborder transfer of personal data out of Serbia, of which 13 were received in 2016, while five were carried forward from the previous period. Countries to which transborder transfer was requested included the USA, India, Canada and the United Kingdom. The Commissioner passed eight decisions pursuant to the requests, including five allowing the transborder transfer of personal data and three resolutions to terminate the procedure, while ten cases have been carried forward to 2017 and procedure is ongoing.

Most of the requesters were corporations that requested transborder transfer of personal data to countries which are not members of the Council of Europe Convention for the Protection of Individuals with Regard to Automatic Processing of Personal Data and provided those data to contractual processors or recipients in those countries for the purpose of creating a central database (e.g. of employees) and for the purposes of corporate governance of those data at the level of their respective international groups.

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 basis of transborder transfer of personal data; notification of data subjects and their consent for transborder transfer of data; the duration of processing for which transborder transfer is requested; safeguards put in place before, during and after the possible transfer of data; protection of data subjects' rights and other facts relevant for decision-making pursuant to requests. After completion of this procedure and compliance with necessary requirements, 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 are regulated; safeguards for data protection; the manner in which the rights of individuals with regard to processing are protected etc. Due to these and other shortcomings of requests, parties in procedures are sometimes repeatedly ordered to make their requests compliant and to provide complete and proper documentation. For the purpose of finding facts relating to compliance with requirements for processing of personal data for which transborder transfer is requested, which are relevant for decision-making pursuant to requests, the Commissioner inspected processing of personal data in two cases. All this affects duration of the procedure and deciding on requests.

In 2016, there was an increase in requests by which parties requested clarifications in connection with specific legal situations in which transborder transfer of data out of Serbia could be allowed. For the purpose of overcoming the shortcomings of LPDP in this regard, the Commissioner gives expert opinions and provides support to parties to enable them to prepare proper and duly reasoned requests and supporting documents.

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 primarily 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.

3.3.5. Acting of Prosecutor's Offices on Criminal Reports filed by the Commissioner

During the course of 2016, the Commissioner filed 1 criminal report for the criminal offence referred to in Article 146 of the Criminal Code. In the previous period, from 2010 until the end of the reporting period, the Commissioner filed a total of 30 criminal reports for the criminal offences referred to in Articles 146, 355 and 359 of the Criminal Code.

According to the information available to the Commissioner, pursuant to the criminal reports filed by the Commissioner to date, one final and enforceable judgment of conviction was passed, 16 criminal reports were dismissed because the statute of limitations had expired or because the principle of opportunity of criminal prosecution had been applied, while one investigation was terminated. The remaining criminal reports are still pending.

The Commissioner believes that the criminal reports he filed build strong enough cases for further prosecution, to ensure the detection and appropriate punishment of the committers of those criminal offences.

3.3.6. Acting of Magistrates' Courts on Petitions filed by the Commissioner

In 2016, the Commissioner filed 9 petitions for initiation of infringement proceedings against violations of the LPDP.

Pursuant to the petitions for infringement proceedings filed to date, in 2016 the Commissioner received 22 decisions of Magistrates' Courts (including 20 first-instance decisions and 2 second-instance decisions), including: 10 judgments of conviction and 12 resolutions terminating the proceedings because the statute of limitations.

Contrary to the hitherto common practice of Magistrates' Courts, when several exonerating judgements were passed per year, it should be noted that all 10 judgements passed in 2016 were judgements of convictions, which shows that the Commissioner was justified in filing the respective petitions for initiation of infringement proceedings. Magistrates' Courts imposed fines in the total amount of RSD 861,000 and 2 cautions in their judgements.

The infringement proceedings (12 of them) 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, including 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.

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

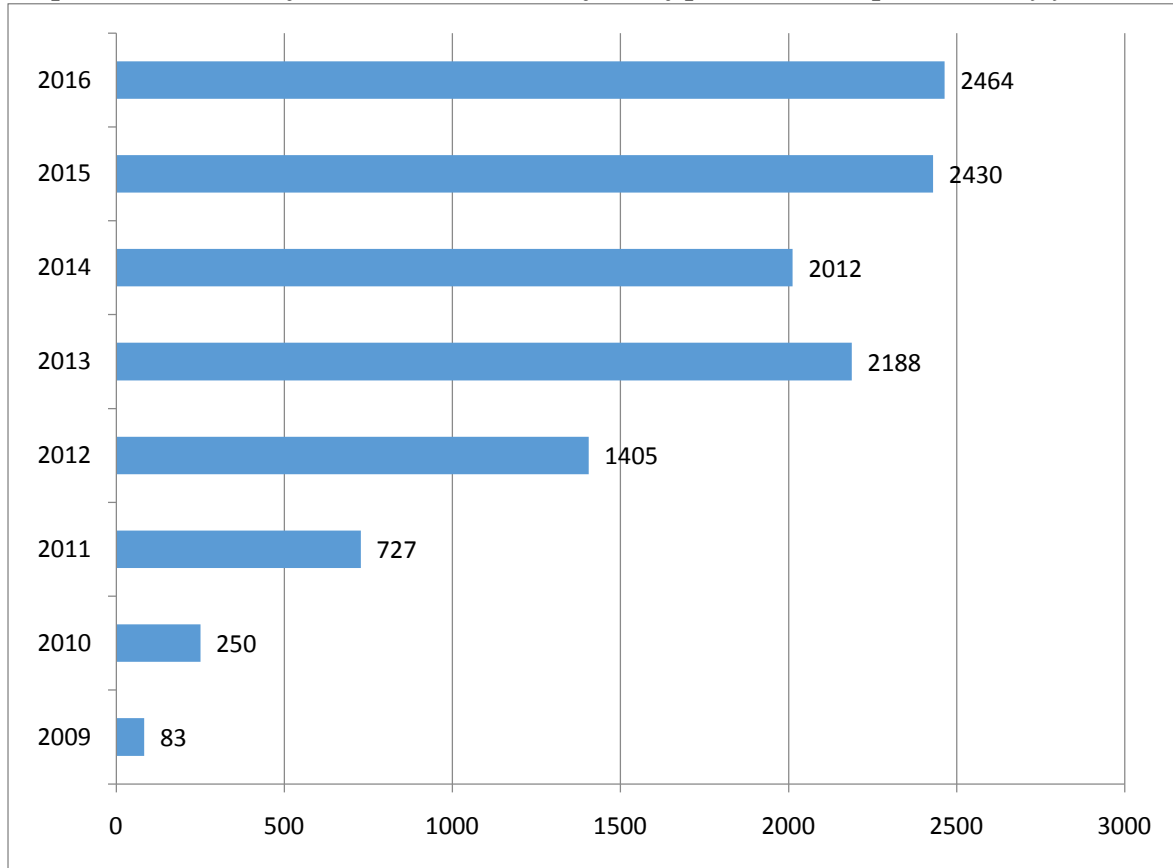
In the course of 2016, the Administrative Court received 26 legal actions against the Commissioner's decisions. Most of the legal actions (15) were filed against decisions rejecting the complaint as unjustified, 5 legal actions were filed against resolutions to terminate acting on complaints, 5 were filed against resolutions dismissing the complaints and 1 legal action was filed (by a data controller) against overturning of the decision and ordering the data controller to honour the request.

In the course of 2016, the Administrative Court ruled on 25 legal actions against the Commissioner's decisions by rejecting 19 and dismissing 6 of them, which shows that the Commissioner's acting was justified in all cases.

3.3.8. Statistical Overview of the Commissioner's Activities in the Field of Personal Data Protection

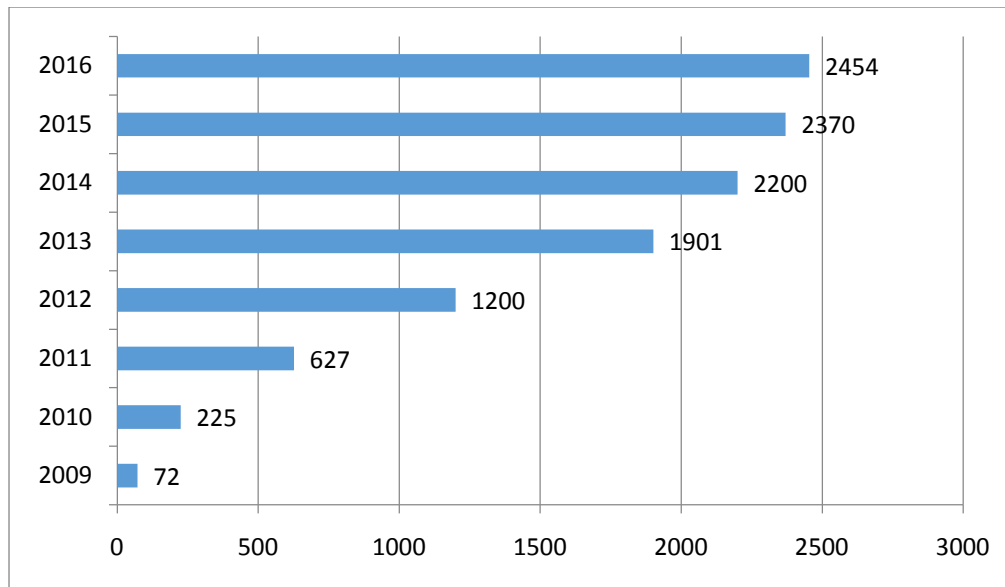
In 2016, the Commissioner received 2464 cases in the field of personal data protection, which was a slight increase compared with 2015.

Graph 15. Overview of cases received in the field of personal data protection by years



The Commissioner closed 2,454 cases, which was only 10 fewer than the number of cases received, while those cases were carried forward to 2017.

Graph 16. Overview of cases closed in the field of personal data protection by years

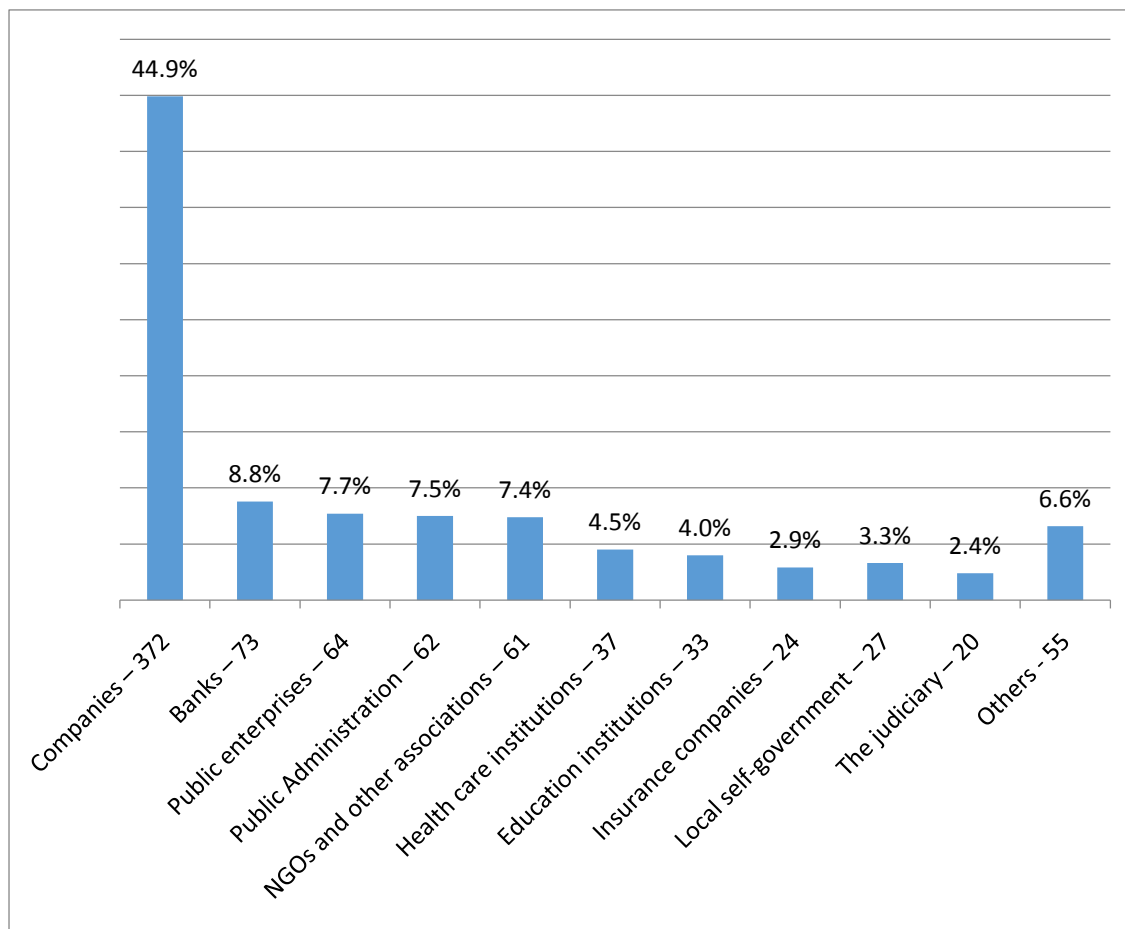


The structure of closed cases was as follows:

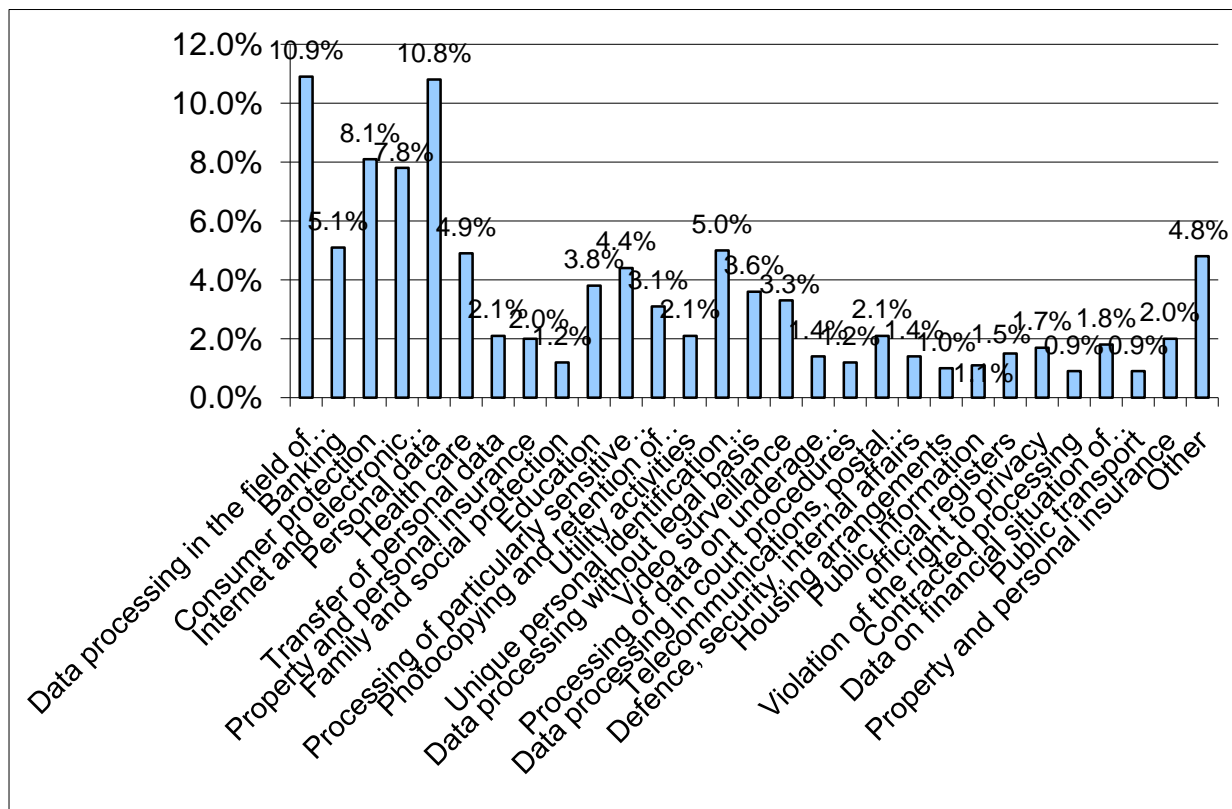
- 835 completed inspections;
- 408 resolved complaints;
- 944 opinions issued on implementation of LPDP (708 to citizens and the media, 105 to public authorities and local self-government authorities, 93 to legal entities and 38 to associations and trade unions);
- 66 petitions ruled on;
- 24 responses issued to legal actions filed with the Administrative Court;
- 11 forwarded resolved requests;
- 30 instruction issued for improved protection and prevention;
- 8 requests for transborder transfer of data out of the Republic of Serbia ruled on;
- 125 requests for changes in the Central Register ruled on;
- 2 requests for protection of lawfulness handled;
- 1 petition for renewed procedure resolved, and
- 130 files maintained by 332 data controllers registered with the Central Register.

3.3.8.1. Supervision of Personal Data Protection

In the course of 2016, the Commissioner initiated 828 inspections and closed 835 inspections initiated in 2016 and the previous period.

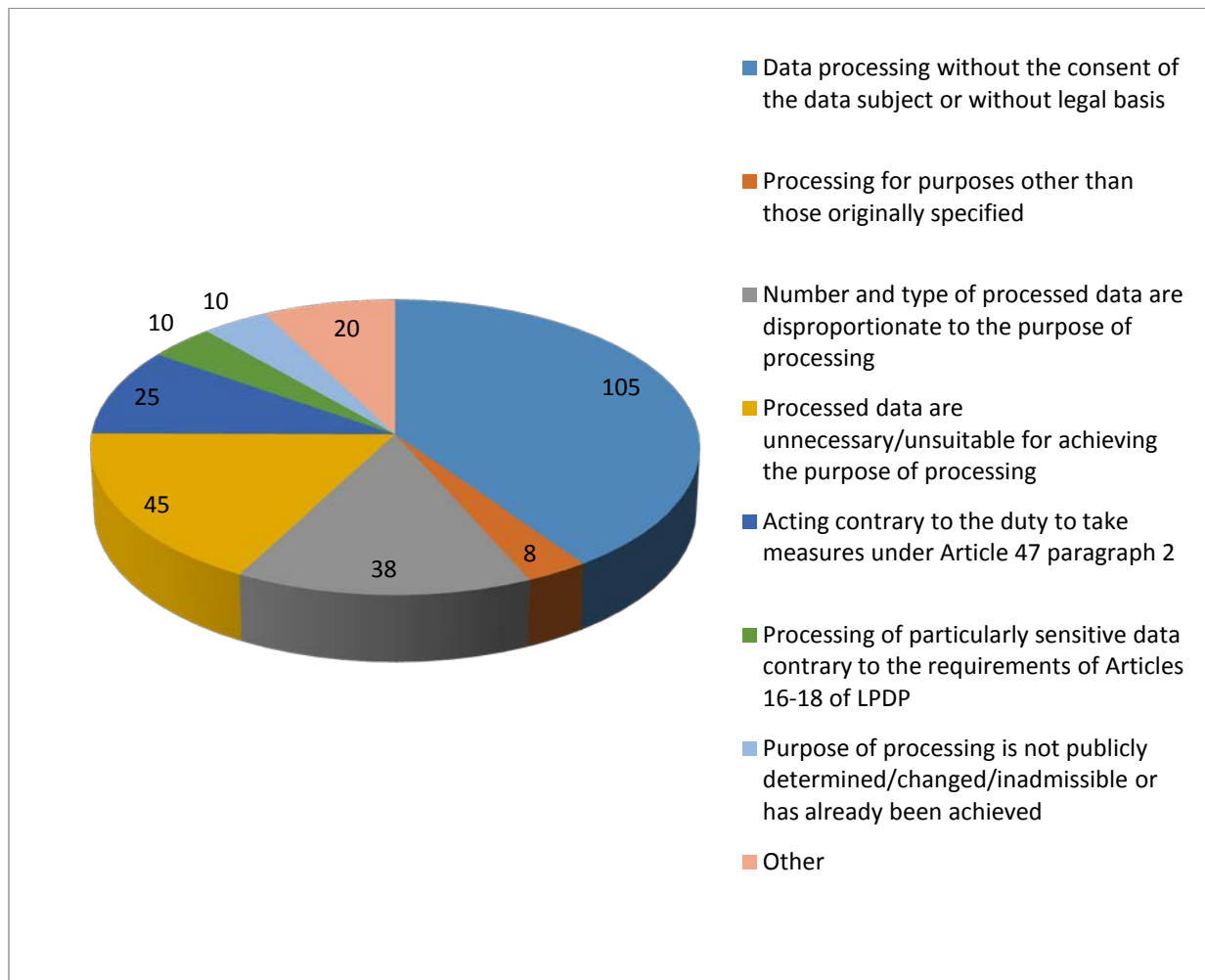
Graph 17. Structure of data controllers inspected in 2016

The structure of data controllers inspected by the Commissioner in 2016 was significantly different than in the previous period. Data controllers most frequently inspected by the Commissioner were companies (44.9%), with significantly a lower share of banks (8.8%), public enterprises (7.7%), public administration (7.5%) etc.

Graph 18. Most frequent reasons for initiation of inspection procedures

The most frequent reasons for initiation of inspection procedures, whether pursuant to reports or on the Commissioner's own initiative, were also significantly different than in the previous period. The most frequent reasons for initiation of inspection procedures were: data processing in the field of labour law (10.9%), personal data (10.8%), consumer protection (8.1%) and the Internet and electronic communications (7.8%), while other reasons accounted for much lower shares.

Graph 19. Most frequent irregularities identified in the warnings issued pursuant to Article 56 paragraph 1 of LPDP



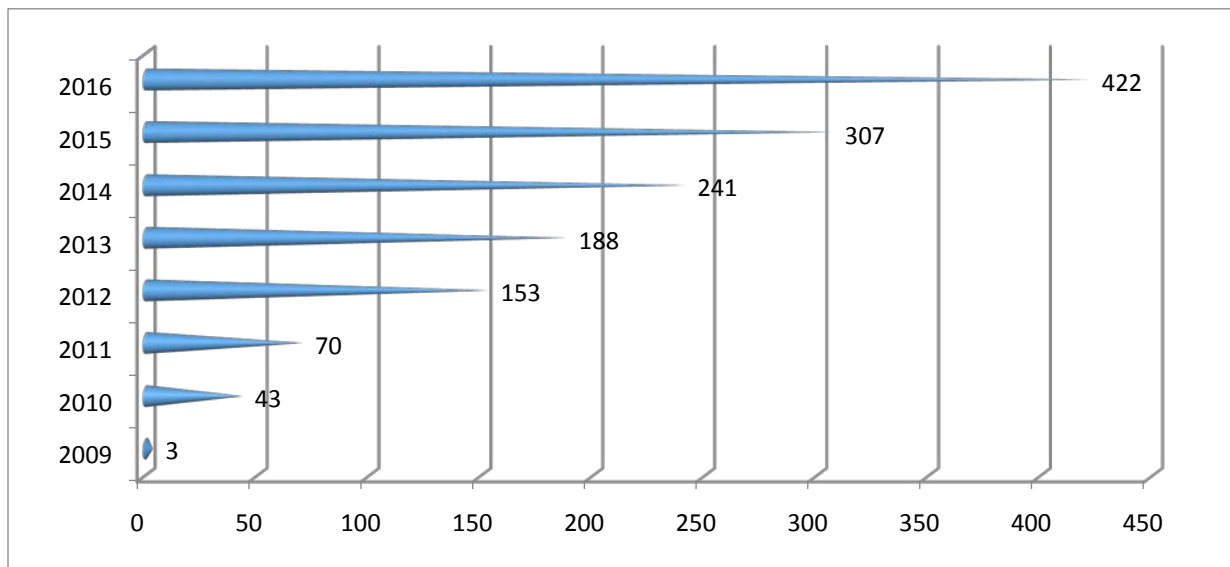
Irregularities identified in the warnings were mostly the same as in the previous period (data processing without a proper legal basis, processed data are unnecessary/unsuitable for achieving the purpose of processing and processed data are disproportionate to the purpose of processing). The shares of other irregularities were much lower.

In the 356 cases where the Commissioner identified violations of the LPDP, he issued 316 warnings and 30 decisions and filed 9 petitions for imitation of infringement proceedings and one criminal report.

3.3.8.2. Commissioner's Acting on Complaints

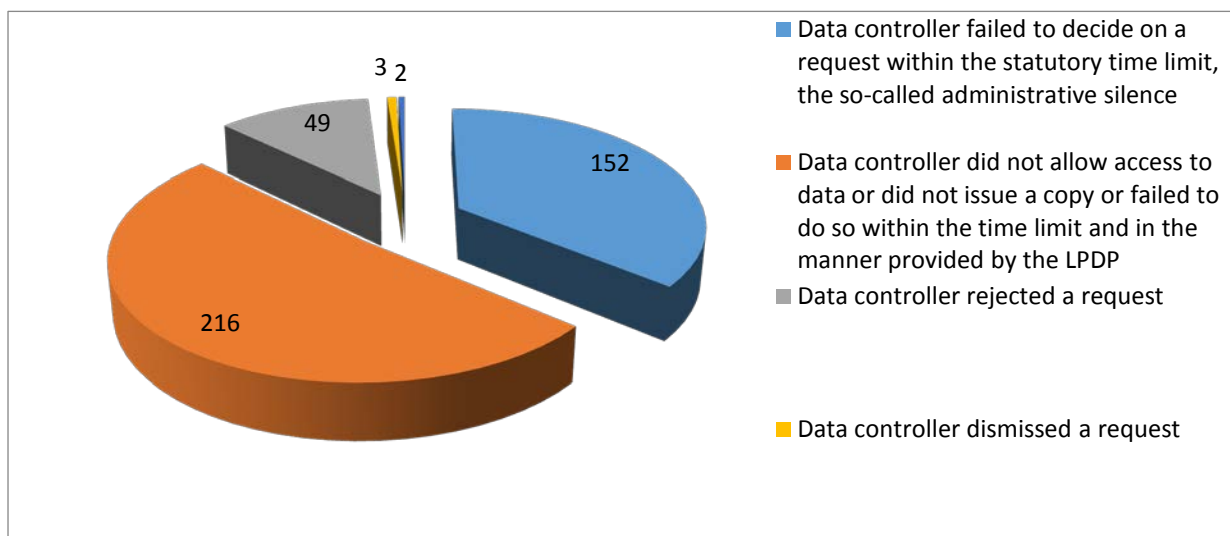
In the course of 2016, the Commissioner received 422 complaints, which was 37.5% more than in 2015.

Graph 20. Complaints lodged with the Commissioner by years



The increase in the number of complaints lodged with the Commissioner continued in 2016, which shows that citizens are better informed about the LPDP, that they are increasingly aware of the exercise of their rights guaranteed under the law, but also that there were several citizens (two same persons/complainants) who lodged far too many complaints.

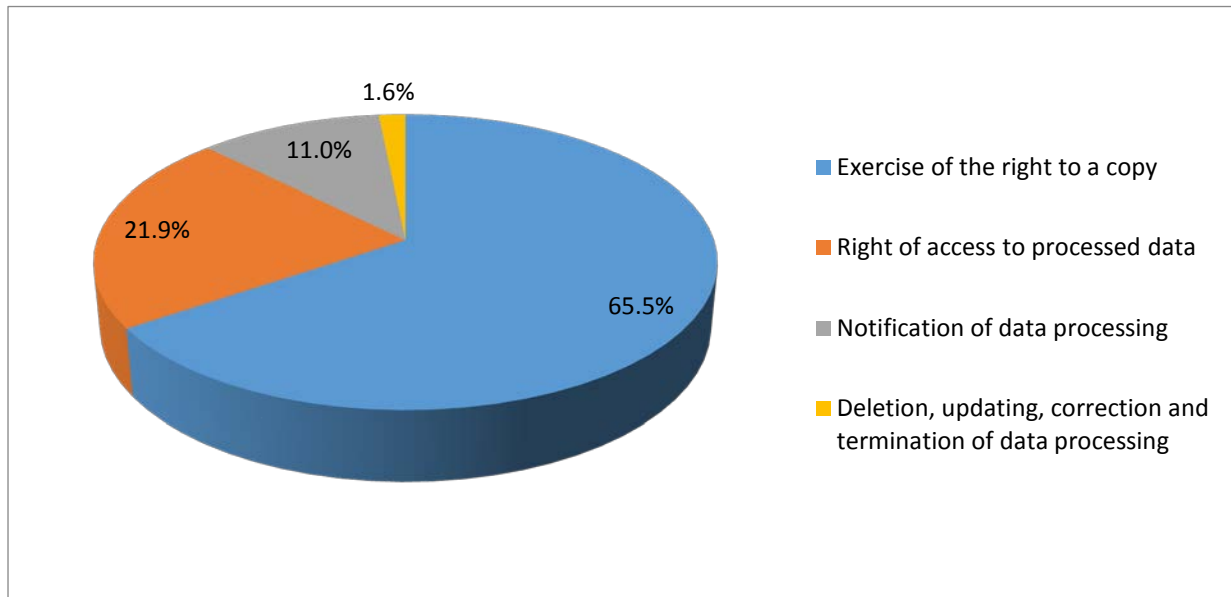
Graph 21. Reasons for lodging of complaints with the Commissioner in 2016



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 (216), the fact that

data controllers failed to decide on a request within the statutory time limit, the so-called administrative silence (152) and the fact that data controllers rejected (49) or dismissed (3) requests.

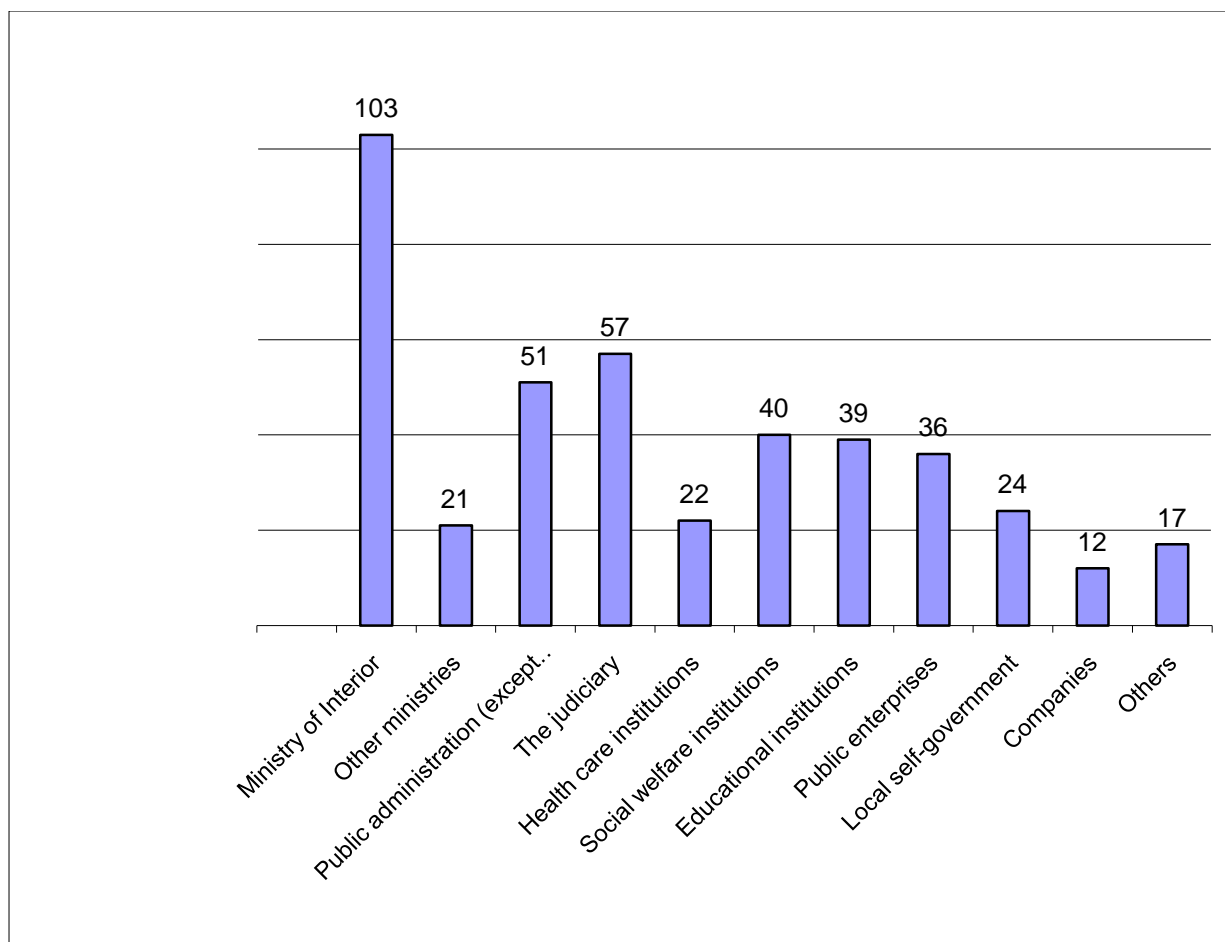
Graph 22. Requests which resulted in lodging of complaints with the Commissioner in 2016



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 (65.5%); the right of access (21.9%); the right to notification of data processing (11%) and deletion, updating, correction and termination of data processing (1.6%).

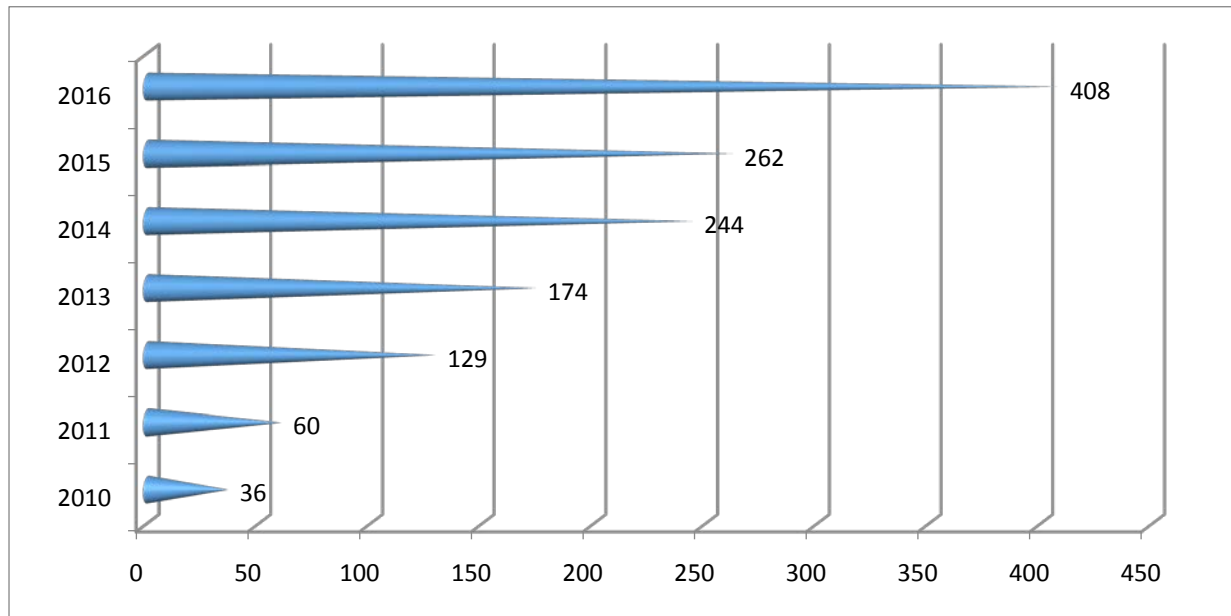
Complaints lodged with the Commissioner most frequently related to data contained in: police records, human resource records, cords in the fields of pension and disability insurance and health insurance, court case files, case files of social welfare centres, registers of births, marriages and deaths,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

Graph 23. Data controllers whose actions or failure to act were causes for lodging of complaints



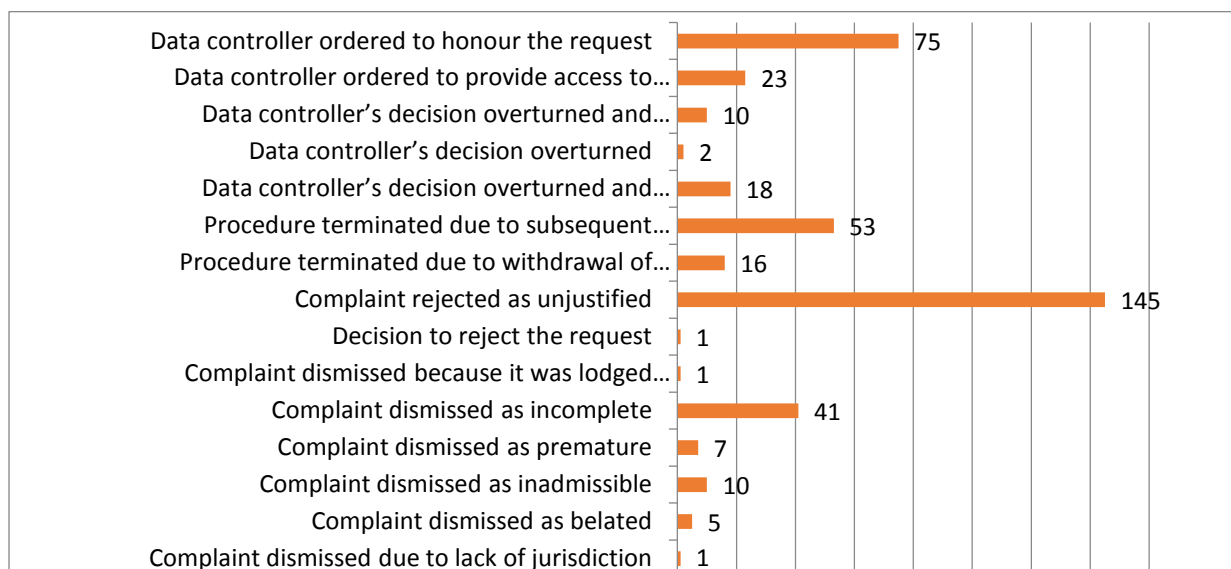
Of a total of 422 complaints lodged in 2016, the largest number (175) were lodged against (in)actions of public administration authorities as data controllers, while 124 complaints were lodged against (in)actions of the ministries, of which 103 against the Ministry of Interior (MIA) alone and 21 against (in)actions of all other ministries put together.

Graph 24. Proceedings pursuant to complaints closed by the Commissioner by years



The number of proceedings pursuant to complaints closed has been increasing year after year, matching the increase in the number of complaints lodged with the Commissioner. In 2016, the Commissioner acted on 522 complaints and resolved 408 complaints (308 from 2016 and all 100 remaining complaints carried forward from 2015), while 114 complaints were carried forward to 2017.

Graph 25. Commissioner's decisions on complaints in 2016



In decisions passed pursuant to the received complaints (408), the Commissioner found that complaints were justified in 197 cases, or 48.3%; of that number, in 108 cases, or 54.8%, the Commissioner passed decisions with orders for data controllers. The Commissioner overturned data controllers' decisions in 2 cases, overturned data

controllerss decisions and returned the case to the data controller for renewed procedure in 18 cases and terminated the procedures by passing resolutions in 69 cases. The Commissioner resolved the remaining 211resolved complaints (51.7%) by rejecting the complaints as unjustified or dismissing complaints on formal grounds.

During the reporting period, the Commissioner issued a total of 108 binding and final decisions pursuant to complaints lodged.

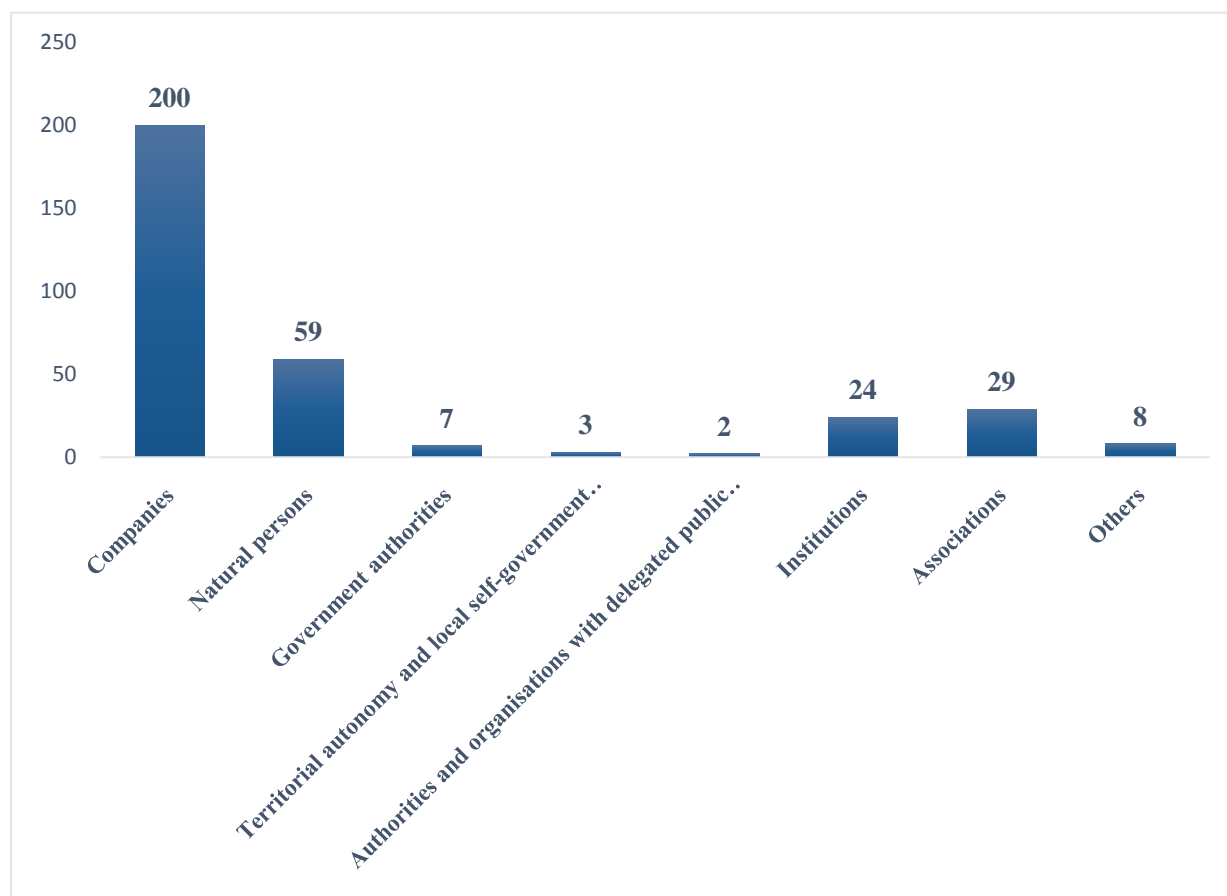
3.3.8.3. Keeping of Central Register

In 2016, 332 data controllers submitted to the Commissioner records of 1,300 data files they keep and as at 31 December 2016, a total of 1,951 personal data controllers submitted records of 9,704 personal data files they keep to the Commissioner's Central Register.

This practically means that, eight years after the LPDP entered into force, only 1,951 data controllers, or 0.6% of the total number of data controllers have complied with the statutory duties regarding registration with the Commissioner's Central Register.

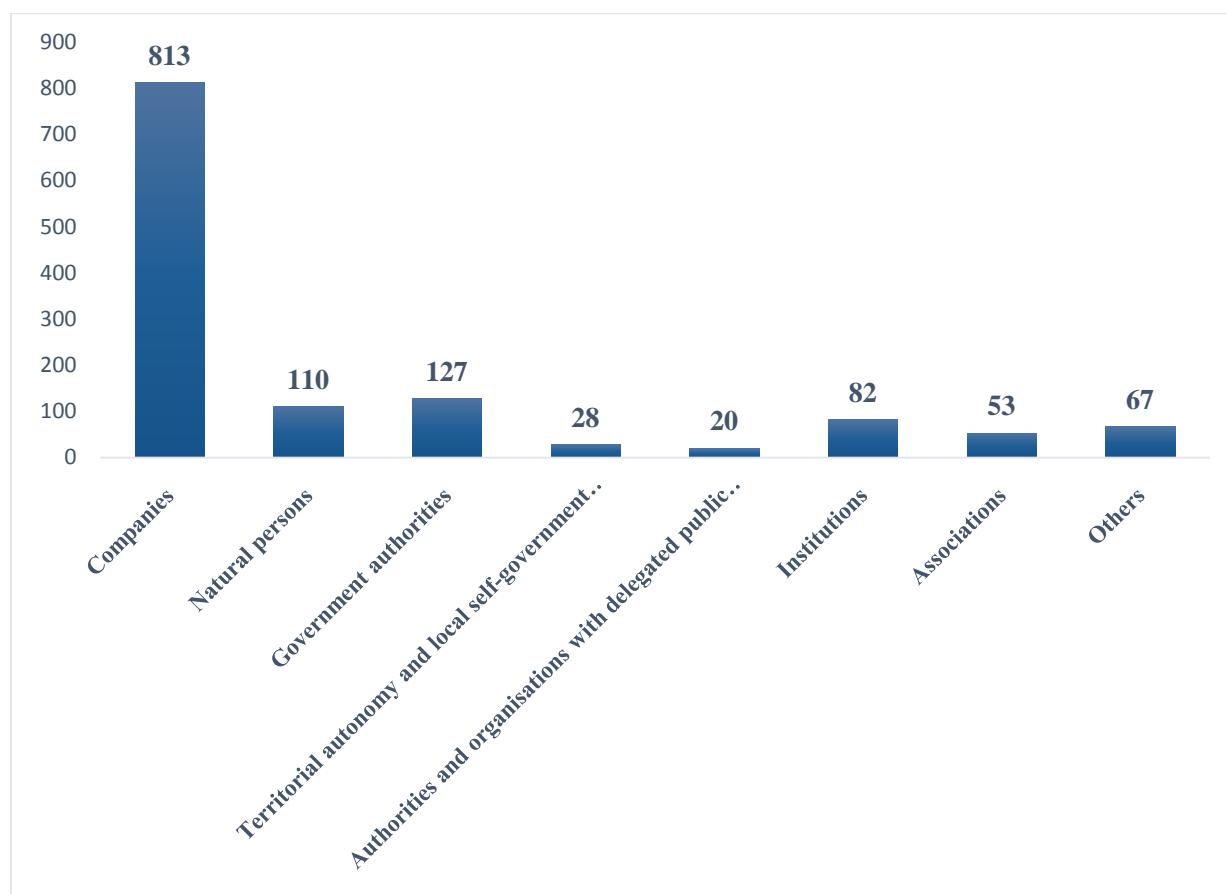
In addition, there has been a negative overall trend of fewer and fewer data controllers submitting fewer and fewer records of their data files with the Central Register, with minor annual fluctuations.

Graph 26. Data controllers registered with the Central Register in 2016, by types of data controllers



In 2016, companies submitted the largest number of records of data files to the Commissioner (200), which is understandable, not least because they are the most numerous data controllers and many of them are data controllers whose international and foreign parent companies require compliance with this duty, with which they are very familiar in the countries of their establishment.

Graph 27. Records of data files registered with the Central Register in 2016, by types of data controllers



Companies are not only the most numerous data controllers registered with the Commissioner's Central Register (200), they also submitted the majority of records of data files (813). They are followed by government authorities which submitted 127 records of personal data files, natural persons (sole traders) who submitted 110 records of personal data files etc.

In the same period, the Commissioner also received 128 requests for changes in the existing records in the Central register, of which 120 received a positive reply, 3 were closed by official notes, while 5 were carried forward to 2017.

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 statements in his annual reports.

3.4. Commissioner's Initiatives and Opinions relating to Regulations

During the course of 2016, the Commissioner issued 38 opinions within his sphere of competence relating to draft laws, bills and model laws; in several cases he even issued

2 or 3 opinions on texts of the same laws which were adjusted in the meantime. Of these 38 opinions, the Commissioner issued 35 at request of ministries, 2 on his own initiative and one at request of the Belgrade Centre for Security Policy.

In addition, the Commissioner also issued 37 opinions on drafts and proposals of implementing regulations and other instruments.

3.4.1. Opinions on Laws

The Commissioner issued 35 opinions at the request of ministries, including opinions to:

The Ministry of Interior on:

- Draft Law on Unique Personal Identification Number (on two occasions, on different texts of the Draft Law),
- Draft Law on Foreigners and
- Draft Law on Asylum and Temporary Protection;

The Ministry of Health and the Biomedicine Administration on:

- Draft Law on Transfusion Medicine and
- Draft Law on Biomedically Assisted Procreation;

The Ministry of Labour, Employment Veteran and Social Affairs on:

- Draft Law on Financial Support to Families with Children;

The Ministry of Trade, Tourism and Telecommunications on:

- Draft Law on Electronic Documents, Electronic Identification and Confidential Services in e-Commerce;

The Ministry of Education, Science and Technological Development on:

- Draft Law amending the amending the Law on Basic Elements of Education System,
- Draft Law on Special Authorisations for Efficient Protection of Intellectual Property Rights,
- Draft Law on Copyright and Related Rights,
- Draft Law amending the Law on Patents,
- Draft Law amending the Law on Protection of Topographies of Semiconductor Products;

The Ministry of Justice on:

- Draft Law on Prevention of Domestic Violence,
- Draft Law amending the Law on Seizure and Confiscation of Proceeds from Crime,
- Draft Law amending the Criminal Code,
- Draft Law on the Organisation and Powers of Public Authorities in Elimination of Organised Crime, Terrorism and Corruption,
- The working version of the Civil Code of the Republic of Serbia;

The Ministry of Agriculture and Environment Protection on:

- Draft Law on Water;

The Ministry of Culture on:

- Draft Law on Archive Material and Archiving Activity;

The Ministry of Construction, Transport and Infrastructure on:

- Draft Law on Utility Activities (on four occasions, on different texts of the Draft Law),
- Draft Law on Housing and Maintenance of Buildings (on two occasions, on different texts of the Draft Law);

The Ministry of Finance on:

- Draft Law on Prevention of Money Laundering and Financing of Terrorism,
- Draft Law amending the Law on Takeover of Joint-Stock Companies,
- Draft Law amending the Law on Capital Market,
- Draft Law amending the Customs Law,
- Draft Law governing the Profession of Real Estate Appraisers (on two occasions, on different texts of the Draft Law),

The Ministry of Public Administration and Local Self-government on:

- Draft Law on System of Salaries of Public Sector Employees,
- Draft Law Determining the Maximum Number of Employees in Public Sector,

The Ministry of Economy on:

- Draft Law on Public Enterprises.

The Commissioner issued two opinions on his own initiative, including an opinion to the National Assembly on the Bill amending the Law on Municipal Police and an opinion to the Serbian Government on the Draft Law amending the Law on Basic Elements of Education System.

At request of the Belgrade Centre for Security Policy, the Commissioner issued an opinion on the Model Law governing Security Services.

3.4.2. Opinions on Implementing Regulations

The Commissioner also issued opinions on secondary legislation and other acts from the aspect of his sphere of competence, including:

1. Bylaw on Medical Assessment of Natural Persons' Fitness for Owning and Carrying Weapons;
2. Draft Regulation on Preventive Occupational Safety and Health Measures when using Sharp Medical Devices in Health Care Services;
3. Draft Resolution on Adoption of the Operating Action Plan on the Establishment of a Single Register of Administrative Procedures and Other Requirements for Business Operations;
4. Draft Resolution on Adoption of the Instructions on the Conduct of Administrative Procedures;

5. Draft Resolution on Adoption of the Form listing Administrative Procedures relating to Business Operations;
6. Draft Resolution adopting the Action Plan on Negotiation Chapter 24 – Justice, Freedom and Security;
7. Draft Resolution Endorsing the Draft Negotiating Position of the Republic of Serbia for Negotiation Chapter 24 for the Intergovernmental Conference on the Accession of the Republic of Serbia to the European Union;
8. Draft Decision on the Process of Reporting, Monitoring and Evaluation of Implementation of the Action Plan on Negotiation Chapter 24 – Justice, Freedom and Security;
9. Draft Memorandum of Cooperation between the Ministry of Interior of the Republic of Serbia and the US Department of Homeland Security on Customs and Border Protection on the Exchange of Passenger Information;
10. Draft Memorandum of Understanding between the Government of the Republic of Serbia and the US Government on the Promotion of Cooperation to Prevent the Traveling of Terrorists and Fight against Illegal Migration;
11. Second Draft Catalogue of Positions and Titles in State Bodies and Catalogue of Positions and Titles in State Administration Bodies and Other State Bodies of Autonomous Provinces and Local Self-Government Units and 2nd Catalogue of Generic Posts (Seconded Positions);
12. Draft Bylaw amending the Bylaw on the Procedure for Issuing Child Birth Registration Certificates and the Form for Child Birth Registration at Health Care Institutions;
13. Bylaw amending the Bylaw on the Procedure for Registration and Deregistration of Permanent and Temporary Residence Addresses of Citizens, Registration of Temporary Residence Abroad and Return from Abroad, Registration of Temporary Absence from Permanent or Temporary Residence Address and Forms and Manner of Record-Keeping;
14. Decision on the Manner of and Timeframe for Submission of Data for Determination of the Maximum Number of Indefinitely Employed Persons at the Services of the National Assembly and Independent State Authorities, Organisations and Bodies;
15. Draft Government's Resolution to adopt the Draft Negotiating Position of the Republic of Serbia for the Intergovernmental Conference on the Accession of the Republic of Serbia to the European Union for Negotiation Chapter 23 – Judiciary and Fundamental Rights;
16. Draft Government's Resolution to adopt the Action Plan on Negotiation Chapter 23 within the Framework of the EU Accession Negotiations of the Republic of Serbia;
17. Draft Regulation on the Codebook of Job Positions in the Public Sector;
18. Draft Resolution adopting the Action Plan on Implementation of the Open Government Partnership in the Republic of Serbia in 2016 and 2017;
19. Draft Action Plan on Implementation of the Open Government Partnership (OGP);
20. Draft Strategy for Social Inclusion of Male and Female Roma in the Republic of Serbia for the period 2016-2025;
21. Draft Strategy for Social Inclusion of Male and Female Roma in the Republic of Serbia 2016-2025 for the period 2016-2018;
22. Draft Bylaw on Licences for Marketing and Use of Particularly Hazardous Substances;
23. Draft Bylaw on the Register of Higher Education Institutions, Study Programmes, Teachers and Other Employees;
24. Draft Bylaw on the Register of Higher Education Institutions, Study Programmes, Teachers, Associates and Other Employees;

25. Draft Regulation on Detailed Content of The Act on Security of Information and Communication Systems of Particular Importance, Verification Method and the Content of Reports on Verification of Security of Information and Communication Systems of Particular Importance;

26. Draft Regulation on the Procedure of Data Provision, Lists, Types and Importance of Incidents and the Procedure for Reporting of Incidents in Information and Communication Systems of Particular Importance;

27. Draft Regulation on Determining a List of Job Positions in Areas where Activities of Common Interest are performed and where Information and Communication Systems of Particular Importance are used;

28. Draft Regulation on Detailed Safeguards for Information and Communication Systems of Particular Importance;

29. Draft Action Plan on the Exercise of Rights of National Minorities;

30. Bylaw on Conditions for Travel Guarantees, Method of Activation and Other Conditions Applicable to Travel Organisers depending on the Type of Organised Travel;

31. Draft Regulation amending the Regulation on Office Management in State Administration Bodies (the Commissioner gave three opinions on different texts of the Regulation);

32. Draft Bylaw amending the Bylaw on the Conditions for and Manner of Disclosure of Financial Statements and Maintenance of a Register of Financial Statements;

33. Draft Action Plan on Implementation of the Defence Strategy of the Republic of Serbia;

34. Draft National Action Plan on implementation of the Resolution 1325 of the UN Security Council – Women, Peace and Security in the Republic of Serbia (2016-2020);

35. Draft Standard Operating Procedure of the Republic of Serbia for the Prevention and Protection of Refugees and Migrants from Gender-based Violence.

3.4.3. Content of Commissioner's Opinions

Looking at the opinions given on the draft laws, bills and other documents, most of the Commissioner's comments and suggestions related to the following:

- When giving opinions on draft laws, bills, draft secondary legislation and other documents, the Commissioner does not restrict his observations to the text of the new law or other document or on amendments and supplements to the existing ones; instead, he uses the opportunity to call for amendments or supplements to certain provisions of applicable regulations that are not covered by the proposed amendments, to ensure they too are made compliant with the provisions of the LPDP and the Law on Access to Information;

- The entities in charge of preparing draft laws and bills, as well as secondary legislation, are not aware of the fact that, in accordance with Article 8 of the Law on Access to Information, restrictions of the freedom of information can be imposed solely and exclusively by the law governing free access to information of public importance, and even then only if it is necessary in a democratic society to safeguard against a more serious violation of a prevailing interest based on the Constitution or on a law. There is no absolute exception from the freedom of information;

- The entities in charge of preparing draft laws and bills still use terms such as "official secret" or "military secret", although these concepts have been abolished in the legal system of the Republic of Serbia following the enactment of the Law on Data Confidentiality

(*Official Gazette of RS* No. 104/09), which provides for a uniform system of determination and protection of classified data;

- Draft laws still frequently stipulate that personal data processing is to be governed by secondary legislation, even though Article 42 of the Constitution of the Republic of Serbia explicitly provides that collecting, holding, processing and use of personal data must be governed by a law and Decision of the Constitutional Court of Serbia passed in its session of 30 May 2012, published in the *Official Gazette of RS* No. 68/12 of 18 July 2012, confirmed that secondary legislation cannot provide proper legal grounds for personal data processing;
- The purpose of data processing governed by a law is often not sufficiently clear or defined, and in some cases it is not even permitted. The entities in charge of preparing draft laws often fail to define the purpose of processing in the text of the law;
- When listing the types of personal data to be processed, they do not take into account the principle of proportionality;
- The entities in charge of preparing draft laws and bills almost always forget to define the periods in which processed data would be kept, and
- The texts of the laws which govern personal data processing pay almost no attention to liability for failure to put in place organisational and technical measures to protect personal data.

3.4.4. Overview of Commissioner's Opinions on Laws Adopted in 2016

In 2016, the National Assembly enacted 88 laws²⁹, while the Commissioner provided 24 opinions on draft laws from the aspect of his sphere of competence regulated under Article 35 of the Law on Free Access to Information of Public Importance and Article 44, paragraph 1 of.

In his opinions on 24 draft laws adopted in 2016, the Commissioner provided certain remarks, suggestions etc. to 23 draft laws, while he had no remarks on one draft law. The Commissioner's opinions on 23 subsequently adopted draft laws contain a total of 88 remarks, of which 21 were fully adopted, 7 were partially adopted and 60 were not adopted (in percentages – adopted 23.9%, partially adopted 7.9 % and not adopted 68.2%).

Out of 88 remarks, 70 related to personal data protection, 14 to freedom of information, while 4 related to both fields (in percentages – personal data protection 79.5%, freedom of information 15.9% and both fields 4.6%).

3.4.5. Typical and Illustrative Commissioner's Opinions on Laws

When giving opinions in connection with draft laws, the Commissioner very often makes suggestions about what should be regulated by those laws to promote the freedom of information and the right to personal data protection.

²⁹ During the spring session of 2016, in the convocation of 16 February 2014, it enacted 41 laws, while the current convocation in the autumn session enacted 47 laws. Source: National Assembly of the Republic of Serbia. The laws which were enacted in the current convocation are available at: <http://www.parlament.gov.rs/akti/doneti-zakoni/doneti-zakoni.1033.html>, while the laws enacted during the spring session in the previous convocation are available at: <http://www.parlament.gov.rs/akti/doneti-zakoni/u-sazivu-od-16-%D0%B0prila-2014.3411.html>

Thus, for example, in his opinion on the Draft Law on Public Enterprises, the Commissioner suggested that the Law should provide for proactive disclosure of information about the work of those enterprises on their websites, taking into account the large numbers of freedom of information requests they receive. **Unfortunately, this suggestion was not accepted.**

Authorised backers of laws do not pay sufficient attention to obtaining an opinion from the Commissioner on the texts of draft laws that may affect the exercise of the freedom of information and the right to personal data protection, and even if they do, they do not care about such opinion. An illustrative example of this was the communication sent by the Commissioner to the Committee on the Judiciary, Public Administration and Local Self-Government of the National Assembly in connection with the Bill amending the Law on Municipal Police, the draft version of which had not been presented to him for an opinion, contrary to the Government's Rules of Procedure. On that occasion, the Commissioner underscored that the provision according to which the Minister is to pass a regulation on the manner of assessing the required psychophysical ability of candidates for municipal police officers was inadmissible, because assessment of psychophysical ability constitutes processing of particularly sensitive personal data.

In connection with the Draft Law amending the Law on Basic Elements of Education System, the Commissioner sent a communication to the Government of the Republic of Serbia and noted that the purpose of the personal data processing provided for in that law was not only defined in unclear and vague terms, but also constituted an example of personal data processing for inadmissible purposes. Namely, the establishment of a register that would include children, pupils, adults and students, i.e. all persons who have ever been enrolled in the education system, would result in the creation of one of the most comprehensive databases of personal data in Serbia and it is therefore necessary to ensure that such processing is proportionate to a legitimate purposes and to provide for all safeguards for the exercise of rights of the data subjects, to restrict access to data, to provide for data safety, to specify the timeframe for data keeping etc..

In the process of enactment of the Law on Housing and Maintenance of Buildings, the Commissioner called on the Government and the members of parliament to diligently and responsibly assess the justifiability of enacting the proposed legislative provisions and opt for those that achieve the intended objectives by means that are the least invasive for citizens' rights and pose the lowest risk for their personal data. The Commissioner noted it was a matter of serious concern that vast quantities of personal data of millions of citizens would be entrusted to completely new, as yet non-existent structures (the bill provides for the introduction of concepts that were hitherto unknown in the Serbian legal system, namely building managers and professional building managers). In connection with this, taken into account the (lack of) qualifications, the (lack of) experience and the non-existent practice and standard, a host of potential issues could arise with regard to safety and keeping of such data.

In connection with the Draft Law amending the Law on Defence, the Commissioner sent an opinion to the Ministry of Defence in which he stated it was unacceptable for that law to introduce a new legal arrangement according to which all data processed by that Ministry would be classified and the Government would be authorised to define in detail the data that are relevant for the defence system and have to be kept and protected, because this would completely exclude the freedom of access to

information held by that Ministry, in violation of the Constitution and the Law on Free Access to Information of Public Importance. In this context, the Commissioner noted the proposed legislative provisions constituted an inadmissible derogation from the uniform system of classification and protection of classified data, as the data classification regime is governed by the Law on Data Confidentiality. In this context, it was pointed out that the proposed legislative provisions constituted a radical and inadmissible encroachment on the subject matter governed by the Law on Free Access to Information of Public Importance and the Law on Data Confidentiality, which undermined the established system in the sphere of the social relations governed by those Laws and consequently threatened the unity of the legal order and effectively reduced the existing level of human and minority rights guaranteed by the constitution.

3.5. Commissioner's Activities aimed at Affirmation of Rights

3.5.1. Trainings, Seminars, Publications and Other Activities

During 2016, the Commissioner held a number of trainings in the field of freedom of information and personal data protection.

The Commissioner organised trainings in implementation of the Law on Access to Information of Public Importance, as a legal duty of public authorities, himself or he participated as a lecturer in trainings organised by other authorities or organisations for employees in public administration authorities.

Employees in the Commissioner's Office participated as lecturers in trainings in the Law on Free Access to Information of Public Importance organised by the Human Resource Management Service of the Republic of Serbia. Trainings were held from 29 to 31 March for civil servants who handle requests for free access to information of public importance. In cooperation with this Service, the Commissioner also held two trainings in personal data protection for civil servants on 1 April 2016 and on 5 May 2016.

The Commissioner organised a seminar intended for representatives of the City Centre for Social Work in Belgrade and the Secretariat for Social Welfare of Belgrade to educate them and to ensure improved implementation of the Law on Personal Data Protection and the Law on Free Access to Information of Public Importance.

In 2016, the Commissioner delivered numerous lectures in freedom of information and personal data protection. Various target groups for which lectures were intended include students at the Faculty of Law in Belgrade; students at the Faculty of Organisational Sciences in Belgrade; PhD students at the Faculty of Political Sciences in Belgrade; course takers of the Diplomatic Academy of the Ministry of Foreign Affairs within the course "Basic Elements of Political and Economic Systems of the Republic of Serbia"; pupils at Secondary Vocational School of Electrical Engineering "Nikola Tesla"; the Students' Union in Uzice; and trainees at the educational programme "PolitiKAS" intended for members of organisations of political parties, organised by the Belgrade Open School. In addition, the Commissioner took part in trainings and held lectures for representatives of six local associations which were organised by the Civic Initiatives as part of the project "Independent Bodies Closer to Citizens"; lectures for representatives of local public authorities in freedom of information and personal data

protection, on invitation from the citizens' association Forum of Civic Action Forca in Pozega and the Centre for Equitable Regional Development in Belgrade; a lecture in the sphere of competence and work of the institution, organised by the Belgrade Centre for Human Rights within the School of Human Rights etc.

The Commissioner affirmed the freedom of information by actively participating in numerous debates, conferences, round tables and other public meetings organised by other public authorities or civil society organisations.

On 28 January, celebrated as the Data Protection Day, the Commissioner held a public conference where he presented the main challenges in the field of personal data protection and in his work. On that occasion, the Commissioner's publication titled ["Commissioner's Decisions and Views on Complaints Lodged in Personal Data Protection Procedure"](#) was presented.

As regards affirmation of freedom of information of public importance, on 28 September the Commissioner organised a conference dedicated to the International Right to Know Day. This conference has been organised every year since 2006 in cooperation with and with support of the OSCE Mission to Serbia, the Independent Journalists Association of Serbia, the Association of Serbian Journalists and the Freedom of Information Coalition. This conference includes traditional presentation of awards to public authorities for results they achieve and for their contribution to the exercise of right to know, as well a special award for the best Information Booklet, pursuant to a public call for competition. As every year, the fifth publication with the opinions and views from the Commissioner's practice in the field of freedom of information of public importance titled Publication No. 5 "Free Access to Information – Commissioner's Attitudes and Opinions" was presented at this conference, as well as previous publications. This is a useful handbook for citizens, journalists and the media, in particular officers in public authorities which implement the Law on Free Access to Information of Public Importance.

In addition to the trainings held 2016 presented above, several public authorities and personal data controllers expressed their interest in participation in trainings which will be organised by the Commissioner in the following period, both in the field of freedom of information and in the field of personal data protection.

In total, 14 trainings in the fields of freedom of information and personal data protection were held as part of the project "Capacity Building of the Commissioner for Information of Public Importance and Personal Data Protection to Effectively and Adequately Perform its Legal Duties and Ensure the Exercise of the Right of Access to Information and the Right to Data Protection and in accordance with European Standards", financed from grants under the Bilateral Programme of the Kingdom of Norway, on the basis of the Agreement with the Serbian Government, which will be addressed in more detail later in this document.

Trainings were held in the form of expert presentations and practical work in groups on addressing the specific issues.

There were 6 trainings in the field of the freedom of information, which addressed the following topics: The Context of Freedom of Information in the Legal System of the Republic of Serbia; Relation between Other Rights and Freedom of Information; Relation between Freedom of Information and Other Forms of Provision of Information to the Public on the

Work of Public Authorities; The Position and Duties of Persons Authorised to Act on Requests; Theoretical Discussion of Issues of Authorised Persons' Actions After Receipt of Requests; Introduction of Authorised Persons to Various Forms of Proactive Publishing of Information; Introduction to the Legal Duty to Prepare and Publish Information Booklets; Acting of Authorised Persons in Preparation of Certain Parts of Information Booklets.

There were 8 trainings in the field of personal data protection, which addressed the following topics: Copyright and Intellectual Property Rights; Human Resources – Managerial Skills; EU Legal Framework and Practice and European Integration; Video Surveillance; Transborder Transfer of Data out of Serbia; Personal Data Protection, the Example of Judiciary; Personal Data Protection, the Example of the Internal Affairs and Security Sector; Personal Data Protection, the Example of IT, Mobile and Landline Telephony and Cable TV Sectors; Strategy, Structure and Mechanisms of Defence of Privacy in the 21st Century; Protection of Particularly Sensitive Personal Data, in Particular Biometric Data; and Training for Managers of information Security Systems according to ISO/IEC 27001 Standard.

3.5.2. Open Data Portal and Twitter Account

In 2016, the Commissioner presented the [Open Data Portal](#) as one of the first authorities which made data on its work available on the Internet to citizens and the public.

The useful value of the Portal was soon recognised by citizens and all other users, as evident from the statistics on visits to [data.poverenik.rs](#) for 2016: total unique visitors to the Portal: 40,620; pages opened: 369.609; visits to pages with visualisations 1,711 unique visitors; percentage of visits from the territory of the Republic of Serbia 57%; downloading of data sets - a total of 4,328 downloads.

During 2016, the Commissioner marked his presence in the social media by editing the official Twitter account @PoverenikRS, which he used, among other things, for posting information about current issues in his work. In addition, this Commissioner's account also presents current global trends regarding freedom of information, the right to know, open data, open government, personal data protection, information security, privacy etc.

In addition to its primary informative function, the Commissioner's official Twitter account also aims to promote positive social values, primarily in the field of protection of fundamental human rights.

The account has been recognised for this and earned more than 2000 members of this social network in less than a year.

4. COMMISSIONER'S COOPERATION

4.1 Cooperation with Civil Society Organisations

In 2016, the Commissioner had sound cooperation with civil society organisations, which took place primarily through participation in various expert meetings for training purposes and affirmation of the right to know and the right to personal data protection.

The Commissioner took part in many conferences, debates and other similar events organised in 2016 by civil society organisations, 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 Changes Serbia, Share Foundation, Aarhus Centre, Victimology Society, Belgrade Open School, Centre for Euro-Atlantic Studies, Belgrade Centre for Security Policy, Balkan Investigative Reporting Network, Belgrade Centre for European Integration, Becej Youth Society, Media Centre-Nis, Lawyers' Committee for Human Rights, Civic Initiatives, Education Centre, Centre for Liberal-Democratic studies, Centre for Free Elections and Democracy, Autonomous Women Centre, IT Society of Serbia, Human Rights House, Foundation for Development of Parliamentarism, Open Society Foundation, Serbia on the Move, Southern News Association, Serbian Association of Corporate Security Managers, SeConS Development Initiative Group, Humanitarian Law Centre, Astra, Centre for Democracy and Human Rights etc.

Rodoljub Sabic, Commissioner for Information of Public Importance and Personal Data Protection, received the "Fine Example of New Optimism" award as part of celebration of 10 December, the International Human Rights Day. The award was presented by the New Optimism movement in Belgrade.

Also, on 7 April Rodoljub Sabic received a special award from the IT Society of Serbia, namely the "Plaque for Outstanding Contribution in IT in 2016".

Rodoljub Sabic also received the Charter Award for Civil Bravery "Dragoljub Stosic" for 2015. The Charter was presented by NGO non-governmental organization "House of Justice Strasbourg" and the Trade Union Federation in memory of Mr. Dragoljub Stosic, trade union leader and defender of democracy.

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

In the course of 2016, as in the previous years, the Commissioner had good cooperation with the media and journalists' associations such as "Danas" daily, N1, on-line media 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 several other media outlets. Journalists most often asked the Commissioner for information relating to the cases he handled and the measures he took.

Public comments on the Commissioner's activities were overwhelmingly very positive. In addition to his regular activities, particular attention was also attached to the Commissioner's statements on the right of the public to know relevant information on the "Savamala" case, on compliance of the Ministry of Internal Affairs with his recommendations concerning the distribution of daily bulletins of events, as well as to insufficient protection of particularly sensitive data of patients in the IHIS. The Commissioner and representatives of his Office appeared every day in printed and electronic media.

According to journalists, the Commissioner personally was one of the six most communicative government officials and public figures in 2016, as evident from the results of a survey conducted by the "Pragma" agency, which has been conducting this survey for sixteen years.

4.3 International and Regional Cooperation

The Commissioner's international cooperation in 2016 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), 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 in 2016, 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 events and meetings dedicated to freedom of information and personal data protection:

- The European conference of national data protection authorities, on 28 January in Ljubljana, which was organised by the Slovenian Information Commissioner,

- The First Annual Forum on Personal Data Protection of Western Balkans countries, held in Skopje on 2 and 3 February 2016, which was organised by the Personal Data Protection Directorate of the Republic of Macedonia,
- 104th meeting of the Working Party 29 held in Brussels on 5 February 2016,
- 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 Paris from 21 to 24 March,
- 18th CEEDPA meeting (Central and East European Data Protection Authorities) held in Sarajevo, from 11 to 12 May 2016,
- Moldova ICT Summit, held from 25 to 27 April in Chisinau,
- Spring Conference 2016 of European data protection authorities, held in Budapest from 26 to 27 May 2016, which was organised by the Hungarian Data Protection Authority,
- A plenary session of the Advisory Committee of the Convention 108 for the Protection of Individuals with regard to Automatic Personal Data Processing held in Strasbourg from 29 June to 1 July,
- A regional conference organised to commend 28 September, International Right to Know Day, titled “Access to Information and Open Data”, which was organised by the Transparency International of Bosnia and Herzegovina,
- 107th meeting of the Working Party 29 held in Brussels from 27 to 28 September 2016,
- 38th International Privacy Conference held from 17 to 20 October in Morocco,
- An international meeting – 28th Workshop of Cases, organised by the Agency for Personal Data Protection and Free Access to Information of Montenegro, which was held from 13 to 14 October in Podgorica,
- The International Conference on Personal Data Protection, organised in Moscow on 8 November,
- A meeting of the Working Party for personal Data Protection of the Convention on International Police Cooperation in Southeast Europe, held from 5 to 7 December in Slovenia.

Two study visits were organised as part of the Project, including a visit to the Commission for Personal Data Protection of the Republic of Bulgaria from 15 to 17 November 2016 and to the Information Commissioner of the Republic of Slovenia from 28 to 29 November 2016.

The Commissioner and the Secretary General visited the Slovenian Information Commissioner on 22 November, exchanged information and experiences and considered possibilities for possible future cooperation.

The costs of the Commissioner’s participation in these conferences, meetings and other events were covered by their organizers (3), fully by the Commissioner (10) and partially by the Commissioner (4).

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, in particular about the improvement of human rights and the fight against corruption and personal data protection.

The Commissioner had meetings with representatives of the diplomatic core, including Mr. Kyle Scott, the US Ambassador, and Mr. Morten Skovgaard Hansen, Head of Mission at the Danish Embassy. They talked about issues relating to the Commissioner's sphere of competence.

The Commissioner also took part in a meeting organised during the visit of Ms Victoria Nuland, the US Assistant Secretary of State, to Serbia. The meeting addressed issues of rule of law and corruption.

5. COMMISSIONER'S OFFICE AND ASSETS

5.1. Number of Employees in Commissioner's Office

According to an assessment made by this authority, the Commissioner's Office should have 94 employees to be able to exercise its powers under the Law on Access to Information and the Law on Personal Data Protection. This number had been set by the previous job classification rules of 2013 and remained unchanged in the currently applicable internal organisation and job classification rules of 2014³⁰, which were approved by the competent committee of the National Assembly.

According to the Commissioner's Human Resources Plan for 2016, 94 scheduled posts should be staffed in 2016, excluding the officials appointed by the National Assembly (the Commissioner and two Deputy Commissioners); this has been approved by the Ministry of Finance from the aspect of allocation of budget funds.

In early 2016, the Commissioner's Office had 64 full-time employees. In the middle of the year, 9 persons were employed for an indefinite period pursuant to a public call for job applications, while two employees terminated employment, meaning that **as at 31 December 2016 the Commissioner's Office had 71 full-time employees, which is 75.5% of the total number of employees set under the job classification rules.** Three employees were absent for a longer period of time during the year.

During the year, three persons were hired under contract to audit public procurements conducted in 2015 and to help with the increased workload.

5.2. Development of Commissioner's Office

Throughout 2016, the Commissioner organised numerous activities aimed at improving the work of his Office and knowledge and skills of employees. Most of those activities were implemented as part of a two-year project from 2015, implemented under the bilateral

³⁰ Bylaw on Internal Organisation and Job Classification No. 110-00-00004/2014-04 of 4 November 2014, 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.

agreement between the Serbian Government and the Ministry of Foreign Affairs of the Kingdom of Norway. The project will be addressed in more detail later in this chapter.

Thus, in 2016 activities have been initiated to strengthen the security system for the information used by the Commissioner in his work, i.e. preparations have been initiated to initiate the implementation of an information security management system in accordance with the requirements of the SRPS ISO/IEC 27001:2014 standard, as its implementation would be of great importance, not only for the security of information available to the Commissioner; it would also be useful for supervision of implementation of LPDP by data controllers who have been certified for this standard. The aim is to improve the security of the Commissioner's information assets as much as possible and to protect it from any internal, external, intentional or unintentional threats by implementing the information security management system according to the requirements of the said standard. In addition to information security, application of this standard also involves the introduction of a more efficient administration, cutting of administrative expenses and faster and less expensive performance of tasks in the Commissioner's sphere of competence. Application of this standard is also a precondition for the development of an interoperable system which would ensure exchange of data, information and knowledge through harmonised operating processes, both within the organisation and in operating communication with external domestic and foreign economic operators and with public administration authorities within the National Interoperability Framework.³¹

As part of these activities, 13 employees received training, including six which acquired the status of auditors (the highest level of certification for SRPS ISO/IEC 27001), while seven acquired the status of information security managers.

Activities aimed at implementing the said standard should be completed by mid-2017, when the Commissioner should receive a certificate of implementation of the information security management system according to the SRPS ISO/IEC 27001:2014 standard.

In 2016, 21 employees at the Commissioner's Office underwent security clearance checks and were issued with the requisite certificates by the Office of the National Security Council which allow them to access classified data in accordance with the Law on Data Classification; three of them have received security clearance to access data with the highest classification level, "state secret", while 18 have received security clearance to access data classified as "top secret", which they need for the normal exercise of their respective duties.

As part of the abovementioned project, 22 thematic trainings were held in 2016 (lasting one day, several days or continually) to improve the knowledge of employees in the Commissioner's Office. The trainings covered issues of relevance for the exercise of human rights which the Commissioner protects, the European integration process and issues relevant for work organisation, management and other issues concerning human resources development. Serbian experts and experts from EU Member States were hired under service contracts for this purpose.

³¹ The National Interoperability Framework was adopted at the Serbian Government's session held on 10 January 2014 by the Decision 05 No.: 345 – 11418/2013.

With the aim of improving organisation of the work and data security, in 2016 the Commissioner formed his own registry office for receiving and expediting of mail. These tasks were previously performed by the Administration for Joint Services of the Republic Bodies.

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

5.3.1. Allocations from Budget of the Republic of Serbia

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

The Law on Budget of the Republic of Serbia for 2016 **granted to the Commissioner funds for finance source 01 – budget revenue in the amount of RSD 175,639,000.00 in accordance with the Commissioner's Draft Financing Plan. In 2016, RSD 154,634,252.85 or 88 % of the approved budget funds was spent on the Commissioner's work.**

The extent of spending of the approved funds was due to the fact that the staffing plan for hiring of the necessary number of employees was not fully achieved because it was not possible to induct new employees in such a short period, while on the other hand the institution handled a huge workload within the Commissioner's sphere of competence, faced a backlog of cases from the past, when it was understaffed, and received a constant inflow of new cases and citizens' communications to the Commissioner.

The Commissioner's approved budget allocations and expenses are presented in the tables below:

Table 6: Execution of the Commissioner's budget for 2016

Function	Source of finance	Programme	Project	Economic classification	Description	Funds approved under the Law on the Budget of RS (Official Gazette of RS No. 103/2015)	Executed	% of execution
60	1	001	011	411	Salaries and fringe benefits	118,500,000.00	105,785,683.72	89.27
				412	Social contributions payable by employer	21,320,000.00	18,933,506.76	88.81
				413	Compensations in kind	400,000.00	396,000.00	99.00
				414	Social benefits to employees	1,000,000.00	562,830.00	56.28
				415	Compensation for employees	3,000,000.00	2,347,890.88	78.26
				416	Rewards and bonuses	200,000.00	186,380.69	93.19
				421	Recurrent expenses	4,000,000.00	2,792,578.51	69.81
				422	Travel expenses	4,100,000.00	2,062,374.59	50.30
				423	Contracted services	9,154,000.00	9,147,424.57	99.93
				425	Repairs and maintenance	1,600,000.00	1,207,423.58	75.46
				426	Material	3,300,000.00	2,975,767.44	90.17
				482	Taxes, statutory charges and penalties	550,000.00	278,306.00	50.60
				512	Machines and equipment	8,365,000.00	7,808,514.00	93.35
				515	Intangible assets	150,000.00	149,571.36	99.71
TOTAL 01 Budget revenues						175,639,000.00	154,634,252.10	88.04
60	5	001	011	422	Travel expenses	1,000.00	0.00	0.00

				423	Contracted services	1,000.00	0.00	0.00
				426	Material	1,000.00	0.00	0.00
TOTAL 05 Donations from foreign countries						3,000.00	0.00	0.00
60	5	001	011	422	Travel expenses	750,000.00	323,668.81	43.16
				423	Contracted services	14,255,000.00	14,164,092.80	99.36
				426	Material	58,000.00	0.00	0.00
TOTAL 15 Unspent donation funds from previous years						15,063,000.00	14,487,761.61	96.18
TOTAL FOR FUNCTION 160:						190,705,000.00	169,122,013.71	88.68

Apart from staff salaries, contributions and fringe benefits, the largest share of the Commissioner's expenses in 2016 was attributable to computer services, administrative equipment, communication services, fuel costs and regular repairs and maintenance of equipment.

On the basis of the Government's Decision 05 No. 46-4580/2016 of 17 May 2016, the Commissioner's Office disposed of one publicly-owned passenger car in a public auction and generated revenue of RSD 377,777.77 for the budget of the Republic of Serbia. For the purposes of the Office, specifically for its inspection tasks, the bulk of the approved allocations for equipment (47.91%) was spent on the purchase of one official passenger car u the Government's Decision 05 No. 46-4854/201 of 31 May 2016. Namely, pursuant to Article 54 of the Law on Personal Data Protection, the Commissioner supervises implementation of this Law through authorised officers. There are about 350 thousand entities subject to the Commissioner's inspection in this field in the Republic of Serbia and the Commissioner performs supervision in the entire territory of Serbia through authorised officers employed at the Supervision Department. The Commissioner does not have regional units through which he could exercise his powers and he sends authorised officers from his head office to all entities subject to supervision. The Commissioner also directly cooperates with data protection authorities in other countries and he is a member of several international associations in accordance with Article 44 of the said Law.

To ensure optimum conditions for the employees to work on implementation of both laws within the Commissioner's sphere of competence, in 2016 the Commissioner's Office also purchased administrative equipment, mainly electronic equipment, mobile and landline phones, as well as intangible assets, namely antivirus software. Part of the computing and electronic equipment was purchased in compliance with the Commissioner's duty to co-finance activities under the project "Building of the Commissioner's Capacities" POV-01-2015 under the Bilateral Programme of the Kingdom of Norway, according to Agreement on Implementation of Projects No. 337-00-00018/2015-04/1 of 18 September 2015. The activities included purchase of equipment for the electronic registry office (a data storage server and a printer with a scanner), a virtual server for case files in the field of freedom of information, as well as equipment for the Commissioner's premises used for trainings.

Table 7: Overview of major expenses

Description	Funds spent
Recurrent expenses	
Communication services (Internet costs, mobile and landline phone services)	2,493,701.60
Contracted services	
Computer services (computer and software maintenance services)	4,816,320.00
Current repairs and maintenance	
Current repairs and maintenance of equipment (transport equipment, computer equipment, electronic and other administrative equipment)	1,137,583.58
Material	
Transport material (fuel and other materials for vehicles)	2,067,562.71
Machines and equipment	
Transport equipment	4,008,000.00
Administrative equipment (computer equipment, electronic equipment, phones)	3,800,514.00

Table 8: Overview of equipment purchased

No.	Fixed asset	Quantity	Price per item, inclusive of VAT	Total
1	Skoda Superb Style 2.0 TSI 4x4 6AG	1	4,008,000.00	4,008,000.00
2	Computer BWB PC INTEL G1840	18	87,694.80	1,578,506.40
3	Laptop HP 250 G4 I5-6200U/8GB/WIN PRO 10 /OFFICE	2	122,772.00	245,544.00
4	Server SUPERMICRO SINGLE PROCESSOR 2U	1	449,505.60	449,505.60
5	Server SUPERMICRO DUAL PROCESSOR 2U	1	509,740.80	509,740.80
6	Printer HP LJ M201N	5	16,130.40	80,652.00
7	Photocopier MP 2501 SP	1	185,449.20	185,449.20
8	IP phone YEALINK SIP-T19P	10	9,360.00	93,600.00
9	IP phone YEALINK SIP-T27P	3	18,462.00	55,386.00
10	Console YEALINK EXP20	3	14,178.00	42,534.00
11	Mobile phone Microsoft 950XL	1	93,366.00	93,366.00
12	Mobile phone Nokia Lumia 950XL	1	65,208.00	65,208.00
13	Mobile phone Iphone 6S plus 64 GB	1	120,000.00	120,000.00
14	TAG device	1	2,022.00	2,022.00
15	LG LED TV 50/126 cm, 16:9	1	122,400.00	122,400.00
16	CAN HD CMOS premium camcorder	1	156,600.00	156,600.00
17	Endpoint Protection Standard 100-249 users GOV Eset LIC for 120 users	1	149,571.36	149,571.36
Total				7,958,085.36

5.3.2. Project Funds

The Commissioner and the Serbian European Integration Office entered into 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”, reference number POV-01-2015,³² which is financed from grants under the Bilateral Programme of the Kingdom of Norway for 2015 on the basis of the Bilateral Programme Agreement with the Government of the Republic of Serbia, which was entered into 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 entered into in Belgrade on 3 August 2015.**

The objective of the project is to build and strengthen the capacities of the Commissioner in the exercise of his powers to contribute to overall improvement of exercise of the freedom of information and the right to personal data protection, as well as to Serbia’s EU integration process in the relevant fields of integration (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 total budget of the Project pursuant to the Agreement is RSD 53,086,375.00, of which a portion of **RSD 46,123,875.00 is financed from grants under the Bilateral Agreement**, while a portion of RSD 6,962,500.00 is financed from the Commissioner’s budget. **The project finance includes VAT and the term of the Project is 26 months.** The Project was launched on 18 September 2015, when the Agreement was signed between the Commissioner and the Serbian European Integration Office. In mid-October 2015, the Serbian European Integration Office transferred the amount of RSD 15,996,605.83 to the Commissioner from the part of the budget financed from the funds under the Bilateral Programme for the first year of implementation of the project; of that amount, RSD 14,487,761.61 was not used in 2015 and was carried forward and spent in 2016.

During 2016, the Commissioner continued implementing this Project. Most of the grant funds were spent for the payment of fees for expert services to persons hired to carry out project activities (project team, local and international experts for certain tasks and expertise, both in the field of data protection, e.g. personal data processing through video surveillance, training in handling of particularly sensitive data, transborder transfer of personal data, automated data processing, digital forensics etc., and in the field of freedom of information: proactive disclosure of information, copyright etc.) in the amount of RSD 10,984,858.98. A portion of the funds in the amount of RSD 2,467,247.56 was spent on education and development of employees to ensure they will become proper data security officers and information security auditors who will control and evaluate the data security standards applied by other entities, as well as for professional development of employees through an English language course, given that the Commissioner’s will take on a more prominent role in the European integration process in the future.

³² The abbreviation “POV” is used to designate the Commissioner in Serbian.

Information on the project “Building of the Commissioner’s Capacities” POV-01-2015 and the activities undertaken to implement it is available on the Commissioner’s official website. The Commissioner submits semi-annual and annual reports on implementation of the Project (narrative and financial reports on project funds spent together with supporting documents) to the Serbian European Integration Office in accordance with the Agreement to ensure monitoring of project activities and achievement of the specified project objectives. The Serbian European Integration Office accepted the Commissioner’s annual report on implementation of activities in the first year of the project term and transferred to the Commissioner funds in the amount of RSD 14,660,233.54 from the part of the budget financed under the Bilateral Agreement of the Kingdom of Norway, so the Commissioner can continue with project activities in the second year of the project term.

6. PROPOSALS AND RECOMMENDATIONS

6.1. About the Review of the Commissioner’s Report for 2015

The most recent resolutions of the National Assembly in connection with implementation of the Law on Free Access to Information of Public Importance and the Law on Personal Data Protection were passed in 2014, when the Commissioner’s Annual Report for 2013 was reviewed. The Commissioner’s Annual Report for 2015 has not been reviewed, just like the Report for 2014, although this is a legal duty of the Assembly set under the Law on National Assembly and the Rules of Procedure of the National Assembly.

The Commissioner’s 2014 and 2015 reports were reviewed by the competent parliamentary Committees, with the exception of the Committee on Culture and Information, which, as the Committee in charge of overseeing implementation of the Law on Access to Information, failed for the first time to review the Commissioner’s Report on implementation of this Law for 2015.

The Committee on the Judiciary, Public Administration and Local Self-Government of the National Assembly of the Republic of Serbia reviewed the Report on Implementation of the Law on Free Access to Information of Public Importance and the Law on Personal Data Protection for 2015 at its session held on 14 September 2016, in accordance with Article 238, paragraph 1 of the Rules of Procedure of the National Assembly³³.

The Committee on Human and Minority Rights and Gender Equality of the National Assembly reviewed the Report on Implementation of the Law on Free Access to Information of Public Importance and the Law on Personal Data Protection for 2015 at its session held on 19 September 2016³⁴. According to its Rules of Procedure, the National Assembly must review reports of public authorities with proposals of resolutions and/or recommendation of competent committees at its first next session, but it failed to do so.

³³ Report of the Committee on the Judiciary, Public Administration and Local Self-Government 07 No.06-2/180-16 of 16 September 2016.

³⁴ Report of the Committee on Human and Minority Rights and Gender Equality, 08 No. 02-861/15 of 2 July 2015.

6.2. Commissioner's Recommendations Based on Situation in 2016

Taking into account that the National Assembly has not reviewed the Commissioner's Report for 2015 and has not adopted resolutions in connection with the Report, it can be concluded that the National Assembly failed to exercise its oversight function in relation to the executive branch, i.e. the Government, and that the Commissioner's recommendations have not been implemented.

For these reasons, the Commissioner would like to repeat in this Report the recommendations that have not been complied with.

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 2016 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 the independent state bodies, including the Commissioner, with particular focus on accountability 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 provide 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 pass without delay a new Personal Data Protection Strategy (because the currently applicable Strategy of 2010 is obsolete and virtually unenforceable) and to adopt as soon as possible an 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 the text of the Law on Personal Data Protection in accordance with the new Model Law on Personal Data Protection, which the Commissioner prepared and which will be submitted to the Government upon completion of a public debate, to adopt the Bill of this Law and to submit it to the National Assembly for review and adoption;
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 to 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 of 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 the relevant legislation, enforce final, enforceable and binding Commissioner's decisions and should consistently take measures within its sphere of competence using the existing legal mechanisms, through the competent ministry, by initiating the procedure to determine liability for omissions in the work of public authorities regarding 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 2017

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