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 IN 2013

B e l g r a d e

March 2014

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1. FOREWORD

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

It is worth recalling once again that, until only a few years ago, the Republic of Serbia was one of the few countries that had no legislation that would define and determine the manner of collecting, using, processing and keeping of personal data and systematically regulate the issues of personal data protection. Indeed, a Law on Personal Data Protection did exist (it was enacted in 1998, as a federal act of the then Federal Republic of Yugoslavia), but in practice there was virtually no data protection. The direct effects of this delay in comparison with the neighbouring countries are very much felt to this day, as reflected in the different assessments of the situation in the two respective spheres of competence of the Commissioner.

What can undoubtedly be seen as a positive development is the fact that, in the field of freedom of information, the process has been one of continual progress over the years, from the very beginning to this date. Of course, many problems are still evident and some of them have persisted for years, as explained later on in this Report, but this positive process is evidently irreversible and needs only to be improved and maintained over time.

In this context, it is paramount that all those responsible focus their efforts on affirming modern concepts of the essence of freedom of information – those based on the view that this freedom, from the aspect of public authorities, along with a passive component, necessarily includes also an active one. Thus, it is not sufficient for public authorities to treat freedom of information requests appropriately and fairly and to honour them; rather, public authorities are encouraged to publish as much information about their work as possible on a proactive basis, without specific requests. Means and methods of electronic communication immanent to this day and age and modern technology in general significantly facilitate the realisation of this idea. It is undoubtedly a positive development that, even with all the problems, the results are increasingly visible.

However, the situation could not be more different when it comes to personal data protection. Negative effects of the delays mentioned earlier are exacerbated by a number of negative facts, two of which stand out in particular.

Firstly, the Commissioner – the very institution that must continually contribute and, in spite of everything, actually does contribute significantly to the implementation of the law – operates with absolutely insufficient staff. Even at the end of 2013 – the year which saw the largest number of employees at the Commissioner's Office thus far – the actual figure was less than 50% of the number envisaged by the organisation regulations approved by the National Assembly.

Secondly, another very much negative development is the fact that the Government and other public authorities have failed to comply with their duties under the Law on Personal Data Protection. In an otherwise difficult situation, this only aggravated the matter further.

A rough but reasonable estimate is that there are several hundred thousands of public and private entities that process personal data in Serbia. Most of them – public authorities in particular – have at their disposal several personal data collections or databases, so the total number of records is estimated to be in excess of one million. These include records kept by government agencies, the military, police, pension and health insurance institutions, education institutions, banking system institutions and credit bureaus, social welfare institutions, public utilities, associations and various human resources departments in companies, to name but a few. In many instances they process personal data without specific legal basis and/or without the consent of data subjects; in other cases, the law does not regulate the purpose and scope of personal data processing, the duration of such processing etc. Worse still, in many cases processing involves sensitive data, such as medical treatment information, information on social status etc.

The risks of illegal data processing are steadily, rapidly and constantly increasingy with the ever-growing pervasiveness of modern technologies, electronic communications, video surveillance devices, biometric personal data processing etc.

The right to data protection, as part of a fundamental human right – the right to privacy – is becoming increasingly difficult to maintain in this day and age. Developments in science and technology, in particular the emergence of modern communications, introduction of new information systems and creation of large data banks in all areas, while certainly beneficial in many ways, have created new ways of violating human privacy and abusing personal data. Information on the basis of which a person is identified or identifiable has the potential for abuse in that it can be used for surveillance and for direction of a person's behaviour and habits, for trading and exchange of personal databases in the market, for identity theft, for attempts at implementing totalitarian concepts of control of the society and various other forms of abuse.

As regards personal data protection, Serbia is at the very beginning of a process which needs to be expedited and enhanced. Unfortunately, there is enough evidence to suggest that this necessity is still not sufficiently recognised and understood. This is best seen from the fact that, as early as in the summer of 2010, after seemingly endless procrastination, the Government of

Serbia, acting on initiative from the Commissioner for Information of Public Importance and Personal Data Protection on the basis of a draft prepared by his staff in cooperation with European Commission experts, adopted a Personal Data Protection Strategy, but failed to adopt an Action Plan for its implementation. It is now three and a half years since the period of three months in which this Action Plan had to be adopted expired, but the Plan remains a dead letter, without any practical effects.

As regards secondary legislation necessary for the implementation of the Law on Personal Data Protection, the only instruments adopted on time were those the adoption of which was the responsibility of the Commissioner. Other secondary legislation, for which the Government and certain Ministries were responsible, has either been adopted after considerable delays or, worse still, has not been adopted at all. In this context, a particularly "grave" case, one that carries much weight, is the failure of the Government to adopt, even after five years, a decree that would provide for the protection of the so-called sensitive personal data (ethnic or religious affiliation, political beliefs, nationality, medical information etc.). In the absence of such a decree, it is abundantly clear that the protection of this data enshrined in the law remains an empty promise, which in turn prevents Serbia from complying with specific commitments it assumed under CoE Convention No. 108.

Precious little has been done to harmonize further the Law on Personal Data Protection with relevant European standards. This beggars belief, not least because, as early as in September 2010, European Commission experts had prepared analytical material within the IPA program "Support to the Institution of the Commissioner for Information of Public Importance and Personal Data Protection", which provided a more than sufficient basis for such action. A direct consequence of such situation is the fact that there is as yet no law that would regulate some areas which are essential for personal data protection – video surveillance, biometrics, security checks, private security etc.

The attitude of the society and the government towards privacy, and personal data protection in particular, needs to undergo fundamental changes. 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. These facts certainly merit the attention of the National Assembly and that is why this Report focuses in detail on specific cases in this field.

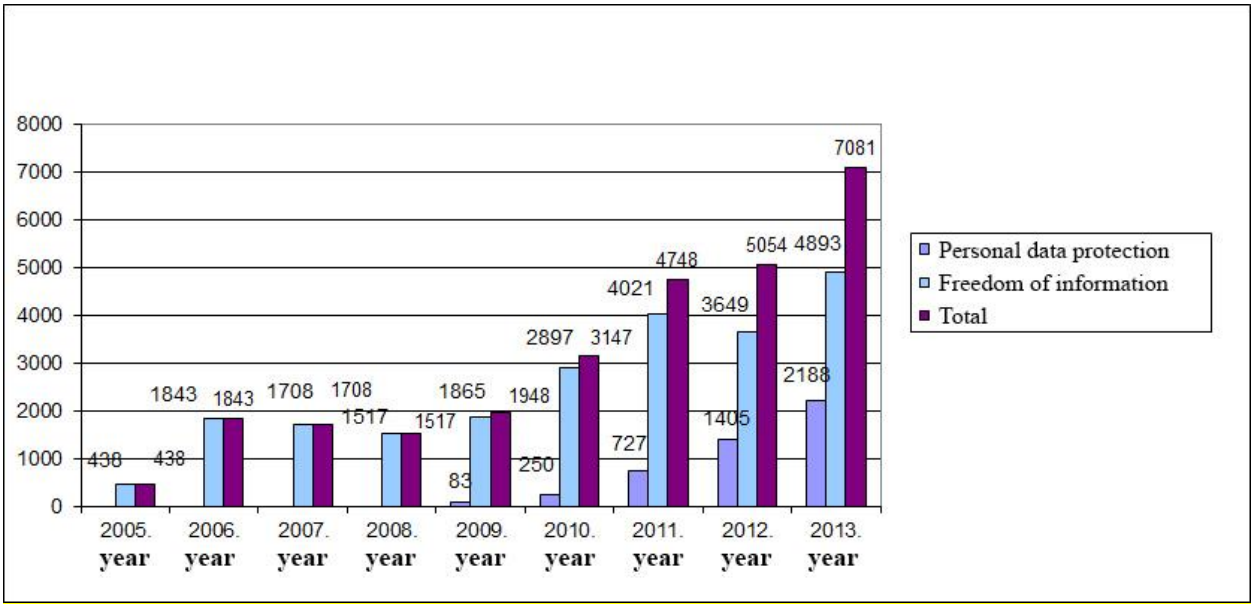
2. SUMMARY OF ACTIVITIES OF THE COMMISSIONER FOR INFORMATION OF PUBLIC IMPORTANCE AND PERSONAL DATA PROTECTION

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

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

Activities of the Commissioner, expressed as the number of cases handled, have been increasing year after year. Thus, in 2013 the number of cases was more than 16 times higher than in 2005, the initial year of the Commissioner's work, as can be seen from the following table.

Graph 1. Number of cases received in 2005-2013 by years



In 2013, the Commissioner handled a total of 9,903 cases (7,377 cases in the field of freedom of information and 2,526 cases in the field of personal data protection), which was 30.8 % higher than in 2012.

Of that number, more than three quarters, or **7,081 cases, were received in 2013** (4,893 cases in the field of freedom of information and 2,188 cases in the field of personal data

protection), while the remaining 2,822 cases were carried forward from 2012 (2,484 relating to freedom of information and 338 relating to personal data protection).

In the course of 2013, the Commissioner closed the proceedings in in 6,307 cases, including 4,406 in the field of freedom of indormation and 1,901 cases in the field of data protection. 3,598 pending cases were carried forward to 2014 (2,971relating to freedom of information and 627 relating to data protection).

Compared with 2012, the volume of activities executed in 2013 measured by the number of cases alone, excluding all other operations, **was 40.3% higher.**

The majority of the Commissioner's activities in 2013 concerned the following:

- Handling of cases pursuant to complaints against violations of the freedom of information and violations of the right to personal data protection;in this context, the Commissioner ruled on a total of **3,084 complaints**(2,910 in the field of freedom of information and 174 in the field of data protection),more than 90% of which were found to be justified. With regard to those cases, the Commissioner's interventions had a positive outcome in approximately 93% of them. As regards decisions issued by the Commissioner ordering public authorities to comply with the requests and enable the citizens to exercise their rights, the rate of compliance is about 80%, although it is possible that this figure is higher, assuming some of the authorities failed to provide feedback on their compliance to the Commissioner;

- **Supervision** of implementation of and compliance with the Law on Personal Data Protection, to prevent any processing of personal data without proper legal basis. Some 1,140 inspection procedures have been initiated, including 206pursuant to citizens' reports, 594 on the Commissioner's own initiative and 340 in connection with personal data files. Of the 1,140 inspection procedures that have been initiated, 831 have been closed, while the remaining 309 have been carried forward to 2014;

- Provision of **assistance to individuals and to public authorities**, i.e. personal data processors, in the exercise of rights and proper implementation of the Law on Free Access to Information of Public Importance and the Law on Personal Data Protection, explanation of procedures on their request **(550 opinions**) and assistance to public authorities in the implementation of regulations providing for improved transparency of their work, in connection with the preparation and publication of information booklets and improvement of data protection etc. **(441 opinions-communications)**. These measures resulted in continual improvements in proactive publication of information, an increase in the number of information booklets published on the websites of public authorities, more active involvement of public authorities in the facilitation of the exercise of rights and better education of the authorities and other controllers of personal data;

- Assistance with the training of employees in to public authorities and data controllers through the organisation of and participation in seminars, activities taken by the Commissioner to affirm the freedom of information and the right to personal data protection through**lectures**for students and other attendees at university schools, academies and other institutions (10 seminars/lectures), **publishing activities**(the second annual publication presenting the views and opinions from the Commissioner's practice in the field of freedom of information has been

published), as well as posting of decisions of Serbian and international courts and relevant decisions, views and opinions from the Commissioner's practice on the website of this authority;

- **Legislative initiatives and opinions**issued to public authorities**in connection with the enactment or amendment of laws**and other regulations**(41 opinions),**the aim of which was to ensure respect for the core principles underlying the freedom of information and the right to personal data protection and relevant international standards. Most of these opinions were accepted;

- Activities within the framework of **international and regional cooperation**,which resulted in the Commissioner's admission to full membership of the European Conference of Data Protection and Privacy Commissioners (Lisbon, May 2013). This continued the recent trend of the Commissioner's admission to a number of international institutions, which saw the institution's admission to full membership of the International Conference of Data Protection and Privacy Commissionersand the Central and Eastern Europe Data Protection Authorities, as well as the observer status in Article 29 Working Party, an expert advisory body of the European Commission in the field of personal data protection. Furthermore, the Commissioner regularly takes part in the Advisory Committee of the Convention and has a member in the Bureau of the Advisory Committee[1]. The Commissioner has also participated in international conferences of relevance for freedom of information and personal data protection;

- Activities relating to Serbia's **EU accession process**;in this context, the Commissioner's representatives take part in the meetings under Enhanced Permanent Dialogue between the Republic of Serbia and the European Commission and present the activities within their spheres of competence. Also, the Commissioner issues opinions to competent authorities in connection with any issues that arise in the course of the accession process, to the extent that they fall under the Commissioner's mandate;

- **Public announcements** through which the Commissioner communicated with the public on **39** occasions, in an effort to draw the attention of the professional community and the competent officials in public authorities to certain occurrences or actions of those authorities that hamper the rights protected by the Commissioner, in cases where these can be of instructional value to the citizens;

- Activities in connection with recording of data files entered in the **Central Register** of data files maintained by the Commissioner in accordance with the law (during the year, 317 data controllers submitted to the Commissioner 1,620 records of the data files they keep). The purpose of this Register is to inform the citizens about the data controllers that keep personal data files;

- Correspondence with the citizens in connection with their**freedom of information requestsreferred to the Commissioner** by those authorities that do not hold the requested information, to ensure that the requests are forwarded to those who might be able to provide the required information **(192 cases);**

[1]The importance of this body will be explained in detail in section 6 of the Report, which deals with the Commissioner's cooperation.

- **Responses to freedom of information requests** in connection with **the Commissioner's work** and responses to requests for access to personal data processing. The Commissioner responded positively and enabled the exercise of the rights in all but two cases**(113 cases);**

- Activities in connection with **enforcement of the Commissioner's decisions**, which includes passing of enforcement orders, passing of resolutions on penalties, requests for assistance in enforcement set to the Government, petitions for the assistance of courts in the enforcement of resolutions on imposition of fines, objections and complaints to court decisions and resolutions on termination of procedures by the Commissioner in cases of compliance (**164 enactments passed in 92 cases**);

- **Responses submitted to the Administrative Court to legal actions** in administrative disputes (**84 cases**) against the Commissioner's decisions. None of these legal actions succeeded in overturning the Commissioner's decisions;

- Activitiesin connection with**transborder transfer of personal data** (**7 cases);**

- Responses to **the citizens' petitions**, most of which relate to issues outside the Commissioner's sphere of competence**(449 cases);**

- **Other communication with public authorities**in connection withthe implementation of Laws within the Commissioner's sphere of competence**(423 cases),**

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

- Copying of case files and **notification of the Administrative Inspectorate of the need for inspection** in cases where public authorities do not comply with the Commissioner's decisions**(283 cases);**

- The Commissioner also received more than **9,800 calls from citizens**, journalists and the media, as well as employees of public authorities, for consultations on issues related to the exercise of the rights within the Commissioner's sphere of competence.

It should be noted that, in 2013,the competent services of the Government finally provided the required office space for the Commissioner,to which the Commissioner's Office moved in October. The process of moving and equipping the Office has had a certain impact on regular activities in this period, but this will be outweighed by the positive effects of the development opportunities for the Office in 2014.

3. LEGAL FRAMEWORK

3.1. Legal Framework in the Field of Freedom of Information

The citizens' freedom of information is established by the Law on Free Access to Information of Public Importance, enacted in late 2004.The Law has been amended on three occasions: first in 2007, which saw only slight amendments in terms of more stringent requirements for the appointment of the Commissioner; then somewhat more thoroughly in

2009, when certain procedural and penal provisionswere improved; and finally in 2010,when the Law provided for enforcement powers in connection the Commissioner's decisions.

In spite of the fact that the applicable Law on Access to Information is based on high international standards from the aspect of the manner of protection of the freedom of information, its coverage of public authorities, the number and nature of exceptions from the principle of freedom of information and similar criteria, after nine years of practical application of this Law it is abundantly clear that some of its sections are in need of reworking, so as to eliminate obstacles in the implementation of the Law and eliminate the scope for interpreting certain provisions to the detriment of the freedom of information.

The 2012 Annual Report explained that amendments to the Law had been in parliamentary procedure and about to be adopted in early 2012, but the process had unfortunately been stopped with the withdrawal of the Bill in question, together with all other bills, after the new Government and new convocation of the National Assembly took office. After that, the Ministry of Justice and Public Administration took no action to return the amendments to parliamentary procedure.

The Draft National Anti-Corruption Strategy of the Republic of Serbia for the Period 2013-2018,adopted by the Government in 2013, identifies a need for improving the Law on Access to Information. It emphasises that transparency in the work of public authorities is ensured in a number of ways, but none of them are fully developed; it identifies this Law as the most important piece of legislation in this regard and calls for granting the Commissioner wider powers and more resources; it also calls for full compliance with the Commissioner's instructions on preparation and publication of information booklets and enforcement of the Commissioner's final decisions in all cases. However, the timeframe for implementation of this Strategy in accordance with the Action Plan is unjustifiably long, including the period left for amending the Law (the end of 2014).

The Commissioner emphasises that amendments to the Law on Access to Information would provide for improved transparency in the work of public authorities and better exercise and protection of the freedom of information in real life. Amendments to the Law would achieve the following:

- Accessibility of more up-to-date information to citizens on the websites of public authorities and in their information booklets, through the expansion of the circle of authorities required to proactively publish information,
- All entities that exercise public powers or have been delegated public powers or are funded from the national budget to any extent would be subject to the Law with respect to those activities that are financed by public funds or resulted from the exercise of public powers,
- The Commissioner would be authorised to file petitions for infringement proceedings for violations of the freedom of information and obtaining of his opinions would be mandatory in the legislative process,
- The vague wording of the provisions pertaining to enforcement of the Commissioner's decisions would be made more clear and the statutory mechanisms of

enforcement of the Commissioner's decisions and resolutions would beactually applicable in practice when necessary[2],

- The amounts of fines would be harmonised with the Law on Misdemeanours and longer statutes of limitation would be provided for proceedings initiated to determine infringement liability for the infringements provided for in this Law,

- A protective mechanism would be put in place to ensure that the achieved level of freedom of information guaranteed by the Law on Access to Information cannot be lowered by other regulations,

- The institute of abuse of the right should be restricted to a narrowly defined minimum level, in view of the increasing abuse of this provision by public authorities,

- Provisions pertaining to the institution of the Commissioner would be modified and the procedures for proposing candidates for appointment and for removal from office would be regulated.

Another crucial issue for the exercise of the freedom of information is enactment of a new Law on General Administrative Procedureas a matter of priority, to harmonise the provisions on access to case files with the core principles of freedom of information which have been incorporated in Serbia's legal system for nine full years. the Bill on General Administrative Procedureadopted by the Government on 18 December 2013, while containing a general provision which stipulates that freedom of information is exercised in accordance with the Law on Access to Information, makes the exercise of this freedom conditional upon the ability to demonstrate justified interest, contrary to the core principle which presupposes the existence of such interest. Acting on the Commissioner's initiative, on 31 January 2014 the Ombudsman[3]submitted to the National Assembly an Amendment to the disputed provision of the Law on General Administrative Procedure, which would rectify the potential harmful consequences, if enacted. After a warning by the Commissioner, the Minister of Justice also informed the public that the Government would draft amendments to the disputed provision of the Bill on General Administrative Procedure.

From the aspect of the legal framework for the exercise of freedom of information, it is noteworthy that the Government, acting on the Commissioner's initiative, amended the Government's Rules of Procedure and imposed an obligation on other public authorities to obtain the opinions of competent institutions in their decision-making processes. Other significant amendments to the Rules of Procedure include the obligation to hold public debates and to make materials and information available to the public. However, the Rules of Procedure still incorporate absolutely unfounded provisions on the so-called official and military secrets, which no longer exist as such under the Law on Data Confidentiality.

The said amendments to the Rules of Procedure which provide for an obligation to obtain the Commissioner's opinion in the legislative process would become effective in practice

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

[3]Notification of the Commissioner by the Ombudsman, ref. No. 2346 of 31 January 2014.

only if relevant provisions were incorporated in the Law on Free Access to Information, as part of the provisions governing the Commissioner's competences and powers. The institute of mandatory obtaining of opinions from the Commissioner whenever legislation containing provisions on accessibility of information is drafted would significantly increase the uniformity and consistency of the legal system. This would prevent the practice in which various procedural and other laws and regulations restrict the freedom of information below the level guaranteed by the Law on Access to Information, as the*lex specialis* in the subject matter of freedom of information.

A typical case of restricting the freedom of information compared with the level guaranteed by the Law is the Bylaw on the Manner of Keeping and Content of the Register of Public Contracts, passed by the Minister of Finance in mid 2013. The Commissioner drew the attention of that Ministry to the harmfulness of the contested provisions and the need to harmonise them with the Law.As the Ministry failed to respond, the Commissioner filed a motion for a constitutional review of the contested provisions of the Bylaw with the Constitutional Court. The Ministry subsequently amended the Bylaw in line with the Commissioner's suggestions, while the proceedings before the Constitutional Court have been terminated[4].

Also conductive to a better environment for the exercise of the freedom of information would be a law on whistleblower protection which would comprehensively regulate and provide adequate protection to persons willing to disclose information pointing to corruption, in accordance with the relevant Council of Europe Resolution 1729 (2010). This issue was already discussed in the Commissioner's 2012 Annual Report, but, sadly, no such law was enacted in 2013, despite the activities of the Commissioner and other participants of the project which resulted in the creation of a model law on comprehensive whistleblower protection (for more details see section 6.1,the part dealing with cooperation and project implementation.

The Commissioner has been insisting for several years that, in order to ensure a higher level of quality in the implementation of the Law on Free Access to Information and to eliminate any doubts the authorities may have with regard to compliance, it is necessary to give effect to the Law on Data Confidentiality as soon as possible by adopting relevant implementing regulations, without which the Law remains unenforceable, while at the same time amending the Law to enable its implementation in practice or, as appropriate, enacting a new Law. As a result of the lack of enforcement of the Law on Data Confidentiality and the major delay in the adoption of implementing regulations, the two-year period in which public authorities should have reviewed data and documents marked as confidential has expired in vain; consequently, we are still facing a huge number of documents that had been marked as confidential at a specific point in time because justified reasons pertained at the time, but have never since been reviewed or declassified once those reasons no longer applied. This is highly detrimental to the implementation of the Law on Free Access to Information and creates confusion for persons authorised to act under this Law. The risks implied by such situation are prejudicial not only to the public's right to know, but also – and perhaps to an even greater extent – to the country's security interests and overall legal certainty.

[4]Decision of the Constitutional CourtNo, IUo- 356/2013 of 7 February 2014.

Once again, the Commissioner reiterates that the laws regulating the operations of public authorities, local self-governments, public enterprises and other entities subject to the Law on Free Access to Information or a special regulation should provide for a statutory obligation of public authorities to create and regularly update their web presentations; the legislation should include a provision stipulating the required minimum content of such web presentation, in accordance with the initiative submitted by the Commissioner back in 2011 to the ministry in charge of public administration. If adopted, this initiative would significantly contribute to higher transparency in the functioning of public authorities.

3.2. Legal Framework in the Field of Personal Data Protection

The Commissioner would like to underscore once again that the current legal framework in the field of personal data protection is unsuitable, as evidenced not only by the unsuitable arrangements provided for by the LPDP, but also by various sector-level laws which either contain no data protection provisions at all or include provisions that are incomplete. The inadequate legal framework is also reflected in secondary legislation, primarily because it either insufficiently regulates the relevant subject matter or does not regulate it at all, but also because secondary legislation governs issues that should be regulated exclusively by laws in accordance with the Constitution of Serbia.

In accordance with the LPDP, enacted at the end of 2008, every individual has the right to personal data protection. After five years of experience as an independent public authority in charge of personal data protection, the Commissioner maintains that significant interventions in the text of the LPDP are necessary. The reason for this lies in the fact that numerous provisions of the LPDP are inappropriate and/or incomplete. These include for example certain definitions, the Commissioner's powers, territorial application, particularly sensitive data and their processing, inspection procedure, transborder transfer of data out of Serbia, maintenance of the Central Register etc.Furthermore, certain issues are not regulated by the LPDP at all, not even under its general provisions, but at the same time they are not systemically regulated by other laws either. These are issues such as biometrics and video surveillance.

An additional reason for significant interventions in the text of the LPDP is the fact that this Law is not fully compliant with the relevant international documents, including in particular the most important European documents in this field–Directive of the European Parliament and of the Council 95/46/ECand Council of Europe Convention 108 for the Protection of Individuals with Regard to Automatic Processing of Personal Data. This issue is all the more pressing because significant amendments brining improvements and modernisation to these international documents are already in an advanced stage of implementation.

In view of the importance and scope of required amendments to the LPDP, the Commissioner is of the opinion that a completely new text of the LPDP should be drafted. Indeed, the Commissioner has called on the competent authorities on a number of occasions to either draft a new text of the LPDP or to thoroughly amend and modify the existing LPDP, as well as to enact secondary legislation within the Government's sphere of competence. Moreover, in the past years the Commissioner submitted to the Ministry of Justice and Public Administration the full text of amendments to the LPDP that would supplement the Law with provisions on video surveillance, as well as Information with suggestions for amendments to a

large number of provisions of the LPDP listed therein. However, no action on behalf of the Government followed these efforts, or at least the Commissioner is not aware of any serious and determined steps taken in this regard.

As the Commissioner is a data protection authority, and taking into account his give years of experience in the exercise of his powers under the LPDP, he has decided and intends to draft a new text of (model) LPDP and offer it to the Government for review and endorsement as a bill. This, of course, is no duty imposed on the Commissioner;rather it is a form of support to the Government in an effort to change the so far inadequate approach to addressing the issues in this field and to introduce new arrangements in the LPDP that would reflect the actual needs and at the same time comply with modern international standards.

As regards laws regulating different sectors, they typically either contain no specific provisions on personal data or regulate this subject matter in an incomplete fashion. This is true in particular of those laws that had been enacted before the LPDP.

In this context, the Commissioner has continued issued opinions to national and local authorities regarding draft laws and bills within his sphere of competence. In certain cases, the authorities concerned went so far as to reject the Commissioner's opinion (for more details, see5.1.5. Issuing of Opinions).

In this regard, the Commissioner would like to illustratively list the laws that need to be enacted or amended in the sectors of security and electronic communications in connection with the right to privacy and personal data protection. Thus, it is necessary to amend the Code of Criminal Procedure, instead of waiting for the Constitutional Court to adjudicate on its rather obvious non-compliance with the Constitution. Furthermore, the competent authorities should implement the "package" of 14 measures proposed by the Commissioner and the Ombudsman in 2012 to warn the authorities and the public about the worrying situation in connection with the use of electronic communication surveillance and proposed relevant measures to address the situation. For example, it is necessary to enact a Law on Security Checks, because this area has been regulated for decades by several laws and other regulations, but the provisions have been incomplete and imprecise. Most of those regulations do not even include definitions or provisions on the subjects of checks, of the purpose and procedure of checks, the applicable timeframe etc. The Commissioner submitted this initiative to the Government of Serbia, but has so far received no response.

The Commissioner reaffirms his support for the initiative to regulate the highly complex subject matter of opening of security service files by a single, special law, based on a realistic examination of the experiences of other countries and subject to a precise assessment of the amount of funding required in order to provide the necessary assumptions for compliance with this Law.

Also, the Commissioner has renewed his initiative for major amendments to the Law on Data Confidentiality, because the controversial provisions it contains render it virtually unenforceable.

As regards implementing regulations in the field of personal data protection, they either do not regulate at all or insufficiently regulate the issues they should be addressing, or they

regulate issues that should be provided for exclusively by laws. This is a direct violation of the provisions of the Constitution of Serbia (Article 42 paragraph 2) which stipulates that personal data collection, keeping, processing and use must be regulated by laws, rather than implementing regulations.

Another huge issue is the lack of certain implementing regulations the 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 should have been adopted by the Government within six months of the effective date of this Law, i.e. by 4. May 2009. The Government has still not done so, even after five years of enactment of the LPDP, which means that the protection of particularly sensitive data proclaimed by the law remains a dead letter.

As another example, the Government should have adopted an Action Plan on Implementation of the Personal Data Protection Strategy, with defined 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, even though more than three years have expired since.

It is also necessary to adopt a number of implementing regulations for the Law on Data Confidentiality.

Such ignorant attitude of the Government beggars belief.

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

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

4.1.1. Types and volume of activities

The volume of the Commissioner's activities in the field of freedom of information in 2013 was 24% higher than in 2012, with a 34.5% increase in the number of received cases. Of a total of 7,377 cases handled in 2013 (4,893 received in 2013 and 2484 pending cases carried forward from 2012), the Commissioner closed the procedure in 4,406 cases, while 2,971 pending cases were carried forward to 2014.

Most of the Commissioner'sactivities in 2013 involved handling of individual cases pursuant to complaints filed by information requesters. In terms of resolved complaints, their number was 28.3 % higher than in 2012.

Other activities including provision of assistance to public authorities in the implementation of laws and to individuals in the exercise of their rights, through opinions, explanations etc., measures aimed at improving the transparency of public authorities, legislative initiatives and opinions in connection with the passing of regulations, execution procedures pursuant to the Commissioner's decisions or procedures related to judicial protection, communication relating to requests of information requesters filed with or forwarded to the Commissioner etc.

Furthermore, the Commissioner's Office has processed more than 300 petitions relating to actions taken by other authorities and issues outside the Commissioner's sphere of competence.

Table 1 contains a breakdown of the number of cases received and resolved by the Commissioner in 2013 by types of activities, with a comparative overview of data from the previous year.

Table 1 – Types and volume of activities and measures

	Types of activities and measures	2012	2013	% increase
1.	Number of cases received	3,639	4,893	34.5
2.	Number of pending cases carried forward from previous year	2398	2484	3.6
3.	Total cases handled	6,037	7,377	22.2
4.	Number of resolved cases	3,553	4,406	24
5.	Number of complaints received	2330	3,300	41.6
6.	Number of complaints resolved	2,269	2,910	28.3
7.	Responses to complaints to the Constitutional Court	49	75	53.1
8.	Opinions on implementation of LFAIPI issued to authorities and citizens	43	80	86
9.	Initiatives and opinions given to Ministries in connection with regulations	9	15	66.7
10.	Responses to requests for information about the Commissioner	69	87	26.1

11.	Acting on requests for access to information of public importance relating to the operations of/held by other public authorities – the Commissioner informed the requesters about the correct procedure	184	185	0.5
12.	Number of motions for enforcement of the Commissioner's decisions	147	92	-37.4
13.	Number of enforcement orders issued	79	62	-27.4
14.	Number of resolutions on penalties issued in the process of enforcement of decisions	47	34	-38.2
15.	Number of requests sent by the Commissioner to the Government for assistance / enforcement of his decisions	10	7	-42.8
16.	Number of cases in which the Commissioner requested the administrative inspectorate to carry out an inspection and initiate infringement proceedings	264	283	7.2
17.	Number of resolutions staying the enforcement of decisions	122	55	-121.8
18.	Advisory and instructional communications to authorities with the aim of increasing the transparency of their work, in connection with their information booklets etc.	62	218	251.6
19.	Written communication with public authorities in connection with the implementation of LFAIPI	336	423	25.9
20.	Petitions against the work of public authorities unrelated to freedom of information	394	336	-14.7

As can be seen from the above figures, **all individually implemented activities and measures of the Commissioner contributing to more effective exercise of rights saw an increase, with a reduction in the number of cases where requesters asked for enforcement of the Commissioner's decisions – and consequently also the number of measures taken as a result.** However, in spite of the fact that enforcement of the Commissioner's decisions was requested in fewer cases than before, this has not alleviated the problem associated with the enforcement of those decisions, regardless of the volume of cases. This is addressed in more detailin section 4.1.4 of the Report.

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

4.1.2.1. Statistics on Complaints and Outcomes of Complaint Procedures

In 2013, the Commissioner resolved 2,910 complaints - 641 complaints (28.3%) more than in 2012.

The most frequent grievance of the complainants was once again the so-called "administrative silence" after filing of freedom of information requests (which accounted for 94.7% of all cases). These are situations where an authority either fully ignores a freedom of information request or answers it cannot comply with a request without providing proper justification. That the share of cases of so-called "administrative silence" has remained so high is certainly a reason for concern, because, unlike most other administrative procedures, in freedom of information procedures "administrative silence" is not only inadmissible, but also constitutes an infringement punishable under the law.

Only 155 complaints, or 5.3% of the total number of resolved complaints, were filed against decisions of public authorities which rejected the requesters' freedom of information requests as unjustified.

Of the total of 2,910 resolved complaints, 2,651 complaints (91.1%) were found to be justified, while 259 complaints (8.9%) were unjustified or had formal deficiencies.

The Commissioner resolved the unjustified complaints (259) by passing:

- 177 decisions (6.1%) rejecting complaints as unjustified, and
- 82 resolutions (2.8%) dismissing complaints on formal grounds as untimely (lodged too late or prematurely) or inadmissibility or because the Commissioner lacked jurisdiction to act on them.

The outcome of proceedings before the Commissionerpursuant to the justified complaints (2,651) was as follows:

- In 779 cases (29.4%), the Commissioner ordered the public authorities to comply with the requests and give the requesters access to the requested information; in doing so, he passed 663 decisions, because 116 cases were joined with other cases, so that a single decision was passed pursuant to two or more complaints against a single authority,
- In 155 cases (5.8%) he overturned the decisions of the authorities of first instance and ordered the public authorities concerned to provide information to the requesters,
- In 1,650 cases (62.2%) he terminated the proceedings because the public authorities in the meantime complied with the freedom of information requests after the Commissioner intervened, so the proceedings in all these cases were closed by passing resolutions on termination of the proceedings,
- In 62 cases (2.3%) he overturned the decisions of the authorities of first instance and returned the cases for repeated proceeding and decision-making, and

- In 5 cases (0.2%) he overturned the decisions of the authorities of first instance passed without proper legal basis.

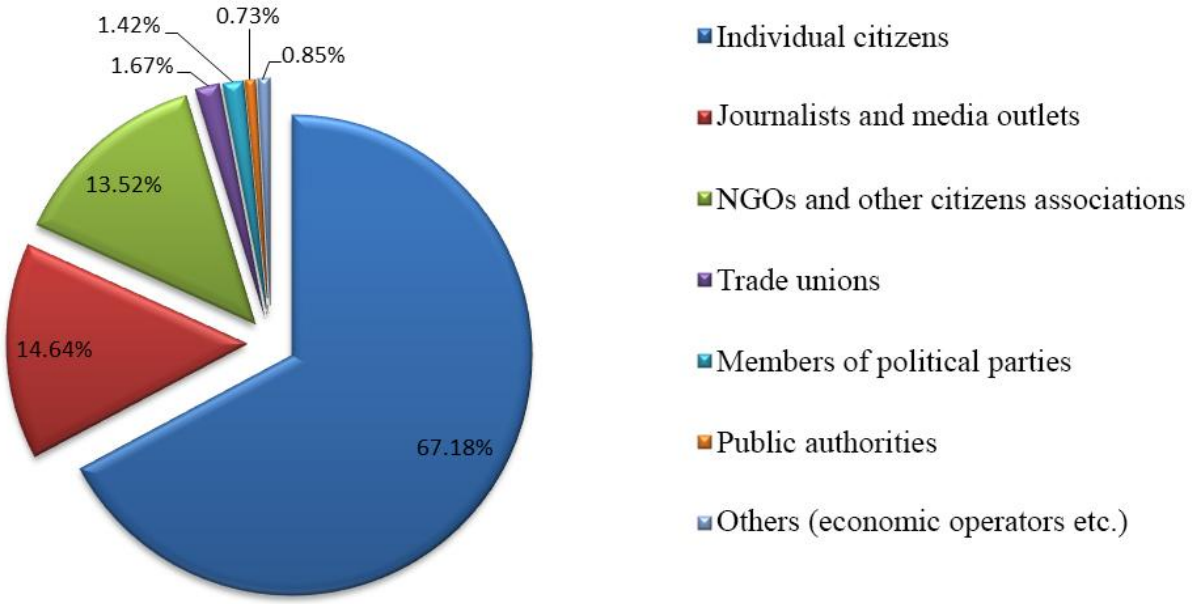
The figures quoted above show that justified complaints by information requesters in more than 60% of all cases ended in termination of the proceedings because the public authorities honoured the request made by the requester/complainant immediately upon learning of a complaint, before the Commissioner passes a decision. The sheer number of procedures terminated due to subsequent compliance of public authorities upon learning of the complaints filed and after the Commissioner's interventions shows that public authorities still act wastefully and irresponsibly in their dealings with the citizens.

However, what can be seen as a positive trend in 2013 is the fact that the number of cases in which the Commissioner had to pass a decision pursuant to a complaint and order the respondent to honour the request and give access to the requested information was approximately 8.3% lower.

4.1.2.2. Who requested information and which information they requested

The Commissioner received 3,300 complaints against public authorities relating to violations of the freedom of information in2013.

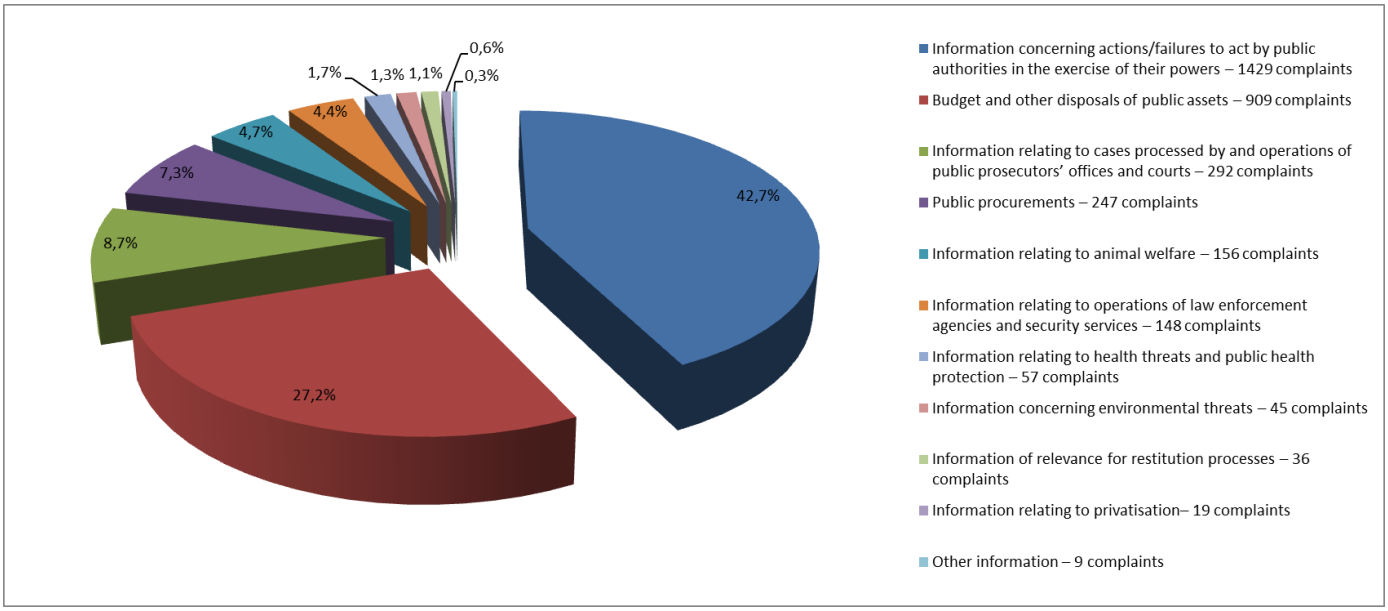
Graph 2. Complainants addressing the Commissioner



In 2013, Journalists and media outlets filed more complaints with the Commissioner for denial of access to information than they had done in 2012. The Commissioner believes this can in part be attributed to the increasing number of these requests, although of course much of it was due to the unwillingness of public authorities to reply. In the total number of complaints, the share of complaints lodged by the citizens, associations, trade unions and political parties was slightly lower than in the previous year; however, complaints filed by citizens individually and by NGOs and other citizens' association still account for the highest share of the total number of complaints.

Another noteworthy fact is that the number of complaints filed by public authorities against other public authorities in 2013 was halved compared with 2012.The Commissioner highlighted this practice as an inadmissible situation in his previous Annual Report. This is a good indicator that the necessary exchange of information and data between public authorities is returning to the realm of regular cooperation, without the need to invokefreedom of information. In 2013, the Commissioner once again encountered a case in which a primary court was unable to obtain the information it needed to adjudicate a claim from a public authority and was therefore forced to address the Commissioner, invoking the Law on Free Access to Information.

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



The majority of requests that were followed by complaints to the Commissioner in 2013 related to information concerning the actions by public authorities in the exercise of their powers, followed by information relating to the budget and other disposals of public funds and public procurements, as well as information concerning the cases processed by and operation of

public prosecutors' offices, courts, law enforcement agencies and security services, just as in 2012.

In 2013, the share of complaints lodged with the Commissioner in connection with the disposal of public funds (budget and public procurement) was more than 10% higher than in 2012. As regards other types of information, their share in the total number of complaints in 2013 was either roughly the same or slightly lower than in 2012. A downward trend has been observed in the number of complaints relating to information on the actions/failures of public authorities to act in the exercise of their powers and the exercise of citizens' rights.

Table 2 gives a comparative overview of respective shares in the total number of complaints by types of information for the withdrawal of which complaints were filed with the Commissioner.

Table 2.Comparative overview of types of information in percentages

No.	Type of information	2012 %	2013 %	Increase or decrease in %
1.	Actions/failures to act by public authorities in the exercise of their powers; exercise of citizens' rights	52.1	43.3	8.8
2.	Budget, grants, salaries etc.	19.4	27.5	8.1
3.	Public procurement	5.4	7.5	2.1
4.	Privatisation	0.9	0.6	- 0.3
5.	Restitution	1.4	1.1	-0.3
6.	Courts, public prosecution offices	10.7	8.8	1.9
7.	Police, security services	5.2	4.5	-0.7
8.	Health threats and public health protection	0.9	1.7	0.8
9.	Environmental threats and environment protection	1.9	1.4	-0.5
10.	Threats to animals and animal welfare	1.8	4.7	2.9
11.	Other information	0.3	0.3	0

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

The majority of the complaints in 2013 – 1,479 complaints or 44.1% of the total number – were filed against national authorities, including 666 complaints (45%) against ministries. These were followed by complaints against local self-governments and public enterprises. Furthermore, 2013 saw slightly lower shares of complaints against national authorities (3.9% down) and judicial authorities (1.7% down), coupled with increased shares of complaints against public enterprises (4% up), local self-governments (1.9% up) and, to a lesser extent, the authorities of Autonomous Provinces (0.2% up).

In 2013 there were 104 complaints more against ministries (up 18.5%)than in 2012, when the Commissioner received 562 complaints against ministries, as a result of the increase in the number of freedom of information requests filed in 2013. Taking into account the total number of requests submitted to ministries in 2013 (3,503) and the number of complaints filed (666), it appears that one in six requesters filed a complaint with the Commissioner due to withholding of information by ministries.

Graph 4. Number of complaints by types of authorities (3.300 complaints)

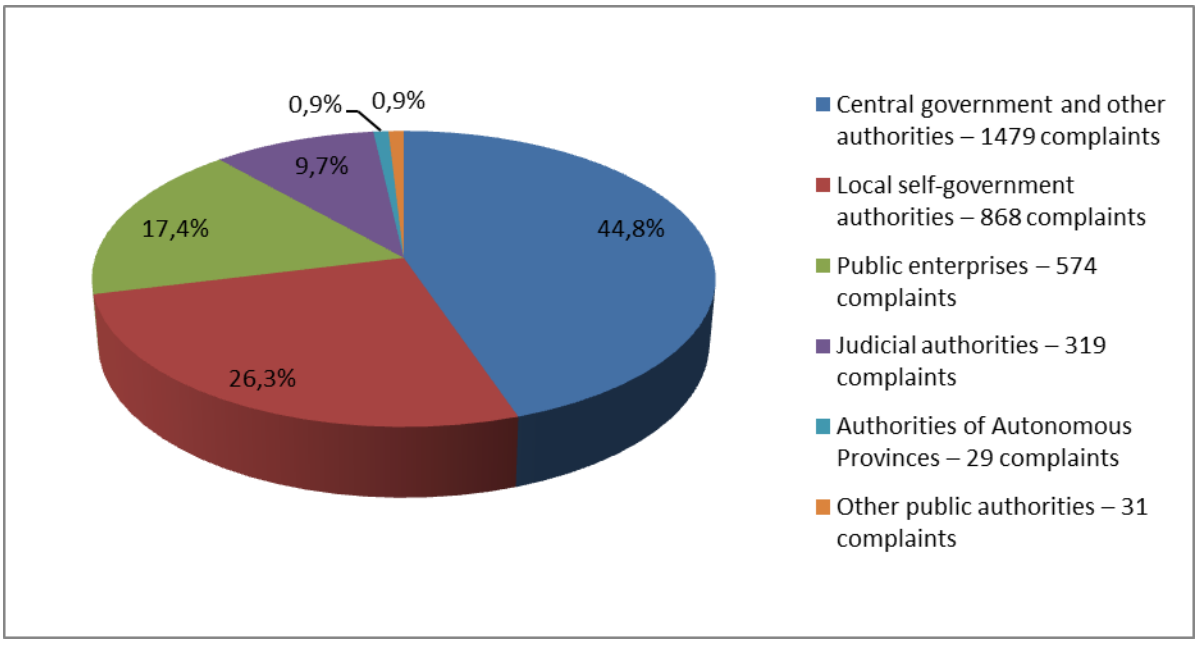


Table 3.–Overview of requests and complaints filed by ministries in2013[5]

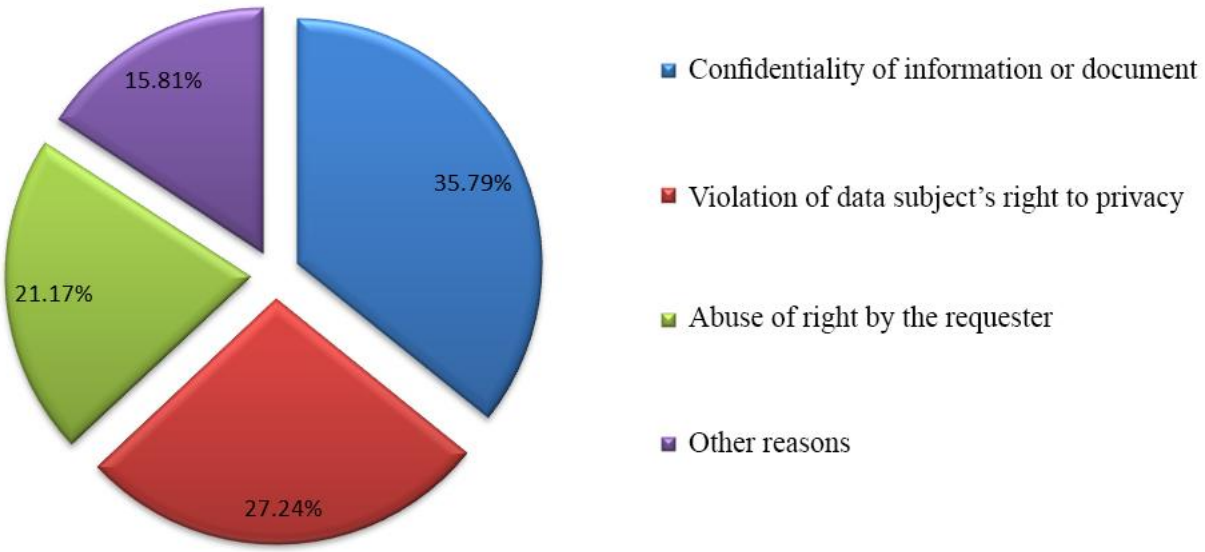
No.	Ministry	No. of requests	No. of complaints
1.	Ministry of Internal Affairs	1,867	237
2.	Ministry of Agriculture, Forestry and Water Management	230	51
3.	Ministry of Education, Science and Technological Development	191	31
4.	Ministry of Energy, Development and Environment Protection	188	31
5.	Ministry of Justice and Public Administration	178	82
6.	Ministry of Health	171	14
7.	Ministry of Finance[6]	136	100
8.	Ministry of Defence	124	30
9.	Ministry of Culture and Information	78	7
10.	Ministry of Foreign and Internal Trade and Telecommunications	63	2
11.	Ministry of Labour and Social Policy	52	14
12.	Ministry of Natural Resources, Mining and Spatial Planning	45	6
13	Ministry of Foreign Affairs	42	12

[5]The table does not include information on complaints filed against the former Ministries: the Ministryof Diaspora, the Ministryof Economy and Regional Development and the Ministryof Human and Minority Rights, each of which had one complaint filed against them, and the two complaints against the Ministry of Kosovo and Metohia

[6]This figure is the total number of requests and complaints against the Ministry and its constituent authorities (Tax Administrationetc.)

14.	Ministry of Youth and Sports	40	-
15.	Ministry of Construction and Urban Planning	30	30
16.	Ministry of Regional Development	27	3
17.	Ministry of Economy	21	3
18.	Ministry of Transport	20	7

Graph 5. Reasons for rejection of freedom of information requests



In 2013, similarly as in earlier years, the most frequent reason for denial of access to information created in the exercise of public powers by public authorities was alleged **confidentiality of information**. The number of such cases increased by 4% compared with 2012

The decision to make available those pieces of information that an authority considers to be secret is as a rule left to the Commissioner. Persons in charge of handling freedom of information requests in public authorities often justify this by their fear of the consequences of disclosure, incongruence between specific provisions of the regulations they apply within their spheres of competence and the freedom of information legislation etc. As a rule, Authorities rarely bother to prove a substantive reason for their decisions to deny access to information by

invoking data confidentiality. They tend to *a priori* reject a request without applying the so-called 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 could be jeopardised through disclosure.

The fact that many of the cases in which public authorities denied access to information by invoking data confidentiality have in the meantime resulted in prosecution due to misappropriation of public funds, malfeasance in office or other forms of corruption points to the resolution that such cases of denial of access to information, while not necessarily indicative of any of the above offences, should always be subject to careful scrutiny.

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

As an illustrative example, we will quote the example of a case in which a public authority invoked confidentiality of the requested documents:

Case of "Morava Canal"

Information on the Feasibility Study for the Design of MORAVA CANAL Inland Waterway attracted much interest from the public in 2013. Several requesters, journalists and NGOs formally requested this document, as information of public importance, from the Ministry of Natural Resources, Mining and Spatial Planning.

The Ministry withheld the document, invoking among other things the alleged confidentiality of the document, which it claimed was envisaged by the document itself, and explained the document had not yet been reviewed by the Government, which, in its opinion, justified the decision to deny public access to the document.

Having examined the complaints, the Commissioner took the view that the complaints were justified, that the public had an undeniable right to access the requested information both from the aspect of the Law on Free Access to Information of Public Importance and from the aspect of the Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters (the Aarhus Convention). The Commissioner concluded that the facts and reasons invoked by the Ministry did not constitute reasons for justified denial of access to requested information in accordance with the law.

The Ministry did not comply with the Commissioner's decision; instead, it informed the Commissioner it had submitted the Feasibility Study to the Government and the Ministry itself was not authorised to allow access to the document, explaining that requests should be addressed to the Republic of Serbia, represented by the Government. Such attitude had no footing in the Law on Access to Information and the Commissioner therefore initiated an enforcement procedure for his decision.

In the total number of complaints filed with the Commissioner in 2013,the share of those filed for denial of the freedom of information justified by a reference to **the right to privacy** was 11% higher. In view of this fact, one might be inclined to conclude that compliance of public authorities with the Law on Personal Data Protection has improved, but unfortunately this is not

the case. Public authorities have veiled their denial of access to information under the cloak of privacy and personal data protection even in those cases when the requested information related to public or political office holders, civil servants or public officials and when such information was in connection with the exercise of their office or powers.

As an illustrative example, we will quote a case in which a public authority invoked violation of privacy:

A requester asked the Public Enterprise "Elektroprivreda Srbije" (Serbian power utility company) in Belgrade for a copy of an agreement signed between that enterprise and the limited liability company "Geokarte" from Belgrade to regulate their mutual relations in the preparation of "Geodetic and Photogrametric Works in the Creation of Topographic and Orthophotographic Maps of Mining Basins Kolubara and Kostolac"'.

The public enterprise/authority replied to the request and enclosed a copy of the requested agreement, but it made inaccessible the names and surnames of persons appointed to supervise and carry out the work and the signatures of both parties' general managers, alleging that access to those data would violate those persons' right to privacy.

The Commissioner rejected the allegation put forth by the public enterprise that access to the requested information would violate the right to privacy and ordered that all requested information be made available to the requester. To support his conclusion, the Commissioner stated that the request related to activities of the public enterprise in the capacity of a public authority, i.e. to activities of its officers in connection with the exercise of public powers, rather than their private lives; furthermore, at the time of signing of the agreement, "Geokarta" was 100% owned by the Government of the Republic of Serbia. Availability of an agreement with the signatures of general managers as the legal representatives of those public authorities, which constitutes a public document and which produces legal effects only if produced in a specific form and signed by the legal representatives, cannot constitute a violation of privacy of those persons; the same applies to the names of employees who have been assigned specific duties in connection with the execution of the agreed works.

The public enterprise complied with the Commissioner's order.

In the complaints filed in 2013, the share of complaints against rejections of freedom of information requests in which public authorities claimed **the requesters abused the right to access information** was 7.5% lower than in 2012. The authorities usually justified this by stating that the requests created excessive burden for them due to the volume of requested information. This fact is indicative of a positive change in the treatment of information requesters by public authorities, but it is still not satisfactory, because the number of complaints against rejections of requests justified by alleged abuse of the right remains high (21.3%).

A frequently cited reason for denial of access to information is the allegation put forth by public authorities that requesters do not have what is known as **"justified interest"**, i.e. that they are not a party to proceedings in connection with which information is requested, which is not acceptable freedom of information is guaranteed to everyone under equal conditions. Even

certain judicial authorities often invoked the lack of justified interest of the public to know when acting on freedom of information requests, which is contrary to the core principles underlying the Law on Free Access to Information.

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

It has also been observed that replies in which public authorities claim they**do not hold the requested information** are as a rule neither substantiated nor supported by evidence, e.g. of expiration of the statutory limit for keeping the document by presenting evidence of destruction or evidence that a case has been forwarded to a higher authority for decision-making etc. This – quite rightly – causes requesters to doubt the veracity of such allegations. Situations such as these call for oversight by the competent authority, i.e. the administrative inspectorate, which would involve actual verification of facts on the spot, in the offices of the authorities concerned, rather than through so-called indirect inspection based solely on written statements by the authorities, as has been the practice of the Administrative Inspectorate so far.[7]

One of the gross examples of ignoring the rights and violating the Law on Free Access to Information is a situation where **a public authority claims it is not subject to the Law.** Individual cases of this type persisted even in 2013 (e.g. Srpska banka, Telekom Srbija, Belgrade Stock Exchange). The most drastic case is that of Telekom Srbija a.d. (Serbian telecom), which has been refusing to apply this Law for two years, in spite of the fact that the the Administrative Court backed the Commissioner's opinion that *Telekom Srbija* had the status of a public authority within the meaning of the Law due to the fact that it was formed and managed by the Government of Serbia.

Nevertheless, as regards the costs of exercising the freedom of information, the figures presented in the annual reports submitted by public authorities to the Commissioner show that in 2013 public authorities collected a higher amount than in 2012, i.e. RSD 213,916.00, and that, contrary to the law, they misappropriated most of these funds to their own accounts, instead of paying them to the designated account of the national budget. What is also apparent is that, similarly as in previous years, in 2013 some courts charged document reproduction fees according to court fee rates, instead of adhering to the cost rates set out in the Government's Decree passed pursuant to the Law on Access to Information. While it is an obvious violation of the said Law, the Commissioner believes the reason for this is the fact that the salaries of court staff are paid from collected court fees and it is therefore in the best interest of courts to ensure a regular inflow of funds from court fees.

The highest amounts of costs of exercising the freedom of informationwere charged by the Republic Geodetic Authority and the Privatisation Agency. Thus, the Republic Geodetic

[7]Report of the Administrative Inspectorate No. 021-00-00003/2014-02 of 17 January 2014.

Authority alone charged RSD 140,333.00, or 65.6% of the total costs charged, of which only 0.7% was paid to the designated account special-purpose accounted, while the remainder was paid to its own accounts (840-742221843-57 and 840-74323843-92)[8]. The Privatisation Agency collected a total of RSD 20,517.00,or 9.6% of the total costs, and paid the entire amount to the specified account. The ministries collected a mere RSD 2,802.00,or 1.3 % of total costs, on this basis.

According to the official figures of the Treasury Department of the Ministry of Finance[9], the total amount paid to the designated Treasury account 840-742328843-30 from fees charged for the exercise of freedom of information in 2013 was RSD 64,641.50, which was 74.7% more than in the previous year. However, this amount was approximately three times lower than the sum of amounts stated in the reports submitted by public authorities, which appears to confirm the above conclusion that some public authorities did not pay the amount collected on this basis to the designated account, but to their own accounts, as in the abovementioned case of the Republic Geodetic Authority.

In the 2012 Annual Report, the Commissioner already explained that the issue of costs of procedures could be surmounted if the proposed amendments to the Law on Access to Information are adopted, because they provide for an arrangement under which all costs of access to information charged by public authorities will be included in the revenue of those authorities, rather than being diverted to the national budget. The charge rates provided for in the Government's Decree of 2006 have not been indexed for inflation.

4.1.3. Enforcement of Commissioner's Decisions and Resolutions

In 2013, the Commissioner's proceedings pursuant to justified complaints (2,651) were closed in 934 cases (35.2%) by passing of decisions or issuing of the Commissioner's orders to make the information available to the requesters. In these cases, the Commissioner passed 818 decisions, because 116 cases were joined with other cases, so that a single decision was passed pursuant to multiple complaints against a single authority.

As regards cases where access to information was ordered by the Commissioner's decisions (818 decisions), from the feedback the Commissioner received it appears that in 2013 public authorities complied with the orders in 78.3% of the cases. Realistically, this figure could be even higher, as it would be safe to assume that there were public authorities that complied with the Commissioner's orders, but failed to notify him of that.

In 1650 cases, or 62.2 % of justified complaints, proceedings pursuant to complaints lodged with the Commissioner were terminated because the public authorities honoured the request made by the requester/complainant immediately upon learning of a complaint, before the Commissioner passed a decision.

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[8]Report of the Republic Geodetic Authority 07No.07-918/2013-1 of 16 January 2014.

[9]Report of the Treasury Department No.401-00-1855/2013-007 of 13 January 2014.

In the remaining 62 cases (2.3%) of justified complaints, the Commissioner quashed the decisions of the public authorities and returned the cases for renewed procedure and deciding, while in 5 cases (0.2%) he quashed the decisions of first-instance authorities as illegal.

According to the data on the outcomes of complaints filed with to the Commissioner,of the total justified complaints (2,651), **the share of successful interventions by the Commissioner was 92.3%, which is a slight improvement over 2012 (by 1.7%).**

In 2013, the number of cases in which enforced execution of the Commissioner's decisions was necessary was significantly (37.4%) lower than in 2012. Thus, in 92 cases the Commissioner received petitions from the requesters for enforcement of the relevant decisions. Acting on those petitions, the Commissioner passed 62 enforcement orders relating to his decisions and 34 resolutions on imposition of fines and imposed 34 fines in the total amount of RSD 2,440,000 (23 fines of RSD 20,000.00 and 11 fines of RSD 180,000.00), which constitute public revenue and are payable to the budget of Serbia. In 55 cases enforcement was terminated because the authorities concerned had in the meantime complied with the Commissioner's orders or enforcement orders relating to his decisions. The resolutions on imposition of fines resulted in the collection of **RSD1,308,000 for the national budget**; however, according to the Treasury Department, in three cases the fines were only partly paid.

The remaining amount of RSD 2,438,692 in outstanding fines was not paid voluntarily by public authorities pursuant to the Commissioner's resolutions on imposition of fines. In such situations, the Commissioner filed petitions with competent courts for judicial enforcement of the imposed fines. However, the First Primary Court of Belgrade declined jurisdiction, contending the Commissioner himself was in charge of enforcing the fines he imposed on public authorities, unlike other courts, which had accepted jurisdiction in similar cases.

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

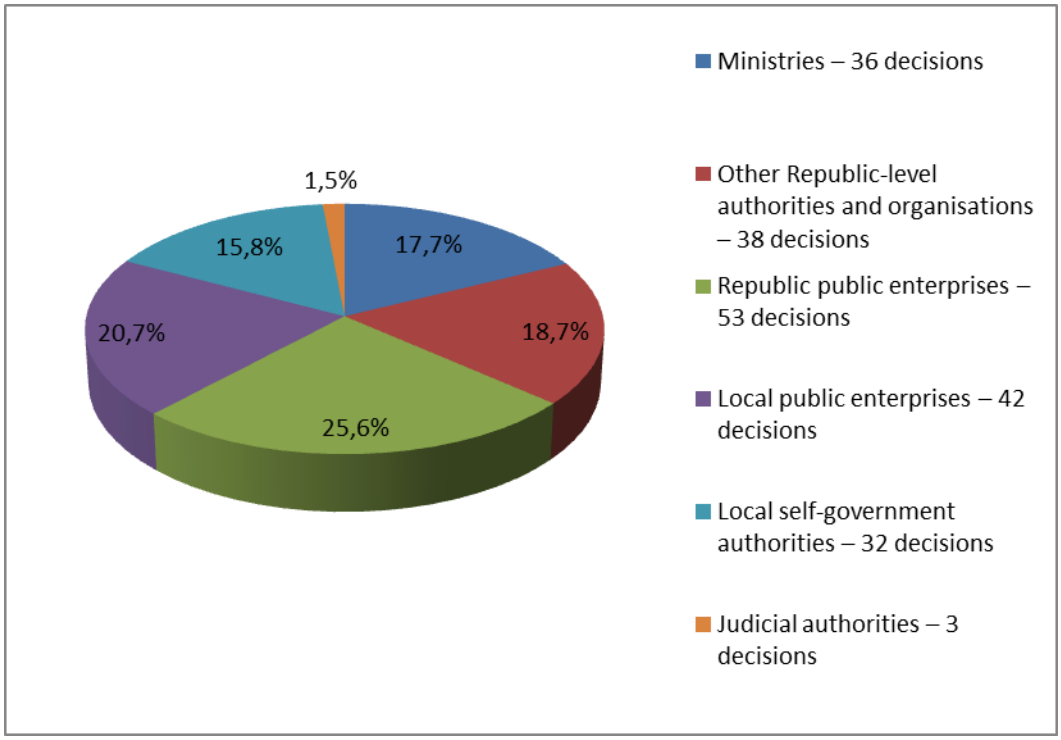
Imposition of measures available to the Commissioner for enforced execution of his decisions through fines as a rule results in compliance with his orders and provision of information to requesters. However, in some cases even those measures produced no effect; the Commissioner was therefore forced, on initiative of the complainants, to ask the Government to enforce his decisions in 7 cases by imposing measures available to it, including direct enforcement action, as provided by the Law. In this context, the Government gave no feedback on enforced execution of his decisions in any of those cases.

According to the Government's Annual Report on Implementation of the Law on Free Access to Information, the Government's Secretariat General received a total of 16 requests for enforcement of the Commissioner's decisions in 2013, including 9 requests filed directly by information requesters. The said Report further states that, in a number of cases, when the

Commissioner conducted an enforcement procedure and the authority in question did not comply with the Commissioner's decision, the Secretariat General, on behalf of the Government, ordered the Ministry responsible for oversight of the authority concerned to take the necessary measures to enforce the decisions. Such measures by the Government have obviously produced no results, since all seven decisions of the Commissioner for which the Government's intervention was sought still remain unimplemented.

In the 2012 Annual Report, the Commissioner pointed out that the current situation with regard to enforced execution of the Commissioner's decisions called for immediate implementation of the mechanism provided for in Article 28 of the Law on Free Access to Information. Alternatively, if the Government's General Secretariat needed any clarifications concerning the application of that Article, the competent Ministry should provide such clarification by issuing an expert opinion or, ultimately, by amending the Law. If the situation remains as it is, the Commissioner underscores once again that the reputation of these institutions might suffer and the exercise of the freedom of information will most certainly be compromised.

Graph 6. Number of Commissioner's decisions passed in 2013 that have not been complied with



Annex 1 to this Report contains an overview of public authorities which failed to comply with the Commissioner's orders issued in 2013, with a brief description of the requested information.

Of the total of 203 decisions of the Commissioner with which the respondents have not complied, **the majority were issued to Republic-level and local public authorities - 94 decisions or 46.3%.**

This prompted the Commissioner to submit an extraordinary/special report to the National Assembly in November 2013, in an effort to draw the attention of the National Assembly to the alarmingly lax attitude of many state-owned enterprises to their obligations under the Law on Free Access to Information of Public Importance, as well as to the harmful consequences of such attitudes for human rights and the undermining of the rule of law, the National Assembly as the institution that enacted the Law and ultimately the country itself. In his Report, the Commissioner also pointed out that such attitude of state-owned enterprises was rather telling from the aspect of anti-corruption efforts as well. While this may not be true in each individual case, past practice in connection with complaints filed with the Commissioner and in particular those filed by the Anti-Corruption Council of the Government of Serbia has shown that issues with transparency are in a large number of cases belied by issues associated with wastefulness, unlawfulness of operations and corruption.

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

Information booklets

The large number of freedom of information requests sent to public authorities and the large number of complaints filed with the Commissioner bespeak a need for a much more hands-on approach of public authorities in the publication of information without being requested to do so by the citizens, both on their websites and by other means.

Throughout 2013, the Commissioner monitored proactive publication of information on the websites of public authorities throughout the year, exerting influence on public authorities to enhance the transparency of work. This was done either ex officio or pursuant to reports made by the citizens.

The primary goal of publication of information booklets on the websites of public authorities is to make available to the citizens and the media the key facts about their operations, HR and other capacities, organisation, powers, assets, spending of public resources, salaries, state aid, subsidies, grants, international and other projects and their implementation, public procurements, types of services they render and procedures for the exercise of requester's rights, available remedies in case of negative outcome before the authority concerned, types of information available to the authorities etc. even without a formal request to access information. Publication of this document gives public authorities a chance and sets a duty to review their organisations and procedures and to improve them, while at the same time affirming their operations.

Overall, year after year there has been certain progress in terms of publication of information on the so-called proactive basis, primarily in terms of quantity, but also to a certain extent in terms of quality. This is the result of new Instructions for Preparation and Publication of Information Booklets on the Work of Public Authorities which the Commissioner passed in 2010 and the activities taken to implement the Instructions and increase transparency in the work of public authorities.

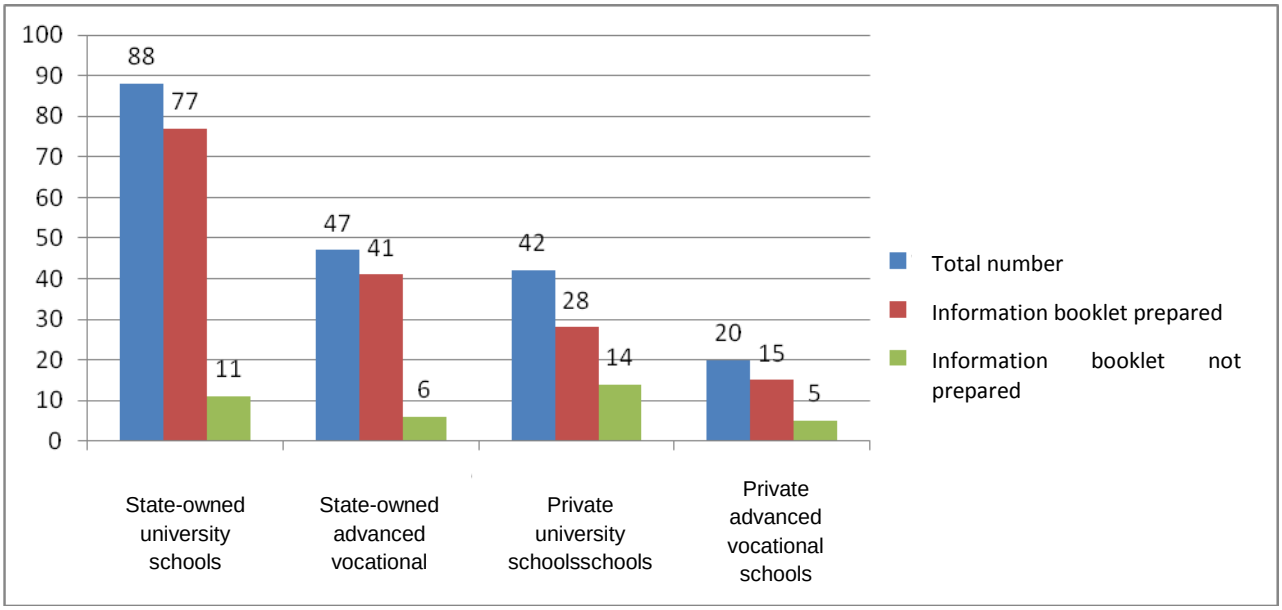
Nevertheless, this statutory obligation does not apply to many public entities whose operations are undoubtedly of much interest to the public. Thus, for example, the now formalised obligation to prepare an information booklet on its work does not apply to a single local public enterprise, or to those Republic-level public enterprises that are not vested with public powers under the law, e.g. PTT Srbija (Serbian Post), Telekom Srbija, health case institutions, pre-school institutions etc. In this context, amendments to the Law on Access to Information would be crucial, as explained in detail in section 2 of the Report.

In 2013, the Commissioner focused his attention in particular on the creation of information booklets on the work of higher education institutions. Namely, higher education institutions had not prepared or published information booklets, save for a few cases in which the Commissioner reacted pursuant to citizens' reports.

The Commissioner sent letters of warning to all higher education institutions to remind them of their obligation to prepare and publish information booklets on their work and to explain to them the sanctions that would follow if they failed to comply. This prompted only several dozens of higher education institutions prepared their information decisions. After that, the Commissioner was forced to pass decisions and order 184 higher education institutions to comply with this obligation, including private universities and advanced schools which, according to the information published on the website of the Accreditation and Quality Assurance Commission, had valid accreditation certificates.

A follow-up inspection of compliance with the Commissioner's decisions found that significant results had been achieved, in spite of the fact that certain higher education institutions failed to comply with this obligation and the fact that not all information booklets met the required standard of quality. Of the total of 88 state-owned university schools, 77 of them prepared information booklets; also, 41 of the 47 state-owned advanced vocational schools prepared their information booklets. Private higher education institutions fared slightly worse:of the 42 private university schools, 28 prepared information booklets, and of the total of 20 private advanced vocational schools 15 prepared their information booklets.

Graph 7. Chart representation of actions taken by higher education institutions to comply with their statutory obligation to prepare and publish information booklets



Also, in 2013 the Commissioner analysed 26 information booklets on the work of city authorities, after which he issued oral instructions to the authorities on ways to improve the content of their information booklets and to keep the information up to date. A follow-up inspection found that some of the authorities failed to comply with the instructions. For this reason, the Commissioner sought explanations for such non-compliance and issued letters of warning in which he detailed future steps that would be taken by the Commissioner. These activities continued in 2014 as well.

One of the ways in which the Commissioner motivated public authorities to make better information booklets on their work was the award for the best information booklet, which was once again presented in 2013. The award was presented to the Ministry of Culture and Information on the 28th of September, as part of commendation of the Right to Know Day.

Measures taken so far in this field have focused primarily on getting as many public authorities as possible to publish their information booklets, in parallel with interventions aimed at improving the quality of the information booklets of those authorities that attract the most attention from the public. A certain improvement has been noted in this regard, although the response to these measures and the level of compliance with this statutory obligation has been very law compared with the effort invested by the Commissioner, due to the absence of infringement liability. Public authorities often tend to neglect their duty to update the information unless the Commissioner intervenes; many of them prepare information booklets only to satisfy the formal requirements, avoiding any “sensitive” information, i.e. information concerning their spending.

Initiatives and opinions concerning legislation

As explained in section 2 of the Reportwhich describes the legal framework for the exercise of the public's right to know, the Commissioner lacks power to propose legislation and the Law on Access to Information does not authorise the Commissioner to give opinions in the process of proposing and enactment of laws and other regulations. For this reason, the most recent amendments to the Government's Rules of Procedure, which now impose an obligation on public authorities to obtain opinions from competent institutions in the legislative process, will become effective from the aspect of the rights protected by the Commissioner only after the provisions of the Law pertaining to the Commissioner's powers are amended

.

In 2013, the Commissioner once again made initiatives for the adoption of new regulations or the amendment of existing ones on multiple occasions and he supported similar initiatives coming from other entities, always with the aim to improve legislative provisions relating to the exercise of the freedom of information. Following requests from public authorities, as well as the citizens, the Commissioner also gave opinions aimed at improving compliance with the Law on Free Access to Information. As there is no formal obligation to consult the Commissioner in the process of drafting or amendment of legislation, the Commissioner could give his opinions concerning the enactment or amendments of legislation only after learning of such activities through informal means or after relevant authorities published the draft versions of legislative provisions on their websites, while in some cases he was able to respond only after specific pieces of legislation were published.

Below is a selection of only a few of the initiatives launched and opinions given by the Commissioner in 2013:

1. An initiative sent to the Government, the National Assembly and the Ombudsman in connection with the Bill on General Administrative Procedure, which the Government adopted on 18 December 2013 and submitted to the National Assembly for enactment. The purpose of the initiative was to amend the provisions governing the right to access information/consult case files, which are inadmissible in view of the core principles of the Law on Access to Information and the achieved level of rights;

2. A letter of warning to inform the Ministry of Finance that certain provisions of the Bylaw on the Manner of Keeping and Content of the Register of Public Contracts (Official Gazette of RS No. 57/13) were contrary to the Constitution and the law, to the detriment of the public's right to know;

3. A Motion filed to the Constitutional Court for a constitutional review of specific provisions of the Bylaw on the Manner of Keeping and Content of the Register of Public Contracts, passed by the Minister of Finance and Economy of the Republic of Serbia on 27 June 2013,which regulate issues in the sphere of freedom of information in a manner contrary to the Constitution and the Law on Free Access to Information;

4. An initiative submitted to the Republic Secretariat for Legislation for amendment of the Government's Rules of Procedure, with a suggestion to change the rigid provisions

governing confidentiality and to repeal the provisions pertaining to "official" and "military" secrets, because those secrets no longer exist as such under the Law on Data Confidentiality. Furthermore, the initiative called for more clarity in the provisions governing the public's right to participate in the legislative process, i.e. public debates, and called for a review and amendment of the provisions which stipulate that everything that is said in the Government's sessions is deemed to be confidential;

5. Comments and suggestions relating to the Draft Law on Environment Protection submitted to the Ministry of Energy, Development and Environment Protection;

6. An opinion relating to the Draft Decree on Detailed Criteria for Designation of Confidential Data with Confidentiality Levels "STATE SECRET" and "TOP SECRET", submitted to the Ministry of Justice and Public Administration;

7. An opinion submitted to the Ministry of Justice and Public Administration concerning the first and second working drafts of the National Anti-Corruption Strategy 2013-2018 and the first and second working drafts of the Action Plan on Implementation of the National Anti-Corruption Strategy 2013-2018,as well as a Draft Resolution on Adoption of the Action Plan;

8. An initiative submitted to the Judicial Academy in connection with the need for systemic training of judicial authorities in the matters of freedom of information and personal data protection, with presentation of available data to support these claims;

9. An opinion submitted to the Ministry of Justice and Public Administration concerning the working versions and Draft Public Administration Reform Strategy sand the Action Plan on Implementation of the Public Administration Reform Strategy in the period 2013-2016;

10. An opinion submitted to the Ministry of Foreign and Internal Trade and Telecommunications concerning the Draft Resolution on Adoption of the Report on Websites of Public Authorities;

11. An opinion submitted to the Ministry of Foreign and Internal Trade and Telecommunications concerning the Draft Action Plan for Open Government with the Use of Information and Communication Technologies in 2013;

12. An opinion on the Draft Law on Privatisation and the Draft Law on Amendments to the Law on Bankruptcy, submitted to the Ministry of Economy;

13. An opinion on the Draft Law on Public Media Services and the Draft Law on Electronic Media, submitted to the Ministry of Culture and Information;

14. An opinion on the Draft Law on Medical Documents and Records in the Field of Health Care, submitted to the Ministry of Health;

Most of these initiatives, proposals and suggestions made by the Commissioner in connection with regulations were met with a positive response, i.e. they were either fully or partially accepted. However, some of them have remained unanswered even after repeated

attempts. An example of the latter category is the initiative submitted to the Judicial Academy, as well as the opinions submitted to the Ministry of Energy, Development and Environment Protection.

Furthermore, pursuant to individual requests by the citizens or public officials, the Commissioner prepared and issued 80 opinions on contentious issues relating to implementation of the Law on Free Access to Information. Typical opinions and views are posted on the Commissioner's website.

Publications

In 2013, the Commissioner published the second issue of the publication titled "Freedom of Information: an Extracts from the Commissioner's Practice". It contains dozens of extracts from the Commissioner's decisions will provide an important source of information for public authorities, for all those who implement the Law in practice or study it academically. The publication brings together all relevant opinions of the Commissioner on more or less all outstanding legal issues and situations that have arisen in the implementation of the Law. It was printed in 1,500 copies.

Trainings-Seminars

In 2013, the Commissioner continued with participation in seminars organised for the officers of various ministries and other public authorities in cooperation with the Government's Human Resources Management Service.

A number of lectures were held, e.g. a lecture for students of the Faculty of Political Sciences on the subject of transparency, a lecture at the Environmental Law School on the subject of free access to environmental information, a lecture for the Diplomatic Academy on the subjects of freedom of information and independent authorities and organisations, a lecture for journalists and other participants in an event organised by the European Journalism Centre and Media Centre Nis on the subject of free access to information and freedom of information, a lecture for the nineteenth generation of the Human Rights School "Vojin Dimitrijevic" on the subject of free access to information of public importance etc.

The Commissioner and representatives of the institution of the Commissioner have spoken about the freedom of information at various debates, conferences, round tables and other public events organised by other public authorities or the civil sector. This is dealt with in more detail in section 6 of the Report, which deals with the Commissioner's cooperation.

Other events relevant from the aspect of protection of rights include conferences hosted by the Commissioner, such as the Conference dedicated to the World Right to Know Dat, which has been held every year since 2006, with the cooperation and support of the OSCE Mission to Serbia, the Independent Association of Journalists of Serbia, the Journalists' Association of Serbia and the Coalition of Free Access to Information. These Conferences traditionally include the presentation of awards to public authorities for their performance and contribution to the

exercise of the right to know, as well as a special award for the best Information Booklet on the work of public authorities, for which participants have to enter in a competition. The Conference held in 2013 also provided an opportunity to present publication number 2, *Free Access to Information of Public Importance – Views and Opinions of the Commissioner*.

For more details on the Commissioner's participation in international conferences and other events held in the country or abroad, see section 6 of the Reportwhich deals with the Commissioner's cooperation.

4.2. Judicial Protection of Freedom of Information before the Administrative Court

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

For these reasons, the Administrative Court, together with the Commissioner for Information of Public Importance and Personal Data Protection, plays a pivotal role in the exercise and protection of the freedom of information.

According to the figures of the Administrative Court, in 2013 that Court received total 13 legal actions, including 5 against the Government, 5 against the Supreme Court of Cassation and one against the President of the Republic, the Constitutional Court and the Republic Public Prosecutor's Office. The Court adjudicated three legal actions against the Government by dismissing two on formal grounds and upholding one. Pursuant to that one legal action, the Constitutional Court ordered the Government to comply with the request. No legal action was brought against the National Assembly before the Administrative Court in 2013.

Although it would be reasonable to assume that, due to the fact that it is the authority of second instance in relation to the six public authorities listed above and taking into account the quantity, type and importance of information available to those authorities, the Administrative Court would have a vast body of case law, this assumption is not supported by the evidence provided above. That there were reasons for filing legal actions against those authorities for denial of access to information can best be seen from the fact that requesters in such situations lodged complaints with the Commissioner, which had to be dismissed as inadmissible. In 2013 there were 30 such cases, i.e. twice as many as in 2012, including 18 against the Government, 4 against the President of the Republic, 3 against the Constitutional Court, 2 against the National Assembly and the Republic Public Prosecutor's Office and 1 against the Supreme Court of Cassation.

As pointed out by the Commissioner year after year, this obviously very small number of complaints serves a reminder that, at the time of enactment of the Law and on many subsequent occasions, the validity of this legislative arrangement was called into question by numerous Serbian and foreign experts in the fields of freedom of information, good governance

and fight against corruption. Exemption of certain public authorities from a general procedure, especially where a fundamental human right is concerned, is not common in comparative practice. However, this legislative provision has remained unchanged through several amendments of the Law.

The Administrative Court received 97 legal actions against the Commissioner's decisions in 2013 – a 47% increase compared with 2012. Of that number, 24 legal actions were brought by public authorities which had decided on the freedom of information requests in first-instance proceedings, which is alarming, given that such legal situations are inadmissible and yet occur year after year, even though the authorities concerned do not have the legal power to file legal actions and such actions are formally dismissed by the Administrative Court. Instead, the Law on Administrative Disputes gives public authorities the option to initiate the filing of legal action by the Republic Public Prosecutor in cases when they believe that a decision passed by the Commissioner is harmful to the public interest. Apart from one case which is still pending, this has not been done in 2013.

Information requesters filed 54 legal actions because the Commissioner failed to decide on complaints within the statutory 30-day period.[10]Pursuant to those legal actions, the Commissioner adjudicated the complaints and the proceedings before the Administrative Courtwere generally terminated, except in cases where the requesters were not satisfied with the outcome.

Of the 97 legal actions filed against the Commissioner's decisions in 2013, the Administrative Court adjudicated 47 cases as follows: it rejected 9 legal actions filed by information requesters as unjustified, thus upholding the Commissioner's decisions; it dismissed 20 including those filed by public authorities; finally, in 18 cases proceedings were terminated. **This means there were no overturned decisions of the Commissioner in 2013. From the aspect of judicial control of the legality of the Commissioner's work, this result is indeed praiseworthy.**

Inadmissible legal actions against the Commissioner's decisions in 2012 were filed by the following public authorities: Telekom Srbija (9 lassuits), public enterprise "Srbijagas" (Serbian gas company), public enterprise PTT Srbija (Serbian postal service), Jugoimport SDPR, Belgrade Fair, Belgrade Stock Exchange, Srpska banka, Faculty of Electrical Engineering in Belgrade, Medical Chamber of Serbia, Medical Centre "Simo Milosevic", "Metanolsko-sircetni kompleks" Kikinda and Centre for Culture in Bosilegrad.

The persistency displayed by some government and other public authorities, in particular *Telekom Srbija a.d.*, in their efforts to avoid or delay the execution of the Commissioner's binding and enforceable decisions by filing inadmissible legal actions, is highly detrimental to the reputation of those authorities. However, this aspect notwithstanding, there is no doubt that such actions should be met by an appropriate reaction in terms of liability, which, as a rule, is

[10]The main reason why the Commissioner exceeds the 30-day time limit when deciding on complaints is the backlog of more than 3,000 cases from the eight years in which the Commissioner waited for the Government to provide his institution with adequate office space and thus allow him to hire sufficient staff, which finally happened in 2013.

unfortunately lacking. The Commissioner once again underscores that, although the number of such complaints is very small compared with the total number of cases handled by the Commissioner, it should be made absolutely clear that the situation in which public authorities and public enterprises willingly ignore their duties, using illegitimate means to thwart the constitutional rights of Serbian citizens and taxpayers and, in doing so, waste the taxpayers' money, will no longer be tolerated. Obviously, the only path available to counter such practice is the imposition of relatively small fines by the Commissioner, which the authorities more often than not refuse to pay voluntarily. All responsible parties, including the Government, the National Assembly and the High Judicial Council, are therefore urged to take due note of this issue.

Quite apart from the fact that the legality of the Commissioner's decisions is constantly reaffirmed by the Administrative Court, it should be noted that **in 2013 the European Court of Human Rights in Strasbourg upheld for the first time a decision passed by the Commissioner. This was decision No. 48135/06 of 25 June 2013, passed in the case Youth Initiative for Human Rights v. the Republic of Serbia[11],**which found that Article 10 of the European Convention of Human Rights – i.e. freedom of expression and freedom of information – had been violated by a refusal of the Security Information Agency to provide information on the number of requests for wiretapping, as ordered by the Commissioner's decision passed pursuant to a complaint filed by the Youth Initiative.

This ECHR judgement is important in many respects: first and foremost, it reaffirms the already established opinion that the freedom of information is protected by the European Convention as the right to freedom of expression;it allows no exceptions from the exercise of this right with regard to competences of public authorities in a country, including the security sector;and, finally, it shows that, notwithstanding the need of certain services to restrict public access to their work, any specific restriction of the freedom of expression must comply with the principles of human rights.

From the aspect of jurisprudence concerning protection of the freedom of information, another noteworthy judgement is that of the Constitutional Court of Serbia No. Už 1823/2010 of 23 May 2013[12],which affirms the views on which the Commissioner has insisted since the beginning of implementation of the Law on Access to Information and the Law on Personal Data Protection.

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

As from 24 December 2009, supervision of implementation of the Law on Access to Information has been the responsibility of the ministry of charge of public administration, more

[11]The Judgement is available on the Commissioner's website underFreedom of Information - Practice–Decisions of International Courts and Bodies, http://www.poverenik.rs/sr/2012-07-11-08-19-51/2012-07-11-08-20-32.html .

[12]The judgement of the the Constitutional Court jis available on the Commissioner's website under Freedom of Information– Practice – Decisions of Serbian Courts, http://www.poverenik.rs/sr/2012-08-31-12-38-14.html

specifically the Administrative Inspectorate. The authority responsible for supervision also has the power to make requests for initiation of infringement proceedings before the competent magistrates' court.

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

According to the Report of the Administrative Inspectorate of the Ministry of Justice and Public Administration[13], in 2013 that body conducted 285 indirect inspections of implementation of the Law on Access to Information with regard to compliance of public authorities with the decisions passed by the Commissioner in procedures launched pursuant to complaints filed by information requesters. The report further states that the authorities concerned complied with the relevant decisions in 145 cases, while the remaining cases are pending.

The report further states that inspectors supervised compliance with the duty to submit reports and publish information booklets, including 37 inspections of penal-correctional facilities and 178 inspections of local self-governments. The outcomes of these inspections are not presented in the Report.

These figures on conducted inspections show that in 2013, just as in the two preceding years, administrative inspectors did not file a single request for initiation of infringement proceedings for a violation of the freedom of information or for non-compliance with any other duties under the Law. This means that, barring individual cases in which requesters themselves as the plaintiffs filed legal actions before magistrates' courts, not a single responsible person in public authorities was held to account for the infringements made, of which there must have certainly been several hundreds in 2013 alone. Indeed, more than 2,600 complaints lodged with the Commissioner were found to be justified and the Commissioner himself forwarded the files to the Administrative Inspectorate for more than 260 cases of gross violation of the freedom of information by public authorities in 2013, including those in which public authorities refused to comply with the Commissioner's orders even after being fined. The Report of the Administrative Inspectorate does not present the effects of the inspections. One can only assume that in some cases they resulted in subsequent compliance with a certain number of decisions of the Commissioner, as the number of unimplemented decisions of the Commissioner issued in 2013 at the time of writing of this Report was lower than at the time when the Commissioner requested the inspection procedures to be conducted.

In view of the foregoing, which seems to indicate a total absence of a system of liability in public authorities for violations of the human right of access to information, the results of interventions by the Commissioner emerge as even more praiseworthy because of the fact that they were achieved without any means of enforcement. The level of compliance of the public authorities subject to the Law on Access to Information would undoubtedly have been even

[13]Report of the Administrative Inspectorate No. 021-00-00003/2014-02 of 17 January 2014.

higher if the mechanism of accountability had been functional and in place, i.e. if the administrative inspectors had filed petitions for infringement proceedings and if those responsible for violations of the law had been held to account.

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

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

Table 4 – Figures showing compliance of public authorities with their duties

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, Government, the Supreme Court of Cassation, the Constitutional Court and the Republic Public Prosecutor)	6	6 (100%)	6 (100%)	/	3 (50 %)	5 (83.3 %)
Ministries	18	18 (100%)	18 (100%)	/	12 (66.6 %)	18 (100%)
Courts	128	123 (96%)	108 (84.3 %)	10 (7.8 %)	62 (48.4 %)	96 (75 %)
Public Prosecutors' Offices	67	63 (94 %)	18 (26.8 %)	40 (59.7 %)	37 (55.2 %)	46 (68.6 %)
Authorities and organisations of the Autonomous Province of Vojvodina	37	24 (64.8 %)	21 (56.7 %)	3 (8.1%)	19 (51.3%)	21 (56.7 %)

Local self-governments (cities/towns and municipalities)	200	158 (79 %)	143 (71.5 %)	2 (1 %)	95 (47.5 %)	138 (69 %)
Public enterprises ((Republic and Provincial level) required to submit reports	30	26 (86.6 %)	19 (63.3 %)	4 (13.3%)	16 (53.3 %)	20 (66.6 %)
Other public authorities	2350	325 (13.8 %)	222 (9.4 %)	66 (2.8 %)	204 (8.6 %)	245 (10.4%)
Total	2836	743 (26.1 %)	555 (19.5 %)	125 (4.4 %)	448 (15.8 %)	589 (20.7 %)

5. IMPLEMENTATION OF THE LAW ON PERSONAL DATA PROTECTION

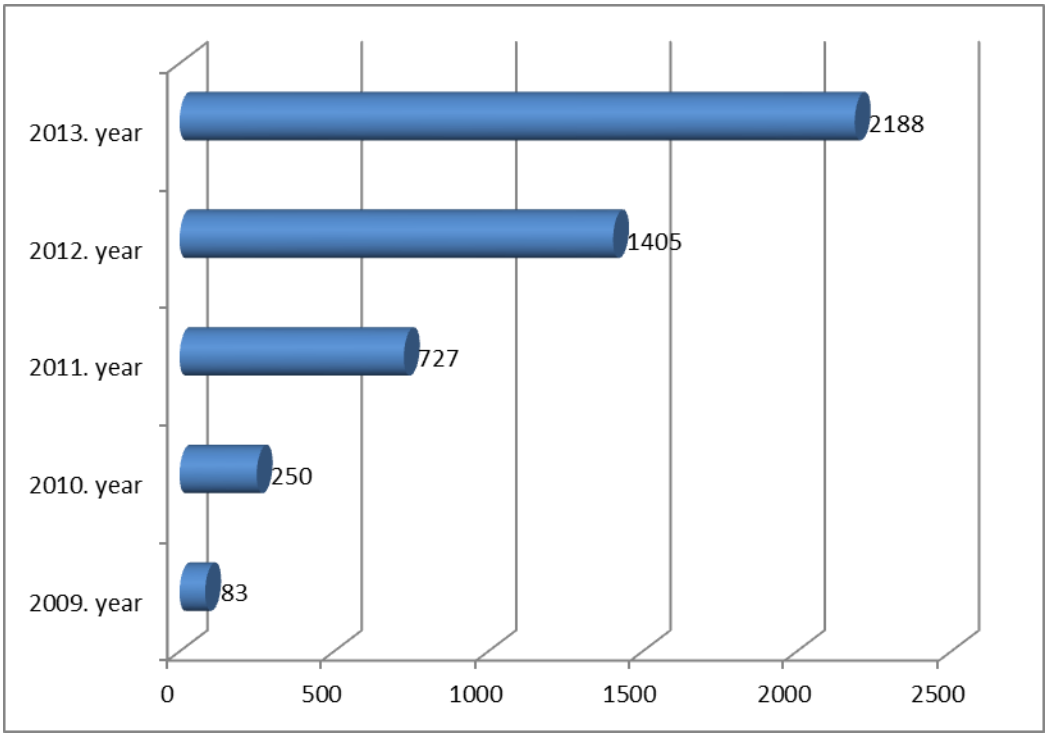
5.1. Commissioner's Activities in the Field of Personal Data Protection

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

In the course of 2013, the Commissioner received 2,188 cases in the field of personal data protection. As a comparison, in 2009 the Commissioner received 83 cases, in 2010 he received 250 cases, in 2011 he received 727 cases and in 2012 he received 1,405 cases. Compared with 2012, the caseload increased 55%, while the increase compared with 2011 is more than 300%.

As 339 pending cases had been carried forward from 2012, the total number of cases handled in this field in the course of 2013 was 2,527.

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



In the course of 2013, the Commissioner closed 1,901 cases in the field of personal data protection. More specifically, the Commissioner:

- Completed 831 inspection;
- Ruled on 174 complaints;
- Issued 511 opinions;
- Ruled on 113 petitions;
- Ruled on 25 freedom of information requests relating to information on the Commissioner's work (24 requests were honoured, while 1 request was rejected);
- Issued 9 responses to legal actions filed with the Administrative Court of Serbia;
- Ruled on 7 forwarded requests;
- Issued 223 instructions for improved protection and prevention (to all advanced secondary and higher education institutions);
- Ruled on 7 requests for transborder transfer of data;
- Complied with one request for the exercise of rights in connection with personal data protection.

5.1.2. Supervision of personal data protection

In the course of 2013, the Commissioner initiated 1,140 inspection procedures and closed 831 of them. Compared with 2012, when he initiated 562 of them, this is an increase of more than100%.

Of the 1,140 inspection procedures initiated in the course of 2013, the Commissioner initiated 206 pursuant to citizens' reports, 594 on his own initiative and 340 in connection with personal data files (notifications by data controllers of their intent to process personal data or to modify existing records).

In 2013, the Commissioner conducted 820 indirect desk inspections and 41 direct field inspections on the data controllers' premises, making a total of 861 inspections. Compared with 2012, when he conducted 366 indirect desk inspections and 74 direct inspections on the data controllers' premises (a total of 440 inspections), this was an increase of nearly 100%.

In the course of 2013, the Commissioner conducted 304 preliminary checks of personal data processing activities. Of that number, in 162 cases no irregularities were found, while in 142 casesthe Commissioner found certain irregularities, which he pointed to the attention of the data controllers concerned by issuing warnings under Article 50 of the Law on Personal Data Protection. Compared with 2012, this was an increase of approximately 90%.

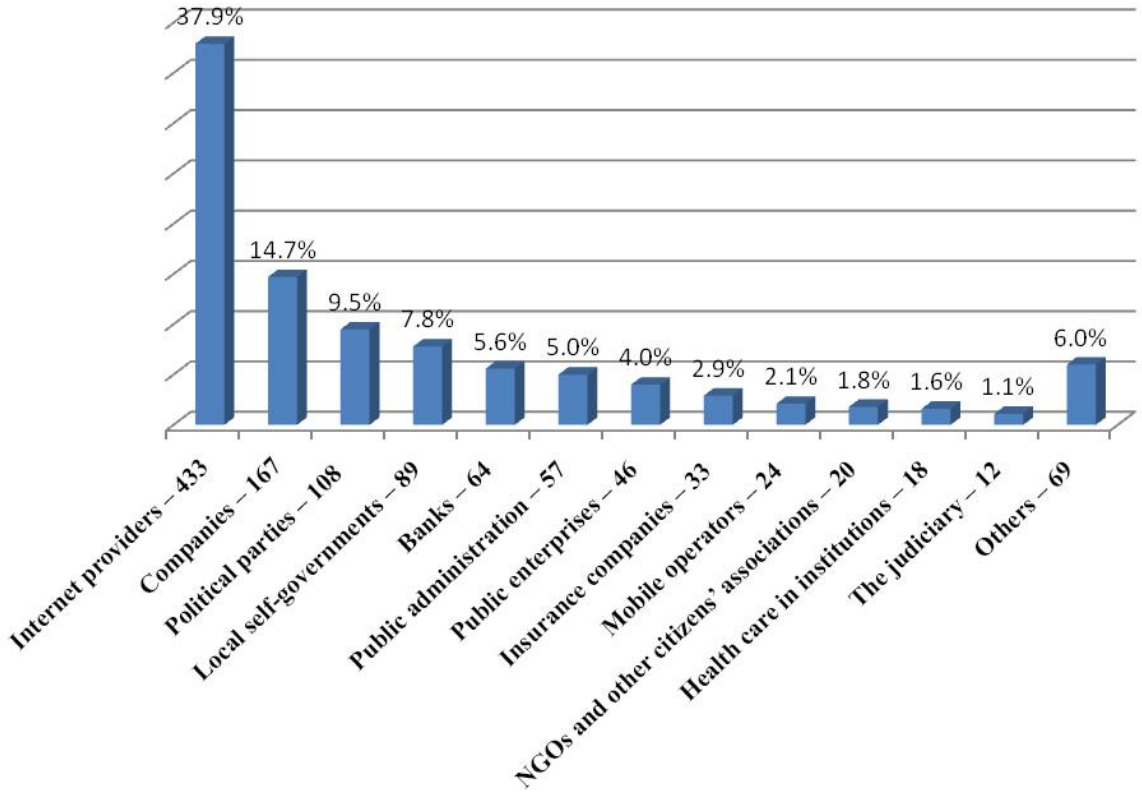
Following the inspections, the Commissioner found violations of LPDP in 422 cases, in which he:

- Issued 395 warnings, including 253 warnings under Article 56 of LPDP (an increase of approximately 370%compared with 2012) and 142 warnings under Article 50 of LPDP (approximately 120% more than in 2012);

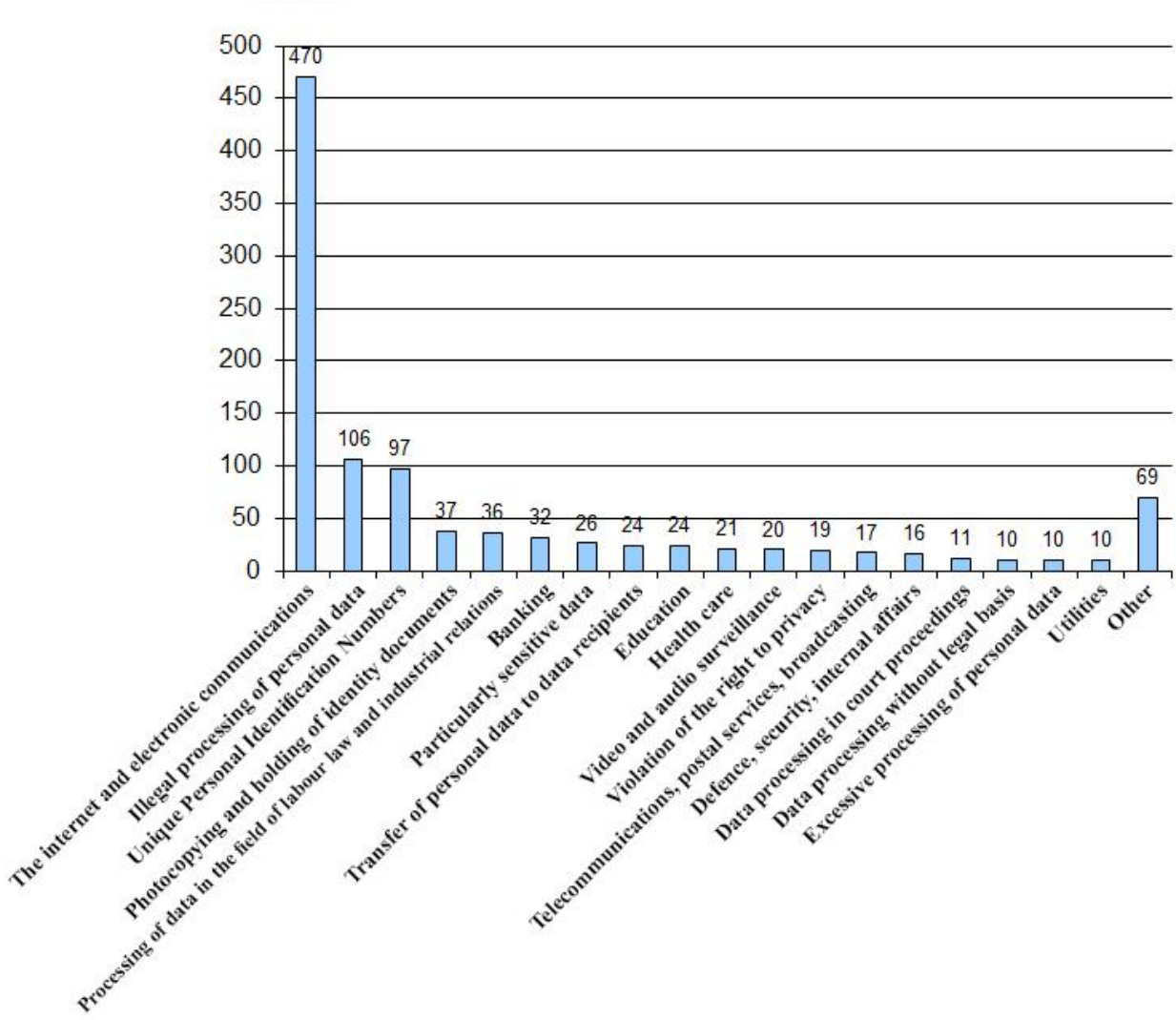
- Issued 15 decisions, including: 3 decisions ordering the deletion of collected data, 8 decisions ordering the deletion of collected data and rectification of irregularities within a specified period, 2 decisions ordering the rectification of irregularities within a specified period and 2 decisions ordering a suspension of data processing and rectification of irregularities within a specified period. In those decisions (15 in total), the Commissioner ordered 25 measures to be put in place, as follows: in 12 cases he ordered the rectification of irregularities within a specified period, in 2 cases he ordered temporary suspension of data processing in violation of LPDP and in 11 cases he ordered the deletion of data collected without proper legal basis. Data controllers complied with 13 decisions, while 2 have not yet been complied with. Of the 13 decisions that have been complied with, in 9 cases this has been done within the specified period.

The structure of data controllers inspected by the Commissioner in the 1,140 inspection procedures was as follows: internet providers – 433 (37.9%), companies – 167 (14.7%), political parties – 108 (9.5%), local self-governments – 89 (7.8 %), banks – 64 (5.6%), public administration – 57 (5%), public enterprises – 46 (4%), insurance companies – 33 (2.9%), mobile operators – 24 (2.1%), NGOs and other citizens' associations – 20 (1.8%), health care in institutions – 18 (1.6%), the judiciary – 12 (1.1%) and others – 69 (6%).

Graph 9.Structure of data controllers inspected in 2013



Graph 10. Most frequent reasons for initiation of inspection procedures pursuant to citizens' reports (206) or on own initiative (594) in 2013

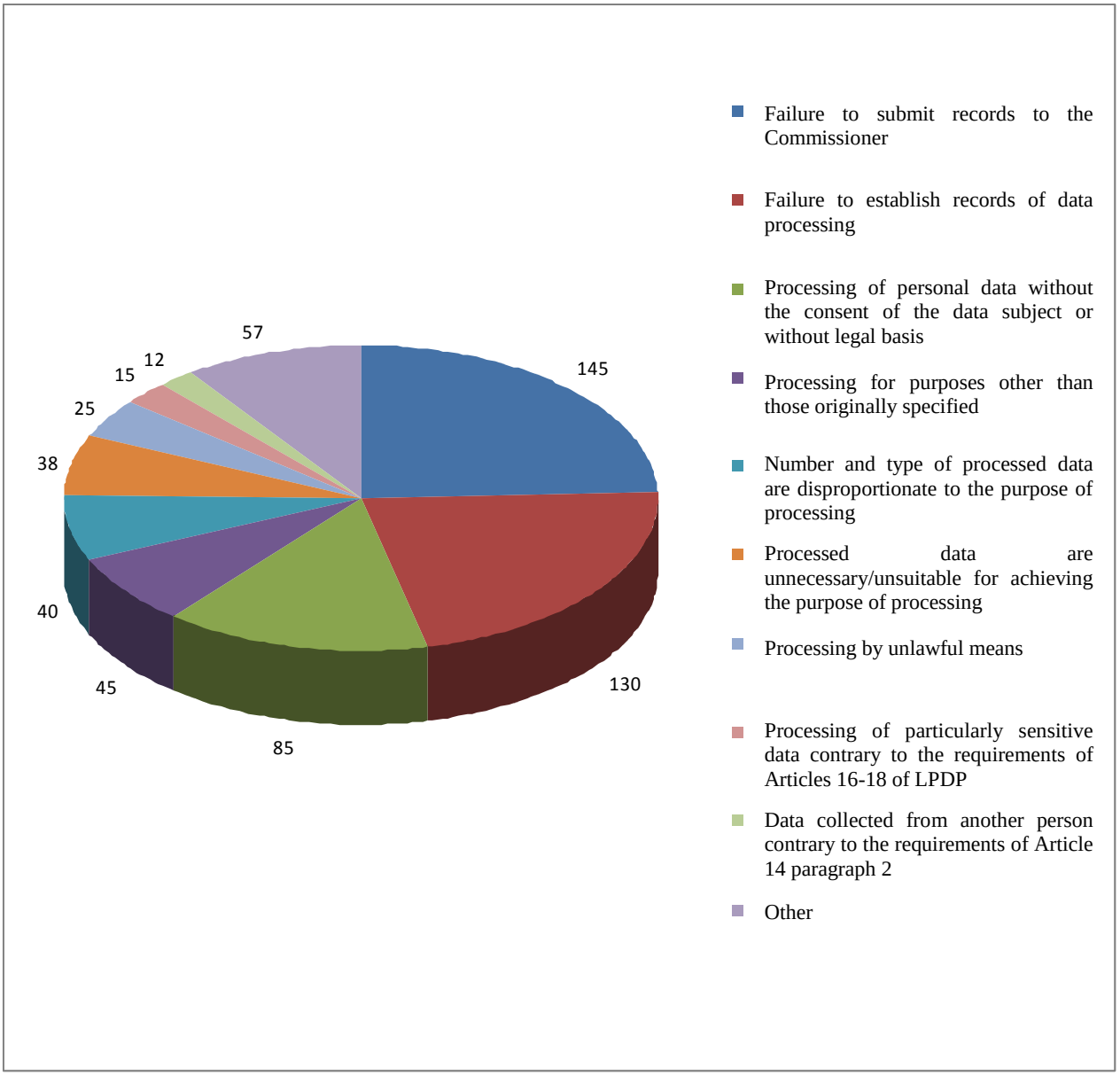


In 395 cases the Commissioner found violations of the LPDP and issued warnings, including 142 warnings under Article 50 of LPDP and 253 warnings under Article 56 of LPDP.

With regard to the 253 warnings issued under Article 56 of LPDP, the Commissioner found 592 irregularities, which means that in practice the Commissioner found one or more violations of the LPDP in some cases.The most frequent violations were as follows:

Of those 253 warnings, 233 have been complied with, 5 have been partly complied with, 13 have not resulted in compliance and for 2 warnings the Commissioner received no feedback until the end of the reporting period. Of the 233 warnings that have been complied with, in 206 cases this was done within the specified time limit.

Graph 11.Most frequent irregularities identified in the warnings issued pursuant to Article 56 paragraph 1 of LPDP in 2013



***Example**: The Commissioner carried out an inspection of compliance with and implementation of the LPDP by Primary School "Marija Trandafil", initiated pursuant to a report, which was submitted with an enclosed copy of a questionnaire that had been distributed to the parents of the pupils applied for enrolment in the first year of the school. Among other things, the questionnaire contains a question about the child's ethnicity. Also, the school reported no records of data processing, which is an obligation of every data controller under the LPDP.*

The school replied that the parents had been told the questionnaires were voluntary and that the information on the ethnicity of pupils and on internally displaced persons were submitted to the Provincial Secretariat for Education, Administration and Ethnic Communities,

to be used for purposes provided for in Article 10b of the Law on Basic Elements of the Education System and the Bylaw on the Programme of All Forms of Work of Technical Associates and the Bylaw on the Content and Manner of Keeping Records and Issuing Public Documents in Primary Schools. The school went on to explain the questionnaires had been common practice since 2009.

Together with the reply, the school provided copies of the request and form issued by the Provincial Secretariat for Education issued to primary schools in the Autonomous Province of Vojvodina, which specified inter alia that the Secretariat was monitoring the situation concerning the exercise of the right to education in one's mother tongue in case of ethnic minorities and the right to learn one's mother tongue/speech with elements of national culture for ethnic minority children who are enrolled in classes in Serbian.

Based on the facts found during the inspection, the Commissioner identified irregularitiesin personal data processing, in that the data controller had, contrary to the provisions of the LPDP, carried out unlawful processing of particularly sensitive personal data – the ethnicity of pupils – without legal authorisation or written consent of the data subjects. It was also found that the data controller had not submitted records of its data files in which such data was processed to the Commissionerfor the purpose of registration with the Central Register.

The Commissioner warned the data controller about the identified irregularities and the data controller stated in its response that the parents of pupils enrolled in the first year of the school, at the time of enrolment or transfer from another school, receive notice of the fact that they were not legally required to provide information on the ethnicity, sex or health status of their child, with a further explanation that their signature is necessary as confirmation if they choose to provide this information.

Taking into account this response, the Commissioner issued a decision by which he ordered the data controller to rectify the irregularities in personal data processingby deleting the question about ethnicity for all first-year pupils and including a question about the language in which the parents would like their child to attend classes, except in the case of Roma children for as long as the Strategy for Improving the Situation of Roma in the Republic of Serbia is in force.

Furthermore, the data controller was ordered to delete the data concerned by destroying the already completed questionnaires which contain the disputed question and an answer about the pupil's ethnicity, which fact must be confirmed in a report drawn up by a committee made up of school staff.

***Example**: The Commissioner carried out two separate inspections of compliance with the LPDP by Telekom Srbija a.d. In both cases,the complainants received letters before action for post-paid mobile telephony services although they had not signed any contract on the basis of which they could have incurred such debt. During the inspection, it was found that there had been no abuse of their personal data by third parties when such contracts were signed; instead, Telekom Srbija a.d.had erroneously entered the Unique Personal Identification Numbers of*

those persons in other people's post-paid contracts. This caused an identity confusion which resulted in the service of letters before action to wrong persons.

The reason for this was the fact that Telekom Srbija a.d.assigns a unique ID number to each user, which is used for all claims towards the person concerned, regardless of the type of service. Essentially, this ID number was the equivalent of the Unique Personal Identification Number for the internal purposes of Telekom Srbija a.d.

Telekom Srbija a.d.had not done enough to ensure the safety of its users' Unique Personal Identification Numbersand their employees were not diligent in their work (e.g. the contract signed with a person born in 1971 includes a Unique Personal Identification Numberof a person born in 1948, which is an obvious error) and this was what caused the two cases referred to above.

In this context, the Commissioner issued two warnings under Article 56 of the LPDP.The data controller responded by modifying its software, adopted new work procedures and added the ID numbers to the existing data files of its users in the Central Register, as personal data used for identifying the users in their contractual relations with Telekom Srbija a.d.

***Example**: Pursuant to citizens' reports, the Commissioner carried out two inspections of compliance with the LPDP in connection with the publication of complete shareholder information by companies on the Internet, including by Messer Tehnogas a.d. Beograd and Stamparija Borba a.d. Beograd.*

Upon examination of the websites of those two companies, it was found that they had published on their websites their "Single Records of Shareholders" (the so-called Shareholders' Book) as PDF documents, which they had obtained from the Central Securities Registry, Depository and Clearing House.

With regard to individuals, the Single Records of Shareholders contain their first names and surnames, Unique Personal Identification Numbers, home addresses (city/town, street and number) and the number of shares/votes of each shareholder. In this way, Messer Tehnogas published the data of 3,529 persons, while Stamparija Borba published the data of 902 persons.

The Central Securities Registry maintains the Single Records of Shareholdersin accordance with the Law on Capital Market, its Statute and its Operating Terms and Conditions. The only details of shareholding individuals published on the website of the Central Securities Registry are the name and surname and the number of shares held.

The Single Records of Shareholdersare provided to companies on their request, including for the purposes of convening a Shareholders' Meeting or a Shareholders' Day, as provided for in the Law on Companies.

However, Messer Tehnogas a.d. Beograd and Stamparija Borba a.d. Beogradhad used this document contrary to its intended purpose, thereby violating their shareholders' right to privacy,because the companies published both their personal data and the number of shares they held.

The said companies, as data recipients, had no legal basis for publication of personal data of their shareholders on the Internet, as a specific form of data processing, nor did they have the consent of the data subjects to do so. Furthermore, the conditions for processing without consent provided for in Article 12 of the LPDP were not met.

***Example**: the Commissioner carried out an inspection of compliance with and implementation of the LPDP by Raiffeisen Bank a.d. Beograd, pursuant to a report by a citizen who claimed that the said bank demanded of individuals who applied for home loans, car loans, cash loans or consumer loans and of its credit card users to provide the number of their health insurance card and their personal health insurance number.*

In the response provided during the inspection process, the bank stated it used the said personal data for checking on the official website of the Republic Health Insurance Fund whether its clients were actually employed by the employer who certified their certificate of employment and amount of salary, explaining that it used the said data solely for the purpose of checking whether the employer actually existed and whether it had paid compulsory health insurance contributions for the employee concerned.

In his decision, the Commissioner ordered the bank to stop processing the numbers of their health insurance card and their personal health insurance numbersof individuals who applied for home loans, car loans, cash loans or consumer loans or who use its credit cardsand to destroy any such data previously collected, because the said personal data, in accordance with Article 138 of the Law on Health Insurance (Official Gazette of RS Nos. 107/05, 109/05 - corrigendum., 57/11, 110/12 –decision of the Constitutional Court and 119/212) can be used solely for health insurance purposes and their use for any other purposes is not allowed, in accordance with Article 8 item 2 of LPDP. The data controller complied with the Commissioner's decision.

***Example**: The Commissioner carried out an inspection of compliance with and implementation of the LPDP bythe data controller Health Care Institution "Apoteka Smederevo", acting on a report filed by the manager of one of the pharmacy units operating within the data controller's system, because of the installation of a video surveillance system in his office.*

Direct inspection was carried out in five pharmacies operating within the data controller's system and the Commissioner found they all had video surveillance systems, installed pursuant to a decision of the data controller's Board of Directors. The said decision had been presented to the founder of the institution – the Assembly of the Town of Smederevo.

The director of the Institution stated that cameras were used in pharmacies to supervise the working area (mixing room), the area in front of the pharmacy and the storage area, if the pharmacy concerned had one; that all cameras were fixed and that each pharmacy had its

digital video recording (DVR) device; that monitoring was done by pharmacy managers on special monitors or computer screen in their offices and that monitoring was not possible from any other location; that the cameras were recording round-the-clock; and that the primary reason for the installation of those systems was the need to protect the institution's property and staff, to prevent burglaries, thefts and muggings, which sometimes occurred even in the mixing rooms, and to prevent breaking of shop windows. If any of those events occurred, the recordings were delivered to the Ministry of Internal Affairs and that was their sole purpose.

Through a direct inspection of the pharmacy whose manager filed the report, the Commissioner found that a camera had been installed in the manager's office. According to the assistant director of the data controller, the reason for installing the camera in the manager's office was to cover the window of the office with CCTV footage, as the window could be broken by potential assailants to gain access to the inside of the pharmacy because the pharmacy was on the ground floor of a building and faced neither other buildings nor the street, which increased the risk of burglary.

Through direct inspection, the Commissioner found that the entry to the pharmacy was not covered by an externally placed camera; likewise, there was no external camera on the window of the manager's office, which was situated in the back of the building; however, the window was secured by strong metal bars from the outside.

A direct inspection of another pharmacy revealed that a camera was placed in the staff resting room.The alleged purpose of placing a camera to cover the entire area of this section of the pharmacy was to control the carrying of goods to and from the storage room, which was done through the resting room.

The claims made by the director of the institution were confirmed in all other pharmacies that were subject to direct inspection.

On the basis of the facts found, the Commissioner identified violations of the provisions of the LPDP in two pharmacies.Consequently, acting pursuant to Article 56 paragraph 1 of the LPDP, the Commissioner warned the data controller about the irregularities in data processing, because such processing was disproportionate and unnecessary for security purposes.

The data controller complied with the Commissioner's warning and removed the cameras from the pharmacies where the irregularities had been found.

***Example**: The Commissioner carried out an inspection of compliance with and implementation of the LPDP bythe public utility company "JKP Informatika", a company in charge of telecommunications, IT and collection of utility and housing bills in the city of Novi Sad. The reason for the inspection was the fact that the said company gave a New Year's and Crhistmass "present" to its regularly paying customers by insuring them with the insurance companies Delta Generali Osiguranje, a.d.o. of Belgrade and SOGAZ a.d.o. of Novi Sad.*

The Commissioner carried out an inspection, in which he found that the data controller had sent in January 2013 regular integrated payment bills for the utility services consumed in the period 1-31 December 2012, in which bills it included an additional item for an insurance premium for all those users who had not opted out of such insurance in writing after a previously received Notice.

The Notice which the data controller had sent to the users of public utility services specified that those who intended to opt out of insurance or terminate the insurance policy at any subsequent time should simply not pay the stated insurance premium, i.e. they should pay the bill issued by JKP Informatika less the stated insurance premium; alternatively, they could send their name, surname and unique property number stated on the bill issued by JKP Informatika.

The Commissioner issued a warning to alert the data controller to the fact it had been using the address details of utility service users for sending integrated utility payment bills for December 2012 which included a separate item for an insurance premium for February 2013 in favour of the said insurance companies, without the consent of the data subjects/service users, for purposes different from that originally specified at the time of data collection.

***Example**: the Commissioner carried out an inspection of compliance with and implementation of the LPDP bythe Public Information Company Novi Pazar. On that occasion, the Commissioner found that the editorial room, where many journalists worked, had a camera installed in such a way that it could cover the entire room. However, at the time of the inspection the camera was out of order.*

The Commissioner finds nothing controversial about the concept of introducing video surveillance for the purpose of protecting a company's property and ensuring the safety of its staff. However, there is absolutely no excuse for using video surveillance as a tool for monitoring the staff's performance;this is excessive, unjustified and violates the privacy and dignity of employees. For that reason, the Commissioner issued a warning to the data controller. Furthermore, a camera that continually covers an editorial room, as the working space, could pose a threat to the freedom of the journalist profession.

The purpose for which data collected through video surveillance can be used and processed must be clearly specified; in this context, it is necessary to evaluate the proportionality and lawfulness of data processing, taking into account the risk such processing might pose for the protection of fundamental rights and freedoms of individuals. In particular, it is necessary to determine whether the purpose of processing could be achieved by less intrusive means.

An employee may and must have a reasonable expectation of privacy in his/her workplace. Continual recording of a person in the workplace is allowed only in cases where this is necessary for the conduct of the data controller's business activity, for the protection of trade secrets, for the safety of persons etc.

The fact that the camera was out of order at the time of inspection cannot sway the Commissioner's view. The camera can easily be repaired, thus the risk of violation of privacy is present. Furthermore, the very existence of a camera may cause the employees to feel uncomfortable and self-conscious because of the invasion of their privacy, since the employees can never be absolutely sure whether the camera is recording or not.

5.1.3. Commissioner's Acting on Complaints

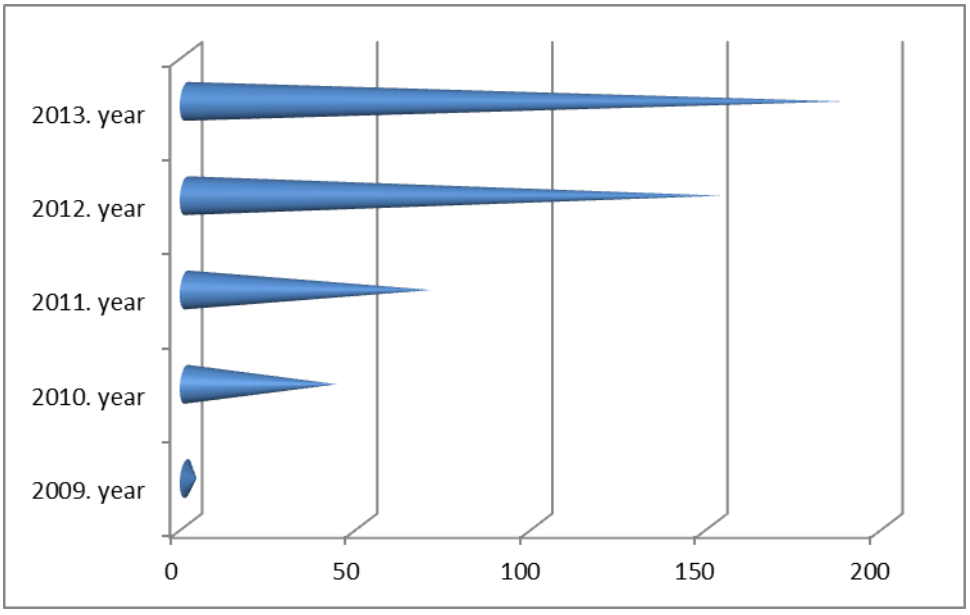
The Commissioner is vested with powers to act on complaints as the authority of second instance pursuant to complaints against violations of rights in connection with personal data protection and/or in connection with access to personal data. The procedure of ruling on complaints by the Commissioner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

A person who previously addressed a data controller with a request for the exercise of rights in connection with data processing may lodge a complaint with the Commissioner in accordance with LPDP. The Commissioner forwards a complaint to the data controller concerned for a reply and then decides on the complaint. The Commissioner's decisions on complaints and binding, final and enforceable and, if necessary, they are enforced by the Government.

In the course of 2013, the Commissionerreceived 188 complaints, which was about 22% more than in 2012, about 170% more than in 2011 and about 340% more than in 2010.

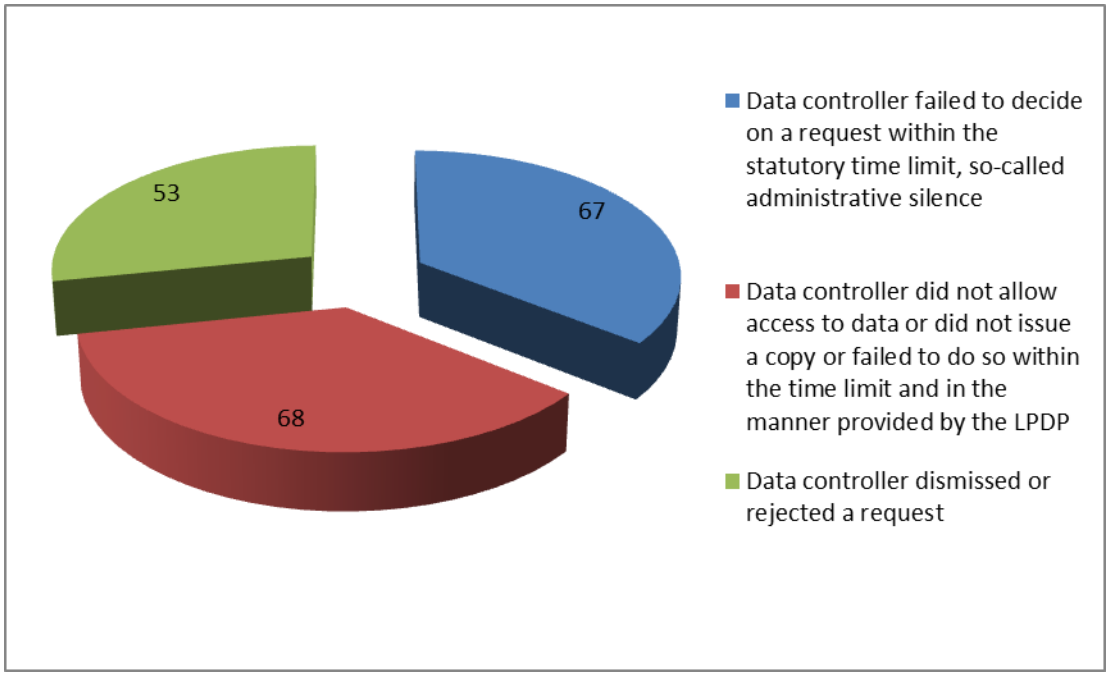
In 2013, the Commissioner handled 232 complaints, of which 188 were received in 2013, while the remaining 44 were carried forward from 2012.

Graph 12. Complaints lodged with the Commissionerby years



Reasons for lodging of complaints with the Commissionerare summarised in the Graph below:

Graph 13.Reasons for lodging of complaints with the Commissioner in 2013



One noticeable fact about the reasons for lodging of complaints with the Commissioner in 2013 is that different reasons accounted for approximately identical shares in the total number of complaints. The most frequent cause for lodging of complaints with the Commissionerwas 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 (68). Compared with 2012, when this reason accounted for 18% of all complaints, in 2013 this behaviour of data controllers accounted for as much as 36% of the total number of complaints, which is indicative of a negative trend of increasing failure of data controllers to comply with the LPDP.

Furthermore, an almost identical share of complaints as above related to the fact that data controllers failed to decide on requests within the statutory time limit, the so-called administrative silence. Compared with 2012, when 43% of all complaints received by the Commissioner were lodged for this reason, in 2013 this form of non-compliance by data controllers has declined to 35.6%.

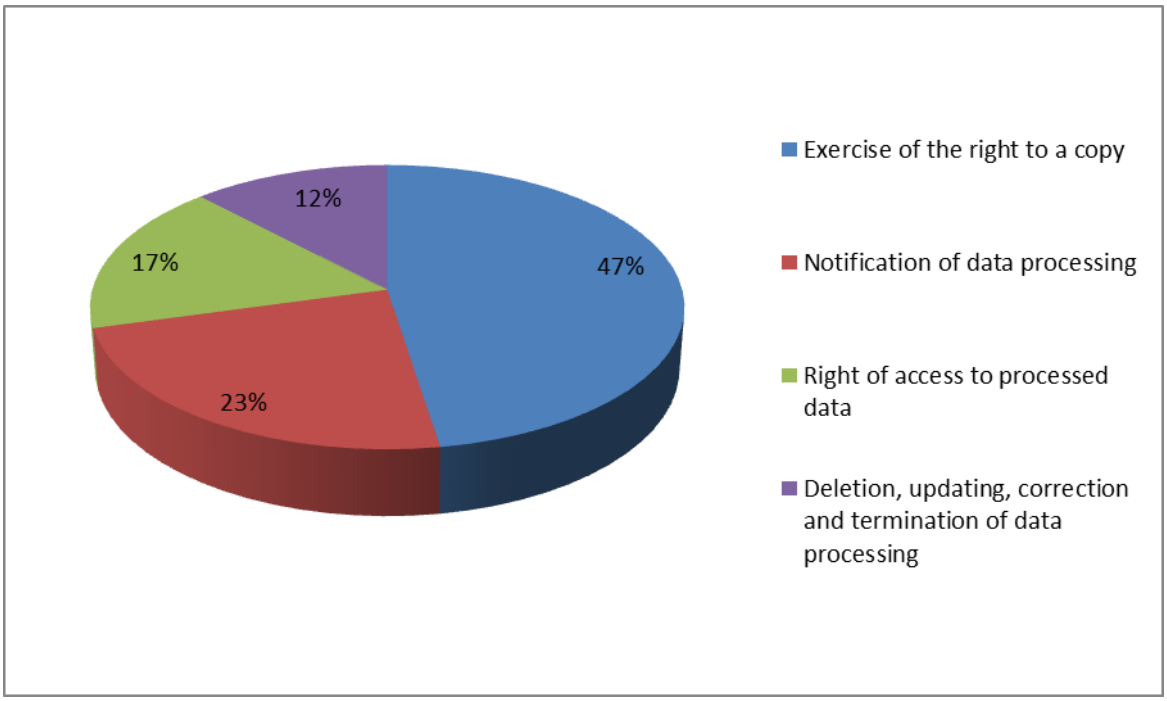
The situation has also changed with regard to rejection or dismissal of requests: in 2012, this reason accounted for 33% of all complaints, while in 2013 data controllers rejected or dismissed requests in 28.2% of all complaints.

A closer look at the reasons for lodging of complaints with the Commissioner suggests that the declining number of complaints because of failure of data controllers to decide on requests, the so-called administrative silence, is indicative of a higher awareness of data controllers of their responsibility to decide on the requests. At the same time, the decrease in the number of rejected requests seems to indicate that data controllers have become more familiar with the LPDP, not only in terms of higher awareness of the need to comply with the LPDP and respond to requests, but also in terms of finding lawful reasons for rejecting requests.

Complaints lodged with the Commissioner related to data contained in: police records;medical records, medical documentation; case files of social welfare centres; records kept by the Ministry of Defence within its sphere of competence; records kept by the Security Information Agency in its documentation archives and registries; human resources records;court case files; records in the fields of pension and disability insurance and health insurance; phone listings; video recordings; and the banking system.

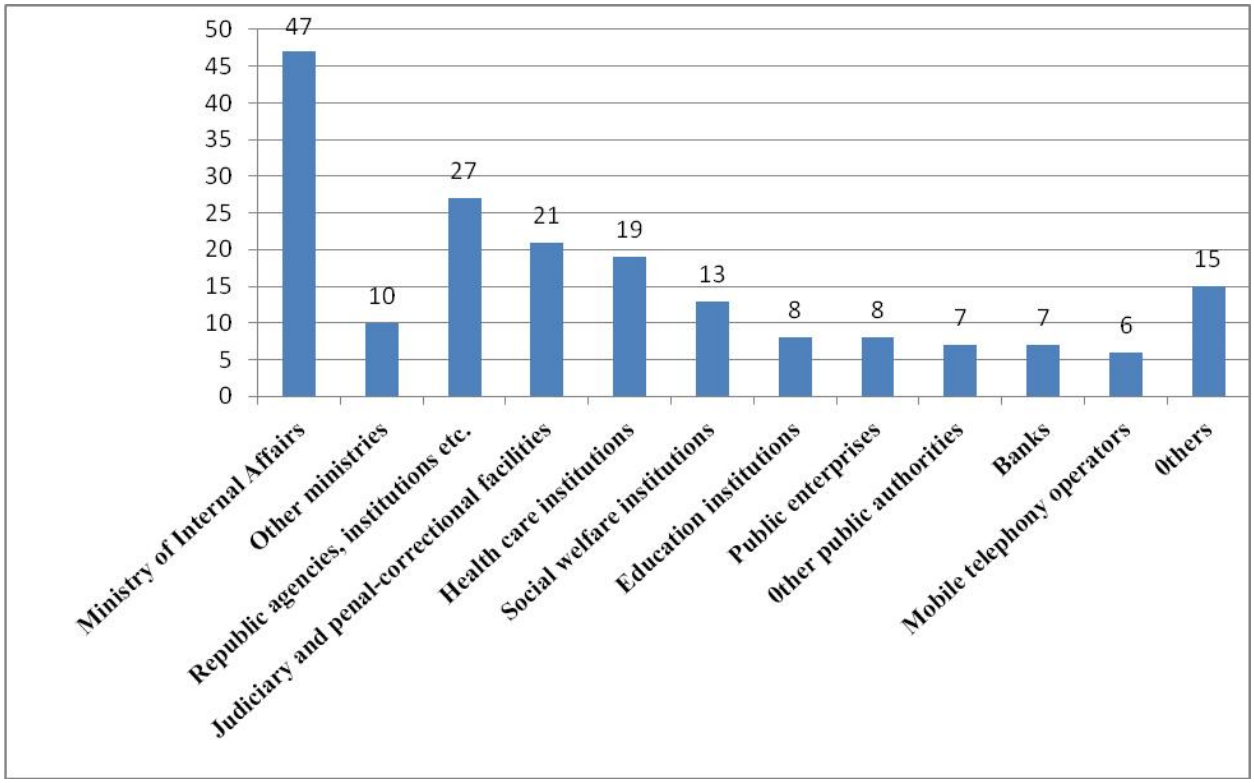
The majority of requests which resulted in the lodging of complaints with the Commissioner due to inadequate actions of data controllers included the exercise of: the right toa copy (47%); the right tonotification of data processing (23%); and the right of access to processed data (17%),while only 12% of the complaintsrelated to deletion, updating, correction and termination of data processing.

Graph 14. Requests which resulted in the lodging of complaints with the Commissioner in 2013



The majority of the complaints– as many as 158 – were lodged due to actions of public authorities or their failure to act, including 57 complaints against ministries, which usually related to the Ministry of Internal Affairs of the Republic of Serbia – 47.

Graph 15. Data controllers whose actions or failure to act were the most frequent cause for lodging of complaints



It is noticeable that the largest number of complaints (47 or 25% of all complaints) %) related to data contained in police records, i.e. (in)action of the Ministry of Internal Affairs. The number of these complaints was more than five times higher than the number of complaints against all other ministries put together. Complaints concerning (in)action of the Ministry of Internal Affairs usually related to data contained in various records kept by that Ministry. Facts show the Ministry of Internal Affairs has already improved its operations in that it has formed a special unit for personal data protection attached to the Minister's Cabinet; also, it is one of two data controllers and it submitted the largest number of records of personal data files for registration with the Central Register and it responded positively to numerous requests by citizens, albeit with delays, which was why the citizens had to raise complaints with the Commissioner. Nevertheless, the figures quoted above clearly show that the Ministry of Internal Affairs needs to improve its operations further on this issue, in particular by modifying the provisions of the Law on Police to define a legal basis for the establishment and maintenance of specific personal data files, in full compliance with the LPDP.

***Example**: A requester filed with the data controller Ministry of Internal Affairs of the Republic of Serbia a request for the exercise of rights in connection with personal data protection, in which he requested a copy of data relating to security checks and assessments carried out by the police in the process of deciding on a request for the purchase of firearms. As the data controller rejected the said request by a decision, explaining that the said information*

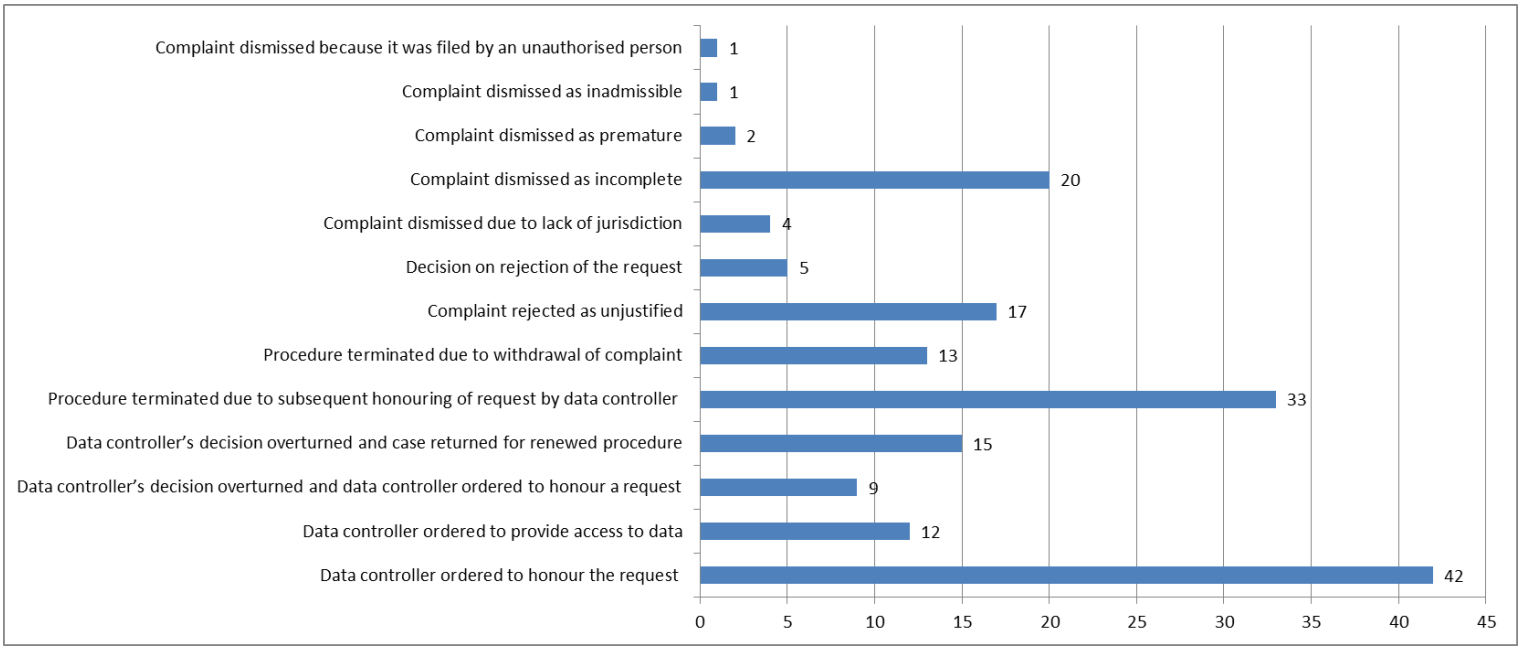
was deemed to be confidential and, if provided, could endanger the privacy of other persons named in the document, the requester lodged a complaint with the Commissioner.

Acting on the complaint, the Commissioner passed a decision by which he overturned the data controller's decision and ordered it to issue a copy of the requested information to the requester, after first protecting any data that relates to other persons or those sections of the documents from which a person can be identified and rendering those protected data inaccessible. The statement of reasons for the decision explained that the data controller's invocation of confidentiality was unacceptable, because the controller failed to quote any actual legal basis for data confidentiality and did not explain which grave legal consequences could arise for interests protected by the law if the requester received a copy of the requested information. In the Commissioner's view, obtaining of the requested information in the manner described above posed no threat to the privacy or security of other persons.

In the course of 2013, the Commissioner acted on 232 complaints, 188 of which were received in 2013,while 44 complaints were carried forward from 2012. Of those **x 232 complaints,by the end of 2013 the Commissioner closed the proceedings pursuant to 174 complaints (130 from 2013 and all 44 from 2012), while 58 cases were carried forward to 2014**.

In the course of 2013, the Commissioner closed the proceedings pursuant to 174 complaints. The actual actions taken are presented in the graph below.

Graph 16. Commissioner's acting on complaints in 2013



***Example**: A requester submitted a request for the exercise of rights in connection with personal data protection to the data controller – Higher Court of Zajecar, in which he requested information on whether he had been subject to law enforcement measures aimed at detecting and evidencing a criminal offence, who had requested such measures, who authorised them and during what period they were implemented; he inquired in particular about surveillance and recording of phone and other conversations and communication. The data controlled rejected the request by a decision, explaining that provision of such information would seriously endanger the interests of national and public safety, national defence or prevention, detection, investigation and prosecution of criminal offences, because another criminal investigation against the same person was pending.*

Pursuant to the complaint, the Commissioner overturned the data controller's decision and returned the case for renewed procedure. In the statement of reasons for the decision, the Commissioner explained that the data controller merely listed general reasons for rejection of the request in its decision, without stating any specific reasons for restricting the complainant's right to be informed about the requested data and without providing sound evidence of justifiability of the restriction of information on processed data, i.e. it failed to demonstrate how exactly the provision of information to the complainant would seriously endanger the criminal investigation.

In his decision, the Commissioner ordered the data controller to determine beyond doubt in the renewed procedure whether the requested data could be provided to the complainant. If any restrictions on the right to information are deemed necessary, the data controller should provide clear and unambiguous reasons for such decision and explain which harmful consequences could ensue if the complainant received the requested information.

***Example**: A requester submitted a request for the exercise of rights in connection with personal data protection to the data controller – General Hospital in Sabac, by which he asked for a copy of monthly payroll slips for the period between 1 January 1970 and 1 November 2005.*

The data controller replied to the complainant's request and informed him it was unable to provide copies of monthly payroll slips for the past 35 years due to objective circumstances, explaining that records of the salaries and contributions paid for employees on an annual basis during the period which an employee spent working with an employer were kept both by the employer and the competent Pension and Disability Insurance Fund.

Pursuant to the complaint, the Commissioner passed a decision by which he ordered the data controller to issue a copy of the requested data, explaining that invoking of objective circumstances which prevent the data controller from issuing the requested data cannot constitute a justified and valid reason for failing to honour a request, given that these data must be stored in the data controller's files and kept permanently in accordance with the applicable legislation, because the data controller was the requester's employer.

***Example**: A requester submitted a request for the exercise of rights in connection with personal data protection to the Penal-Correctional Facility in Nis, asking for a copy of data contained in a personal sheet. As the data controller failed to act within the statutory period, the requester lodged a complaint with the Commissioner.*

The Commissioner passed a decision by which he ordered the data controller to comply with the request immediately, and in any case not later than 5 days of receipt of the decision, in accordance with Article 39 paragraph 3 of LPDP, because it had failed to inform the requester within the statutory time limit whether it held the requested data and because it had neither issued a copy of the data not passed a decision to reject the request.

***Example**: A requester submitted a request for the exercise of rights in connection with personal data protection to the data controller – Republic Pension and Disability Insurance Fund in Belgrade, asking for a copy of a report on his years of employment in the &United Kingdom. As the data controller failed to act within the statutory period, the requester lodged a complaint with the Commissioner.*

In its response to the allegations raised in the complaint, the data controller informed the Commissioner it had complied with the request and provided the requested data to the requester, presenting evidence of provision of the data.

As the data controller had allowed the requester to exercise his right to obtain a copy of personal data after the lodging of the complaint, but before a decision was passed pursuant to the complaint, the Commissioner issued a resolution and terminated the procedure.

Judging by the Commissioner's decisions passed pursuant to complaints, filing of complaints with the Commissionerwas justified in 75% of cases. In 9.8% of cases the Commissioner rejected the complaints as unjustified, while in 16% of cases he dismissed the complaints on formal grounds.

As the Commissioner's decisions pursuant to complaints are binding, final and enforceable, in 2013 data controllers informed the Commissioner of their compliance with his decisions in 39 cases.

5.1.4. Keeping of Central Register

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

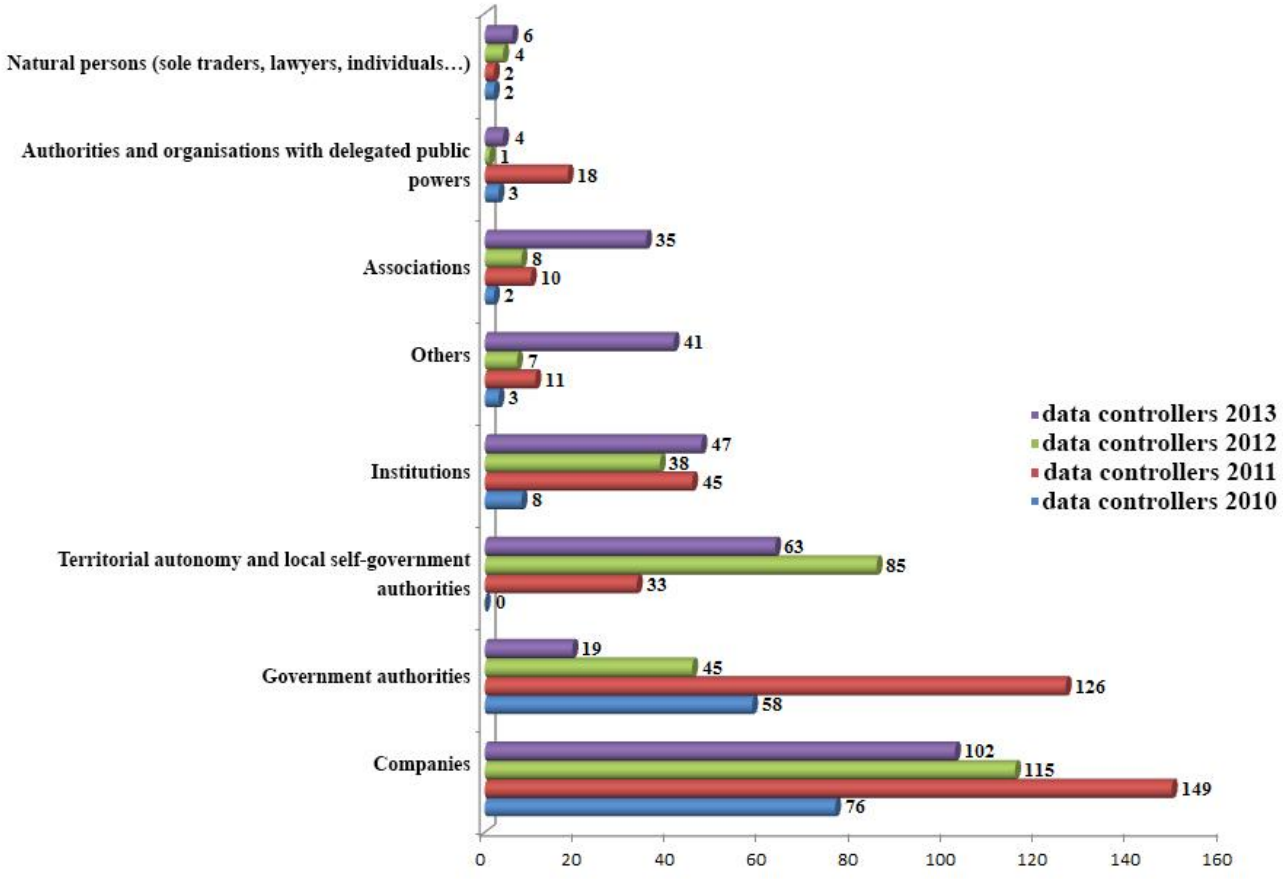
The Central Register is public, kept electronically and published online. Data controllers register their data files electronically and subsequently submit a data file report on the requisite form.

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

The situation as regards registration with the Central Register as at 31 December 2012 shows that a total of 1,166 data controllers submitted to the Commissioner records of the 6,257 personal data files they keep. This practically means that less than 0.3% of personal data controllers have complied with the LPDP.

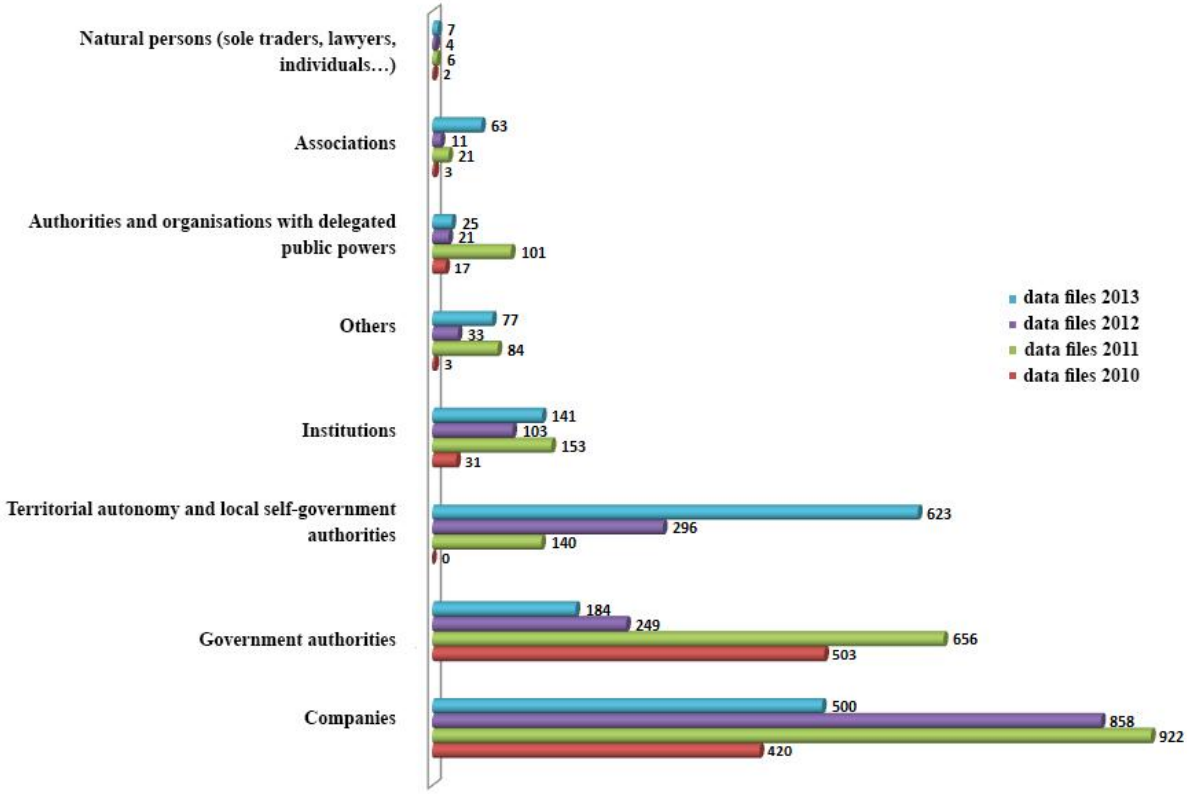
In the Commissioner's view, now that the Law has been in force for more than five years, there is absolutely no justification for data controllers to ignore this or any other statutory obligation *en masse*.

Graph 17. Comparative analysis of registered data controllers in 2010, 2011, 2012 2013



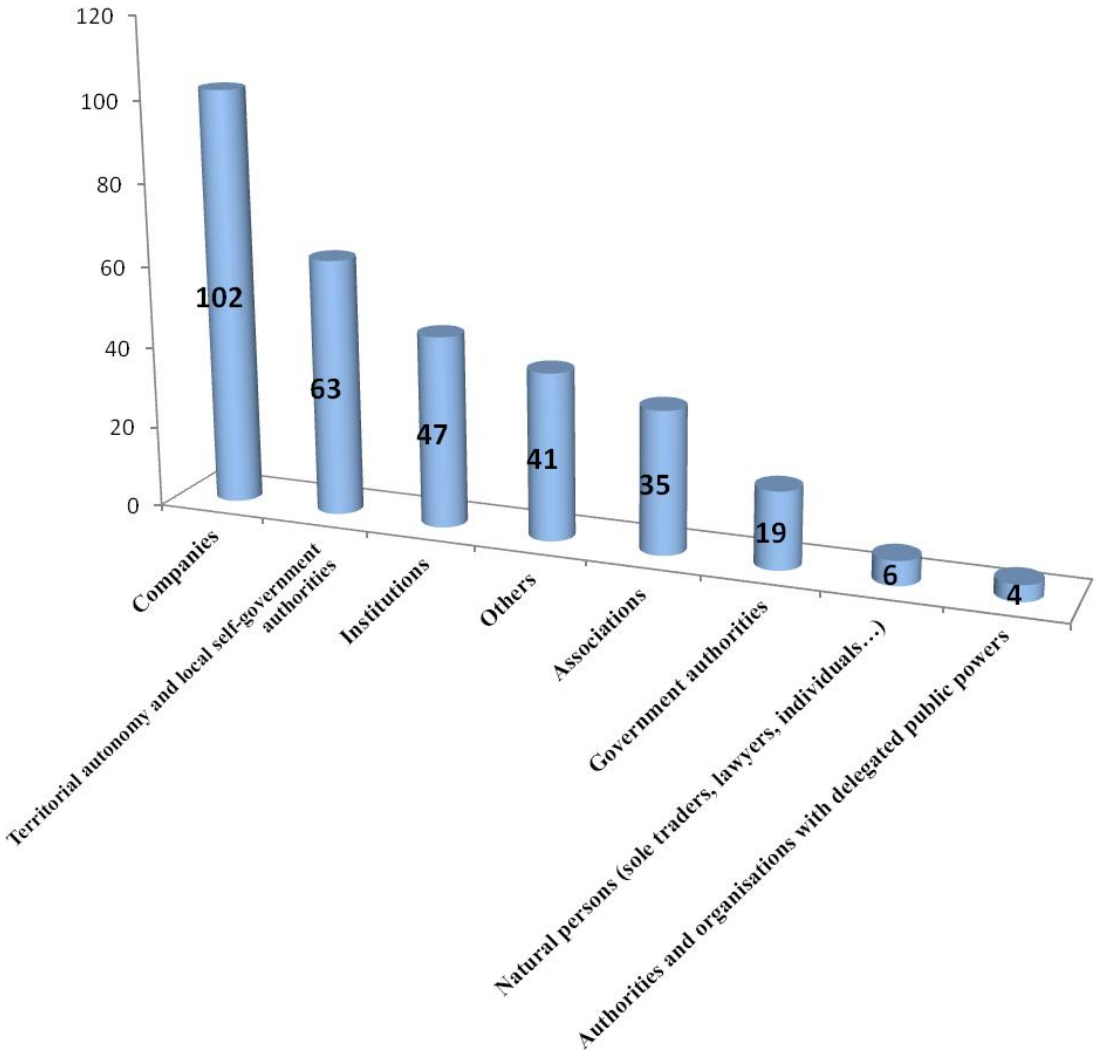
In the course of 2013, a total 317 of data controllers submitted to the Commissioner the records of the 1,620 data files they maintain. This figure was almost identical as in 2012, when 303 data controllers submitted records of 1,575 data files.

Graph 18. Comparative analysis of registered records of personal data files in 2010, 2011, 2012 and 2013

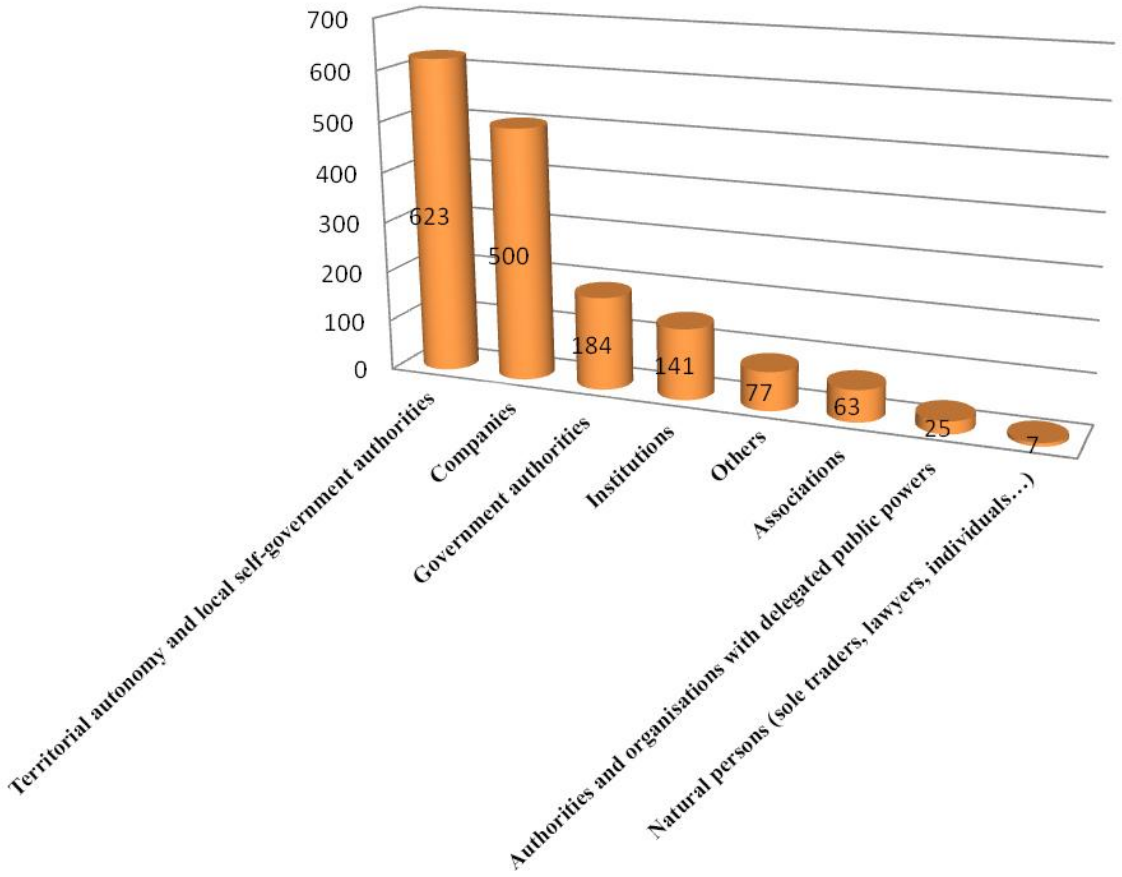


As regards submission of records of data files to the Commissioner for the purpose of registration with the Central Register in 2013, the highest response was among companies − 102, which submitted 500 records of personal data files. The response rate was somewhat lower for public authorities − 86 (government authorities − 19, territorial autonomy and local self-government bodies - 63 and bodies exercising delegated public powers − 4) which submitted total 832 records of data files (government authorities − 184, territorial autonomy and local self-government bodies − 623 and bodies exercising delegated public powers − 25). The remaining categories of data controllers fared even worse in terms of compliance. Also, the above categories of data controllers submitted the highest number of records of data files to the Commissioner (companies – 500, an average of 4.9 records of data files per company, and public authorities – 832, an average of 9.67 records per public authority).

Graph 19. Data controllers registered with the Central Register in 2013 by types of data controllers



Graph 20. Data files registered with the Central Register in 2013 by types of data controllers



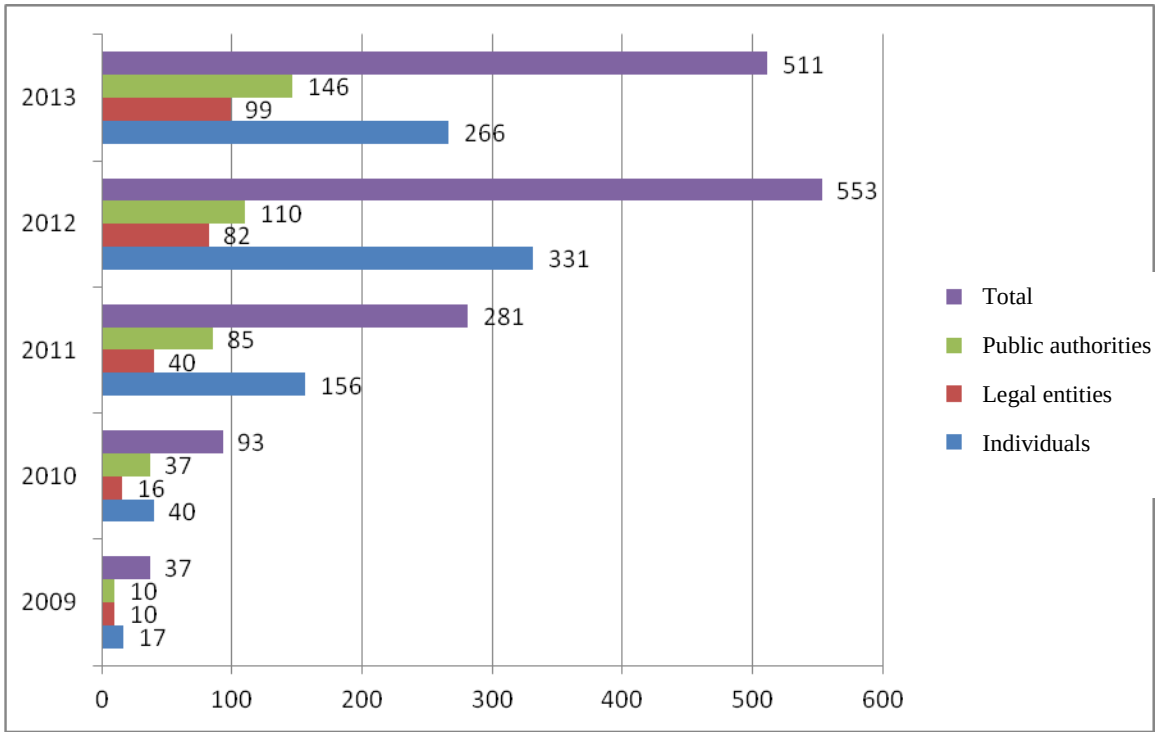
The Commissioner continues to make efforts to ensure compliance with this legal duty. The Commissioner frequently calls for compliance with this duty under LPDP through the media, his web page, warnings sent to large data controllers, presentation of legislative provisions, education of large data controllers' staff and filing of requests for initiation of infringement proceedings.

5.1.5. Issuing of Opinions

In 2013, the Commissioner issued a total of 511 reasoned opinions and responses, including 266 to individuals, 99 to legal entities and 146 to national authorities and local self-governments.

For the sake of comparison, in the course of 2009 the Commissioner issued 37 opinions (17 to individuals, 10 to legal entities and 10 to public authorities), in 2010 he issued 93 opinions (40 to individuals, 16 to legal entities and 37 to public authorities), in 2011 he issued 281 opinions (156 to individuals, 40 to legal entities and 85 to public authorities), while in 2012 he issued 523 opinions (331 to individuals, 82 to legal entities and 110 to public authorities).

Graph 21. Opinions issued by years



Of the 146 opinions issued to national and local authorities, 15 related to drafts laws or bills, including: Draft Law on Amendments to the Law on Serbian Export Insurance and Financing Agency (Ministry of Economy); Draft Law on Amendments to the Law on Privatisation Agency (Ministry of Economy); Draft Law on Privatisation (Ministry of Economy); Draft Law on Amendments to the Law on Bankruptcy (Ministry of Economy); Draft Law on Amendments to the Law on Electronic Communications and Postal Services (Ministry of Foreign and Internal Trade and Telecommunications); Draft Law on Health Documents and Records in the Field of Health Care (Ministry of Health) and Additional Opinion on the Draft Law on Health Documents and Records in the Field of Health Care, issued to the Ministry of Health after the said Ministry brought the Draft Law in compliance with the Commissioner's comments and suggestions; Draft Law on National Councils of National Minorities (Ministry of Justice and Public Administration); Draft Law on Unique Personal Identification Numbers (Ministry of Internal Affairs); Draft Law on Textbooks and Other Teaching Aids (Ministry of Education, Science and Technological Development); Bill on Private Security (National Assembly); Bill on Detective Operations (National Assembly – opinion submitted to the Committee on Human and Minority Rights, the Judicial Committee and the Defence Committee); Draft Law on Amendments to the Law on the Standard of Pupils and Students (Ministry of Education, Science and Technological Development) and Additional Opinion on the Draft Law on the Standard of Pupils and Students, issued to the Ministry of Education, Science and Technological Development after the Ministry brought the Draft Law in compliance with the Commissioner's comments and suggestions; and Draft Law on International Restrictions (Ministry of Foreign Affairs). The Commissioner also issued opinions on two bills on his own

initiative, namely the Bill on Amendments to the Law on the Military Security Agency and the Military Intelligence Agency and the Bill on Exports and Imports of Dual-Purpose Goods.

The Commissioner notes in particular that he has, not only in 2013, but in earlier years as well, issued opinions within his sphere of competence which pointed to the inadequate arrangements contained in the Law on Detective Operations and the Law on Private Security. However, notwithstanding those opinions, the said Laws were enacted with those arrangements unchanged.

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

In the course of 2013, the Commissioner acted on twelve requests for transborder transfer of personal data out of Serbia. The Commissioner passed seven decisions pursuant to the requests: 1 decision allowing the transborder transfer, 1 decision forbidding the transborder transfer, 4 resolutions to terminate the procedure and 1 resolution dismissing a request.

Requests for transborder transfer of personal data submitted in 2013 covered data relating to: employees, health professionals and researches in clinical trials and trade partners – customers and suppliers. Countries to which transborder transfer was requested included the USA, India, Malaysia, the Philippines and Australia. In most cases, applicants were large business corporations which sought to transfer personal data from Serbia to their contractual processors and/or users in foreign countries for the purpose of creating centralised databases (e.g. of employees) and corporate management of those data on group level. For some categories of persons (e.g. customers, suppliers, tested candidates etc.), the purpose of transborder transfer was further processing, use and storage of data.

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. In decision-making, the Commissioner takes into account all circumstances of 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 for transborder transfer of personal data (e.g. transfer for specific data processing actions or transfer for further use or transfer to new controllers), the manner of informing data subjects about processing, the duration of processing, safeguards put in place before, during and after the transfer, data storage, protection of data subjects' rights and other facts relevant for decision-making in such cases. After this procedure, the Commissioner decides whether transborder transfer of personal data from the Republic of Serbia is allowed or not. A decision passed by the Commissioner may be challenged in an administrative dispute initiated pursuant to a complaint.

Judging by the requests received so far, most of them tend to be incomplete, i.e. 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 include relevant facts in connection with personal data processing and transborder transfer out of Serbia, such as: legal basis for processing and transfer, identity of data controllers, data processors, data recipients and other persons to whom the data controller intends to make personal data available, the manner in which rights, duties and responsibilities in connection with the intended transfer and further processing are regulated (agreements providing for transfer and further processing), the manner in which the rights of individuals with regard to processing are protected etc. Due to these and other shortcomings, parties in procedures are often ordered (sometimes repeatedly) to make their requests compliant and to provide complete and proper documentation. In some cases it was necessary to carry out inspections in order to determine whether the personal data for which transborder transfer is requested would be processed in accordance with the law, which ultimately delays the procedure and extends the process of deciding on the requests.

The Commissioner's Office is available to parties for any preliminary clarifications before submission of requests for transborder transfer of data out of the Republic of Serbia and for all clarifications of the procedure, in order to overcome the shortcomings of LPDP in this regard. In this context, the Commissioner also issued nine opinions on requests from the parties to enable them to prepare proper and duly reasoned requests and supporting documents for transborder transfer of data out of Serbia.

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, as is the manner of determining the "adequate level of personal data protection" in accordance with the Convention. For the purpose of more efficient implementation of LPDP, it is necessary to regulate properly the issue of transborder transfer of data and to harmonise the applicable provisions with the solutions contained in relevant international documents in this field.

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

In 2013, the Commissioner continued carrying out a number of activities on the promotion and affirmation of the right to personal data protection. Thus, the Commissioner informed in various manners (through participation in trainings, seminars, debates, round tables, conferences etc., as well as through the media, Internet presentation, social networks and other manners of communication with citizens) the public or only the expert community on the exercise and obstacles in the exercise of the right to personal data protection. In addition, the Commissioner was providing formal, and often also informal, assistance and advice for efficient implementation of LPDP.

Trainings/seminars

The Commissioner organised several seminars in the field of personal data protection, e.g.: a seminar for the civil servants who are directly responsible for personal data protectionwhich was organised by the Human Resource Management Service; a seminar for lawyers and businessmen, organised by the American Chamber of Commerce; a seminar for the

participants in the counselling event "Compliance Function in Banks 2013", organised by the Association of Serbian Banks; a seminar for educators of patients' rights advisors, titled "Patients' Right to Personal Data Protection and their Right to Privacy", organised by the Medical Centre of Savski Venac; a seminar for the participants in the Open Dialogue on the Impact of Business on Human Rights in Serbia, titled "Human Rights Protection Mechanism in an Information Society, with Focus on the Company-Consumer Relationship", organised by the Belgrade Centre for Human Rights; a seminar for participants in the conference Professionals for Professionals, organised by the international IT company Atos; a seminar for participants in the 13th Symposium on Medical Forensics in Occupational Medicine, organised by the Association of Forensic Scientists in Occupational Medicine etc.

Conferences/roundtables

The Commissioner took part in a number of meetings in the field of personal data protection, e.g.: the roundtable "Why are identity cards being replaced again?", organised by the IT Society of Serbia and the IT Sector Association of the Belgrade Chamber of Commerce; the conference "Internet Dialogue in Serbia", organised by the Directorate for Digital Agenda and the National Domain Name Register of Serbia; the roundtable "A Regulated Private Security Sector – A Safer Life for the Citizens", organised by the Centre of Euro-Atlantic Integrations; the Security Facilities, Infrastructure, Persons and Operations Exposition (ISEC); the roundtable "Why are health insurance cards introduced and how far have preparations for the introduction of a modern health information system advanced?", organised by the IT Society of Serbia, the Belgrade Chamber of Commerce and the IT Sector Association etc.

5.2. Acting of Judicial Authorities and Constitutional Court in the Field of Personal Data Protection

5.2.1. Acting of Prosecutors' Offices on Criminal Reports filed by the Commissioner

The Commissioner is not aware of any criminal proceedings initiated pursuant to the criminal reports he filed. This is certainly reason enough to include this issue in the Report. The Commissioner believes that the criminal reports he filed with the public prosecutors' offices build strong enough cases for further prosecution, to ensure the detection and appropriate punishment of the committers of those criminal offences.

5.2.2. Acting of Magistrates' Courts on Petitions for initiation of Infringement Proceedings filed by the Commissioner

In 2013, the Commissioner received 30 judgements of Magistrates' Courts pursuant to petitions for infringement proceedings he filed between 2010 and 2012. Of those 30 judgements, 11 were convictions, one was a partial conviction and two were exonerating judgements; two

proceedings were terminated because the respondents were unavailable to the judicial authorities; in one case, the petition for infringement proceedings was dismissed; and, finally, as many as 13 judgements were passed to confirm the expiration of absolute statute of limitations on infringement liability.

The Commissioner notes that an analysis of these 30 judgements delivered by Magistrates' Courts reveals that cases with identical factual and legal basis often resulted in diametrically opposite decisions. Based on the foregoing, the Commissioner believes Magistrates' Courts do not treat the issue of personal data protection with the attention it deserves as a right guaranteed by the Constitution of Serbia. The penal policy pursued by Magistrates' Courts is obviously two lenient, given that, of the 11 convictions, in seven cases the respondents got away with mere cautions. Finally, a significant number of cases were terminated due to the expiration of the absolute statute of limitations applicable to the initiation and conduct of infringement proceedings, which it two years; this is an issue that has been raised by the Commissioner, to little avail, in the process of drafting and enactment of the new Law on Misdemeanours.

As regards petitions for infringement proceedings filed in 2013, only one judgement was delivered against one company and it partly exonerated the respondent.

A change in the attitude towards violations of the LPDP in general and the penal policy in particular will be essential in order to improve the situation in this field. As it is, the jurisprudence with regard to filing of petitions for infringement proceedings and their effects has a deterring effect and the Commissioner is *de facto* forced to attempt to achieve the desired effects by warnings and educational efforts.

5.2.3. Acting by Administrative Court

In the course of 2013, the Administrative Court received nine legal actions against the Commissioner's decision, including three legal actions against the Commissioner's decisions ordering the deletion of data collected without proper legal basis and six legal actions rejecting complaints against the actions of data controllers. By the end of 2013, the Administrative Court ruled on four legal actions filed in the period 2012-2013 by rejecting three and upholding one, which it returned to the Commissioner for renewed procedure.

The Commissioner would like to take this opportunity to draw attention to the judgment of the Administrative Court which upheld the claim and returned the case to the Commissioner for renewed procedure. Namely, the Commissioner passed a resolution to terminate the procedure pursuant to a complaint against the Ministry of Internal Affairs due to its failure to comply with a request for the exercise of rights in connection with personal data protection, because the Ministry of Internal Affairs had in the meantime passed a decision pursuant to the request and informed the requester accordingly.

This resolution of the Commissioner was appealed by a legal action, which the Administrative Court adjudicated as explained above. In the statement of reasons, the Administrative Court explained that, under Article 39 paragraph 1 of LPDP, complaints are filed with data controllers in order to obtain a response to the complaint, with the possibility for the

complainant to make a statement in reply to the response received. As the litigated authority (the Commissioner) failed to provide a response by the Ministry of Internal Affairs to the complainant to allow her to reply – which was not done because it was just a possibility, not a statutory obligation – the Administrative Court adjudicated that the Commissioner thus violated the aforesaid provision of the LPDP and it ordered the Commissioner to renew the procedure in order to rectify this "shortcoming".

5.2.4. Acting by the Constitutional Court

Under Article 168, paragraph 1 of the Constitution of Serbia, the Commissioner, as a government authority, has the power to file motions for the Constitutional Court to review the constitutionality of laws and other regulations.

In the past period (2010-2012), the Commissioner filed motions with the Constitutional Court for constitutional reviews of three laws – the Law on Personal Data Protection (independently), the Law on Electronic Communications, the Law on Military Security Agency and Military Intelligence Agency and the Code of Criminal Procedure (together with the Ombudsman).

The Constitutional Court has so far ruled on motions for constitutional reviews of three laws, including the constitutional review of the Law on Electronic Communications in 2013. As regards the challenged provisions of Article 128 paragraphs 1 and 5 and Article 129 paragraph 4 of the Law on Electronic Communications (Official Gazette of RS No. 44/10), the Constitutional Court found them non-compliant with Article 41 paragraph 2 of the Constitution. Namely, with regard to the provision of Article 128 paragraph 1 of the Law on Electronic Communications, the Constitutional Court found that only courts had the power, where necessary for the conduct of criminal proceedings or to protect the security of the Republic of Serbia, to order (allow), for a limited period only and in a manner provided for by the law, a derogation from the constitutionally guaranteed inviolability of letters and other communication; therefore, this right could not be granted in accordance with the said Law. Furthermore, as regards the provision of Article 128 paragraph 5 of the Law on Electronic Communications, the Constitutional Court found it unconstitutional because it imposed an obligation on operators to retain data in a way which enables those retained data to be made available to competent authorities on their request without delay, without a court order. Finally, as the provision of Article 129 paragraph 4 of the Law on Electronic Communications is logically linked to the provision of Article 128 paragraph 5 of the Law on Electronic Communications, the Constitutional Court ruled that provision was unconstitutional as well.

As regards the motions filed jointly by the Commissioner and the Ombudsman, the Constitutional Court has not yet ruled on the motion for a constitutional review of Article 286 paragraph 3 of the Code of Criminal Procedure (Official Gazette of RS Nos. 72/2011 and 101/2011), which was filed on 28 May 2012. The challenged provision reads as follows: "Upon the orders of a public prosecutor, the police may, for the purpose of complying with the duty provided for in paragraph 1 of this Article, obtain records of phone communications and base stations used or identify the location from which such communication is conducted." In the opinion of the Commissioner and the Ombudsman, this provision is incompliant with Article 41

paragraph 2 of the Constitution of Serbia, because it allows for the application of special measures which derogate from the inviolability of letters and other communication without a court order, based only on an order issued by a public prosecutor to the police. The unconstitutionality of this view has already been affirmed in earlier decisions of the Constitutional Court.

The Commissioner is of the opinion that, in connection with the Code of Criminal Procedure, competent authorities should take swift action to define and adopt new legislative arrangements that would be fully compliant with the Constitution, while at the same time reflecting the realities of the actual operations. Furthermore, based on those new legislative arrangements, systematic efforts should be made to provide organisational, HR, IT, financial and all other assumptions for more efficient implementation of such arrangements.

6. COMMISSIONER'S COOPERATION

6.1. Cooperation in the Country

Cooperation with public authorities and organisations

Cooperation between the National Assembly of the Republic of Serbia and the Commissioner in 2013 took place within the framework of relations between the National Assembly and independent authorities, as provided for by the Rules of Procedure of the National Assembly.

The Commissioner submitted his 2012 Annual Report to the National Assembly of the Republic of Serbia in March 2013. The same Report was submitted to the President of the Republic, the Ombudsman and the Government of the Republic of Serbia in accordance with the Law.

The Commissioner's Annual Report on Implementation of the Law on Free Access to Information of Public Importance and the Law on Personal Data Protection in 2012 was reviewed by competent committees of the National Assembly, i.e. the Committee on the Judiciary, Public Administration and Local Self-Government in its session of 17 June 2013 and the Committee on Culture and Information in its session of 24 June2013.

Based on the Commissioner's recommendations, the Committees prepared Draft Conclusions and submitted them to the National Assembly for adoption after the review of the Report. On 26 June 2013, the National Assembly reviewed the Commissioner's Report on Implementation of the Law on Free Access to Information of Public Importance and the Law on Personal Data Protection in 2012 and adopted the Conclusions, which were published in the Official Gazette of the Republic of Serbia No. 57/13 of 3 July 2013 and posted on the Commissioner's website. The conclusions upheld the Commissioner's recommendations contained in the Report.

In November 2013, the Commissioner, in accordance with the law, submitted to the National Assembly a special Report on the Attitude of Republic-Level Public Enterprises and Other State-Owned Enterprises to the Law on Free Access to Information, due to the worryingly poor compliance of these entities, as public authorities, with their obligations under the law and their treatment of human rights. This Report has not been reviewed either by the competent committees of the National Assembly.

In May 2013, the competent Committee on Administrative, Budgetary, Mandate and Immunity Issues of the National Assembly approved the new enactments governing the operations of the Commissioner's Office and it December 2013 it gave its consent for the staffing of the announced vacancies, thus allowing the Office to develop further to match the increasing volume of its work.

On the invitation of certain parliamentary committees, the Commissioner attended also other parliamentary committee sessions and took part in public hearings and other events they organised in 2013, dealing with the issues of the role of independent public authorities in the protection and promotion of human rights, improvement of the legislative framework, public information and other issues of relevance for the Commissioner's sphere of competence.

Thus, the Commissioner attended the 13th session of the Committee on Health and Family of the National Assembly, which reviewed the Bill on Patient Rights and the Bill on Protection of Persons with Mental Disorders, submitted by the Government of Serbia. As a result, the Committee accepted the Commissioner's suggestions given from the viewpoint of data protection. Furthermore, the Commissioner also attended the 17th session of the Committee on Health and Family of the National Assembly, which addressed the issue of replacement of health insurance cards.

In 2013, the Commissioner also had talks with the President of the Republic and with individual Ministers in the Government. One of the outcomes of those talks is the fact that, in 2013, the competent services of the Government finally resolved the issue of lack of adequate office space, which resulted in a backlog in the handling of citizens' complaints, which, as at the date of this Report, includes about 3,500 pending cases.

The Commissioner has drawn the attention of the Government to specific issues of relevance for his scope of work, such as the issue of significant amendments to the Law on Personal Data Protection, the need for enactment of an implementing regulation on keeping and archiving of particularly sensitive personal data, the Action Plan on Implementation of the Personal Data Protection Strategy, implementation of the Law on Data Confidentiality, constitutionality of certain provisions of the Code of Criminal Procedure, amendments to the Law on Access to Information etc. These efforts have not yielded satisfactory results, other than the fact that the Government's strategic documents provide for the activities to be taken by the Government and/or competent public authorities in connection with those issues.

The Commissioner's relations with Ministries, other public authorities and local authorities were based on relations of the authority of the second instance to the authority of the first instance, provision of assistance through education seminars and other expert meetings and consultations on a daily basis between the representatives of these authorities and the

Commissioner's Office. Thus, the Commissioner took part in 57 conferences and other expert meetings organised by national and other authorities.

In 2013, the Commissioner maintained good cooperative relations with other independent and autonomous government authorities and supervisory bodies, notably the Ombudsman, the Anti-Corruption Agency and the State Audit Institution, on issues concerning possible improvements in their operations.

Cooperation with Civil Society Organisations

In 2013, the Commissioner continued developing well-established cooperation with the civil sector. Cooperation with the civil sector took place primarily through organisation of various expert meetings for the purpose of training and affirmation of the right to know and the right to personal data protection.

Thus, the Commissioner took part in 56 conferences, panels and other similar events organised by civil society organisations and associations, either alone or in cooperation with government institutions and/or international organisations, such as the United States Agency for International Development, the Organisation for Security and Cooperation in Europe and the Konrad Adenauer Foundation. These included the following organisations and associations: Transparency Serbia, Belgrade Centre for Human rights, European Movement in Serbia, Bureau for Social Studies, Centre for the Development of the Non-Profit Sector, Centre for Research, Transparency and Accountability, Partners for Democratic Change Serbia, Aarhus Centre, Victimology Society, Open Society Fund, Belgrade Open School, International Security Institute, Centre for European Policies, Youth Initiative, Coalition on Access to Justice, Centre for Minority Rights, Centre for Cultural Decontamination, "Biljana Kovacevic Vuco" Fund, Human Rights Centre Nis, Media Centre Nis, Centre for Euro-Atlantic Integration, Press Council, Lawyers' Committee For Human Rights, Autonomous Women's Centre, IT Society of Serbia, Civil Initiatives, Serbia's National Internet Domain Register, Centre for Euro-Atlantic Studies, Fund for Political Excellence etc.

In this context, it is also important to mention cooperation with the organisation Partners for Democratic Change Serbia and training of the members of civil society organisations in the field of personal data protection with the aim to empower the non-government sector to better recognize problems concerning personal data protection and to contribute towards their elimination, as well as cooperation with the Association of Serbian Banks, the American Chamber of Commerce, the Chamber of Commerce of Belgrade, the Magistrates' Association, the Association of Forensic Scientists in Occupational Medicine etc. in the sphere of education.

Media Relations and Media Reporting on Commissioner's Activities

In the course of 2013, the Commissioner continued building on the already good cooperation with the media. Reporting on the Commissioner's activities has overall been highly positive.

Cooperation was particularly good with the Independent Association of Journalists of Serbia, the Association of journalists of Serbia, the Association of Electronic Media and a number of exclusively online media, including Media Centre Nis, Istinomer and Juzne vesti, as well as with numerous printed and electronic media, as well as the Press Council.

Cooperation on Projects

For the purpose of implementing the project titled PEU SRE 000817 "Whistleblower Protection in Serbia", the Commissioner entered into the Accountable Grant Agreement with the UK Embassy in Belgrade (under Contribution Agreement No. BEL0115682) and with the Kingdom of Holland (under Contribution Agreement No. BEL0115682). The purpose of the Project is to improve whistleblower protection in Serbia and to raise the awareness of all relevant stakeholders in this field, from competent ministries to regulatory bodies to business associations and civil society organisations of the need for a whistleblower protection mechanism in Serbia in order to facilitate Serbia's progress towards EU integration, especially in the field of fight against corruption.

In April 2013, the Commissioner presented in a press conference the Model Law on Whistleblower Protection developed within the framework of this Project. The Model Law is published on the Commissioner's website, together with a financial report on the Project's implementation. A public debate on the Model Law was held until 19 April 2013.

In May 2013, the Commissioner hosted an International Conference in which he presented the Model Whistleblower Protection Law. The Conference attracted top foreign and Serbian experts in the field of whistleblower protection, with the aim of setting off and promoting discussion about different aspects of such protection. The participants discussed whistleblower protection in public and private sectors and in the sector of national security, the role of citizens' associations and the media in the protection of individuals and the role of information and communication technologies in whistleblower protection. The event gave the participants an opportunity to learn about Serbia's Model Whistleblower Protection Law and about current international trends in whistleblower protection. The outcome of the Conference was a publication on whistleblower protection which contains the documents presented at the Conference. The publication is available on the Commissioner's website.

The Commissioner submitted the Model Law on Whistleblower Protection to the Ministry of Justice in May 2013.

At the end of 2013, towards the end of the Project, the Commissioner held a promotion for the publication titled *Whistleblower Protection*, the first ever publication dedicated to whistleblower protection to be published in Serbia and in the Serbian language.

The final financial report on the implementation of this project is included in section 7 of this Report which deals with project funding and is also available on the Commissioner's website.

6.2. International and Regional Cooperation

The Commissioner's international cooperation in 2013 was successful, just like in previous years. In addition to the already established cooperation with offices of international and supranational organisations in Serbia (OSCE, United Nations Development Program – UNDP, the Delegation of the European Union to the Republic of Serbia, the Council of Europe, United States Agency for International Development - USAID), the Commissioner also established cooperation with other organisations and public authorities. Thus, the Commissioner cooperated with competent institutions in the region and in the countries of former Yugoslavia. This cooperation was also established 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 several important conferences the Commissioner established cooperation with authorities of other states responsible for both or one of his spheres of competence.

The Commissioner's representatives also participated in the following major international meetings:

- The 8th International Conference of Information Commissioner, held in Berlin on 18-20 September. The Conference was organised by the German Federal Commissioner for Data Protection and Freedom of Information and the Commissioner for Data Protection and Freedom of Informationof the City of Berlin;

- A meeting to harmonise the principles of national security and freedom of information, held in Pretoria, South Africa, on 5 and 6 April 2013, under the auspices of the Open Society Justice Initiative and the University of Pretoria. The Commissioner's representative participated on the invitation of the organiser, which also covered the participant's travel costs;

- A joint EU and Council of Europe conference titled "Building the Capacities of Law Enforcement and the Judiciary to Fight against Corruption in Serbia", held in April 2013;

- A roundtable held in Sarajevo on 25 and 26 February 2013,which saw the presentation of the deliverables of three separate working groups tasked with the drafting the Model Law on Protection of Persons who Report Corruption, the Model Law at the level of Bosnia and Herzegovina, the Model Law at the level of the Federation of Bosnia and Herzegovina and the Model Law of the Republic of Serbia;

- The international conference "Online Privacy – Consenting to your Future", about the process of modernisation of Convention 108 for the Protection of Individuals with Regard to Automatic Processing of Personal Data, on behalf of the Commissioner and the Council of Europe, held in Malta on 20 and 21 March 2013;

- The international conference "Whistleblowing for Change"about the protection of whistleblowers in the Republic of Serbia and the project "Whistleblower Protection" implemented by the Commissioner, organised by Transparency International and Heinrich Boll Stiftung in Berlin on 11 March 2013;

- A joint EU and Council of Europe conference titled "Building the Capacities of Law Enforcement and the Judiciary to Fight against Corruption in Serbia", held in Belgrade in April 2013;

- The European Conference of Data Protection and Privacy Commissionersheld in Lisbon on 16-17 May 2013, in which the members decided to admit the Commissioner for Information of Public Importance and Personal Data Protection of the Republic of Serbia to full membership and adopted the Resolution on Future Personal Data Protection in Europe, the Resolution on Ensuring Personal Data Protection in the Cross-Atlantic Free Trade Area and the Resolution on Ensuring Appropriate Personal Data Protection in Europol;

- The conference "The Right to Privacy, Covert Surveillance and Recording in Criminal Prosecution", organised by the International Institute for Safety in Belgrade;

- Participation in the Bureau of the Advisory Committeeon CoE Convention 108 for the Protection of Individuals with Regard to Automatic Processing of Personal Data, in the period 28-30 May;

- The meeting "Whistleblower Protection" organised by the Council of Europe on 29-30 May in Strasbourg, on behalf of the Commissioner and the Advisory Committeeon CoE Convention 108 for the Protection of Individuals with Regard to Automatic Processing of Personal Data;

- The workshop "Data Protection on the Internet – New Challenges", held in Zagreb in June 2013 to exchange knowledge and experiences in the field of personal data protection in connection with the use of modern information and communication technologies and promotion and strengthening of cooperation between the competent institutions of the EU and those in the countries of the region;

- The International Conference of Data Protection and Privacy Commissionersheld in Warsaw in July 2013.

- A meeting of the European Commission's "Article 29" Working Party held in Brussels, first on 26 and 27 February and then on 2 and 3 October 2013. In keeping with its advisory status, the Working Party took stands on certain disputed issues, thereby significantly influencing EU's policy-making in the field of personal data protection. It adopted opinion on: sending of passengers' personal data to third countries; mobile applications; the so-called legitimate interest; reform of key European documents on personal data protection etc.;

- A plenary session of the Advisory Committee held in Strasbourg from 15 to 18 October 2013,with the primary objective of preparing Explanations for Convention 108, to be reviewed by an *ad-hoc*Committee which would draft the final text of the Convention for adoption by the Council of Ministers;

- The 25th Case Management Workshop, held in Sarajevo, which discussed the actions to be taken by commissioners with regard to video surveillance in private and public sectors;

- Regional Conference "Toward Efficient Public Procurement in the Western Balkans", organised as part of the project "Towards Efficient Public Procurement Mechanisms in

(Potential) EU Candidate Countries", implemented by the Open Society Fund of Serbia and the Centre for Development of the Non-Profit Sector in Serbia, in cooperation with other organisations in the region;

The Commissioner also hosted and participated in several international and regional events in Belgrade, including:

- The 15th CEEDPA (Central and East Europe Data Protection Authorities) Conference held in Belgrade on 10-12 April, attended by heads and representatives of competent authorities from 14 Eastern and Central European countries, including: Albania, Bosnia and Herzegovina, Bulgaria, Croatia, the Czech Republic, Hungary, Macedonia, Montenegro, Poland, Russia, Slovakia, Slovenia, Serbia and Ukraine;

- A conference held in Belgrade to mark the 28th of January, commended as the Personal Data Protection Day,in which the Commissioner presented the key challenges in the field of personal data protection and in his work;

- A conference to mark the World Right to Know Day, the 28th of September, which included the presentation of awards to public authorities for their performance and contribution to the exercise of the right to know and also provided an opportunity to present publication number 2, *Free Access to Information of Public Importance – Views and Opinions of the Commissioner*;

In 2013, the Commissioner continued cooperation with the OSCE Mission to Serbia on activities from previous years in the field of exercise of the right information held by public authorities, particularly on organisation of commendation of the Right to Know Day, 28 September.

In 2013, the Commissioner also met on several occasions and had several talks with other representatives of European and international institutions and of neighbouring countries about the improvement of human rights and the fight against corruption, personal data protection and secret files. The Commissioner was a host and talked to ambassadors and representatives of international organisations and states, such as Head of the Delegation of the European Union to the Republic of Serbia, Head of the OSCE Mission to Serbia, Head of the Council of Europe Office in Belgrade, a representative of the United States Agency for International Development (USAID) in Serbia, Head of the country unit of the EC Directorate Enlargement, members of the EC Expert Committee on the Rule of Law, a representative of the US Embassy in Belgrade, a representative of the Public Management and e-Government Agency of the Kingdom of Norway, a member of the MATRA Programme delegation from the Embassy of the Kingdom of Holland etc.

In July 2013, the Commissioner received a working visit from the Agency for the Protection of Personal Data and Freedom of Information of Montenegro and that Agency's Council. The parties exchanged experiences within their scope of work and made plans for future cooperation.

7. ABOUT THE COMMISSIONER'S ASSETS AND OFFICE

Assets – Funds Received and Expenses Incurred by Commissioner

The operations of the Commissioner and his Office are funded from the budgetof the Republic of Serbia.

Premises

On 14 October 2013, the Commissioner moved from his two temporary addresses to the office building in Bulevar Kralja Aleksandra 15, where offices have been allocated to him under the Resolution of the Committee on Housing and Allocation of Official Buildings and Offices of 2 August 2013. The offices are on the fourth and fifth floors and are sufficient for the Commissioner's needs. This addressed the years-long issue of lack of appropriate office space, which created a huge backlog in the work of the Commissioner which he could not handle on time due to staff constraints and an ever-increasing inflow of new cases. The backlog at this moment is about 3,500 pending cases.

Equipment

The equipment currently at the Commissioner's disposal – including computer equipment in particular – is insufficient to cover the actual needs, because the Commissioner's Office hired 13 civil servants at the end of the year; however, budget funds for the purchase of the necessary equipment have been secured. Some of the equipment is the property of the Administration for Joint Affairs of Republic Authorities, but the majority of it was purchased from the Commissioner's budget in past years.

Thus, in 2013, equipment worth RSD 2,326,860.16 was purchased from the Commissioner's budget allocation – primarily computer equipment, including antivirus software, as well as photocopiers, phones and some of the missing furniture for the newly-allocated offices.

The Commissioner also received, free of charge, computer equipment worth RSD 27,800.00 after the completion of a project implemented by the United Nations Development Programme (UNDP) in Serbia.

Budget

Approved budget allocation

The Law on Budget of the Republic of Serbia for 2013 (Official Gazette of RS No. 114/2012) **approved an allocation of RSD 145,445,000.00 to the Commissioner**, in accordance with the Commissioner's Draft Financing Plan. **The budget revision** carried out in July (Official Gazette of RS No. 59/2013) reduced the Commissioner's allocation by 5.5%, so **the Commissioner's final allocation was RSD 137,445,000.00** (Financing Source 01).

Funds allocated for project implementation

The Commissioner's budget includes also the amount of **RSD 4,298,044.43** for the implementation of the project "Whistleblower Protection in Serbia" **(**FinancingSource 05). This was a project from 2012 that was completed in 2013, under the Accountable Grant Agreement signed by the Commissioner with the UK Embassy in Belgrade and the Kingdom of Holland. However, **the funds allocated for this Project were technically transferred to the Commissioner's budget account and are thus shown in the execution of his budget, although they were not *de facto* neither intended for nor used by the Commissioner's institution or the incumbent personally.**

The purpose of the project was to improve whistleblower protection in Serbia and to raise the awareness of all relevant stakeholders in this field, from competent ministries to regulatory bodies to business associations and civil society organisations of the need for a whistleblower protection mechanism in Serbia in order to facilitate Serbia's progress towards EU integration, especially in the field of fight against corruption.

Budget Execution

The Commissioner's budget execution in 2013 was RSD 115,083,498, or 79% of the funds approved under the Law on Budget of the Republic of Serbia for 2013 or 84.35% of the funds approved by the budget revision of July 2013.

This under-utilisation of the approved funding for 2013 by the Commissioner can in part be attributed to the fact that the newly-allocated offices were not ready for occupancy until mid October, meaning that the Commissioner could begin hiring new officers and equipping his offices only after that. For these reasons, the Human Resources Plan, which included provisions for the employees' salaries, could not be implemented either.

Table 5 - Execution of the Commissioner's budget in 2013

Function	Source of finance	Economic classification	Description	Funds approved under the Law on Budget of the Republic of Serbia (Official Gazette of	Funds approved after budget revision (Official Gazette of RS No. 59/2013)	Executed	% of execution

				RS No. 114/2012)			
60	01	411	Salaries and fringe benefits	96.100.000.00	91.250.000.00	76.320.733.09	83.64
		412	Social contributions payable by employer	17.203.000.00	16.343.000.00	13.582.362.83	83.11
		413	Compensations in kind	250.000.00	250.000.00	244.735.00	97.89
		414	Social benefits to employees	1.086.000.00	1.086.000.00	383.915.98	35.35
		415	Compensation for employees	2.400.000.00	2.150.000.00	1.549.143.21	72.05
		416	Rewards and bonuses	180.000.00	180.000.00	179.830.00	99.91
		421	Recurrent expenses	4.670.000.00	4.670.000.00	4.147.985.10	88.82
		422	Travel expenses	2.950.000.00	2.260.000.00	1.355.401.69	59.97
		423	Contract services	11.055.000.00	10.505.000.00	9.390.861.59	89.39
		425	Current repairs and maintenance	2.150.000.00	1.720.000.00	1.595.725.55	92.77
		426	Material	4.770.000.00	4.300.000.00	3.752.529.77	87.27
		482	Taxes, statutory charges and penalties	400.000.00	400.000.00	253.414.00	63.35
		512	Machines and equipment	1.900.000.00	2.000.000.00	1.999.260.16	99.96
		515	Salaries and fringe benefits	331.000.00	331.000.00	327.600.00	98.97

SUBTOTAL 01 Budget Revenues				145.445.000.00	137.445.000.00	115.083.497.97	83.73
60	05	421	Recurrent expenses		238.300.00	238.300.00	100.00
		422	Travel expenses		605.550.79	605.550.79	100.00
		423	Contracted services		3.066.041.80	3.066.041.80	100.00
		465	Other subsidies and transfers		388.151.84	388.151.84	100.00
SUBTOTAL 05 Grants by foreign countries					4.298.044.43	4.298.044.43	100.00
60	15	421	Recurrent expenses		23.400.00	23.400.00	100.00
		422	Travel expenses		290.00	290.00	100.00
		423	Contracted services		1.062.018.00	1.062.018.00	100.00
		465	Other subsidies and transfers		14.747.30	14.747.30	100.00
SUBTOTAL 15 Unspent grants from earlier years					1.100.455.30	1.100.455.30	100.00
TOTAL FOR FUNCTION 160:					142.843.499.73	120.481.997.70	84.35

Apart from staff salaries, fringe benefits and contributions, the largest share of the Commissioner's expenses in 2013 was attributable to recurrent operating costs, including communication and computer services, current maintenance and repairs of buildings and equipment, fuel costs, costs of translation and staff professional advancement, costs associated with participation in international conferences and membership in relevant international bodies, costs of insurance for employees, vehicles and equipment, costs of purchase, maintenance and use of vehicles and costs of fees for external expert services.

Most of the costs of maintenance and repairs of buildings and equipment were due to the relocation of the Commissioner's Office to the new address in Bulevar Kralja Aleksandra 15.

Spending of funds allocated for the project "Whistleblower Protection in Serbia"

As this is a two-year project, implemented in 2012 and 2013, the present Report deals with the spending of funds in 2013, while the spending in 2012 was covered in the Commissioner's 2012 Annual Report, which is available on the Commissioner's website at http://www.poverenik.rs/sr/o-nama/projekti/zavrseni-projekti/1391-poverenik-sprovodi-projekt-qzatita-uzbunjivaaq.html .

For the purpose of implementation of this project in 2013, unspent funds from the grant by the UK Embassy from 2012 in the amount of RSD 1,100,455.30 (£ 7,329.04) were carried forward and an additional payment of RSD 1,453,862.42 (£ 10,957.00) was made in January 2013, raising the total grant by the UK Embassy in 2013 to RSD 2,554,317.72 (£ 18,286.04).

Of the total funds available under the UK Embassy grant in 2013, RSD 2,365,893.00 was spent on implementation of project activities and **the unspent amount of RSD 188,424.72 (£1,407.16) was returned to the donor.**

Most of the funding was spent on remuneration for persons hired to implement the project activities – the total of RSD 2,159,554.00 (£ 15,460.94).

In 2013, for the purpose of organizing an International Conference to present the Model Whistleblower Protection Law that provides an appropriate and comprehensive regulatory framework for whistleblower protection under Project 24195 – "Whistleblower Protection in Serbia", based on the Contribution Agreement BEL0115682, the Dutch Embassy transferred the amount of RSD 2,844,182.01 (£ 20,808.00). The outcome of the International Conference was a publication on whistleblower protection which contains the documents presented at the Conference.

Of the total grant received from the Dutch Embassy, RSD 2,629,707.59 (£19,188.84) was spent on implementation of project activities, leaving an **unspent amount of RSD 214,474.42 (£ 1,619.16), which the Commissioner returned to the Dutch Embassy.**

Commissioner's Office

For the purpose of exercising the powers with which this institution is vested under the Law on Free Access to Information of Public Importance and by the Law on Personal Data Protection, according to the Human Resources Plan, in 2013 the Commissioner should have had 69 employees, excluding the officials appointed by the National Assembly (the Commissioner and two Deputy Commissioners). The Ministry of Finance had agreed to this arrangement and secured budget funding. Similarly as in earlier years, in 2013 the Human Resources Plan could not be achieved due to the lack of adequate office space for the Commissioner in the first ten months of 2013.

In 2013, certain changes were made in the work organisation at the Commissioner's Office following the passing of:

- The Decision on Operations of the Office of the Commissioner for Information of Public Importance and Personal Data Protection No. 021-01-66/2013 of 25 April 2013, which was approved by the Committee on Administrative, Budgetary, Mandate and Immunity Issues of the National Assembly of the Republic of Serbia by its enactment 21 No. 02-1726/13 of 17 May 2013, and

- The Bylaw on Internal Organisation and Job Classification No. 110-00-2/2013-04, which was approved by the Committee on Administrative, Budgetary, Mandate and Immunity Issues of the National Assembly of the Republic of Serbia by its enactment 21 No. 02-1727/13 од 17 May 2013.

According to the Bylaw on Internal Organisation and Job Classification, the total number of employees at the Commissioner's Office has been increased by about 36% (to a total of 94 employees) compared with the previous Bylaw. The increase in the number of employees was necessary because of the constantly increasing inflow of cases, both in the field of freedom of information and in the field of data protection, and also because there was a need to introduce a number of new posts for junior advisors in order to facilitate the recruitment and training of junior staff and to introduce IT posts, which are of particular importance in the field of personal data protection.

Furthermore, implementation of the Law on Personal Data Protection requires a large number of direct inspections and it is therefore necessary to create assumptions for continued intensive exercise of these very broad powers and responsibilities of the Commissioner in the field of personal data protection, as the oversight authority in charge of implementation of this Law and the authority of second instance in the protection of this right. Also, the number of cases in the field of freedom of information has been increasing constantly.

At the beginning of 2013, the Commissioner's Office had 41 employees, but one civil servant left the Office in the first quarter of the year for a senior position in a public enterprise.

As at 31 December 2013, the Commissioner's Office had 48 employees, i.e. its staffing level was approximately 50% of that envisaged by the Bylaw on Internal Organisation and Job Classification.

In 2013, new civil servants were hired only towards the end of the year, after the Commissioner was given use of new office space. Most of them were either taken over from other public authorities or hired on the basis of internal job announcements.

Technical jobs needed to ensure the functioning of the Office itself (technical support for the IT system etc.) were staffed by persons hired under service contracts as the needs arose. Specifically, the Office hired two persons in January and one person in the period February-December 2013.

8. COMMISSIONER'S PROPOSALS AND RECOMMENDATIONS

Judging by the reported data, significant results have been achieved in both fields of competence of the Commissioner: freedom of information and the right to personal data protection.

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

Elimination of the identified obstacles in the field of freedom of information would contribute to the much needed improvements in the field of democratic control of the government by the public, in particular in the context of the fight against corruption and various forms of abuse, all of which are issues the Law on Free Access to Information has the potential to address properly.

In the field of personal data protection, it is necessary first and foremost to create a suitable legislative framework, underpinned by relevant constitutional principles and international rules and to introduce legislative provisions that would regulate data processing and protection in those areas where this has not been done or has been done in an incomplete and/or unsuitable fashion. This would enable the citizens to exercise their constitutionally guaranteed right to personal data protection, while at the same time also increasing the effectiveness of the Commissioner's activities.

The Commissioner believes that public authorities have not taken all necessary measures to comply with his recommendations, which is why most of them recur every year.

In view of the foregoing, and 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 expects the following:

1. That the competent Committees of the National Assembly review the Commissioner's 2013 Annual Report and, on the basis of the Recommendations contained herein, adopt conclusions and recommendations with measures aimed at improving the situation, which would then be forwarded to the National Assembly for discussion,

2. That the National Assembly review the conclusions and recommendations submitted by competent committees and pass a resolution on their implementation, thereby supporting the Commissioner's 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.

The Commissioner hereby makes the following proposals to the National Assembly:

1) 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,

2) Amendments to the Rules of Procedure of the National Assembly should provide for and/or improve mechanisms for supervising compliance with the resolutions passed by the National Assembly pursuant to Annual Reports submitted by the Commissioner and other independent public authorities,

3) The National Assembly should oversee 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 Commissioner, with particular focus on responsibility for omissions in the work of public authorities,

4) The National Assembly should continue with the practice of providing appropriate support for the Commissioner's independence.

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

1) Modifications of the Law on Access to Information should provide for an improved proactive exercise of the freedom of information, vest the Commissioner with powers to give his opinions in the legislative process and to file petitions for infringement proceedings for violations of rights, harmonise the fines imposed for infringements with the Law on Misdemeanours and eliminate any scope for any divergent interpretation of specific provisions that would be detrimental to proper implementation of the Law, in consultation with the Commissioner,

2) Measures should be taken to ensure that the mechanisms for infringement liability and other forms of liability for violations of the freedom of information are fully functional through more intensive and more comprehensive direct inspection of compliance with the Law on Access to Information by the administrative inspectorate of the ministry in charge of justice,

3) The provisions of the law imposing a responsibility on the Government to enforce the Commissioner's final, enforceable and binding decisions, where necessary and when demanded by the Commissioner, should be implemented consistently,

4) Uniformity should be ensured in the acting of competent courts when enforcing the Commissioner's resolutions which impose fines, through improvements in the relevant provisions of the Law on Access to Information which courts tend to construct differently in practice,

5) The Government should ensure implementation of the Law on Data Confidentiality through urgent enactment of relevant secondary legislation, without which the Law remains unenforceable, while at the same time amending to Law to ensure its actual implementation in practice or enacting a completely new Law,

6) The Government should, as a matter of priority, provide a relevant legislative framework to afford protection to the so-called whistleblowers, in accordance with the Council of Europe Resolution 1729 (2010),

7) The Government should propose a new text of the Law on Personal Data Protection, to ensure a more rounded and better regulatory framework in this field. In doing so, the Government should take into account the suggestions made by the Commissioner, as the personal data protection authority, and harmonise the LPDP with relevant European documents which are currently being amended and/or modernised,

8) The Government should propose amendments/modifications of a number of sector-specific laws which usually tend to contain incomplete or inappropriate provisions governing personal data protection in the respective fields, while some of the sector-specific laws contain no provisions at all that would regulate this subject matter. In this context, the Government should continually support the Commissioner's efforts to ensure compliance with the constitutional provision which stipulates that personal data protection must be regulated by laws, rather than by secondary legislation,

9) With respect to the situation concerning protection for privacy in the sectors of security and electronic communications, the Government should ensure the 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,

10) The Government should propose amendments to the Law on Criminal Procedure, in compliance with the motion for a constitutional review filed by the Commissioner and the Ombudsman,

11) The Government should propose amendments to the Law on Security Checks in order to improve the situation in this field,

12) The Government should pass an enactment on the manner of filing and the safeguards to protect particularly sensitive data,

13) The Government should adopt an Action Plan on implementation of the Personal Data Protection 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 timeframe for implementation of those duties.

Support for and implementation of the measures proposed above are instrumental for ensuring further improvements with regard to freedom of information and personal data protection. The Commissioner is available for cooperation and any assistance the competent authorities may need in their efforts to ensure compliance with the above recommendations.

COMMISSIONER

Rodoljub Sabic

Done in Belgrade, on 27 March 2014

No: 021-01-00227/2013-01