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PROTECTOR OF CITIZENS

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# PROTECTOR OF CITIZENS 2012 ANNUAL REPORT

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## CONTENTS

INTRODUCTORY NOTE, OVERALL ASSESSMENT OF RESPECT FOR RIGHTS OF CITIZENS AND THE MOST IMPORTANT INFORMATION ON ACTIVITIES OF THE PROTECTOR OF CITIZENS IN 2012 .....	13
I. LEGAL FRAMEWORK AND SCOPE OF WORK OF THE PROTECTOR OF CITIZENS .....	35
1.1. LEGAL FRAMEWORK .....	35
1.2. SCOPE OF WORK .....	36
1.3. NEEDED MODIFICATIONS OF THE LEGAL FRAMEWORK REGULATING OPERATION OF THE PROTECTOR OF CITIZENS .....	38
II. OVERVIEW OF ACTIVITY AREAS .....	41
2.1. SECTOR OF PROTECTION OF THE RIGHTS OF PERSONS DEPRIVED OF LIBERTY AND NATIONAL PREVENTIVE MECHANISM .....	41
2.1.1. Status Overview .....	41
2.1.2. Statistical Overview of Citizens' Complaints in the Area of Protection of Persons Deprived of Liberty .....	43
2.1.3. Achievements in 2012 in the Area of Protection of the Rights of Persons Deprived of Liberty .....	45
2.1.4. National Preventive Mechanism .....	53
2.1.5. Proposals for Improving the Position of Citizens in Relation to the Authorities .....	55
2.2. PROTECTION OF THE RIGHTS OF NATIONAL MINORITIES .....	57
2.2.1. Status Overview .....	57
2.2.2. Statistical Overview of Citizens' Complaints in the Area of Protection of the Rights of National Minorities .....	60
2.2.3. Achievements in 2012 in the Area of Protection of the Rights of National Minorities .....	62

2.2.4.	Proposals for Improving the Position of Citizens in Relation to the Authorities .....	65
<b>2.3.</b>	<b>CHILDREN'S RIGHTS .....</b>	<b>67</b>
2.3.1.	Status Overview .....	67
2.3.2.	Statistical Overview of Complaints in the Area of Protection of Children's Rights .....	70
2.3.3.	Achievements in the Area of the Protection of Children's Rights .....	73
2.3.4.	Proposals for Improving the Position of Citizens in Relation to the Authorities.....	78
<b>2.4.</b>	<b>GENDER EQUALITY AND LGBT RIGHTS .....</b>	<b>80</b>
2.4.1.	Status Overview .....	80
2.4.2.	Statistical Overview of Complaints in the Area of Protection of Gender Equality and LGBT Rights .....	83
2.4.3.	Achievements in the Area of the Protection of Gender Equality and LGBT Rights .....	85
2.4.4.	Proposals for Improving the Position of Citizens in Relation to the Authorities .....	87
<b>2.5.</b>	<b>RIGHTS OF PERSONS WITH DISABILITIES .....</b>	<b>89</b>
2.5.1.	Status Overview .....	89
2.5.2.	Statistical Overview of Complaints in the Area of Protection of the Rights of Persons with Disabilities .....	91
2.5.3.	Achievements in the Area of Protection of the Rights of Persons with Disabilities .....	93
2.5.4.	Proposals for Improving the Position of Citizens in Relation to the Authorities .....	98
<b>2.6.</b>	<b>SECTOR OF INTERNAL AFFAIRS .....</b>	<b>100</b>
2.6.1.	Proposals for Improving the Position of Citizens in Relation to the Authorities .....	102
<b>2.7.</b>	<b>SECTOR OF FINANCE, ECONOMY, REGIONAL DEVELOPMENT, PRIVATIZATION, PROPERTY Directorate, NATIONAL EMPLOYMENT SERVICE, BANKRUPTCY AND PUBLIC PROCUREMENT OFFICE .....</b>	<b>103</b>
2.7.1.	Proposals for Improving the Position of Citizens in Relation to the Authorities .....	113
<b>2.8.</b>	<b>SECTOR OF FOREIGN AFFAIRS AND DIASPORA, JUSTICE, PUBLIC ADMINISTRATION AND REHABILITATION .....</b>	<b>115</b>
2.8.1.	Proposals for Improving the Position of Citizens in Relation to the Authorities .....	122

2.9. SECTOR OF DEFENSE .....	123
2.9.1. Proposals for Improving the Position of Citizens in Relation to the Authorities .....	129
2.10. SECTOR OF PUBLIC ADMINISTRATION, LOCAL SELF-GOVERNMENT, DELEGATED TASKS TO LOCAL SELF-GOVERNMENT AND KOSOVO AND METOHIJA .....	130
2.10.1. Proposals for Improving the Position of Citizens in Relation to the Authorities .....	136
2.11. SECTOR OF URBAN PLANNING, CONSTRUCTION AND CADASTRE, NATURAL DISASTERS AND RESTITUTION .....	137
2.11.1. Предлози за побољшање положаја грађана у односу на органе власти .....	148
2.12. SECTOR OF AGRICULTURE, TRADE, FORESTRY AND WATER MANAGEMNT, ENVIRONMENT, INFRASTRUCTURE, ENERGY AND MINING, TRAFFIC, HYDROMETEOROLOGY AND COMMODITY RESERVES .....	149
2.12.1. Proposals for Improving the Position of Citizens in Relation to the Authorities .....	153
2.13. SECTOR OF EDUCATION AND SCIENCE, YOUTH AND SPORTS, CULTURE, INFORMATION AND INFORMATION SOCIETY AND INTELLECTUAL PROPERTY .....	154
2.13.1. Proposals for Improving the Position of Citizens in Relation to the Authorities .....	158
2.14. SECTOR OF HEALTH .....	160
2.14.1. Proposals for Improving the Position of Citizens in Relation to the Authorities .....	168
2.15. SECTOR OF SOCIAL PROTECTION, PENSION AND DISABILITY INSURANCE .....	170
2.15.1. Proposals for Improving the Position of Citizens in Relation to the Authorities .....	179
2.16. SECTOR OF LABOUR .....	180
2.16.1. Proposals for Improving the Position of Citizens in Relation to the Authorities.....	185
2.17. SECTOR OF SECURITY SERVICES AND INDEPENDENT CONTROL AUTHORITIES .....	186
2.17.1. Proposals for Improving the Position of Citizens in Relation to the Authorities .....	189

2.18. STATISTICAL OVERVIEW OF CITIZEN COMPLAINTS CONCERNING MALADMINISTRATION .....	191
III. COOPERATION OF THE PROTECTOR OF CITIZENS .....	197
3.1. COOPERATION WITH PUBLIC AUTHORITIES WHOSE WORK THE PROTECTOR DOES NOT CONTROL .....	200
3.2. COOPERATION WITH CIVIL SOCIETY AND ACADEMIC COMMUNITY .....	202
3.3. COOPERATION WITH THE MEDIA .....	204
3.4. INTERNATIONAL COOPERATION AND PROJECTS .....	207
3.4.1. Activities of the Protector of Citizens as National Institution for Promotion and Protection of Human Rights .....	209
3.4.2. Projects .....	211
IV. TOTAL NUMBER AND CLASSIFICATION OF COMPLAINTS .....	213
4.1. CLASSIFICATION OF COMPLAINTS BY THE TYPE OF RIGHTS VIOLATIONS ....	217
4.2. CLASSIFICATION OF COMPLAINTS ACCORDING TO AUTHORITIES THEY REFER TO .....	220
V. RECOMMENDATIONS AND LEGISLATIVE INITIATIVES OF THE PROTECTOR OF CITIZENS AND PROPOSALS FOR EVALUATION OF CONSTITUTIONALITY .....	223
5.1. RECOMMENDATIONS .....	223
5.2. OPINIONS .....	227
5.3. LEGISLATIVE INITIATIVES AND PROPOSALS FOR ASSESMENT OF CONSTITUTIONALITY .....	229
ANNEX I	
Human and Material Resources .....	232
ANNEX II	
Financial Statement .....	236

## LIST OF TABLES AND CHARTS

Table 1 – Types of Protector of Citizens’ activities .....	20
Table 2 – Division of complaints per Sectors; their number and percentage in comparison to the total number of complaints .....	21
Table 3 – Ministries that did not act upon recommendations .....	24
Table 4 – Local self-government authorities that did not act upon recommendations .....	24
Table 5 – An overview of the number of recommendations according to areas and the fulfilment percentage .....	25
Table 6 – Violation of rights of persons deprived of liberty pointed to by complainants .....	44
Table 7 – Special rights of persons deprived of liberty .....	44
Table 8 – Violations of specific rights of national minorities, their number and percentage share in the 211 recorded violations of these rights .....	61
Table 9 – Specific rights in the area of children’s rights, their number and percentage share in the 669 recorded violations of these rights .....	71
Table 10 – Specific rights in the area of gender equality .....	84
Table 11 – Violations of specific rights of persons with disabilities, their number and percentage share in the 98 reported violations of these rights .....	93
Table 12 – Division of complaints by good governance sectors .....	191
Table 13 – Most common violations of the citizens’ right to “good governance” .....	192
Table 14 – Most common violations of economic and social rights .....	193
Table 15 – Most common violations of civil rights .....	193
Table 16 – The outcome of the investigations of good governance complaints in 2012 .....	194
Table 17 – The outcome of the investigations of good governance complaints in 2012 .....	195
Table 18 – Outcome of investigations of complaints from 2012 and from previous years, overview as of 31 December 2012 .....	214
Table 19 – Data on the of the complainants, and manner of complaint submission ...	214

Table 20 – Division of complaints by sectors, their number and percentage in the total number of complaints .....	215
Table 21 – Data about the percentage of complaints from different districts .....	216
Table 22 – Types of violated rights, their number and percentage in the total number of complaints .....	217
Table 23 – Types of violated rights, their number and percentage in the total number of all the recorded violations of the rights in the complaints .....	217
Table 24 – Overview of violated rights in the field of “good governance”, their number and percentage in the total number of all the recorded violations of these rights in the complaints .....	218
Table 25 – Overview of violated economic, social and cultural rights, their number and percentage in the total number of the recorded violations of these rights in the complaints .....	218
Table 26 – Overview of violated civil and political rights, their number and percentage in the total number of recorded violations of these rights in the complaints .....	219
Table 27 – Classification of complaints according to authorities they refer to, and their percentage in the total number of complaints .....	220
Table 28 – Classification of complaints according to authorities they refer to, and their percentage in the total number of complaints .....	221
Table 29 – Classification of complaints according to authorities they refer to .....	221
Table 30 – Classification of complaints according to various authorities they refer to .....	222
Table 31 – Number and percentage of the sent recommendations in relation to the area of law .....	223
Table 32 – Authorities that received recommendations .....	224
Table 33 – Authorities that failed to comply with recommendations and the number and percentage of unfulfilled recommendations in relation to the total number of unfulfilled recommendations .....	225
Table 34 – Number and percentage of sent and unfulfilled recommendations .....	225
Table 35 – Ministries that failed to comply with recommendations .....	226
Table 36 – Local self-government authorities that failed to comply with recommendations .....	226
Table 37 – Overview of the number and percentage of fulfilled recommendations in particular areas .....	226
Table 38 – Rights that are improved by the opinions of the Protector of Citizens .....	228
Table 39 – Execution of the 2012 Budget .....	236
Table 40 – Projects completed in 2012 .....	239

Chart 1 – Number of complaints (in percentages) to the work of specific authorities in comparison to the total number of complaints .....	21
Chart 2 – Ratio between recommendations in the area of protection of the rights of persons deprived of liberty in 2011 and 2012 (an increase by 157.45%) .....	45
Chart 3 – Complaints regarding violated rights of national minorities in comparison with other violated rights .....	60
Chart 4 – Complaints by national minorities about the work of certain authorities .....	61
Chart 5 – Complaints regarding violations of children's rights in comparison with other violated rights .....	70
Chart 6 – Complaints concerning the work of authorities in the area of child rights .....	72
Chart 7 – Violations of rights in the area of gender equality .....	83
Chart 8 – Complaints concerning the work of authorities in the area of gender equality .....	84
Chart 9 – Complaints about certain authorities in the area of rights of persons with disabilities .....	92
Chart 10 – Types of violations of the citizens' right to "good governance" .....	192
Chart 11 – Complaints by the authorities to which they refer .....	193
Chart 12 – Good governance cases in 2012 .....	194
Chart 13 – Reasons for rejection of good governance complaints .....	195
Chart 14 – Number of articles in daily newspaper .....	204
Chart 15 – Overview of the number of TV reports .....	205
Chart 16 – The Protector of Citizens in media 2008–2012 .....	206
Chart 17 – Work on complaints received in 2012, overview as of 31 December 2012 .....	213
Chart 18 – Division of complaints by violated rights in the field of vulnerable categories of citizens and in the area of good governance .....	215
Chart 19 – Overview of recommendations by area of law .....	224
Chart 20 – Percentage of failed recommendations implementation .....	225
Chart 21 – Number and types of referred recommendations of the Protector of Citizens .....	227
Chart 22 – Number and types of filed legislative and other initiatives .....	230
Chart 23 – Number and outcome of the filed legislative and other initiative .....	231



## INTRODUCTORY NOTE, OVERALL ASSESSMENT OF RESPECT FOR RIGHTS OF CITIZENS AND THE MOST IMPORTANT INFORMATION ON ACTIVITIES OF THE PROTECTOR OF CITIZENS IN 2012

Dear Reader,

During the reporting period, the National Assembly elected me Protector of Citizens in the second term, with the consent of MPs<sup>1</sup> from all parliamentary parties. Such kind of election was positively accepted by the citizens of our country, and also by people outside of the country, not because of the personality of the Protector of Citizens, but because this shows that Serbia can have the Ombudsman institution in the way which the world has been striving towards for decades and centuries – i.e. to make it generally accepted and an authoritative break to the arbitrariness of any form of administration, and to demonstrate with its activities that the centre of its attention are the citizens, and not gaining power.

This Annual Report also contains general and specific assessments of and information on respect for rights of citizens (primarily human and minority rights); informs about the most important and most characteristic identified deficiencies in the work of the public authority; presents proposals for the improvement of the legality and regularity of the work of the public authority, and provides detailed information on activities and expenditures of this authority.

### ***Human Rights Situation***

Human rights situation is a reflection of prevailing social values and the power of institutions. Protection and promotion of human rights are also encouraged and embodied by prominent individuals. In 2012, Serbia lost its most prominent figure in the area of human rights of our time – Prof. Dr. Vojin Dimitrijević. Verica Barač, an anti-corruption heroine, also passed away. The Protector of Citizens had the honour of working closely with both of them.

Human rights situation in 2012 was marked by:

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<sup>1</sup> All gender-specific words used in this Report denote and refer equally to both sexes.

- 1) Decrease in the exercise of economic, social and cultural rights of citizens;
- 2) Improvement of some political and civil rights, and simultaneous decrease in the exercise of the others;
- 3) Breaking the vicious circle of omissions in judicial reform;
- 4) Stagnation (at a low level) of adherence to the rule of law;
- 5) Clear demonstration of political will to combat corruption, followed by its trivialization in the media;
- 6) Absence of consistent administrative reform, particularly in terms of depoliticisation and profesionalisation, as a precondition for its lawful and proper operation.

Weak institutions, supremacy of political will and populism over the rule of law, media wars, and bureaucracy and formalism represent a major obstacle for greater respect for human rights and establishment of the rule of law in Serbia.

1) Economic and social rights – An increase in poverty and unemployment has increased the number and amount of requests submitted to the government. Serbia has been failing to provide to the most vulnerable groups of people the minimum adequate standard of living, sufficient social aid, adequate health care, minimum education, assistance with pregnancy and maternity, sickness, disability, unemployment, lonely childhood and old age. Access to the most endangered cultural and scientific achievements, which are also guaranteed rights, is within the limits of the statistical error.

Tens of thousands of citizens of Serbia are not in a position to fully exercise constitutionally guaranteed rights and the health and pension care rights regulated by law with compulsory statutory insurance. These citizens are, *inter alia*, children, childbearing women, mothers on maternity leave, single parents with children under seven years old, and the elderly, although these categories of citizens have health care guaranteed by the Constitution from public funds, if not provided otherwise. This is due to the fact that for years thousands of employers have not been fulfilling their statutory obligations to pay contributions to the health and pension fund. The competent public authorities are not taking any statutory measures against them, and due to applicable regulations, consequences are borne by employees and their family members. They are deprived of their right to full health care provided from the health fund and, most commonly, health care in general, because, most of the time, they cannot afford treatment without insurance.

Inefficient and selective control of contributions, apart from affecting the exercise of the right of employees and their families, has at least two additional negative effects on conscientious employees: collapsing equality on the market (unfair competition) and a contribution rate that is higher than what is considered to be an economic optimum.

The material basis for the exercise of economic, social and cultural rights should be found in the economy. The Protector of Citizens cannot contribute to its revival except to seek for more fair allocation of available resources and in accordance with the law, and to conclude that the state appears as a (privileged) player in the market competition too many times rather than staying out of it and directing its efforts towards creating equal, incentive, favourable and protected environment conducive for the operation of peer businesses on a free market.

In one of control procedures it was determined that the Government of the Republic of Serbia created the "Potato Centre" in Guča, which is not involved in scientific work but deals with potato sales on the market. Regardless of the fact that it operates on the public land, it also utilises public funds and each year receives money from the budget through two ministries, i.e. it has a privileged position on the market. The Centre is in debts, including unpaid salaries and allowances for employees.

2) In terms of civil and political rights, progress has been achieved in the exercise of the right to obtaining legal personality and related right to personal documents, as a result of amendments to three laws, at the initiative of the Protector of Citizens, and their implementation – adoption of first court decisions on entry into registers in non-contentious procedures, and issuance of first personal documents to persons with no permanent address.

According to new regulations, Slobodan Jovanović from Belgrade was the first to receive an ID card among the homeless. He was known to the public for days of protesting outside the Office of the Protector of Citizens for not being able to obtain an ID card, which lasted until the legislative procedure commenced.

Guarantees of respect for the privacy of communication of citizens in security service operations have also been improved after the Constitutional Court adopted a decision at the proposal of the Protector of Citizens and Commissioner for Information of Public Importance and Personal Data Protection.

The Decision of the Constitutional Court of 9 April 2012 concerning the unconstitutionality of Article 13 paragraph 1 relating to Article 12 paragraph 1, and Article 16 paragraph 2 of the Law on Military Security Agency and Military Intelligence Agency confirmed an opinion which the Protector of Citizens for the first time officially presented in recommendations to the Security Information Agency after an control visit in 2009 – identification of senders and receivers of calls and messages, their locations and other information on citizens' telecommunications are protected by the constitutional guarantee of confidentiality of communication, and they cannot be obtained without a court decision. The unconstitutional provision of Article 286 paragraph 3 of the Criminal Procedure Code is still in effect and envisages that a decision on obtaining those data shall be adopted by the prosecutor (and not by the court, i.e. by the judge from previous proceedings). This and one more similar provision of the Law on Electronic Communications containing the same type of unconstitutionality that was contained in the Law on Military Security Agency and Military Intelligence Agency were contested by the Prosecutor of Citizens and Commissioner before the Constitutional Court, however, their decisions have been waited for a year, i.e. two years, respectively.

First court judgements, activities of the Commissioner for the Protection of Equality, the Protector of Citizens, public authorities, media and associations, strengthened protection against discrimination and raised awareness of its unacceptability. Social and institutional acceptability of violence, particularly against children and domestic violence, have been also reduced.

However, what was also recorded at the same time is prevention of freedom of assembly of LGBT persons (cancelation of the Pride Parade in Belgrade), abuse of freedom of expression, that is, hate speech and incitement of ethnic, religious and other intolerance, usually via the internet and graffiti, but also in direct clashes with vulnerable groups accompanied by violence.

Citizens of Serbia have been facing difficulties in exercising the constitutionally guaranteed right to freedom of movement and freedom to leave the country<sup>2</sup> in order to reduce the number of, so called, false asylum seekers (with a tacit approval of the European Union and its member states).

The Protector of Citizens repeatedly requested from border authorities of the Republic of Serbia to treat all citizens equally at border crossings, and strictly within their legal powers, and publicly, at meetings, the Protector of Citizens criticised representatives of the European Union and their unprincipled attitude towards Serbia in order to reduce the number of asylum applications.

One of adverse trends in civil rights is reduction of the essential freedom of the press (media) due to the influence of non-transparent owners and political party interests. This trend is reflected in tabloidisation, "leaking" of sensitive information from public authorities in specific media, violation of the presumption of innocence, creation of a hostile atmosphere, headlines manipulation, selective transmission of statements and facts with a covert, but recognisable objective of political discreditation or promotion. This has resulted in the lowering of the quality of the exercise of the right of citizens to true, complete and timely information, while at the same time, undermines integrity, dignity, and a material basis for journalism as a profession.

The collapse of the credibility of the Hague Tribunal, an international institution established for ensuring prosecution of criminals and providing justice for victims of past wars, regardless of their ethnicity, weakened international foundations of the guarantee for the protection of human rights. Apart from acquittal of the most responsible persons for the suffering of Serbian civilians during the wars in the nineties of the last century, who were deprived of justice, the fact that Vojislav Šešelj, a citizen of the Republic of Serbia, has not been sentenced even after 10 years of detention is incompatible with standards of a trial within a reasonable time and a fair trial, and requires more energetic attitude of competent public authorities.

3) Judicial reform. – Further implementation of unconstitutional reform laws in the judiciary was stopped in 2012, as well as illegitimate operation of the High Judicial Council (HJC) in its incomplete composition, which was first officially warned about by the Protector of Citizens in the Opinion of 11 January 2012.

In the Opinion is pointed out that "judges and courts and the HJC exist for the purposes of exercising the rights of citizens to a fair trial and effective access to justice, which implies a precondition of legitimate and indisputably lawful and proper operation of the authority that, by the Constitution, provides and guarantees independence and autonomy of courts and judges"; thus, it was required that the HJC ceases with operation in its illegal and incomplete composition "which seriously casts doubt on the legality and regularity, that is, legitimacy of the operation of this authority".

In 2012, all not elected or re-elected prosecutors and judges were returned to work after receiving dismissal compensation for more than a year (the law stipulates six months). The Protector of Citizens detected serious omissions in the (re)election procedure as early as in 2010, and publicly warned to the fact that, if the HJC does not remedy

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2 Article 39 paragraph 1 of the Constitution of RS.

this in the first step – in individual complaint procedures – all dismissed persons by higher authorities will, sooner or later, have to be returned to work, which imposes huge costs to the public fund. In addition, some of them would definitely not have stayed in the judiciary had the (re)election procedure been conducted in materially and procedurally legal and proper manner.

A particular interest of the Protector of Citizens in the judiciary system does not derive only from the obligation to act upon complaints of judges and prosecutors, that is, candidates for these functions, but also from the fact that courts (should) be the primary mechanism for the protection of citizens' rights as well as the basis for the institutional development of citizens' rights protection consisting of the Protector of Citizens and other parajudicial authorities. Therefore, the Protector of Citizens, without effective, fair and accessible judiciary, cannot fully achieve its purpose or sufficiently protect citizens against illegalities and irregularities in the operation of other public authorities. The job of the Protector of Citizens is usually to prevent the need of a citizen to seek protection of his/her rights before the court, when violated by public authorities, or when they tolerate violation committed by someone else. Robust, fast, effective judicial protection of human rights is a cornerstone of the human rights protection system not yet firmly established in Serbia.

During the next reporting period, it will be possible to see whether measures prepared by the Ministry of Justice, and related to the correction of detected omissions, will be constitutional and expedient, whether they will have full legitimacy required for their proper implementation, and whether they will enable elimination of remaining gaps in some specific cases which the State Prosecutorial Council has not resolved in accordance with decisions of the Constitutional Court, although it supports an opposite view.

4) The rule of law in the Republic of Serbia is still in the shadow of the "political will". Failure to implement applicable laws is still justified by the deficiencies of the rule of law, although adherence and execution of imperative legal norms should not depend on anyone's good or bad will, or the will of political elites for that matter. One of the examples is ongoing disregard of legal norms in the election of civil servants for the position of an assistant minister. They are still elected without a competition, often on the basis of obvious political criteria, and sometimes regardless of whether statutory requirements (such as years of experience) have been met. The government interferes with regulations in the legal matter by setting new obligations, which creates legal uncertainty,<sup>3</sup> and bylaws are often not adopted within a time limit prescribed by relevant laws, which directly prevents the exercise of statutory rights and legitimate interests of citizens.<sup>4</sup>

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3 The Regulation on recording overdue liabilities of SOEs upon executive judgements for claims arising from employment ("Official Gazette of RS", Nos. 23/12 and 87/12) established an obligation for the citizens to report to the Privatisation Agency on claims arising from employment in SOEs according to valid court judgements. Without grounds in any law, this Regulation does not state consequences for those not complying with it.

4 "The Ministry of Infrastructure and Energy and the Ministry of Energy, Development and Environment made an omission in its operation to the detriment of rights of socially most vulnerable electricity and gas customers by not preparing and submitting to the Government of the Republic of Serbia, and within the statutory time limit, a draft document on criteria, method of protection, conditions, time limits and procedures for determining the status of a protected energy customer", stated the Protector of Citizens in September 2012.

5) Corruption economically exhausts and morally humiliates citizens of Serbia, and, in terms of its prevalence and intensity, it threatens foundations of the society. Such a situation did not happen overnight nor can it be changed so quickly. However, in 2012, state leaders gave a strong political momentum that could make room for actual results. Decisive steps made by the highest level representatives of executive authorities gave dynamics to the activities of the civil servants who for the first time conducted strict repressive measures against the persons considered to be “untouchable”. The public started to believe that corruption is losing support from the top levels of state power.

The turning point in combating corruption was by some media viewed as an opportunity to daily violate the presumption of innocence and a series of personal discreditations with clear political implications. The readership was secured by authentic data from pre-investigation actions and ongoing investigations that should not be accessible to the public. For these reasons, such media are by the critical mass pejoratively labelled as “official messengers” and party newsletters.

Demonstrated political commitment and personal courage of government executives who politically personified the fight against corruption, require a specific and general support from and activation of all authorities and holders of state power. The given political momentum opened the door through which competent public authorities must go in the following period to ensure that the fight against corruption is institutionalised, comprehensive, massive and long-term.

6) None of the priorities of public administration reform set by the relevant national strategy made significant progress in 2012, especially not in terms of depoliticisation and rationalisation. A leader of a political party openly stated after elections that preelectoral announcements of departisation given by all parties, including his own, were not sincere, and that the citizens should be aware of that.

The administration of all levels – national, provincial and local, remained a “tool” of a social policy and a party loot. It is a social policy “tool” as it employs a large number of people and seemingly reduces the unemployment rate, and ensures them, more or less, decent existence, whereas it is a party loot because leading civil servants positions are often allocated on the party orientation basis.

As long as the administration is not connected in terms of functioning, organisation and information technology, and civil servants become small in number, professional, highly motivated and even more responsible for their work, irregularities and omissions in work will be numerous, dissatisfaction of the citizens will be expressed daily, and the administrative procedure extremely expensive and lengthy, because it disproportionately often completes only after objections, appeals, urgings, claims, complaints and other applications submitted to domestic and international judicial and non-judicial institutions.

The Protector of Citizens believes that the efficiency in combating corruption and all other kinds of illegalities and irregularities, which strictly separates the reality from the normative order in many areas, is not achieved by constant adoption of new strategies, action plans, analyses, laws and projects, but with good quality operation of all state agencies and civil servants, primarily in various inspection services. Those are thousands of civil servants who daily have to implement the law independently and authoritatively respond in case they detect any nonconformities. Those inspections are nowadays dispossessed, they lack authority, independence, or sufficient accountability.

### **Republic inspections**

The Market Inspection, Labour Inspectorate, Sanitary Inspection, Health Inspection, Medicines and Medical Devices Inspection, Tourist Inspection, Foreign Exchange Inspectorate, Veterinary Inspection, Water Management Inspection, Agricultural Inspection, Forestry Inspection, Traffic Inspection, Road Transport Inspection, Inland Navigation Inspection, Inspectorate General of the Ministry of Defense, Republic Building Inspection, Republic Urban Planning Inspection, Republic Communal Inspection, Education Inspection, Geological Inspection, Mining Inspection, Environmental Protection Inspection, Steam Boilers Inspection, Energy-Electric Power Inspection, Ecology Inspection, Administration Inspectorate...

### **AP Vojvodina**

The Education Inspection, Budget Inspection, Sanitary Inspection, Water Management Inspection, Forestry Inspection, Road Transport Inspection, Rail Transport Inspection, Water Transport Inspection, Copyright and Related Rights Inspection, State Roads Inspection.

### **City inspections**

City Communal Inspection, City Traffic Inspection, City Environmental Protection Inspection.

### **Municipal inspections**

Building Inspection, Communal Inspection, Ecology Inspection, Agricultural Inspection...

## ***About the Activities***

In 2012, compared to 2011, the Protector of Citizens, personally and as an institution, received more appeals and complaints of citizens, conducted more investigations and activities, detected more omissions and gave more recommendations, submitted normative initiatives and achieved practical effects through the implementation of recommendations and adoption of initiatives, and generally worked more, and more effective for about 30%, with the same number of people in the Secretariat.

The reason for the increase in the amount of work and effectiveness is higher proficiency and experience of employees, improved organisation of work, more comprehensive knowledge of the competences of the Protector of Citizens among the authorities whose operation was controlled by and with whom the Protector of Citizens cooperated, greater visibility and accessibility, more intensive use of external consultants-specialists, a greater authority of the institution among the citizens and civil servants (especially because of the elections to the National Assembly by consensus) and, above all, extraordinary efforts of the Secretariat staff in meeting expectations and needs of the citizens that go beyond their physical strength.

Here will be presented only basic indicators that are in a separate section elaborated according to their detailed criteria.

**Table 1 – Types of Protector of Citizens' activities**

	Types of activities	2011	2012	Increase in %
1.	No. of received citizens in person	4,182	4,422	5.74
2.	No. of phone calls with the citizens and provided counseling services	7,312	9,951	36.09
3.	Various citizens' submissions other than complaints	648	888	37.04
4.	No. of complaints	3,639	4,474	22.95
5.	No. of complaints successfully addressed during the year	2,944	3,957	34.41
6.	No. of complaints whose merits were determined in the investigation <sup>5</sup>	487	714	46.61
7.	No. of submitted legislative initiatives	40	46	15.00
8.	No. of adopted legislative initiatives	1	12	1,100.00
9.	No. of investigations initiated against authorities	973	1,314	35.05
10.	No. of inquiries in which the authority admitted and eliminated its failure upon receiving a notice on the initiation of a control procedure	212	375	76.89
11.	No. of submitted recommendations (in collective and individual cases)	214	323	50.93
12.	No. of recommendations implemented	120	197	64.17
13.	No. of acts submitted to public authorities	2,924	4,063	38.95
14.	No. of control and preventive visits to authorities	132	150	13.64

**Note:** In 2012, the Protector of Citizens submitted additional 229 recommendations to competent authorities as a result of performing activities of the National Preventive Mechanism (under OPCAT).<sup>5</sup>

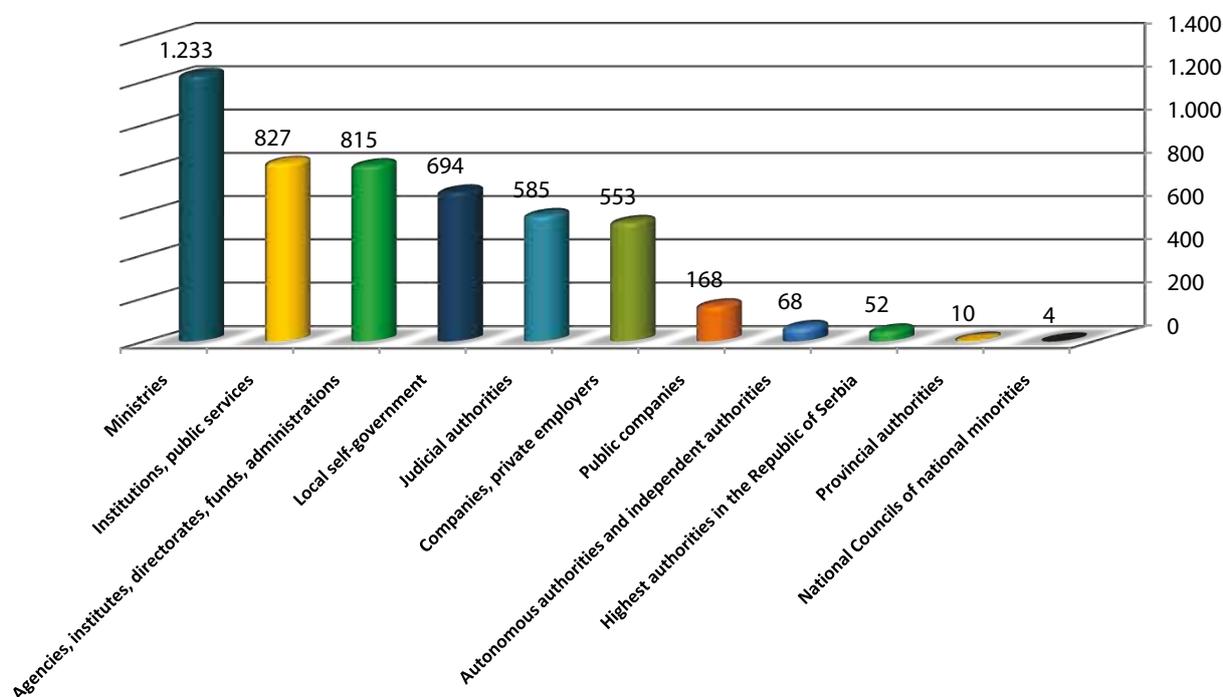
Needs and expectations of the citizens continue to grow, which threatens institution collapse because of the severity of the tasks entrusted to it and high expectations of the citizens that cannot always be fully met.

For this reason, it is necessary that the National Assembly improves the legal framework for the operation of the Protector of Citizens and enables maximisation of capacities of the Secretariat of this authority. Naturally, it would even be better if public authorities changed their method of operation so that the citizens have no need to complain about it. This, however, is not realistic to expect in the next few reporting periods as the culture of respect for human rights and citizens' rights cannot be created overnight.

5 This number should not be viewed as a total number of founded complaints because a large number of them, even when it is obvious that they are founded, are rejected according to the Law because they are premature, that is, a citizen did not even make an attempt to use any available remedy.

**Table 2 – Division of complaints per Sectors; their number and percentage in comparison to the total number of complaints**

Rights of persons deprived of liberty	396	8.85%
Gender equality	95	2.12%
Rights of the child	425	9.50%
Rights of persons with disabilities and the elderly	281	6.28%
Minority rights	364	8.13%
Sector of foreign affairs, diaspora and justice	436	9.74%
Sector of defence	119	2.66%
Sector of internal affairs	161	3.60%
Sector of finance, economy and regional development	358	8.00%
Sector of agriculture, trade, forestry and water management, environment, infrastructure, energy and mining	183	4.09%
Sector of urban planning, construction and cadastre	368	8.22%
Sector of human rights, public administration and local self-government	425	9.50%
Sector of labour	280	6.26%
Sector of health, social protection, pension and disability insurance	402	8.98%
Sector of security services and independent control bodies	22	0.49%
Sector of culture, education, science, youth and sports	159	3.55%
<b>Total</b>	4,474	



**Chart 1 – Number of complaints (in percentages) to the work of specific authorities in comparison to the total number of complaints**

**“Kosovo pensions”**

The question of the pension system in Kosovo requires special attention. The Protector of Citizens received a large number of complaints of the citizens (about 150) who reside or resided in the territory of the Autonomous Province of Kosovo and Metohija, or whose overall or part of their pensionable service was made there. They have been prevented from exercising the right arising from pension and disability insurance since 1999. The number of such citizens is much greater than the number that contacted the Protector of Citizens. Some of them received a pension that was suspended on no legal grounds, and some of them applied for a pension on which no decision has ever been made.

The Fund stated in initiated a procedure that the exercise of the pension right by a certain number of beneficiaries was “only temporary restricted” until the problem was resolved as part of the overall issues and problems existing among institutions of the Republic of Serbia and the International Interim Administration in Kosovo and Metohija.

In view of the judgement of the European Court of Human Rights in Strasbourg in the case *Grudić v. Serbia*, received complaints and facts determined during conducted proceedings, as well as relevant regulations, the Protector of Citizens submitted an opinion to the Government of the Republic of Serbia in which it was stated that the Fund made omissions in its work because it suspended payment of pensions to the insurance holders residing in the territory of the AP Kosovo and Metohija who had been entitled to the right to pension according to valid and enforceable decisions. In the opinion was also recommended that the Government should take all necessary and appropriate measures to ensure fair payments of pensions to insurance holders, which would contribute to the implementation of decisions of the European Court of Human Rights in Strasbourg and to the settlement of all liabilities of the Fund according to valid decisions of this authority. This would enable the exercise of citizens’ rights guaranteed by the Constitution of the Republic of Serbia and the European Convention on Human Rights. The amount of money owned by the Republic of Serbia in this respect is enormous.

The Protector of Citizens is not in a position to exercise its competences in the manner prescribed by the Constitution and the Law in the territory of the Autonomous Province of Kosovo and Metohija (K&M). According to paragraph 11(j) of the Security Council Resolution 1244(1999), UNMIK shall be obliged to protect and promote human rights in K&M. According to available information and on the basis of allegations from complaints, the citizens in K&M, especially the non-Albanian citizens living in enclaves, are “hostages” of ongoing political processes and face violations of rights in the manners inconceivable in the rest of modern Europe.

It is particularly difficult when the population in K&M suffers the consequences of unfair treatment of public authorities of the Republic of Serbia. The Protector of Citizens discovered that representatives of the Government asked the citizens of Serbian nationality to leave their jobs in K&M local provisional institutions under the control of Priština, promising them that, in turn, and in accordance with conclusions of the Government of the Republic of Serbia, they would receive a job in institutions of the Republic of Serbia. Dozens of citizens quit their jobs, but even after more than four years later, the promise given to them was not fulfilled. Bearing in mind the moral obligation, and due to difficult consequences for the life of many citizens caused by such unfair treatment, the Protector of Citizens submitted an opinion to the Government of the Republic of Serbia to help through the Office for Kosovo and Metohija and other public authorities, in all lawful manners, and without further delay, with hiring people who accepted the invitation of representatives of the authorities of the Republic of Serbia and became jobless.

### **Privacy in communications**

During control of the operation of services and the police, the Protector of Citizens and the Commissioner for Information of Public Importance and Personal Data Protection detected serious shortcomings in legal, organisational and practical implementation of specific measures threatening privacy in citizens' (tele)communications, which creates space for serious abuse. To overcome the shortcomings, the Protector of Citizens and the Commissioner proposed 14 systematic measures for the improvement of the current situation. Despite the fact that measures were supported by the Prime Minister – the Minister of Interior and heads of security services, the actual implementation of the measures was not conducted in this reporting period.

### **National preventive mechanism**

The Protector of Citizens assumed the statutory competence of the National Preventive Mechanism (NPM) in this reporting period. In 2012, 69 visits were made within the NPM to the institutions accommodating persons deprived of liberty, and 47 days were spent in those visits. The total of 61 reports were made about the visits in 2012, with over 229 recommendations. In the end of 2012, the Protector of Citizens had a dialogue with the representatives of most of the visited institutions and competent ministries, for now with the Ministry of Interior, the Ministry of Justice and Public Administration, and the Ministry of Health. Administrative authorities established full cooperation with NPM in 2012.

### **“Belgrade principles”**

The National Assembly established cooperation with the Protector of Citizens in the capacity of the national institution for the protection and promotion of human rights with the “A” status international accreditation. Together with the Protector of Citizens, the National Assembly hosted an international conference on the relationship between parliaments and national human rights institutions, in Belgrade, on 22 and 23 February 2012. Participants in the seminar were representatives of parliaments and national human rights institutions from five continents, including different legal systems. The seminar resulted in the adoption of “Belgrade principles on the relationship between national institutions for the protection and promotion of human rights and parliaments” which is so far the most comprehensive document of this kind in the world. The United Nations Secretary General recognised their importance and specifically mentioned them in the regular reporting on national human rights institutions.

### **Acknowledgments**

The Protector of Citizens received “Contribution of the Year Award” given by the European Movement in Serbia for the activities conducted in 2012 that contributed to the process of European integrations and promotion of European ideas and values. The Protector of Citizens was also an awardee for the award “Personalities of the Year” of OSCE Mission, and the Judges' Association of Serbian and Prosecutors' Association of Serbia awarded the Protector of Citizens the acknowledgement for a special contribution to the promotion and protection of the rule of law, freedom and democracy. On the occasion of the “Day of Misdemeanor System” in Serbia, the Association of the Judges of the Misdemeanor Courts of the Republic of Serbia awarded the Protector of Citizens the acknowledgement for an “outstanding contribution to the establishment of the rule of law and improvement of the work and status of judges of misdemeanor courts as

an integral part of the judiciary system in the Republic of Serbia". The Protector of Citizens was again elected for one of top-five most communicative state officials by journalists.

#### HOW SPECIFIC AUTHORITIES CARRY OUT THEIR LEGAL OBLIGATIONS OF COOPERATION WITH THE PROTECTOR OF CITIZENS IN CONTROL PROCEDURES, REMEDYING IRREGULARITIES AND IMPROVEMENT OF THE STATUS

Similar to ombudsman institutions in other countries, the Protector of Citizens does not adopt legal acts having executive power, only recommendations. Bindingness of these recommendations is essential, but not formal. However, in order for the Protector of Citizens to be able to determine whether violation of a civil right occurred, the Constitution and the Law granted the Protector of Citizens with investigative powers, and all authorities are strictly obliged to cooperate in such investigations – answer the questions and requests of the Protector of Citizens, make accessible and submit available documents, allow unrestricted access to their premises, inform the Protector of Citizens on the implementation of recommendations, that is, on their reasons for non-implementation. They are not acts of good will, but statutory obligations that allow the Protector of Citizens to make a qualified judgement on the merits of a complaint. Their violation must not be tolerated in the state based on the rule of law.

The largest number of authorities, in most of investigations in the reporting period, carried out their statutory obligations and enabled the Protector of Citizens to exercise its control, preventive and promoting function. The majority of authorities implemented most of the recommendations of the Protector of Citizens, accepting them as a method to remedy irregularities and to show to the citizens that they adhere to the law, and that they strive to improve their own work.

This part contains a list of authorities that singled out in cooperation for the purposes of respecting citizens' rights, but also of those authorities for which the Protector of Citizens was embarrassed before the citizens that addressed this institution, on behalf of the whole country.

**Table 3 – Ministries that did not act upon recommendations**

Ministry of Labour, Employment and Social Policy	9	25.00%
Ministry of Education, Science and Technological Development	9	25.00%
Ministry of Defense	4	11.11%
Min. of Human and Minority Rights, Public Administration and Local Self-Government	3	8.33%
All other ministries	11	30.56%
<b>Total</b>	<b>36</b>	

**Table 4 – Local self-government authorities that did not act upon recommendations**

The authorities of the city of Leskovac	13	41.94%
The authorities of city of Belgrade and municipalities	6	19.35%
The authorities of the city of Niš	3	9.68%
Other local self-governments	9	29.03%
<b>Total</b>	<b>31</b>	

**Table 5 – An overview of the number of recommendations according to areas and the fulfilment percentage**

Area	No.	Fulfilled	%	Not fulfilled	%	Within the time limit	%
General human rights	19	12	63.16%	7	36.84%	0	0.00%
Persons deprived of liberty	13	13	100.00%	0	0.00%	0	0.00%
Gender equality	3	3	100.00%	0	0.00%	0	0.00%
Rights of the child	95	64	67.37%	6	6.32%	25	26.32%
Persons with disabilities	38	20	52.63%	9	23.68%	9	23.68%
National minorities	54	22	40.74%	26	48.15%	6	11.11%
Good governance	101	63	62.38%	29	28.71%	9	8.91%
<b>Total</b>	<b>323</b>	<b>197</b>		<b>77</b>		<b>49</b>	

**Suspensions**

When the Protector of Citizens informs a public authority that they received a complaint and decided to initiate a control procedure, and ask for a declaration, where the public authority immediately acknowledges its omission and remedies the irregularity for which the investigation was initiated, the Protector of Citizens shall most often suspend the control procedure.

In 2012, the Protector of Citizens initiated 1,314 control procedures in terms of public authorities, and in 375 cases the authorities remedied irregularities in their operation, which was 22% in comparison to the number of initiated investigations.

This practice of the authorities is admirable. The control procedure was most often in this manner suspended in case of the following authorities:

- 1) Ministry of Interior (62);
- 2) Republic Geodetic Authority (35);
- 3) Ministry of Environment, Mining and Spatial Planning (33).

## HOW SPECIFIC AUTHORITIES FULFILL THEIR LEGAL OBLIGATIONS AND COOPERATE WITH THE PROTECTOR OF CITIZENS IN REMEDYING IRREGULARITIES

**Rights of persons deprived of liberty**

The General Police Directorate of the Ministry of Interior, the Directorate for the Execution of Criminal Sanctions of the Ministry of Justice and Public Administration, and the Ministry of Health established satisfactory cooperation with the Protector of Citizens.

**National minorities**

The Ministry of Justice and Public Administration, the Ministry of Interior, the City Administration of the City of Belgrade and the Commissioner for Refugees and Migrations contributed to the promotion and exercise of minority rights, and up-to-date actions upon recommendations and cooperation.

The Ministry of Culture, the Ministry of Education, Science and Technological Development, the Ministry of Labour, Employment and Social Policy, and majority of the local administrations with the ethnically diverse population in Central Serbia did not sufficiently meet, in a statutory manner, obligations in the investigations which the Protector of Citizens conducted to protect and promote rights of national minorities.

### **Rights of the child**

In 2012, the Protector of Citizens, acting in the area of rights of the child, established good cooperation with all controlled authorities. In terms of timeliness of actions upon requests of the Protector of Citizens and actions upon recommendations, the following stand out: social welfare centres, the Ministry of Labour, Employment and Social Policy, and the Secretariat of Education and Child Care of the City Administration of the City of Belgrade. Although cooperation with the Ministry of Education, Science and Technological Development is in most cases good, occasional delays in actions upon recommendations or their incomplete implementation has been detected.

The Ministry of Health and Niš Police Directorate are the only authorities that did not fully follow recommendations of the Protector of Citizens in the area of rights of the child.

### **Gender equality**

During the reporting period, good quality cooperation was established with the Ministry of Interior and the Ministry of Labour, Employment and Social Policy in the area of gender equality, which is reflected in compliance with time limits, timely actions and exchange of information.

### **Persons with disabilities**

The National Employment Service, the Ministry of Construction and Urban Planning and the Ministry of Health stand out in following recommendations of the Protector of Citizens and establishing different forms of cooperation in the exercise and promotion of rights of persons with disabilities. The Fund for Pension and Disability Insurance, the Ministry of Labour, Employment and Social Policy and specific local administrations (the city of Vranje, Čajetina municipality) should make more efforts in fulfilling their obligations in terms of control procedures.

### **Sector of finances and economy**

Compared to previous years, the cooperation between the Ministry of Finance and Economy and the Protector of Citizens was improved, particularly with the Tax Administration, being the largest organisational unit within the Ministry. In view of branches and offices that are part of the Tax Administration, no irregularities or tendencies toward non-cooperation were noticed in any of them, only individual omissions in most cases.

### **Sector of economy, regional development, privatisation, bankruptcy, property directorate, national employment service and public procurement office**

Having in mind the number of requests of the Protector of Citizens for declaration of competent authorities, which is a consequence of received complaints, the Privatisation

Agency and the Bankruptcy Supervision Agency acted timely in the investigations initiated by the Protector of Citizens.

### **Sector of foreign affairs and diaspora, justice, public administration and rehabilitation**

The Ministry of Justice and Public Administration fulfilled its obligations towards the Protector of Citizens in two ways. On one hand, despite the lack of resources, the supervision department in judicial authorities established good cooperation with the Protector of Citizens. On the other hand, the Committee for obtaining compensation on the basis of unfounded deprivation of liberty and unfounded conviction, as well as the Committee for obtaining compensation on the basis of the decision of the Constitution Court of the Ministry, failed to fulfil their obligation to cooperate with the Protector of Citizens, or they fulfilled it with a considerable delay.

### **Sector of defence**

The cooperation between the Ministry of Defence and the Protector of Citizens was improved not only in terms of the speed of actions upon requests of the Protector of Citizens, but also in terms of approach, by trying to systematically address a number of individual complaints and problems. Unfortunately, the absence of cooperation with the Social Insurance Fund for military insurance beneficiaries was present in this period as well.

### **Sector of urban planning and construction**

The Ministry of Construction and Urban Planning did not fully and timely fulfil its obligations to cooperate with the Protector of Citizens, which is why it often received urgent requests. In view of the local authorities competent for the activities of a construction inspection, or legalisation procedure, no irregularities or tendencies toward non-cooperation were noticed in any of them, only individual omissions in most cases.

### **Sector of cadastre, natural disasters and restitution**

During the reporting period, outstanding cooperation between the Agency for Restitution and the Protector of Citizens was established. In addition, very good cooperation was also established with the Republic Geodetic Agency. This was reflected in the cooperation between real estate cadastre services and the Protector of Citizens, where no irregularities or tendencies toward non-cooperation were noticed in any of them, only individual omissions in most cases.

The Ministry of Environment, Mining and Spatial Planning did not fully fulfil its obligation of cooperation with the Protector of Citizens.

### **Sector of agriculture, trade, forestry and water management, environment, infrastructure, energy and mining, traffic, hydrometeorology and commodity reserves**

The Ministry of Economy, Development and Environment established good cooperation with the Protector of Citizens. Similarly, in terms of electricity distribution companies, no irregularities or tendencies toward non-cooperation were noticed in any of them, only individual omissions in most cases.

### **Sector of interior affairs**

The Ministry of Interior in the large number of cases remedied irregularities in its work immediately after the initiation of investigation of regularity and legality. Also, it was noticed that the Ministry of Interior took specific measures to overcome identified problems.

There were cases when cooperation was established only upon receiving urging requests and phone contacts with competent persons, mostly in case of MoI employees' complaints.

### **Sector of education, science and technological development**

The Ministry of Education, Science and Technological Development did not fully meet the obligations under the Law on the Protector of Citizens. In the course of investigations, the Ministry often submitted declarations to the Protector of Citizens in an untimely manner after a sufficient time limit and many urgent requests. The Ministry explicitly refused to implement one recommendation, even though the Protector of Citizens found serious illegalities, irregularities and particularly unfair treatment of the complainant.

### **Sector of culture and information**

During the reporting period, there was not a great number of complaints against the operation and activities of the Ministry of Culture and Information. This authority acted upon requests of the Protector of Citizens.

The largest number of complaints against the sector of culture referred to the operation of the Republic Agency for Electronic Communications (RATEL), that were unfounded, because the Agency timely acted upon citizens' requests and submitted required information in the envisaged time.

### **Sector of youth and sports**

During the reporting period, there was not a great number of complaints against the operation and activities of the Ministry of Youth and Sports. The Ministry of Youth and Sports well fulfilled its obligation of cooperation with the Protector of Citizens in control procedures and it timely submitted declarations to the Protector of Citizens. Also, progress was noticed in acting upon recommendations of the Protector of Citizens and fulfilling statutory obligations in the control procedure.

### **Sector of labour, employment and social policy**

The Ministry of Labour, Employment and Social Policy and the Secretariat of Social Welfare of the City Administration of the City of Belgrade acted upon requests within the envisaged time and cooperated with the Protector of Citizens. During the reporting period, proper cooperation was also established with the Labour Inspectorate.

### **Sector of pension and disability insurance**

The cooperation between the Republic Pension and Disability Insurance Fund and the Protector of Citizens is satisfactory, having in mind the speed of Fund's actions upon requests of the Protector of Citizens. A possible delay in terms of the legal time limit and submission

of required declarations were sporadic and related to the cases when the authority due to objective reasons could not provide all the required information, or when the process of collection of information required more time.

There is evident awareness of the Fund about omissions in its operation to which citizens pointed out in the previous reporting period, as well as willingness of the Fund to systematically solve a larger number of individual complaints and problems pointed to. There is still a need for improving the operation of the Fund in order to achieve its efficiency and improve communication with citizens.

### **Cooperation of local self-governments**

The Protector of Citizens established good cooperation with most local self-governments. Leskovac stands out as a negative example.

### **Sector of health**

The Protector of Citizens made progress in cooperation with the line ministry as well as in solving the problem of exercising the right to health care and insurance.

The Republic Health Insurance Fund acted timely upon requests of the Protector of Citizens and submitted required information within the envisaged time limit.

## ***Deficiencies in the Work of Public Authorities in Terms of Respect for Rights of Citizens***

The most common omissions of public authorities determined by the Protector of Citizens in the reporting period are as follows:

- Untimely addressing statutory claims of citizens, which resulted in violation of many guaranteed rights, *inter alia*, the right to use legal remedies;
- Clearly erroneous implementation of the substantive law, out of ignorance or deliberately, to the detriment of the exercise of the wide range of civil rights;
- Non-execution of and a passive attitude towards valid decisions of competent authorities, including courts, which determine rights of the citizens or protect their legitimate interest;
- Adoption and implementation of unpurposeful administrative procedures which cause for the citizens unnecessary impediment to the exercise of rights;
- Passivity in the exercise of public powers to the detriment of the exercise or protection of citizens' rights and interests;
- Selectivity in the exercise of public powers and different treatment of the citizens without reasonable grounds, to the detriment of the exercise of the right to equality;
- Arbitrariness in decision making (a lack of clear and known in advance work rules), to the detriment of the exercise of the right to legal certainty;
- Formal and "routine" work that does not takes into consideration particularities of a specific legal and factual situation of a citizen, which leads to unpurposeful, unjust and absurd results.

All the above omissions are violations of the principles of good governance that are for the most part contained in and based on statutory principles of a general administrative procedure which the administration often considers decorative, and not binding and governing.

### ***Proposals for Improving the Position of Citizens in Relation to the Authorities***

Specific control procedures, preventive activities and learnings gained in other ways resulted in a number of proposals for the improvement of the position of citizens in relation to public authorities:

#### **Persons deprived of liberty**

1. It is essential for the Sector for Internal Control of the Ministry of Interior to be more attentive in its future operation of all relevant facts, and to objectively determine the responsibility of police officers in cases of torture or any other form of abuse. The Ministry of Interior must increase efficiency of existing internal control mechanisms.
2. The Ministry of Interior must, without delay, harmonise accommodation conditions in the premises for police custody with applicable regulations and standards, as citizens' longer stay in inhumane conditions is a form of abuse.
3. In their future work, the police in their public announcements, and police managers and officers in the press release, must not violate the presumption of innocence of the citizens and/or publicly declare that specific persons committed certain criminal offenses if this has not been determined by a final judgement of the court.
4. It is necessary to solve the problem of overcrowded Belgrade District Prison, the largest detention unit in Serbia, which in architectural terms is inappropriate for this purpose, dilapidated, and in one of its parts live families of current and former prison employees.
5. Pass the Law on Probation for the purposes of protecting the society from crime, resocialising perpetrators of criminal offenses and their reintegration in the community, as well as providing assistance to victims, injured parties and their families.
6. The Ministry of Justice and Public Administration should implement measures that will prevent abuse in the institutions for the execution of criminal sanctions. In order to achieve this, it is necessary to increase efficiency of the existing internal control mechanisms.
7. The Ministry of Justice and Public Administration and/or the institutions for the execution of criminal sanctions should harmonise accommodation conditions for prisoners with applicable regulations and standards.
8. There is a need to improve the existing bylaws relating to the treatment of convicted persons, primarily for the purposes of carrying out intensive active treatment-related work with convicted persons; functional and stimulating classification, and awarding of specific rights of convicted persons; implementing effective preparation for the release of convicted persons from special release units; effective post-penal treatment which will ensure reintegration of convicted persons after their release.
9. The health care service should be under the jurisdiction of the Ministry of Health and displaced from the system for the execution of criminal sanctions.

10. The convicted persons with severe mental disorders should be displaced from ordinary prison units to the Special Prison Hospital, a stationary health care unit within the institution, which has the conditions necessary for their treatment, or to some other relevant health care institution.
11. The Law on the Protection of Persons with Mental Health Problems should be passed immediately, and the provisions of the Law on Non-Contentious Procedure related to detention of persons with mental health problems in stationary health institutions should be amended in accordance with the rules of the international law and applicable standards, particularly with the Strategy for the development of mental health protection which determined that the treatment and accommodation of such persons should take place in the community, as close to patients' families as possible.

### **National minorities**

1. It is necessary that the Ministry of Justice and Public Authority, with the assistance of the Office for Human and Minority Rights and other competent authorities:
  - a) Draft amendments to the Law on National Councils of National Minorities in order to ensure normative conditions for full direct participation of national minorities in the election and operation of national councils of national minorities and to overcome problems manifested in the current implementation of the Law;
  - b) Ensures both consistent official use of the Cyrillic alphabet and equal use of languages and scripts of national minorities;
  - c) Drafts and submits for adoption to the Government of the Republic of Serbia the Action Plan for the implementation of the Strategy for the Improvement of the Status of Roma;
  - d) Draft a relevant document that will in detail regulate actions, cooperation and coordination of competent public authorities during the relocation of informal settlements.
  - e) Take all measures, legal and financial ones, to ensure that national minorities whose National Councils have a seat in Central Serbia have, as much as possible, the protection and exercise of the rights relevant for the preservation of ethno-cultural identity at the level of national minorities in the AP Vojvodina.
2. The Ministry of Education, Science and Technological Development should regulate the procedure and criteria for creating a single proposal of the list of religious education teachers in cases when churches and religious communities submit more than one proposal, in order to eliminate omissions and problems occurring at the beginning of each school year regarding religious education of students of the Islamic religion.

### **Rights of the child**

1. Harmonise the Criminal Code with the Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse and the Council of Europe Convention on Preventing and Combating Domestic Violence, according to the submitted Initiative of the Protector of Citizens.

2. Ratify the Optional Protocol to the Convention on the Rights of the Child on the procedure for the submission of complaints to the Committee on the Rights of the Child, which Serbia signed in February 2012.
3. Amendments to the relevant legislation should provide assistance and support to the families that directly take care of their children with developmental difficulties, disability, and/or children with more severe illnesses that are, due to the nature of the problem or disease, in need of constant care.
4. Establish mechanisms that would be used for monitoring the number of children in the Republic of Serbia, particularly the children who are in a vulnerable position or in sensitive situations, and who need help and support from the state.
5. Ensure that provisions of the law relating to the vulnerable groups exposed to an increased risk of a disease are applied to each child who is not insured as a family member of the insured person, or does not exercise rights from the compulsory health insurance as a family member of the insured person.
6. Ensure effective and timely initiation and implementation of a procedure aimed at determining the level of personal accountability of employees in schools for the violation of violence prohibition, abuse and neglect, for the violation of their work duty, and for omissions in the implementation of measures of protection of children from violence, abuse and neglect.
7. Regulate and define measures for additional support of students with developmental difficulties in education, the method of their support and financing, and the procedure of an assessment of needs of children and students, and establish and put into operation inter-sectoral committees, and introduce effective control mechanisms.
8. Provide regular education in education institutions aimed at increasing the sensitivity of their employees towards children with developmental difficulties and at the adoption of practical skills and knowledge required for work with them.
9. Ensure, in the full range, professional control of the quality of textbooks and teaching aids and their procurement, in accordance with the law and principles relating to the proper administrative conduct, and take adequate measures towards the participants in the procedure who act unlawfully and/or unconscionably.
10. Organise a campaign for raising public awareness about harmful effects of corporal punishment of a child and alternative children discipline methods for the purposes of providing professional assistance and support to parents in the upbringing of children, through the mechanisms of social and health care services (parental counselling, phone lines, "Schools for parenting", etc.)

### **Gender equality and LGBT rights**

1. Ratify the Council of Europe Convention on preventing and combating violence against women and domestic violence, in order to proceed with the harmonisation of the legal framework for the protection of women from violence.
2. It is necessary that the Ministry of Education, Science and Technological Development amends the Law on the Foundations of the Education System in the

Republic of Serbia<sup>6</sup> by entering a provision on explicit prohibition of discrimination based on sexual orientation.<sup>7</sup>

3. The Ministry of Education, Science and Technological Development should introduce into primary and secondary schools curricula, and then in texts of books, the content by which it will, in an acceptable but professional manner, address all important issues relating to LGBT rights.
4. Gender Equality Directorate of the Ministry of Labour, Employment and Social Policy will continually monitor implementation of gender equality and equal opportunities policies in local self-governments and/or public authorities at the national level.
5. The Ministry of Justice and Public Administration, and the Republic Legislation Secretariat will propose measures for the introduction of the gender-sensitive language in government work, including writing of laws and other regulations.
6. Establish mechanisms for gender equality in local self-governments and take other measures for the implementation and monitoring of the implementation of the Law on Gender Equality at the local level.
7. The Ministry of Labour, Employment and Social Policy should prepare specific measures for more effective protection of rights and promotion of the position of child-bearing women, new mothers and mothers, as particularly vulnerable groups of women.
8. Ministries of the Government of the Republic of Serbia should monitor, within their jurisdictions, implementation of the strategy for the improvement of the position of women and/or activities defined in action plans for the implementation of specific strategies.
9. The Ministry of Justice and Public Administration should prepare a Draft Law on Free Legal Aid, which would promote the position of a large number of women, particularly victims of domestic violence.
10. It is necessary that public authorities continuously develop and implement measures and activities related to raising awareness about the necessity of respecting LGBT human rights.
11. With the passage of new or amendments to the existing laws, the Government should promote protection of rights of transgender/transsexual persons.

### **Persons with disabilities**

1. The Ministry of Labour, Employment and Social Policy should independently, and in cooperation with other authorities of public administration:
  - a) Draft and adopt action plans for the implementation of the Strategy of the Government of the Republic of Serbia for the Improvement of the Position of Persons with Disabilities;
  - b) Ensure consistent implementation of the Law on Vocational Rehabilitation and Employment of Persons with Disabilities, and take measures to remove obstacles

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6 "Official Gazette of RS", Nos. 72/09 and 52/11.

7 See Article 44 of the Law on the Foundations of the Education System in the Republic of Serbia.

- related to the employment of persons with disabilities such are discrimination, prejudice, underdeveloped support services, inaccessibility of job positions, physical environment, public transportation, information and communication, and insufficiently inclusive education system;
- c) Prepare and propose to the competent authority effective measures for “affirmative actions” that will enable businesses employing and rehabilitating persons with disabilities to be on an equal footing with other companies;
  - d) Develop new measures for vocational rehabilitation, retraining and further education of persons with disabilities seeking employment, in accordance with the demand and needs of the labour market;
  - e) Develop systems and support services for people with disabilities in local communities;
  - f) Ensure sufficient number of associates working on decision making about citizens’ complaints and protection of human rights.
2. The Ministry of Health, independently or in cooperation with other authorities of public authorities, should:
    - a) Establish a task force in charge of development of the process of desinstitutionalisation, that is, transformation of existing health care and social welfare institutions where persons with developmental disabilities are accommodated, whose work will be supported by the Ministry of Labour Employment and Social Policy, the Ministry of Education, Science and Technological Development, the Ministry of Finance, experts and representatives of civil society organisations;
    - b) Harmonise the Draft Law on Rights of Persons with Mental Health Problems with the Mental Health Strategy of the Government of the Republic of Serbia, and with the UN Convention on Rights of Persons with Disabilities, and ensure human rights protection and social inclusion.
  3. The Ministry of Construction and Urban Planning should harmonise the Rulebook on Technical Standards for Accessibility in accordance with laws and international standards, and organise and conduct training of competent local agencies in charge of its implementation.
  4. The Ministry of Education, Science and Technological Development should improve the education system for persons with disabilities because an extremely unfavourable education structure is one of the main causes of unemployment and social exclusion of persons with disabilities.
  5. The Republic Pension and Disability Insurance Fund must make amendments to the Rulebook on the Establishment and Model of Operations of Expertise Authorities of the Republic Fund for Pension and Disability Insurance, and adopt other relevant bylaws in order to eliminate deficiencies related to time limits, clarity, completeness and description of findings and opinions of expert bodies in the first- and second-instance expertise procedure.

Saša Janković, Protector of Citizens

# I. LEGAL FRAMEWORK AND SCOPE OF WORK OF THE PROTECTOR OF CITIZENS

## 1.1 LEGAL FRAMEWORK

The Protector of Citizens of the Republic of Serbia is an independent and autonomous public authority, introduced into the legal system of the Republic of Serbia in 2005 by the Law on the Protector of Citizens<sup>8</sup> (hereinafter referred to as the “Law”) and, subsequently confirmed by the Constitution of the Republic of Serbia<sup>9</sup> (hereinafter referred to as the “Constitution”). The competences of the Protector of Citizens consist of controlling the legality and regularity of the work of administration authorities related to the exercise of individual and collective rights of citizens, as well as to protect and promote human and minority rights and freedoms of citizens.

The independence of the Protector of Citizens is one of the basic principles in the work of this institution, in accordance with the international documents on the ombudsman institution; it means that the Protector of Citizens is organisationally and functionally separate from the administration authorities<sup>10</sup> whose work it controls. The principle of the Protector of Citizens’ autonomy arises from the principle of independence, which means that this institution performs the duties within its competence independently and prevents anyone from influencing its work and actions.

The Protector of Citizens is appointed by the National Assembly and, according to the Constitution and the Law, the Protector of Citizens reports to the National Assembly on its work. The Protector of Citizens acts in accordance with the Constitution, the Law, other regulations and general acts, as well as ratified international treaties and generally accepted rules of the international law.

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8 The Law on the Protector of Citizens (“Official Gazette of the Republic of Serbia”, Nos. 79/05 and 54/07).

9 Decision on the proclamation of the Constitution of the Republic of Serbia, published in the “Official Gazette of the Republic of Serbia”, Nos. 83/06 and 98/06 (Fifth Part – Organisation of Government, Section 5 – “Protector of Citizens”, Article 138).

10 The Law on the Protector of Citizens (Article 1) introduced the shortened term „administration authorities“ which denotes state administration authorities, authorities responsible for the legal protection of property rights and interests of the Republic of Serbia, as well as other agencies and organisations, companies and institutions vested with public powers. In order to make a reader-friendly Report, we have used the same shortened term.

## 1.2 SCOPE OF WORK

The Protector of Citizens controls the work of the public administration authorities responsible for legal protection of property rights and interests of the Republic of Serbia, as well as other agencies and organisations, enterprises and institutions vested with public powers. The Protector of Citizens is not authorised to control the work of the National Assembly, the President of the Republic, the Government, the Constitutional Court, courts and public prosecutors.

In addition to initiating and conducting the investigations of the work of public administration authorities, the Protector of Citizens can act pre-emptively through providing good services, mediating between citizens and administration authorities and giving advice and opinions on the matters within its competence, in order to improve the work of administration authorities and the protection of human rights and freedoms.

The Protector of Citizens also has the right to launch legislative initiatives. The Protector of Citizens may propose legislation within its competences; submit initiatives for amending or adopting new regulations if the Protector of Citizens believes that their shortcomings cause violations of civil rights, or if it is of importance for the realisation and promotion of civil rights. The Protector of Citizens is also authorised to give opinions on draft regulations to the Government of the Republic of Serbia and the National Assembly. Moreover, the Protector of Citizens is authorised to initiate procedures before the Constitutional Court for the assessment of constitutionality and legality of laws, regulations and general acts.

In a relatively quick process, free from excessive formalities, the Protector of Citizens controls the observance of the rights of citizens, determines violations committed by administration authorities through acts, actions or failure to act, if they violate state laws, other regulations or general acts. The Protector of Citizens investigates (or controls, as stipulated by the Constitution and the Law) whether an administration authority has acted lawfully and properly in the matters related to the rights, freedoms or legally based interests of citizens. If it has not, the Protector of Citizens establishes a failure and recommends the way of correcting it whatever the case may be.

The Protector of Citizens investigates much more than a formal compliance with the law; the Protector of Citizens examines ethics, conscientiousness, impartiality, competence, usefulness, effectiveness, respect of client's dignity and other properties that should characterise public administration, which citizens, as taxpayers, rightfully expect.

Recommendations, views and opinions of the Protector of Citizens are not legally binding. The work of the Protector of Citizens is not to force, but to persuade, by using the force of argument, as well as the institutional and personal authority, about the necessity of removing gaps and improving the method of operation.

However, the administration authorities are obliged to cooperate with the Protector of Citizens, allow it to access their premises and make available all information they hold, regardless of the degree of their confidentiality (when it is in the interest of the initiated investigation). A failure to comply with these legal obligations is the basis for the initiation of appropriate disciplinary and other procedures.

The Protector of Citizens may recommend a dismissal of the official who is considered liable for the violation of civil rights, initiate disciplinary action against the employees of administration authorities, or submit a request for initiating a criminal, misdemeanour or other appropriate procedures.

### 1.3 NEEDED MODIFICATIONS OF THE LEGAL FRAMEWORK REGULATING OPERATION OF THE PROTECTOR OF CITIZENS

The reasons for improving the legal framework regulating operation of the Protector of Citizens have been identified on the basis of over 5 years of experience in its implementation. Since its passage in 2005, the Law was modified once (2007), but prior to the election of the Protector of Citizens, so that the amendments made on that occasion could not take into account the experience gained through the implementation of the Law.

Reasons for amendments to the legal framework regulating operation of the Protector of Citizens are twofold – on one hand, there is a need for regulating certain issues in a different manner whereas, on the other hand, it is necessary that some of still unregulated issued be regulated for the first time.

First, for example, inconsistencies existing in the current provision of the Law according to which the deputy Protector of Citizens is required to have double less experience than the Protector of Citizens, which does not match requirements to be met by the deputy when assisting the Protector of Citizens in performing activities and when being delegated the Protector of Citizens' powers. In practice, the Protector of Citizens is also required to submit initiatives for the amendment of regulations to other authorities as well, and not only to the Government and the National Assembly, as stated in the Law, that is, to provide an opinion in the drafting regulations procedure. It is also necessary to prescribe time limits in which competent authorities will consider initiatives that are, in accordance with the Law, submitted by the Protector of Citizens, as well as to specifically commit to submit draft proposals to the Protector of Citizens regulating issues relevant for the exercise and protection of rights of citizens, so that the Protector of Citizens could provide an opinion about them, or propose their amendments in the adoption procedure. Currently, the Law on the Protector of Citizens leaves too wide discretionary space for the assessment whether repeated conduct of an official or an employee derives from an intention to refuse cooperation with the Protector of Citizens. Reasons of appropriateness impose an amendment to the existing provision on when and under what conditions the control procedure may be terminated.

In respect of completely new solutions, it is necessary to protect the name and symbols of the Protector of Citizens whose use by different institutions, organisations and individuals, at different levels, creates confusion among citizens and other authorities and organisations, as well as in the media in terms of what specific authority is being referred

to. In addition, it is necessary that, for the purposes of efficiency of actions upon received complaints, the Protector of Citizens is granted with more specific powers in the protection of whistleblowers, which, in addition to protection from retaliation over those who, in good faith, point to a serious violation of a public interest, create conditions for more efficient protection of the interest. More significant necessary novelties are the need to prescribe an effective mechanism for reviewing citizens' complaints in each public authority and reporting to the Protector of Citizens on the operation of these mechanisms. Serbia does not have a systematic method of consideration of citizens' complaints that horizontally and vertically pervades the whole administration, but in most cases, the Protector of Citizens is the first, instead of the last instance, the citizens refer to.



## II. OVERVIEW OF ACTIVITY AREAS

### 2.1 SECTOR OF PROTECTION OF THE RIGHTS OF PERSONS DEPRIVED OF LIBERTY AND NATIONAL PREVENTIVE MECHANISM

#### 2.1.1 Status Overview

In 2012, in the area of protection of the rights of persons deprived of liberty, the Protector of Citizens performed its competences by responding to citizens' complaints, and on its own initiative. For the purposes of preventing torture or any other form of ill-treatment or punishment, the Protector of Citizens paid particular attention to proactive activities by carrying out activities of the National Preventive Mechanism.<sup>11</sup>

Detected deficiencies in the position of persons deprived of liberty and their protection from torture and other forms of ill-treatment range from individual attitudes of civil servants towards persons deprived of liberty, gaps in the organisation and functioning of a certain institution, defects of the system as a whole, regulation deficiencies, lack of regulations, to a broader social attitude reflected in the stigmatisation of persons deprived of liberty, which includes awareness of the justifiability of their abuse.

It is obvious that efforts to protect rights of persons deprived of liberty in Serbia are seen as an attempt to provide them with privileges, or to give them more rights than they should have. Although human dignity, the right to inviolability of the physical and psychological integrity, and the prohibition of torture, ill-treatment or degrading treatment or punishment are guaranteed by the Constitution and a number of laws, as well as by the most significant conventions ratified by Serbia, there is no sincere belief that those basic human rights are inviolable, that they belong to every citizen, even to those who are arrested, detained or convicted, as well as to persons with mental health problems or developmental difficulties.

The Protector of Citizens has not identified in its activities so far any forms of torture as a systematic, organised and encouraged phenomenon in the Republic of Serbia. However, individual cases of abuse in a large number exist as a result of deficiencies of a system that has been set up in such a way that it cannot sufficiently prevent occurrence of torture,

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<sup>11</sup> See the Special Report of the Protector of Citizens about carrying out activities of the National Preventive Mechanism for the prevention of torture in 2012.

its detection and identification of responsible persons. In addition, systematic deficiencies reflected in poor housing and other living conditions in institutions, as well as some specific system failures, or irregularities in the treatment of persons deprived of liberty, gain a character of ill-treatment or degrading treatment themselves. Notable inefficiency of existing internal mechanisms for the protection from abuse suggests that it is necessary to improve their efficiency in the following period.

Regarding police treatment of persons deprived of liberty, the most noticeable problem are inadequate premises for police custody, which should promptly be complied with applicable regulations and standards. Longer custody in inadequate premises can be characterised as degrading treatment, and in some cases as abuse. To say that there are no adequate funds is inappropriate. Required investments are usually small and they produce essential results. It has been noted that police representatives in their public statements violate the presumption of innocence, stating that certain persons committed certain crimes, even though this has not been determined by a final judgement of a court.

The judicial reform in the Republic of Serbia did not yield in expected results, especially after determining detention which is, according to overall impression, easily imposed and is unduly long. Accommodation and other living conditions of detainees are generally not in compliance with applicable standards, therefore, detention in many cases is a kind of punishment prior to conviction. There are many situations in which a person stays in detention for a long time, and is not convicted. Those persons receive compensation from the budget of the Republic of Serbia for the time spent in detention, whereas an effective reimbursement system has not been established yet. The position of women detainees is particularly difficult who, in comparison to male detainees, due to their small number, mostly stay in detention in isolation. What is used as a temporary or disciplinary measure for sentenced persons is a common method of the execution of a detention measure for women detainees.

A high rate of recidivism shows that the system for the execution of criminal sanctions has not achieved the punishment purpose. Treatment-related activities are insufficient, sentenced persons are mostly idle, and many are 23 hours per day closed in dormitories. Classification is dysfunctional, preparation for release is not effectively carried out, there are no separate release departments, nor there is effective post-penal treatment. Deficient ices have been detected in the exercise of the right to health care, and there is a significant problem with imprisoned persons with mental disorders.

The Protector of Citizens welcomes activities of the Ministry of Health related to the passage of the Law on the Protection of Persons with Mental Health Problems, as well as activities of the Ministry of Justice and Public Administration which initiated amendments to the Law on Non-Contentious Procedure. Provisions of these regulations relating to the rights of persons with mental health problems, or their retention in stationary institutions, should be fully in compliance with rules of the international law and applicable standards, as well as with the Strategy for the Development of Mental Health Protection,<sup>12</sup> stating that treatment and accommodation of such persons should take place in the community, as close to the patient's family as possible. In its opinion submitted to the Ministry of Health, the Protector of Citizens pointed to the fact that longer custody of persons with mental health problems in displaced psychiatric hospitals, in which it is impossible to obtain psychosocial rehabilitation,

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12 "Official Gazette of RS", No. 08/07.

has resulted in the inability of inclusion of these persons in the community, and in elements of ill-treatment and degrading treatment.<sup>13</sup> The Protector of Citizens pointed out that it is necessary to improve existing regulations – when the nature of an illness or disability is no longer a cause of custody, it can be justified only if it is carried out to protect one’s life or health. Apart from a need to clearly differentiate consent to a medical measure, or treatment, from consent to accommodation in an institution, regulations should carefully regulate custody of patients in health institutions, but also of beneficiaries in stationary social welfare institutions. It should be clearly prescribed that no one can be held or deprived of liberty, either on the basis of one’s own will, or on the basis of someone else’s will, or consent, but only on the basis of a decision of the competent authority.

The Protector of Citizens welcomes activities related to the reduction of the number of beneficiaries in stationary social welfare institutions, however, the procedure is slow and focused mainly on juveniles. There is a need for faster provision of conditions for accommodating as many beneficiaries as possible, who are currently accommodated in institutions, in the community, and as close to their families as possible. In some institutions was found that some beneficiaries were continuously in isolation, which represents ill-treatment, and in some cases torture. There is a need to change conditions and procedures for the custody of persons with mental health problems, dementia, etc., in order to avoid long-term deprivation of liberty of such persons according to the will of their guardians.

Serbia still has to face a fundamental problem of the position and protection of rights of persons deprived of liberty, as well as to achieve standards by which limitations of rights of such persons should be at least necessary and proportionate to the legitimate aim.

The General Police Directorate of the Ministry of Interior, the Directorate for the Execution of Criminal Sanctions of the Ministry of Justice and Public Administration, as well as the Ministry of Health, established a satisfactory cooperation with the Protector of Citizens.

### **2.1.2 Statistical Overview of Citizens’ Complaints in the Area of Protection of Persons Deprived of Liberty**

Acting upon complaints and on its own initiative,<sup>14</sup> the Protector of Citizens, in 2012, acted in 548 cases, out of which 152 were transferred from the previous year. Actions were completed in 347 cases, and there are 201 cases still pending. In 2012 were initiated 396 cases, out of which 394 cases on the basis of citizens’ complaints, and two on the initiative of the Protector of Citizens. In 2012, the number of received citizens’ complaints increased by about 4% compared to the previous year. Out of 394 complaints received in 2012, in the current year actions were completed in 243 cases, i.e. 62%, and 151 cases, i.e. 38%, are still pending. The total of 524 violations of rights were recorded in the stated 396 cases (see Table 1 for the most common violations).

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13 The Psychiatric Hospital in Vršac accommodate about 800 patients, half of whom was there more than a year, and more than 100 patients stay there longer than 10 years. The question is whether we can talk about “treatment” if it lasts for 10 years or for life, or this is rather a sort of an asylum. It is particularly alarming the fact that only in psychiatric wards in the Hospital die from 350 to 400 patients each year.

14 For more information on the execution of activities of the Protector of Citizens related to preventive work or to the activities of the National Preventive Mechanism for the prevention of torture, see section “Report on National Preventive Mechanism” in this chapter.

In 2012, 20 complaints indicated to the occurrence of torture and other forms of abuse, which is 37% less than in the previous year. In order to establish a direct contact with complainants, and an insight into the circumstances relevant for acting upon complaints, 35 visits were made to the institutions for the execution of criminal sanctions.

**Table 6 – Violation of rights of persons deprived of liberty pointed to by complainants**

Civil and political rights	189	36.07%
Right to good governance	119	22.71%
Special rights of persons deprived of liberty	119	22.71%
Economic, social and cultural rights	97	18.51%
<b>Total</b>	<b>524</b>	

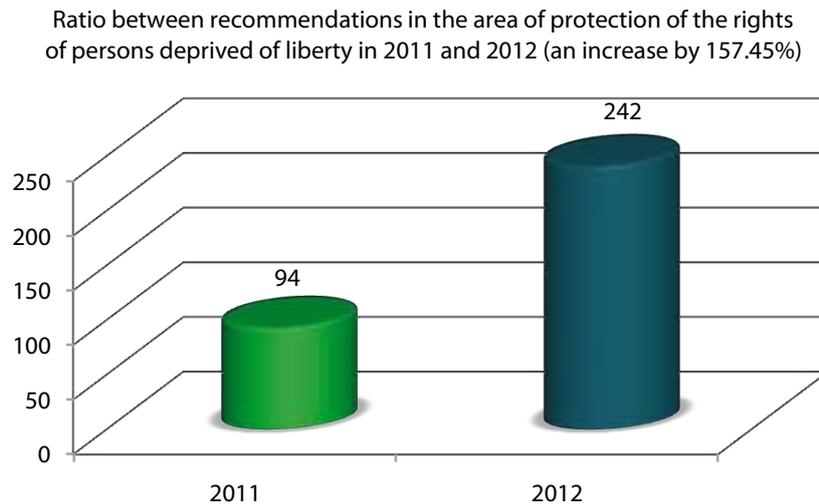
Complaints have the same trend as in the previous periods and mostly refer to bad accommodation, hygiene, food, insufficient time sent in the fresh air, insufficient health care, unengagement, lack of active treatment, frustration with classification and inability to progress in treatment, transfer, the right to information and legal aid, improper conduct of procedures, illegal deprivation of liberty, and more.

The largest number of complaints refers to the illegal and irregular work of the institutions for the execution of criminal sanctions and the police.

**Table 7 – Special rights of persons deprived of liberty**

Type of right violated	No.	%	Type of right violated	No.	%
Accommodation	24	20.17%	Amnesty	4	3.36%
Right to transfer	14	11.76%	Right to making and receiving submissions	3	2.52%
Placement	11	9.24%	Parole	3	2.52%
Right to visit	9	7.56%	Disciplinary procedures	3	2.52%
Special rights of the convicted person	9	7.56%	Right to correspondence	2	1.68%
Nutrition and canteen	8	6.72%	Right to stay in a separate room	2	1.68%
Clothing, underwear and footwear	7	5.88%	Right to leave	2	1.68%
Categorisation	7	5.88%	Right to phone calls	1	0.84%
Right to a submission, complaint and appeal of the convicted person	4	3.36%	The right to pardon	1	0.84%
Hygiene		3.36%	Free time outside enclosed spaces	1	0.84%

In 2012, in the area of protection of the rights of persons deprived of liberty, the Protector of Citizens addressed 242 recommendations to competent authorities,<sup>15</sup> which marked an increase by 157% in relation to the previous year. The number of 139 recommendations were addressed to the General Police Directorate of the Ministry of Interior, 78 recommendations to institutions – Directorate for the Execution of Criminal Sanctions, 25 recommendations to psychiatries – the Ministry of Health, and seven recommendations were sent to the Asylum Centre Bogovađa – the Commissioner for Refugees and Migrations.



**Chart 2 – Ratio between recommendations in the area of protection of the rights of persons deprived of liberty in 2011 and 2012 (an increase by 157.45%)**

Recommendations are mostly systematic, so they refer to a large number of cases and/or complaints addressed to the Protector of Citizens. Administrative authorities which received recommendations timely informed the Protector of Citizens about their actions upon recommendations. In 2012, actions were taken upon 114 recommendations, 90 of which within the time limit envisaged for actions, whereas 38 recommendations were not acted upon.

### **2.1.3 Achievements in 2012 in the Area of Protection of the Rights of Persons Deprived of Liberty**

In 2012, the Protector of Citizens made 35 visits to the institutions for the execution of criminal sanctions, whereas in this field, the Protector of Citizens sent 242 recommendations to executive authorities. In order to determine irregularities, identify at what level they occur, and investigate reasons for their occurrence, the Protector of Citizens established a continuous dialogue with the representatives of visited institutions and ministries.

#### *Application of police powers*

In 2012, the Protector of Citizens received 90 citizens' complaints to the exercise of police powers. In terms of the work on the prevention of torture and other forms of abuse in the exercise of police powers, by performing activities of the National Preventive

<sup>15</sup> Including recommendations provided in the NPM capacity.

Mechanism, the Protector of Citizens made 41 visits to police stations in 2012. In the reporting period, the police received 149 recommendations.

In 2012, as in the previous year, the Protector of Citizens determined torture against a person deprived of liberty by the police.

*Example: Torture in police custody*

The Protector of Citizens determined that the right of a complainant to physical and mental integrity was violated, because during arresting, bringing to a police station and custody, the complainant was subjected to torture and degrading treatment. The police received a recommendation: to determine responsibilities of police officers for torture, and to punish them; to protect in the future the right of all persons to respect for physical and mental integrity, and to take all possible measures to protect from torture; to apologise to the complainant for illegal actions of police officers, and to inform the complainant of the possibility of exercising the right to compensation and to other rights. Institutions – Directorate for the Execution of Criminal Sanctions – received a recommendation to notify the competent prosecutor's office, without delay, in its future work, of any information about a person being abused in the period between deprivation of liberty and admission to an institute.

The described case was primarily determined on the basis of existing documents submitted by the police and the institute in which the complainant served detention. It is indicative that in this, as in a similar case last year, internal control services that acted before the Protector of Citizens did not identify any irregularities. **It is clear that it is necessary to increase effectiveness of the existing internal, police mechanisms for the protection against abuse.**

On several occasions, the Protector of Citizens determined that premises for police custody do not meet applicable standards. In witness whereof, the police points to the fact that provision of adequate premises requires funds that are lacking now. Such justification is inappropriate.

In a large number of police stations, there are no separate premises for police custody. Persons deprived of liberty are kept in the offices, or in prison detention units. **The practice of keeping persons for hours, and especially the whole day, in police offices or other inadequate premises not intended for that purpose, should be immediately discontinued.** The placement of persons in police custody in prison detention units is justified by better accommodation conditions, but this creates both, organisation and security problems, so this practice should be terminated in the future.

Most police stations have special rooms for police custody, but they, to a greater or lesser extent, do not meet minimum standards. Accommodation in such premises can be characterised as degrading treatment, in some cases even as abuse.

*Example: Inadequate premises for police custody*

The Protector of Citizens determined that in 24 police stations, premises for police detention do not meet applicable standards. **Recommendations<sup>16</sup> were sent to 9 police stations stating that police custody in the existing premises assigned for this purpose should be completely stopped because they are inadequate**, and that in 15 police stations premises for police custody should be adjusted according to applicable standards. It is necessary that they are sufficiently spacious. Their size must be at least 6, i.e. recommended 7 square meters, for single cells, i.e. at least 4 square meters per person, for multi-occupancy cells; the distance between the walls of a room must be at least 2 meters, the height from the floor to the ceiling at least 2.5 meters, and if the room is smaller, it may be used only if people are not kept in it longer than a few hours. The rooms must be clean, dry and ventilated; there must be fresh air, they must have both natural and artificial light; they must be heated according to climatic conditions; they must have a bed, a mattress and a sufficient number of blankets; they must have an alarm/button to call the guard, and they also must be controlled through video/audio surveillance that does not violate privacy; they must not contain elements that kept persons could use for self-infliction; kept persons must always have accessible running water for drinking and hygiene, hygiene agents and sanitary installations. Also, the accompanying space for spending time in the fresh air should also be provided.

*Execution of detention measures*

The Protector of Citizens controls operation of the institution, i.e. Directorate for the Execution of Criminal Sanctions, and not operations of the court, as part of its reactive work, and control of legality and regularity of the treatment of detainees. In 2012, the Protector of Citizens received 71 complaints from detainees. In order to establish a direct contact with complainants and gain insight in the circumstances relevant for acting upon complaints, the Protector of Citizens made 8 visits to detention units to see complainants. As part of preventive work, for the purposes of preventing torture and other forms of abuse during the execution of detention measures, and carrying out activities of the National Preventive Mechanisms, the Protector of Citizens made monitoring visits to 7 detention units. In 2012, the Protector of Citizens sent 9 recommendations to institutions, i.e. Directorate for the Execution of Criminal Sanctions, for the purposes of remedying irregularities related to the protection of rights of detainees.

The Protector of Citizens found that accommodation and other living conditions in detention units are not in compliance with regulations and applicable standards. Detention units are overcrowded, insufficient in capacity to accommodate the existing number of detainees. Detainees do not generally have space in their dorm rooms of at

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16 Recommendations of the Protector of Citizens related to the execution of NPM activities in reports about visits to police administrations/units in 2012, are available at [www.ombudsman.rs/nacionalni\\_mehanizam\\_za\\_preveniraju\\_torture](http://www.ombudsman.rs/nacionalni_mehanizam_za_preveniraju_torture).

least 8 square meters and 4 square meters, and some inmates sleep on mattresses – so called, “cubes” on the floor or on triple bunk beds, which undermines the idea of a separate bed. Some of the premises used for the accommodation of detainees are dirty, not freshly painted and moist. The Belgrade District Prison, the largest detention facility in Serbia, which usually accommodates more than 1,000 detainees, most dorm rooms do not have windows, so the fresh air and natural light only come through the bars from a common hallway. The detainees who are non-smokers, and whose health is threatened by tobacco smoke, are in even more difficult position. A large number of toilets is ruined, not equipped with appropriate sanitation and personal hygiene devices, water constantly leaks, and one can feel clamminess.

#### **Placement of detainees**

In 2012, the Protector of Citizens sent a recommendation stating that detainees, who had not been previously convicted, cannot be placed in the same dormitory with inmates who had already been convicted, and that attention should be paid to their placement, depending on the type of a crime they are charged with.

Although according to applicable regulations detainees have the right to spend outside enclosed spaces at least 2 hours every day, it was found that they are typically allowed to do that only for about an hour a day. Existing walkways generally do not have shelters appropriate for the protection from precipitation. Also, there are insufficient conditions for physical activities, especially during bad weather. Detainees are deprived of the right to education and paid work, and they do not undergo any form of psychotherapy.

#### *Execution of criminal sanctions*

In 2012, the Protector of Citizens received 193 complaints of the persons subject to the execution of criminal sanctions. As part of proactive work, for the purposes of preventing torture and other forms of abuse, and carrying out activities of the National Preventive Mechanism, the Protector of Citizens made 41 visits to the institutions for the execution of criminal sanctions in 2012. The Protector of Citizens sent 110 recommendations for the purposes of remedying determined irregularities in the work and actions.

In 2012, the Protector of Citizens determined that security service members injured a convicted person with a rubber stick.

***Example: Abuse of a convicted person***

Identified physical injuries on a convicted person incurred by a security service member, which were not recorded in official records, nor the prison warden was informed about this, are illegal and improper conduct, i.e. an act of torture.

In terms of the execution of criminal sanctions, the Protector of Citizens recommended establishing liability of the officers in the institution for the violence against the complainant, for the failure to record the inflicted physical injuries and inform the prison warden, and for the fact that the complainant was not taken to see a doctor.

The Protector of Citizens submitted a notice to the competent prosecutor with the accompanying documentation about this case. Event after almost a year, the Protector of Citizens has not received information whether an effective investigation has been conducted. The institution submitted a notice in which it confirmed injuring the complainant, indicating that it was not possible to determine who caused him harm. The stated reason was that the complainant did not cooperate sufficiently, and that all officers “explicitly stated that they did not personally applied, or anyone else from the service,” any of the means of coercion against the convicted person, as well as that none of the inmates heard or saw that the convicted person was beaten. Institutions are obliged to provide effective mechanisms for the prevention of torture and, if any form of abuse takes place even in despite of this, to investigate and determine who was the perpetrator, and to determine a system of strict liability.

Acting upon complaints and visits made in 2012, the Protector of Citizens found that, in the previous year, there had been no improvements in accommodation and other living conditions in the institutions for the execution of criminal sanctions.

The consequences of the amnesty were, by the end of 2012, reflected in the reduction of the overcrowdedness of the accommodation capacities of the institutions. Although convicted persons will be released in the future on these grounds, effects of the amnesty are expected to be short-lived.

Existing institutions were mostly built at the beginning of the last century, and many of them are located in the central parts of cities, therefore, it is difficult to adapt them to applicable standards. A large number of dorm rooms is dilapidated, sanitary facilities are generally wet, in some of them there is no direct airflow or natural light, which comes only through a common hallways, and artificial lighting is usually insufficient. A large number of persons deprived of liberty are not allowed to spend sufficient time in the fresh air, they often stay outside for half an hour a day, although regulations require the minimum of two hours. This is primarily due to the lack of adequate walking area. Existing walkways for convicted persons generally do not have adequate shelters for the protection from precipitation. Often there are no adequate facilities for physical activities in case of bad weather.



Image 1 "The consequence of overcrowdedness"

The Protector of Citizens found that there is a lack of active, individual and collective activities of educators in terms of the treatment of prisoners. In addition, judging from the conversations conducted with teachers and prison managers, it seems that, according to the current system for the placement of convicted persons, there is an unduly restrictive option for a convicted person to move to a more favourable treatment group due to his good behaviour. This leads to the common phenomenon that a convicted person is released from a prison directly from the prison division.

**Apart from the fact that social support for persons deprived of liberty is almost nonexistent, their position is further undermined by the lack of social support to their families.** Programs created for the purposes of providing support in order to help convicted persons after release are arbitrary. They are left to be on their own, which increases the risk that, since they are persons not adapted to the life outside of a prison, it is most likely that they will commit a crime again.

In 2012, the Protector of Citizens paid special attention to the provision of health care in the institutions, which was the main reason for complaints. It was noticed that after admission into a prison, medical examinations are carried out superficially, that is, during the first medical examination not all parts of the body are examined, there are no uniform protocols, there are no regular medical examinations of the prisoners conducted at intervals shorter than three months, and that physicians do not examine sick prisoners every day. In many prisons, the presence of physicians is reduced to the insufficient two hours a day, whereas on weekends and on holidays, physicians do not even visit the institutions. It is a common thing for a non-medical staff to give medicines. It is also a common phenomena that non-medical staff attended medical examinations when a health care worker do not require them to do so, which violates the privacy of prisoners and the right to confidentiality of their health status.

**It was noticed that persons with disabilities are generally not provided with accommodation and assistance that suit their needs.** In some prisons premises and sanitary facilities

are not adapted, ramps are missing, doors are too narrow for the passage of wheelchairs. A particular problem is that the institutions still accommodate convicted persons with severe mental disorders, although there are no conditions for their treatment.

**In the Correctional Institution for Women in Požarevac, being the only institutional capacity of this type, all women, regardless of the treatment group they are placed in, are accommodated in enclosed type of capacities, surrounded by high walls.**

*Example: A child with a mother in prison*

The Protector of Citizens was addressed to by a woman complainant who, during her time in prison because a mother. The complainant states that the program for her treatment as a convict limits the right of the child to undisturbed and proper maintenance of personal relations with the father and close relatives, as the decision of the head of treatment activities allows the child's father to pay a visit only once a month.

The Protector of Citizens, together with the guardianship authority, sent a recommendation to the institution for the execution of criminal sanctions to take appropriate measures to and ensure for the child conditions for undisturbed and proper maintenance of personal relations with the father and relatives, in accordance with the child's best interests, and not in accordance with the program for treatment of the convicted mother of the child. The institution for the execution of criminal sanctions acted upon the recommendation.

*Keeping persons with mental health problems in psychiatric hospitals*

The same as in past years, there is a noticeable lack of complaints submitted to the Protector of Citizens related to keeping of persons with mental health problems and their treatment in psychiatric hospitals. Faced with the above, the Protector of Citizens, as part of preventive work, and carrying out activities of the National Preventive Mechanism, made 4 visits to psychiatric hospitals in 2012, 3 **announced – during the day, and 1 unannounced – at night**. The number of 25 recommendations was sent for the purposes of harmonising the existing situation with applicable regulations and standards.

During the visits, the Protector of Citizens noticed numerous negative consequences of the longer custody of persons with mental health problems in displaced psychiatric hospitals. According to doctors, patients are not released from hospitals when a need for hospital treatment no longer exists because the community does not have an established system that would provide them with the necessary health care and social support they need. In one psychiatric hospital that accommodates 820 patients, 460 of them are there longer than one year, and 111 of them over 10 years. Such patients, many of whom are kept there for many years and completely isolated from the social environment, in time become less adaptable, and sometimes they are completely incapable of resocialising. The stated may – taking into account accommodation conditions that do not meet applicable standards – be the source of individual cases of torture, and, in any case, represents illtreatment and degrading treatment.

Accommodation conditions in psychiatric hospitals are different, both within one hospital and between two or more hospitals. Some accommodation capacities are in a quite

good condition, new or renovated, maintained, clean, bright, ventilated, with sanitary facilities in good condition, decorated dormitories that are not too big, but allow enough space between beds, with clean linen and storage space for personal items. In other institutions, the situation is completely different. There are noticeable efforts of staff to create more favourable living conditions, regardless of available resources and the condition of the building they are in.

The following was noticed: a lack of professional medical staff; insufficient education of nursing staff; a lack of appropriate criteria suitable for securing funds for the operation of hospitals; insufficient work engagement of patients and non-payment of compensations for the work performed; patients are insufficiently encouraged to participate in making decisions relevant for their stay and treatment; the staff specified absence of the security service.

**Deficiencies in the procedure for and keeping records about tying disturbed/violent patients were identified.**

#### **Tying of disturbed/violent patients**

The Protector of Citizens sent recommendations stating that tying of patients can only be done if the control of their aggression is not possible to be established in any other medically appropriate manner, as a last resort, after proving that less restrictive measures are unsuccessful; that tying may be ordered only by a physician; that it can be performed in the prescribed manner with appropriate means that prevent self-infliction; that it should last for as short period of time as possible, and terminated the moment the patient stops being upset with the application of other means and methods; that a health care worker must constantly be in direct contact with the tied patient; and that the tied patient must not be accessible to other patients. In addition, all tying-related activities and reasons for taking such a measure must be regularly recorded.

It was determined that psychiatric hospitals use a drug therapy as the main method of treatment and that access to occupational therapy, group therapy, individual psychotherapy, art, drama, music, sports and additional education is often insufficient for most patients, or is not the same for all patients.

**The Protector of Citizens sent a recommendation stating that all patients must be included in psychosocial rehabilitation programs in accordance with their needs, and adjusted to their abilities, and that necessary staff must be provided for this purpose.**

Taking into account the lack of complaints submitted to the Protector of Citizens related to keeping of persons with mental health problems and to their treatment, as well as official data indicating to the minimum number of complaints addressed to the patrons of rights of patients, one can conclude that persons with mental health problems accommodated in psychiatric hospitals are not adequately instructed about the rules they are entitled to or about protection mechanisms. Accordingly, the Protector of Citizens sent a recommendation stating that psychiatric hospitals should conduct activities aimed at informing patients about their rights (e.g. creating a newsletter – brochure), and encourage them to use legal means to protect their rights.

### *Keeping of beneficiaries in social welfare institutions*

The same as persons with mental health problems accommodated in psychiatric hospitals, beneficiaries accommodated in social welfare institutions rarely submit complaints to the Protector of Citizens, i.e. only one complaint was submitted during the year. Faced with the above stated, the Protector of Citizens, as part of its proactive work, and performing activities within the National Preventive Mechanism, made 10 visits to stationary social welfare institutions in 2012, that is, it visited 5 institutions for the accommodation of persons with disabilities and 5 institutions for the accommodation of the elderly, i.e. gerontology centers.

Many deficiencies were noticed during the visits – a longer stay of children with developmental difficulties and adults with intellectual and mental health problems in displaced asylum-type social welfare institutions, where they are kept primarily because the community does not have an established effective system adequate for providing the support that suits their needs and abilities. The problem is that in such institutions, beneficiaries are completely isolated from the social environment, and become less and less adaptable, sometimes completely incapable of resocialising. The stated may – taking into account accommodation conditions that do not meet applicable standards – be the source of individual cases of torture, and, in any case, represents ill-treatment and degrading treatment.

Accommodation conditions in social welfare institutions are different, both within one institution and between two or more institutions. Specific accommodation capacities are quite good, and some are very poor. The staff points to the deficiencies in the system for the funding of the work of institutions. It is noticeable that there is a lack of staff of various profiles, ranging from caretakers to medical nurses, teachers and psychologists, and physicians. There is an insufficient number of physiatrists and physical therapists, which resulted in neglecting the needs of beneficiaries that are immobile.

**Deficiencies were determined in the procedure for and recording of tying of disturbed/violent beneficiaries. In some institutions was found that specific beneficiaries are held in continued isolation and in the absence of constant supervision of professional staff, in inhumane conditions, without access to or with limited access to running water and a toilet. The position of the Protector of Citizens is that the stated long-term treatment represents the most serious form of abuse.**

#### **2.1.4 National Preventive Mechanism**

The Law on Amendments to the Law on Ratification of the Optional Protocol to the Convention against Torture,<sup>17</sup> passed on 28 July 2011,<sup>18</sup> designated the Protector of Citizens to perform activities within the National Preventive Mechanism (hereinafter referred to as "NPM"). In performing these activities, the Protector of Citizens cooperated, in accordance with the Law, with ombudsman institutions of autonomous provinces and associations whose statutes envisage an objective of promotion and protection of human rights and freedoms.

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17 "Official Gazette of RS – International Treaties", No. 7/11.

18 Serbia signed the Optional Protocol to the Convention against Torture 2003, ratified in 2005, and became a member state in 2006, by submitting its instrument of ratification.

In 2011, the Protector of Citizens created a visit methodology, questionnaires, determined a structure of reporting and visit report models. In the same year, the Protector of Citizens also concluded the Memorandum of Understanding with the Provincial Ombudsman Institution of AP Vojvodina, as well as cooperation agreements with 9 associations<sup>19</sup> with whom the Protector of Citizens also drafted the visit plan of the National Preventive Mechanism for 2012. The budget envisaged special, earmarked funds for the Protector of Citizens for 2012 for carrying out current activities. In addition, the premises of the Protector of Citizens have two offices with the necessary equipment, and, owing to the foreign aid, a van used by team members to make visits to institutions.

In February 2012, the NPM started visiting institutions accommodating persons deprived of liberty. By the end of the year, the Protector of Citizens made 69 visits, and spend 47 days in those visits. The total of 41 police stations were visited, 8 prisons (including also 6 detention units), 4 psychiatric hospitals, 5 stationary social welfare institutions, 5 gerontology centres, 2 visits to asylum centres, and 4 monitoring visits related to the reception of persons returned in the readmission procedure at the airport "Nikola Tesla". **NPM teams for visits are always multidisciplinary, and usually consist of experienced lawyers, psychiatrists, forensic doctors and psychologists.** Based on the visits made, the NPM submitted reports to the visited institutions about the visits, and recommendations for remedying the identified irregularities that can cause or lead to torture or abuse. The total of 61 report with over 229 recommendations were created for the visits made in 2012.

NPM operation methodology envisages that, after submission of a report on the visit made, NPM should, together with the visited institution and the competent ministry, establish a permanent, ongoing dialogue for the purposes of joint assessment of the situation in the visited institution and the system as a whole, in order to prevent torture and any other form of abuse.<sup>20</sup> At the end of 2012, the Protector of Citizens established a dialogue with representatives of most of the visited institutions and competent ministries (currently with the Ministry of Interior, the Ministry of Justice and Public Administration, and the Ministry of Health). In 2012, administrative authorities established full cooperation with the NPM. **During visits, NPM teams are enabled with undisturbed operation, access to all premises and installations, interviews with all employees and patients, as well as with access to all documents, regardless of the degree of confidentiality, in accordance with the law.**

The Plan for 2013 envisages the same number of visits to the institutions as in the previous year. Some visits will be made on a regular basis (visits to the institutions that were not visited in the previous period), some visits will be a follow up and aimed at monitoring the fulfilment of sent recommendations, and some visits will be made *ad hoc*.

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19 The Belgrade Centre for Human Rights, Victimology Society of Serbia, Dialogue – Valjevo, the International Aid Network (IAN), the Human Rights Committee – Valjevo, the Mental Disability Rights Initiative of Serbia (MDRI-S), the Lawyers Committee for Human Rights (YUCOM), the Helsinki Committee for Human Rights in Serbia, and the Centre for Human Rights – Niš.

20 A cooperative dialogue was established in the second half of 2012 between the NPM and police representatives on the basis of 26 sent reports (with recommendations) about visits to police stations, primarily interviews with Mol representatives and visited police administrations, and in the second stage was organised a meeting with the representatives of all police administrations in the territory of Serbia. Similar activities are currently being conducted with representatives of the prison administration and the Ministry of Health, i.e. psychiatric hospitals.

Unannounced visits will be intensified, and some of them will be made at night. For the purposes of supporting NPM operation in 2013, the budget of the Protector of Citizens envisages the same amount of funds as in the previous year. At the beginning of 2013, a special organisational unit was formed as part of the Secretariat of the Protector of Citizens<sup>21</sup>, i.e. the NPM, with 4 employees. In accordance with applicable guidelines,<sup>22</sup> this unit will exclusively carry out a preventive function, i.e. NPM activities. To enable undisturbed operation of the NPM unit, it is necessary to adopt the systematisation of posts which will ensure conclusion of employment agreements for an indefinite period of time for employers. The Protector of Citizens will submit to competent authorities and make available to the public the Report on NPM operation in 2012. Translation of the Report into English will be submitted to the UN's Subcommittee on Prevention of Torture and relevant international organisations.

### **2.1.5 Proposals for Improving the Position of Citizens in Relation to the Authorities**

1. It is essential for the Sector for Internal Control of the Ministry of Interior to be more attentive in its future work of all relevant facts, and to objectively determine the responsibility of police officers in cases of torture or any other form of abuse. The Ministry of Interior must increase the efficiency of existing internal control mechanisms.
2. The Ministry of Interior must, without delay, harmonise accommodation conditions in the premises for police custody with applicable regulations and standards, as citizens' longer stay in inhumane conditions is a form of abuse.
3. The police in their published announcements, and police officers in their public statements, must stop violating the presumption of innocence of citizens and/or to publicly declare that specific persons committed certain criminal offenses, if this has not been determined by a final judgement of the court.
4. It is necessary to solve the problem of the overcrowded Belgrade District Prison, the largest detention unit in Serbia, which in architectural terms is inappropriate for this purpose, dilapidated, and in one of its parts live families of current and former prison employees.
5. Pass the Law on Probation for the purposes of protecting the society from crime, resocialising perpetrators of criminal offenses and their reintegration in the community, as well as providing assistance to victims, injured parties and their families.
6. The Ministry of Justice and Public Administration should increase efficiency of the existing internal control mechanisms, particularly in order to prevent the abuse in the institutions for the execution of criminal sanctions.
7. The Ministry of Justice and Public Administration and/or the institutions for the execution of criminal sanctions should harmonise accommodation conditions for convicted persons with applicable regulations and standards.

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21 Professional Service of the Protector of Citizens primarily performs a reactive function – acting upon complaints.

22 The guidelines of UN's Subcommittee on Prevention of Torture and Associations for the prevention of torture.

8. There is a need to improve the existing bylaws relating to the treatment of convicted persons, primarily due to conducting intensive active treatment-related work with convicted persons; functional and stimulating classification, and awarding of specific rights of convicted persons; implementation of an effective preparation for the release of convicted persons from special release units; effective post-penal treatment which will ensure reintegration of convicted persons after their release.
9. The health care service should be under the jurisdiction of the Ministry of Health, and displaced from the system for the execution of criminal sanctions.
10. The convicted persons with severe mental disorders should be displaced from ordinary prison units to the Special Prison Hospital, a stationary health care unit within the institution, which has the conditions necessary for their treatment, or to some other appropriate health care institution.
11. The Law on the Protection of Persons with Mental Health Problems should be passed immediately, and the provisions of the Law on Non-Contentious Procedure related to detention of persons with mental health problems in stationary health institutions should be amend in accordance with the rules of the interational law and applicable standards, particularly with the Strategy for Development of Menal Health Protection which determined that the treatment and accommodation of such persons should take place in the community, as close to the patients' families as possible.

## 2.2 PROTECTION OF THE RIGHTS OF NATIONAL MINORITIES

### 2.2.1 Status Overview

The constitutional protection of national minorities enables them to exercise and protect individual and collective rights, including those pertaining to the preservation of ethnic and cultural identity. The election and organisation of minority authorities (national councils of national minorities), which attend to culture, official use of language, education and information of national minorities, enable them to decide, through elected representatives, on matters relevant to the protection of their identities.

In practice, there are problems and inconsistencies that present obstacles both to the full exercise and protection of rights of national minorities and to effective work of the public authorities before which those rights are exercised. The Protector of Citizens also pointed to these problems in the previous regular annual reports and in the recommendations and opinions addressed to the competent public authorities. Yet, the investigations conducted subsequently, following complaints by citizens and by national councils of national minorities indicate that the causes of the said problems were not remedied even in 2012. The problems faced with regard to the exercise of competences, and also in the process of organising their work, were directly notified to the Protector of Citizens by the representatives of the Albanian, Ashkali, Bosniak, Bulgarian, Bunyevtsi, Hungarian, Macedonian, German, Roma, Slovene, Croat and Czech national minority self-governments.

Most national councils are faced with the fact that, owing to unclarity of the Law on National Councils of National Minorities<sup>23</sup> or its incongruence with other laws, they do not exercise all prescribed competences, in particular in the sphere of culture and information, and official use of languages and scripts. Owing to the modality of funds allocation, the work of national councils representing less numerous national minorities is especially difficult. Also, the already existing differences in the manner and level of exercise of rights of national minorities are deepened, depending on whether the seat of the national councils is in the AP of Vojvodina or in other parts of Serbia.

Already in the first year of implementation of the Law on National Councils, immediately after the elections for national councils of national minorities, the Protector of Citizens

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23 "Official Gazette of RS", No. 72/09.

addressed a Recommendation<sup>24</sup> to the then Ministry of Human and Minority Rights, indicating that amendments to the Law were necessary to remedy the omissions occurring with respect to the entry into the special electoral rolls and in convoking the National Council of the Bosniak National Minority.

With respect to direct influence being exerted by citizens belonging to national minorities on the taking of decisions pertaining to the protection and fostering of ethnic and cultural identity, **the Protector of Citizens is of the view that decentralisation of the minority self-government system, entailing their election and organisation also at the local level and freeing them from the influence of political parties in electing members and taking decisions, would contribute both to the establishment of essential “cultural autonomy” and to effective exercise of rights by national minorities, which should be the goal of recognising minority rights.**

In support of the observation that, in spite of the developed, yet inconsistent legislative protection of rights, national minorities are faced with problems hampering the effectiveness of cultural autonomy, there are findings showing that, even after the amendments to the Law on the Official Use of Languages and Scripts<sup>25</sup>, the problems concerning the full exercise of rights to the official use of **national minorities’** languages and scripts have persisted.

The investigations conducted and direct contacts with citizens in local self-governments with ethnically diverse populations indicate that **only some local self-governments in the AP of Vojvodina have developed the capacities required for the fulfilment of obligations regarding the exercise, promotion and protection of individual and collective rights of national minorities**, stipulated both by the Law on Local Self-Government and the Law on National Councils of National Minorities (Articles 26, 53, 114) and by other laws, regulations and action plans for the implementation of various Government strategies.

Local self-governments are faced with these problems, on the one hand, owing to the abovementioned incongruence of the Law on National Councils of National Minorities and other laws and regulations, in particular those governing information and culture activities, and, on the other hand, because some local self-governments avoid implementing the law and providing conditions, in accordance with their inherent competences, for the exercise and protection of individual and collective rights of national minorities.

**The Roma national minority, owing to poverty, living conditions and unresolved status issues, and also owing to unjustifiably slow institutional progress in providing the conditions for the protection of their national identity, does not have the same opportunities to exercise the recognised “minority” rights as other national minorities.**

The Strategy for the Improvement of the Status of Roma, adopted by the Government in 2009, has assisted in partial mitigation of the problems of Roma poverty, but there are no indicators suggesting that it essentially contributes to the creation of legislative and factual conditions for their removal. Action plans for Strategy implementation have not been adopted yet, and the improvement of the status of the Roma is visible only in some local self-governments. **Further, this ethnic group is also faced with the problem of recognising their identity**, i.e. being registered in birth registers, for which reason, at the initiative of the

24 Recommendation No. 16-1725/10 of 6 December 2012; available at:

25 “Official Gazette of RS”, Nos. 45/91, 53/93, 67/93, 48/94, 101/05 – law amended by another law, and 30/10.

Protector of Citizens, the Law on Non-Contentious Procedure has been amended<sup>26</sup>, and with legislative barriers to the exercise of human rights, for which reason, at the initiative of the Protector of Citizens, specific articles of the Law on the Permanent and Temporary Residence of Citizens<sup>27</sup> and the Law on Identity Cards have been amended.<sup>28</sup> **However, legal amendments and the creation of a more favourable legislative environment do not mean actual status improvement, among other things, because a part of public administration and public services holds the view that the measures and solutions reached by legal amendments cannot be implemented owing to a lack of their own capacities.**

Solving both the problems of Roma poverty and the problems pertaining to the actual exercise of the right to the protection of ethnic, linguistic and cultural identity requires: detailed planning, coordination of affairs and linking several public administration systems; oversight of the implementation of measures in local self-governments, designing measures for ensuring actual equality, etc. Despite this, the administration is not developing the necessary organisational, staff and financial resources. This observation is verified by the example showing that, during the relocation of the predominantly Roma residents from the informal settlement near the Belville complex in New Belgrade, and also from other informal settlements, there was no efficient coordination or oversight carried out by any public authority from the executive branch. Hence, in such a complex activity, which was practically entirely carried out by city authorities, it was not possible to ensure the compliance with all standards that the Republic guarantees by its regulations. This resulted in numerous problems faced by the residents of the newly established container settlements in Belgrade, as well as the City of Belgrade Administration and other local self-governments to which the residents were relocated, since they do not have at their disposal the mechanisms required for achieving full social integration of the Roma.

The Protector of Citizens has issued recommendations to state administration authorities to regulate the actions of public authorities in relocating informal settlements and to ensure the protection of human rights of the citizens being relocated. The recommendations have not been fulfilled, and the view of the Ministry of Labour, Employment and Social Policy is noteworthy: in spite of the fact that, under the Law on Ministries<sup>29</sup>, it is responsible for Roma integration in local communities, it considers that, by implementing measures foreseen by the Law on Social Welfare<sup>30</sup> and realised in social work centres, it has provided the conditions for durable integration of the relocated Roma. **A result of such interpretation of social integration is that most relocated Roma have returned to Belgrade, while conditions for sustainable integration have not been provided for those who were placed in Belgrade's newly established container settlements in a planned manner.**

As opposed to this, the Government of the AP of Vojvodina continuously strengthens the organisational, staff and material capacities of its Roma Inclusion Office, responsible for planning, coordinating and monitoring the implementation of measures for improving the status of the Roma. In addition, in the Secretariat for Economy, Employment and Gender Equality, a special organisational unit in charge of Roma employment problems has been established.

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26 "Official Gazette of SRS", Nos. 25/82 and 48/88 and "Official Gazette of RS" Nos. 46/95 law amended by another law, 18/05 – law amended by another law, and 85/12.

27 "Official Gazette of RS", No. 87/11.

28 "Official Gazette of RS", Nos. 62/06 and 36/11.

29 "Official Gazette of RS", No. 16/11 and "Official Gazette of RS" No. 72/12.

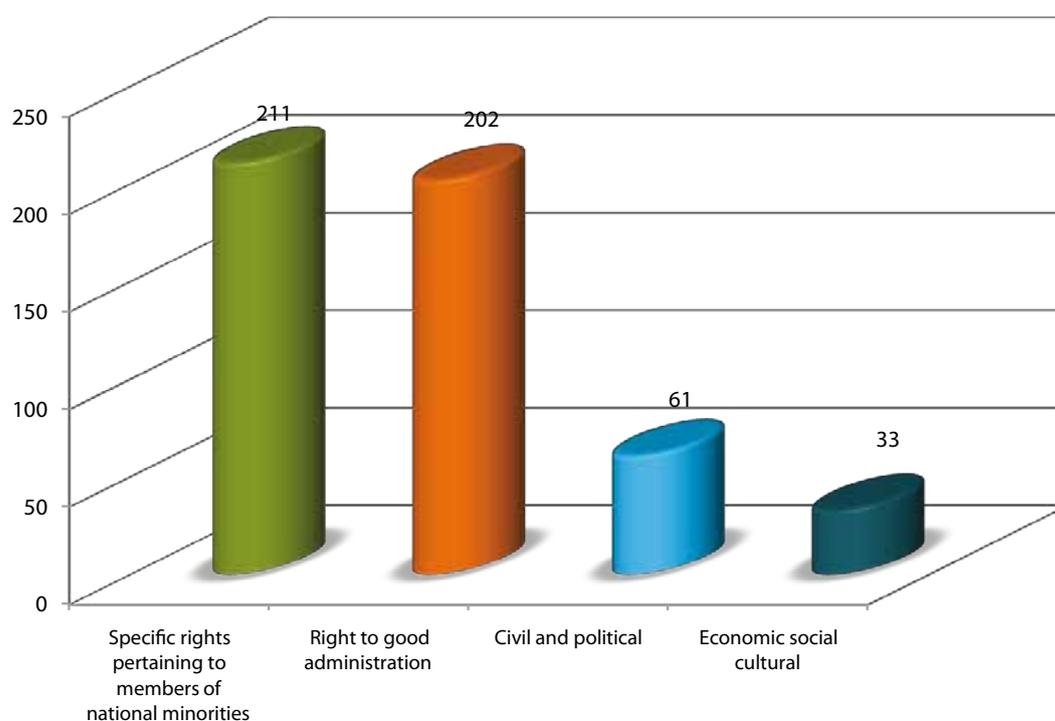
30 "Official Gazette of RS", No. 24/11.

**The promotion and exercise of the rights of national minorities**, through fulfilling recommendations and cooperation, **have been aided by** the Ministry of Justice and Public Administration, Ministry of Interior, City of Belgrade Administration and the Commissariat for Refugees and Migrations. **Such work and approach to citizens, through the development of their capacities, should be the aspiration of** the Ministry of Culture, Ministry of Education, Science and Technological Development, Ministry of Labour, Employment and Social Policy and the administrations of most local self-governments with ethnically diverse populations in Central Serbia.

## 2.2.2 Statistical Overview of Citizens' Complaints in the Area of Protection of the Rights of National Minorities

In 2012, the number of citizens' complaints regarding the exercise of the rights of national minorities increased by 65%. A total of 347 complaints were received, and an additional 17 inquiries were opened on the initiative of the Protector of Citizens.

The complaints concerned violation of the rights of national minorities regarding: the official use of languages and scripts (15), education in the mother tongue (15), prohibition of discrimination on national grounds (29), the exercise of competences of national councils of national minorities (10), the right to cultural creative work and information in the mother tongue (6), equality in the conduct of public affairs (4). Almost one third of the total number of complaints, 131 of them, were filed by national minorities regarding violation of individual rights (the right to identity documents, citizenship, adequate housing, emergency accommodation, etc.).

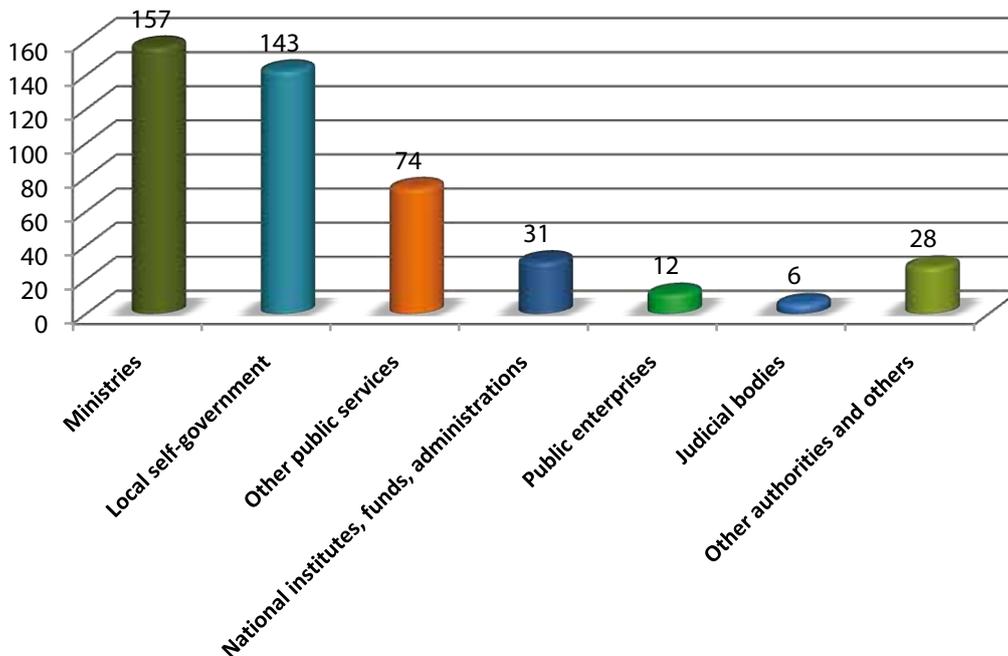


**Chart 3 – Complaints regarding violated rights of national minorities in comparison with other violated rights**

**Table 8 – Violations of specific rights of national minorities, their number and percentage share in the 211 recorded violations of these rights**

Type of right violated	Number	%
Individual rights of national minorities	131	62.09%
Prohibition of discrimination on national grounds	29	13.74%
Right to the official use of languages and scripts of national minorities	15	7.11%
Right to education in the mother tongue	15	7.11%
Right to the exercise of competences of NCNM	10	4.74%
Right to information in the mother tongue	4	1.90%
Equality in the conduct of public affairs	4	1.90%
Right to cultural creative work in the mother tongue	2	0.95%
Right to association and cooperation with fellow nationals in the country and abroad	1	0.47%
<b>Total</b>	<b>211</b>	

Citizens belonging to national minorities most frequently filed complaints due to their dissatisfaction with actions of ministries – a total of 157 complaints, mainly: Ministry of Interior (69), Ministry for Human and Minority Rights, Public Administration and Local Self-Government (50), Ministry of Education, Science and Technological Development (18); Ministry of Labour, Employment and Social Policy (10). A total of 143 complaints concerned the work of local authorities, and 74 – the work of institutions and other public services, most of which were in the sphere of social welfare (52).



**Chart 4 – Complaints by national minorities about the work of certain authorities**

The Protector of Citizens completed 187 investigations as follows: in 20 investigations, irregularities were found and recommendations issued; in 52 investigations, public authorities remedied the irregularities and investigations were discontinued; in 114 investigations, no violations of rights were found, i.e. there were no grounds to conduct the investigations, and one investigation was completed by withdrawal of the complaint by the complainant. A total of 45 complaints were rejected on the grounds that, for legal reasons, the control procedure could not be conducted, owing to: non-competence (23), incomplete complaint (17), untimeliness (3) and non-exhaustion of legal remedies (2).

In 2012, the Protector of Citizens also completed investigations from earlier years. A total of 77 investigations from 2011 were completed, of which 13 resulted in recommendations. For legal reasons, 25 complaints were rejected. Also, three investigations on cases from 2010 were completed, of which one resulted in a recommendation.

During 2012, within the Department for the Rights of National Minorities, handling the complaints from 2012 and earlier years, a total of 54 recommendations were addressed to competent authorities, i.e. 27 recommendation documents (collective and individual), some of which contained more than one recommendation. Until 31 December 2012, 19 recommendations or 35.19% were fulfilled, 29 recommendations or 53.70% were not fulfilled, and six recommendations or 11.11% were pending as the time limit given to authorities to fulfil them had not expired.

### 2.2.3 Achievements in 2012 in the Area of Protection of the Rights of National Minorities

During the year, the Protector of Citizens addressed 54 recommendations, two opinions and three initiatives for amending laws and regulations to public authorities, requesting that irregularities be remedied and situation improved with respect to the exercise and protection of individual or collective rights of national minorities. The 65% increase in the number of complaints by citizens belonging to national minorities, the increasing number of those filed by Albanian and Roma citizens and the approaches by national councils of national minorities regarding the protection of "minority" rights are indicative of the trust that the Protector of Citizens has earned in this area.

#### *The legally invisible and homeless*



Image 2 "Receipt of complaints in a Roma settlement in Novi Sad"

### **Amendments to the Law on Non-Contentious Procedure, Law on Permanent and Temporary Residence of Citizens and Law on Identity Cards**

On the basis of the investigations conducted and the Report on the Status of “Legally Invisible” Persons in the Republic of Serbia<sup>31</sup>, the Protector of Citizens initiated amendments to the Law on Non-Contentious Procedure, whose passage enabled persons who were not able to register in birth registers in the administrative procedure of late registration of birth, to exercise this right within a reasonable time through judicial proceedings.

Before the Ministry of Interior, the Protector of Citizens also initiated amendments to the Law on Permanent and Temporary Residence of Citizens and the Law on Identity Cards, which were passed by the National Assembly, whereby citizens who had not been able to exercise their rights because they did not have a registered permanent residence were enabled to do so after registering at the address of the social work centre in the local self-government in which they lived.

**By endorsing these initiatives of the Protector of Citizens, the National Assembly and public authorities created the legislative basis that serves as an example for states in the region and other European states that, owing to increasingly intensive migration, are faced with the problem of “legal invisibility” of citizens.** However, in order for good laws to become good practices, conditions for their implementation should be developed, which is not the case, since the competent state authority took more than one year to prepare the *Rulebook on the Form for the Registration of Permanent Residence at the Address of an Institution or Social Work Centre*<sup>32</sup>, rather than prepare it within the time limit stipulated by the Law. Social work centres accept the tasks stipulated by the Law with great disgruntlement, and the Ministry of Interior is not bound to adhere to court decisions when deciding on the entry into the register of citizens with respect to persons whose facts of birth were established in judicial proceedings and who were registered in the register of births on that basis.

The Protector of Citizens, the Ministry of Justice and Public Administration and the United Nations High Commissioner for Refugees concluded the *Memorandum of Understanding*<sup>33</sup>, pursuant to which the institution undertakes activities pertaining to the improvement of the work of public administration and courts with a view to enabling recognised rights to become an efficient system for solving the problems of the recognition of identity and exercise of human rights of the “legally invisible”.

#### *Rights of the Roma*

By acting efficiently upon the complaints of Roma citizens, issuing recommendations and publicly highlighting problems faced by them, the Protector of Citizens improved the work and conduct of public authorities in deciding on the rights of the Roma.

31 Available at [www.zastitnik.pravamanjina.rs/attachments/lzvestaj](http://www.zastitnik.pravamanjina.rs/attachments/lzvestaj). On 20 March 2012, the Protector of Citizens organised the “Discussion on the Status of Legally Invisible Persons on the Basis of the Report by the Protector of Citizens” at the National Assembly, on which occasion one of the speakers was Thomas Hammarberg, the Council of Europe Commissioner for Human Rights.

32 “Official Gazette of RS”, No. 113/12.

33 No. 45-351/12 of 9 April 2012.

After monitoring the relocation of the informal settlement near Belville<sup>34</sup> and addressing recommendations to local self-governments to which its residents were relocated, permanent accommodation was provided for poor Roma families in Žabalj, Leskovac and Surdulica, and temporary accommodation in nine more local self-governments. The insistence by the Protector of Citizens that the relocation of families in “container” settlements in Belgrade was a temporary solution rather than an integration measure contributed to measures being taken by the city administration to ensure the solution of Roma problems in accordance with the Government of Serbia Strategy for the Improvement of the Status of Roma.

The receipt of complaints in Roma settlements and outreach to Roma citizens in more than 40 local self-governments have contributed to their better information on how to access certain rights, as well as how the Protector of Citizens can assist them in that. As a result, 184 complaints were filed by Roma citizens.

### *Official use of national minorities' languages and scripts*

By addressing the recommendation to the Division for Citizens' Civil Status of the Savski venac Municipality, indicating that it is obliged to take all measures *ex officio* to facilitate the entry of data into the register of births in the national minority language and script, the Protector of Citizens precluded the possible irregular actions by other civil registry offices and facilitated the exercise of national minorities' right to the protection of identity.

***Example: Violation of the right of a national minority to have her personal name entered in the register of births in the language and script of the national minority to which she belongs***

The Protector of Citizens received the complaint of a national minority whose application for the entry of her personal name in the register of births in the language and script of the national minority to which she belongs had been rejected by the Civil Registry Office of the City of Belgrade Administration on the grounds that she was not able to prove how her name was spelt in that language and according to that orthography.

Following the Recommendation issued by the Protector of Citizens, the City Administration acted in conformity with the Law on General Administrative Procedure and obtained the prescribed evidence, on the basis of which it entered the complainant's name in the register of births in the language and script of the national minority. This provided the conditions for the complainant to apply for the issue of identity documents in which the personal details will also be entered in that language and its script.

With respect to the insights gained in this procedure, and in order to facilitate the exercise of rights in all similar cases, the Protector of Citizens submitted an Opinion to the Ministry of Public Administration and Local Self-Government with recommendations to instruct

34 The report with recommendations on the relocation of an informal Roma settlement near Belville is available at [www.ombudsman.pravamanjina.rs](http://www.ombudsman.pravamanjina.rs)

all civil registry offices in the modality of action to be taken when a person belonging to a national minority, after the main entry is made in the register of births, applies for the entry of the personal name in the language and script of the national minority, without evidence or any public document from which it could be ascertained how the name and surname are spelt in the language and script of the national minority to which the applicant belongs. The Ministry fulfilled the recommendation.

By a recommendation to the Novi Pazar City Administration and the municipal administrations of Prijepolje, Sjenica and Tutin to ensure the equal use of the Bosniak language, the awareness of public services of the need to provide the conditions for the exercise of recognised rights was enhanced.

**Equal use of the national minority language and script introduced  
into official use in local self-governments**

In the investigations conducted following the complaint submitted by the National Council of the Bosniak National Minority, the Protector of Citizens ascertained that the city of Novi Pazar and the municipalities of Prijepolje, Tutin and Sjenica did not ensure that the names of authorities exercising public powers, names of local self-government units, settlements, squares and streets, and other toponyms were written as prescribed by Article 11 paragraph 4 of the Law on the Official Use of Languages and Scripts – also in the language of the national minority, in accordance with its tradition and orthography.

Acting upon the Recommendation, the local authorities notified the Protector of Citizens of the measures taken to ensure the full exercise of the right to the official use of the Bosnian language and its script.

**2.2.4 Proposals for Improving the Position of Citizens  
in Relation to the Authorities**

1. It is necessary that the Ministry of Justice and Public Administration, with the assistance of the Office for Human and Minority Rights:
  - a) Prepare amendments to the Law on National Councils of National Minorities, in order to provide the legislative conditions for full direct participation of national minorities in the election and work of national councils of national minorities, with a view to remedying the problems manifested in the implementation of the Law to date;
  - b) Ensure both the consistent official use of the Cyrillic script and the equal use of the languages and scripts of national minorities;
  - c) Prepare an Action Plan for the Implementation of the Strategy for the Improvement of the Status of Roma and submit it to the Government for adoption;
  - d) Draft the relevant document regulating in detail the actions, cooperation and coordination of competent public authorities in the relocation of informal settlements;

- e) Take all measures, legal and financial ones, to ensure the full protection and exercise of the rights important for the preservation of ethnic and cultural identity of national minorities whose national councils have their seat in Central Serbia, to the same extent as these rights are exercised in the AP of Vojvodina.
2. The Ministry of Labour, Employment and Social Policy should consider the view that the social integration of the Roma as a vulnerable group is achieved through social welfare measures and, therefore, to take measures towards training its staff in working with socially vulnerable groups, taking into account the protection of their human rights and respect for the principles of good governance.

## 2.3 CHILD RIGHTS

### 2.3.1 Status Overview

According to the final results of the Census of Population, Households and Dwellings in the Republic of Serbia in 2011<sup>35</sup>, a total of 1,263,128 children live in Serbia.<sup>36</sup> It is not possible, however, to determine the ratio of boys to girls, the accurate number of children aged 15 to 18, the number of children in a vulnerable situation and those in need of additional state support and assistance. **Other data pertaining to the status of children, which inform the planning of services for children and the funds required, are not available either, as a result of which the services are provided to an insufficient extent, most commonly on an *ad hoc* and impromptu basis.**

The status of children with developmental difficulties and disabilities is not materially different in comparison with the previous year, although the state is making efforts towards transforming child welfare institutions and providing additional support to children with developmental difficulties in education.<sup>37</sup> **There are no reliable data available in Serbia on the number of children with developmental difficulties and disabilities and children suffering from severe, rare or chronic illnesses and high-quality planning of support and assistance measures without these data is not possible.** The inclusion of children with developmental difficulties in the education system is encumbered with numerous weaknesses and deficiencies, from the absence of rules and standards, to many prejudices and stereotypes about the schooling of children with developmental difficulties in the regular education system and their inclusion in the community.

Further, there is no progress pertaining to the status of the families of children with developmental difficulties and disabilities and children suffering from severe and/or rare illnesses, which indicates the ineffectiveness of the mechanism for supporting unemployed

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35 The Census of Population, Households and Dwellings in the Republic of Serbia in 2011, Statistical Office of the Republic of Serbia, Belgrade, 2011, available at [www.popis2011.stat.rs](http://www.popis2011.stat.rs)

36 This figure was computed indirectly, since the data on the total population and the adult population are known.

37 Acting upon the recommendations of the Protector of Citizens (available at [www.xn--80aneakq7ab5c.xn--90a3ac/index.php/lang-sr/2012-02-07-14-03-33/2629-2012-12-10-09-13-58](http://www.xn--80aneakq7ab5c.xn--90a3ac/index.php/lang-sr/2012-02-07-14-03-33/2629-2012-12-10-09-13-58)), the City of Belgrade commenced activities aimed at the re-organisation of the work of inter-sectoral committees, and at planning and providing funding for their work and additional support services proposed by the committees.

parents caring personally for their child with a developmental difficulty, disability or illness<sup>38</sup>, as stipulated by the Law on Social Welfare<sup>39</sup>, which was indicated by the Protector of Citizens in its 2011 Annual Report.<sup>40</sup> **Families caring for children in need of constant care do not receive even remotely adequate social support** to ensure that children with developmental difficulties and disabilities stay in their families, which has been set by the Republic of Serbia as an objective of deinstitutionalisation, i.e. transformation of residential child care institutions.

Amendments to the Law on Health Insurance<sup>41</sup> and the Rulebook on the Health Insurance Card and Special Document for Access to Health Care<sup>42</sup>, which became applicable on 1 January 2012, led to a lower level of exercise of children's rights to health insurance. Children's health insurance cards could not be validated unless the statutory health insurance contribution payers have settled, or commenced to settle their liabilities on account of health insurance. Children whose parents are employed with employers who fail to pay insurance contributions were in a particularly unfavourable position.

**Violence in schools still persists as one of the major issues faced by children, their families, schools and other institutions and authorities.** Although some progress has been visible in the actions of schools and authorities responsible for (inspectional and pedagogical) oversight of schools' work, **schools themselves fail to apply the rules stipulated by the Law on the Foundations of the Education System<sup>43</sup> and the Rulebook on the Protocol for Institutional Response to Violence, Abuse and Neglect.<sup>44</sup>** Violence against a student committed by a teacher or a school employee is not recognised, except in cases of physical violence, and even then some schools are prone to justify violence or deny that the adult person's act is violent. Out of the 34 recommendations issued by the Protector of Citizens with respect to violence in schools, 15 pertain to physical and psychological violence against a student committed by a school employee. Some schools still lack teams for the protection of children against violence, or if they do have such teams, students are not aware of it; many schools do not have elaborated and structured procedures, levels of violence, very precisely defined by the Rulebook, are not recognised and therefore the measures taken are inadequate. The schools' actions are predominantly reactive and indicate a lack of knowledge and skills and the oversight authorities often fail to control whether schools apply the rules concerning their response to violence against children. What is particularly worrying is the absence of cooperation between schools and other authorities (in particular the guardianship authorities) as well as the unacceptably low level of

38 "Official Gazette of RS", No. 24/11.

39 Article 94 paragraph 4 of the Law on Social Welfare: „One of the parents, who is not in an employment relationship, and who has cared personally, for at least 15 years, for his/her child who obtained the right to increased attendance allowance, as stipulated in paragraphs 1 and 2 of this Article, shall be entitled to a special pecuniary benefit in the form of life-long monthly allowance equal to the minimum pension for insured employees, upon reaching the general retirement age pursuant to the pension and disability insurance regulations unless he/she obtained the right to a pension.”

40 2011 Annual Report of the Protector of Citizens, Protector of Citizens, Belgrade, 2011, p. 55. Available at: [www.ombudsman.rs/index.php/lang-sr/izvestaji/godisnji-izvestaji](http://www.ombudsman.rs/index.php/lang-sr/izvestaji/godisnji-izvestaji)

41 "Official Gazette of RS", Nos. 107/05, 109/05 – corr., 57/11 and 110/12 – law amended by decision of the Constitutional Court.

42 "Official Gazette of RS", Nos. 68/06, 49/07, 50/07 – corr., 95/07, 127/07, 37/08, 54/08, 61/08, 1/09, 25/09, 42/e10, 45/10, 103/10, 89/11, 91/11 – corr., 34/12, 78/12, 81/12 – corr., 96/12, 98/12 – corr. and 114/12.

43 "Official Gazette of RS", Nos. 72/09 and 52/11.

44 "Official Gazette of RS", No. 30/10.

information exchange between the education authorities and institutions and of cooperation between the education system and other systems.

The manner in which the competent authorities conduct the public procurement of textbooks for the purposes of the Free Textbooks project, is tainted by irregularities, primarily because adjustments to the already approved textbooks (with a view to meeting the project requirements) are made without consultations with professional bodies established for the purpose of verifying and assessing textbook quality. On the other hand, in the public procurement procedure, no attention is paid and no sanctions are imposed on publishers who affect the regularity of the procurement procedure and the selection of student textbooks by offering gifts to teachers who choose their textbooks.

Two or more schools sharing a building is no rare phenomenon in Serbia, which sometimes gives rise to conflicts between them. As a rule, one school considers itself the "owner" and the other a "tenant" of the building. This "property war" involves recruitment of students and their parents, whose demands are, at times, laden with prejudice and discriminatory attitudes, intolerance and a tendency to neglect the needs, rights and interests of other students. Unequal treatment of students of some schools has a particularly negative impact on children in lower grades, who always attend classes in the afternoon shift.

The existing criminal law provisions offer insufficient protection to children victims of sexual abuse and sexual exploitation. Although more than two years have passed since the Republic of Serbia ratified the Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse, the criminal legislation has not been brought into line with the provisions of this international treaty.

**The practice of corporal punishment of children as a means of upbringing and discipline is still present in a high percentage of parent-child relationships, as reported in surveys of children conducted in 2012 by the Protector of Citizens with the assistance of the Panel of Young Advisers.**<sup>45</sup> The information on the harmfulness of such upbringing model and on positive parenting techniques as an alternative to corporal punishment is not available to parents. Parent education and counselling on parenting skills based on the principles of appreciating child personality, child participation and non-violent upbringing methods, rather than on the principles of power and control, are not available either.

In 2012, acting in the area of child rights, the Protector of Citizens established good cooperation with all authorities whose actions were controlled by this institution. In terms of timely response to the institution's requests and fulfilment of its recommendations, the following institutions stand out: social work centres, Ministry of Labour, Employment and Social Policy, Secretariat for Education and Child Protection of the City of Belgrade Administration. Although there is, in most cases, also good cooperation with the Ministry of Education, Science and Technological Development and education institutions, sometimes there are delays in the fulfilment of recommendations or the recommendations are not completely fulfilled.

The Ministry of Health and the Niš Police Administration are the only authorities that did not completely fulfil the recommendations issued by Protector of Citizens in the area of child rights.

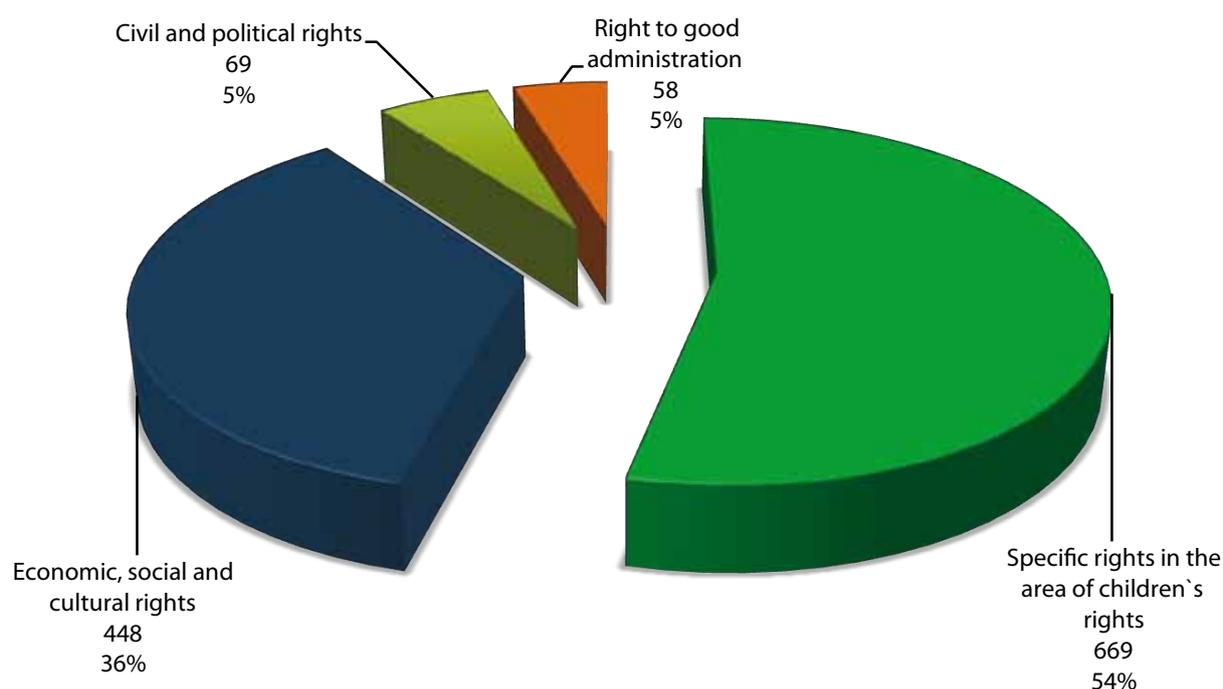
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45 Available at: [www.pravadeteta.com/index.php?option=com\\_content&view=article&id=440%3A2012-10-22-17-23-42&catid=37%3A2012-04-09-12-59-03&Itemid=90&lang=sr](http://www.pravadeteta.com/index.php?option=com_content&view=article&id=440%3A2012-10-22-17-23-42&catid=37%3A2012-04-09-12-59-03&Itemid=90&lang=sr).

### 2.3.2 Statistical Overview of Complaints in the Area of Protection of Children's Rights

In 2012, the Protector of Citizens received 409 complaints and opened 16 investigations on its own initiative in the area of children's rights. The total number of cases was 425, or 9.5% of the total number of complaints received by the Protector of Citizens in 2012. In addition, through the subsite dedicated to children ([www.pravadeteta.rs](http://www.pravadeteta.rs)), the Protector of Citizens received and answered 65 questions from children or adults concerned with children's status.

In most cases (321), there was suspicion of multiple violations of child rights.<sup>46</sup> The most complaints were filed with regard to violations of the following rights: right to respect for the best interest of the child (216), to protection against violence, abuse and neglect (122), to education (135) and to healthy development (67). These are followed by the cases pertaining to children's right to maintain personal relations with the parent with whom they do not live (48), to an adequate standard of living (40), to health care and health insurance (37), the right of children with developmental difficulties to a quality life and special protection by the state (32), to the expression of their own opinion (28). Other violations of children's rights appear in a lower number of cases (fewer than 20).



**Chart 5 – Complaints regarding violations of children's rights in comparison with other violated rights**

<sup>46</sup> In 425 complaints, 1,244 different violations of rights are recorded.

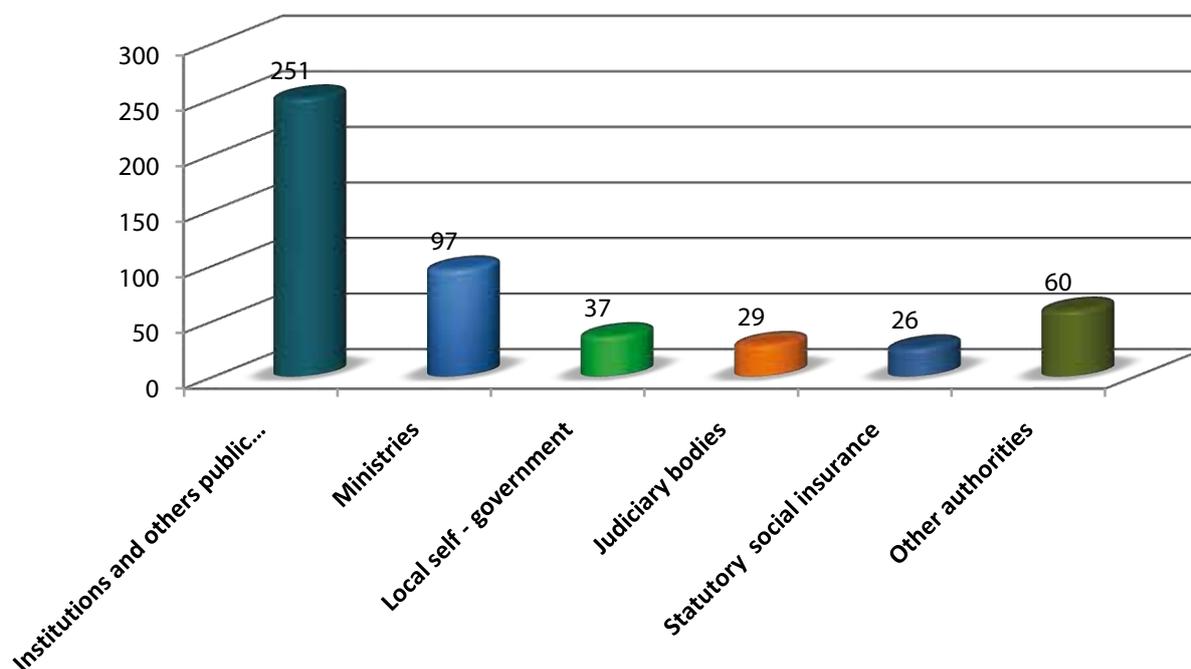
**Table 9 – Specific rights in the area of children’s rights, their number and percentage share in the 669 recorded violations of these rights**

Type of right violated	No.	%	Type of right violated	No.	%
Right to respect for the best interest of the child	216	32.29%	Right to protection against exploitation	7	1.05%
Right to protection against violence, abuse and neglect	122	18.24%	Right to know who his/her parents are	6	0.90%
Right to proper development	67	10.01%	Right to the preservation of personal identity	6	0.90%
Right to maintain personal relations with the parent with whom he/she does not live	48	7.17%	Right to maintain personal relations with the family of origin and close persons	6	0.90%
Right to an adequate standard of living	40	5.98%	Right to review of treatment in care	6	0.90%
Right of children with developmental difficulties to high-quality life and special protection by the state	32	4.78%	Right to protection against parental abduction	5	0.75%
Right to express his/her own opinion	28	4.19%	Right to leisure and recreation	5	0.75%
Assistance to families in the exercise of children's right to an adequate standard of living	19	2.84%	Rights of children in conflict with the law	4	0.60%
Parenting assistance to parents	18	2.69%	Right to protection against sexual exploitation	3	0.45%
Right to live with parents	10	1.49%	Right to psychological recovery	3	0.45%
Right to a healthy environment	9	1.35%	Right to family reunification	1	0.15%
Right to personal identity	7	1.05%	Special protection of maternity	1	0.15%

The most cases pertained to actions/omissions by education institutions and social welfare institutions (251 in total), ministries (97)<sup>47</sup>, local authorities (37)<sup>48</sup> and judicial authorities (29). The number of complaints against the National Health Insurance fund was increased (23), in view of the problem regarding the validation of health insurance cards for children, which emerged in 2012.

47 Most frequently, the Ministry of Education, Science and Technological Development – 41, the MoI – 21 and the Ministry of Labour, Employment and Social Policy – 17.

48 Most frequently, authorities of the City of Belgrade, including authorities of metropolitan municipalities (21 complaints).



**Chart 6 – Complaints concerning the work of authorities in the area of child rights**

In 2012, the Protector of Citizens investigated 198 complaints from earlier years and completed a total of 134 inquiries: 17 complaints were rejected; 26 cases resulted in recommendations; in 38 cases, authorities remedied the irregularities in their work and the investigations were discontinued, and in 52 cases complaints were dismissed as unfounded (i.e. it was assessed that there were no irregularities in the authorities' work). One complainant withdrew his/her complaint.

Of the total of 425 complaints filed in 2012, 249 were completed as follows: 86 complaints were rejected; in 18 cases, irregularities were found and recommendations issued; in one case, an opinion was issued; in 16 cases, the authorities remedied the irregularities after inquiries were opened by the Protector of Citizens; 122 cases were completed by finding that the complaints were not founded, i.e. that no violations of children's rights had occurred; seven complainants withdrew their complaints.

The questions received by the Protector of Citizens through the subsite [www.pravade-teta.rs](http://www.pravade-teta.rs) were mostly concerned with: quality education (18), respect for the best interests of the child (9), the right to an adequate standard of living (7) and the right to leisure and recreation (4). Other children's rights were addressed by 1–3 questions.<sup>49</sup> Slightly less than 10% of the questions were so-called test questions, whereby children test whether and to what extent the Protector of Citizens appreciates children and is willing to communicate with them, by asking questions unrelated to the institution and the area of child rights (questions in the area of mathematics, biology, etc.).

<sup>49</sup> The right to proper development, maintenance of the child's personal relations with the parent who does not live with him/her, questions on children's rights in general, child maintenance, and the like.

### 2.3.3. Achievements

In comparison with the previous year, the total number of complaints in the area of children's rights slightly increased. Protection of children against violence, abuse and neglect, child health insurance, education of children with developmental difficulties, support to the families of children with developmental difficulties and child education are the areas mostly dealt with by the Protector of Citizens in 2012.

In 2011, the Protector of Citizens issued 62 recommendations in the area of child rights, the majority of which (80.3%) were fulfilled.<sup>50</sup> In 2012, 95 recommendations were made to authorities, which fulfilled them in the majority of the cases (67.37%); thus remedying the irregularities in their actions found by the Protector of Citizens during its control activities.

#### *Protection of children against violence in schools*

Out of 95 recommendations issued by the Protector of Citizens, one third (34) pertains to omissions by schools and other authorities and institutions in protecting children from violence in schools (peer violence or violence by adults). Omissions are manifested, primarily, in schools' failure to apply regulations adopted with the aim of protecting students from violence, abuse and neglect, and also in the failure of authorities responsible for oversight of schools' work to ascertain whether and to what extent the schools observed these regulations and standards. By issuing recommendations, the Protector of Citizens pointed to schools' duties stipulated in the provisions of the Law on the Foundations of the Education System and the Rulebook *on the Protocol for Institutional Response to Violence, Abuse and Neglect, as well as to the duty of inspection authorities to control whether schools observe these regulations and standards and to exercise the full scope of their legal powers once they find omissions in a schools' actions.*

**Example: The Education Inspectorate is required to control whether a school implements measures for the prevention of and protection against violence, abuse and neglect**

The Education Inspectorate failed to carry out an oversight inspection following the receipt of a report that a school employee had perpetrated physical violence against a child. In a subsequent joint inspection carried out by a national education inspector and a local education inspector, the regularity of the implementation of regulations adopted with a view to protecting children against violence was not controlled.

Acting upon the recommendations of the Protector of Citizens, the local education inspectorate repeated the inspection, found the school's omissions in protecting children against violence and imposed measures on the school. In a follow-up inspection, which was also recommended by the Protector of Citizens, the education inspectorate found that the school acted completely as instructed by the education inspector: the Team for the Protection of Students against violence was formed; disciplinary measures were taken against the employee who had perpetrated violence and the school adopted an internal protocol governing the rules for responding in case of suspicion or awareness of violence against a student.

50 This figure differs from the percentage of fulfilled recommendations in the area of children's rights in 2011 as stated in the 2011 Annual Report of the Protector of Citizens (53%), as more than one third of the recommendations issued to authorities in 2011 were pending at the time of drafting the Report.

### *Children's right to health insurance*

During one of its investigations, the Protector of Citizens found that the National Health Insurance Fund violated children's rights to health insurance and health care by leaving children without validated health insurance cards on the grounds that third parties (employers of their parents or family members through whom children are covered by insurance) failed to fulfil their legal obligation to pay contributions.

When the right to health insurance is not exercised on other grounds, a child has the legally stipulated right to be covered by health insurance on the grounds of being a child.

The Protector of Citizens found that, when children do not have access to health insurance rights in the capacity of insured persons' family members, irrespective of the fact they are registered for insurance in that capacity, it constituted the fulfilment of the legally stipulated requirement for the application of alternative insurance grounds – membership in a vulnerable social group – children. In that regard, the institution addressed a recommendation to the National Health Insurance Fund to validate children's health insurance cards even in cases when their parents' employers failed to fulfil their obligations, as children should not sustain the consequences of third parties' unlawful actions.

However, after amendments to the Rulebook on the Health Insurance Card and Special Document for Access to Health Care<sup>51</sup>, it was provided that children covered as family members of insured persons whose employers had not paid health insurance contributions regularly until 9 August 2011 would be issued a certificate for the purpose of access to health care; however, this did not apply to cases where the employer fell in default after this date.

The Protector of Citizens continues to monitor the situation in this area with a view to finding a durable solution.

### *Inclusion of children with developmental disabilities in education*

Inquiring into a great number of cases in 2012, the Protector of Citizens identified a range of problems accompanying the inclusion of children with developmental disabilities in the education system, from deficiencies in regulations and their implementation to the many prejudices in the education system against the education of children with developmental difficulties.

Issuing opinions and recommendations to competent authorities, the Protector of Citizens pointed to the need to regulate and define in a uniform way the additional support measures and their funding, ensure timely actions of competent authorities, regulate the procedure for child needs assessment – including the method of operation, obligations and responsibilities of inter-sectoral committees and the modality of funding their operations and establish functional control mechanisms. Owing to overwhelming prejudices and

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51 Rulebook Amending the Rulebook on the Health Insurance Card and Special Document for Access to Health Care ("Official Gazette of RS", No. 96/12).

presence of stereotypes about the education and social inclusion of children with developmental difficulties, the Protector of Citizens emphasised a need for better and regular professional training of education institutions' employees and also for strengthening the support mechanisms for the inclusive education of children with developmental disabilities.

**Inclusive education is education of all children in the education system and according to a model tolerant of differences**

The Republic of Serbia still has no clear rules governing the procedures, mechanisms, resources, obligations and responsibilities for the exercise of children's right to inclusive education and the existing legal rules are either not applied or are applied incorrectly and selectively.

The prejudice against children with developmental difficulties and the views on the unacceptability of inclusion – regardless of the fact that, as a legally established principle of education, it is not a subject for debate – are common, not only among "laymen", but also among those who are directly responsible for putting inclusion into practice.

At this point, three and a half years after the Law on the Foundations of the Education System entered into force, the education of children with developmental difficulties in the mainstream education system mostly directly depends on their parents' abilities, knowledge and skills for confronting numerous obstacles and also on the level of sensitisation, competences, skills and knowledge of education institutions' management and staff.<sup>52</sup>

Acting upon the recommendations of the Protector of Citizens, the City of Belgrade Administration commenced the reorganisation of inter-sectoral committees' work, election of their members and modality of their funding and also commenced the establishment of mechanisms for the control of their work.

*Support to the families of children with developmental disabilities*

Towards the end of 2012, the matter of providing support to parents and families caring personally for their children with developmental difficulties was brought into focus again. Having recognised the Protector of Citizens as the much-needed pillar of support in the fulfilment of their demands, parents of children with developmental difficulties and disabilities, gathered in several associations, approached the Protector of Citizens with a proposal to launch an appropriate initiative, i.e. to submit a proposal for the improvement of the status of children with developmental difficulties and disabilities as well as their families. These demands received wide public support – over 50,000 citizens supported the parents' initiative.

The Protector of Citizens held several meetings with parents' associations and organisations advocating the rights and interests of persons with disabilities and launched activities

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52 From the Opinion of the Protector of Citizens with recommendations, dated 6 December 2012, available at [www.ombudsman.osobesainvaliditetom.rs/attachments/098\\_Microsoft%20Word%20-%20475\\_14-2755-12-preporuka%20ministarstva%20final%20-%20ZA%20SAJT.pdf](http://www.ombudsman.osobesainvaliditetom.rs/attachments/098_Microsoft%20Word%20-%20475_14-2755-12-preporuka%20ministarstva%20final%20-%20ZA%20SAJT.pdf)

towards strengthening the legislative framework and introducing support and assistance measures for parents of children and persons with disabilities who require full-time care, by providing secure livelihood to families and simultaneously promoting the inclusion of children and persons with disabilities in the community as much as possible.

### *Education of Children*

Dealing with the matter of children's right to education, the Protector of Citizens has identified irregularities in the work of different authorities which had a direct impact on education quality and realisation of legally established principles and objectives, from the use of textbooks fully compliant with the standards set, to the schooling of students in an environment conducive to tolerance, equal opportunities, respect for diversity and appreciation of children's and students' rights.

#### *Example: "My", "your" – or "our" school?*

The organisation of work of a vocational school and a gymnasium, according to which the vocational school students have attended classes only in the afternoon and the gymnasium students only in the morning for decades, favours the latter over the former. Such unequal status of the students was largely a result of the rigid attitude of the governance and management structures in the gymnasium, as well as the passive approach of the authorities responsible for the oversight of the legality and regularity of education institutions' work.

The Ministry of Education, Science and Technological Development and the local self-government fulfilled the recommendations issued by the Protector of Citizens to change the schools' work organisation so as to ensure a balanced burden for both schools' students, observing the principle of equality of students and both schools' right to use the common building, in line with the opinions provided by both schools' students.

### *Protection of children against sexual abuse and sexual exploitation*

This year, children's right to freedom from any type of sexual violence is still on the agenda of the Protector of Citizens. In October 2012, the Protector of Citizens renewed its Initiative for Amendments to the Criminal Code, submitted to the Ministry of Justice and Public Administration, to ensure better and more comprehensive criminal law protection against all forms of violence, abuse and neglect, sexual abuse and exploitation, especially when victims are children, and to bring the national criminal law into line with the ratified international instruments, in particular the Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse and the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence.

In response to the launched initiative, the Ministry of Justice and Public Administration informed the Protector of Citizens that the initiative would be considered in the second stage of drafting the amendments to the Criminal Code, which would be more comprehensive than the amendments passed in late 2012.

*Prohibition of corporal punishment of children*

In cooperation with UNICEF, the Protector of Citizens launched the project “Promoting Good Parental Practice in Serbia”, aimed at helping overcome the challenges of modern parenting in the best interest of children and encouraging critical thinking about the corporal punishment of children as a means of upbringing and discipline.



**Image 3 “Presentation of the initiative ‘Promoting Good Parental Practice in Serbia’ ”**

The project, which lasts until June 2013, also included a peer survey on children and youth’s views on corporal punishment, carried out by the Panel of Young Advisers of the Protector of Citizens by surveying 812 VII and VIII grade students and secondary school students from Arandjelovac, Belgrade, Jagodina, Kraljevo, Kula, Loznica, Lučani, Niš, Novi Sad, Pančevo, Smederevska Palanka, Subotica and Užice. The Protector of Citizens published the official position on the harmfulness of corporal punishment.<sup>53</sup> A result of these activities is the publication titled “Parenting without Beating Your Children”, which contributed to the improved understanding of the harmfulness of corporal punishment of children and lowering the tolerance for this means of upbringing. The brochure is distributed in maternity wards in Serbia – to young parents, and also in selected schools – to parents of first-grade students. The position of the Protector of Citizens and the publication “Parenting without Beating Your Children” were presented to the public in late October 2012. During 2013, public debates on the harmfulness of corporal punishment and positive parenting practices will be held in schools, with active participation of members of the Panel of Young Advisers.

*Preliminary draft law on the rights of the child*

During 2012, the Protector of Citizens continued the work on developing the Law on the Rights of the Child, which will regulate the status of children in the national legal system in a comprehensive and uniform way. Expert review of the text of the Preliminary Draft, presented to the professional and general public in December 2011, was performed by Council

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53 Available at [www.pravadeteta.com/attachments/394\\_Stav%20ZG%20o%20telesnom%20kaznjavanju-FINAL.doc](http://www.pravadeteta.com/attachments/394_Stav%20ZG%20o%20telesnom%20kaznjavanju-FINAL.doc)

of Europe experts and a range of constructive suggestions, remarks and proposals was provided by participants of the conference at which the Preliminary Draft was presented, as well as by children, through a consultation process led by the Child Rights Centre. The Protector of Citizens considered the remarks received and included them in the text. The new version of the text will also be made available to the public and further work on this law will be accompanied by consultation processes with experts, representatives of public authorities, the civil sector and children.

#### Subsite on children's rights

Within the website of the Protector of Citizens, a subsite was designed; it is dedicated to children's rights, activities of the Protector of Citizens in that area and a dialogue with professionals working with children and for children, citizens and organisations.

A designated subsite, the "children's pages" – [www.pravadeteta.rs](http://www.pravadeteta.rs) – was recognised by children as a place to ask questions; their number and variety have constantly grown since the launch three years ago.

### **2.3.4 Proposals for Improving the Position of Citizens in Relation to the Authorities**

1. Bring the Criminal Code into line with the Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse and the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence, in accordance with the Initiative submitted by the Protector of Citizens.
2. Ratify the Optional Protocol to the Convention on the Rights of the Child on a Communications Procedure, signed by Serbia in February 2012.
3. By passing amendments to the relevant laws, ensure assistance and support to families personally caring for their children with developmental difficulties, disabilities or suffering from severe illnesses, who are, due to the nature of difficulties or illnesses, in need of constant care.
4. Establish mechanisms allowing the monitoring of the number of children in the Republic of Serbia, in particular those in vulnerable positions or situations and in need of state assistance and support.
5. Provide that every child who is not covered by health insurance as an insured person's family member or has no access to statutory health insurance rights as an insured person's family member is subject to the legal provisions on vulnerable groups who are at a heightened risk of illness.
6. Ensure efficient and timely initiation and conduct of procedures with the aim of ascertaining personal liability of school employees for violation of the prohibition of violence, abuse and neglect, for violation of work duties and for omissions in the implementation of measures for the protection of children against violence, abuse and neglect.
7. Regulate and define measures for providing additional support to students with developmental difficulties, the modality of its provision and funding, the procedure for children and student needs assessment, the establishment and work of inter-sectoral committees and efficient control mechanisms.

8. Provide regular training in education institutions aimed at higher sensitisation of employees for children with developmental difficulties and at the acquisition of practical skills and knowledge for working with them.
9. Ensure the full scope of professional quality control of textbooks and teaching aids and their procurement in conformity with the law and principles of good governance with obligatory adequate measures towards parties involved who act unlawfully and/or in bad faith.
10. Organise awareness-raising campaigns on the harmfulness of corporal punishment of children and alternative methods for disciplining children and provide professional assistance and support to parents in raising their children, through mechanisms of social and health care services (parent counselling services, telephone lines, "parenting schools", etc.).

## 2.4 GENDER EQUALITY AND LGBT RIGHTS

### 2.4.1 Status Overview

Although the legal framework governing the protection of rights and improvement of the status of women, i.e. removing gender inequality between women and men in the Republic of Serbia was improved during 2012, the discrepancy between the legislative standards and the practice in this area still persists.

Poor socio-economic status of women still prevails. Disadvantaged status of women is present in employment, exercise of employment rights, career progress and it results in a gender pay gap.<sup>54</sup> Reports of public authorities and civil society organisations show that the number of unemployed women is still on the rise, that many women have lost their jobs and have been left with wage arrears and gaps in pensionable service, without opportunities for re-employment. Thus, women, in particular women with disabilities, elderly women, Roma women, young women, childbearing women or mothers, accounted for a majority of the unemployed population in 2012 as well.<sup>55</sup>

There are still many forced marriages in the Republic of Serbia, especially among the Roma population, combined with trafficking in human beings. The economic crisis and poverty result in the increase in migration flows, which poses a risk of citizens becoming victims of trafficking in human beings. The number of victims, i.e. the extent and characteristics of trafficking in human beings, is almost impossible to determine with absolute accuracy. This is partly a consequence of the absence of common criteria for victim identification among all stakeholders in combating trafficking in human beings and partly also of the absence of a single data collection system that would be applied with the obligation to respect the victims' privacy and identity.

Gender-based violence is also highly prevalent and has many tragic consequences. During 2012, 32 women died as a result of domestic/partner violence perpetrated by their current or, more frequently, former partners. It was noted that violence was particularly intensified during holidays.<sup>56</sup> It was also noted that the legally stipulated measures were not

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54 For more information, see: V. Nikolić Ristanović, S. Čopić, J. Nikolić and B. Šaćiri, *Diskriminacija žena na tržištu rada u Srbiji*, Victimology Society of Serbia, Belgrade, 2012.

55 For more information, visit <http://webrzs.stat.gov.rs/>

56 Data obtained from the Autonomous Women's Centre; for more information, visit: [www.womenngo.org.rs/](http://www.womenngo.org.rs/)

consistently implemented in practice and that, in cases of reported violence against women, there was a lack of high-quality inter-sectoral cooperation and clearly defined rules for employees' responses in cases of reports of domestic violence. General Protocol for Action and Cooperation of Institutions, Bodies and Organisations in the Situations of Violence against Women within the Family and in Intimate Partner Relationship<sup>57</sup> regulates in general terms the actions of competent authorities in cases of domestic violence, but the competent ministries (justice and public administration, labour, employment and social policy, and interior, with the exception of health) did not adopt the specific protocols in a timely manner.

Undertaking of activities by all relevant institutions and public authorities to propose, monitor and apply measures towards promoting childbearing, in view of the dramatic decrease in birth rates in Serbia over the past decades, is often highlighted as one of the basic priorities of the Republic of Serbia's national policy. However, in practice, childbearing women encounter more difficulties in finding employment, their benefits during pregnancy, maternity and child care leave are paid irregularly, childbearing women's fixed-term employment contracts are usually not extended.

Consequences of the crisis have a different impact on men's and women's health care. Despite statistical data showing that the Republic of Serbia ranks high in terms of incidence of diseases and, unfortunately, also in terms of mortality of women suffering from breast and cervical cancer<sup>58</sup>, with the Rulebook on the Contents and Scope of Health Care Rights under Statutory Health Insurance and Copayment for 2012, the National Health Insurance Fund reduced the scope of the right to preventive gynaecological examinations at the expense of the Fund by foreseeing that this right can be exercised once every three years, instead of once per year.

The need to increase the participation rates of women in decision-making positions is still recognised in words only, and less so in essence. The election of 30% female members of the National Assembly must be accompanied by measures ensuring at least an equal level of representation in task forces, state delegations<sup>59</sup>, among ambassadors, consuls and the like, which is not the case currently.

Notwithstanding initial success in advancing the status of women in the security sector, the necessary measures for their actual and full inclusion in work are lacking. Women still have no access to the Military High School, and the most recent research of the Belgrade Centre for Security Policy<sup>60</sup> has shown that women professional soldiers are still "women", rather than colleagues, and that their access to the highest-ranking position (that of general) in the military hierarchy is difficult. It has been noted that the quota system (at least 20% women), which was necessary to enable women access to the security sector, which traditionally belonged to men, has the contrary effect on the position of women who wish to enrol in the Military Academy, because it is applied as the upper limit.

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57 General Protocol available at: [www.gendernet.rs/files/dokumenta/Domaci/Opsti\\_protokol.pdf](http://www.gendernet.rs/files/dokumenta/Domaci/Opsti_protokol.pdf); [www.gendernet.rs/rrpage.php?chapter=35&id=271](http://www.gendernet.rs/rrpage.php?chapter=35&id=271)

58 For more information, see: [www.ecca.info/cervical-cancer/cervical-cancer-rates.html](http://www.ecca.info/cervical-cancer/cervical-cancer-rates.html) и [www.screeningserbia.rs](http://www.screeningserbia.rs)

59 In February 2012, the Council of Europe adopted a resolution inviting member states to take continuous measures to efficiently protect women's rights and improve their status in the member states' society. [www.europarl.europa.eu/sides/getDoc.do?type=REPORT&reference=A7-2012-0029&language=EN](http://www.europarl.europa.eu/sides/getDoc.do?type=REPORT&reference=A7-2012-0029&language=EN)

60 Available at [www.bezbednost.org/upload/document/nezavisni\\_izvestaj\\_o\\_sprovođenju\\_nap\\_1325\\_u\\_srbij.pdf](http://www.bezbednost.org/upload/document/nezavisni_izvestaj_o_sprovođenju_nap_1325_u_srbij.pdf)

It is a fact that four candidates stood for election of the University of Belgrade Chancellor in 2012 and there were no women among them, although they account for almost one half of the teaching and assistant staff at the University.<sup>61</sup>

The use of gender-sensitive language is essential and represents an important step in achieving gender equality. Gender-sensitive language is, above all, a matter of social power and entails higher linguistic visibility of women, and its consistent use in the media and political discourse would significantly contribute to increasing women's visibility in the Serbian society. As indicated in the 2011 Report, in 1990 the Council of Europe Committee of Ministers adopted the Recommendations for states on the elimination of sexism from language<sup>62</sup>, which clearly expresses the view on the necessity of changing linguistic practices so as to ensure that women are socially visible in public and official use of language. Serbia still has not integrated these recommendations in the regulations and official communication.

The Protector of Citizens considers it necessary to reiterate that already in 2009 the institution developed an Instruction on the Use of Standardised Language<sup>63</sup>, intended for internal use, but the model was not mainstreamed and there was much public debate on the justifiability of applying this instruction. Thus, titles are still stated in the masculine grammatical gender, although the Serbian language allows the use of suffixes to mark the feminine grammatical gender.

The legal framework for **combating violence and discrimination against LGBT persons** is developed since, in addition to the Republic of Serbia Constitution<sup>64</sup> and the Criminal Code, several other laws which recognise and prohibit discrimination on the grounds of sexual orientation are in force. Yet, there is a great problem due to the absence of mechanisms and will to apply the existing laws and insufficient promotion of tolerance for the LGBT population by state institutions. This is best illustrated by the impossibility of exercising the right to freedom of assembly, i.e. the repeated ban on the Pride Parade in 2012, despite the 2011 decision of the Constitutional Court of Serbia that state authorities violated the freedom of peaceful assembly of citizens by banning the Pride Parade in 2009.

The most recent research<sup>65</sup> shows that the highest share of negative views (as high as 36%) expressed by children and youth pertains to persons of different sexual orientation, which calls for interventions in curricula, and subsequently in textbooks, without delay. This situation is certainly aided by the fact that the Law on the Foundations of the Education System in the Republic of Serbia<sup>66</sup> does not contain an express prohibition of discrimination on the grounds of sexual orientation.<sup>67</sup>

61 Statistical Yearbook of the Statistical Office of the Republic of Serbia – education, 2012, available at [http://webzrzs.stat.gov.rs/WebSite/repository/documents/00/00/81/84/05\\_Obrzovanje.pdf](http://webzrzs.stat.gov.rs/WebSite/repository/documents/00/00/81/84/05_Obrzovanje.pdf)

62 Recommendation N0 R(90)4 of the Committee of Ministers to member states on the elimination of sexism from language <https://wcd.coe.int/com/intranet>

63 Available at [www.ombudsman.rodnaravnopravnost.rs/attachments/013\\_001\\_upustvo%20za%20standard.doc](http://www.ombudsman.rodnaravnopravnost.rs/attachments/013_001_upustvo%20za%20standard.doc)

64 "Official Gazette of RS", No. 98/06.

65 Child Rights Centre: Report on the Implementation of Child Rights in the Republic of Serbia from the Perspective of Children and Youth, Belgrade, December 2012, available at [http://cpd.cmass3.info/home/news/\\_params/newsplus\\_news\\_id/1295.html](http://cpd.cmass3.info/home/news/_params/newsplus_news_id/1295.html)

66 "Official Gazette of RS", Nos. 72/09 and 52/11.

67 See Article 44 of the Law on the Foundations of the Education System in the Republic of Serbia.

In view of the high number of laws in this area, the focus of the Protector of Citizens in 2012 was on the status of transsexual people in the Republic of Serbia. The joint expert working group, formed by the Protector of Citizens and the Commissioner for the Protection of Equality, conducted an analysis of the existing regulations governing the status and rights of transsexual people, on the basis of which it will present proposals for the necessary amendments to certain laws.

In the reporting period, in terms of the quality of cooperation in the area of gender equality, the Ministry of Interior and the Ministry of Labour, Employment and Social Policy stand out; this is manifested in strict compliance with time limits, timely actions and exchange of information.

### 2.4.2 Statistical Overview of Complaints in the Area of Protection of Gender Equality and LGBT Rights

In 2012, the Protector of Citizens received 89 citizens' complaints and launched 6 investigations on its own initiative in the area of gender equality. Compared to 2011, the number of complaints received in 2012 increased threefold.

The most frequent violations of rights maintained in the complaints in the area of gender equality pertain to social welfare; there are many cases of domestic violence and specific violations of rights concerning marginalised groups of women and LGBT population, but the number of complaints from childbearing women and new mothers regarding omissions in health care is much higher.

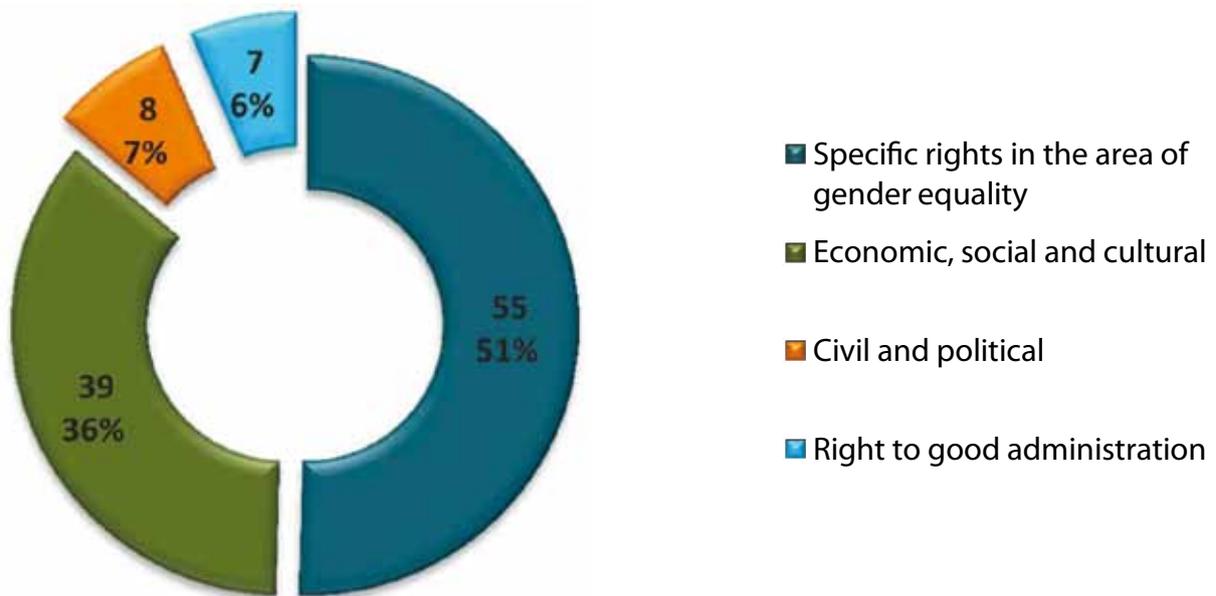
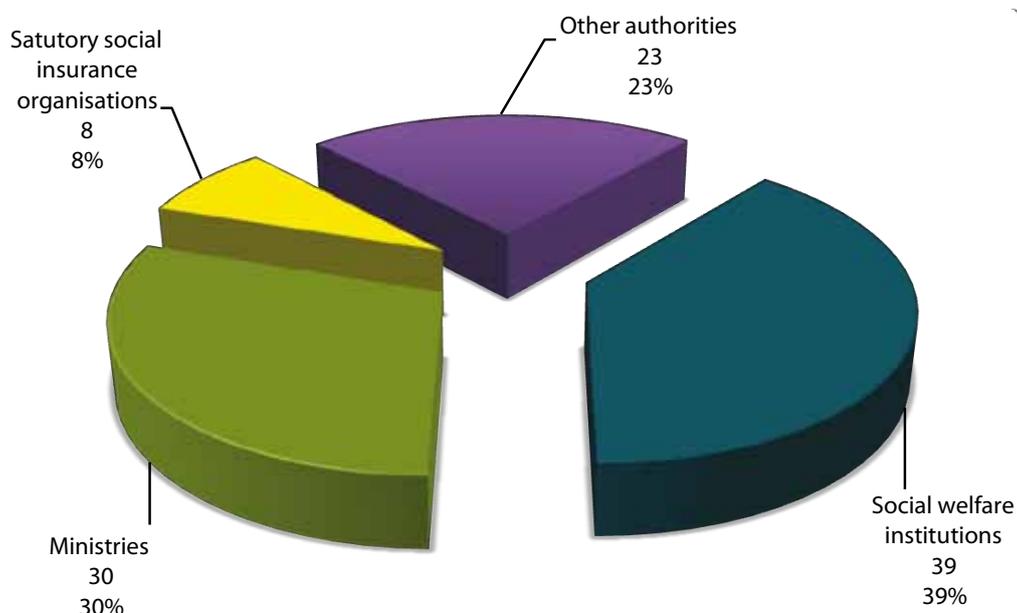


Chart 7 – Violations of rights in the area of gender equality

**Table 10 – Specific rights in the area of gender equality**

Type of right violated	Number	%
Domestic violence	18	32.73%
Specific rights of marginalised groups of women	16	29.09%
Right to maternity leave	11	20.00%
Right to benefit during leave from work on the grounds of pregnancy, maternity and child care leave	5	9.09%
Parental right	3	5.45%
Specific rights of the LGBT population	2	3.64%
<b>Total</b>	<b>55</b>	

Complaints frequently point to possible omissions in the work of ministries, notably those of: interior affairs, labour, employment and social policy, health, as well as social welfare institutions, the Army and other authorities and institutions, such as courts and prosecutors' offices.

**Chart 8 – Complaints concerning the work of authorities in the area of gender equality**

With respect to the complaints filed in 2012, the investigations were completed in 37 cases. A total of 23 cases were rejected, on the grounds of: falling outside the institution's competence (10), incomplete complaint (2), complaint being filed by an unauthorised person (3), competence of another ombudsman institution (4), non-exhaustion of available legal remedies (4).

Investigations were completed in 14 cases, as follows: by discontinuing investigations (1), by informing and advising the complainant (6), by dismissing the complaint as unfounded (2), by complainant's withdrawal (4) and by issuing an opinion with recommendations (1).

The investigations following the complaints filed in earlier years were completed by rejection of the complaint on the grounds of non-competence, in one case.

The investigations following the complaints transferred from earlier years (a total of 56 cases) were completed in 10 cases, as follows: by discontinuing investigations (1), by complainant's withdrawal (2), by informing and advising the complainant (3), by finding no grounds for further investigations.

### **2.4.3 Achievements in the Area of the Protection of Gender Equality and LGBT Rights**

#### *Violence against women*

During 2012, the problem of domestic and, in particular, gender-based violence remained a priority in the work of the Protector of Citizens in the area of gender equality.

With a view to remedying the omissions identified in the work of social welfare institutions and police administrations, the Protector of Citizens recommended urgent adoption of specific protocols by the competent sectors (police, social welfare, justice); consequently, within the set time limit, the Ministry of Interior and the Ministry of Labour, Employment and Social Policy acted upon the recommendations of the Protector of Citizens and adopted specific protocols for response in situations of domestic and partner violence against women.

In 2012, the Protector of Citizens renewed<sup>68</sup> its Initiative for Amendments to the Criminal Code concerning gender-based violence and received the response from the Ministry of Justice and Public Administration that proposals of the Protector of Citizens contained in this Initiative would be considered in the second stage of drafting the amendments to the Criminal Code.

***Example: It is the duty of the social work centre and the police to apply effective measures and protect a woman's right to life***

The Protector of Citizens became aware of a tragic event when a man activated a hand grenade in a public place, killing himself and his former wife and injuring several passers-by. The institution initiated the investigation of the regularity and legality of the work of the social work centre and the police administration of that jurisdiction. On the basis of facts found during the investigation, the Protector of Citizens found that the actions of the authorities had been inefficient, that the measures taken had not been effective and that the results were death of a woman and injuries sustained by passers-by.

The Protector of Citizens made a recommendation to the social work centre and police administration to remedy the identified omissions and ordered measures to be taken by these authorities in future as well as the modality of providing effective protection to women/victims of gender-based violence, primarily the protection of the right to life. The authorities not only implemented the recommendations, but also took an extra step by signing a protocol of cooperation at the local level, in which they integrated recommendations of the Protector of Citizens.

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68 The Protector of Citizens originally submitted the same Initiative to the Ministry of Justice in October 2011, but received no written answer from the former Ministry.

*Protection of maternity, special protection of childbearing women and new mothers*

In its complaints handling work the Protector of Citizens found that the rights of mothers (childbearing women and new mothers) were violated to a great extent with respect to the exercise of the right to work and labour rights.

**Example: Certain employers are reluctant to recruit childbearing women and fail to provide new mothers with the means of subsistence for themselves and their babies**

Six women (childbearing women and new mothers) filed complaints because their employers did not compute and pay their benefits and public authorities did not take measures to sanction such behaviour and enable them to exercise their guaranteed rights. Some employers, as alleged in the complaints, violated their legal obligation to compute and pay the benefits; others failed to submit proof to municipal/city administrations that they had not paid wages to employees for longer than three months or that they were in bankruptcy, for which reason these authorities could not assume these employers' obligations, in conformity with the law, and pay the benefits for maternity and child care leave.

After completing the control of the regularity and legality of the work of the Ministry of Labour, Employment and Social Policy and the Labour Inspectorate under this Ministry, the Protector of Citizens will decide on measures to be taken.

*Women's health care*

By initiating the control of the National Health Insurance Fund, the Protector of Citizens made sure that the Fund itself remedied the irregularity whereby women's existing health care rights had been reduced instead of being increased.

**Example: Prevention is necessary and constitutes the first step in the successful treatment of certain illnesses among women**

Four complainants pointed to the violation of health care rights committed by the actions of the National Health Insurance Fund, which, in regulating the scope of the right to preventive health care and copayment in 2012<sup>69</sup>, reduced the scope of previously guaranteed women's rights to preventive examination for the purpose of early detection of breast and cervical cancer. Women between 25 and 69 years of age were granted the right to a preventive examination once every three years, instead of once per year, as had been the case previously.

In its legal instrument for 2013, the Fund restored the right to a preventive examination at the Fund's expense once per year.

69 Rulebook on the Contents and Scope of Health Care Rights under Statutory Health Insurance and Copayment for 2012

*Protection of the rights of sexual minorities*

Education authorities still do not demonstrate the full readiness to combat peer violence and discrimination on the grounds of sexual orientation in education institutions.

**Example: Homosexuals drop out of full-time education due to peer bullying**

In his complaint to the Protector of Citizens, a gay man, who attends secondary school part-time, stated that the school employees had not provided him protection against violence to which he had been subjected by peers because of his sexual orientation. The Protector of Citizens initiated the control of school's work in the process of providing protection against violence based on sexual orientation.

*Gender Equality Advisory Board of the Protector of Citizens*

In April 2012, the Gender Equality Advisory Board was established; it is composed of recognised experts in different areas and aims to improve the status of women and LGBT persons in all segments of society.<sup>70</sup>

The Advisory Board is tasked with the very important activity of monitoring the implementation of the Gender Equality Law<sup>71</sup> at the local level. In the last quarter of 2012, 4 monitoring visits to local self-governments were conducted, in Kragujevac, Žitište, Pirot and Aleksinac and these visits are planned to be continued in 2013 and to cover another 17 cities and municipalities. Other cities and municipalities in Serbia will be sent a questionnaire in order to analyse the situation in all local self-governments in the Republic of Serbia.

*Subsite on gender equality*

Within the website of the Protector of Citizens, a subsite was created; it is dedicated to gender equality, the activities of the Protector of Citizens in that area and a dialogue with citizens and organisations.

**2.4.4 Proposals for Improving the Position of Citizens in Relation to the Authorities**

1. Ratify the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence, with a view to continuing the harmonization of the legal framework for the protection of women against violence with the international standards.

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70 The Advisory Board consists of Prof. Marijana Pajvančić, PhD, the Chair, Prof. Slobodan Savić, PhD, Milan Djurić, Vanja Macanović, Djurdjica Ergić, Sonja Stojanović, MA and Prof. Snježana Milivojević, PhD.

71 "Official Gazette of RS", No. 104/09.

2. It is necessary that the Ministry of Education, Science and Technological Development amend the Law on the Foundations of the Education System in the Republic of Serbia<sup>72</sup> by introducing a provision on the express prohibition of discrimination on the grounds of sexual orientation.<sup>73</sup>
3. In the curricula for primary and secondary schools, and subsequently in textbooks, the Ministry of Education, Science and Technological Development should introduce contents whereby all important matters pertaining to the rights of the LGBT population will be covered in an acceptable, yet professional way.
4. The Gender Equality Directorate within the Ministry of Labour, Employment and Social Policy will continuously monitor the implementation of gender equality and equal opportunities policies in local self-governments and state authorities.
5. The Ministry of Justice and Public Administration and the Republic of Serbia Secretariat for Legislation will propose measures towards the introduction of gender-sensitive language in the work of state authorities, including drafting laws and other instruments.
6. In local self-governments, gender equality mechanisms should be established and other measures taken towards implementing and monitoring the implementation of the Gender Equality Law at the local level.
7. The Ministry of Labour, Employment and Social Policy should prepare specific measures for more effective protection of rights and improvement of the status of child-bearing women, new mothers and mothers in general as particularly vulnerable groups of women.
8. Within their respective scopes of competence, Government ministries need to monitor the implementation of strategies for improving the status of women and/or activities set by action plans for the implementation of individual strategies.
9. The Ministry of Justice and Public Administration should prepare a Draft Law on the Provision of Free Legal Aid, whereby the status of many women, in particular domestic violence victims, would be improved.
10. Public authorities need to continuously prepare and implement measures and activities towards raising awareness of the need to respect the LGBT human rights.
11. The Government should improve the protection of the rights of transgender/transsex people by passing new or amending the existing laws.

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72 "Official Gazette of RS", Nos. 72/09 and 52/11.

73 See Article 44 of the Law on the Foundations of the Education System in the Republic of Serbia.

## 2.5 RIGHTS OF PERSONS WITH DISABILITIES

### 2.5.1 Status Overview

The Republic of Serbia has passed laws<sup>74</sup> and adopted other regulations improving the legislative framework for the exercise and protection of rights of persons with disabilities, but this particularly vulnerable group faces complex problems on a daily basis, preventing them from exercising those rights and attaining the desired level of social inclusion. Problems persist because the existing legislative system for the protection of rights of persons with disabilities is not complete and also because certain legislative solutions do not contribute to their effective, system-wide and durable solution.

In local self-governments, the support system enabling persons with disabilities to exercise recognised rights in their immediate environment is not even remotely sufficiently developed. The support that is partly provided through social welfare and education systems is not sufficient to remedy the causes of the problems that stand in the way of full inclusion of persons with disabilities in social life. The fact that action plans for the implementation of the *Strategy for Improving the Position of Persons with Disabilities*<sup>75</sup> have not been developed since 2007 says enough.

Investigations conducted by the Protector of Citizens during 2012 indicate that persons with disabilities in Serbia most commonly face difficulties in exercising the rights to social welfare and health care, education, employment and vocational rehabilitation and that the reasons for the inability to exercise the rights lie in prejudice, discrimination, "inaccessibility of rights", owing to both the lack of information and appropriate legal aid in the local government and the inaccessibility of public institutions and communication barriers. Citizens' complaints indicate problems concerning the recognition of the status of the military war disabled and the exercise of rights in the social welfare system on the grounds of disability sustained in war during the 1990s.

The status and protection of the rights of persons with mental health problems are not adequately regulated. This is indicated by the insights of the Protector of Citizens,

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74 Law on the Prevention of Discrimination against People with Disabilities ("Official Gazette of RS" No. 33/06); Law on Vocational Rehabilitation and Employment of Persons with Disabilities ("Official Gazette of RS" No. 36/09).

75 "Official Gazette of RS", No 1/07.

gained through direct access to local self-governments and institutions in which these persons are placed for treatment, and also from reports by expert and non-governmental organisations. The Ministry of Health's initiative for the passage of a law on the rights of persons with mental health problems indicates the need for improving their legislative and actual status. The foundations for improving their position, as well as the overall mental health, as foreseen by the state Strategy for the Development of Mental Health Protection<sup>76</sup>, should be in the local community, but, owing to legislative unclarity and actual unpreparedness of local self-governments to provide appropriate support to persons with disabilities, this has not been provided yet. From the viewpoint of the exercise of human rights, the issue is that, by being declared legally incompetent, many of these persons are fully excluded from public life.

Overall improvement of the status of citizens with disabilities and their full inclusion in society depends on the support they will receive in their immediate environment through social welfare, health care, education and employment systems and by eliminating discrimination and combating prejudice. To achieve this, in addition to adopting a relevant normative framework, it is necessary to overcome the existing resistance and problems in the work of public administration, which are manifested in untimely handling citizens' complaints regarding the exercise of disability rights in an untimely manner, inconsistent and partial implementation of improvement measures in different administrative systems, the lack of clear criteria for the implementation of measures ensuring full equality of these citizens and the constant lack of funds for their implementation. The Protector of Citizens drew the competent public authorities' attention to these problems through recommendations and opinions addressed to them, through investigations conducted, through cooperation established with them and also through its participation in public debates and discussions and expressing its views in the media.

Disability is, as a rule, accompanied by poverty, for which reason it is important, in addition to developing efficient support systems and services, to promote persons with disabilities' independence, rehabilitation and employment whenever possible, through appropriate measures. In view of the fact that slightly above 5% of persons with disabilities are employed and that many of them are pensioners with the lowest pensions, it can be inferred that many persons with disabilities depend on "social transfers". Moreover, a considerable number of persons with disabilities who are recipients of the pecuniary benefit for the assistance and care of another person do not use these funds to procure a higher level of services, but to fulfil other essential needs. Independent living and social inclusion should be stimulated by combating poverty, i.e. by planning and managing measures that will contribute to the permanent remedying of the causes that present obstacles to the exercise of the said rights. Improving education and employment of persons with disabilities are highlighted as such measures and, accordingly, relevant regulations have been adopted, which, with certain adjustments, improvements and – most importantly – consistent implementation, could contribute to improving the status of persons with disabilities in the long run.

The existing system for improving the status of persons with disabilities is based on an insufficient number of measures of institutional support, a network of services incomplete in

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76 "Official Gazette of RS", No. 8/07.

terms of contents and geographical coverage and, most importantly, a fragile system for the provision of services that meet their essential needs or promote independent living. Improving the status of persons with disabilities directly depends on improving the support system that the competent public authorities are required to provide and the services established to make the recognised rights accessible to citizens.

The status of the elderly, i.e. the 1,250,316 citizens over 65 years of age (17.4% of the total population)<sup>77</sup> is not regulated in a way that would ensure security and dignified life. Low pensions and social policy measures do not support the meeting of the elderly people's essential needs. A particular problem lies in the employers' unpaid contributions to the Fund for Pension and Disability Insurance, as a result of which a large number of citizens are deprived of their labour rights.

The National Employment Service, the Ministry of Construction and Urban Planning and the Ministry of Health stand out in terms of implementing the recommendations issued by the Protector of Citizens and establishing different forms of cooperation with respect to the exercise and advancement of rights of persons with disabilities, while the Fund for Pension and Disability Insurance, the Ministry of Labour, Employment and Social Policy and administrations of certain local self-governments (City of Vranje, Municipality of Čajetina) should improve their work and actions.

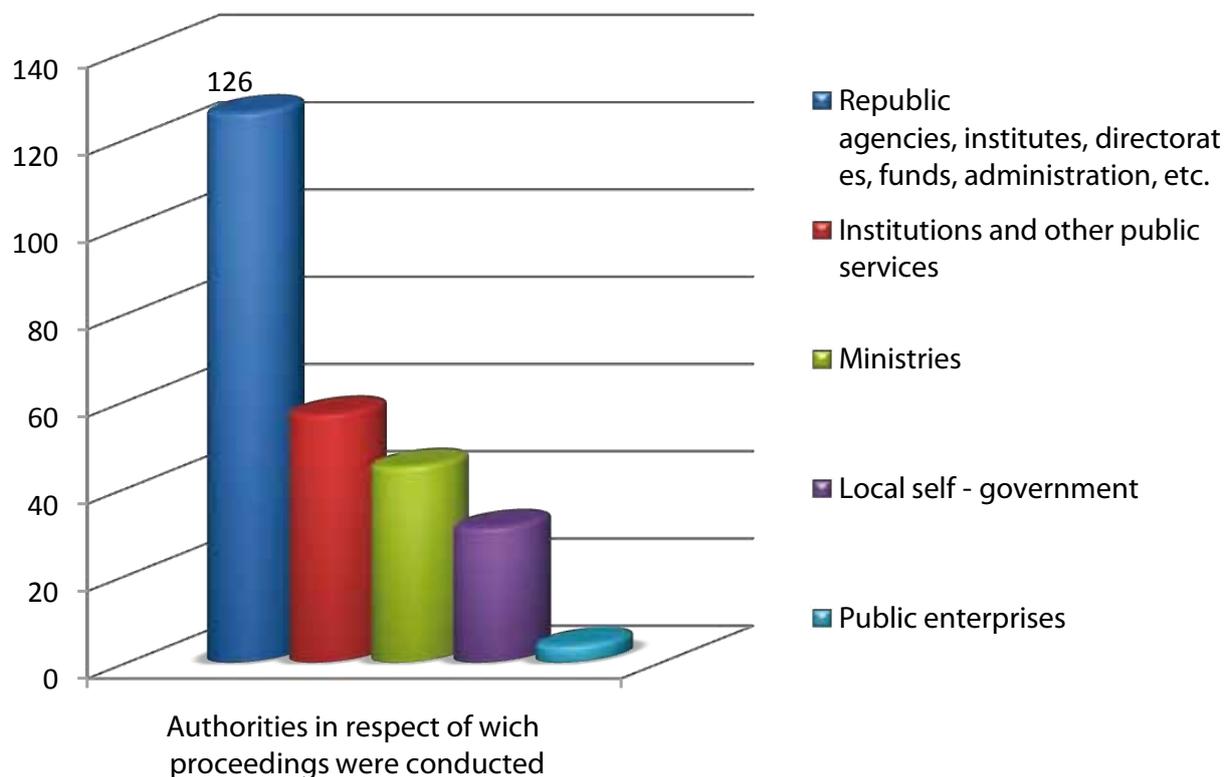
### **2.5.2 Statistical Overview of Complaints in the Area of Protection of the Rights of Persons with Disabilities**

In 2012, the Protector of Citizens received 270 citizens' complaints and launched 11 investigations on its own initiative (a total of 281) in the area of the protection of the rights of persons with disabilities.

In most cases, citizens expressed their dissatisfaction with the actions/omissions of the Republic Fund for Pension and Disability Insurance (104), social welfare institutions (48), local authorities (31), ministries (45 cases in total, out of which 25 complaints concern the Ministry of Labour, Employment and Social Policy). Also, a number of complaints deal with the work of the Republic Fund for Pension and Disability Insurance (9), judicial authorities (8), health and education institutions (7 and 2, respectively) and public enterprises (4). In a lower number of cases (fewer than 10), citizens were dissatisfied with the work of the National Assembly of the Republic of Serbia, the Government of the Republic of Serbia and the Provincial Secretariat.

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77 Age and Sex, 2011 Population Census, Statistical Office of the Republic of Serbia, Belgrade, 2012. Available at <http://webzrzs.stat.gov.rs>



**Chart 9 – Complaints about certain authorities in the area of rights of persons with disabilities**

In 98 cases, citizens pointed to the violations of specific rights of persons with disabilities, as follows: right to architectural access (11), right to the allowance and pecuniary benefit for the assistance and care of another person (41), right to employment and vocational rehabilitation (12), right to equal access to services (6), right to pecuniary benefit for physical impairment (7), right to relief and benefits in public transport (3), right to orthopaedic aids (2), right to the increased allowance for the assistance and care of another person (14) and right to customs and fiscal relief and benefits (2). Complaints also pointed to violations of other pension and disability insurance rights (72), other social welfare and health care rights (36), right to work and labour rights, as general rights (15) and right to protection of property (10). Other violations of rights indicated in complaints accounted for a lower number of cases and pertained to violations of rights to the protection against discrimination, right to healthy environment, compensation of damages, housing, privacy, access to information of public importance and inviolability of physical and psychological integrity.

**Table 11 – Violations of specific rights of persons with disabilities, their number and percentage share in the 98 reported violations of these rights**

Type of right violated	Number	%
Right to the pecuniary benefit for the assistance and care of another person	29	29.59%
Right to the increased allowance for the assistance and care of another person	14	14.29%
Right to the allowance for the assistance and care of another person	12	12.24%
Right to employment and vocational rehabilitation	12	12.24%
Architectural access	11	11.22%
Right to pecuniary benefit for physical impairment	7	7.14%
Right to access to public services	6	6.12%
Right to relief and benefits in public transport	3	3.06%
Right to customs and fiscal relief and benefits	2	2.04%
Right to orthopaedic aids	2	2.04%
<b>Total</b>	<b>98</b>	

Out of the total number of complaints in 2012 (281) and those from earlier years (56), the investigations were completed in 171 cases. Out of the 56 complaints from earlier years, 13 were rejected; in 12 cases irregularities were found and recommendations issued; in 8 cases, the authorities remedied the irregularities after investigations were initiated by the Protector of Citizens; in 21 cases the complaints were dismissed as unfounded and two complainants withdrew their complaints. Complaints handling work from 2012 was completed in 115 cases, as follows: 59 complaints were rejected; in 9 cases irregularities were found and recommendations issued; in 4 cases opinions were issued; in 14 cases the authorities remedied the irregularities after investigations were initiated by the Protector of Citizens; in 32 cases the complaints were dismissed as unfounded and 7 complainants withdrew their complaints.

### 2.5.3 Achievements in the Area of Protection of the Rights of Persons with Disabilities

The number of complaints concerning the exercise of rights of persons with disabilities almost doubled in comparison to 2011, which is a result of direct receipt of complaints in local communities and also of strengthening citizens' confidence in the work of the Protector of Citizens with respect to the exercise of the rights of persons with disabilities. This was supported by the fact that, with respect to the complaints received in 2012 and earlier years, 21 out of 39 recommendations were fulfilled.

The action of the Ministry of Labour, Employment and Social Policy upon the Recommendation<sup>78</sup> made by the Protector of Citizens and the remedying of irregularities that led to this authority issuing second-instance decisions on appeals by vulnerable groups with long delays enabled more efficient exercise of the right to social welfare.

The success of the work of the Protector of Citizens with respect to the rights of persons with disabilities was aided by the work of its Advisory Board for the Rights of Persons with

78 No 15-621/12 of 14 December 2012.

Disabilities and the Elderly<sup>79</sup>, which highlighted the access to public and other spaces and access to services, employment and deinstitutionalisation, i.e. the transformation from institutional care provided in health care and social welfare institutions in which persons with disabilities, most of whom are persons with intellectual disabilities and psychosocial conditions, are placed, as the problems that present a considerable burden to the status of citizens with disabilities and an obstacle to their social inclusion.

### *Accessibility*

**After immediate insight into the work of more than 30 local governments, the Protector of Citizens was convinced that none of them had provided environmental access and access to information for persons with disabilities as stipulated by Article 9 of the United Nations Convention on the Rights of Persons with Disabilities.<sup>80</sup>**

However, in most of them, partial measures were taken to enable citizens with disabilities to navigate main streets without difficulty and access basic public services. Accessible environment is a condition for social inclusion of persons with disabilities and delays in solving the accessibility problem in their best interest hamper the exercise of recognised rights and violate the principles of non-discrimination and equality. Access to services and information, public spaces and public transport are conditions for the exercise of rights.

With respect to local self-governments' obligation to ensure environmental access and access to public communication for citizens with disabilities, the Protector of Citizens held meetings with decision makers in the cities and municipalities of Zlatibor, Raška, Bor, Piroć, Pčinja and Jablanica districts. It was pointed out that the competent local authorities, in conformity with regulations, were responsible for ensuring accessibility of public areas, structures under construction and reconstruction and also promoting the concept of "accessibility for all", entailing the application of architectural solutions that facilitate access to services and spaces for all citizens.



**Image 4 "Meeting at Predejane"**

79 Advisory Board members are Gordana Rajkov, Damjan Tatić, PhD, Ivanka Jakanović, Vidan Danković, Dragana Ćirić Milovanović, Miodrag Počuć and Miloš Nemanjić, PhD.

80 Law on the Ratification of the Convention on the Rights of Persons with Disabilities ("Official Gazette of RS – International Treaties" No. 42/09).

In that respect, the Rulebook on Technical Standards for Accessibility<sup>81</sup> by the Ministry of the Environment, Mining and Spatial Planning represents an improvement in this area. However, this Rulebook is not in line with the Law on Planning and Construction<sup>82</sup>, the Law on the Prevention of Discrimination against Persons with Disabilities<sup>83</sup> and the abovementioned UN Convention.

**The Protector of Citizens launched inquiries into the work of the Ministry of Construction and Urban Planning, on the basis of which it submitted an opinion to the Ministry, expecting this administrative authority to improve the existing Rulebook on Technical Standards for Accessibility by adapting it to the concept of “accessibility for all” and developing modalities for consistent monitoring of its implementation.** At the meeting organised in that regard, it was agreed with the Ministry representatives that this administrative authority would bring the Rulebook into line with the said standards in cooperation with professionals and civil society organisations advocating the rights of persons with disabilities and subsequently organise training in its implementation for the competent local agencies.

The Convention on the Rights of Persons with Disabilities requires states to guarantee equal enjoyment of political rights to persons with disabilities, which, amongst other things, includes the right to vote and to stand as candidate. The exercise of these rights includes making information available to persons with disabilities in a timely manner in the organisation and conduct of elections and referendums and ensuring the accessibility of polling stations. **In an effort to ensure efficient protection of this right, immediately before the conduct of parliamentary and presidential elections and elections of members of local assemblies, the Protector of Citizens submitted an opinion<sup>84</sup> to the authorities responsible for keeping and updating electoral rolls and conducting elections, in which the institution pointed to the obligation to provide conditions for persons with disabilities to exercise the right to direct voting and decision-making in an unhindered manner and on an equal basis with other citizens.**

### *Employment and labour rights*

The hunger strike of the disabled workers of the Kragujevac-based enterprise for vocational rehabilitation and employment of persons with disabilities Šumadija DOO (as a result of impossibility of exercising their attained labour rights) briefly drew public attention to the status of workers employed in this and similar enterprises. **Their claims were settled only after the Protector of Citizens initiated the relevant investigation of the Ministry of Economy and Regional Development,** but the causes that drove the workers to the strike – unresolved status of enterprises employing and rehabilitating persons with disabilities and market uncompetitiveness of their products – were not remedied during the last year.

**The Protector of Citizens publicly drew attention of the Ministry of Economy and Regional Development and the Ministry of Labour and Social Policy to the employees’ poor status and the problems in the operation of the former sheltered workshops and**

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81 “Official Gazette of RS”, No. 18/12.

82 “Official Gazette of RS”, Nos. 72/09, 81/09 – corr., 64/10 – law amended by decision of the Constitutional Court, 24/11 and 121/12.

83 “Official Gazette of RS”, No. 33/06.

84 Available at [www.ombudsman.osobesainvaliditetom.rs](http://www.ombudsman.osobesainvaliditetom.rs)

**now the enterprises for vocational rehabilitation and employment of persons with disabilities, which are required to reserve 50% of the total number of jobs for persons with disabilities.**

During its investigations, the Protector of Citizens became aware that the Law on Vocational Rehabilitation and Employment of Persons with Disabilities<sup>85</sup> was not implemented consistently; that employers were reluctant to recruit persons with disabilities and frequently encouraged their existing workers to initiate the disability level assessment procedure before competent authorities, in order to formally comply with the legally required minimum number of persons with disability employed; that system-wide obstacles to higher employment of persons with disabilities had not been remedied (non-existence of support services to employed persons with disabilities, inaccessible workplaces, physical environment, public transport, inaccessible information and communication, insufficiently inclusive education system and inadequate vocational qualifications of many job seekers with disabilities). The passage of the Law on Social Welfare<sup>86</sup>, Law on the Foundations of the Education System<sup>87</sup> and Law on Vocational Rehabilitation and Employment of Persons with Disabilities provided the legislative basis for the rectification of the abovementioned system-wide obstacles to the employment of persons with disabilities; however, problems in the implementation of these regulations and their incongruence with other regulations seriously compromise the independent living and social inclusion of persons with disabilities. Higher involvement of the National Employment Service in better matching supply with demand in the labour market and the organisation of appropriate training, retraining and further training programmes for unemployed job seekers with disabilities would contribute to improving their status.

### *Deinstitutionalisation*

The transfer of persons placed in psychiatric hospitals and social welfare institutions into the primary community should ensure their social inclusion and protection of their human rights. The process of "deinstitutionalisation" (DI) has been implemented in European countries for a long time and since the adoption of the UN Convention on the Rights of Persons with Disabilities, a system for professional supervision of the development of this process has been established. In most countries, including (post)transition ones, this process is being implemented in a manner entailing the coordinated implementation of medical and social measures for the protection of interests and rights of persons placed in psychiatric institutions or specialised homes. The system is being transformed so that the treatment, resocialisation and the protection of interests and rights of persons with mental health problems are carried out in the least restrictive environment in line with their needs while the previous model, which insisted on medical treatment and institutional care, is being abandoned.

In spite of the fact that, through the Strategy for the Development of Mental Health Protection, the Government of the Republic of Serbia adopted the main principles of implementing "deinstitutionalisation", this process has not progressed very far. The Protector of

85 "Official Gazette of RS", No. 36/09.

86 "Official Gazette of RS", No. 24/11.

87 "Official Gazette of RS", Nos. 72/09 and 52/11.

Citizens was made sure there was the need for it, both in the capacity of the National Preventive Mechanism against Torture having immediate insight into conditions in hospitals and other institutions in which persons with mental health problems are placed and through interviews with managers, doctors and other professionals in these institutions. During these control visits, many problems with regard to the living conditions were identified. It is a fact that many patients are placed in institutions in which resocialisation is impossible on a long-term basis and some even permanently.

**The Protector of Citizens established a working group of experts and representatives of the Ministry of Health and Ministry of Labour, Employment and Social Policy that should contribute to analysing the existing problems concerning the protection of the rights of persons with mental health problems, in particular those placed in the above-mentioned institutions. Although in principle the experts and public administration representatives agree that the process of deinstitutionalisation needs to be implemented, there are still many outstanding issues hampering the process and the Protector of Citizens is of the view that the joint activities of these ministries as part of a project supported by the European Commission provide a good basis for overcoming the problems.**

**In December 2012, the Protector of Citizens submitted an Opinion<sup>88</sup> to the Ministry of Health regarding the Draft Law on the Protection of Persons with Mental Health Problems, in which the attention was drawn to the fact that, in addition to medical aspects, the future Law had to stipulate solutions that would take due care of the protection of human rights of persons with mental health problems, foresee the modalities of treatment and, in particular, modalities and conditions of resocialisation in the least restrictive environment in the primary community and finally provide conditions for the real prevention of mental illnesses.**

### *Disability rights*

Disability rights are exercised through the social welfare and pension and disability insurance systems. These rights are decided upon by branch offices of the Republic Fund for Pension and Disability Insurance and social work centres as the first-instance authorities and by the Head Office of the Republic Fund for Pension and Disability Insurance and the Ministry of Labour, Employment and Social Policy as the second-instance authorities. Most complaints by persons with disabilities concerned the exercise of the right to pecuniary benefit for the assistance and care of another person or allowance and increased allowance for the assistance and care of another person, the right to pecuniary benefit for physical impairment and the right to disability pension.

Citizens also filed complaints concerning the expertise procedure before both the first- and second- instance expertise authorities of the Republic Fund for Pension and Disability Insurance, which frequently took several months or even longer, as a result of which the competent authorities deciding upon citizens' rights issued their decisions with long delays in relation to the legally prescribed time limits. Authorities deciding upon disability rights base their decisions solely and fully on the findings, opinions and assessment of the first- or second-instance expertise authority and fail to use the legally prescribed procedural

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88 Available at [www.ombudsman.osobesainvaliditetom.rs](http://www.ombudsman.osobesainvaliditetom.rs)

possibilities of rectifying unclarity and irregularities in expertise authorities' opinions, if any, in order to reach the final decision on the basis of the accurately and fully ascertained factual situation and in the citizens' best interest.

**With its recommendation, made to the Republic Fund for Pension and Disability Insurance to prepare amendments to the Rulebook on the Establishment and Model of Operations of Expertise Authorities in terms of setting time limits for completing the expertise procedures and the determination of the findings, opinions and assessments by the expertise authorities and oversight authorities so that they are complete, clear and substantiated by arguments, the Protector of Citizens pointed to the omissions in the first- and second-instance expertise procedures were indicated. The Republic Fund for Pension and Disability Insurance informed the Protector of Citizens that the Rulebook would be amended with a view to improving the quality and efficiency of expertise authorities and that the Head of the Department for Medical Expertise had instructed the expertise authorities that they were required to fully and clearly substantiate their findings, opinions and assessments by arguments and make them comprehensible both to the authority conducting the procedure and to the clients.**

In the recommendations addressed to the Ministry of Labour, Employment and Social Policy and the Republic Fund for Pension and Disability Insurance, the Protector of Citizens emphasised the omissions in individual responses to citizens' appeals as well as the necessity of taking organisational and technical measures to ensure the legality, timeliness and efficiency of deciding upon the rights of persons with disabilities.

#### **2.5.4 Proposals for Improving the Position of Citizens in Relation to the Authorities**

1. The Ministry of Labour, Employment and Social Policy, independently and in cooperation with other public authorities, should:
  - a) Prepare and adopt action plans for the implementation of the Strategy for the Improvement of the Status of Persons with Disabilities in the Republic of Serbia;
  - b) Ensure consistent implementation of the Law on Vocational Rehabilitation and Employment of Persons with Disabilities and take measures to remove the obstacles to employment of persons with disabilities, such as discrimination, prejudice, insufficiently developed support services, inaccessibility of workplaces, environment, public transport, information and communication and insufficiently inclusive education system;
  - c) Prepare effective „affirmative actions“ that will facilitate a more equal position of enterprises for the employment and rehabilitation of persons with disabilities in comparison to other companies and propose them to the competent authority;
  - d) Develop new measures of vocational rehabilitation, retraining and further education of job seekers with disabilities, in line with the labour market demand and needs;
  - e) Develop support systems and services for persons with disabilities in local communities;
  - f) Provide a sufficient number of professionals who handle citizens' complaints and protect their rights;

2. The Ministry of Health, independently and in cooperation with other public authorities, should:
  - a) Establish a task force in charge of developing the process of deinstitutionalisation, i.e. transformation of the existing health care and social welfare institutions in which persons with mental health problems are placed; the task force must include the Ministry of Labour, Employment and Social Policy, Ministry of Education, Science and Technological Development, Ministry of Finance, experts and representatives of civil society organisations;
  - b) Harmonise the Draft Law on the Rights of Persons with Mental Health Problems with the Republic of Serbia Strategy for the Development of Mental Health Protection and UN Convention on the Rights of Persons with Disabilities and ensure human rights protection and social inclusion.
3. The Ministry of Construction and Urban Planning should harmonise the Rulebook on Technical Standards for Accessibility with the laws and international standards and organise and deliver training for the competent local agencies responsible for its implementation.
4. The Ministry of Education, Science and Technological Development should improve the education system with respect to persons with disabilities, since the unfavourable education structure is one of the main reasons for unemployment and social exclusion of persons with disabilities.
5. The Republic Fund for Pension and Disability Insurance must amend the Rulebook on the Establishment and Model of Operations of Expertise Authorities under the competence of the Fund<sup>89</sup> and adopt other relevant bylaws to eliminate the deficiencies with respect to procedural time limits, clarity, completeness and substantiation of findings and opinions of expertise authorities.

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89 "Official Gazette of RS", Nos. 59/08, 75/08, 24/11 and 7/12.

## 2.6 SECTOR OF INTERNAL AFFAIRS<sup>90</sup>

Within the sector of internal affairs, citizens' complaints in 2012 were mostly related to the so called administrative silence, i.e. failure of the authorities to decide upon requests of citizens within the appropriate time limits. Furthermore, there was an increasing number of complaints, in which the citizens expressed their dissatisfaction with incorrect, irregular and inefficient actions of police officers, organizational units of the Ministry of Interior as well as the Ministry itself.

At the same time, it was noted that only a few citizens, who addressed the Protector of Citizens concerning the work performed by the police officers or the Mol organizational units, were aware of the possibility of filing a complaint against a police officer to an organizational unit within the Ministry or the Ministry itself as well as the possibility of addressing the Internal Affairs Sector.

***Example: Irregularities in the work of certain Mol organizational units in handling applications for issuing an identity card***

The Serbian Association of Photographers filed a complaint with the Protector of Citizens requesting protection and stating that the police officers in the Ministry of Interior acted contrary to the existing regulations in handling applications for issuing identity cards because they refused to receive citizens' photographs made in photography shops, without previously checking out whether the photographs met the requirements specified in legal regulations.

In the conducted investigation, the Protector of Citizens identified irregularities in the work of the Ministry organizational units, which, without prior checking out if the photographs met the prescribed standards, refused to receive photographs citizens' photographs along with their applications for issuing identity cards.

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90 In 2011, organizational changes occurred in the Protector of Citizens' complaints handling sector. The former good governance sector was divided in accordance with the Law on Ministries, with certain variations.

In order to eliminate the above-mentioned irregularities, on 10 September 2012 the Protector of Citizens issued a recommendation to the Ministry of Interior to warn and instruct, through guidelines or other appropriate way, its organizational units that the employees are required to take the photographs submitted by citizens with applications for issuing their first identity cards; to check out on the spot or immediately afterwards whether the submitted photographs met the prescribed conditions for making identity cards and to acknowledge this fact in accordance with regulations stipulating the process of handling the complete or incomplete applications in the administrative procedure. Furthermore, the Ministry was made aware of the need to ensure proper application of this procedure and other possible procedures in which citizens enclosed their photographs and other documents. Upon receiving this recommendation, the Mol informed the Protector of Citizens that it acted in accordance with the recommendation within the time limit stipulated by law.

*Failure to act, within a reasonable time, upon citizen applications for acquiring citizenship, admission to citizenship and release from citizenship of the republic of Serbia*

A considerable number of citizens turned to the Protector of Citizens in 2012 emphasising the problems they were facing in the procedure of acquiring citizenship, termination of citizenship or admission to citizenship of the Republic of Serbia, i.e. in the procedure for regulating citizenship issues implemented by the Ministry of Interior. In some cases, the Ministry did not decide on the submitted applications for more than a year, which made these citizens unable to exercise other rights.

As in previous years, after the Protector of Citizens opened an investigation of the legality and regularity of the work of the Ministry, it was noted that the authority in question remedied omissions in its work and decided on the requests of the complainants (for re-acquiring citizenship, admission to citizenship or release from citizenship of the Republic of Serbia).

**Example: Administrative silence**

The Protector of Citizens received a complaint in which a complainant expressed his/her dissatisfaction with the failure of the Ministry of Interior to receive a citizen's application for citizenship of the Republic of Serbia which was filed in 2010. After the investigation of the legality and regularity of the work of the Ministry of Interior was initiated, the authority informed the Protector of Citizens that it decided the submitted application and that the decision on acquiring citizenship of the Republic of Serbia was forwarded to the relevant Police Department for hand-delivery to the applicant.

*Conclusion*

In its complaints handling work, as well as based on data and information received by the Ministry of Interior and citizens, the Protector of Citizens learned that the Mol, in most cases, remedied omissions in its work immediately upon the initiation of the investigation

of the legality and regularity of its work. Furthermore, it was noted that the Mol undertook certain measures in order to overcome the identified irregularities. There were cases when this cooperation was established only after the Protector of Citizens' interventions and telephone contact with the responsible persons in this authority, mostly when issues concerning the employment rights were in question.

During the reporting period, based on citizens' complaints and contacts with citizens, the Protector of Citizens learned that the citizens were not completely familiar with legal remedies and procedures available to them when they believed that their rights and freedoms had been violated by the Mol, its organizational units or the police officers. Citizens are not aware enough of the possibility of filing complaints against police officers as well as the procedure following the filed complaint. Furthermore, citizens are not informed enough either about the possibilities of addressing the Internal Affairs Sector or the competences and procedures implemented by this public authority.

### **2.6.1 Proposals for Improving the Position of Citizens in Relation to the Authorities**

1. For more efficient protection of the rights of citizens, it is essential that Mol undertakes necessary measures in order to completely inform the citizens about available legal remedies in cases when the citizens believe that their rights and freedoms are violated by unlawful or irregular actions or omissions of the Mol, its organizational units or police officers.
2. It is necessary that the Ministry of Interior undertakes appropriate measures in order to inform the citizens about the possibilities of addressing the Internal Affairs Sector, as well as the competences and procedures implemented by this authority.

## 2.7 SECTOR OF FINANCE, ECONOMY, REGIONAL DEVELOPMENT, PRIVATIZATION, PROPERTY DIRECTORATE, NATIONAL EMPLOYMENT SERVICE, BANKRUPTCY AND PUBLIC PROCUREMENT OFFICE

### Sector of Finance and Economy

During 2012, after the establishment of the new government and the adoption of the Law on Ministries, beside the competences of the former Ministry of Finance, the Ministry of Finance and Economy was delegated part of the competences of the former Ministry of Economy and Regional Development in the area of economy and tourism. The Tax Administration, the Customs Administration and the Directorate of Measures and Precious Metals were established as separate organizations within this Ministry.

Bearing in mind the considerable amount of work done by this Ministry, it comes as no surprise that there were a lot of complaints about its work with **more than 2/3 of complaints concerning the work of the Tax Administration**, as its biggest organizational unit, which decides on the rights and responsibilities of a wide range of natural and legal persons – citizens and business entities.

**The complaints mostly pointed out to the violation of substantive and procedural rights, inefficiency and delays in the work of the authorities as well as non-compliance with the created legal standards.** A great number of people address the Ministry on a daily basis complaining against the employers, who have not fulfilled their legal obligation of paying taxes and contributions for compulsory social insurance of the employees. **The current mechanism of the control of the contribution calculation and payment is obviously inefficient; it inadequately sanctions violations of workers' rights at the same time favouring the unjust enrichment of the employers and development of the so called grey market.**

**The regulations on bankruptcy and liquidation, which enable quick and insufficiently transparent termination of business operations of companies, as well as abuse of limited liability companies, contribute to non-payment of contributions, funds impoverishment and denial of rights to the employees.**

The complaints also concerned the work of the Ministry of Finance and Economy as authority of the second instance in administrative procedures; the manner of giving opinions on the implementation of laws and other general acts; as well as the violation of the rights of civil servants and appointees in the Ministry.

The economic crisis and poverty resulted in a certain number of citizens submitting requests to the Protector of Citizens for financial support, requests for delay of garnishment or proposals to amend the existing regulations, without stating the concrete objections to the work of the Ministry of Finance and Economy. There are no legal grounds for the Protector of Citizens to act upon such requests.

*“Administrative silence”*

**“Administrative silence” was the most common reason for investigating the complaints concerning the legality and regularity of the work of the Ministry of Finance and Economy.** “Administrative silence” was mostly manifested in situations when the Ministry or its organizations acted as the second-instance authorities, although there were also situations when citizens’ requests were not acted upon for several months or when there were no written replies to citizens’ written requests. **After the intervention of the Protector of Citizens, the omitted actions were as a rule undertaken while the well-foundedness of the complaints was not challenged.**

*The right of the complainant to be notified of the decision*

The principle of confidentiality in the tax procedure<sup>91</sup> was applied in a certain number of cases in such a way that the Tax Administration informed the citizens - who filed complaints against certain entities – that it had acted upon their complaints, although it never communicated details on the course and the outcome of the procedure, claiming confidentiality. The existing regulations require weighing the preponderant interest between the interest of tax payers and the public interest, on the one hand, i.e. the interest of access to information of public importance, on the other hand. More detailed information was also missing in situations when the citizens complained about the failures to pay contributions for compulsory social insurance while the Tax Administration did not state the reasons why it considered, in concrete cases, that the interest regarding the protection of a tax payer or the public interest trumps the interest of the applicant to be notified.

*Tax payment*

Tax notices<sup>92</sup> are mailed out to citizens in certain cases even several years after the tax liability fell due, in order to eliminate the writing off of tax and secondary tax duties. The long time interval considerably increased interest rates, even in situations when the tax debt was minor; thus, due to silence of the tax authority for several years, the citizens erroneously believed that they had settled their debts in full with one of the previous payments. Receiving such notices created tax payers’ impression that they were deliberately deluded so that their tax liabilities would increase. This is the reason why it is so important to send tax payment notices immediately after it was determined that tax and secondary tax duties were not paid in due time.

91 Article 7 of the Tax Procedure and Tax Administration Act (“Official Gazette of RS”, Nos. 80/02, 84/02, 23/03, 70/03, 55/04, 61/05, 85/05, 62/06, 63/06, 61/07, 20/09, 72/09, 53/10, 101/11, 2/12 and 93/12).

92 Article 71 of the Tax Procedure and Tax Administration Act.

For the amounts of underpaid or overpaid tax and secondary tax duties in 2012, the interest was calculated by using the compound interest formula. According to the Decision of the Constitutional Court I Uz. No. 82/2009 of 12 July 2012, it was determined that the provision of Article 3 paragraph 1 of the Statutory Interest Act<sup>93</sup> was unconstitutional in the part where the compound interest formula was applied to calculate the interest rates. In an explanation of its decision the Constitutional Court stated, *inter alia*, that this method involved the complex interest calculation, i.e., calculation of interest on interest, which ruled out the application of certain legal principles of civil law (principles of monetary nominalism, interest rate cap, prohibition of abuse of law) as well as other general legal principles and fundamental values protected by the Constitution (principles of the rule of law, social justice, legal security, etc.). Furthermore, the constitutional principle of the prohibition of discrimination on any grounds was violated as well and the principle of equality of all before the Constitution and law, since different treatment of the interest claim was envisaged, depending on the capacity of creditor and debtor, where the penalty interest on foreseeable damages is transformed into a penalty the amount of which considerably exceeds the actual damage that has occurred due to late payment. In spite of the mentioned argumentation, the **Tax Administration continued to calculate the penalty interest rate by applying the compound interest formula up till January 2013, referring to the provisions of the Tax Procedure and Tax Administration Act. The constitutionality of this Act has not been assessed formally, which brought the tax debtors into the more unfavourable position compared to debtors under civil law relations, while the legal issue of the constitutionality of the compound method has been clearly settled according to the Constitutional Court decision.**

Unfounded implementation of the enforced tax collection happens when, due to the omission of the Tax Administration, this procedure is implemented for an already paid tax liability. Then problems related to tax return, which the National Bank of Serbia collects in the enforced tax collection procedure, occur. The National Bank of Serbia points out that it acts per order of the competent subsidiary or branch office of Tax Administration, and charges fees for this service regardless of enforceability of writ of execution, while the Tax Administration points out that it cannot return the amount of the collected fee, because it is not found on its account.

The Law on Contributions for Compulsory Social Insurance<sup>94</sup> stipulates that the control of the contribution calculation and payment is performed by the Tax Administration in accordance with regulations, under which tax procedure and tax administration are prescribed. This competence is essential for exercising the rights of a great number of employees, to whom the employers pay contributions irregularly or in part, particularly bearing in mind case law<sup>95</sup> that obligating employers for the payment of contributions for compulsory social insurance does not come under court competence, which is the reason why these actions are rejected. On the basis of till now implemented control procedures, the conclusion is that Tax Administration is not sufficiently persistent in collecting

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93 "Official Gazette of FRY", No. 9/01, "Official Gazette of Serbia and Montenegro", No. 1/03 and "Official Gazette of RS", Nos. 31/11 and 73/12.

94 Article 69. ("Official Gazette of RS", Nos. 84/04, 61/05, 62/06, 5/09, 52/11, 101/11 and 7/12).

95 Judgment of the Appellate Court in Belgrade, Gž1. 3767/2011(2) of 28 September 2011; decision of the Administrative Court, 9 U. 28814/2010 of 31 October 2011.

contributions. In certain cases enforced collection is not implemented until the state authority of second instance does not decide on the employer's appeal, although the appeal shall not stay enforcement.

Sometimes, the contributions are considered to be unpayable when companies terminate their business operations, i.e. terminate to perform their entrepreneurial activity, although unlimited liability of partners, complementary partners and entrepreneurs could be engaged with personal property for the liabilities originating from their business activity. Positive effects of obligating banks, through which orders for salary and contribution payments are implemented, to submit to the Tax Administration information on the executed payment operations until the expiry on the next day from the day of the implementation of the order,<sup>96</sup> for more successful implementation of control, still remain to be assessed. In spite of the new solution, whose aim is to improve the current control system, **it is obvious that it is not appropriate bearing in mind social and economic needs and that it does not have much success in efficient abuse preventing and sanctioning. This is the reason why the employees are found, in spite of the proclaimed obligation of payment of social insurance contributions, in a situation that they cannot exercise their earned right to pension, health care or unemployment compensation.**

VAT refunds to the first time apartment buyers was mostly a problem for the buyers of non-profit apartments for socially vulnerable groups (solidarity apartments) in 2012. These persons could not exercise their right to VAT refunds until the Law on the Amendments and Supplements to the Value Added Tax Law<sup>97</sup> was passed, where this possibility was envisaged for such a category. In accordance with these provisions, the buyers of solidarity apartments have completely equal tax rights and obligations as other categories of the first time apartment buyers.

The National Corporation for Insurance of Housing Loans (NCIHL) in 2012, due to the lack of funds, suspended receiving and processing applications for approving subsidized housing loans. Upon adoption of the Regulation on Amendments and Supplements of the Regulation on the Measures of Support to the Construction Industry through Long-term Housing Loans in 2012<sup>98</sup>, receiving and processing applications continued. After the intervention of the Protector of Citizens, omission in the work of NCIHL, consisting of non-observance of the sequence of submitting applications during their receiving and processing, was eliminated.

In exercising rights of the employees in the Ministry of Finance and Economy, it was noticed that the Customs Administration, when deciding upon disciplinary responsibility of an employee, applied a different legal regime compared to the general regime established by civil servants labour relations regulations, and did not provide, at the same time, sufficiently convincing and law-based reasons for its actions, denying competence of the Protector of Citizens for conducting the control procedure. Later in the procedure, the Customs Administration (new management) stopped avoiding responsibility and to be subjected to external independent control.

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96 Article 30a paragraph 1 of the Tax Procedure and Tax Administration Act.

97 Article 56a paragraph 3 ("Official Gazette of RS", No. 93/12).

98 "Official Gazette of RS", No. 98/12.

### *Conclusion*

**In 2012, progress was noted in cooperation between the Ministry of Finance and Economy and the Protector of Citizens; it consisted in timely and complete submittance of statements and acting upon given recommendations,** which was not the case in recent years. Beside written communication, direct contact with the representatives of the Ministry, with the aim of pointing out to the significance and scope of actions of the Protector of Citizens, for eliminating certain doubts regarding the competence of this state authority, was established.

**Further improvement of work of the Ministry is necessary when accurateness and promptness are in question as well as improving communication with the citizens.** Lack of promptness is particularly present in situations when the Ministry acts as the second instance authority. As a rule, decisions are adopted upon expiry of time limits for deciding in the second instance, primarily in the Tax Administration regional centres. The Budgetary Inspection informed the Protector of Citizens that inflow of reports makes efficient supervision impossible, bearing in mind the number of employees (totalling nine inspectors) and the number of Budgetary Beneficiaries (more than 9,000), which is the reason why special attention should be paid to human resources planning within the authority and adapting the work organization to the scope.

**Communication with citizens should be improved, both in writing and orally.** During 2012 there were cases when written answers to written requests were not given; also, citizens were told to come to get a certificate or an approval some other day, when the authorized officer comes to work from annual holiday, or when the seal with the new name of the Ministry is made.

Communication with citizens is of special importance because frequent amendments of regulations cause to a considerable degree misunderstanding and difficulties in the implementation of regulations, particularly in transitional periods. **In only one year, competence for deciding on complaints in tax procedures, related to source of income of local self-governments, was changed twice:** in cases where Tax Administration did not adopt a decision until 31 December 2011, local self-governments<sup>99</sup> became competent for settling these cases; only a year later, decision making on legal remedies filed against tax administration decisions, adopted by 1 January 2013 by the local self-governments,<sup>100</sup> was returned to the competence of the Tax Administration. Initiating and conducting procedures for tax petty offences in the first instance and pronouncing fines for tax offences were also returned from Minor Offence Courts to the competence of the Tax Administration.<sup>101</sup> This is the reason why complete and timely informing of citizens on the content of the applicable regulations and legal regime to be applied, is essential; also, certain revisions of the legislative policy, demonstrated in adopting frequent and opposite decisions that take turns in very short time periods, is vital.

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99 Article 51 of the Law on Amendments and Supplements to the Tax Procedure and Tax Administration Act ("Official Gazette of RS", No. 101/11).

100 Article 3 paragraph 1 of the Law on Amendments and Supplements to the Tax Procedure and Tax Administration Act ("Official Gazette of RS", No. 93/12).

101 Article 26 paragraph 2 of the Law on Amendments and Supplements to the Tax Procedure and Tax Administration Act ("Official Gazette of RS", No. 93/12).

Local tax administrations had similar problems like the Tax Administration, since most complaints were related to the amounts of tax liabilities, and the complainants believed that they were determined arbitrarily, and not on the basis of objective economic criteria. Town and municipal councils, as the second instance authorities, were also unable to achieve satisfactory level of accurateness and promptness in their work.

All in all, the improved cooperation between the Ministry of Finance and Economy with the Protector of Citizens also reflected in the cooperation between the Tax Administration, as the biggest organizational unit within the Ministry, with the Protector of Citizens. When subsidiaries and branch offices of Tax Administration were in question, no ill-will nor tendency of non-cooperation were noted; in most cases, there were only individual omissions.

### National Bank of Serbia

National Bank of Serbia (NBS) is an autonomous and independent state authority, which, performs, *inter alia*, activities relating to the protection of rights and interests of the consumers of services provided by banks, financial leasing providers, insurance companies and voluntary pension funds.<sup>102</sup> In 2012, The Protector of Citizens received complaints about the work of NBS as well.

According to the content of complaints, the complainants were mainly dissatisfied because they expected that NBS would settle contested property relations from contractual relations with the banks (to less extent with insurance companies and financial leasing providers), with which civil procedures before courts would be avoided. By entering into force of the Law on the Protection of Users of Financial Services<sup>103</sup>, NBS is not only a mediator in the communication between clients and providers of financial services, but also takes into account violations of rights, which require fines for such offences. Besides, banks and other financial entities, using their dominant economic position, provide client consent through contractual provisions and general terms and conditions, to which clients agree without any possibility of negotiating, i.e. they adjust their business operations to the applicable regulations, and the only way to protect their rights is through initiating a litigation. Clients most frequently complained about the costs of current accounts maintenance, loan processing costs, instalment amount, interest amount, abuse over the phone in case of late payment and assignment of the claim by the bank to third parties. Some citizens expressed their dissatisfaction with the fact that they were denied the possibility to select independently the bank through which they will receive their salaries, although it seems that such bans were mostly introduced by their employers.

Part of the complaints were related to impossibility of exercising the right to the so called "old foreign exchange savings", i.e. savings deposited with "Dafiment" and "Jugoskandik" banks, where the National Bank of Serbia provides administrative and technical services in this filed for the commission established in accordance with regulations, according to which the mentioned claims were turned into public debt. Considerable dissatisfaction of complainants was caused by a legal provision, according to which "the citizens of the former republics of SFRY, which are not within FRY, and who deposited their foreign

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102 Law on the National Bank of Serbia ("Official Gazette of RS", Nos. 72/03, 55/04, 85/05, 44/10, 76/12 and 106/12).

103 "Official Gazette of RS", No. 36/11.

exchange savings with the authorized banks in the territory of FRY, as well as citizens of FRY, who deposited their savings with branch offices of the banks found in the territory of the former republics of SFRY until the moment of their secession, shall file their claims related to foreign exchange savings in the manner agreed with the SFRY successor states.<sup>104</sup> **Since the mentioned Agreement on Succession has not yet been entered into, a great number of savings depositors (and their successors) cannot exercise their right, which they undisputedly have, even after 20 years.**

A certain number of complaints was related to events regarding bankruptcy of a bank in 2012, its transformation into a new company and takeover of deposits and certain number of employees by another bank, where the Protector of Citizens received the most complaints filed by former workers, shareholders or pledgers in different credit arrangements.

The number of ungrounded complaints about the work of the National Bank of Serbia shows both insufficient knowledge of its competences and the fact that it was impossible for the citizens to obtain expert legal assistance during the economic crisis, which compelled them to take loans or use other financial services. It was noted in 2012 that the **Centre for protection and education of users of financial services of NBS regularly and timely informed the applicants on the undertaken activities, and submitted to them copies of statements of providers of financial services, acquainting the mentioned users with possibilities for peaceful dispute resolution through mediation of NBS.**

### **Sector of economy, regional development, privatization, bankruptcy, property directorate, national employment service and public procurement office**

Violations of rights noted during complaint consideration point to systemic issues in the field of bankruptcy and privatization related to labour relations rights, on the one hand, and individual issues that occur as consequence of the violation of good governance principles, i.e. principles and provisions of the Law on General Administrative Procedure, on the other hand.

During 2012, the **most complaints in the reporting period concerned violations of the citizen property rights and the impossibility of collecting their claims on the grounds of labour relations** (unpaid salaries and contributions for social insurance, i.e. severance pay, and the like) when employers, against whom bankruptcy proceedings were initiated, i.e. company liquidation procedure, as well as unpaid service years, were in question. As a rule, the complainants expressed dissatisfaction with the fact that after expiry of a certain period of time, or even after the completion of the bankruptcy proceedings and after the bankruptcy debtor was deleted from the Register of business entities, claims were not paid out; they also expressed dissatisfaction with the allegedly incorrect work or obstruction of proceedings by the bankruptcy judge and/or bankruptcy administrator. One of the reasons was most certainly the fact that **in most cases, bankruptcy proceedings were initiated against companies only when they were practically left without any assets, and when debts to the employees and other creditors became too big.** Then it was very difficult to sell in the bankruptcy proceedings assets of the bankruptcy debtor under favourable conditions and form a bankruptcy estate, from which it was possible to pay up major part of the unpaid claims.

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104 Article 21 paragraph 13 of the Law on the Settlement of the Obligations Arising from Citizens' Foreign Exchange Savings ("Official Gazette of FRY", No. 36/02 and "Official Gazette of RS", Nos. 80/04 and 101/05).

One of the characteristics in this field is the fact that **the biggest problem were the complaints about procedures where the Privatization Agency was appointed bankruptcy administrator, bearing in mind that the Law on Bankruptcy stipulates in Article 22 that provisions on professional supervision over the bankruptcy administrator during the proceedings do not relate to the work of the Privatization Agency, i.e. its trustee, and that the Privatization Agency cannot be compulsorily retired with the decisions of the bankruptcy judge, which is the case with other bankruptcy administrators.**

The circumstances which were an obstacle for the successful implementation of bankruptcy proceedings, thus, exercising the rights of citizens, according to the received complaints, were obvious indifference of the authorities that implemented it, i.e. denying necessary assistance and information to bankruptcy creditors; and insufficient care when management and preservation of the property of bankruptcy debtor were in question, where particularly characteristic is transferring responsibility for conducting proceedings from one authority to another.

When bankruptcy is in question, additional problem was the fact that provisions of Articles 150 through 154 of the Law on Bankruptcy, which stipulated the so called automatic bankruptcy, and on the basis of which a great number of bankruptcy proceedings were completed, were proclaimed unconstitutional with Decision of the Constitutional Court of 12 July 2012. For the so called automatic bankruptcy it was characteristic that upon adoption of a decision on initiating the previous bankruptcy proceedings and determining advance, if advance was not paid, bankruptcy proceedings were initiated and completed at the same hearing, due to belief that there is no legal interest of the creditors and debtor to conduct bankruptcy proceedings, while the property of the bankruptcy debtor would become the property of the Republic of Serbia, which is not responsible for the liabilities of the bankruptcy debtor.

There was also a special sub-type of complaints, formally oriented toward basic courts, because the complainants did not succeed in their employment-related claims, and determined by final and enforceable decisions, because of the obstacles for initiating or continuing an enforcement proceeding. In such circumstances, bankruptcy proceedings were a huge blow for creditors, which conducted before its initiation court proceedings against the bankruptcy debtor and obtained final decisions or final and enforceable court decisions for their unpaid claim; namely, by opening bankruptcy proceedings these decisions almost completely lost significance and were only proof in bankruptcy proceedings that the reported claim existed. Bearing in mind by Law prescribed competences of the Protector of Citizens, according to which the Protector of Citizens is not responsible to control the work of courts nor actions of private employers, the complainants were only instructed on the reasons, because of which the court decision is not enforced, and the manner to eliminate the obstacles for the enforcement implementation, i.e. they were referred to report their claims in bankruptcy proceedings, if the reason why court decisions are not enforced, is the opening of bankruptcy proceedings against the claimant's debtor; the Protector of Citizens also provided answers to all other questions related to the proceedings underway.

The reporting period was also characterized by complaints of bankruptcy administrators about acting of the Bankruptcy Supervision Agency, due to initiation of disciplinary measures against them or rejecting applications of bankruptcy administrators for license renewal. Common denominator of the mentioned complaints was the fact, to which bankruptcy

administrators pointed out, that the Agency authorities, which supervise their work, acted according to insufficiently clear rules and insufficient objectivity in deciding. On the other hand, the complaints about acting of the Bankruptcy Supervision Agency upon objections concerning work of bankruptcy administrators, i.e. complaints against acting of the Ministry of Finance and Economy upon objections concerning the work of the Bankruptcy Supervision Agency during the implementation of bankruptcy proceedings, were very rare.

Another huge group of complaints related to violations of property and labour relations rights in the privatization process, where the complainants most frequently considered that the ones responsible for these violations were the Privatization Agency and the privatized company, i.e. its management. **The complaints mainly pointed to the fact that Privatization Agency was inaccurate and lacked promptness in its actions upon cancellation of the privatization contracts, and particularly in adopting decisions on restructuring programs and deciding upon claims of workers employed in enterprises to be privatized.**

On the other hand, problems in the proceedings were also caused by certain normative solutions from applicable regulations. Namely, the problem of collection of claims from the companies that entered a restructuring process by their creditors, because of Article 20 of the Law on Privatization,<sup>105</sup> which stipulates that from the date of passing the decision on restructuring till the date of passing the decision and completion of restructuring, against the entity to be privatized, i.e. its property, no enforced performance may be determined nor implemented, nor any measure of the enforcement procedure for the settlement of claims. At the same time, the Civil Division of the High Court of Cassation adopted a legal opinion (on 24 February 2011 with explanation of 25 March 2011), according to which "enforcement procedures that relate to the collection of financial claims on the basis of labour relations determined in the enforcement documents against the debtor, entity to be privatized in restructuring process, shall not be suspended. Suspended procedures shall be continued and completed." **Thus, it was practically pointed out to courts to act, in enforcement procedure, contrary to the mentioned provision of the Law, which most certainly cannot contribute to establishing legal safety in this matter, and is not an appropriate way to address the presented issue, regardless of the fact that the Protector of Citizens considers the position of the High Court of Cassation constitutional and more equitable than the law provision.**

A special subgroup of complaints were complaints of citizens, to whom applications for entering in the Registry of holders of rights to free shares were denied because they did not fulfil some of the specified conditions for the registration.

There was also a considerable number of complaints that point to the violation of rights in case of unemployment, and, most frequently, violation of the right to payment of unemployment compensation, determined by the decision of the National Employment Service, was in question.

A matter of concern was also the fact that an increasing number of citizens expressed dissatisfaction with the impossibility to collection of their claims in spite of possessing an enforceable judgment. Regarding this matter they were instructed to turn to the Privatization Agency to be registered in accordance with the Regulation on Registering Unsettled Liabilities of Socially-owned Companies on the basis of Enforceable Judgments Arising from Employment-related Claims<sup>106</sup>, which was adopted with the aim of implementation of general measures on the basis

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105 "Official Gazette of RS", Nos. 38/01, 18/03, 45/05, 123/07, 30/10 and 93/12.

106 "Official Gazette of RS", Nos. 23/12 and 87/12.

of judgments of the European Court of Human Rights *Kačapor and Others v. Serbia, Crnišanin and Others v. Serbia, Grišević and Others v. Serbia* and *Vlahović v. Serbia*.

Bearing in mind the number of requests of the Protector of Citizens to the competent state authorities to give a statement, which is the consequence of the number of the received complaints, good cooperation between the Privatization Agency and Bankruptcy Supervision Agency with the Protector of Citizens, which reflects in timely submission of answers, was established.

*Impossibility of exercising labour rights and **pension and disability insurance rights in bankruptcy proceedings***

In the reporting period, due to difficult economic situation in the country, there was an increased number of complaints because it was impossible for the citizens, when bankruptcy proceedings were in question, to settle their claims related to salaries, salary wages remuneration, contributions for pension and disability insurance, severance pay and other employment-related emoluments. Although the claims of workers related to salaries and contributions in the year preceding the opening of bankruptcy proceedings were classified, according to the Law on Bankruptcy, as priority claims regarding collection, obstacles and delays or total absence of collection were frequent.

*Example: Settlement of workers' claims*

The complaint stated that by decision of the bankruptcy judge in 2010 for conducting bankruptcy proceedings against an agricultural cooperative, a bankruptcy administrator was appointed. Two years passed after the initiation of bankruptcy proceedings, and to the former workers of the bankruptcy debtor employment-related emoluments were paid only partly, at the beginning of 2012. Although the workers inquired several times with the bankruptcy judge when are their claims going to be settled, the only answer they got was that it depended from the bankruptcy administrator when the payment from the bankruptcy estate would be effected. The bankruptcy administrator, on the other hand, stated that the payments depended only from the decision of the bankruptcy judge. Bearing in mind that the complainants turned in relation to this issue to the Bankruptcy Supervision Agency as well, which observed the mandatory time limit to answer to the complaint, there were no conditions for initiating the control procedure. At the same time, the citizens were instructed regarding their rights on appeal in section of the complaint concerning the work of the court.

*Violation of property and employment-related rights in the privatization procedure  
– administrative silence*

The complaints filed in relation to the implementation of the privatization process of companies usually point to violations of rights, such as the so called administrative silence and inaccuracy and lack of promptness in the work of competent authorities in certain cases.

***Example: Failure of the Privatization Agency to submit a conclusion to the party in an administrative procedure***

On behalf of a company a complaint was filed about the work and acting, i.e. failure to act by the Privatization Agency, because it did not pass a decision in the procedure repeated upon appeal of the mentioned company regarding the conclusion on the termination of the privatization procedure of the town information centre. The Protector of Citizens initiated the investigation of the legality and regularity of the work of the Privatization Agency, which stated that by decision of the Ministry of Economy and Regional Development the respective conclusion was cancelled, and that the Agency passed in a repeated procedure of 27 May 2011 a new conclusion. The new conclusion was not submitted by the Privatization Agency to the company with explanation that it was not entitled to participate in the procedure. The Protector of Citizens gave a recommendation to the Privatization Agency to submit without delay to the company the new conclusion since it is a party entitled to participate in the procedure in accordance with Article 39 of the Law on General Administrative Procedure. The Privatization Agency informed the Protector of Citizens that it acted upon the recommendation.

***Example: Administrative silence***

The complaint stated that the complainant was employed in the enterprise in the restructuring procedure, to which the Republic of Serbia appointed a Temporary Capital Representative that took care of the property of the mentioned company, and that it requested from the Privatization Agency to review the work of the Temporary Capital Representative and answer to her question if the restructuring of the company was successful or not. The Agency did not answer to her letter till the date when the Protector of Citizens was addressed. In the investigation of the legality and regularity of the work, the Agency informed the Protector of Citizens that it sent in the meantime a letter to the company union representatives with answers to their questions. The investigation is underway.

***Unemployment rights***

When it comes to the National Employment Agency's procedures for recognizing rights and determining amounts of unemployment compensations, the citizens expressed their dissatisfaction in most cases with the very decision meritum, i.e. compensation amount determined or the period for the payment of compensation, while the complaints about irregularities in the procedure, implemented by the National Employment Service during deciding upon their requests, were rare.

**2.7.1 Proposals for Improving the Position of Citizens in Relation to the Authorities**

1. It is necessary to ensure that the Privatization Agency, when submitted requests and posed questions of citizens in accordance with the applicable legal regulations are in question, adopts in future adequate administrative decisions, i.e. submits answers

in writing, contrary to the present practice, when it is considered to be enough to answer to the citizen written requests orally or by phone drafting at the same time a formal note.

2. It is necessary to increase, in normative terms and terms of content, supervision of the work of bankruptcy administrators and make it more attractive and effective, in order to complete bankruptcy proceedings more quickly and with better results than the present ones.
3. It is necessary that the Tax Administration, immediately after being acquainted with the fact that tax and contributions were not paid on time, even when the tax debt is minor, sends tax payment notices to the respective citizens in order to prevent that lapse of time brings to considerable increase of interest, particularly because the citizens, bearing in mind multiannual passivity of the tax authority, erroneously think that they have completely settled their tax obligations with one of the former payments.

## 2.8 SECTOR OF FOREIGN AFFAIRS AND DIASPORA, JUSTICE, PUBLIC ADMINISTRATION AND REHABILITATION

### **Sector of Foreign Affairs**

In the reporting period, there were not many complaints about the work and acting of the Ministry of Foreign Affairs. A few complaints were mostly related to (non)performance of diplomatic missions and consular posts when issuing of documents and cooperation with foreign authorities were in question.

It was noted that the requests submitted by citizens in the reporting period to the Ministry, and addressing the Protector of Citizens after Ministry's actions, were related to multiple violations of rights predominantly concerning the following: protection of property abroad, court proceedings conducted before foreign courts, payment of pensions and other allowances earned abroad. Citizen complaints about the work of diplomatic missions and consular posts and the Ministry of Foreign Affairs were mostly filed to the Protector of Citizens upon their return from abroad, thus, in the reporting period, the number of complaints filed by the citizens of the Republic of Serbia with place of residence or stay abroad, was smaller.

The complainants sometimes "saw" irregularities in the work of the Ministry of Foreign Affairs even in situations when the actions of the Ministry, and exercising of rights contained in the request, depended from acting of the foreign authorities, and not the Ministry itself, which had no possibility whatsoever to influence them.

Special type of complaints came from the Union of Diplomats in the Ministry of Foreign Affairs, in which it was pointed to irregularities in the staffing policy in relation to appointment of inadequate and not enough qualified staff to diplomatic missions and consular posts, which has become a common practice, according to the Union, of violation of positive regulations, by which career diplomats are discriminated. It was particularly pointed to a huge percent of non-career ambassadors in our diplomatic missions and consular posts; frequent duration of term of office longer than prescribed; and cases of conflict of interest when certain appointments of ambassadors were in question.

Professionalism and efficiency of the administrative authorities, as well as applying principles of good governance have a great significance for exercising and protection of citizen rights. Bearing in mind that control and human resources issues of a public authority are not in the competence of the Protector of Citizens, and that, in accordance with provision of Article 24

paragraph 2 of the Law on the Protector of Citizens, the Protector of Citizens shall have the right to act preventively by offering good services, negotiating and giving advice and opinions related to issues from its competence, with the view of improving the work of administrative authorities and protection of human rights and freedoms, the Protector of Citizens informed the Ministry of Foreign Affairs on the statements in complaints, particularly with the view of observance and fulfilment of criteria when appointing diplomats in diplomatic missions and consular posts of the Republic of Serbia. Secretary General of the Ministry informed the Protector of Citizens that part of the statements was correct and that steps were undertaken for intensifying processes and settling perceived irregularities, and that further important step in preventing future ones will be done by the adoption of the Law on Foreign Affairs, prepared by the Ministry.

### *Conclusion*

In the sector of foreign affairs there was only a small number of complaints, and the Protector of Citizens did not establish, not in one case, except for the mentioned union complaints about irregularities when sending staff abroad in most cases, any irregularities or deficiencies from its competence.

Besides, in the reporting period the relation of the Protector of Citizens with the Ministry of Foreign Affairs was improved, reflecting in most cases in cooperation. Thus, the manner of acquiring information on acting upon complaints and applications of citizens was considerably facilitated. The information requested from this authority in the reporting period was given in a timely manner, it was comprehensive and most useful in further activities upon complaints filed with the Protector of Citizens.

### **Sector of Justice and Public Administration**

During 2012 and in the recent years, a great many citizens filed their complaints with the Protector of Citizens for violation of the right to trial within a reasonable time and the right to fair trial; non-enforcement of final and enforceable court decisions; and the manner in which the Ministry of Justice and Public Administration acted upon citizen complaints. At the same time, an increased number of complaints was noted, in which the citizens stated that they would express their dissatisfaction before the European Court of Human Rights, which also reflected in an increased number of petitions submitted to this court. According to the Report of the Agent of the Republic of Serbia before the Court of Human Rights, this number is constantly increasing. Both facts show, on the one hand, that there are serious systemic issues in our judicial system, which necessitate a serious approach for resolving, and, on the other hand, that the citizens of the Republic of Serbia trust more international judicial institutions.

Ever more frequent were also complaints because of the impossibility to compensate damage on the basis of decisions of the Constitutional Court of the Republic of Serbia, where violations of the right to trial within a reasonable time have been determined.

The problem of payment of compensation for damage was also the subject of complaints relating to non-enforcement of judgments of the European Court of Human Rights in Strasbourg. This problem deserves special attention since violations of the rights of citizens were caused by failure of the administrative authorities to act on the basis of decisions of the European Court of Human Rights or settlement entered into with the Republic of Serbia before this court.

Problems which appeared in the reporting period in practice were requests of citizens for providing legal aid (drafting petitions, representation before courts and other state authorities, interpreting legal situations and applicable regulations, and the like). This problem was especially notable with the citizens of poor financial standing, who could not afford lawyers, while the local legal aid services, where they exist, specified too complex conditions for providing their services, which majority of citizens could not have fulfilled. Also, the same problem faced citizens with fairly good financial standing; namely, even after filing complaints to numerous authorities and institutions, they never received an answer to a question, although the authority, procedure and time limit for exercising and protection of their rights are prescribed by law. All this shows the need for speeding up the adoption of the Law on Free Legal Aid.

Besides, in the reporting period, complaints of the employees in courts and prosecutions for violations of employment-related rights and failure to settle status in the field of labour law of court appointees, continued to increase.

Neither the recent decisions of the Constitutional Court concerning the constitutional appeals of judges and public prosecutors have not put an end to disputes regarding the review process of the judicial reform, which was also stated in complaints related to the enforcement of these decisions. At the end of the reporting period, Serbian Judges Association turned to the Protector of Citizens filing objections to actions of the High Judicial Council in the Constitutional Court decisions enforcement process. The Constitutional Court has determined, by adopting appeals of judges and public prosecutors, whose rights in reviewing the election procedure were violated, that the High Judicial Council and the State Prosecutorial Council did not rebut the presumption of fulfilling conditions for the election of candidates to judge/prosecutor position, which was the reason why the decisions on pleas were declared void. The Constitutional Court ordered to the mentioned authorities to carry out within 60 days election of the appellants to respective courts / prosecutions, in accordance with regulations on the general election review process. According to statement in the appeal of the Serbian Judges Association, whose groundedness is yet to be assessed, the High Judicial Council deployed a certain number of judges to courts, to which they had not applied for, thus not eliminating all consequences of poorly implemented reform concerning their employment-related rights and compulsory social insurance rights.

Bearing in mind the right to act preventively by offering good services, negotiating and giving advice and opinions related to issues from its competency, with the view of improving the work of administrative authorities and protection of human rights and freedoms, the Protector of Citizens gave during the reporting period its Opinion concerning complaints of the Association of Prosecutors and their deputies<sup>107</sup> about the violation of the right to freedom of opinion and expression. In the Opinion, significance of enabling the right of participation of public prosecutors and deputies of public prosecutors in public debates concerning issues related to law, implementation of justice and promotion and protection of human rights, as well as their joining local, national or international organizations without affecting their position, was emphasized.

Also, new complaints appeared related to impossibility of enforcement of final and enforceable judgments for employment-related claims, which is the consequence of the Regulation of

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107 For more see: [www.ombudsman.rs/index.php/lang-sr/2011-12-11-11-34-45/2313-2012-05-14-12-04-39](http://www.ombudsman.rs/index.php/lang-sr/2011-12-11-11-34-45/2313-2012-05-14-12-04-39)

the Government of the Republic of Serbia on Registering Unsettled Liabilities of Socially-owned Companies on the basis of Enforceable Judgments Arising from Employment-related Claims.<sup>108</sup>

*Actions of the Ministry of Justice upon filed citizen complaints*

A great number of citizens, according to the number of complaints filed with the Protector of Citizens, Ministry of Justice and Public Administration, complained about the work of courts because of violation of the right to trial within a reasonable time and violation of the right to fair trial. Most reasons for dissatisfaction of citizens were frequent postponement of hearings; unjustified absence of judges; inaccurate summons and submission of documents; inaccurate development of decisions; and failure to decide on legal remedies in prescribed time limits. Furthermore, citizens expected from the Ministry to perform actual and efficient supervision over the work of judicial administration in concrete cases. However, what happened was that the Ministry forwarded citizen complaints to the president of the respective court for consideration. **In most cases, the Ministry only forwarded the obtained answer to the complainant, without undertaking measures of direct supervision or making statements or taking a position on the obtained answer, which is the reason why the citizens did not get an answer from the Ministry concerning the filed complaint.** It was not rare, on the basis of implemented procedures for controlling the legality and regularity of work of the Ministry, that the president of the respective court submitted his/her answer to the complainant, which should be practice in cases when a complaint is filed to the president of the court, in accordance with the Law on Courts; and the complainant never got a written answer from the Ministry to a filed complaint, because the Ministry considered that the answer of the president of the court is sufficient. Thus, the right of citizens to a legal remedy is violated, and confidence in the Ministry of Justice, as the authority that supervises the work of judicial administration, essentially shattered, which is the reason why the citizens most frequently turn to the Protector of Citizens, which was also mentioned in the previous annual reports.

*Failure to settle employment-related status of the court appointees results in illegitimacy and irregularities of court proceedings*

It was noted that appointees in certain courts retained status of employed persons for definite period of time for several years. Upon expiry of the bylaw prescribed employment for definite period of time, the appointees were delivered decisions on termination of employment. However, even during work suspension, some appointees continued to perform tasks related to drafting and signing court minutes, which may have legal consequences regarding legality and accurateness in conducting such court proceedings. Due to the mentioned right violation, the Protector of Citizens turned to the Union of employees in judicial authorities of the State of Serbia, which filed a complaint on behalf of appointees, in order to protect their employment-related rights, to the Ministry of Justice and Public Administration. **In this regard, the Ministry of Justice informed the Protector of Citizens that it was acquainted with the mentioned status and the reasons for that. The Protector of Citizens was not informed till the end of the reporting period whether the mentioned violation of the rights of these persons by the competent authority was eliminated.**

<sup>108</sup> "Official Gazette of RS", Nos. 23/12 and 87/12.

*Violation of the right to compensation of damage per decision of the Constitutional Court, by which violation of the right to trial within a reasonable time was determined*

In the reporting period, the Protector of Citizens received a lot of complaints of citizens who did not succeed to exercise their right to compensation of damage according to the Decision of the Constitutional Court, by which violation of the right to trial within a reasonable time was determined.

The complainants pointed to the fact that they filed their complaints because of the failure of state authorities to act upon submitted requests, i.e. lack of promptness in a long period of time, because of which decisions for determining proposals of amounts for compensation of damage were not adopted; as well as non-enforcement of the adopted decisions.

***Example: Non-enforcement of the decision of the Commission for compensation of damage and violation of the obligation to cooperate with the Protector of Citizens***

The complainant addressed the Protector of Citizens to express her dissatisfaction with the work of the Ministry of Justice because of the impossibility to exercise her rights to compensation of immaterial damage determined in the decision of the Constitutional Court on violation or denial of human or minority rights guaranteed by the Constitution. Acting upon the submitted request, the Commission for compensation of damage partly adopted the complainant's request, drafted its proposal of agreement on the type and amount of compensation of damage, which the complainant signed and promptly returned. Bearing in mind that she did not receive the compensation, she turned again to the Ministry of Justice, which did not effect payment of the amount till the date of the complaint filed to the Protector of Citizens, nor it submitted its answer to the complainant's letter reminding the Ministry to reply!

Acting upon the mentioned complaint, the Protector of Citizens recommended to the Ministry of Justice and Public Administration to undertake urgently all necessary measures in order to enforce the decision of the Commission for compensation of damage and pay to the complainant the determined and agreed amount for compensation of immaterial damage. In the same recommendation it was pointed to the Ministry of Justice and Public Administration that in this and other complaints filed with the Protector of Citizens, and regarding the complaints relating to the failure to act upon requests for compensation of damage, obligation of the Ministry to cooperate with the Protector of Citizens was violated, because the Ministry did not reply in prescribed time limits, or at all, to letters and requests of the Protector of Citizens regarding submittance of necessary information.

An additional problem, which is similar to the problem illustrated in the example above, is the fact that the provisions of the Law on Amendments and Supplements to the Law on Constitutional Court,<sup>109</sup> which came into force on 4 January 2012, prescribe that the

109 "Official Gazette of RS", No. 99/11.

constitutional appeal must contain a precise request on which the Constitutional Court should decide, with stating the amount and grounds for the compensation of damage, i.e. the request may be submitted only at the same time with filing of the constitutional appeal. Furthermore, a new solution has been envisaged, according to which the Constitutional Court shall, along with the decision with which it adopts the constitutional appeal, decide on the request of the applicant of the constitutional appeal for the compensation of material, i.e. immaterial damage, and that the compensation shall be paid from the budget – division of the Ministry of Justice. It means that for final and enforceable exercising of this right the Ministry should undertake repeated measures. At the same time, the mentioned amendments and supplements stipulate that the requests for compensation of damage, submitted to the Commission till the date of coming into force of this law, shall be resolved in accordance with regulations applicable till the date of its coming into force.

However, the Constitutional Court, acting upon requests of citizens, to whom by decision of the Constitutional Court on constitutional appeal of 2011, violation of the right to trial within a reasonable time and the right to compensation of damage were determined (because of which the requests were submitted to the Commission), established that the Commission for compensation of damage stopped working, which was also established in the explanation of the Additional Decision UŽ-498/2009 of 23 March 2012, in which the amount of immaterial damage was determined.

In this manner, the Constitutional Court had in mind, deciding on request of citizens found in a legal vacuum (when they could not exercise their determined right to compensation of damage), the need to provide effective legal protection to the citizens.

The legal obligation to cooperate with the Protector of Citizens was not fulfilled neither by the Commission for the compensation of damage when unfounded deprivation of liberty and unfounded conviction in the Ministry of Justice and Public Administration were in question.

*Regulation of the Government of the Republic of Serbia on registering unsettled liabilities of socially-owned companies on the basis of enforceable judgments arising from employment-related claims<sup>110</sup>*

Although the measures prescribed with the Regulation formally represent technical actions of recording employment-related claims, they have far-reaching consequences for the legal system of the Republic of Serbia and protection of citizen freedoms and rights.

Namely, the measures prescribed in the Regulation can easily be an introduction, and they probably are, in the situation when the employment-related rights of citizens, determined by court decisions, cannot be effected in the volume (amount) included in such decisions. The Protector of Citizens understands the size of the total amount claimed according to such decisions from the state budget and that it is clear that there are no sufficient funds for full payment according to all court decisions. However, if the state has decided to resolve this problem as, for example, debts in regard to creditors when the debtor became bankrupt, then the solution must be stipulated by law, and by no means by Regulation.

The Regulation concerns the rights of citizens to court access, which does not contain only the right to turn to a court and obtain a court decision, but also the right to

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<sup>110</sup> "Official Gazette of RS", No. 23/12.

enforcement of a final and enforceable and binding court decision, which must not be to the detriment of a party in the proceedings.

Bearing in mind the right to offering good services, negotiating and giving advice and opinions related to issues from its competence, with the view of improving the work of administrative authorities, the Protector of Citizens sent an Opinion to the Government of the Republic of Serbia pointing out that it shall undertake in accordance with its powers all necessary and appropriate measures in order to enable fair payments of salaries to the workers in socially-owned companies on the basis of final and enforceable court judgments and in accordance with law.

#### *Non-enforcement of judgments of the European Court of Human Rights*

After judgments in the case *Kačapor and Others*, the so called good practice of the Court has been established, according to which, in most proceedings, upon petitions related to non-enforcement of final and enforceable court decisions, settlement of the complainants shall be entered into with the Republic of Serbia. In the mentioned situations, the subject of the settlement is payment of damage (material/immateral); cost of proceedings; debts of socially-owned companies (salaries, social contributions). On the basis of complaints it can be noted that there are frequent problems related to the enforcement of the undertaken obligation by the state, with which the so called amicable settlement has been entered into, most frequently due to non-observance of the payment terms and dynamics specified in the mentioned settlement.

#### *Conclusion*

The reporting period in the second half of 2012 was marked with strong legislative activity of the Ministry of Justice and Public Administration directed toward the preparation and amendments of the procedural laws, laws on organization and competences of judicial authorities, as well as issues concerning the status of judges and public prosecutors. The envisaged amendments and supplements are aimed at harmonization of regulations with the Constitution of the Republic of Serbia, Report on Progress of Serbia 2012 of the European Commission and obtained expertise of the Council of Europe. The intention is to observe in the debate on amendments and supplements opinions of the academic community in order to eliminate weaknesses in the legal and judicial system.

The Protector of Citizens considers the organization of public debate to be a huge progress, as well as placing draft law on web site of the Ministry of Justice and Public Administration, and enabling comments of the visitors for the first time. At the same time, the Protector of Citizens is concerned about dissatisfaction of professional associations of judges and prosecutors, expressed on several occasions, the speed (too high) of the new wave of reforms and lack of systematic approach. The contribution of academic community and professional associations is of utmost importance for creating optimal solutions and returning shattered confidence of citizens in efficiency and effectiveness of the judicial system, while their participation in the process of reform and re-reform is indispensable.

When cooperation between the Ministry of Justice and Public Administration with the Protector of Citizens is in question, two opposing tendencies can be noticed. On the one

hand, in spite of scarce capacity, the Department for supervision of judicial authorities has, in accordance with objective possibilities, good cooperation with the Protector of Citizens. On the other hand, the Commission for the compensation of damage on the basis of unfounded deprivation of liberty and unfounded conviction, and the Commission for compensation of damage on the basis of the Decision of the Constitutional Court within the Ministry, do not fulfil their obligations concerning cooperation with the Protector of Citizens at all or with considerable delay.

Citizen complaints pointing out that the prescribed court fees are high, and that their payment does not guarantee success in exercising rights determined in court proceedings, i.e. enforcement of court decisions, are justified. Having insight in the legislative activities plans of the competent Ministry, the Protector of Citizens has not noted anything which would lead to resolving of this problem, like, for example, introducing rules that the fee for enforcement proceedings shall be paid only after successful completion of the proceedings.

**Frequent violations of the right to trial within a reasonable time, high fees, whose payment does not guarantee to citizens that the purpose, for which the court proceedings were initiated, will be fulfilled, and the fact that providing free legal aid to the poorest citizens is still not available, makes access to justice in Serbia too difficult.**

### **2.8.1 Proposals for Improving the Position of Citizens in Relation to the Authorities**

1. Department for supervision of judicial authorities of the Ministry of Justice and Public Administration should always submit a written answer to citizens related to complaints about the work of courts, in cases when the complainant gets an answer from the president of the respective court, high court or High Judicial Council.
2. The Ministry of Justice and Public Administration should undertake all necessary measures and activities to contribute, by strengthening material and human resources of the Ministry, to legal, efficient and timely acting in enforcement of powers as determined by law, particularly with the aim that the Department for supervision of judicial authorities begins to start supervision, in accordance with law, by direct inspection of practices concerning cases in prescribed time limits upon citizen complaints and applications.
3. It is necessary to speed up the procedure for the adoption of the Law on Free Legal Aid.
4. The fact that the prescribed court fees are high, which is sometimes an insuperable obstacle for citizens to turn to courts for the protection of their rights, is an additional reason that the state authorities eagerly, completely and without delay enforce court decisions as ordered by law.

## 2.9 SECTOR OF DEFENSE

During the reporting period as well as recent years, most of the complaints about the work of the Ministry of Defense were filed by citizens who are employed or were once employed in this sector. During 2012, there was an increasing number of complaints about work of the Ministry of Defense, while, compared to the previous reporting period, there was an increasing number of complaints by active members of the Serbian Armed Forces compared to complaints of the so called military pensioners.

Dissatisfaction of the active members of the Serbian Armed Forces was expressed, most frequently, with irregularities in settling status issues, while the reasons for filing complaints by military pensions beneficiaries, like in recent years, were omissions in work of the authority when exercising rights to pension in amounts stipulated by laws and bylaws was in question.

### *The right to obtaining decisions within the period stipulated by law*

The Protector of Citizens received a great many citizen complaints about work of the Ministry because of administrative silence, i.e. failure to adopt administrative decisions within time limit stipulated by law. In all such cases, the Protector of Citizens initiated control procedures, and the Ministry, upon receipt of notice on initiating the investigation, interrupted its silence as a rule and adopted administrative decision. The Protector of Citizens in such cases suspended control procedures and referred the citizens, if they were still dissatisfied with its content, to contest the administrative decision using regular legal remedies.

### ***Example: Failure to act upon judgments of Administrative Court within the time limit stipulated by law***

The complainant filed a complaint, in which she stated that the Ministry of Defense, Human Resources sector, Tradition, Standard and Veteran Department, Housing Affairs Division, did not act within the time limit stipulated by law upon judgment of the Administrative Court, by which decision on the second instance was declared void. The complainant expressly stated that she submitted a request for adoption of an administrative decision on the basis of Administrative Court decision, but that the Ministry of Defense, till the date of filing the complaint with the Protector of Citizens, and in spite of urging, did not adopt an administrative decision.

Following the initiated investigation, the Ministry informed the Protector of Citizens that it adopted an administrative decision in compliance with guidelines from the Administrative Court judgment. At the same time, it expressed its gratitude to the Protector of Citizens because it contributed with its control activity to eliminating irregularities in the work of the Ministry, in the interest of citizens of the Republic of Serbia. The investigation was suspended.

*Violation of the right to obtaining an administrative decision with explanation and the right to legal remedy*

The Protector of Citizens, on the basis of complaints, was acquainted with violation of the rights of citizens due to failure of the authority to adopt upon request of complainant an administrative decision, which contains explanation as well instruction of legal remedy; namely, dispositive part of the administrative decision was orally communicated to the complainant by his/her superior.<sup>111</sup>

***Example: Informing orally the complainant instead of adopting an administrative decision***

The complainant informed the Protector of Citizens that he turned to the competent Military Post Office with the request to adopt an order on termination of employment, believing that he fulfilled conditions for retirement, in accordance with Article 110 paragraph 3 of the Law on Serbian Armed Forces. The superior officer talked officially to the complainant and acquainted him with the way of resolving his status and the reasons why conditions were not fulfilled for positive settlement of his request. Dissatisfied with the orally given answer, the complainant turned again to the competent authority urging it to adopt an order on retirement. However, neither after this letter, the authority did not decide upon the submitted request in accordance with the Law on General Administrative Procedure.

Not indulging in the assessment of the groundedness of the complainant's request, the Protector of Citizens determined that in this case the authority failed to adopt an administrative decision on the applicant's request with explanation and instruction of legal remedy, thus denying him the right to explained decision with clearly stated determined facts and circumstances on the reasons of (non) fulfilling of conditions for the termination of service with the right to pension. Accordingly, the Protector of Citizens initiated an investigation of the legality and regularity of the work of the administrative authority.

Acting upon the request to make a statement, the authority informed the Protector of Citizens that the senior officer, during official conversation, orally informed the complainant that he did not fulfil the conditions for termination of service with the right to retirement, without mentioning the reasons why an administrative ***decision was not adopted on the*** complainant's request. The investigation is underway.

<sup>111</sup> "Official Gazette of RS", No. 116/07, 88/09 and 101/10 – other law.

*Ignorance or purposeful error to disadvantage of the rights of citizens*

During 2012, the citizens turned to the Protector of Citizens pointing to incorrect implementation of the provisions of the Law on General Administrative Procedure<sup>112</sup> while deciding in repeated procedure upon judgments of the Administrative Court, which resulted in unjustified procedural delay of the authority.

**Example: Adopting conclusions on termination of procedure contrary to provisions of the Law on General Administrative Procedure**

The Protector of Citizens received a complaint in which it was pointed to the fact that in 2005 the Ministry of Defense adopted a decision on termination of service without consent of the civilian because of the abolishment of working place to which she was appointed. The complainant stated that the Administrative Court abolished the decision of the Ministry of Defense for three times, with detailed instructions for eliminating omissions when adopting decisions, upon which the authority on the second instance, Department for Military Obligations, did not act. It was stated that although the procedure lasted more than six and a half years, the authority deciding in second instance, contrary to Article 134 of the Law on General Administrative Procedure, adopted the conclusion on termination of procedure, which prolonged the procedure even more.

The Protector of Citizens initiated an investigation of the legality and regularity of the work of the Ministry of Defense. Acting upon the request, to the Protector of Citizens a statement was submitted that the procedure was conducted in a legitimate manner, in accordance with the Law on General Administrative Procedure and that the procedure continued in the meantime.

The Protector of Citizens established that in this case principles of good governance were violated because of delayed procedure and that provisions of the Law on General Administrative Procedure on termination of procedure were obviously incorrectly applied.

After that, Department for Military Obligations of the Ministry of Defense informed the Protector of Citizens that it reviewed the case file and established that there were irregularities in the procedure, to which the Protector of Citizens pointed; that disciplinary procedure will be initiated against the person who processed the case, and emphasized that in future all decisions will have their grounds in material laws and will be adopted in prescribed procedures, observing legal time limits in order to increase trust of citizens in the work of this state authority.

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112 "Official Gazette of FRY", Nos. 33/97 and 31/01, and "Official Gazette of RS", No. 30/10.

*Example: Passive relation towards the final and enforceable decision of Administrative Court*

The complainant turned to the Protector of Citizens stating that he filed an application with the Ministry of Defense and Centre for Social Work with request for determining the right to increased allowance for help and care of another person, and that both authorities rejected the submission on account of non-competence, while the Centre for Social Work additionally adopted an administrative decision with which the complainant's request was rejected as groundless. The Administrative Court, acting upon action of the complainant against the decision of the Centre for Social Work, passed judgment, in which it stated "that military insured persons exercise the mentioned right in accordance with the Law on the Yugoslav Armed Forces and the Law on Serbian Armed Forces". The complainant submitted the mentioned judgment to the Ministry of Defense, and this authority, not even after that, has not undertaken any action upon the submitted request.

Bearing in mind the mentioned, and not indulging in the assessment of the competence of the authority for acting in the concrete administrative matter, the Protector of Citizens initiated an investigation of the legality and regularity of the work of the Ministry of Defense. According to statement of the Protector of Citizens, the Ministry of Defense stated that it is not competent for deciding on the right of the complainant to increased allowance for help and care of another person, not mentioning at the same time that it has undertaken other measures for resolving negative conflict of competence in accordance with law.

The Protector of Citizens gave a recommendation to the Ministry of Defense to adopt, in compliance with provisions of the Law on General Administrative Procedure, an administrative decision with explanation and instructions of legal remedy relating to the request of the complainant, for determining the right to increased allowance for help and care of another person, and undertake measures stipulated by law to resolve the conflict of competence between the Ministry of Defense and Ministry of Labour, Employment and Social Policy for deciding on the right of the complainant to increased allowance for help and care of another person.

However, even after sent recommendation, the Ministry of Defense advocated a standing that it was not competent for acting in the mentioned administrative matter, mentioning at the same time that "**statement of the Administrative Court (included in the judgment, Protector of Citizens comment) is not grounded**, and that it is not included neither in the Law on the Yugoslav Armed Forces nor the Law on Serbian Armed Forces, since neither of the mentioned laws does not regulate the right of the military insured person to increased allowance for help and care of another person, which is the reason why this allowance is unacceptable and not binding for the Ministry of Defense". The Ministry did not act as per the recommendation issued by the Protector of Citizens.

In the concrete case, the Military Social Insurance Fund of the Ministry of Defense, not even after the recommendation was issued by the Protector of Citizens did not realize the necessity to overcome the problem of military pension beneficiaries in exercising the right to the increased allowance for help and care of another person. If the Ministry, since it had already decided **not to observe the final and enforceable court decision**, had initiated, in compliance with regulations in case of conflict of competence, an adequate procedure before the Government of the Republic of Serbia for resolving such conflict, this type of help would have been enabled also to the military pensions beneficiaries, to whom at this moment this right is unjustifiably denied.

***Example: Poor organization as excuse for not resolving problems of citizens***

The Association of military pensioners from Zaječar turned to the Protector of Citizens pointing to the fact that for the insured military from Zaječar, Boljevac, Sokobanja, Majdanpek, Donji Milanovac, Kladovo and Negotin, it is possible to get prescription medicines from military health care institutions only in one pharmacy in Zaječar, because of which they have additional travel expenses and other difficulties (in case of serious patients) to come to Zaječar to get the medicine.

Assessing that the statements from the complaint relate to the implementation of the Republic laws, other regulations and general acts, i.e. violation of the principle of good governance, the Protector of Citizens initiated an investigation of legality and regularity of the work of the Ministry of Defense, Department for Military Health Care, Military Social Insurance Fund.

Acting upon the request of the Protector of Citizens, Military Social Insurance Fund informed the Protector of Citizens that "bearing in mind the current situation regarding human resources, it has no possibility to conduct a public procurement procedure for providing services from other suppliers". Upon new systematization and filling job vacancies, a tender will be announced, which shall enable more favourable conditions for providing services to all beneficiaries of the military health care insurance, and to the beneficiaries from the mentioned towns as well.

On the basis of the above mentioned, military insured from seven towns are referred to use the service of only one pharmacy; namely, although it is in the competence of the Military Social Insurance Fund to enter into contracts with civil health care institutions that provide health care services, the Fund, due to current staffing problems, is not able to resolve the detected omission in its work and announce a public tender for providing services from other suppliers. This most certainly points to an example of "poor administration", when the omissions in work are justified with (non) organization of work, i.e. in concrete case with new job systematization. The investigation is underway.

***Good practice in work of the Ministry of Defense: Establishing a filing clerk office upon suggestion of the Protector of Citizens that citizens should be allowed to file their complaints directly to the Ministry of Defense***

The Protector of Citizens, on the basis of complaints concerning other issues, found an irregularity in the work of the Ministry related to submitting letters, i.e. deliveries to the Ministry, after which the Protector of Citizens initiated an investigation of the legality and regularity of the work of this authority.

Operations and Planning Department of the Secretariat in the Ministry of Defense informed the Protector of Citizens that after the investigation initiated by the Protector of Citizens, a clerk's office was established, thus enabling direct receiving of post mail of parties with acknowledged receipt.

Furthermore, receiving submissions sent to the Ministry of Defense and the organizational units of the Ministry of Defense is centralized in the central department for records management. The Protector of Citizens suspended further investigation.

In the reporting period, the relation between the Protector of Citizens and Ministry of Defense was improved when cooperation of the Secretariat of the Protector of Citizens with the Office of the Chief of Serbian General Staff is in question.

The Protector of Citizens received a great many complaints about the work of organizational units within the General Staff of the Serbian Armed Forces. After receiving information on the investigation initiation, officials in the Office of the Chief of General Staff informed the Secretariat of the Protector of Citizens on the received information, possibilities and time limits for the problem resolution. The agreed time limits for actions and elimination of omissions in work were observed in all cases. On this occasion, all requested information was provided, both on regulations applied in certain cases and on the manner of work and specificities of procedures conducted in the Ministry of Defense.

Considerable improvement is the fact that ever more frequent omissions in the work of the Ministry of Defense, after initiation of the control procedure by the Protector of Citizens, were eliminated in very short time limits, and that the organizational units of this Ministry considered activities of the Protector of Citizens as cooperation and support in the improvement of the Ministry's operations. This is reflected the best in the document of the Tradition, Standard and Veteran Department, when beside the notification on eliminated omissions in work, gratitude was expressed to the Protector of Citizens for the initiative regarding speedier and more efficient resolving of the problem that occurred, in the interest and for the benefit of the Serbian citizens.

*Conclusion*

During 2012, the most attention was paid to the issues related to exercising of rights of active members of the Serbian Armed Forces. Many issues relating to the status of Serbian Armed Forces and its members, i.e. Ministry of Defense in the legal, social and economic system of the Republic of Serbia, were not complaints actually, but the citizens

wanted to point to the status of the members of Serbian Armed Forces and problems they face while working in the Ministry of Defense.

It is characteristic for the reporting period that recommendations of the Protector of Citizens, given to the Military Social Insurance Fund in 2011, were not implemented; these recommendations were related to exercising of rights of the military pensions beneficiaries to adjustment of pensions, which was explained in detail in the Report 2011. Failure to act upon recommendations of the Protector of Citizens provoked additional dissatisfaction with the military pensioners. Negative attitude of the Military Social Insurance Fund toward the recommendations related to adjustment of pensions by 11.06% as of 1 January 2008, caused repeated complaints of the military pensioners to this authority.

Military pensions beneficiaries also warned the Protector of Citizens of the Draft Law on Conversion of Due and Unsettled Liabilities Toward Military Pensions Beneficiaries into Public Debt of the Republic of Serbia, which was submitted by the Government of the Republic of Serbia using emergency procedure to the National Assembly, considering that coming into force of the provisions of such law would be contrary to the Constitution of the Republic of Serbia.

The Protector of Citizens, within its powers, drafted its Opinion on Draft Law on Conversion of Due and Unsettled Liabilities Toward Military Pensions Beneficiaries into Public Debt of the Republic of Serbia. However, the mentioned opinion was not submitted neither to the Government of the Republic of Serbia nor the National Assembly, bearing in mind that the Government withdrew on 31 July 2012 the mentioned draft law from the parliamentary procedure.

Bearing in mind that approximately 20,000 military pension beneficiaries still wait for the payment of the difference up to the amount of the pensions that belong to them, the Protector of Citizens will monitor in the future passing of new laws, other regulations and general acts, as well as measures which will be undertaken by the Ministry of Defense in relation to exercising of the mentioned right.

The cooperation between the Ministry of Defense and the Protector of Citizens has been improved not only regarding the speediness in acting upon requests of the Protector of Citizens, but also regarding approach to efforts to settle systemically most of the individual complaints and issues. Unfortunately, lack of cooperation with the Military Social Insurance Fund continued in this period as well.

Beside certain omissions in the work of the Ministry of Defense, the Protector of Citizens noticed in control procedures many examples of good governance and efforts to remedy the noted deficiencies, which has considerably contributed to more complete and faster exercising of rights of the citizens.

### **2.9.1 Proposals for Improving the Position of Citizens in Relation to the Authorities**

1. It is necessary that the Ministry of Defense undertakes all necessary measures in order to minimize number of cases due to administrative silence.
2. Besides, it is necessary that the Ministry of Defense prevents the failure to act practices, i.e. untimely actions upon final and enforceable court decisions.

## 2.10 SECTOR OF PUBLIC ADMINISTRATION, LOCAL SELF-GOVERNMENT, DELEGATED TASKS TO LOCAL SELF-GOVERNMENT AND KOSOVO AND METOHIIJA

In the reporting period, the highest number of citizen complaints in this sector related to the failure of local authorities to act in accordance with their own decisions, untimely deciding on requests for legalization of facilities and activities of the local utility companies. When local utility companies are in question, citizen complaints most frequently related to issues in thermal energy supply (insufficient supply or complete lack of supply), large bills for provided utility services and complaints about enterprises that perform business activity of public parking lot management. Beside the abovementioned, in a certain number of complaints, dissatisfaction was expressed with the decisions of local assemblies, according to which performing of certain utility activities (e.g. utility waste management) was entrusted to private enterprises, with whose performance the complainants were not satisfied. Besides, in the reporting period, certain citizen complaints related to difficult re-registration into the birth registry books for the territory of Kosovo and Metohija.

To the Protector of Citizens complaints were filed also because of issues in water supply, lack of street lighting, poor maintenance of local roads and illegal dumping and landfills. Furthermore, the Protector of Citizens also received complaints, in which dissatisfaction was expressed with acting of local inspection authorities in procedures upon their noise complaints and complaints about harmful gas emissions in the environment, in most cases caused by work of sole proprietorship businesses.

*Local authorities do not implement own final and enforceable decisions*

**Example: Failure to enforce the decision of inspection authority, because of which the complainant suffers violation of the right to peaceful enjoyment of property**

The Protector of Citizens received a complaint, in which it was stated that the municipal administration had not undertaken adequate measures for the enforcement of the decision of the Utility Inspection, according to which it was prohibited to the natural person, user of the house lot in the immediate vicinity of the complainant, sewage emissions and wastewater emissions from septic tank to the road channel; also, sanitation activities were ordered for eliminating consequences of septic tank spill and undertaking certain measures for the prevention of further damage that occurred, *inter alia*, also in the complainant's yard. The complainant stated that up till the moment of the complaint filing to the Protector of Citizens her problem had not been resolved, that there had been no action upon the decision, although she had filed already in autumn 2010 the proposal for permitting the enforcement.

The Protector of Citizens established that there were omissions in the work of municipal administration, which caused violation of the principle of good governance and administrative procedure as well as the right of the complainant to peaceful enjoyment of property, because it did not complete all measures undertaken for the enforcement of the decision of the Utility Inspection. The Protector of Citizens sent to this authority a recommendation to promptly undertake all necessary measures, in accordance with positive legal regulations, for the complete enforcement of the decision of the Utility Inspection. Till the end of the reporting period, the Protector of Citizens did not receive any statement of the competent authority on acting upon the recommendation.

*Local authorities do not resolve in a timely manner submitted requests for legalization*

The complainants drew attention of the Protector of Citizens to the problems that occurred because of non-enforcement of decisions on removing illegally built facilities. Most frequently, non-enforcement of decisions related to deciding on requests for legalization, because of which construction inspections could not have begun for justified reasons demolition of the facilities until reaching a final decision on the legalization request. Bearing in mind that time limits expired long ago, timely acting in these cases was transferred to the authorities competent to settle requests for legalization, because of which the Protector of Citizens in these matters mostly acted in accordance with them, examining the reasons why they had not been settled. In certain cases, the reasons for non-enforcement of decisions on removing illegally constructed facilities were either lack of funds or the fact that legal entities interested in removing the facilities did not respond to announced public tenders. Such reasons must not serve as an excuse for non-enforcement of decisions for establishing legality, but must be overcome without delay, for which the administrative authorities frequently did not demonstrate any awareness or responsibility.

***Example: Untimely settlement of requests for legalization  
– undertaking first judicial acts after two and a half years  
upon submission of request***

The complainant filed a complaint about the failure of the Town Administration for Urbanism and Housing and Utility Affairs to act in the legalization procedure and to inform the complainant on the procedure outcome. The complainant stated that the investor placed in the middle of the complainant's yard right beside the fence, without project documentation and permit, a wooden pole for cable and antenna network system and dragged cables across the complainant's yard. The complainant stated that he filed a complaint about this matter already in 2008 to the town construction inspection, and after that, since the wooden pole was not removed, he turned to the Republic Construction Inspection, and pressed criminal charges against the investor.

The Protector of Citizens established that the mentioned authority made omissions in its work, because it did not adopt a decision on the mentioned request for legalization in a timely and efficient manner, but undertook judicial acts only after two and a half years from the date of filing of the complaint, with which principles of good governance were grossly violated as well as the rules of administrative procedure, and the right of the complainant to peaceful enjoyment of property. The Protector of Citizens sent recommendation to the authority prompting it to complete the legalization procedure as soon as possible and inform the complainant on this. The time limit for acting upon recommendation expired at the end of September 2012. Up till the end of the reporting period, a statement of the authority regarding its actions upon recommendation was not received.

***Example: Many years of silence of the local authority concerning  
the expropriation case and completion of the procedure without adopting  
an administrative decision***

The Protector of Citizens received a complaint filed because of the failure of the Lajkovac Municipal administration to act in expropriation cases and to inform the complainant on the outcome of the procedures. The complaint states that before the Department for Urbanism and Housing and Utility Affairs of the Municipality of Lajkovac, at proposal of Public Enterprise JP RB "Kolubara" Lazarevac, a procedure for complete expropriation of the complainant's lot was initiated, and that the competent authority of the Municipality of Lajkovac held only one public hearing on this matter. The complainant highlighted that he tried to obtain information from the acting authority on the progress made in the procedure, but never got any information to his questions.

The Protector of Citizens established omissions in the work of the municipal administration, with which principle of good governance and principles of administrative procedure were grossly violated, and that the complainant had the right to be informed; namely, the municipal administration did not settle nor completed procedures initiated at expropriation requests submitted already in 2003, nor did it inform the complainant on progress of the procedure, but archived the files without hearing all parties and without adopting an administrative decision. On the basis of the established deficiencies, the Protector of Citizens sent to municipal administration of the Municipality of Lajkovac a recommendation to undertake without delay all necessary measures for correct settlement of the initiated procedures of expropriation, in accordance with principles and rules of the administrative procedure. The local administrative authority acted upon this recommendation.

*Too long procedures for the restitution of confiscated land*

Frequent reasons for citizen dissatisfaction were too long procedures for the restitution of land confiscated pursuant to the Law on Agricultural Socially-owned Land Fund and Allocation of Land to Agricultural organizations<sup>113</sup>, and land confiscated because of unfulfilled obligations concerning mandatory purchase of agricultural products in accordance with regulations on mandatory purchase. In most cases, the biggest problems faced were organization of meetings, finance and real estate cadastre services. Furthermore, it was stated that one of the problems was that the presidents of the Commissions for land restitution, established within local self-governments, were not able, neither physically nor technically, to perform the functions of the Commission presidents beside their regular judge duties and responsibilities

**Example: Recommendation sent to the local authority for eliminating deficiencies**

The complainant pointed to irregularities in the work of the Commission for conducting the procedure and adoption of decisions on requests for land restitution. The complaint stated that a request was filed with the Commission already in 1995; that it is necessary, in the procedure before the Commission for the restitution of confiscated property, to adopt a decision on referring to extra-judicial proceedings for the assessment of value of the confiscated property, and that the commissions and commission members change all the time.

The Protector of Citizens determined that there were omissions in the work of the local authority, which reflected in violation of principles of good governance, i.e. violation of the principle of legality due to inaccurate and inappropriate acting upon request for land restitution, by which the right of the proposer to obtain the decision within the period stipulated by law was violated. The Protector of Citizens sent a recommendation to the Commission, and it acted upon the recommendation within the set time limit.

113 "Official Gazette of FPRY", No. 22/53, "Official Gazette of SFRY", No. 10/65, "Official Gazette of SRS", No. 51/71 and 52/73, and "Official Gazette of SAPV", No. 26/72.

*Dissatisfaction of citizens caused by work of local utility companies  
and inadequate performance of tasks from the original competences  
of local self-governments*

Citizens frequently addressed the Protector of Citizens expressing their dissatisfaction with the work of public utility companies, established by local self-governments, in relation to heating, heating pipeline system, water supply system, united calculation of charges for utility services, heating plants, electric power plants and parking services. Dissatisfaction of citizens was caused by poor quality services, illegal heating charges, non-fulfilment of contractual obligations, illegal work. However, since the Protector of Citizens is not authorized to control the work of public enterprises, whose founders are local self-governments, citizens were referred to address municipal and town assemblies, which established the mentioned enterprises and which are competent to supervise their work. However, in especially difficult cases, the Protector of Citizens, using its mediator powers and the right to act preventively by offering good services and giving advice and opinions, with the view of improving the work of administrative authorities and improvement and protection of human rights, sent to the local authorities letters pointing to the importance and urgency of solving particular issues from their scope of competence.

*Non-cooperation of the Town administration of Leskovac with the Protector of Citizens  
and deficiencies in coordination and organization of work of the town services  
of the Town of Leskovac*

The Protector of Citizens received in 2011 five citizen complaints about acting of administrative authorities of the Town of Leskovac; the Protector of Citizens acted upon these complaints and requested information from the respective authorities of the Leskovac Town Administration; but there was no answer, not even after several interventions. The complaints, to which the Leskovac Town Administration did not answer, were related to different fields: problems concerning expansion and building of Bara Canal in Leskovac; forced eviction from an apartment given for temporary use by the Town Administration; failure to settle requests for legalization.

Since the Leskovac Town Administration did not submit its statement not even after several interventions, the Secretariat of the Protector of Citizens pointed out, over the telephone, and afterwards in a meeting held in the premises of the Town Administration of Leskovac, that it is an obligation of the public authorities, stipulated by law, to cooperate with the Protector of Citizens and that it is necessary that the Town Administration answers to our letters, particularly bearing in mind that procedures for determining facts on possible omissions of the local self-government related to exercising rights of the citizens are in question. However, a written answer was never sent to the Protector of Citizens, not even after this conversation.

Since the Protector of Citizens did not receive any answer to the mentioned complaints, except in one case, the Protector of Citizens established that the competent town authorities of Leskovac did not fulfil their obligation to cooperate with the Protector of Citizens, because they failed to answer to documents and interventions and did not submit to the Protector of Citizens required information and data they disposed of, and which were of significance for the investigations conducted by the Protector of

Citizens. Furthermore, deficiencies in coordination and work of the Town Administration of Leskovac were established, and as a consequence violation of the rights of citizens and non-fulfilment of the obligation to cooperate with another state authority, which means violation of the principle of good governance and violation of obligations stipulated by law.

On the basis of the established deficiencies in the work of authorities of the Town of Leskovac, the Protector of Citizens sent a recommendation that the Town Council and competent Town Administration of Leskovac determine responsibility of the acting officer, immediately responsible for the violation of obligation to cooperate with the Protector of Citizens, and undertake measures for initiating an adequate procedure because of the violation of this obligation. At the same time, it was recommended that the Mayor, Town Council and Town Administration of Leskovac undertake all necessary measures to improve the organization and coordination of work of their authorities, with the aim of achieving their greater availability both to the citizens and state authorities. Special recommendations were sent for all individual cases as well. Time limit for acting upon all recommendations expired on 8 October, i.e. 9 October 2012: in the meeting of the Deputy Protector of Citizens, Goran Bašić, and Mayor of Leskovac, Slobodan Kocić, on 4 October 2012, this time limit was extended for 30 days for acting upon recommendations. The Department for Urbanism and Housing and Utility Affairs of the Town of Leskovac acted upon the recommendation issued by the Protector of Citizens, which was related to the procedure of forced eviction from the apartment. The Town of Leskovac, in spite the extended time limit for acting, up till the end of the reporting period, did not inform the Protector of Citizens on acting upon other sent recommendations.

The Opinion of the Protector of Citizens sent to the Government of the Republic of Serbia on the need for providing employment assistance to citizens, who complied with the call of the representatives of the authorities of the Republic of Serbia, and left their employment in local authorities of temporary local government institutions in Kosovo and Metohija under control of Priština

The Protector of Citizens, acting upon citizen complaints related to the problem of former employees of local authorities of temporary local government institutions in Kosovo and Metohija, established that the state authorities of the Republic of Serbia – Government of the Republic of Serbia, Ministry for Kosovo and Metohija and the Chief of the Pomoravlje District, acted illegally and incorrectly toward the citizens of the Republic of Serbia in the territory of Kosovo and Metohija, when they asked them to leave their job in local authorities of the temporary institutions in Kosovo and Metohija under control of Priština, with the promise that they will be employed, in turn, in accordance with the conclusions of the Government of the Republic of Serbia, in institutions of the Republic of Serbia, which did not happen not even after four years.

Bearing in mind the moral obligation created with such incorrect acting of authorities of the Republic of Serbia and difficult consequences affecting the life of numerous citizens, the Protector of Citizens sent to the Government of the Republic of Serbia its opinion that the Government should help through the Office for Kosovo and Metohija and other state authorities, in all legal ways, and without further delay, in employment of these citizens who left their job because they listened to the call of the representatives of authorities of the Republic of Serbia.

### *Conclusion*

By working on complaints as well as on the basis of information that the Protector of Citizens got from the media and other sources, it was noted that the basic issues of citizens in this field were similar to issues, to which it was pointed out in the previous reporting period: insufficient engagement of the local authorities, and in some cases complete failure to act in settling issues, both regarding the ones that belong to the delegated public administration tasks, as well as the ones that belong to the original competences of the local self-governments.

During the reporting period, it was established that the citizens were not sufficiently acquainted with their rights and the possibilities they dispose of when they have a problem with a local authority; also, the citizens began to use certain mechanisms for the protection of their rights relatively late (e.g. addressing Republic authorities); on the other hand, local authorities, frequently took advantage of the fact that the citizens were poorly informed and caused, for example, unjustified delay of procedures they conducted; they did not use their powers regarding control and acted, as pointed out in some complaints, incorrectly towards citizens. Bearing in mind the aforementioned, the local authorities should realize the significance and importance of informing the citizens on their rights and organize their work in such a way so that the described problems will not be repeated any more, to which the Protector of Citizens pointed out, both in sent recommendations and in acts of preventive action and cooperation, sent when the Protector of Citizens could not act due to the lack of authority.

The cooperation of the local authorities with the Protector of Citizens has not always been satisfactory. The authorities in most cases act according to recommendations of the Protector of Citizens, and exceptions are formally allowed since the recommendations are not final and enforceable. However, obstruction of control, non-submittance of documentation and other forms of non-cooperation, which prevent the Protector of Citizens to take a stand on the groundedness of complaints, are not allowed in legal order since they represent explicit violation of imperative legal norms. The Protector of Citizens does not have the same level of cooperation with all local self-governments, and the quality of cooperation differs significantly depending from the local self-government; it ranges from full cooperation and acceptance of not only formal recommendations, but also all suggestions of the Protector of Citizens, to complete ignoring of legal obligations toward this control authority (e.g. Leskovac). This is the reason why it is necessary to pass amendments to the Law on the Protector of Citizens and establish concrete misdemeanor liability of responsible persons for such self-will.

#### **2.10.1 Proposals for Improving the Position of Citizens in Relation to the Authorities**

1. The local self-government should act in a lawful and timely manner upon requests of citizens.
2. It is necessary that the local self-governments inform the citizens on their recognized rights and the way how to exercise their rights, and to organize their work in such a manner to provide exercising of these rights of the citizens.

## 2.11 SECTOR OF URBAN PLANNING, CONSTRUCTION AND CADASTRE, NATURAL DISASTERS AND RESTITUTION

### **Sector of Urban Planning and Construction**

In this reporting period all complaints addressed to the Protector of Citizens may be divided into three categories, namely: 1) complaints based on the failure of local authorities imposing certain measures not only to natural or legal persons, but also the measures that should be enforced by authorities themselves, to act upon its own final and enforceable administrative acts, 2) complaints based on untimely and ineffective enforcement of pending legalization procedures, 3) complaints related to the manner of acting and/or failure of construction inspection to act upon citizens complaints. The common aspect of all mentioned complaints is the violation of the principles of good governance and main principles and rules of administrative procedure.

#### *Failure of local self-government authorities to act upon its own final and enforceable administrative acts*

A significant number of complaints from this sector indicate perennial failure of local authorities to act upon their own decisions, and/or failure to enforce final and enforceable administrative acts. Failure to act upon final and/or enforceable decisions implies unlawful and ineffective actions of local authorities and the act of poor administration which results in legal uncertainty in the legal system of the Republic of Serbia, and citizens' legitimate doubt in the diligence, impartiality and professionalism of administrative authorities. The most commonly used rationale for such a failure to act is the lack of funds for the implementation of enforced execution of adopted decisions. In such circumstances, the authorities themselves should be concerned and should take additional measures in order to ensure conditions necessary for the full implementation of their decisions.

***Example: Local self-government authority failed to implement the enforced execution of its final and enforceable decision***

Acting upon the complaint of a citizen expressing dissatisfaction based on the failure of the Administration of City Municipality Zvezdara to act upon its own final and enforceable decision regarding the removal of two roof windows in the housing facility, the Protector of Citizens conducted the investigation and referred recommendations to the Administration of City Municipality Zvezdara. The Protector of Citizens recommended the enforcement of the decision regarding the removal, without delay and in accordance with the conclusion allowing the execution, and also recommended the Head of the Administration of City Municipality Zvezdara to initiate the procedure for determining the responsibility of employees and managers in the Administration regarding this failure in the work. The Administration of City Municipality Zvezdara notified the Protector of Citizens that it acted upon the relevant recommendation within the time limit.

*Untimely and ineffective enforcement of pending legalisation procedures*

In this reporting period, similarly to the previous reporting period, the Protector of Citizens established errors in procedures of legalization of facilities which are reflected in untimely and non-transparent acting upon filed requests, and/or failure to act in an equal and uniform manner in the same factual and legal situations.

The stated errors caused both violations of rights of citizens who filed requests for legalisation and violations of rights of citizens who sought protection from obstructing their right to peaceful enjoyment of property due to construction and use of illegal facilities, given the fact the new Law on Planning and Construction,<sup>114</sup> passed on 11 September 2009, stipulates not only a new time limit for the legalization of facilities constructed without building permits but also specifies a new statutory provision stipulating that demolition of facilities which are constructed without building permit up to the date when this law come into effect, will not be executed, and that there will be no new decision about removal of such facilities, until completion of the legalization procedure. Thus, the procedure of legalization of facilities constructed without a building permit and the procedure for the implementation of the order to demolish an illegally constructed facility are inextricably linked, and the former case cannot be implemented in practice or legally until the completion of the latter case, which by the virtue of its very nature, should oblige competent authorities to act upon this procedures promptly, effectively and transparently.

<sup>114</sup> "Official Gazette of RS", Nos.72/09, 81/09 – corr. and 64/10 – Administrative Court's decision.

***Example: Silence of local authorities***

Complaint expressed dissatisfaction with the actions of City Administration of Urban Planning, Communal and Housing Affairs of Leskovac failing to complete the procedure of requested legalization of works on the reconstruction and extension of commercial and residential building, whose completion is the precondition for further enforcement of procedure of illegal construction on that site.

After initiating the investigation of the regularity and legality of the work, the Protector of Citizens issued a recommendation to the City Administration of Urban Planning, Communal and Housing Affairs of Leskovac recommending the authority to make a decision on the request for legalization without further delay.

The time limit to act upon the recommendation expired in November 2012. However, the City Administration of Urban Planning, Communal and Housing Affairs of Leskovac failed to notify the Protector of Citizens on actions taken with regard to this recommendation.

*Inefficient acting of local authorities responsible for actions of construction inspection upon filed citizens' complaints*

Since the beginning of its work, the Protector of Citizens is continuously facing a very distinctive and serious problem of failure to act, and/or the manner of handling complaints of citizens relating to the construction and use of facilities without building permits by construction inspection, which obstructs their right to peaceful enjoyment of the property. This mainly refers to disproportionately lengthy procedures against owners and investors, delayed adoption of decisions or their non-adoption in general, which is contrary to the principle of procedure efficiency.

In the investigations of the regularity and legality of the work of competent authorities that were initiated and conducted based on these complaints, some deficiencies were noted in the work of the Ministry of Urban Planning and Construction, which is, according to the Law on Planning and Construction, responsible for the supervision over the implementation of the provisions of this Law, as well as for the inspection supervision by means of inspectors within the scope determined by the Law. Some deficiencies that are directly related to this were observed in statutory provisions regulating this matter, primarily the control system, and/or supervision over the implementation of legislation, legality and regularity of actions taken by inspectors, thus making the enforcement of these powers insufficiently effective.

*Conclusion*

A significant outcome in this reporting period is the adoption of the proposal submitted by the Protector of Citizens for the assessment of (non) constitutionality of the provision of Article 83, paragraph 2 of the Law on Amendments of the Law on Urban Planning and Construction.<sup>115</sup> The provision of Article 193, paragraph 3 of the Law on Planning and Construction,<sup>116</sup> stipulated that it shall be considered that the co-owner, and/or co-user on

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115 "Official Gazette of RS", No. 24/11.

116 "Official Gazette of RS", Nos.72/09, 81/09 – corr. and 64/e10 – Administrative Court's decision.

the subject land has given his consent for the legalization if he knew or could have known about the construction of the subject facility or the execution of works, but it did not oppose it at the time of the construction. In its proposal for the assessment of constitutionality of the Law, the Protector of Citizens stressed that the implementation of disputed statutory provision restricts the right to property, and at the same time violates the principle of non-discrimination and legal certainty for citizens, guaranteed by international documents, the Constitution of the Republic of Serbia and the Law. The Protector of Citizens explained its views by stating that the disputed provision puts citizens-owners of the facility constructed without a building permit in a more favourable position compared to those who constructed facilities in compliance with legal regulations, explaining further that along with the disputed provision, the provision of Article 135, paragraph 3 of the Law on Foundations of Property Law Relations<sup>117</sup> is in force, prescribing the mandatory consent of all co-owners over an individual thing in case of undertaking transactions that exceed the regular management of the thing. The Constitutional Court of Serbia passed a Decision<sup>118</sup> at its session held on 27 December 2012, stating that the provisions of Article 185 to Article 200 of the Law on Planning and Construction are not in compliance with the Constitution, and this decision included the provision disputed by the Protector of Citizens. With regard to the submitted proposal of the Protector of Citizens, the Constitutional Court of Serbia noted in its decision that the disputed provision in favour of illegal constructor puts additional and disproportionate burden on third parties whose co-ownership, or co-use on the land gives these persons a right to peaceful enjoyment of the property and the legitimacy to build a facility on that land.

There is a need for greater control and supervision over the legality and regularity of the work of local inspection authorities in order to overcome many illegalities and irregularities. To achieve more efficient actions of construction inspections it is recommendable to increase the number of inspectors, to improve technical conditions of the work and also to amend legislation in order to create such system of privilege and accountability that would employ only the most qualified and the most experienced staff who have no interest of getting involved in unlawful actions and depriving themselves of privilege and security provided by the civil service. On the other hand, there is a need to increase the transparency of work and the citizens' accessibility to inspection services.

Ministry of Construction and Urban Planning is not fully performing its obligation to cooperate with the Protector of Citizens, which in certain cases requires re-sending of the request for a statement. When it comes to local authorities in charge of construction inspection affairs, and/or the legalization procedure, no regularity or tendency of non-cooperation was observed, and in most cases the omissions could be ascribed to individual failures.

### **Sector of Real Estate Cadastre**

In 2012, a large number of citizens addressed the Protector of Citizens expressing dissatisfaction about the work of the Republic Geodetic Authority (hereinafter referred to as the "RGA") and real estate cadastre services, as well as the work of relevant second-instance authority, formerly the Ministry of Environment, Mining and Spatial Planning, and currently

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117 "Official Journal of SFRY", Nos. 6/80 and 36/90, "Official Journal of FRY", No. 29/96 and "Official Gazette of RS", No. 115/05.

118 Number IU-295/09.

the Ministry of Construction and Urban Planning. Consequently, the complaints referred to the Protector of Citizens can be divided into complaints filed on the basis of violation of rights and legitimate interests of citizens in conducting the procedures before the first-instance authorities and violation of rights of second-instance authorities when handling complaints. In a certain number of cases the investigation of the legality and regularity of the work of stated services included Sector for Real Estate Cadastre or Sector for Professional and Administrative Supervision within RGA, in order to take preventive actions and establish cooperation to overcome the identified problem.

*Improper and unlawful actions of RGA and real estate cadastre services*

Similarly to the previous years, the largest number of complaints in this area relate to improper and untimely decision-making of real estate cadastre services handling citizens complaints.

**Example: Competent real estate service eliminated the deficiency**

Complaint noted that the decision of the Real Estate Cadastre Service on determining the number of residential building stated the incorrect name of the street, bearing in mind that the Decision of the Municipal Assembly amending the names of streets and squares and determining the names of streets and squares, envisages the change of current names of streets and squares. The Protector of Citizens was informed that the complainant is among many citizens facing this problem due to the decision of the Real Estate Cadastre Service on house numbers, which is not in conformity with the stated decision of the Municipal Assembly.

The decision of the Municipal Assembly was formally submitted to the competent Ministry of Interior, and since then the Mol uses new names of the streets in its records. When issuing personal documents, for the purpose of determining the residence of a person, the decision on the house number must be submitted, and this creates problems because citizens cannot obtain documents stating the official address, i.e. the name of the street determined by the city/town.

Real Estate Cadastre Service notified the Protector of Citizens that after the initiated procedure of control, it eliminated the identified deficiency and submitted a copy of the decision with the correct name of the street.

*The authorities fail to adopt administrative acts upon the requests of citizens, but submit a written response not allowing the possibility of appeal or other legal remedy*

Positive regulations and principles of good governance oblige state authorities to adopt an administrative act, and/or decision or conclusion, with the instruction on legal remedy in cases when they receive requests from citizens relating to their legitimate rights, obligations or interests.

***Example: The request of a party for issuance of an officially recorded document was denied, and the authority failed to make a decision, contrary to its statutory obligation***

The Republic Geodetic Authority and the relevant Real Estate Cadastre Service made an error in its work to the detriment of a complainant, because they failed to act upon his request for issuance of real estate possession sheet, contrary to the mandatory provision of the Law on General Administrative Procedure,<sup>119</sup> and issue a decision on the refusal of request with the instruction on legal remedy, once they established that based on the official records check, the document cannot be issued. Such an action deprives a citizen to initiate a mechanism of control and review of the decision made by administrative authorities with regard to his right to be issued a requested real estate possession sheet based on data from official records, i.e. deprives a citizen to exercise one of the fundamental rights guaranteed by the Constitution – the right to appeal or other legal remedy.

The Protector of Citizens referred the recommendation, prompting RGA and the relevant Real Estate Cadastre Service to issue the requested document on the subject request, i.e. the real estate possession sheet, and if such issuance is not possible, to issue a decision on the refusal of the request, with the explanation and instruction on legal remedy. It was recommended that RGA takes appropriate measures and ensure that all real estate services working within RGA issue a special decision with explanation and instruction on legal remedy in all cases when they refuse or are unable to issue the corresponding document on the facts maintained in their official records. The Republic Geodetic Authority acted on the recommendation issued by the Protector of Citizens.

***Unlawful charging of fees for issuance of documents required for the initiation of the procedure of restitution***

Provisions of the Law on Restitution of Confiscated Property and Indemnification<sup>120</sup> prescribe that the applicant shall not be obliged to pay the fees for the work and services provided by RGA, the cost of which is borne by this authority in cases when the relevant real estate cadastre service is requested to issue the real estate registry excerpts and the certificates on identification of cadastral parcels of old and new survey, which are submitted as a proof along with the request for restitution.

119 "Official Journal of FRY", Nos. 33/97 and 31/01 and "Official Gazette of RS", No. 30/10.

120 "Official Gazette of RS", No. 72/11.

***Example: Contrary to the provisions on the Law on Restitution of Confiscated Property and Indemnification, RGA was charging fees for issuance of required documents to applicants***

Large number of citizens indicated that real estate cadastre services refuse to issue the required documents unless the fee is paid, pursuant to binding instruction issued by the Director of RGA on 1 December 2011.

After initiating the investigation of the regularity and legality of the work, the Protector of Citizens noted that these actions are contrary to the provisions of the Law on Restitution of Confiscated Property and Indemnification. Director of RGA accepted the stated remarks (letter dated 6 February 2012), repealed the previous instruction and informed the real estate cadastre services that they are obliged to issue the relevant document to citizens without charging fees, with the indication that the documents may be used only for the purpose of exercising the right to restitution of confiscated property.

Taking into account the disputed regulation of the payment of fees for the issuance of these documents due to various instructions, RGA was asked to give a statement on the status and rights of citizens who were obliged to pay fees in order to obtain necessary documents until 6 February 2012.

On 26 July 2012, the Protector of Citizens referred a recommendation to the Director of RGA prompting him to provide an adequate instruction on the obligation to make a refund of wrongfully paid fees for the issuance of documents on requests referring to the restitution of confiscated property and indemnification.

The recommendation was duly fulfilled, and the real estate cadastre services received a binding instruction to make a refund to citizens who paid fees, to submit a written request and issue a certificate stating the legal basis for a refund, if the applicant submits the proof that he submitted a request for the restitution of confiscated property and the proof of paid fees.

***Failure to submit appeals for further proceedings and issue decisions within the prescribed time limit***

Number of citizens who addressed the Protector of Citizens pointed to failure of real estate cadastre services to submit their appeals for further proceedings to the relevant second-instance authority within the prescribed time limit (or in a timely manner).

**Example: Failure to submit an appeal for further proceedings  
and issue a decision within the prescribed time limit**

The complaint was filed due to the failure of the competent administrative authority to act upon the appeal submitted by the complainant on 4 November 2008, through the Real Estate Cadastre Service Novi Sad, who appealed in a timely manner against the first- instance decision rendered by this authority. Given the fact that the time limit for deciding on this appeal expired a long time ago, the complainant prompted RGA to act upon the appeal, in the capacity of a competent second instance authority at the time of submission of the appeal. Following this, the complainant addressed an intervention to the Ministry of Environment, Mining and Spatial Planning, being the authority competent to act upon appeals submitted against decisions of real estate cadastre services as of 1 January 2010.

The Protector of Citizens initiated an investigation of the work of Real Estate Cadastre Service Novi Sad, and the Service reported that the complainant's appeal against the decision of 3 October 2008 was referred to the second-instance authority on 14 February 2012, for further actions. These actions were visible only after the intervention of the Protector of Citizens and **after more than three years from the date of the submission**. As this was not an isolated case when appeals and accompanying documents are not submitted in a timely manner to competent second-instance authorities, but instead the actions are taken with delay and often exceeding the prescribed time limit, a recommendation was referred to RGA and services facing identified problems.

Director of the Republic Geodetic Authority notified the Protector of Citizens that he referred the stated recommendation to the Assistant Director of the Sector for Real Estate Cadastre, ordered its consistent implementation and instructed all civil servants in internal units within RGA, real estate cadastre services in towns and municipalities to comply with submitted recommendation and binding regulations. At the same time, the Director of the Republic Geodetic Authority noted that he was informed that the heads of services referred a written apology to aggrieved citizens. In addition to their regular professional and administrative supervision, the Sector for Professional and Administrative Supervision was also ordered to control the actions of civil servants based on the recommendation issued by the Protector of Citizens.

*Improper and unlawful acting of second-instance authority  
– Ministry of Construction and Urban Planning*

Untimely acting upon citizens appeals against decision  
of real estate cadastre services

In an unacceptable number of cases, the Ministry of Construction and Urban Planning is untimely acting when deciding on appeals against first-instance decisions of real estate cadastre services.

***Example: Failure to issue a decision within the prescribed time limit***

The complaint stated that although the time limit for issuing a decision upon appeal expired a long time ago, the competent second-instance authority – the Ministry of Construction and Urban Planning failed to issue a corresponding second-instance decision.

The Protector of Citizens initiated the investigation of the work of the Ministry of Construction and Urban Planning. Given the fact that the second-instance authority failed to give its opinion, the Protector of Citizens made an intervention pointing to the obligation to cooperate, requesting the statement on the previous act of this authority within the period of seven days.

After the intervention, the Ministry submitted a statement not denying that it failed to decide on this administrative matter within the statutory time limit, saying that such outcome was due the fact that during 2010, 2011 and 2012, this authority received a large number of cases where it had to decide on appeals, extraordinary legal remedies and act upon decisions rendered by the Administrative Court. In this sense, the complaint was founded and the Ministry promised to take all necessary measures to decide on the appeal, not later than 30 days from the date of the communication.

After the expiry of the time limit for rendering a second-instance decision which, in this specific case, was determined by the authority, the Protector of Citizens once again addressed the Ministry requiring a statement whether it adopted the administrative act in the meantime. Given the fact that the Ministry did not react upon the Protector of Citizens' request within the set time limit. The investigation of the complaint is ongoing.

*Conclusion*

It appears that during the previous reporting period the major problem encountered in the area of state survey and real estate cadastre was untimely acting, which in certain cases could be measured in years and not months.

During this reporting period, the Agency for Restitution established an outstanding cooperation with the Protector of Citizens. Furthermore, the cooperation with Republic Geodetic Authority was very good. The apparent efforts of the Republic Geodetic Authority to improve the work of competent services are encouraged. This also reflected on the cooperation of real estate cadastre services with the Protector of Citizens, and no regularity or tendency of non-cooperation was observed, and in most cases the omissions could be ascribed to individual failures. Unfortunately, the Ministry of Environment, Mining and Spatial Planning failed to establish full cooperation with the Protector of Citizens, which in most cases required re-sending of the request for a statement.

**Sector of Natural Disasters**

Complaints of citizens of Kraljevo whose facilities were damaged in the earthquake, which hit the area on 3 November 2010, referring to the work of local authorities handling claims for recovery of damage, i.e. allocation of funds for repairing the damage

on housing facilities caused by the earthquake, represents a novelty in the current work of the Protector of Citizens.

Complaints mainly pointed out that the conclusion made by the City Headquarter for Emergency Situations states that citizens are not entitled to recovery of damage or allocation of solidarity funds, with no explanation for such decision. Furthermore, the citizens are unable to exercise their fundamental right to a legal remedy which is guaranteed by the Constitution, due to the fact that the dissatisfactory conclusion does not include instruction on legal remedy. Moreover, certain citizens explicitly requested an explanation for refusal with an instruction on legal remedy from the City Headquarter, but they failed to receive any further information.

Although the Protector of Citizens insisted on this while conducting procedures, the City Headquarter for Emergency Situations of the town of Kraljevo failed to provide copies of acts including an explanation for such a decision and instruction on legal remedy, and/or an act stating why the reasons for rejecting the claims for recovery of damage caused by the earthquake are unfounded, with an instruction on legal remedy on such an act. All initiated investigations are still pending.

In this regard, it should be noted that the assessment of damage caused by natural disasters is made in accordance with the Instruction on Common Methodology for the Assessment of Damage Caused by Natural Disasters<sup>121</sup>, that regulates the procedure for the assessment of damage caused by natural disasters, in general and in specific cases, and prescribes specific measures for the recovery, which is a precondition for awarding funds from the Solidarity Fund. However, the Instruction does not set up the time limits, procedures and criteria for determining the order for awarding funds for the damage recovery (ranking), and does not regulate the possibility of filing objections/appeals of aggrieved citizens, both with regard to the grounds of the claim itself, priorities for taking actions on the restoration of a facility and the amount of funds awarded for this purpose. The Law on Emergency Situations<sup>122</sup>, which came into force on 6 July 2010, also failed to address this issue.

However, the fact is that relevant republic and local authorities surpassed this legal limbo, and most of 23.000 households affected by the earthquake had no substantial reasons to complain, as the restoration of Kraljevo was more effective and successful than the restoration of other areas affected by natural disasters (e.g. floods in 2005 in Jaša Tomić settlement). This does not diminish the need to fill the existing gaps in the legal system, and reduce unnecessary freedom of choice in discretionary decision-making, legal uncertainty and different actions in different areas, but same situations.

### *Conclusion*

Acting of local authorities and other relevant authorities upon claims of citizens for restoration of damage/construction of destroyed facilities, and compensation for other damages caused by natural disasters should be regulated by establishing more detailed criteria on determining the order of priority- priority for the restoration/construction of

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121 "Official Journal of SFRY", No 27/87.

122 "Official Gazette of RS", Nos. 111/09, 92/11 and 93/12.

damaged facilities within the area of local self-government affected by natural disasters. In addition, the concerned citizens should be able to have an insight into the priority lists and documentation on which they were established, in order to minimize the possibility of unequal treatment of citizens in awarding the solidarity funds and biased, unpredictable, non-transparent and corrupt actions of relevant officials and authorities, thus reducing doubt and legal uncertainty among citizens. At the same time, legislation should ensure two-instance decision-making, i.e. determine the legal remedy to appeal against the decision on the claim for the restoration/construction of destroyed facilities or to obtain adequate compensation for repairing the damage caused by natural disasters.

By adopting appropriate regulations within its competence, the Government of the Republic of Serbia should regulate the procedure for the restoration of damage and allocation of funds to citizens for construction and restoration of housing facilities destroyed or damaged by natural disasters, and in particular establish the criteria that would ensure the equal treatment and legal certainty of citizens in these proceedings.

### **Sector of Restitution**

The Law on Restitution of Confiscated Property and Indemnification<sup>123</sup> entered into force on 6 October 2011. Pursuant to statutory provisions, the Agency for Restitution announced a public call, according to which the former owners, their inheritors or legal successors may file a claim for the restitution of confiscated property or indemnification over the relevant post office counters, as of 1 March 2012. According to information made available to the Protector of Citizens, more than 11.000 claims were filed until November 2012.

Restitution is a legal area where an increased activity of the Protector of Citizens may be expected only in the future period, i.e. the control of observance of rights of citizens and legality of the work of relevant administrative authorities. In the course of 2012, several citizens addressed this authority pointing to the difficulties in obtaining documentation required for the submission of complete claims, as well as irregularities in the procedure conducted by the Agency for Restitution. In its complaints handling work, the Agency for Restitution demonstrated the highest degree of cooperation and willingness to eliminate the identified deficiencies without delay.

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123 "Official Gazette of RS", No. 72/11.

***Example: Inability to obtain the documents required for the submission of complete claim for the restitution of property and/or indemnification***

The complainant, which is a legal successor to the former owner, addressed the Municipal Assembly, the Historical Archives and the Real Estate Cadastre Service in Negotin, in order to obtain certified copies of a decision on the nationalization of Municipal Assembly of Negotin. All stated authorities responded that they were unable to supply the relevant decision on nationalization.

In the course of the investigation, the Protector of Citizens asked the Agency for Restitution to provide their view and opinion on the matter, as it may be reasonably expected that many citizens will face this problem, without their fault.

The statement provided by the Director of the Agency for Restitution pointed out that the act of confiscation is a mandatory evidence which must be submitted along with the claim for restitution of confiscated property and indemnification, within the meaning of Article 42, paragraph 7 of the Law on Restitution of Confiscated Property and Indemnification, but when a potential claimant has an evidence that relevant authorities were unable to act upon the claim and issue the required decision, the negative responses of competent authorities are appreciated as an evidence in the procedure of restitution or indemnification.

*Conclusion*

In the forthcoming period, the Protector of Citizens shall continue to monitor the problems encountered by citizens in procedures before the competent authorities relating to claims submitted under the Law on Restitution of Confiscated Property and Indemnification. Pursuant to competences vested in it, the Protector of Citizens shall take appropriate measures in order to guarantee that the procedures are implemented within the stipulated time limit and fully in accordance with the Law on Restitution of Confiscated Property and Indemnification.

**2.11.1 Proposals for Improving the Position of Citizens in Relation to the Authorities**

1. Local self-government authorities responsible for the work of construction inspection should take all necessary measures to ensure the discontinuation of practice of non-enforcement of its own final and enforceable administrative acts requiring certain measures in the shortest possible time.
2. In addition, timely and efficient acting of these authorities upon the claims of citizens is essential.
3. Real estate cadastre services must take all necessary measures and actions, including the corresponding proceedings initiated against competent civil servants, to ensure legal, proper and timely acting upon claims of citizens and improve the exercise of their property rights.
4. Furthermore, these services must decide and adopt a corresponding administrative act on claims of citizens and ensure that the citizens are able to use other legal remedies to protect their rights.

## 2.12 SECTOR OF AGRICULTURE, TRADE, FORESTRY AND WATER MANAGEMENT, ENVIRONMENT, INFRASTRUCTURE, ENERGY AND MINING, TRAFFIC, HYDROMETEOROLOGY AND COMMODITY RESERVES

The adoption of the new Law on Ministries<sup>124</sup> brought some changes with regard to competences of authorities in this sector, so the activities related to energy and environmental protection are now performed by the Ministry of Energy, Development and Environmental Protection. This Ministry assumed certain responsibilities in the area of energy from the former Ministry of Energy and Infrastructure, while certain responsibilities in the area of environmental protection are assumed from the former Ministry of Environment, Mining and Spatial Planning. Activities in the area of traffic now fall within the competences of the Ministry of Transport, which assumed certain responsibilities in the area of rail, road, water and air traffic from the Ministry of Energy and Infrastructure.

Violations of rights identified in handling complaints point the necessity to address the systematic issues in the area of energy and also some other areas falling within the scope of this sector.

**Systematic issues indicate that the Ministry of Energy, Development and Environmental Protection (formerly the Ministry of Energy and Infrastructure) failed to prepare and submit to the Government of the Republic of Serbia a proposal of an act on the criteria, methods of protection, conditions, terms and procedure for determining the status of protected energy customer.**

In individual complaints, the complainants mainly pointed to the improper calculation of electricity consumed, namely: elements of the calculation, the amount of principal debt and interests, and to the fact that the Electric Power Distribution also calculates the old debt. Furthermore, the complainants pointed out that their requests and other submissions are not being responded regarding the quality of electricity supply, failure to connect to the electricity distribution system, the fact that TV subscription is charged with the electricity and in certain number of cases complainants suggested that distributors do not comply with court decisions and that electric power facilities endanger their safety.

In handling complaints relating to electricity distribution companies it has been observed that the debts of tariff costumers, which are the subject of the payment in enforceable court proceedings, are shown as an item in the bill for the delivered electricity, and citizens are obliged to pay the debt regardless of the fact that the proceeding is still pending. The similar practice has been observed in other public energy distribution companies.

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124 "Official Gazette of RS", No. 72/12.

In some cases the electricity bill also includes the interest arising from the claim. It is undisputed that distributors are entitled to sue consumers who fail to pay their debt for electricity and also to require from their consumers to pay the interest on the whole debt, which is the subject of the claim, i.e. the amount of the principal debt and interest accrued until the date of submission of a claim. However, the electricity distributors unduly charge the interest arising from the claim in the electricity bill. Moreover, even though the obligation to pay the interest depends on the merits of a claim, which is to be decided by the court in its final judgement after the proceeding is completed, the distributors include the interest arising from the claim from the date of the submission of a claim, and for the whole debt, and certain complainants reported that the interest arising from a claims was calculated even if they were unaware that they were sued.

In addition to the aforementioned, it has been observed that the decision rendered by Governing Board of the Public Company *Elektroprivreda Srbije*,<sup>125</sup> which obliges all electricity distribution companies in the Republic of Serbia to approve debt rescheduling to all consumers from the broad consumption category (households), in a uniform manner and according to precisely defined criteria and conditions is not being applied consistently and properly and complainants are unable to reach an agreement allowing them to repay the debt in instalments.

The complaints addressing individual issues mostly indicate the violation of principles of goods administration, of the Law on State Administration<sup>126</sup> and of the Law on General Administrative Procedure.<sup>127</sup>

*Failure to make proposal of an act on the criteria, methods of protection, conditions, terms and procedure for determining the status of protected energy customer within the statutory time limit*

The complainant pointed that the suspension of delivery of electricity by the electricity distribution company *Jugoistok d.o.o. Niš* due to a debt, put in danger the health of his son, suffering from schizophrenia, who ran away from home due to the lack of electricity. The Protector of Citizens received another complaint referring to the same company pointing out that the suspension of delivery of electricity due to a disputed debt, caused further deterioration of the complainant's health, given the fact that he had undergone a complicated surgical intervention. A complainant who is the beneficiary of welfare rights was in the similar situation, and when addressing the Protector of Citizens she pointed that she has no electricity for several years since she has no available funds to pay for the cost of connection to the electricity distribution system.

Provisions of the Article 149, paragraph 1, point 1 and point 2 of the Law on Energy<sup>128</sup> stipulate that the status of energy protected customer may be granted to a household whose members exercise the welfare rights based on the act passed by the authority competent for welfare issues as well as to household with members whose life or health may be subjected to a danger, loss or destruction by the suspension or limitation of delivery of electricity or natural gas due to their health condition, disability or physical incapacity. Pursuant to Article 149, paragraph 2 of the Law on Energy, the energy protected customer is entitled to the

125 No. 2181/8-11 dated 15 July 2011.

126 „Official Gazette of RS“, No. 20/92, 6/93 – Decision of Administrative Court of RS, 48/93, 53/93, 67/93, 48/94, 49/99 – other law, 79/05 – other law, 101/05 – other law and 87/11 – other law.

127 „Official Journal of FRY“, Nos. 33/97 and 31/01 and „Official Gazette of RS“, No. 30/10.

128 „Official Gazette of RS“, Nos. 57/11 and 80/11 – corr.

delivery of certain amounts of electricity and natural gas and to the delivery suspension under special conditions and to all other rights regulating the social welfare.

Article 12, paragraph 1, point 7 of the Law on Energy prescribes that the ministry in charge of energy prepares and proposes to the Government an act on the criteria, methods of protection, conditions, terms and procedure for determining the status of protected energy customer. The Law on Energy entered into force on 9 August 2011, and pursuant to transitional and final provisions of the Law, the act on criteria, methods of protection, conditions, terms and procedure for determining the status of protected energy customer should be adopted no later than 9 August 2012. In the absence of such an act, consumers of electricity and natural gas facing specific social conditions, or whose life or health may be subjected to a danger, loss or destruction by the suspension or limitation of the delivery of electricity or natural gas, cannot exercise their rights effectively.

The Protector of Citizens included complaints in a single recommendation and sent to the Ministry of Energy, Development and Environmental Protection, prompting it to prepare and submit an act on the criteria, methods of protection, conditions, terms and procedure for determining the status of protected energy customer to the Government of the Republic of Serbia. At the same time, it submitted the opinion to the Government of the Republic of Serbia with a view that it should act in order to protect customers of electricity and natural gas who are facing specific health and social conditions, so as to adopt an act on the criteria, methods of protection, condition, terms and procedure for determining the status of protected energy customer as soon as the Ministry of Energy, Development and Environmental Protection submits a proposal.

**Example: Administrative silence due to a failure of an electricity distribution company to respond to a letter**

Electricity distribution company *Elektrosrbija* d.o.o. Kraljevo, *Electric Power Distribution Loznica* informed the complainant that he has to file a request for the connection to the electricity distribution system, since the existing connection is irregular, or otherwise the delivery of electricity will be suspended. The complainant submitted a response where he pointed that the electricity counter has been replaced during the calibration, which he deems to be disputed, stressing that on several occasions in the past years he addressed both the authorized offices and company *Electric Power Distribution Loznica* requesting them to resolve the disputed situation and to submit electricity bill, which they failed to do. The Protector of Citizens initiated the investigation of the regularity and legality of the work of electricity distribution company *Elektrosrbija* d.o.o. Kraljevo, *Electric Power Distribution Loznica* and requested a statement with an explanation why the complainant failed to receive a response to his letter. The statement provided to the Protector of Citizens initially denied that the complainant sent any letter, and when the Protector of Citizens has made it clear that the evidence speaks contrary to that statement, the argument for non responding to a complainant was that the complainant sent "a letter repeating the same story", stating that there is no need to prolong such correspondence. The Protector of Citizens referred a recommendation to the stated company prompting it to submit an appropriate response to the complainant. The company acted upon the referred recommendation.

***Example: Failure of Electric Power Distribution to act in accordance with the court decision ordering provisional measure and an obligation to renew the delivery of electricity***

Acting upon the complaint, the Protector of Citizens launched an investigation on 19 November 2012, against the electricity distribution company *Jugositok d.o.o.*, Niš, due to its failure to act in accordance with the decision rendered by the Basic Court in Vranje. Namely, the complainant's electricity was suspended due to a debt. Since he believed that this delivery suspension is unlawful, he sued *Jugoistok* and requested a provisional measure ordering the defendant to renew delivery of electricity. The proposal was adopted and a provisional measure was ordered, but the complainant reported that the authority failed to act in accordance with the said decision. During the investigation, the authority informed the Protector of Citizens that the proceedings adopting decision on provisional measure resulted in final rejection of the request, stating that the delivery of electricity to the complainant was regular until the adoption of a court decision. Having reviewed the available documents, the Protector of Citizens found that the minutes on the renewal of electricity delivery, stated as the evidence proving that the authority acted upon the previously adopted decision ordering provisional measure, was made on 3 December 2012, i.e. after the Protector of Citizens launched the investigation.

***Example: Administrative silence due to the failure of the General Inspectorate of the Ministry to respond to the complaint about the work of an agricultural inspector***

The Protector of Citizens received a complaint about the work of the Ministry of Trade and Services, the Market Inspection Sector in which the complainant expressed dissatisfaction due to the fact that he addressed the Ministry, but failed to receive a written response. In the statement relating to the complaint, the Ministry reported that it was not obliged to provide a response to the complainant relating to the work of inspector, as the complainant had the opportunity to express his objections in the minutes and in the misdemeanour proceedings subsequently initiated against him. The Protector of Citizens referred a recommendation to the Ministry of Agriculture, Trade, Forestry and Water Management, the Market Inspection Sector advising it to inform the complainant of the outcome of a submitted request in a prescribed manner and in accordance with Article 56 of the Law on General Administrative Procedure. The line ministry acted upon the referred recommendation.

*Conclusion*

The abovementioned examples illustrate that administrative authorities generally tend to act upon recommendations of the Protector of Citizens, which indicates a good cooperation with the Protector of Citizens and their willingness to promote the work. The Ministry of Economy, Development and Environmental Protection established a good cooperation with

the Protector of Citizens. Likewise, in case of electricity distribution companies, no regularity or tendency of non-cooperation was observed, and in most cases the omissions could be ascribed to individual failures.

The complaints showed that in a large number of cases, the complainants do not know whom to address when they are not satisfied with the work of electricity distributors.

### **2.12.1 Proposals for Improving the Position of Citizens in Relation to the Authorities**

1. It is essential that companies performing public functions and activities of general interest improve their work so that they do not take advantage of their dominant position when dealing with citizens, but instead by their socially responsible operations and by adhering to relevant legislation contribute to a more efficient and transparent work of those who enforce the public powers, on the one hand, and on the other hand, promote protection and exercise of human freedoms and rights of citizens.
2. The Ministry of Agriculture should improve the performance of its inspection services, and particularly ensure the independent work of inspectors and their accountability for not taking actions within their competences.

## 2.13 SECTOR OF EDUCATION AND SCIENCE, YOUTH AND SPORTS, CULTURE, INFORMATION AND INFORMATION SOCIETY AND INTELLECTUAL PROPERTY

### Sector of Education and Science

During 2012, most of complaints received by the Protector of Citizens in this area were filed by students stating problems they encounter after the graduation and problems which occur due to non-compliance of bylaws more closely regulating requirements regarding the type and level of education with current positive legislation. Furthermore, the Protector of Citizens received complaints stating violation of regulations by the Ministry of Education, Science and Technology Development when deciding on the requests for textbooks publishing. In a significant number of complaints the expressed dissatisfaction was related to actions of education institutions and education inspectors acting upon complaints of citizens while performing inspection supervision over the work of education institutions.

***Example: Inability to enter into labour relations in the profession due to non-compliance of regulations***

The complaints filed by graduated students pointed out that after finishing studies and acquiring a title in the higher education institutions they were unable to enter into labour relation because the rulebooks regulating the type and professional qualifications of teachers, assistant teachers, preschool teachers and expert associates in elementary and secondary schools are not harmonised with the titles and names of professions they acquired after the graduation. The Protector of Citizens initiated the investigation of the regularity and legality of the work of the Ministry of Education, Science and Technology Development, prompting it to notify the Protector of Citizens whether the competent ministry acted in accordance with the law and its bylaws and whether it prescribed more detailed conditions regarding the type and level of education of teachers, assistant teachers, preschool teachers and expert associates in education institutions, and thus allow the students graduating from this institutions to enter into labour relations in these professions.

In its statement, the Ministry of Education, Science and Technology Development noted that the student's complaint was unfounded, stating that the time limit for the adoption of bylaws envisaged by the Law on the Foundations of the Education System has not expired. Namely, the competent ministry expressed its view that the student's complaint was unfounded notwithstanding the importance of this issue and consequences suffered by citizens due to non-compliance of regulations, and in spite of a fact that at the time of submission of the statement by this authority, the time limit for the adoption of bylaws was about to end in one-month period.

The position of the Protector of Citizens is that administrative authorities should take proactive and engaged attitude when performing activities within their scope, instead of "not resolving cases and waiting for the deadlines". They should act in a prompt and efficient manner, properly and in accordance with the law, in order to ensure that the rights of citizens **are fully exercised**. This, among other things, implies that they should not wait for the expiration of the maximum statutory period in order to take legal actions that would allow hundreds of citizens to exercise their right to work.

***Example: Acting contrary to positive legal regulations and principles of good governance in giving an expert assessment and approval of textbooks***

Acting upon the complaint of a publishing company, the Protector of Citizens initiated the investigation of the regularity and legality of the work of the Institute for the Improvement of Education and Upbringing, the Ministry of Education, Science and Technology Development and the National Education Council. It was determined that during the procedure of expert assessment and approval of textbooks at the request of a publishing company, the stated authorities have made of series of failures detrimental to the principles of legality and regularity, by conducting the procedure arbitrarily, in legally and factually disorganised and inconsistent manner and by violating the statutory time limits and demonstrating the lack of impartiality in actions taken. Based on deficiencies identified in the work, the Protector of Citizens referred recommendations for the elimination of identified deficiencies. Namely, the Institute for the Improvement of Education and Upbringing was recommended to adopt, without delay and in accordance with the law and the Statute of the Institute, a general act that would regulate the issues of importance for proper and legal procedure of expert assessment of the quality of textbook manuscripts. The National Education Council was recommended to conduct the future procedures of approving textbooks in timely and efficient manner and to adopt decisions. The Ministry was recommended to act in a timely and efficient manner and in accordance with the law and the statutory time limits if the Institute for the Improvement of Education and/or the National Education Council fail to conduct procedures within the statutory time limits and in accordance with provisions of the Law on Textbooks and Other Teaching Materials.

Having received the recommendations, the Ministry of Education, Science and Technology Development and the National Education Council informed the Protector of Citizens that on the basis of their own assessment of facts and their own interpretation of regulations, as opposed to the Institute for the Improvement of Education and Upbringing, they do not intend to act upon the referred recommendations.

### *Conclusion*

During 2011, the Protector of Citizens received a large number of complaints from students relating to the work of higher education institutions, and also the work of education institutions employees, especially the violation of the law by the directors of education institutions. In these cases, the Protector of Citizens initiated investigations against the relevant ministry, being the authority responsible for supervising the work of education institutions. **Data obtained from the control provide a sufficient basis to conclude that the exercise of rights of citizens before the Ministry of Education and Education inspection is rather difficult.** The control also determined that the fulfilment of statutory obligations and the cooperation of the Ministry of Education with the Protector of Citizens are not at the appropriate level. Namely, the statements provided by the Ministry of Education to the Protector of Citizens are often untimely, are submitted after the expiry of the applicable time limit, often requiring a series of interventions. It is important to note that after the recommendation was sent and the ministry refused to accept and act upon it, the Protector of Citizens received a number of new complaints relating to the same type of deficiencies in the work of this administrative authority – the failure to comply with the statutory time limits for deciding on requests for the approval of textbooks.

### **Sector of Culture, Information and Information Society**

Complaints relating to the sector of culture, information and information society most often express dissatisfaction with the work of cable operators and the Republic Agency for Electronic Communications (hereinafter referred to as the "RATEL"). Until the passage of the new Law on Ministries<sup>129</sup> the inspection control over the work of this authority was performed by the Ministry of Culture, Information and Information Society and now the Ministry of Foreign and Domestic Trade and Telecommunications, through the electronic communications inspectors. A large number of complaints relate to activities of the broadcasters, i.e. natural or legal persons who are registered for the production and broadcasting of radio and television programs, and whose work is supervised by the Republic Broadcasting Agency (hereinafter referred to as the "RBA").

**Deficiencies identified in the work of the Ministry of Culture and Information in deciding on on the competition for awarding recognition for outstanding contribution to national culture and culture of national minorities**

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129 "Official Gazette od RS", No. 72/12.

***Example: Deficiencies identified in the work of the Ministry of Culture and Information in deciding on the competition for awarding recognition for outstanding contribution to national culture and culture of national minorities***

A large number of artists/experts expressed their dissatisfaction with the lack of criteria in decision-making, unequal representation of representatives from different areas who have received recognitions, the fact that participants in the competitions do not receive decisions with the explanation, but find about the outcome of competitions in the newspapers and also that the ministry fails to respond to letters submitted by the Association of Fine Artists of Serbia (ULUS). In its investigations of the regularity and legality of the work of the said ministry, the Protector of Citizens requested necessary statements. The statement and submitted documentation sent by the authority show that the agenda of the session of the Commission for determination of proposals for awarding recognitions for outstanding contribution to national culture and culture of national minorities, held on 24 November 2010, established the proposed list which included 45 candidates. The Chairman of the Commission did not support the list of candidates and proposed to add three more artists/experts to the list, while the list of 45 artists/experts proposed and voted by the Commission, included five more names in the proposed decision for awarding recognitions which the Ministry referred to the Government of the Republic of Serbia. In the course of investigations of the regularity and legality of the work of the said Ministry, some deficiencies were identified in the competitions, including some legal deficiencies in the Regulation on detailed conditions and manner of awarding recognition for outstanding contribution to national culture and culture of national minorities.<sup>130</sup>

***Example: The Republic Agency for Electronic Communications failed to adopt a general act prescribing for which types of radio-stations the licences shall not be issued, within the stipulated time limit and in accordance with the Law on Electronic Communications<sup>131</sup>***

The complainant complained about the work of the Republic Agency for Electronic Communications.

The complaint states, as shown in the submitted documentation, that the complainant contacted RATEL by e-mail, requesting a licence for a radio-station. RATEL responded that there is no possibility to assign any radio-frequency from the Radio-Frequency Allocation Plan, which states "all activities", nor the licence for the amateur radio-station, because the proposal of the Rulebook on types of radio-stations for which licences shall not be issued, prescribes that the stated type of radio-station is not within the regime of licences. RATEL also noted that the said Rulebook has not been passed and the complainant was instructed to work without a licence, and as stated, he did so.

130 "Official Gazette of RS", No. 36/10.

131 "Official Gazette of RS", No. 44/10.

Given the fact that the complaint pointed to extremely incorrect conduct of RATEL, i.e. instructing the citizen to continue the work without a licence, the Protector of Citizens considered it reasonable to apply Article 25, paragraph 5 of the Law on the Protector of Citizens,<sup>132</sup> and initiate the investigation of the legality and regularity of the work concerning the respect of citizens rights and adherence to the principles of good governance in the work of RATEL, even before all legal remedies have been exhausted. The Protector of Citizens received a reply from RATEL informing it that after the passage of the Law on Electronic Communications there is no possibility to issue licences for amateur radio-stations, as was the case in the former Law on Telecommunications.<sup>133</sup> In order to overcome the identified problem, RATEL noted that the proposal of the Rulebook on types of radio-stations has been made, prescribing that CB radio-stations set up in accordance with the EU standards may also be used without a special licence, and pointed that the adoption of this regulation is pending.

### *Conclusion*

The line ministry, which is legally obliged to monitor and assess the situation in areas within the scope of its activities, to examine the consequences of its findings and propose the Government to adopt regulations and to take measures to which it is authorized, does not take all legal measures in adopting bylaws within its scope and does not ensure the enforcement of regulations sufficiently and in lawful and proper manner. Deficiencies identified in the work of the Commission for awarding recognitions in the area of culture are particularly disturbing, due to an impermissible degree of arbitrariness in awarding state recognitions with moral and financial component.

During this reporting period, number of complaints relating to the work and actions of the Ministry of Culture and Information was not significant. The said authority acted in compliance with the requests of the Protector of Citizens. Having in mind that the largest number of complaints from the sector of culture related to the Republic Agency for Electronic Communications (RATEL), it is important to point out that the said authority acted upon the requests of citizens in a timely manner and submitted the requested information within the stipulated time limit.

### **2.13.1 Proposals for Improving the Position of Citizens in Relation to the Authorities**

1. The Ministry of Education, Science and Technology Development must act timely and efficiently in its future work, both in handling the requests of citizens and in cooperating with other authorities and institutions, and must take appropriate measures in order to improve the efficiency and legality of the work of education inspection.

<sup>132</sup> "Official Gazette of RS", Nos. 79/05 and 54/07.

<sup>133</sup> "Official Gazette of RS", Nos. 44/03 and 36/06.

2. The Ministry of Education, Science and Technology Development must ensure that more detailed conditions with regard to the type and level of education are prescribed by its bylaws, fully and in accordance with positive legal regulations.
3. The Republic Agency for Electronic Communications should adopt a general act in accordance with the Law on Electronic Communication and prescribe the types of radio-station for which the licences shall not issued.
4. The Ministry of Culture and Information must take all legal measures when adopting bylaws within its scope and must ensure that the regulations are implemented in a legal and proper manner.
5. The Ministry of Youth and Sports must act timely upon the requests of citizens in its future work and must take proactive and engaged attitude in exercising its competences and powers.

## 2.14 SECTOR OF HEALTH

Compared to the previous year, the Protector of Citizens received larger number of complaints in 2012, in which the citizens complained about the violation of certain principles of good governance, which resulted in deprivation and/or difficulties in exercising the citizens' rights in the area of health insurance and health care.

The complaints relating to the work of competent branches of the Republic Health Insurance Fund (hereinafter referred to as the "Fund") mainly pointed to the impossibility to exercise the rights to health insurance due to unsettled obligations of employers failing to pay contributions for health insurance and due to failure of the insured person to choose general practitioner.

Furthermore, the complaints of citizens and association of citizens filed on behalf of patients undergoing dialysis treatment in private practice for haemodialysis pointed that in accordance with the decision rendered by the Fund they were referred to a dialysis treatment to a medical institutions within the Medical Institutions Network Plan, which resulted in a more difficult dialysis treatment and lower quality of health services.

The Protector of Citizens also received complaints from citizens who expressed their dissatisfaction related to the difficulties they faced in the exercise of the right to health care in some health institutions, stating that they first addressed the protector of patients' rights in the health institutions, but consider that the actions taken by the protector of patients' rights were not appropriate.

Complaints relating to the work of the Ministry of Health (hereinafter referred to as the "Ministry") pointed to deficiencies in the work of the authority due to its unfair acting or failure to act and violation of principles of good governance that result in deprivation of citizens' rights.

Similarly to the previous year, the Protector of Citizens was contacted by health care providers and trade unions of health care providers pointing to the violation of labour rights both by medical institutions and the Ministry.

During 2012, the Protector of Citizens was contacted by medical institutions, protector of patients' rights as well as the Department for the organisation of health service of the Ministry of Health who requested the interpretation of legislation and advise on the manner of acting of authorities in specific situations (e.g. how to handle repeated requests of the parties whose previously submitted requests with the identical content were already handled by authorities who duly informed the applicant).

Having reviewed the draft Law on the Protection of Patients' Rights and competences of this authority and guided by the principle of cooperation with state authorities, the Protector of Citizens addressed the Ministry and pointed to certain aspects that require further consideration.

The general impression is that the Protector of Citizens and the line ministry made progress in their cooperation and in resolving problems in the exercise of the right to health care and insurance. However, the severity and number of problems leave no room for satisfaction.

#### *Right to health insurance*

Similarly to the same period in the previous year, the Protector of Citizens received a number of complaints at the time of certification of health cards for the following period which pointed to difficulties in exercising the right to health insurance.

***Example: Exercising the right to health care in a case when the insured person could not certify a health card due to the failure of the employer to pay the outstanding contributions for compulsory health insurance***

The complainant filed a complaint with the Protector of Citizens pointing to problems she faced at the time of certification of the health card, due to a failure of her employer to meet the obligations prescribed by the law, i.e. to pay taxes and contributions for health insurance.

Given the fact that the Protector of Citizens must act within the positive law framework, it had to inform the complainant that according to current regulations she is not entitled to a right to health insurance from the Fund, except for emergency medical assistance, even though she is not responsible for the fact that her employer violated the law, and that competent authorities apply adequate and prescribed measures in such cases. The Protector of Citizens firmly believes that such legislative decision is not only unfair but it also encourages the violation of the law to the detriment of citizens.

#### *Deprivation of patients' right to choose a medical institution for a dialysis treatment*

The Protector of Citizens received a large number of complaints from citizens and associations of citizens on behalf of patients undergoing dialysis treatment in some private hospital for haemodialysis. Namely, in the filed complaints they stated that they were pleased with the dialysis treatment in private medical institutions, and then the relevant branches informed them that they shall be referred for a dialysis treatment to some other medical institution. Complaints stated that the relevant branches of the Fund deprived them certain rights and also the right to choose a medical institution for a dialysis treatment.

The Protector of Citizens was informed that 4.500 patients undergo dialysis treatment per year, and the number tends to increase. In the course of the investigation, the Protector of Citizens was informed that the Fund, acting in accordance with the Rulebook on conditions, criteria and standards for the conclusion of contracts with health care providers and

for determining the compensations for their work<sup>134</sup>, at the moment when capacities for dialysis were insufficient, concluded a contract for the provision of health services with medical institutions which are not within the Network Plan, for the type and number of health services that could not be provided within the existing capacities of medical institutions in the Network Plan, with the prior opinion of the Institute of Public Health of Serbia "Dr Milan Jovanović Batut". Later on, when conditions were created to perform dialysis in medical institutions within the Network Plan, the patients who were referred for a dialysis treatment to medical institutions outside the Network Plan were informed that in the future this type of medical services shall be provided again in some medical institution within the Network Plan.

Having reviewed all circumstances of these particular cases, the Protector of Citizens could not conclude that the Fund deprived the right to access health care to patients on dialysis treatment, but that it acted lawfully and properly. The fact is that the conditions for dialysis treatment in institutions outside the Network Plan might be better compared to institutions within the Network Plan, and this should surely be taken into account when creating a Network Plan in the future, so as to provide the best medical care for the patients at the cost of the Fund.

***Example: The complainant exercised her right to a specialist examination after the Protector of Citizens initiated an investigation of the regularity and legality of the work of the Fund***

The complainant filed a complaint with this authority in which she stated that after consulting a doctor in the relevant medical institution, she was advised by a chosen doctor to perform medical analysis in order to determine the cause of miscarriages and secondary infertility. Given the fact that the complainant does not live in Belgrade, and that the required analysis can be performed only in medical institutions in this city, she addressed the local medical commission in order to get an opinion on referral to medical institutions outside the area of the parent branch. However, the relevant office, i.e. branch failed to decide upon her request in a period of two months.

Having in mind that the complaint pointed to extremely incorrect conduct of authorities and other circumstances of the case, the Protector of Citizens initiated the investigation of the regularity and legality of the work of the Fund.

The Fund submitted a statement within the given time limit stating that in the meantime the first instance medical commission refused to give a consent for the referral to specialist examination in Belgrade, but the complainant was instructed to lodge a complaint, which the second instance medical commission acknowledged and approved the necessary examination outside the parent branch, thus allowing the exercise of the right to health care.

After receiving the information from the Fund and from the complainant stating that the above actions rectified the deficiencies in the work of this authority, the Protector of Citizens suspended the investigation.

134 "Official Gazette of RS", No. 125/12.

*Right to health care*

In 2012, citizens filed complaints pointing to the violation of principles of good governance by medical institutions and the Ministry of Health, which resulted in the deprivation of certain rights in the health care sector.

***Example: The Ministry of Health failed to act upon its own decision on extraordinary control of the quality of the work performed by health care providers***

The Protector of Citizens received a complaint in which the complainant, being the patient of the Clinic of Gynaecology and Obstetrics, Clinical Centre Kragujevac pointed to violation of rights guaranteed by the Law on Health Care.<sup>135</sup> She was admitted to the Clinic of Gynaecology and Obstetrics because she had birth pains. According to allegations, doctors failed to provide her the adequate medical care, while the medical staff treated her and her husband in an extremely incorrect and improper manner. In spite of her continuous residence in the Clinic, after the medical examination on 6 January 2012, she was told that her baby died, and the delivery was made on 8 January. During her stay at the Clinic, the complainant and her husband were denied information regarding her health condition and the delivery.

The Protector of Citizens found certain deficiencies in the work and actions taken, i.e. failure of the Ministry of Health and Clinical Centre Kragujevac to act in this particular case. Namely, the protector of patients' rights in Clinical Centre Kragujevac failed to inform the complainants on undertaken measures in timely manner, but only after the expiration of the statutory time limit and during the investigation conducted by the Protector of Citizens. The health inspector submitted a proposal to the Ministry to organize and conduct an external control of the quality of the work performed by health care providers regarding the hospitalization and the complainant's delivery. The decision rendered by the Ministry ordered an extraordinary control of the quality of the work at the Clinic for Gynaecology and Obstetrics, Clinical Centre Kragujevac. **However, the Clinic failed to act upon the decision 11 months after the complainant's treatment was completed.** In order to remove the identified deficiencies, the Protector of Citizens referred a recommendation to the Ministry of Health of the Republic of Serbia, prompting it to conduct an extraordinary control of the quality of the work performed by health care providers who were involved in the treatment of the complainant and to submit the copy of the report to her. The time limit for acting of the Ministry of Health has not yet expired.

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135 "Official Gazette of RS", Nos. 107/05... 57/11.

*The Ministry of Health of the Republic of Serbia and the Department of Biomedicine failed to adopt, i.e. prepare bylaws necessary for the implementation of the Law on Treatment of Infertility by Biomedical Assisted Fertilisation<sup>136</sup>, within the statutory time limit*

The Protector of Citizens was contacted by the complainant, stating the violation of the right to treatment of infertility by biomedical assisted fertilisation. Based on the allegations from the complaint, it appears that the complainant, after years of infertility treatment and several unsuccessful in-vitro fertilizations, and based on advice of the doctor in the Institute of Gynaecology and Obstetrics, Clinical centre of Serbia opted for the treatment by biomedical assisted fertilization with donated ovum. The complainant stressed that the acting doctors explained her that she was expected to find a person willing and medically fit to be an ovum donor.

The complainant claims that she fulfilled her obligation to the Clinic and found a donor, and the preparation of the donor for the aspiration and the complainant for embryo transfer was synchronised. All costs related to the donor therapy and all financial obligations to the Clinic were borne by the complainant. However, the complainant claims that, as previously agreed with the acting doctor and after the donor was subjected to aspiration, she was admitted to the Clinic for embryo transfer, but was told that the *procedure was suspended pursuant to the order of the Director of the Clinic*. The complainant also noted that she insisted on a more detailed explanation of the reasons for this suspension but only received brief information that the procedure was suspended because *the new law came into force*. The complainant stressed that she felt humiliated, betrayed and exposed to a large amount of stress, as she unreservedly hoped for the successful outcome of the treatment. The complainant claims that few days later she was contacted by the acting doctor who informed her that it *was decided to perform the embryo transfer on her*.

**Believing that she was cheated and that she unjustly paid the financial funds, the complainant addressed the Ministry of Health in order to protect her rights. The Ministry informed her that the medical inspection is not competent and that her complaint was referred to the Department of Biomedicine, being the competent authority, even though the Department of Biomedicine orally informed her that the medical inspection is the competent authority.**

The Protector of Citizens considered it reasonable to initiate the investigation of the regularity and legality of work concerning the respect of a citizen right and adherence to the principles of good governance in the work of the Ministry of Health of the Republic of Serbia and the Department of Biomedicine, even before all legal remedies have been exhausted. Moreover, the Protector of Citizens specifically had in mind the fact that there is no corresponding legal remedy allowing the citizen to protect her rights.

The Protector of Citizens found that the complainant, undoubtedly dissatisfied with the treatment and provided medical care during the treatment, addressed the Ministry of Health on 2 December 2011. However, the Department for the organisation of health service did not take any actions but instead referred the complaint to the Department of

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136 "Official Gazette of RS", No. 72/09.

Biomedicine. Formerly the Department for the organisation of health service and health inspection and now the Department for Inspection, as the organisational unit of the Ministry of Health, should and must know whether the Department of Biomedicine, as the authority within the ministry and factually (not just by job classification), created conditions and started to perform inspection regarding the process of biomedical assisted fertilization. The complainant should not and does not need to know whether the Department or the authority or both are within the competences of the same ministry which is responsible for acting upon her complaint referring to biomedical assisted fertilisation and should not suffer the consequences of this situation.

The Protector of Citizens believes that this mutual transfer of competences regarding the inspection control in the medical institution where the citizen was treated for infertility is unacceptable, noting the lack of appropriate measures for prompt, efficient and adequate handling of this and other similar complaints of citizens concerning this sensitive segment of treatment.

In handling this complaint, the Protector of Citizens found that no regulations were adopted regarding the implementation of the Law on Treatment of Infertility by Biomedical Assisted Fertilisation. The Department of Biomedicine and the Ministry of Health failed to meet a statutory obligation and adopt implementing bylaws to the detriment of the lawful and proper exercise of the right prescribed by the Law.

In order to address the identified problems, the Protector of Citizens referred the following recommendations to the Ministry of Health of the Republic of Serbia and the Department of Biomedicine, namely: the Ministry of Health of the Republic of Serbia should, without further delay, perform the inspection control of the work of the medical institution where the complainant was treated for infertility by biomedical assisted fertilisation and ensure that the copy of the report of the completed inspection made by inspectors is submitted to the complainant; then, the Ministry of Health of the Republic of Serbia should take all necessary measures, also including issuing instructions, to prevent new cases of negative conflict of competences between the organisational unit within the Ministry with ineffective outcome, resulting in deprivation and hindering the exercise of citizens rights; the Department of Biomedicine and the Ministry of Health of the Republic of Serbia should, without further delay, take all necessary measures to adopt bylaws necessary for the implementation of the Law on Treatment of Infertility by Biomedical Assisted Fertilisation. The time limit for acting upon referred recommendations has not yet expired.

### *Labour rights of health care workers*

#### Referral to specialisation

During 2012, the Protector of Citizens was addressed by citizens – doctors and medical institutions, expressing their dissatisfaction with the actions of the Ministry of Health, regarding their requests for obtaining the approval for specialization. The received complaints mainly pointed to improper manner of notification of the outcome of the filed request and the lack of transparency of the whole process.

***Example: Deprivation of the right to information in the procedure conducted by the Ministry of Health for obtaining the approval for specialisation***

The complainant filed a complaint, stating that after obtaining necessary approvals from the Ministry of Health of Montenegro, the medical institution from Montenegro where she works, decided to refer her to a specialization.<sup>137</sup> The request for obtaining the approval for specialization in medical institution within the Network Plan and private medical institutions in Serbia was submitted to the clerk's office of the Ministry of Health of the Republic of Serbia. At the time the complainant submitted the request she was informed that she may get information regarding the request for the approval of specialization in the Ministry of Health. She received telephone numbers and names of officials able to provide such information.

The complainant pointed out in her complaint that she was unable to contact these ministry officials, because no one answered the phone. According to the complainant, many of her colleagues faced the same situation. She went to the Ministry's head office, but was unable to talk to anyone and get any information. The investigation is ongoing.

*Entry into labour relations*<sup>137</sup>

Based on previously filed complaints, the Protector of Citizens is familiar with the fact that health care workers in some medical institutions enter into labour relations without prior public announcement of a medical institution wishing to recruit new employees, that they are engaged only on a fix-term contract and also that for years their labour contracts are extended for a fix term. According to information obtained from filed complaints, some health care workers work for 6-7 years in the same medical institution with a fix-term contract

<sup>137</sup> Any physical or legal, local or foreign person who considers that their rights have been violated by an act, action or failure to act of an administrative authority of the Republic of Serbia may file a complaint with the Protector of Citizens (Article 25, paragraph 1 of the Law on the Protector of Citizens).

***Example: Entry into labour relations and exercise of the rights to specialization***

The Protector of Citizens received the complaint in which the complainant states the violation of her labour rights. The complainant is employed in the organizational unit of the Clinical Centre of Serbia, based on a fix-term contract, and the individual contracts were concluded for a period of six months up to one year. These contracts were consecutively concluded for few years. At the same time, she pointed out that during her fix-term employment, few doctors entered into labour relations for indefinite term in the same organizational unit, even though there was no prior announcement for recruitment of new doctors. Given the fact that the complainant has met conditions for the referral to specialization, the complaint pointed out that she was deprived of the right to vocational training, since she was not employed for indefinite term.

Upon the receipt of the notice on initiation of the procedure of control, the Clinical Centre of Serbia informed the Protector of Citizens that it concluded employment contract with the complainant for indefinite term, so the Protector of Citizens suspended the procedure.

***The method of calculating salaries of health care workers***

The complaints filed by health care workers pointed that medical institutions in which they are employed, the Ministry of Health and the Fund, violate the principles of good governance and disrespect the laws, thus violating the labour law and particularly the rights to regular and fair salaries.

***Example: Calculation of salaries of health care workers by applying the corrective coefficient – capitation formula***

The Union of Doctors and Pharmacists addressed the Protector of Citizens pointing out that the introduction of a new type of payment by performance, i.e. measuring the performance using capitation formula, will affect not only the health care providers but also the users of these services, i.e. patients.

During the meeting with the line minister and her associates, the Protector of Citizens informed them that the Union of Doctors and Pharmacists of Serbia raised their objections regarding this new method of performance evaluation of chosen doctors and dentists, and the method of calculating salaries of persons employed in medical institutions, stressing the importance of their dialogue.

The Protector of Citizens expresses its hope that the direct dialogue between the Ministry of Health and the Union of Doctors and Pharmacists of Serbia will help them find options to clarify both the disputed views in this particular case and address the problems they might encounter in their future work.

### *Conclusion*

Despite some substantial problems in the exercise of citizens' rights to health care, the Ministry of Health and the Republic Health Insurance Fund made progress with regard to their actions and cooperation with the Protector of Citizens, aimed at the elimination of identified deficiencies and promotion of the work of medical institutions, the Ministry and the Fund. In some individual cases, once the Protector of Citizens initiated the investigation of the regularity of the work of this authority, as a rule, the deficiencies were duly eliminated and the investigation were suspended.

However, this cannot change the fact that a large number of citizens are facing problems in the exercise of their rights to health care and insurance on a daily basis, and sometimes they are not in a position to address the Protector of Citizens nor the Protector of Citizens should act upon each individual case. Therefore, these deficiencies should be characterized as systematic deficiencies.

One of these deficiencies is that the Fund branches refuse to renew health cards to citizens who acquired the status of insured person from employment or a family member of an employed person whose employer failed to pay contributions for health insurance. If the employer fails to fulfil its statutory obligation to the public fund whose founder is the state and fails to pay the statutory contributions, and the public authorities (the Fund and the Tax Administration of the Ministry of Finance) fail to exercise their statutory powers – fail to share data on payments of insured persons and fail to file claims against offenders, i.e. file a request for the initiation of corresponding procedures, and then the right to health care cannot be exercised by those who have not offended the law – employees. The Protector of Citizens will try to make changes by submitting an initiative to the Government of the Republic of Serbia to amend the regulations, which shall hopefully be supported both by unions and employers' associations.

In the investigations of the regularity and legality of the work of medical institutions, which the Protector of Citizens conducted in the past, special attention was paid to the manner and the functioning of the scheduling of certain specialist-consultative and diagnostic examinations for which no waiting lists are prescribed. In the forthcoming period the activities of the Protector of Citizens will also be focused in this direction.

The Protector of Citizens welcomes efforts of the Ministry of Health on the passage of the Law on the Protection of Patients' Rights. At the same time it hopes that the Ministry will undertake more forceful measures to monitor the implementation of the law, hoping that this law will be observed more than not so broad patient's rights under the current Law on Health Care.

#### **2.14.1 Proposals for Improving the Position of Citizens in Relation to the Authorities**

1. The Ministry of Health has to improve its work in order to achieve efficiency in its work and improve communication with citizens and must be able to provide unimpeded and timely information to parties and citizens in direct communication, by telephone and by other available means of communication.
2. The Republic Health Insurance Fund and the Tax Administration of the Ministry of Finance must exercise their statutory powers and share data on insurance payments,

file claims and/or requests for the initiation of corresponding procedures against the offenders, in order to ensure that the insured persons are not unreasonably deprived of their right to health care.

3. The Republic Health Insurance Fund must organize its work and coordinate the work of its branches in a manner which will ensure the equal treatment in the same situations (issuing instructions, exercising control powers, etc).

## 2.15 SECTOR OF SOCIAL PROTECTION, PENSION AND DISABILITY INSURANCE

### **Sector of Social Protection**

The complaints filed to the Protector of Citizens in the field of social protection mainly point to inefficient and untimely work of social welfare centres in deciding on the social welfare rights. A smaller number of complaints relates to the failure of competent second-instance authorities to decide upon citizens requests within the statutory time limit, primarily the Ministry of Labour, Employment and Social Policy.

***Example: The Ministry of Labour, Employment and Social Policy  
decided upon the appeal after two years***

The complainant addressed the Protector of Citizens stating that the Ministry of Labour, Employment and Social Policy failed to decide upon the appeal she submitted against the decision of social welfare centre, despite the fact that the appeal was submitted two years ago. Having conducted the investigation of the legality and regularity of the work of the administrative authority, the Protector of Citizens recommended the line ministry to establish the reasons of this failure and depending on the outcome, to take appropriate organizational and/or disciplinary measures and ensure lawful, efficient and timely acting upon the submitted appeals and also to send a written apology to the complainant.

**Example: City Centre for Social Work failed to decide on the rights in the field of social protection within the statutory time limit**

The complainant expressed dissatisfaction with the actions of the City Centre for Social Work in Belgrade, Voždovac Department, due to the failure of the said authority to act upon requests for exercising the rights in the field of social protection within the statutory time limit. After the Protector of Citizens initiated the investigation, the City Centre for Social Work, Voždovac Department, informed the Protector of Citizens that it issued a new decision on the right to financial family support. The Protector of Citizens was also informed that the competent authority, acting upon the request of the complainant for the recognition of a right to social allowance, adopted a decision to recognise the right to social allowance. Having in mind that the authority eliminated the deficiency stated in the complaint, the Protector of Citizens suspended the investigation.

**Example: Costs of obtaining the evidence for the exercise of rights to social protection are borne by socially vulnerable citizens**

The Protector of Citizens received a complaint in which the complainant states to be the beneficiary of financial family support under the Law on Social Welfare, noting that twice a year he has to collect the documentation necessary for the exercise of this right. The complainant stressed that although he is exempt from the payment of fees for obtaining the required excerpts, certificates and official documents from various authorities, the Real Estate Cadastre Service of Smederevo charges fees for its documents, despite the fact that he needs these documents in order to exercise his right to social protection.

In this regard, the Protector of Citizens addressed a recommendation to the Ministry of Labour, Employment and Social Policy, prompting it to propose amendments to the Regulation on fees for using survey and cadastral data and services provided by the Republic Geodetic Authority, so as to include persons who require certificates for the purpose of exercising the rights to social protection in the category of persons who are exempt from the payment of fees for using data of the Republic Geodetic Authority. The Protector of Citizens also recommended that, until the adoption of the amendments to the said regulation, the Ministry should direct and coordinate the activities of social welfare institutions, by adopting an instruction obliging these institutions and social welfare centres to obtain, *ex officio*, certificates from the Republic Geodetic Authority. The Ministry of Labour, Employment and Social Policy notified the Protector of Citizens that it shall act in accordance with the referred recommendation.

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138 "Official Gazette of RS", No. 24/11.

139 "Official Gazette of RS", Nos. 45/02, 15/10 and 9/11.

### *Conclusion*

The line ministry should take more proactive attitude when performing the activities within its scope, particularly the supervision over the work of social welfare institutions. The Protector of Citizens is familiar with the views expressed on professional conferences and meetings by high representatives of the Ministry- that the Protector of Citizens “interferes too much” in the sector of social welfare, that it deals with individual cases without any legal basis and that it unreasonably assumes supervision over the work of social welfare centres. Therefore, in this annual report the Protector of Citizens wishes to point out not only the deficiencies in the work of the line ministry but also the need of this ministry to study attentively the Law on the Protector of Citizens. At the same time, the fact that based on citizens complaints the Protector of Citizens actually very often performs the control over the work of centres and in doing so finds various deficiencies, only speaks of a fact that the Ministry is under-performing within the scope of its activities, that the supervision conducted under the law is insufficient and also the Ministry lacks public confidence.

Social protection is the area in which the complaints are filed by persons belonging to the most vulnerable groups who require social care and whose livelihood is often threatened, so the position of the Protector of Citizens is that administrative authorities and social welfare institutions should put additional efforts and act efficiently, timely and within a reasonable time when handling and deciding on the rights of the said persons.

The Protector of Citizens feels obliged to honour the outstanding examples of professionalism, dedication and hard work in inappropriately hard working conditions that exist in some social welfare institutions.

### **Sector of pension and disability insurance**

In 2012, the Protector of Citizens received a number of citizens’ complaints related to difficulties in exercising their right to pension and disability insurance with the competent organizational units of the Republic Fund for Pension and Disability Insurance (RFPIO, hereinafter referred to as the “Fund”).

The majority of the complaints related to unjustified length of procedures before the first and second-instance authority of the Fund, where the most frequent issue was non-resolving of the requests for entitlement to a pension, followed by the failure to handle the complaints and the failure to adopt a decision at the first instance in the repeated procedure. Such omissions in the work of the Fund in the majority of cases were resolved after the Protector of Citizens initiated the control procedure, that is, the Fund acted upon its recommendation. The Omissions relating to the commitment of the user to return wrongly calculated and paid out amount of the pension, the Fund partially removed so that the RFPIO Board of Directors passed a decision in order to write off the debt, under certain conditions, to policyholders who had an overpayment of pension.

*Non-updated* main registry records represent an omission determined also in case of commitment to refund the excess amount of the pension, since in some cases the overpayment comes because of errors in the registry records of RFPIO (incorrectly calculated amount of pension or the data stating that the relevant pension was achieved according to local regulations without the data on the part of foreign pensions, etc.).

The complainants most frequently mentioned the deficiencies related to the failure to render professional assistance to ignorant parties and inconveniences experienced in the Fund, together with their main problem, rarely did the complaints refer solely on the aforementioned drawbacks.

The Protector of Citizens considered the actions of the Fund for a period of one and a half year after submitting the Protector of Citizens' Recommendations from 18 April 2011.<sup>140</sup> and found that during that period, in 68 of the citizens' complaints, the omissions were observed and identified in the recommendations. In order to remedy the identified deficiencies in the work of the Fund, and improve the rights of the citizens and prevent similar failures in the future, the Fund was asked to act upon the recommendations that is, to remedy the identified deficiencies in their work. Of the total number of initiated investigations per recommendations in 46 cases the investigations were completed, namely the Fund has complied with the recommendations and remedied the noted deficiencies.

Besides the omissions listed in previous reports of the Protector of Citizens<sup>141</sup>, the new omissions were observed in the work of the Fund.

***Example: Suspension of payments of the lowest level of pension according to the legislation of the Republic of Serbia, without passing a new decision***

The Protector of Citizens received a complaint from the complainant who stated that she is the pensioner of the Republic of Serbia, explaining that she was receiving the lowest amount of the pension, from 1 January, 2007. However, this amount was reduced, and she was never notified by the Fund of the reasons for such reduction. For this reason, she filed a submission to the said authority, asking them to provide the data on the amount of paid monthly pensions during the disputed period, as well as the decision according to which the lower amount of pension was determined.

Republic Fund for Pension and Disability Insurance submitted to the Protector of Citizens a statement stating that the new decision on the reduced amount of the complainant's pension was not passed, because the point is not about establishing a new pension amount, because since 1 January 2007, when the complainant moved to Serbian Republic, the payment of the complainant's retirement pension is effected without the lowest amount, which is already established under the general regulations of the initial decision with the corresponding adjustments based of that decision, in accordance with Article 5 Paragraph 4 of the Agreement between the Federal Republic of Yugoslavia and Bosnia and Herzegovina.

Since the complainant is being paid a reduced amount of pension, without issuance of a decision that would determine the new pension amount and having in mind that the Fund declared that they hold that a new decision should not have been passed, the investigation is in progress.

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140 See more at: [www.zastitnik.rs/index.php/lang-sr/2012-02-07-14-03-33/1345-2011-04-19-07-46-29](http://www.zastitnik.rs/index.php/lang-sr/2012-02-07-14-03-33/1345-2011-04-19-07-46-29)

141 See more in 2011 Annual Report of the Protector of Citizens (p. 90–96). Report available at: [www.zastitnik.rs/index.php/lang-sr/izvestaji/godisnji-izvestaji](http://www.zastitnik.rs/index.php/lang-sr/izvestaji/godisnji-izvestaji)

*Fund does not issue separate decisions on determining overpaid amounts of pension*

Article 208 Paragraph 2 of the Law on Pension and Disability Insurance<sup>142</sup>, provides that the Fund shall issue a decision on establishing the overpaid amounts of pensions, indicating the overpaid amount and the manner how to repay the same.

The implementation of this provision commenced since 1 January 2011, since when the Fund has been obligated to issue a separate decision on determining the overpaid amount of pension, its value and manner of its repayment.

The Protector of Citizens found that the Fund, in cases when it determines existence of several payments of pension or other cash payments from pension and disability insurance, does not make a separate decision on determining the overpaid amount of pensions, but refers the invitation to the insured person for a refund of pension payments, informing him/her on the amount of overpaid pensions and the established debt.

**Example: Refund of the overpaid amount of pension**

The complainant filed a complaint about the conduct of the Republic Fund for Pension and Disability Insurance, stating that she was informed that based on the decision on the final pension amount, it was established that that she had received a certain overpaid amount of the pension, which she is obligated to repay. After initiating the investigation of the legality and regularity of the Fund, the Protector of Citizens received a response from the said authority stating that the decision on establishing the overpayment of pension was not passed, since the Instruction on the procedure of determination, recovery and recording of overpaid pension amounts and cash payments from pension and disability insurance was taken in consideration and was adopted for the purpose of implementation of the Decision on determination and collection of receivables and write-offs of due uncollectible receivables from the beneficiaries.<sup>143</sup> According to the above stated Instruction, in case of differences in the amount of pension as per final decision in relation to a temporary decision according to which the payment was made, does not envisage passing of the decision on establishing the overpaid amount of pension. The Protector of Citizens found that the above mentioned Instruction was contrary to Article 208 Paragraph 2 of the Law on Pension and Disability Insurance and Article 2 of the Decision on determination and collection of receivables and write-offs of due uncollectible receivables from the beneficiaries for whom an obligation of passing a decision on establishing the overpaid amount of pension was prescribed. The process is in progress.

*Fund does not issue ex officio decisions on the definite amount of pensions*

The Protector of Citizens found that the Fund, after issuance of a temporary decision, when the conditions are met, issues a decision on the definite pension amount, most frequently against the request of the insured person, and not in the line of duty, thus acting contrary to the provisions of Law on General *Administrative* Procedure.

142 "Official Gazette of RS", No. 34/03... 101/10.

143 "Official Gazette of RS", No. 30/11.

***Example: Passing decision on the definite pension amount at the request of the insured person***

In the complaint filed with the Protector of Citizens, it was stated that the complainant repeatedly addressed the Fund, requesting issuance of a decision on the final amount of pension. Verbally she was informed that she should submit a request for the issuance of the final pension amount, which the complainant submitted on the same day. In the statement, delivered to this authority after initiating the investigation of the legality and regularity of RFPIO, the Fund stated that the decision on the final amount of pension are made *ex officio*, but given the fact that most of the decisions is made temporarily, **due to the large volume of work**, it happens that the decision on the definite amount of pension is issued only at the request of the insured person, as happened in the above case. The process is still ongoing.

*Fund incorrectly uses institute of providing evidence in administrative procedures*

The Protector of Citizens found that the Fund, in cases where a request is submitted for the exercise of rights from the pension and disability insurance should obtain from the applicant specific documentation, does not apply the relevant provisions of the Law on General Administrative Procedure.

***Example: Determining facts and presenting evidence in administrative procedures***

The complainant in his complaint to the Protector of Citizens, states that he has received the Fund's conclusion on provision of evidence, passed pursuant to Articles 126, 191 and 210 of the Law on General Administrative Procedure in which he was invited, within 15 days upon the receipt of the conclusion, to submit the evidence for the purpose of passing the decision in the administrative procedure. In the argumentation of the conclusion, it was stated, among other things, that if he fails to act in accordance with the conclusion, the decision will be passed on the basis of the available evidence, pursuant to Article 127 of Law on General Administrative Procedure.

The Law on Administrative Procedure, Articles 189, 190 and 191 that the Fund refers to, the Institute of securing evidence in an administrative proceeding is regulated, which is used in cases where there is a reason to fear that it will not be possible to present some evidence later on and/or it will be difficult to present it . In cases where there is no reason to fear this, the Fund should implement Article 126 of the Law on General Administrative Procedure, according to which the official person conducting the procedure may, during the procedures supplement the facts and present evidence to establish those facts that were not presented or were not established.

*"Kosovo pensions"*

The European Court of Human Rights in Strasbourg marked the suspension of pensions, or inability to pay the outstanding pensions to the insured persons as a system problem in the Republic of Serbia, because it is a violation of the right to peaceful enjoyment of possessions. The Protector of Citizens is of the opinion that **the state has to find a solution so that the citizens, many of whom are on the edge of poverty, exercise one of the basic human rights, the right to peaceful enjoyment of possessions and already vested rights to pension, and the right to obtain the decision within a reasonable time respecting the principle of equality and equal treatment of all citizens who are in the same situation.**

The Protector of Citizens received a number of complaints of the citizens (around 150), who have or have had a place of residence and made the whole or a part of insurance service on the territory of the Autonomous Province of Kosovo and Metohija. The Complaints indicate that they are prevented from exercising the right to pension and disability insurance. A part of the complaints received is related to the termination of pension payments, specifically indicating that the complainants, subject to the decisions of the competent organizational unit of the Republic Fund for Pension and Disability Insurance Fund (hereinafter referred to as the "Fund") had freely exercised a certain right to the full extent and the pensions were regularly paid to them in definite monthly instalments until the mid-1999. The complainants point out that they have applied for continuation of pension payments, providing proof on residence outside the territory of Kosovo and Metohija, but the duration of the procedures is unreasonably long, and the Fund ask them to provide some documentation that the citizens do not have. A certain number of the received complaints refers to an unreasonably long duration of the procedure for recognition of the right to a pension based on insurance service which is entirely or partly made with the business entities headquartered on the territory of the Autonomous Province of Kosovo and Metohija.

In accordance with legal powers, the Protector of Citizens conducted over 150 investigations of control of regularity and legality of the Fund and held a series of meetings with the representatives of the Fund. In addition, in making statements and submitting relevant documentation, the representatives of the Fund, fully in line with legal obligations from Article 21, paragraphs 1 and 2 of the Law on the Protector of Citizens, collaborated with the employees in the *Secretariat of the Protector of Citizens*. In addition, the representatives of the Protector of Citizens had several meetings with the representatives of the Fund and the Protector of Citizens held a meeting with the relevant Assistant Minister for Labour and Social Policy on 7 May 2012.

During the process, the Fund pointed out that the exercise of the right to pension of a number of beneficiaries is, "only temporary restricted" until the occurred problem get resolved within the overall issues and problems that exist between the institutions of the Republic of Serbia and the interim international administration in Kosovo and Metohija.

The Ministry of Labour and Social Policy in its submission, as well as in the meeting that the Protector of Citizens had with the Assistant Minister, specifically pointed to the fact that the Directorate of the Fund and the Ministry addressed all the relevant institutions in the Republic with the aim to draw attention to this problem and take a stand, but emphasizes that, "to date there has been no progress." Due to the lack of stand, the Fund usually refuses the requests for reinstatement of the pension to persons from the territory of Kosovo and Metohija, while the judicial practice in these cases is uneven.

The Ministry of Labour has indicated that the representatives of the Fund and the Ministry took part in preparation of the answer of the Representative of RS to the European Court of Human Rights regarding the application of Ljutvija Mahmut Grudić. Due to the complexity of the problem, the Representative of RS has sent a letter to the Office of the Prime Minister, Minister of Finance, Minister of Interior and Minister of Foreign Affairs, emphasizing the importance of the fact that this issue has been raised before the European Court of Human Rights, and pointing to legal consequences of possible adoption of the judgment that would establish violation of the law, which could result in a potentially large number of new similar cases.

The European Court of Human Rights in Strasbourg in the case of Grudić v. Serbia (application no. 31925/09) resulted in enacting the judgment on 17 April 2012 in which the Court accepted that the Fund had suspended payments based on the opinion of the Ministry of Social Affairs and later the Ministry of Labour and Social Policy, but noted that the above opinions had never been published in the "Official Gazette of RS" and in accordance with the position of the Constitutional Court of Serbia, the same cannot be considered as a law, but their function is to facilitate the implementation of the law. The Court also noted that the Supreme Court of Serbia, in its opinion from 15 November 2005, held that the right to a pension can be denied to a person solely in accordance with Article 110 of the Law on pension and disability insurance, and the pension payments cannot depend on whether the contributions for pension and disability insurance are collected in particular territory or not.

The Court considered that the state interference into peaceful enjoyment of possessions of the applicants did not comply with the applicable law, and the Court did not find it necessary to assess whether in such interference, a fair balance between the general interest of the community and protection of the fundamental rights of individuals was established. Because of all the above, the Court held that in case of the applicant there was a violation of the applicants' right to protection of possessions under Article 1 Protocol No. 1.

The Court, in view of the provisions of Article 46 of the European Convention on Human Rights<sup>144</sup> and considering a large number of potential applicants, took the position that the Government of the Republic of Serbia is obligated to take all appropriate measures to ensure that the competent authorities adopt the relevant legislation to ensure the payment of pensions and debts. It is important to note that according to this judgment, the Republic of Serbia is obligated, within six months from the occurrence of finality, to take appropriate measures so that the issue of pension payment to beneficiaries from Kosovo and Metohija would be resolved. In this sense, the Court's suggestion is to carry out, within the time specified, verification of total claims in order to identify the volume of the total debt in the same manner as was done in the case of the debts of socially owned enterprises.

The Protector of Citizens, **given the view of the European Court of Human Rights in Strasbourg regarding these matters, the received complaints and the facts established during the conducted investigations and relevant positive regulations** sent the opinion to the Government of the Republic of Serbia which stated that the Fund had committed errors in work because it suspended pension payments to pension beneficiaries who have permanent residence on the territory of Kosovo and Metohija, whose right to a pension had previously been determined on the basis of valid and enforceable decisions. In the opinion, the Government was recommended to take all the necessary and appropriate steps to enable a

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144 "The High Contracting Parties undertake to abide by the final judgment of the Court in any case to which they are parties."

fair pension payment to pension beneficiaries, which would contribute to the implementation of the decisions of the European Court of Human Rights in Strasbourg and settlement of all the Fund's liabilities on the basis of final decisions of that authority. This would enable realization of the citizens' rights guaranteed by the Constitution of the Republic of Serbia and the European Convention on Human Rights.

### *Conclusion*

On the basis of the complaints received from the citizens and the statements received from the Fund, the Protector of Citizens noted which are the most common reasons why the Fund did not comply with the requirements of the insured persons or did not do so within the prescribed time limit.

In some cases, procedural and organizational reasons led to the fact that the Fund was not able to act according to the requirements of the insured persons within the prescribed time limit. Namely, in cases where an administrative case was initiated against the lawsuit of the insured person and the case files are located in the Administrative Court, the Fund could not act until the files were returned from the Administrative Court and/or until the ending of the administrative dispute. Also, the lack of cooperation between organizational units of the Fund, or subsidiaries, and between the Fund's subsidiaries and the Tax Administration, when it comes to obtaining the documentation or certificate on paid contributions resulted in inefficiency in dealing with the requirements of the insured persons. Similarly, the cooperation between the Fund and foreign insurance holders, who often do not deliver the certificate on insured person's years of service even after several received interventions.

Unpaid contributions for pension and disability insurance, unconfirmed insurance service, the need for verification of income for certain periods, the lack of data on average earnings, still remain frequent reasons preventing the issuance of a decision on the final amount of pension.

**In order to achieve greater efficiency and effectiveness in Fund's handling of the requirements for obtaining the eligibility to pension and disability insurance, it is necessary for the Fund to improve cooperation between branch offices and between the branch offices and the Fund's Directorate, as well as with the foreign insurance holders. This can be achieved by signing a protocol on mutual cooperation, by holding the meetings, through more frequent mutual contacts and the like. This would remove one of the main reasons why the Fund does not act according to the requirements of the insured persons within the prescribed time limit.**

In 2012, while monitoring the actions of the Fund against the sent recommendations from 18 April 2011, it was noted that the Fund had in most cases subsequently rectified the errors indicated by the Protector of Citizens, that is, had acted in a manner as indicated in the recommendations.

**The Fund takes specific actions to improve its work and more efficiently handle the requests for eligibility to pension and disability insurance, which provides a good basis for further improvement of the Fund's actions. However, one should not ignore the fact that in their complaints, apart from the Fund's new violations of rights, the citizens continue to point to the omissions in work identified in the abovementioned recommendation.**

The Protector of Citizens, acting upon the citizens' complaints, noticed new omissions in the Fund's work, which indicates the need for the adoption of recommendations that would establish irregularities in the work of the Fund and the need to rectify these errors, with the aim of further improving the work of the Fund and legal and effective exercise of civil rights arising from pension and disability insurance.

The cooperation of the Republic Fund for Pension and Disability Insurance with the Protector of Citizens is at a satisfactory level, taking into account the fast action of the Fund as required by the Protector of Citizens. The eventual failure in meeting the legal time limit for the submission of the required statements is sporadic or related to the cases when the authority, due to the objective circumstances cannot provide all the required information, and/or when the process of collection of the data requires more time.

There is an evident awareness of the Fund related to the omissions in its work that the citizens indicated to in the previous period, as well as the Fund's willingness to systematically solve a number of individual complaints and problems indicated above. There is still a need to improve the work of the Fund, in order to achieve efficiency in work and improve communication with the citizens.

### **2.15.1 Proposals for Improving the Position of Citizens in Relation to the Authorities**

1. It is essential that the Ministry of Labour, Employment and Social Policy timely, lawfully and efficiently take all the necessary measures with regard to the exercise of its control authority over the work of Social Welfare Centre and with special attention, take measures relating to the protection of the rights of vulnerable groups.
2. It is necessary for the Republic Fund for Pension and Disability Insurance to improve its work so as to act more efficiently upon the requests of citizens related to exercising their rights to pension and disability insurance, and promote mutual cooperation among its branch offices and effectively cooperate with international funds.
3. There is still a need to improve the work of the Fund, in order to achieve efficiency in its operation and improve communication with citizens.

## 2.16 SECTOR OF LABOUR

### Exercising the right to work

In 2012, the tendency of increase of the number of complaints relating to violations of the rights to work and violations of labour rights was continued. Citizens addressed the Protector of Citizens indicating problems related to both finding suitable employment and conducting employment procedure, as well as to implementation of the laws and by-laws governing labour relations. A large number of complaints also referred to the manner of employment termination and the inability of the former employees, after termination of employment, to exercise their labour rights. In most cases, the complainants pointed to disregard of the provisions of the Labour Law by private employers, and in a smaller number of cases citizens expressed their dissatisfaction with the violation of their labour rights in public administration authorities, civil service and local authorities. It is noteworthy that, the Protector of Citizens is not empowered to supervise the observance of the rights of citizens in the work of the employers who are not the public administration authorities and/or holders of public powers.

The prevailing attitude of the citizens is that a job in Serbia is obtained and kept due to party affiliation, kinship, or some similar connection, or corruption. The Protector of Citizens was asked to provide protection against harassment at work based on membership in a particular political party.

#### *Employment*

When it comes to complaints relating to the recruitment process, given that the provisions of the Law on Labour<sup>145</sup> also apply to public agencies, it should be noted that this law does not regulate the issue of conducting employment competition procedure, neither does any regulation or general act define the duty of the public agency that is provide a legal remedy in cases of notification on the outcome of a public announcement.

#### *"Black-market" employment*

The Protector of Citizens' attention was frequently drawn to an increasingly broad issue of "black-market" employment, and/or evasion of registering the engaged employees to compulsory social insurance. In these cases, the engaged employees do not receive

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145 „Official Gazette of RS“, No. 24/05, 61/05 and 54/09.

regular salaries; their taxes and contributions are not paid; they do not enjoy elementary rights based on labour; they face a dilemma in deciding whether to report the employer and risk the loss of job, regardless of its disadvantages, or keep working unregistered, without almost any rights.

#### *Fix-term employment*

A large number of complaints referred to the duration of fix-term employment. Although the Law on Labour limits the duration of fix-term employment to one year, employees are kept in this status for several years. It has been noted that employers, in their attempts to avoid the implementation of this provision of the Law, conclude employment contracts with employees assigning them to different jobs, while in fact they continue to perform the same duties.

#### *Non-payment of salaries and other benefits and contribution evasion*

The existence of a large number of citizens is threatened by the non-payment and irregular payment of salaries. A great number of complaints emphasize the violations of employees' rights to other benefits, such as salary compensation during temporary inability to work, compensation for overtime, for night work, non-payment of anniversary awards, severance, etc. Although the law obligates employers to register employees for compulsory social security insurance and pay contributions, they often fail to fulfil their legal obligations, and for that reason many citizens do not have fully regulated insurance service and cannot achieve full pension rights. Special problem refers to the cases in which these obligations have not been settled, and the employer is removed from the register of companies, based on one of the legally stipulated methods. Often, there are court judgments which are, in such cases, not possible to execute, in spite of the fact that the plaintiff's right and/or claim has been established. Even though the collection and control of contributions for compulsory health, pension and disability insurance is the obligation of the state, because of the employers failure to fulfil their legal obligations, the employees are those who suffer most, who because of this reason, cannot exercise their right to pension, or health care.

It was noted that, in order to solve such problems faced by many citizens, it is necessary to consider whether the problem is caused by the regulations or by conduct of the competent authorities, or by both.

In its public statements, the Protector of Citizens has repeatedly asked the state to act decisively against employers who do not pay contributions. The attention was also drawn to inefficient acting of the authorities exercising control of regularity and legality of the work of the employers, and to the ineffectiveness of the sanctions that are untimely (when a citizen is no more able to realize his/her rights) applied to employers who do not respect their obligation to pay contributions.

#### *Discrimination*

A number of complaints was related to discrimination at work on political grounds.

***Example: Discrimination on political grounds (the need for increased initiative of authorities in the oversight of implementation of labour regulations)***

Acting on its own initiative, the Protector of Citizens found that organization of the work in public companies in Kuršumljia there were some irregularities towards individual employees who are engaged in cleaning of the buildings and facilities, but the party's motives and preferences, which should not be noticeable in the work of the authorities and employees of the public authorities and agencies, are extremely big and present on all sides, including the employees. It was noted that the organization of work was not entirely consistent with the regulations and omissions were made resulting in the improper treatment of individual employees. The feeling of discrimination was mitigated by the fact that the municipal leadership, headed by the mayor, themselves subsequently took part in cleaning up the city, as the Protector of Citizens had recommended.

After conducting control procedure and considering the facts and circumstances relevant to solving the problem of the employees, the Protector of Citizens by notification addressed the public on 31 August 2012. The statement presents the conclusions of the procedure, whereas a special emphasis was laid on present politicization in public enterprises founded by the municipality Kuršumljia and the fact that the party affiliation of each employee is known.

Reviewing the work of labour inspection, the Protector of Citizens found that in this particular case the supervision over the implementation of labour regulations in public companies in the municipality of Kuršumljia, was carried out by labour inspection only at the initiative of the Protector of Citizens. The Protector of Citizens expressed hope that in the future work the labour inspectorate would notice irregularities in labour relations timely and with more own initiative prevent violation of the right to work and labour work and protect the rights of the employees prescribed by the Law on Labour, collective agreement or contract of employment, and by the Rule-book, only when prescribed by the law.

It was observed that a large number of citizens complained of politicization in case of new employments, or when deciding on termination of employment of the employees who were made "redundant".

*Termination of employment and exercising the rights arising from the employment relationship*

Addressing the Protector of Citizens, citizens expressed great fear of losing their jobs, but also of the consequences of making illegal decisions on termination of employment, with additional difficulties due to non-fulfilment of the obligations of employers.

***Example: Implementation of liquidation procedure and inability to exercise labour rights***

The Protector of Citizens was addressed by a complainant whom the employer, during the period of using the right to maternity leave, did not inform either of the liquidation of the company, or of termination of employment, and in doing so did not fulfil the obligation of mandatory health and pension and disability insurance of employees, whereby exercising of her labour rights and the right to salary compensation during maternity leave were not exercised.

The complainant's attempt to report claims to liquidation administrator has remained unsuccessful. In order to realize the right to salary compensation, she addressed the competent authorities (Tax Administration, Republic Fund for Pension and Disability Insurance), but was given such a possibility only after reporting it to the NES. The complainant claims that the liquidation was carried out on the basis of the employer's statement on having settled all the obligations, even though her claims are not settled. The investigation is still in progress.

Citizens frequently refer to the Protector of Citizens because of the retention of their employment record cards and not checking out of the employees.

The Protector of Citizens was addressed by a number of the complainants, dissatisfied with the legal regulations which do not allow the return to work of the employees of the Ministry of Interior whose employment was terminated due to security obstacles. Namely, the provisions of the Law on Police<sup>146</sup> which was in force until 6 August 2009, it was stipulated that the employment of a police officer or any other employee, will be terminated if, during the course of his work at the Ministry, security obstacles referred to in Article 111 of this Law arise, due to which the employment relationship with him/her would not have been established if they had existed at the time of establishing the employment relationship. In applying such regulations it happened that a police officer was found innocent by a final court judgment, but he could not return to work because criminal proceedings were initiated against him, which presents a security obstacle.

*Labour Inspectorate*

A large number of complaints refer to the activities of the Labour Inspectorate, mostly because, as they state, the insufficient engagement of that authority or its failure to take appropriate legal measures in oversight procedures. The complainants often address the Protector of Citizens when the Labour Inspectorate declines its competence over their notifications (often due to the fact that at the time of filing a notification the complainant is no longer employed), or when this authority rejects their request for postponing the execution of the decision on employment contract termination, and in cases where the Inspectorate sends a notice to the submitter of notification or complainant that the conducted oversight procedure has not revealed any irregularities of the

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146 „Official Gazette of RS“, No. 101/05.

employer, when the complainant expects from the Protector of Citizens to evaluate the correctness of the content of such decision, (which does not fall within the competence of this authority).

It was noticed that the Labour Inspectorate in most cases acted only upon notification of interested parties, rarely on their own initiative, so that the irregularities in employment are identified untimely, or at the moment when there is no possibility for the employee to exercise his rights or there is no legal basis for Labour Inspectorate to carry out supervision (longer blockades of account, bankruptcy proceedings in which it is impossible to collect the receivables due to a small bankruptcy estate, liquidation of which employees are not informed and the like). It is necessary for the Labour Inspectorate to have a bigger initiative in order to prevent the violation of the rights to work and labour works and provide timely protection of the rights of the employees. The Labour Inspectorate should have broader powers, and greater accountability for not taking the necessary inspection actions and not exercising the relevant powers.

*Deciding on the rights of employees in the administrative procedure*

Unlike violations of the rights of employees by other employers, the Protector of Citizens may establish its direct competences to examine violation of the employees' rights when their employers are public administration authorities. Such complaints point to incorrect or unlawful administrative procedures conducted in order to decide about the rights and obligations of employees, initiation and conduct of disciplinary procedures, failure to act upon second-instance decisions of authorities or to take adequate measures to improve the status of employees towards which the state has certain obligations.

***Example: Failure to adopt administrative acts in the decision making process at the request of employees in public administration authority – the recommendations of the Protector of Citizens***

The Protector of Citizens was addressed by the complainants, dissatisfied with the conduct of the Ministry of Education and Science with regard to their requests for taking examination for education advisers. In the investigation of the work of this Ministry, the Protector of Citizens found that the Ministry of Education and Science, deciding in administrative matters against identical requests of the parties in different time periods and in the same legal situation, acts differently, or more precisely, decides by passing a decision or by sending a notification thereon.

The Protector of Citizens recommended that the Ministry of Education and Science, in its future work and in accordance with applicable regulations, when acting upon the requests of the parties is to issue administrative acts in an appropriate form (conclusion or decision but not a notification). Ministry of Education, Science and Technological Development in this matter acted in all in accordance with the recommendation the Protector of Citizens, replied in the form of a decision to the requests of the complainants and sent them an apology for the committed omission.

### *Conclusions*

Based on the experiences and findings that the Protector of Citizens came to when analyzing complaints relating to violations of labour rights and the statements of the authorities against which the control procedures were instituted, it can be concluded that the amendments to certain regulations would contribute to creation of better conditions for controlling legality of the work of employers and fulfilment of contractual obligations in relation to employees.

It is necessary to pass amendments to a number of laws in order to make sure that the state is to guarantee the exercise of employees' rights in cases where the employer failed to fulfil its obligations and pay the contributions, the competent authorities have tolerated such violation of the law. The Protector of Citizens shall submit an initiative to the Government in this direction.

On several occasions, during the reporting period, the Protector of Citizens pointed to the ineffectiveness of sanctions applied to the employers who do not respect their obligation to pay contributions, even when the Tax Administration submits a timely request for court proceedings, due to the relatively short periods of statutory limitation of misdemeanor procedure and the possibility of avoiding misdemeanor liability. Greater efficiency in conducting of the misdemeanor proceedings is necessary, so that the offenders could be quickly and adequately punished for the committed offense.

**In order to efficiently conduct the labour inspection, it is necessary to increase the number of inspectors, improve technical conditions for work, change legal regulations, in order to allow easier establishment and punishment of "black market" work (keeping employment contracts in the employer's business premises, registering concluded employment contracts with the competent state authority), and to give the inspectors broader powers, such as the power of requesting to see identification documents.**

Ministry of Labour, Employment and Social Policy and the Secretariat for Social Welfare of the City of Belgrade, act in accordance with the requests of the Protector of Citizens in due course, in due time, and the willingness to cooperate with the Protector of Citizens was observed. In the reporting period, the fair cooperation with the Labour Inspectorate was realized.

#### **2.16.1 Proposals for Improving the Position of Citizens in Relation to the Authorities**

1. It is necessary to change the regulations to ensure realization of the rights of employees when the employer failed to fulfill its obligations and pay contributions.
2. It is necessary that the Ministry of Labour, Employment and Social Policy increase the number of inspectors, broaden the competencies of the relevant labour inspection, improve technical conditions for work, and propose change of legal regulations, in order to allow easier establishment and punishment of "black market" work.
3. In its future work, the labor inspection will show greater level of initiative and initiate official inquiries when there are sufficient facts indicating the necessity of inspection.

## 2.17 SECTOR OF SECURITY SERVICES AND INDEPENDENT CONTROL AUTHORITIES

### **Sector of Security Services<sup>147</sup>**

The Republic of Serbia in the previous period made progress in strengthening democratic civilian control of the security services<sup>148</sup>, however a series of threats to the results achieved require new legal, organizational and practical measures and activation of all control factors in order to prevent a return to the old status or even greater deterioration.

Following the proposal the Protector of Citizens and the Commissioner for Information of Public Importance and Personal Data Protection (hereinafter referred to as the "Commissioner") from 2010, the Constitutional Court in June 2012 passed a decision on the unconstitutionality of the provisions of the Law on Military Security Agency and Military Intelligence Agency<sup>149</sup> that are inconsistent with the constitutional guarantee that any deviation from the secrecy of letters and other correspondence must be approved by the court.<sup>150</sup> The Protector of Citizens and the Commissioner, back in 2010, challenged the constitutionality of the Law on Electronic Communications<sup>151</sup>, and in May 2012 sent a proposal to the Constitutional Court to review the constitutionality of Article 286 Paragraph 3 of the Criminal Code<sup>152</sup> for the same reasons, because it allows the police to interfere with the secrecy of letters and other means of communication against the order of the public prosecutor, not the court.

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147 Despite the fact that the sectors of governance are generally consistent with the relevant ministries of the Government of the Republic of Serbia, this sector deviates from this rule, because of especially vulnerable (secret) data that can be accessed following the complaints, Protector of Citizens personally handles all the cases, bearing in mind the provisions of Law on Classified Information ("Official Gazette of RS", No. 104/09).

148 According to Article 4 Paragraph 1 of Law on the Security Services of the Republic of Serbia („Official Gazette of RS", No. 116/07 and 72/12), security services in Serbia are: Security Information Agency, the Military Security Agency and Military Intelligence Agency.

149 "Official Gazette of RS", No. 88/09.

150 Case of the Constitutional Court no. IUz-1218/2010. The decision was passed on 19 April 2012. "Official Gazette of RS", No. 55/12.

151 "Official Gazette of RS", No. 44/10.

152 "Official Gazette of RS", No. 72/11 and 101/11.

Commissioner for Information of Public Importance and Personal Data Protection has conducted an extensive investigation of telecommunication service providers, in order to ascertain the extent and the means by which the security services and the police accessed the data on citizens' communications without a court decision. During control activities of the Protector of Citizens and the Commissioner over the work of the police and it was noted that there are serious deficiencies in the legal, organizational and practical implementation of specific measures that threaten privacy (tele)communications of citizens, which opens the door to abuse. In order to overcome these shortcomings, the Protector of Citizens and the Commissioner proposed 14 measures to improve the current situation<sup>153</sup>. Despite the fact that the measures have been supported by the Prime Minister/Minister of Interior and the heads of the security services, there was no actual implementation thereof within the reporting period.

When speaking about the work against the complaints in this sector, compared to the previous year, during 2012, there was an increase in complaints of the employees of the military security service in which it was especially pointed to the unfair treatment of the superiors towards the employees of the services who drew attention of the competent control authorities to the illegal and irregular work of the Military Intelligence Agency (hereinafter referred to as the "MIA") and the Military Security Agency (hereinafter referred to as the "MSA"). In particular, the incorrect behaviour reflected, according to the statements of the complainants, in performance appraisal of the employees of these agencies, transfer within and outside the unit, and verbal pressure.

As for the Security-Information Agency during the reporting period, the Protector of Citizens received two regular complaints about its work. One investigation is still in progress, whereas in the other the Protector of Citizens found no reason to initiate a control procedure before the available legal remedies are exhausted.

***Example: Omissions in the work of the Military Intelligence Agency***

A member of the MIA of the Ministry of Defense addressed the Protector of Citizens and asked for the protection of his rights, which he believed had been violated due to the particularly unfair treatment of MIA towards him, which followed after he had pointed to the possibility of illegal acts and irregularities in the work of a number of officers. According to the statements of the complainant, his transfer to the new place of service was the result of retaliation, not the need of the service.

After the conducted investigation, the Protector of Citizens found omissions in the work of MIA to the detriment of the rights of its members and sent recommendations on how to eliminate them.

After serious resistance in MIA to accept the identified omissions and recommendations as a result of the control, including all subsequent challenging of the whole constitutional concept of independent control, MIA and the Ministry of Defense began implementing the recommendations, but after the time limit expired.

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153 See complete list of measures to be taken in the Report section: "2.17.1 Proposals for improving the position of citizens in relation to authorities".

*The right of the employer to inspect the electronic communications of employees*

During 2012, the Protector of Citizens received a request for an opinion from the Ministry of Interior on the right of the employer to inspect the electronic communications of the employees. Since this is a significant practical issue that is not specifically regulated by applicable law, and in this field there is not an established common practice of judicial and administrative authorities, the Protector of Citizens gave an advisory opinion so that in the existing conditions a balance could be achieved and a decent level of privacy of employees at their workplace could be preserved, on the one hand, enabling on the other hand the employer to control the means of communication that are made available to employees for official purposes and not for the abuse.

Until this field is specifically regulated by law, an employer can greatly prevent misunderstandings if he at the moment of recruiting an employee informs him /her in detail and periodically reminds the employee of the rights and obligations arising from the employment relationship, including the purpose and intended use of electronic and any other means of communication, whereas the manner of controlling this must not involve intrusion into the privacy of communication without a court order.

*Conclusion*

During the reporting period, there was observed an improvement in carrying out of obligations and cooperation of security services in the control procedures led by the Protector of Citizens. The cooperation with SIA and MSA is especially good, whereas the improvement in collaboration with MIA is possible. The key result of the Protector of Citizens in this sector in 2012 was the decision of the Constitutional Court on the unconstitutionality of certain provisions of the Law on MSA and MIA, made according to the proposal of the Protector of Citizens and the Commissioner for Information of Public Importance and Personal Data Protection, which protected the privacy of communication of citizens from supervision without a court order which established an extremely important domestic precedent consistent with the practice of international institutions for the protection of human rights. The control activities which brought about the proposal for 14 systematic measures to strengthen democratic civilian control of the security sector are of essential importance as well, the application of which would lead to a greater compliance of the needs of the state security, on the one hand and protection of citizens' rights, on the other hand. Towards the end of the reporting period, there was recorded an awakening of cooperation with the Parliamentary Committee for the control of the security services, which is the long-awaited and necessary step.

**Sector of Independent Control Authorities**

During 2012, the Protector of Citizens received a few complaints related to the work of other independent authorities, but the number has increased in comparison with the previous year.

Citizens complained of the work of the Commissioner for Information of Public Importance and Personal Data Protection, the Commissioner for the Protection of Equality, as

well as of the work of the Anti-corruption Agency and the complaints generally pointed to “administrative silence”, that is, failure of these authorities to decide upon the requests of the citizens within a reasonable time.

Having in mind the notorious problems in the provision of working conditions which the Commissioner for Information of Public Importance and Personal Data Protection has been facing with for years now, it is not surprising that the complaints of the work of this authority is primarily related to inefficiency. Many times has it been pointed out, both to the public and to the Government of the Republic of Serbia that the premises for the work of the Commissioner are unsuitable, that the number of employees is insufficient, and therefore it is the citizens who suffer most because their complaints are sometimes resolved within a period longer than the legally prescribed time limit of 30 days.<sup>154</sup> In the argumentation of its decisions related to this sector, the Protector of Citizens indicated to the complainants the possibility of initiating an administrative proceeding against the Commissioner’s failure to pass a decision in due course, simultaneously pointing to objective circumstances, that is, to unresolved problems related to the office space and personnel of the Commissioner, that considerably affect the compliance with the statutory time limits, due to which the Protector of Citizens has no ground to conclude that a violation of civil rights is caused by unlawful or improper conduct of the Commissioner, but this occurs despite of all its efforts to make the Government of the Republic of Serbia carry out its obligations and allocate an adequate office space for the work of this public authority.

The investigations of other independent control authorities are usually solved by dismissing and rejecting complaints as unfounded, and in this reporting year there was no basis for making recommendations in this sector. However, in the investigation of the complaints about the work of the Anti-Corruption Agency, the director of the Agency tried to call in question the control authority of the Protector of Citizens, of which the Protector of Citizens, in a separate act, notified the National Assembly, at the same time explaining to the director of the Agency why the control authority of Protector of Citizens in case of the Agency cannot be successfully challenged legally, even if there is justification thereon. Towards the end of the reporting period, this kind of problem in cooperation with the Agency was corrected.

### **2.17.1 Proposals for Improving the Position of Citizens in Relation to the Authorities**

1. Urgently amend the relevant laws in order to determine which specific courts have jurisdiction to decide on the requests of the police and Military Intelligence Agency to access the data on the communication of the citizens (according to the existing regulations, jurisdiction of the court is only known to the Security-Information Agency-SIA).
2. Implement effective organizational measures and IT solutions that accelerate prior judicial control and decision making upon requests for access to communications and data related to communications.

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<sup>154</sup> Article 24 Law on Free Access to Information of Public Importance, “Official Gazette of RS”, Nos. 120/04, 54/07, 104/09 and 36/10.

3. The Government should draw up drafts and propose, whereas the Assembly should pass the laws that respect the constitutional guarantees concerning privacy of communications and other human rights. The National Assembly should not ignore the opinion of the public authorities established to protect the rights of the citizens.
4. Unite the existing parallel technical capacities of various agencies and the police into one national agency which, as a provider, is to provide technical services required for the interception of communications and other signals to all authorized users.
5. Unify procedures to providers of electronic communications and their obligations.
6. Provide powerful, legal and factual protection of whistleblowers (especially in the security sector, but also in general).
7. Provide indelible record of access to telecommunications, with all the information necessary to execute a subsequent review of the legality and regularity of the access.
8. Legally regulate the work of private security sector and ensure efficient supervision thereon.
9. Criminalize obstruction of the investigation led by independent regulatory public authorities (Protector of Citizens, the Commissioner for Information of Public Importance and Personal Data Protection, Anti-corruption Agency, the State Audit Office, the Commissioner for the Protection of Equality). Any harassment, threat or other attempt to influence the complainant or a witness cooperating with the control authorities should be treated as a criminal offense.
10. Obligate internal supervisory mechanisms, to notify, in their findings of importance for respect of human rights, the Protector of Citizens and the Parliamentary Committee, especially in cases where these were ignored by the management of the authorities in which they were drawn up and in cases of serious alleged or confirmed violations of human rights.
11. Analyze implementation of the Law on Classified Information (including the adoption of necessary bylaws, declassification of the old documents, conducting of investigations, issuing of security certificates ...), and consider the need to make serious amendments to the relevant law or a new law in order to ensure achievement of the objectives for which it had been enacted.
12. Strengthen the capacity of control authorities so as to manipulate with the confidential data and protect them.
13. Pass a new law on the Security-Information Agency in order to, among other things, provide predictability in application of special measures.
14. Consider the police powers of intelligence and security services, that is, their participation in criminal proceedings.

## 2.18 STATISTICAL OVERVIEW OF CITIZEN COMPLAINTS CONCERNING MALADMINISTRATION<sup>155</sup>

The sectors of good governance generally coincide with the line ministries in the Government of the Republic of Serbia, and the complaints recorded in these sectors account for almost two thirds of the total complaints received in 2012.

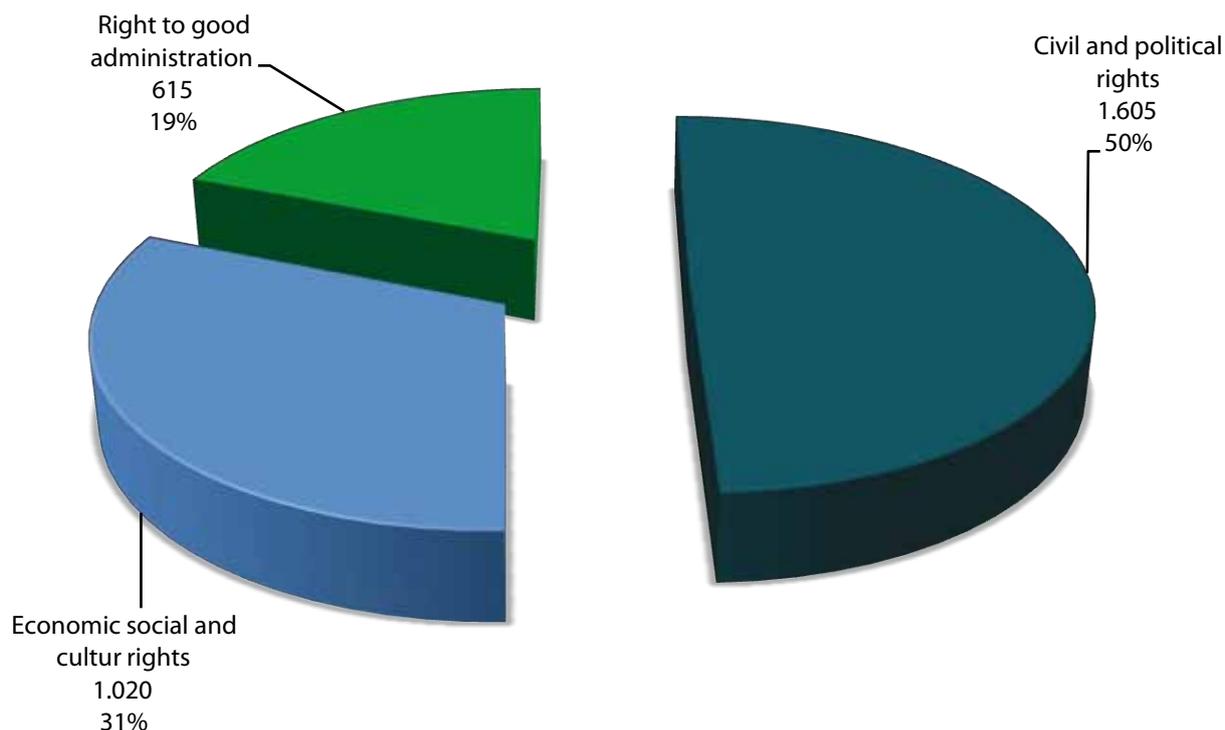
**Table 12 – Division of complaints by good governance sectors**

Sector of foreign affairs, diaspora and justice	436	9.74%
Sector of defence	119	2.66%
Sector of internal affairs	161	3.60%
Sector of finance, economy and regional development	358	8.00%
Sector of agriculture, trade, forestry and water management, environment, infrastructure, energy and mining	183	4.09%
Sector of urban planning, construction and cadastre	368	8.22%
Sector of human rights, public administration and local selfgovernment	425	9.50%
Sector of labour	280	6.26%
Sector of health, social protection, pension and disability insurance	402	8.98%
Sector of security and independent control authorities	22	0.49%
Sector of culture, education, science and sports	159	3.55%
<b>Total</b>	<b>2,913</b>	

The Protector of Citizens during 2012 acted in 2,913 complaints in the good governance sector, 2,901 written complaints were addressed by the citizens, and in 12 cases the institution opened own-initiative inquiries.

The majority of complaints relates to violations of the right to good governance, that is the violation of the basic principles and the principles of administrative actions of public authorities.

<sup>155</sup> For reasons of clarity and due to the fact that most of the violated rights is of the same kind, the statistics for good administration sectors was merged.



**Chart 10 – Types of violations of the citizens’ right to “good governance”**

**Table 13 – Most common violations of the citizens’ right to “good governance”**

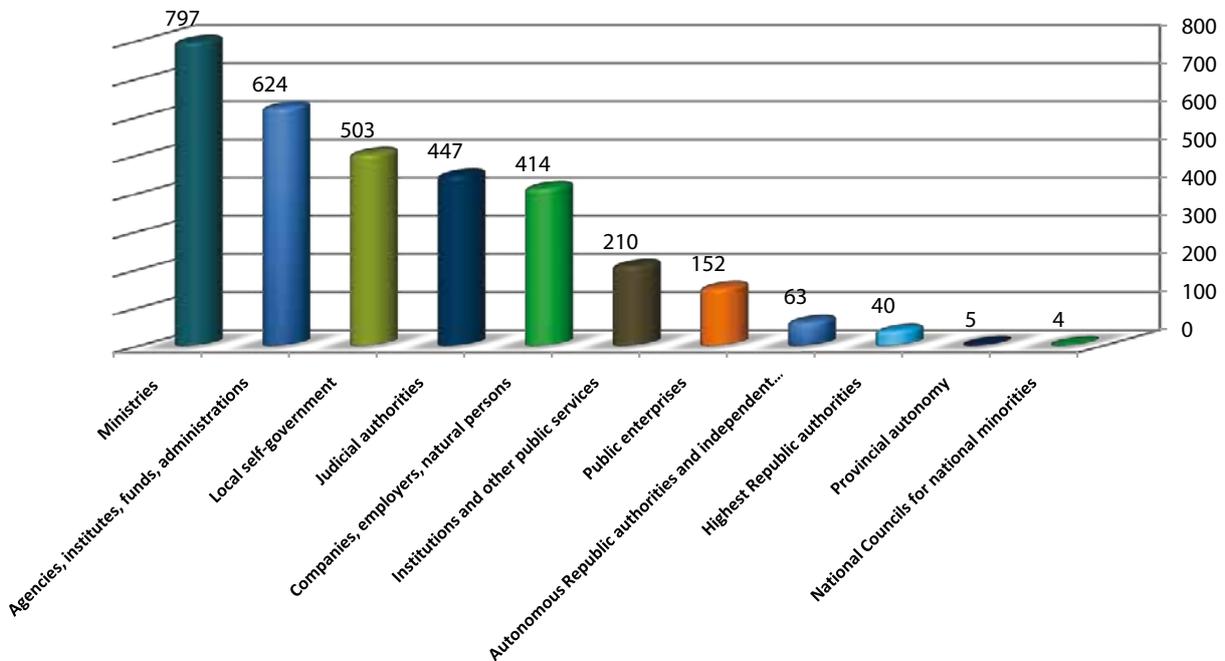
Right to observance of laws (no obvious material irregularities in the work)	502	31.28%
Right to receive a decision within the legally stipulated time limit	340	21.18%
Right to efficient work of authorities	201	12.52%
Right to be protected from administrative silence	162	10.09%
Right to respect created legal expectations	121	7.54%
Right to correct conduct of authorities (respect for the dignity of the party)	153	9.53%
Right to protection from the violation of procedure	46	2.87%
Right to equal treatment of citizens	43	2.68%
Right to the absence of abuse of power	35	2.18%
Right to proportionality in the work of authorities	2	0.12%
<b>Total</b>	<b>1,605</b>	

**Table 14 – Most common violations of economic and social rights**

Right to work and labour rights	364	35.69%
Right to the protection of property	359	35.20%
Rights from pension an disability insurance	193	18.92%
Right to health insurance and health care	86	8.43%
Other rights	18	1.76%
<b>Total</b>	<b>1,020</b>	

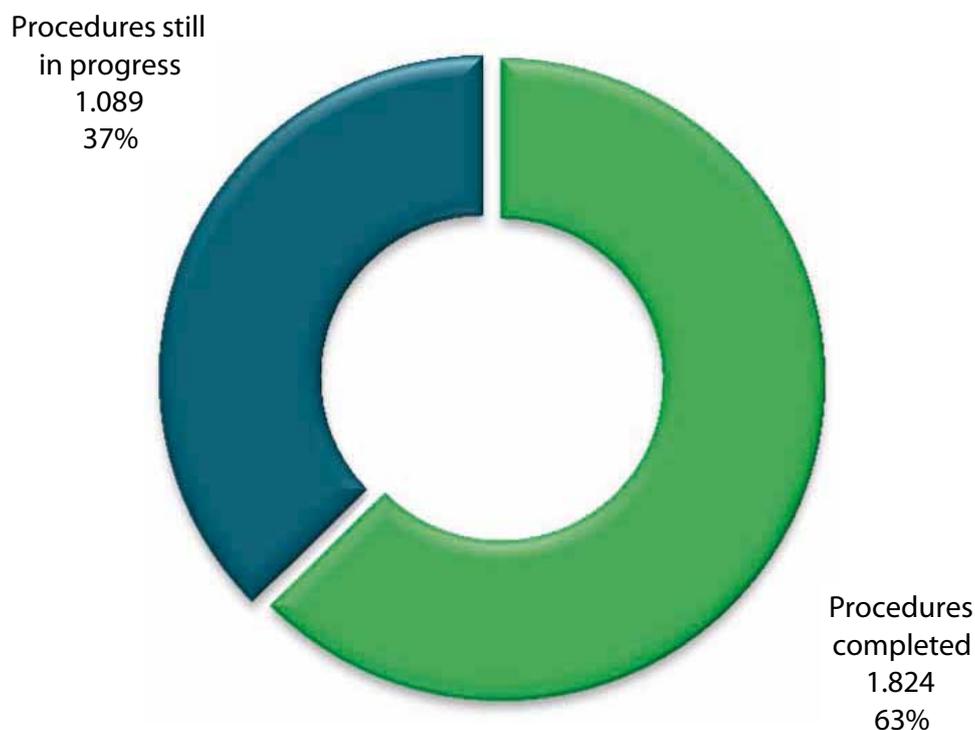
**Table 15 – Most common violations of civil rights**

Right to a fair trial and trial within a reasonable time	289	10.00%
Right to legal protection, legal remedy and legal aid	134	3.62%
Right to personal documents	45	2.03%
Right to inviolability of physical and psychological integrity	34	0.45%
Right to citizenship	21	0.77%
Right to privacy and personal data protection	14	0.41%
Other rights	78	2.85%
<b>Total</b>	<b>615</b>	



**Chart 11 – Complaints by the authorities to which they refer**

In 2012, the Protector of Citizens, acting on the complaints in the field of good governance, initiated 753 investigations of the work of administration authorities and conducted 21 oversight visits to administration authorities. After considering all the received complaints, conducted control and oversight procedures, the work was completed in 1,824 cases from 2012, and the complaint investigation in 1,089 cases is still in progress out of the total 2,913.

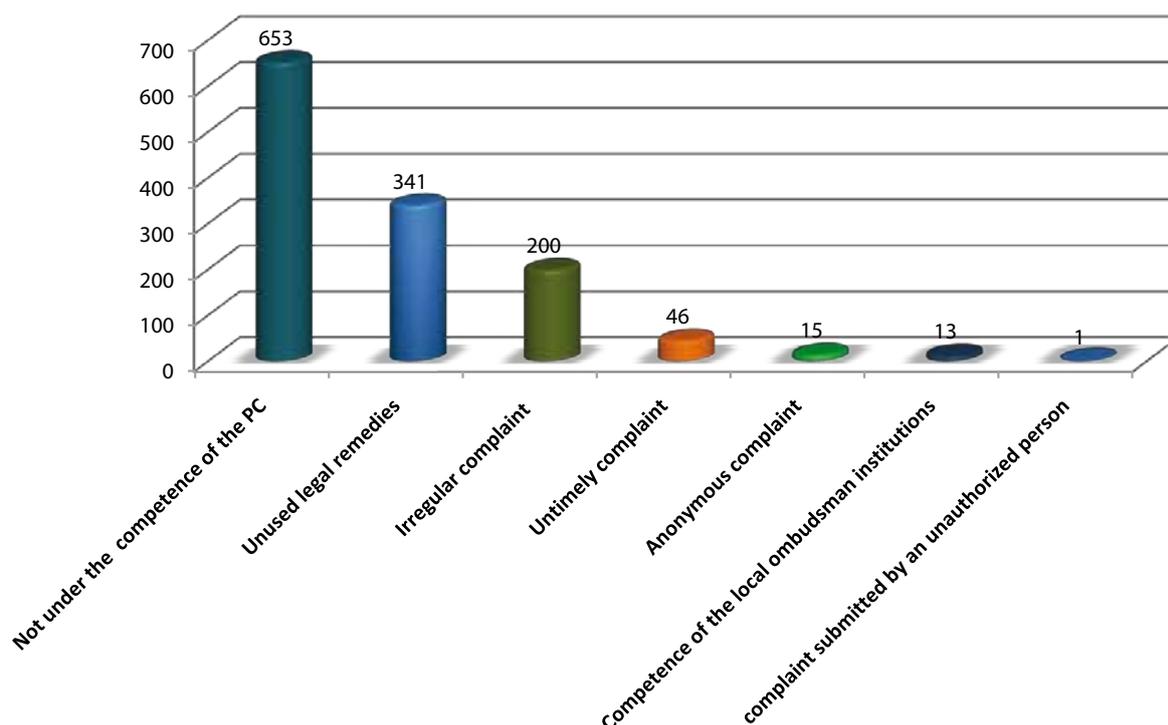


**Chart 12 – Good governance cases in 2012**

**Table 16 – The outcome of the investigations of good governance complaints in 2012**

Rejected complaints	1,271	<b>69.68%</b>
Unfounded complaints	302	<b>16.56%</b>
The authorities remedied deficiencies in their work by themselves during the investigation conducted by the Protector of Citizens	139	<b>7.62%</b>
Complaints resulting in given recommendations	59	<b>3.23%</b>
Complainants withdrew their complaints	35	<b>1.92%</b>
Opinions – pursuant Article 24, para. 2 of the Law on the Protector of Citizens	18	<b>0.99%</b>
<b>Total</b>	<b>1,824</b>	

## II. Overview of activity Areas



**Chart 13 – Reasons for rejection of good governance complaints**

In the course of 2012, the Protector of Citizens completed work on 870 complaints carried forward from previous years in the following ways: 132 investigations of the administration authorities were initiated and conducted 14 oversights of administration authorities.

So, after considering all the complaints from 2012 and the previous years, the conducted control and oversight procedures, the work on 1,824 cases from 2012 and 870 cases from the previous years was completed. Consequently, the work on the total of 2,694 complaints was completed.

**Table 17 – The outcome of the investigations of good governance complaints in 2012**

Rejected complaints	1.571	58.31%
Unfounded complaints	593	22.01%
The authorities remedied deficiencies in their work by themselves during the investigation conducted by the Protector of Citizens	241	8.95%
Complaints resulting in given recommendations	121	4.49%
Opinions – pursuant Article 24, para. 2 of the Law on the Protector of Citizens	109	4.05%
Complainants withdrew their complaints	59	2.19%
<b>Total</b>	<b>2.694</b>	



### III. COOPERATION OF THE PROTECTOR OF CITIZENS

Continuing its ongoing activities with the aim of bringing closer the role, function and importance of the Protector of Citizens in the protection and respect of human rights and the control of public authorities, the Protector of Citizens in 2012 held a series of lectures, but also organized and participated in numerous round tables, thematic meetings, conferences, etc.. These activities were aimed at the media, citizens' associations, student population and authorities at all levels. The Protector of Citizens is specifically focused on increasing its visibility at the local level. Thus, in addition to the "Electronic access to the Protector of Citizens"<sup>156</sup>, in December 2012 in Bujanovac, Preševo and Medveđa, the days of the Protector of Citizens were held, during which the Protector of Citizens and his associates held a series of meetings with the representatives of local self-governments and civil society organizations that are active in these municipalities. Besides, citizens were able to file complaints in the local offices of the Protector of Citizens in Bujanovac, Preševo and Medveđa, and a round table was held in Bujanovac on 12 December on the relationship between media and independent control bodies. In order to approach their work to citizens, several local self-governments - Bačka Palanka, Valjevo, Velika Plana, Dimitrovgrad, Kladovo, Negotin, Novi Pazar, Pančevo, Sjenica and Šabac – The Secretariat of the Protector of Citizens was receiving complaints directly, and the interviews were conducted with the civic associations representing the interests of people with disabilities and decision makers in local self-governments units of Bor, Zlatibor, Raška, Jablanica and Pčinj district.

In these districts and in Dimitrovgrad expert meetings were organized in which the decision-makers were presented their obligations relating to the protection of human and civil rights of the persons with disabilities, particularly in relation to providing full accessibility to the public and other buildings and facilities by developing services as part of the support system to their social inclusion, and in connection with the activities of the authorities of local governments and the possibilities of cooperation with the Protector of Citizens on improving the protection of the rights of persons with disabilities.

In the field of national minorities, in 2012, the cooperation was continued with the National Councils of National Minorities.

In the field of child rights, the Protector of Citizens, in addition to the control of the work of the authorities, in 2012 realized collaboration and offered good services to various organs.

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<sup>156</sup> See more about this project in the report section „International cooperation and projects“.

This is particularly emphasized in relation to the Ministry of Education, bearing in mind determination of the Protector of Citizens to contribute to the implementation of inclusive education. The Protector of Citizens hosted thematic meetings if it was evaluated on the basis of the complaint that there was a delay in the implementation of the principle of inclusion. The Deputy Protector of Citizens is an honorary member of the Republican network to support of inclusive education.

In the field of protection of persons deprived of liberty, the Protector of Citizens during 2012 achieved successful cooperation with the public authorities, especially the Ministry of Interior, Directorate for Execution of Sanctions of the Ministry of Justice and Public Administration, Ministry of Health and the Ministry of Labour, Employment and Social Policy. Especially encouraging is the fact that in the conducting of the activities of the National Mechanism for the Prevention of Torture with the managements of the visited institutions where persons deprived of their liberty are accommodated, a cooperative dialogue was established in order to implement the recommendations.



**Image 5 "Panel of Young Advisors"**

In 2012, the Protector of Citizens was cooperating with the Commissioner for the Protection of Equality, through joint expert working group on the analysis of the existing legal framework for realization of the rights of transgender people. In addition, this cooperation was marked by the following: a three-day seminar for children, for the newly elected members of the advisory body of the Commissioner for the Protection of Equality and members of the Panel of Young Advisors of the Protector of Citizens, as well as by participation of the members of the Panel of Young Advisors in the "Living Library" project, which was launched by the Office of the Council of Europe in Belgrade together with the Commissioner for the Protection of Equality.

The Protector of Citizens had a joint press conference with the Anti-Corruption Agency on the occasion of the publication of the Report on the analysis of the textbooks approval procedure and selection of textbooks in schools which was prepared by the Agency, during

which the Protector of Citizens' experiences in the fight against corruption were presented. The Protector of Citizens also participated in Anti-corruption Forum in Serbia which was organized by the Agency.

In order to promote the principles of good governance, the Protector of Citizens took part in the debates on good governance in Leskovac and Novi Pazar held during the campaign, "I want ... because I live here," conducted by the Program of the European Partnership with Municipalities - EU Progress, in cooperation with the Balkan Investigative Reporting Network (BIRN) and the Executive Group Communications Agency. The aim of the campaign is to promote the five principles of good governance in 25 municipalities in the south and southwest Serbia. During the debates in which the representatives of other independent institutions, local self-governments, public authorities and civil society organizations took part, the copies of the Code of Good Governance were distributed, which the Protector of Citizens prepared and sent to the National Assembly of the Republic of Serbia for adoption in 2010.

In performing of the activities of the National Mechanism for the Prevention of Torture, an intensive cooperation was established with the Provincial Ombudsman Institution of the AP Vojvodina.

### 3.1 COOPERATION WITH PUBLIC AUTHORITIES WHOSE WORK THE PROTECTOR DOES NOT CONTROL

The Protector of Citizens during the reporting period tried to improve the relationship with public authorities whose work the Protector of Citizens does not control - the National Assembly, the President of the Republic, the Government, the Constitutional Court, Courts and Public Prosecutor's Offices.

However, the National Assembly did not in accordance with the Law on the Protector of Citizens considered the Annual Report of the Protector of Citizens for 2011. Of the Parliamentary Committees dealing with issues under the jurisdiction of the Protector of Citizens only the Committee for Justice and Administration reviewed the report. On the other hand, the Protector of Citizens is encouraged by the initiative of the Parliamentary Committee for the control of the security services to cooperate with the independent control authorities, as well as by the first meeting, held at end of 2012.

The Protector of Citizens in order to improve the situation in the field of gender equality began controlling the implementation of the Law on Gender Equality, first at the local level with the intention to gradually eliminate gender inequalities of women in relation to men, and introduce gender perspective into the work of all the organs and institutions. The first step is to establish cooperation with the Committee for the Protection of Human and Minority Rights and Gender Equality of the National Assembly.

In the new convocation of the National Assembly, for first time the Committee on the Rights of the Child was formed as a permanent task force, which invites the Protector of Citizens to its meetings.

In cooperation with the relevant United Nations agencies, very important joint activity of the National Assembly and the Protector of Citizens was organizing of the International Conference on the relationship between parliaments and national human rights institutions, in Belgrade in February 2012.<sup>157</sup>

During the reporting period, the Protector of Citizens also participated in several public hearings in the National Assembly, including "The National Assembly on the Road to European Integrations" and "Execution of Judgments of the European Court of Human Rights in Serbia." Also, the Deputy Protector of Citizens for children's rights took part in a public hearing on the protection of children from abuse on the Internet.

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<sup>157</sup> See more about this event in section "Activities of the Protector of Citizens as a National institution for protection and promotion of human rights".

Cooperation with the Government, however, is completely absent. The Government did not take any visible step to make it clear to administrative authorities whose work it manages that it is a real guarantor of their commitment to fulfil legal obligations towards the Protector of Citizens, cooperate with it and implement its recommendations in order to promote respect of the rights of citizens.

To certain initiatives of the Protector of Citizens, which were addressed in accordance with the explicit provision of the Law on the Protector of Citizens, the Government had no response whatsoever.

### 3.2 COOPERATION WITH CIVIL SOCIETY AND ACADEMIC COMMUNITY

The Protector of Citizens and 2012 continued the practice of cooperation with the academic community, giving lectures to students of undergraduate and post-graduate studies. Thus, to the students of Police Academy he gave a lecture about the place and role of the Protector of Citizens in the legal system of Serbia, with an emphasis on working with the police, while at the Faculty of Political Sciences in Belgrade he talked during the lecture on public administration. At the Faculty of Law of the University of Belgrade, the Protector of Citizens held a lecture to the students of master studies of administrative law.

During the reporting period, the cooperation with non-governmental organizations related to the exercise of the rights of the Roma as a vulnerable group was continued, in particular with non-governmental organization "Praxis", so as to create a common mechanism for the sustainable monitoring of implementation of the recommendations of the Protector of Citizens relating to vulnerable groups.

In the field of gender equality, in 2011, the Protector of Citizens established and deepened cooperation with several associations of citizens, including the Autonomous Women Centre through the work on legislative initiatives for amending legislation to improve legal protection for women victims of domestic violence domestic criminal law; Victimology Society of Serbia, Gay Straight Alliance, and Labris Gayten representatives LGBT.

During the year, the cooperation with the Belgrade Centre for Security Policy was developed in the field of monitoring of the status of women in the security sector, that is monitoring of the work of public authorities in implementation of United Resolution 1325 - Women, Peace and Security<sup>158</sup> and Action Plan of the Republic of Serbia<sup>159</sup> for implementation of this Resolution. Also, special attention was paid to the establishment and development of cooperation with *Roma Women's Centre "Bibija"* for the purpose of monitoring the measures for protecting and improving the position of Roma women.

Cooperation with civil society in the field of children's rights, was especially marked by the support of the Protector of Citizens to Incest Trauma Centre, which is the official campaigner in the Republic of Serbia of the *Council of Europe ONE in FIVE Campaign*<sup>160</sup>, and cooperation with the Centre for Interactive Pedagogy, through participation of the Panel

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158 Resolution of UN Security Council S/RES/1325 (2000).

159 National Action Plan for implementation of Security Council Resolution 1325 of the United Nations - Women, Peace and Security in the Republic of Serbia (2010-2015).

160 „ONE in FIVE“ campaign refers to protection of children from sexual abuse.

of Young Advisers in the project "Equal Opportunities for All", as well as cooperation with the Network of Organizations for Children (MODS) in a variety of fields related to children's rights. The Deputy of the Protector of Citizens was providing a special support to associations of parents of the children with dyslexia, thus drawing attention to the need for adequate support for children with dyslexia in the education system.

The Protector of Citizens closely cooperated with organizations and civil society organizations dealing with the rights of persons with disabilities - Association of Students with Disabilities, National Organization of Persons with Disabilities, the *Centre for Independent Living Serbia* and *Centre "Living Upright"*, Accessibility Audit Association, Association of Persons with Disabilities "Equality" Prijepolje, Regional Centre for Monitoring of the Rights of Persons with Disabilities, Muscular Dystrophy Association of Zlatibor Region, the Association of Paraplegics of Raška District, Municipal Organization of the Blind of Bajina Bašta, Association of Patients of Cerebral Palsy Children Zaječar, Association of the Deaf and *Partially Deaf* Negotin, *Multiple Sclerosis Society, Knjaževac*, European Expert Group on Deinstitutionalization, International Aid Network (IAN) and the Mental Disability Rights Initiative (MDRI-S).

In the performance of the activities of the National Mechanism for the Prevention of Torture an intensive cooperation with a number of civic associations was established (especially with the Belgrade Centre for Human Rights, the Helsinki Committee in Serbia, IAN, MDRI-S, the Lawyers' Committee for Human Rights - YUCOM, Victimology Society of Serbia, the Committee for Human Rights Valjevo, Valjevo Dialogue, Centre for Human Rights Niš, Serbia against the Death Penalty and the Centre for Cultural Decontamination), as well as with the Police Academy, Serbian Medical Chamber and the Institute of Forensic Medicine, University of Belgrade.

### 3.3 COOPERATION WITH THE MEDIA

In the year of re-election, the journalists followed the work and the activities of the Protector of Citizens with special attention, as well as the attitude of the authorities towards this independent institution. Print and electronic media were constantly emphasizing the necessity of functioning and independence of the independent state institutions as the foundation of a democratic system in Serbia.

Number of articles in 19 newspapers, which this institution followed in 2012, is 859 (including statements, reports, news, commentaries, communications), which is over a hundred more than in previous year. Most articles were published by the daily papers *Politika*, *Blic*, *Danas* and *Dnevnik*. At nine television with national coverage 309 stories were aired about the work and activities of the Protector of Citizens. Most of them appeared on RTS, B92 and TV Pink. The media wrote about the institution on the basis of the statements of the Protector of Citizens and his deputies and other officials, and also on the basis of the report from the event, announcement or in the form of news.

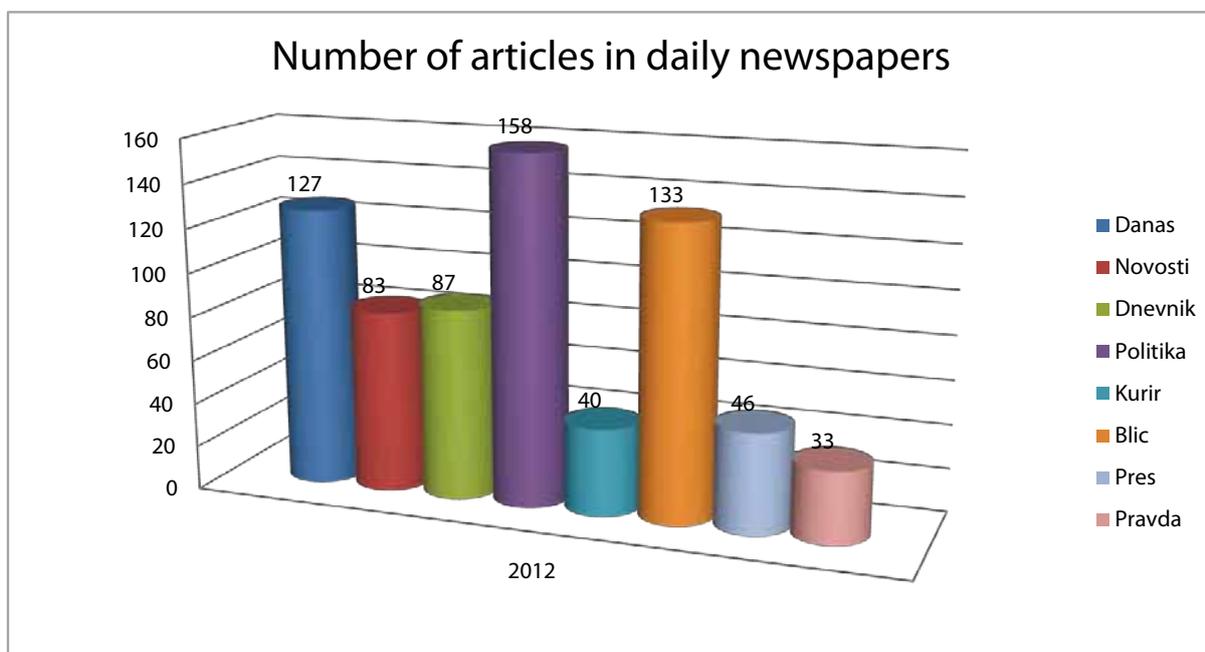


Chart 14 – Number of articles in daily newspaper

In a year, 25 comments were published in the press, relating to the work and activities of the Protector of Citizens, mostly in newspapers *Politika*, *Danas* and *Blic*. The journalists in a huge percentage responded positively to the initiative of the Protector of Citizens, they specially supported his efforts to amend the regulations enabling the citizens communication interception without a court order, and the Law on Non-Contentious Procedure aimed at recognition of the legal identity of all the citizens. The media reported his position when he was pointing to an illegitimate work of the High Judicial Council. With great interest, they wrote about his visit to the workers of "Ratko Mitrović" from Kragujevac while they were on hunger strike. Responding to the current events in the fields of law that they follow, both the Protector of Citizens and his deputies were publishing their comments in the press. There were more published interviews than in 2011, a total of 14, most of which were published in the newspaper *Danas*.

Televisions hosted the Protector of Citizens 14 times. Topics for discussion were the current trends in society, such as banning the operation of the movement "Obraz", reelection to the office of the Protector of Citizens, the control of the security services, initiatives to change laws to respect and promote the rights of employees, the Pride Parade and so on.

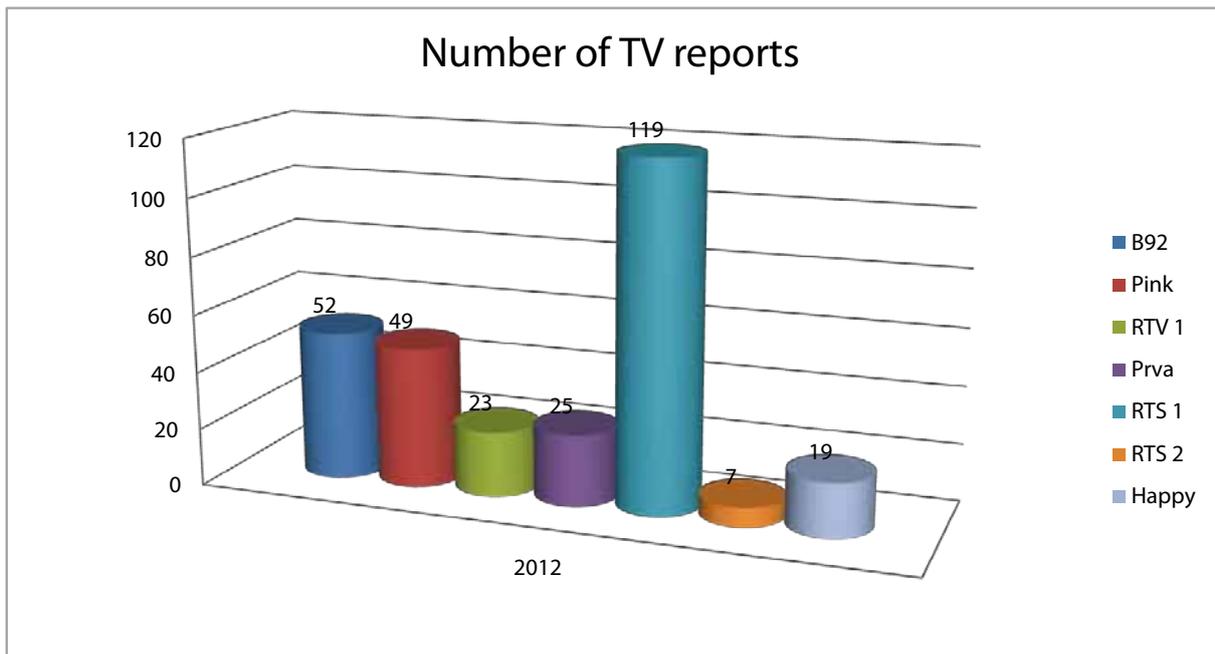
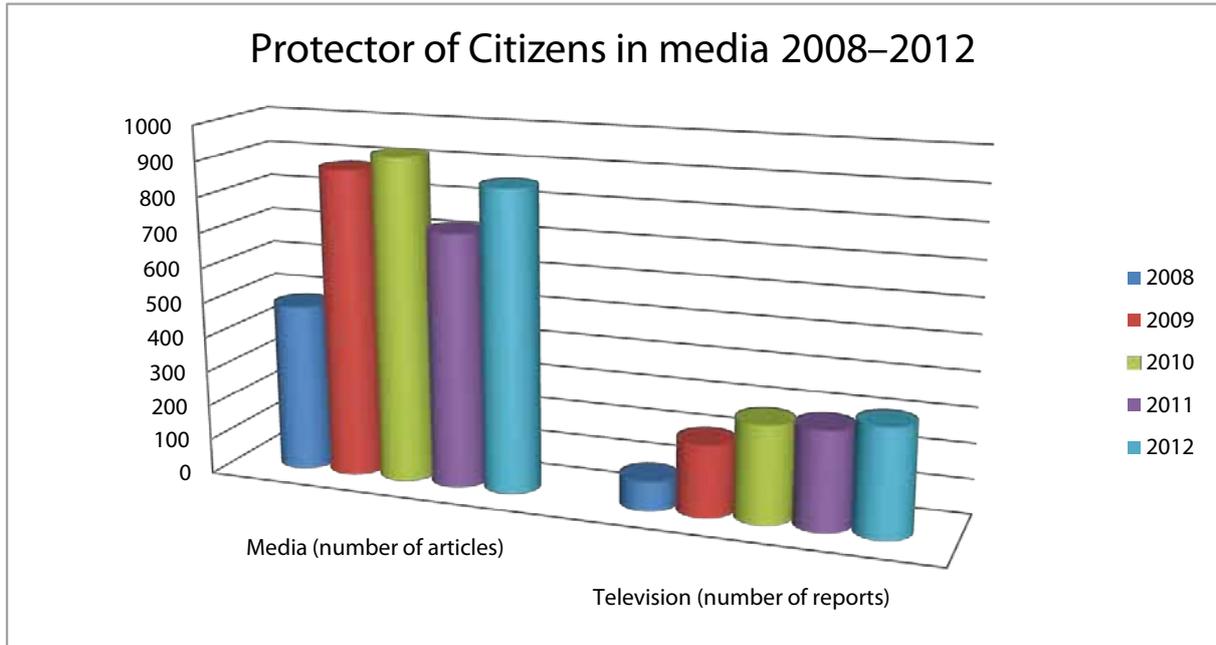


Chart 15 – Overview of the number of TV reports

The Protector of Citizens received unequivocal support from the media when the time of the expiry of the first term indicated the necessity of (re)election and urged MPs to put the debate on the agenda of the National Assembly as soon as possible. Commenting on the unanimous support of MPs for the re-election of the first Protector of Citizens, the media agreed on a key point - the Protector of Citizens had succeeded in uniting the parties in power and the opposition in sitting in parliamentary benches.



**Chart 16 – The Protector of Citizens in media 2008–2012**

### 3.4 INTERNATIONAL COOPERATION AND PROJECTS

During 2012, the Protector of Citizens continued intensive international cooperation at the multilateral and bilateral level. Cooperation with regional and European organizations and institutions, and their specialized bodies was reinforced even more. Mechanisms for cooperation with other countries' ombudsmen were improved through bilateral and multilateral meetings, primarily in regular conferences, round tables, seminars, trainings and other educational and other events organized in the country and abroad.

The Protector of Citizens continued to perform regular activities as a member of several professional networks: the International Coordinating Committee of National Human Rights Institutions, the International Ombudsman Institute, the Association of Mediterranean Ombudsmen, the European Ombudsman Institute and the European Network of Ombudsmen for Children.

As a full member, the Protector of Citizens took an active part in the work of the European Network of Ombudsmen for Children (hereinafter referred to as the "ENOC").<sup>161</sup> Deputy of the Protector of Citizens was a member of the working group that prepared the European survey on situation of children in conflict with the law and ENOC statement on the need of improving the status of children, in accordance with the accepted principles and standards of juvenile justice. The statement of the Network is based on the data from the survey, which involved most of the Ombudspersons for Children of Europe, including the Protector of Citizens, and was adopted at the ENOC Annual Conference, held in October 2012, in Nicosia. At the conference, Deputy Ombudsman on Children's Rights was elected the member of the Network Bureau for 2013 as the first representative of the South-Eastern Europe so far.

During the reporting period, the Protector of Citizens held a series of meetings with the representatives of international organizations. Ahead of parliamentary and presidential elections, the Protector of Citizens met with *Corien Jonker*, Head of the *OSCE Limited Election Observation Mission*. During the reporting period, meetings were held with Jelko Kacin, European Parliament's rapporteur for Serbia, and Stefano Sannino, Director General for Enlargement of the European Commission. The Protector of Citizens also received Jean-Charles Gardetto, Rapporteur of the Committee on Equality and Non-Discrimination of the Council of Europe.

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<sup>161</sup> See more at: [www.crin.org/enoc/](http://www.crin.org/enoc/)

Cooperation with the Council of Europe was continued in several directions. Within the cooperation with the European NPM Network, the Protector of Citizens participated in important meetings in Geneva, Moscow, Tirana, Paris and Baku, and important exchange of experience among European NPM was realized. At a meeting with the Protectors of Citizens in the region, which was organized by the Council of Europe in Tirana (the topics were the protection of minorities, the existence of cooperation and coordination among the bodies involved in the protection of minorities) and in Skopje (the implementation of the rights of minorities in the Balkans, the trends, challenges and prospects) as for the encouragement of the regional cooperation on the protection of minority rights, the work of the Protector of Citizens related to the protection of minority rights was praised as a good example for the region. At a meeting of the Council of Europe, which was dedicated to the contemporary challenges of independent bodies in combating racism and xenophobia, and which was attended by ombudsmen and commissioners for equality from European countries, it was pointed out, among other things, to the role and the importance of acting of the Protectors of Citizens related to protection of the rights of national minorities in Serbia, and in particular the work related to the elimination of all forms of discrimination manifested in the activities of public administration.

In the field of gender equality, the Protector of Citizens has established cooperation with the OSCE Mission to Serbia. The cooperation takes place through the exchange of experiences, presentation of the reports from foreign experts, holding meetings with the representatives of the OSCE from the country and the world, through joint planning, and financial support to activities of the Protector of Citizens. The first effects of the established cooperation are expected during 2013. OSCE Mission to Serbia was continuously assisting the establishment and operation of the National Preventive Mechanism in Serbia (NPM). During the reporting year, several round tables and conferences on the subject were organized, the Protector of Citizens participated in the OSCE meeting in Warsaw, a study visit to Denmark NPM was realized, information leaflet on the NPM was printed, a publication *Setting up NPM*<sup>162</sup> was issued.

*Deputy Ombudsman on Children's Rights*, at the invitation of the Council of Europe and UNICEF, was giving lectures in Turkey, Tunisia and Albania. Her presentations were related to issues of adoption of children, inclusive education, the protection of children from violence, and the introduction of an independent institution for the protection of children's rights in the Tunisian legal system.

Previous year in the field of children marked the project "Promoting Good Parenting Practices in Serbia", which is intended to informing and sensitizing the public, primarily parents, about the harmful effects of corporal punishment of children, which was supported by UNICEF. Within the cooperation with this organization, the Protector of Citizens, in October 2012, conducted monitoring of the transition of children from residential institutions in Kulina in small home communities in Aleksinac Negotin and Niš, on which a separate report was made .

Support to the work of the Protector of Citizens to protect and promote the rights of persons with disabilities was provided, in 2012 as well, by the Office of the High Commissioner for Human Rights (OHCHR) and the UN Development Programme (UNDP). Cooperation with the United Nations was particularly intense within the framework of the UN

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162 Report available at: [http://ombudsman.npm.rs/attachments/147\\_Report%20NPM%20\\_2\\_.pdf](http://ombudsman.npm.rs/attachments/147_Report%20NPM%20_2_.pdf)

Subcommittee for the Prevention of Torture (hereinafter referred to as the "SPT"). At the beginning of 2012, the Protector of Citizens submitted to the Subcommittee a report on the organization of NPM in Serbia. Subcommittee member Mary Amos visited Serbia, and on this occasion without any announcement, during the night, visited a psychiatric hospital, two police stations and a home for the elderly.

Within the cooperation with the Association for the Prevention of Torture (hereinafter referred to as the "APT") the Protector of Citizens participated in a round table in Geneva, Warsaw and Odessa. During the reporting period, the visits were made to Ombudsmen and National Mechanisms for the Prevention of Torture of Slovenia, Spain, Denmark and Albania, and an intensive cooperation was established with the relevant bodies of Montenegro, Bosnia and Herzegovina, Macedonia, Azerbaijan, Ukraine, Switzerland and Russia.

The Protector of Citizens in cooperation with the National Mechanisms for the Prevention of Torture of Slovenia, Macedonia and Albania agreed to create a "NPM Balkans Networks", whose founding meeting will be held in Belgrade in the first half of 2013.

The Protector of Citizens shared the experience in protecting the rights of the armed forces personnel, with his colleagues at a conference in Canada (the host of the previous conference was the Protector of Citizens in Belgrade), whereas the experience in the control of the security services and establishing of effective and efficient external control over the public authorities, the Protector of Citizens reported to the officials of Palestine during his visit to Palestine organized and financed by the Geneva Centre for the Democratic control of Armed Forces.

### **3.4.1 Activities of the Protector of Citizens as National Institution for Promotion and Protection of Human Rights**

In 2012, the Protector of Citizens as a National Institution for Human Rights in Serbia (National Institutions for the Promotion and Protection of Human Rights, hereinafter referred to as the "NHRI"), accredited to the highest "A" status by the International Coordinating Committee of National Institutions for the Promotion and Protection of Human Rights (hereinafter referred to as the "ICC")<sup>163</sup> conducted a series of activities.

As part of its reporting activities in the field of international cooperation, the Protector of Citizens has prepared and sent the answers to various OHCHR questionnaires pertaining to the promotion and protection of human rights, the relationship between the national human rights institutions and human rights defenders, children's rights to an adequate health care standard and so on.

The work of the Protector of Citizens in 2012, in the capacity of NHRI, was particularly marked by three activities. The first is organizing of the International Conference on the relationship between parliaments and national human rights institutions, held in Belgrade on 22 and 23 February 2012. The conference was organized by OHCHR, ICC, the National Assembly of the Republic of Serbia and the Protector of Citizens, with the help of the National Team of the United Nations for the Republic of Serbia.

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<sup>163</sup> ICC is a global network of institutions for protection and promotion of human rights whose internal accreditation system, based on the Paris Principles, is recognized by the UN. ICC coordinates the relationship between NHRIs and the UN in the field of human rights.



**Image 6 “Participants of the Seminar”**

The representatives of parliaments and national human rights institutions in Ecuador, Ghana, India, Jordan, Kenya, Mexico, New Zealand, Portugal, Serbia and the United Kingdom were the participants of the conference. At the end of the conference, in international forums, very notable Belgrade principles of respect of national institutions for protection and promotion of human rights and parliaments were adopted. The principles are thematically divided into several groups: the role of parliament in the establishment of NHRIs and in ensuring their functioning, independence and accountability aspects of cooperation between NHRIs and parliaments; cooperation between NHRIs and parliaments in the lawmaking process; cooperation between NHRIs and parliaments in relation to international mechanisms for human rights, parliamentary cooperation and NHRIs in education, training, and raising awareness of the importance of human rights, and monitoring response of the executive authorities to judgments of judicial and administrative bodies related to human rights. Up to now, the Belgrade principles regulate in the most comprehensive and the most concrete manner the fields of cooperation between the legislative bodies and national human rights institutions.<sup>164</sup>

In order to promote these principles, the Protector of Citizens Saša Janković via video link participated in the 20<sup>th</sup> session of the UN Human Rights of the United Nations, which was held from 18 June 6 July 2012.<sup>165</sup>

The third especially important activity of the Protector of Citizens in the capacity of NHRI in the reporting period was organizing the event on the theme “The Role of the Ombudsman Institutions for the Armed Forces” during the 21<sup>st</sup> Session of the Human Rights Council of the United Nations (17-20. September). The Protector of Citizens organized this event in cooperation with the Geneva Centre for the Democratic Control of Armed Forces (DCAF) and the Permanent Mission of the Republic of Serbia to the United Nations and other international organizations in Geneva. During the meeting, there was a presentation of the handbook *The Ombudsman Institutions for the Armed Forces*, published by DCAF, in writing of which the Protector of Citizens was involved.

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164 See more information on the Belgrade principles at: [www.zastitnik.rs/index.php/lang-sr/linkovi/2012-07-17-11-56-00](http://www.zastitnik.rs/index.php/lang-sr/linkovi/2012-07-17-11-56-00)

165 Video statement is available at: [www.zastitnik.rs/index.php/lang-sr/linkovi/2012-07-17-11-56-00](http://www.zastitnik.rs/index.php/lang-sr/linkovi/2012-07-17-11-56-00)

### 3.4.2 Projects

During 2012, the Protector of Citizens completed a two-year pilot project "Electronic Access to the Protector of Citizens (Ombudsman Online)", funded by the Government of the Kingdom of Norway. The project contributed to greater visibility and accessibility of institutions to the citizens who live in smaller towns and villages in Serbia and was conducted in cooperation with the Serbian Library Association, libraries and local authorities in ten selected municipalities. During the project, this institution was contacted by 838 people via video link, while 1500 citizens were informed in town libraries about the competences of the Protector of Citizens. A successful cooperation was established with the local authorities and the media, while the contacts were established also with 33 non-governmental human rights organizations. One of the most important activities of the project is installation of an access ramp and electric platform lift which provide for people with disabilities an access to libraries and/or project activities. Given the success of the pilot project and its excellent reception by the citizens, the Protector of Citizens shall, in cooperation with the Government of the Kingdom of Norway, continue this project, increasing thereby the number of libraries and intensifying the promotion of human rights at the local level.

At the end of 2012 a two-year project "*Support to the Protector of Citizens Office in South Serbia*," which is a part of a larger joint programme of the United Nations entitled "Peacebuilding and Inclusive Local Development" (PBILD) was completed. The project is implemented with the financial support of the Swedish International Development Agency (SIDA), in cooperation with the United Nations Development Programme (UNDP). During the two years, various activities were carried out within the project, aimed at promoting the institution in the municipalities of Bujanovac, Preševo and Medveđa, strengthening the capacity of employees in the offices of the Protector of Citizens in the above municipalities. During the reporting period, round tables on the accessibility of public spaces to people with disabilities and the relation of the media towards independent institutions were organized and a Protocol for the internal communication of the Protector of Citizens was developed. It is important to note that the preparation of the website in English, Albanian and Roma is in progress.

Within a five-year programme of judicial reform and government accountability, implemented by the US Agency for International Development (USAID), in 2012 the Protector of Citizens designed the overall communication strategy to improve communication with stakeholders and increase awareness of general and professional public on the role and responsibilities of the Protector of Citizens. Also, a part of the project is monitoring of the implementation of the recommendations of the Protector of Citizens in the field of good governance and the rights of the Roma population in collaboration with non-governmental organizations, Belgrade Centre for Human Rights, the Lawyers Committee for Human Rights (YUCOM) and "Praxis". In addition, a number of activities to strengthen the capacity of the staff in the Office of the Protector of Citizens was carried out, such as improving communication with the complainants and public authorities and development of the handbook with guidelines for dealing with complaints, monitoring and reporting. It is also important to mention the campaign to promote the principles of good governance among public administration authorities based on the draft Code of Good Governance which the Protector of Citizens referred to the National Assembly in June 2010.

With the support of the British Embassy in Belgrade, in collaboration with the Ethnicity Research Centre, the Protector of Citizens launched a project to monitor the implementation of recommendations which this authority has referred to state authorities in the field of the Roma population rights in Serbia. The project has been implemented with the purpose of improving the normative framework of implementation of the Roma inclusion measures at the local level. The project will be accompanied by a special report on recommendations for improving implementation of affirmative action in education and employment, and on prevention of discrimination against the Roma in these fields. Also, the Protector of Citizens will make recommendations to the relevant authorities to remove the barriers to the implementation of inclusion that were identified in the research process. The project also aims to promote good practice in the implementation of inclusion at the local level, and therefore a brochure will be published with examples of good practice in the conduct of local government.

In cooperation with OHCHR and technical support to civil society organizations (EU project TACSO), the Protector of Citizens launched the project to support the process of deinstitutionalization and transformation of the social welfare institutions accommodating persons with disabilities, children with disabilities and children without parental care. The project will be implemented in order to strengthen the capacity the Protector of Citizens, local authorities, civil society organizations and other stakeholders involved in this process, which will begin in Serbia in the future. To this end, the guidelines on deinstitutionalization of the European Expert Group have been translated, which will be presented to the representatives of public authorities, local governments and non-governmental organizations, and which represent a collection of good practices and applied models of deinstitutionalization in European countries. The result of the project will be the development of the Roadmap, which the Protector of Citizens will refer to the relevant state authorities, which will contain the proposed strategy and the model of implementation of deinstitutionalization in Serbia.

#### IV. TOTAL NUMBER AND CLASSIFICATION OF COMPLAINTS

The Protector of Citizens may be addressed by anyone (Serbian nationals, foreigners, legal persons, stateless persons, refugees, displaced persons, adults and children, various associations) who believes that the administrative authorities improperly or incorrectly apply or do not apply the regulations of the Republic of Serbia. A complaint to the Protector of Citizens is free and is submitted in writing or orally for the Commission's record.

In 2012, the Protector of Citizens considered 4,474 complaints received during the year, of which 4,410 written complaints and 64 investigations launched upon own initiative. At the same time, some 1,500 complaints from the previous years were considered, of which the work was completed in 1,257 cases.

In the period from 1 January to 31 December 2012, out of the total 4,474 complaints received in 2012, the Protector of Citizens completed the work on 2,700 complaints, by rejecting 1,660 complaints for the reasons provided by the Law on the Protector of Citizens while in the remaining cases (1,040) the investigation was carried out in an appropriate manner. Other initiated investigations upon the remaining 1,774 complaints from 2011 are still ongoing and will be the subject of consideration in the Annual Report for 2013.

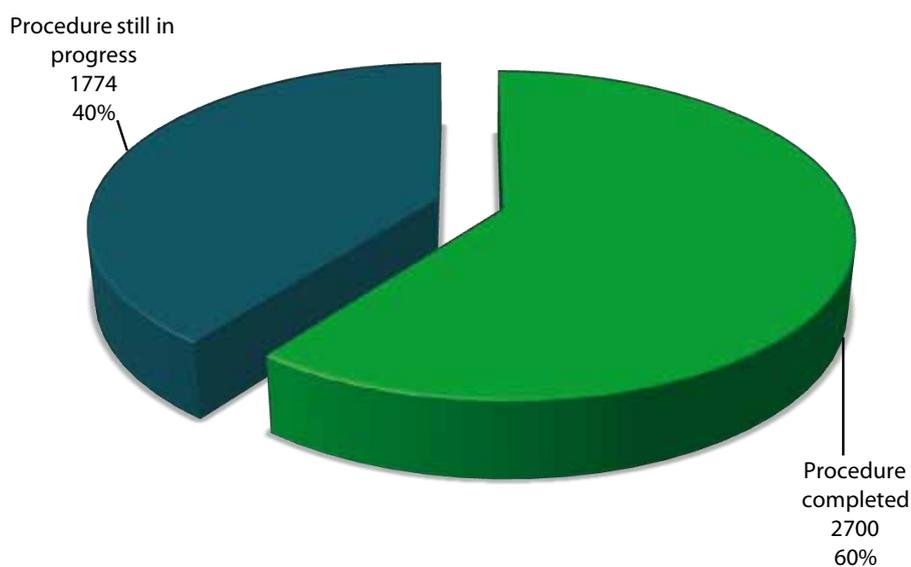


Chart 17 – Work on complaints received in 2012, overview as of 31 December 2012

During 2012 the Protector of Citizens initiated 1,314 inquiries into the legality and regularity of the work of administrative authorities and carried out 150 visits and direct supervisions of the work of the authorities. During the same period, the authorities were sent 2,518 letters, notices and requests for additional information regarding the inquiries initiated, and 346 interventions were sent to the authorities that did not, within the specified time, submit required information, on the basis of which the Protector of Citizens makes its position related to the allegations in the complaints upon which it is acting.

**Table 18 – Outcome of investigations of complaints from 2012 and from previous years, overview as of 31 December 2012**

Complaints rejected for one of the reasons provided by law	2,055	51.93%
Complaints rejected as unfounded	1,078	27.24%
Cases covered by recommendations – individual and collective	375	9.48%
Suspended investigations – administrative authorities remedied deficiencies	225	5.69%
Opinions – pursuant Article 24, para. 2 of the Law on the Protector of Citizens	113	2.86%
Complainants withdrew complaints	110	2.78%
Statements of the Protector of Citizens on conducted investigations	1	0,03%
<b>Total:</b>	<b>3,957</b>	

Data on the complainants, and manner of complaint submission, are given in the following table:

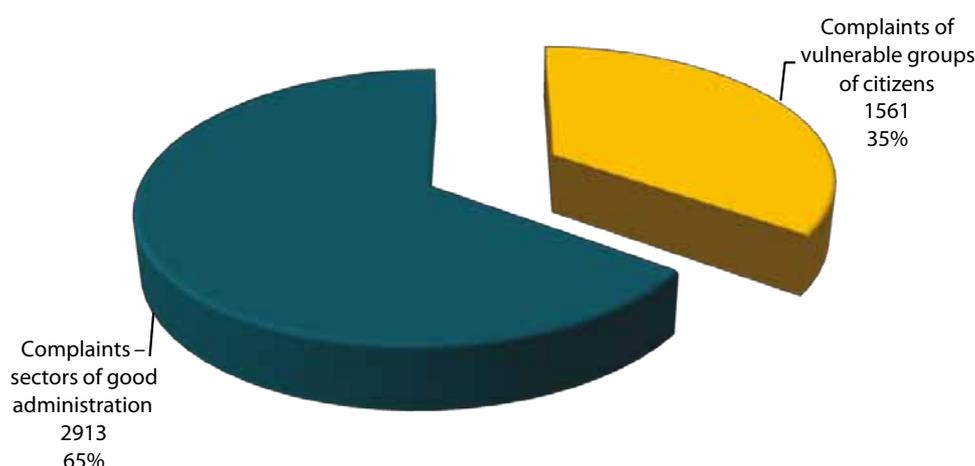
**Table 19 – Data on the of the complainants, and manner of complaint submission**

1.	Men	2,623	58,61%
2.	Women	1,495	33,41%
3.	Natural persons	4,283	95,71%
4.	Legal persons	167	3,73%
5.	Combination natural and legal persons	19	0,42%
6.	Own initiative - Protector of Citizens	57	1,27%
7.	Complaints filed in own name	3,673	82,08%
8.	Complaints filed by other person	304	6,79%
9.	Complaints filed by parent for the child	333	7,44%
10.	Anonymous Complaint	25	0,56%
11.	Domestic citizens	4,148	92,69%
12.	Foreign citizens	53	1,18%
13.	Individually filed complaints	4,148	92,69%
14.	Collective complaints	226	5,05%
15.	Complaints submitted by regular mail	2,044	45,68%
16.	Complaints filed in person	804	17,97%
17.	Complaints received on record	22	0,49%
18.	Complaints received via e-mail	1,314	29,36%
19.	Complaints submitted through the local Ombudsmen	28	0,63%
20.	Complaints submitted through foreign Ombudsmen	2	0,04%

All the complaints received by the Protector of Citizens during the year or those started on own initiative, for the purpose of more effective procedure upon them and their more precise statistical analysis, on the one hand, are recorded in sectors of vulnerable citizens (children, the disabled and the elderly, minorities, persons deprived of their liberty, complaints on gender equality) and, on the other hand, the sectors of so-called good governance. The sectors of good governance mainly coincide with the line ministries in the Republic of Serbia and the complaints about the ministries account for nearly two thirds of all complaints received in 2012.

**Table 20 – Division of complaints by sectors, their number and percentage in the total number of complaints**

Persons deprived of liberty	396	8.85%
Gender equality	95	2.12%
Child rights	425	9.50%
Rights of persons with disabilities and the elderly	281	6.28%
Rights of persons with disabilities and the elderly	364	8.13%
Sector of foreign affairs, diaspora and justice	436	9.74%
Sector of defence	119	2.66%
Sector of internal affairs	161	3.60%
Sector of finance, economy and regional development	358	8.00%
Sector of agriculture, trade, forestry and water management, environment, infrastructure, energy and mining	183	4.09%
Sector of urban planning, construction and cadastre	368	8.22%
Sector of public administration and local selfgovernment	425	9.50%
Sector of labour	280	6.26%
Sector of health, social protection, pension and disability insurance	402	8.98%
Sector of security services and independent control authorities	22	0.49%
Sector of culture, education, science and sports	159	3.55%
<b>Total</b>	<b>4,474</b>	



**Chart 18 – Division of complaints by violated rights in the field of vulnerable categories of citizens and in the area of good governance.**

As data show, there are complainants from all the districts in the Republic of Serbia, but most of them were from Belgrade. (Table 16):

**Table 21 – Data about the percentage of complaints from different districts**

Belgrade	1,447	<b>32.34%</b>
AP Vojvodina	740	<b>16.54%</b>
Other parts of Serbia (all the districts with fewer than 100 complaints)	559	<b>12.49%</b>
No address information (arrived via email, with no indication of address)	428	<b>9.57%</b>
Nišava District	169	<b>3.78%</b>
Raška District	152	<b>3.40%</b>
Jablanica District	140	<b>3.13%</b>
Zlatibor District	132	<b>2.95%</b>
Braničevo District	130	<b>2.91%</b>
Rasina District	123	<b>2.75%</b>
Mačva District	108	<b>2.41%</b>
Pomoravlje District	108	<b>2.41%</b>
Šumadija District	108	<b>2.41%</b>
Foreign country	57	<b>1.27%</b>
Municipalities of Preševo, Bujanovac and Medveđa	37	<b>0.83%</b>
AP Kosovo and Metohija	36	<b>0.80%</b>
<b>Total</b>	<b>4,474</b>	

#### 4.1 CLASSIFICATION OF COMPLAINTS BY THE TYPE OF RIGHTS VIOLATIONS

By considering the total of 4,474 complaints filed with the Protector of Citizens in 2012, it was established that the largest number of rights violations indicated by the citizens, regardless of within which sectors they were considered, related to, cases of violation of the principles of "good governance", the economic and social rights and violation of civil and political rights.

**Table 22 – Types of violated rights, their number and percentage in the total number of complaints<sup>166</sup>**

Area of law	Number of rights violated	% in the total number of complaints
Right to good governance	2,112	47.21%
Economic, social and cultural rights	1,790	40.01%
Civil and political rights	963	21.52%
Child rights	669	14.95%
Rights of national minorities	209	4.67%
Rights of persons deprived of liberty	119	2.66%
Rights of persons with disabilities	98	2.19%
Rights of gender equality	55	1.23%
<b>Total number of filed complaints</b>	<b>4,474</b>	

**Table 23 – Types of violated rights, their number and percentage in the total number of all the recorded violations of the rights in the complaints**

Област права	Број повређених права	% у односу на све поднете притужбе
Право на добру управу	2,112	35.11%
Екон., социјал., култур. права	1,790	29.76%
Грађанска и политичка права	963	16.01%
Посебна права детета	669	11.12%
Посебна права националних мањина	209	3.47%
Посебна права лица лишених слободе	119	1.98%
Посебна права особа са инвалидитетом	98	1.63%
Посебна права у области родне равноправности	55	0.91%
<b>Total number of violated rights in filed complaints</b>	<b>6,015</b>	

<sup>166</sup> The number of violated rights is always greater than the number of complaints, as many complaints indicate multiple violations.

Violation of the principle of good governance is a violation of law to which the majority of complainants indicated in their complaints, regardless of whether it is a complaint dealt with in the department of children's rights, rights of persons deprived of liberty, the rights of persons with disabilities, the rights of national minorities or department that deals with issues of gender equality. This confirms the fact that the principles of good governance are violated in all administrative authorities before which the citizens, including those who belong to these vulnerable, minority groups, exercise their rights, which makes the issue of violation of this law even more sensitive and more difficult.

**Table 24 – Overview of violated rights in the field of “good governance”, their number and percentage in the total number of all the recorded violations of these rights in the complaints**

Right to observance of laws	557	26.37%
Right to receive a decision within the legally stipulated time limit	357	16.91%
Right to protection against administrative silence	288	13.64%
Right to efficient work of authorities	233	11.04%
Right to correct conduct of authorities	186	8.81%
Right to respect created legal expectations	181	8.57%
Right to protection from the violation of procedure	114	5.40%
Right to the absence of abuse of power	73	3.46%
Right to protection against the failure to act by judicial decisions	63	2.98%
Right to equal treatment of citizens	45	2.13%
Right to protection against the failure to act by the acts of the administration authorities	13	0.62%
Right to proportionality in the work of authorities	2	0.09%
<b>Total</b>	<b>2,112</b>	

**Table 25 – Overview of violated economic, social and cultural rights, their number and percentage in the total number of the recorded violations of these rights in the complaints**

Right to work and labour right	552	30.84%
Right to protection of property	404	22.57%
Right from pension and disability insurance	281	15.70%
Right to health care and health insurance	235	13.13%
Right to education	145	8.10%
Right to social protection	79	4.41%
Right to a healthy environment	59	3.30%
Right to adequate housing	28	1.56%
Right to protection of family, mother and single parent	7	0.39%
<b>Total</b>	<b>1,790</b>	

There are about 160 unregulated complaints, where it was impossible to determine which right was violated not even after requesting additional information from the complainants thereof. The Secretariat of the Protector of the Citizens in a letter requesting additional

information from the citizens always tries to offer help to ignorant party to properly write a complaint, but many citizens do not respond to these letters, which results in a number of irregular complaints, that are impossible to handle.

**Table 26 – Overview of violated civil and political rights, their number and percentage in the total number of recorded violations of these rights in the complaints**

Right to a fair trial	252	26.17%
Right to a fair trial and trial within a reasonable time	114	11.84%
Right to legal protection and legal remedy	109	11.32%
Right to legal aid	68	7.06%
Right to inviolability of physical and psychological integrity	49	5.09%
Right to protection from discrimination	47	4.88%
Right to personal identification documents	45	4.67%
Right to protection from torture, inhuman and degrading treatment	35	3.63%
Right to respect for dignity and free development of personality	31	3.22%
Right to access of information of public importance	23	2.39%
Right to citizenship	22	2.28%
Right to damage compensation	22	2.28%
Right to be informed	21	2.18%
Right to protection from groundless deprivation of liberty	18	1.87%
Right to personal data protection	18	1.87%
Right to freedom and security	14	1.45%
Right to privacy	14	1.45%
Freedom of movement	9	0.93%
Right to protection of refugees and internally displaced persons	8	0.83%
Election right	7	0.73%
Right to life	6	0.62%
Right to protection from incitement of racial, national and religious hatred and intolerance	6	0.62%
Right to language and script	6	0.62%
Religious rights	4	0.42%
Freedom of opinion and expression	4	0.42%
Right of association	3	0.31%
Right to protection from child trafficking and human trafficking	2	0.21%
Freedom of thought, conscience and religion	2	0.21%
Right to petition	1	0.10%
Right to legal personality	1	0.10%
Right to rehabilitation	1	0.10%
Right to work union organizing	1	0.10%
<b>Total</b>	<b>963</b>	

## 4.2 CLASSIFICATION OF COMPLAINTS ACCORDING TO AUTHORITIES THEY REFER TO

The largest number of complaints related to the work of the representatives of executive authorities, especially the ministries to which over 30% of all written complaints referred, as well as the work of authorities in the field of pension and disability insurance, employment, health care, public companies, tax authorities, education and social welfare institutions, judicial authorities and local administrative authorities.

**Table 27 – Classification of complaints according to authorities they refer to,  
and their percentage in the total number of complaints**

Ministries	1,233	<b>27.56%</b>
Institutions and other public services	827	<b>18.48%</b>
Agencies, institutes, directorates, funds, administrations	815	<b>18.22%</b>
Local self-government authorities	694	<b>15.51%</b>
Judicial authorities	585	<b>13.08%</b>
Companies, private employers, natural persons and other	553	<b>12.36%</b>
Public companies	168	<b>3.76%</b>
Independent authorities and independent bodies	68	<b>1.52%</b>
Highest Republic authorities	52	<b>1.16%</b>
Provincial authorities	10	<b>0.22%</b>
National Minority Councils	4	<b>0.09%</b>
<b>Total to all authorities</b>	<b>5,009</b>	

**Note:** The number of authorities is always higher than the number of complaints since many complaints sometimes indicate a violation of citizens' rights by more than one authority.

The Ministry of Interior has traditionally been an authority against which most people complain every year, since it establishes a largest number of contacts with citizens, but it must also be noted that this authority in most cases rectifies its errors in work upon receiving the opinion of the Protector of Citizens.

**Table 28 – Classification of complaints according to authorities they refer to, and their percentage in the total number of complaints**

All complaints against the ministries in the total number of complaints	1.233	27,56%
Individual ministries compared to all ministries		
Internal affairs	392	31.79%
Defence	117	9.49%
Education, Science and Technological Development	153	12.41%
Labour and Social Policy	122	9.89%
Construction and Planning	104	8.43%
Finance and Economy	101	8.19%
Public administration and local self-government	94	8.43%
Justice	57	4.62%
Health	55	4.46%
Ministry of Agriculture, Forestry and Water Management	27	2.19%
Other Ministries	11	0.89%

**Note:** Some departments bear the names from the former Law on Ministries, since the new law came into force on 26 July 2012.

The following tables (24 and 25) show the variations inside large groups of authorities to which they belong, as presented in Table 22. It shows the number and percentage of the total number in the group of authorities they belong to.

**Table 29 – Classification of complaints according to authorities they refer to**

Institutions and other public services in the total number of complaints	827	18,48%
Individual institutions compared to all institutions		
In the field of social protection	278	33.62%
In the field of education	207	25.03%
In the field of criminal sanctions	194	23.46%
In the field of health	132	15.96%
In the field of science and culture	16	1.93%
Republic funds, institutes, agencies, administrations, etc. in the total number of complaints	815	18.22%
Individual authorities of the group in relation to all the authorities belonging to the group		
Republic Fund PIO	331	40.61%
Republic Geodetic Authority	154	18.90%
Republic Health Insurance Fund	106	13.01%
Tax Administration	56	6.87%
National Employment Service	42	5.15%
Privatisation Agency	35	4.29%
Commissariat for Refugees, and Migration	20	2.45%
Security Services (SIA, MSA, MIA)	10	1.23%
Other agencies	26	3.19%
Other administrations	11	1.35%
Other institutes	12	1.47%
Other authorities	12	1.47%

In terms of geographical distribution, most complaints related to the operation of the City of Belgrade and other urban municipalities. Total 15.51% of the complaints related to the work of the authorities of the local self government, 13.08% to judicial organs, less than 4% to the work of the public companies and about 12% to other authorities.

**Table 30 – Classification of complaints according to various authorities they refer to**

Local self-government authorities in the total number of complaints	694	15.51%
Individual authorities of the group in relation to all the authorities belonging to the group		
City of Belgrade and city municipalities	263	37.90%
Other cities	233	33.57%
Other municipalities	198	28.53%
Judicial authorities in the total number of complaints	585	13.08%
Individual authorities of the group in relation to all the authorities belonging to the group		
Basic courts	333	56.92%
Higher courts	76	12.99%
Commercial courts	64	10.94%
Prosecutor's Offices	60	10.26%
Other judicial authorities	52	8.89%
Public enterprises compared to the total number of complaints	168	3.76%
Local public companies	124	73.81%
Republic public companies	44	26.19%
Other authorities in the total number of complaints	553	12.36%
Individual authorities of the group in relation to all the authorities belonging to the group		
Companies	283	51.18%
Natural persons	39	7.05%
Private Employers	27	4.88%
Association of Citizens	21	3.80%
Foreign authorities	15	2.71%
Lawyers and Bar Associations	13	2.35%
Church and religious authorities	12	2.17%
Chamber of Commerce	8	1.45%
Socially-owned companies	5	0.90%
Banks	5	0.90%
The media	5	0.90%

In some complaints it was impossible to record which authority they refer to, because the complainants even after the set time limit did not edit their complaints and make them eligible for the procedure, so that such complaints were rejected as disorderly.

## V. RECOMMENDATIONS AND LEGISLATIVE INITIATIVES OF THE PROTECTOR OF CITIZENS AND PROPOSALS FOR ASSESSMENT OF CONSTITUTIONALITY

### 5.1 RECOMMENDATIONS

In 2012, acting upon citizen complaints or upon own initiative in 265 cases (from 2012 and from the previous years), the Protector of Citizens established deficiencies in the work of administration authorities, which caused the violations of citizens' rights, and referred 323 recommendations to the authorities requesting them to remedy these deficiencies.

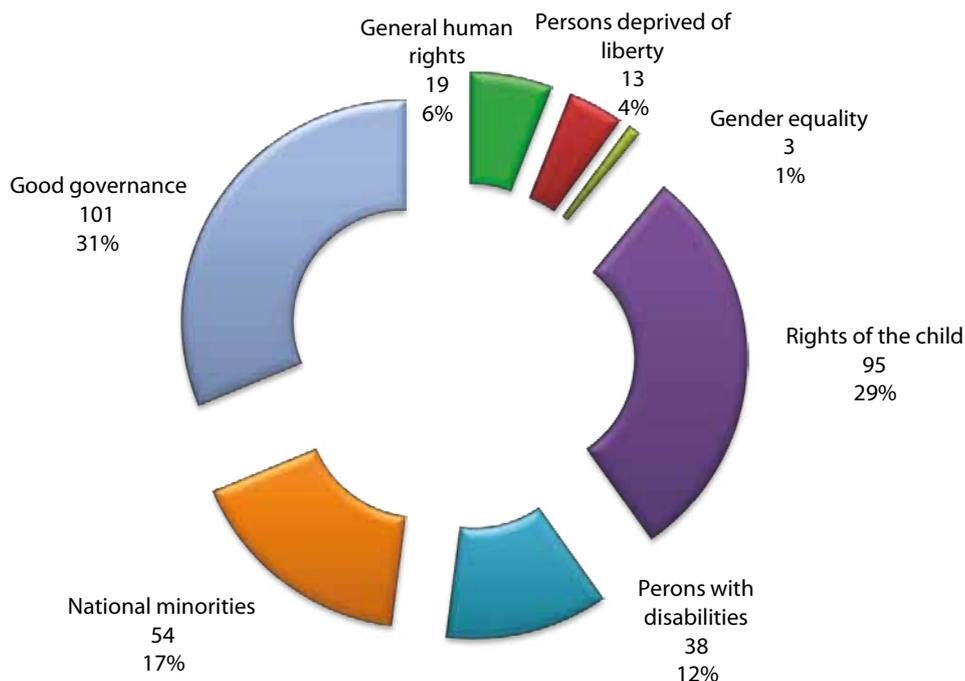
Recommendations are recorded and depending on the area of law to which they relate, that is- depending on whether they relate to the protection and promotion of the rights of vulnerable groups (persons deprived of their liberty, children, persons with disabilities, national minorities, the field of gender equality), or the respect of principles of good governance.

Of the total number of recommendations issued, the largest number, 101, that is, 31.27%, related to the promotion of the respect of principles of good governance.

**Table 31 – Number and percentage of the sent recommendations  
in relation to the area of law**

Field of good governance	101	31.27%
Child rights	95	29.41%
Rights of Minorities	54	16.72%
Rights of persons with disabilities	38	11.76%
General human rights	19	5.88%
Rights of persons deprived of their liberty	13	4.02%
Field of gender equality	3	0.93%

**Note:** By carrying out activities of the National Mechanism for the Prevention of Torture in 2012, the Protector of Citizens referred 229 recommendations to the authorities in the field of persons deprived of liberty, so that the total number of recommendations amounts to 552, whereas the total number of recommendations in the field of persons deprived of liberty amounts to 242.



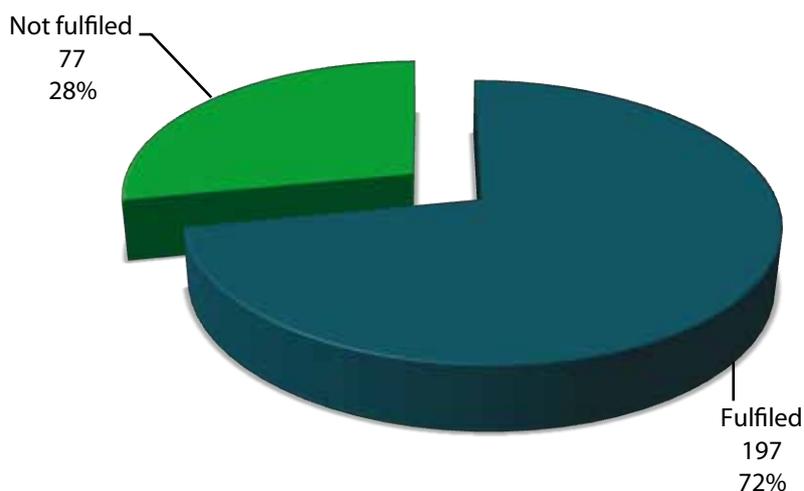
**Chart 19 – Overview of recommendations by area of law**

As for type of the authority to which recommendations have been addressed, ministries and local authorities are the most common with about 30%.

**Table 32 – Authorities that received recommendations**

Ministries	96	29.72%
Local self-government authorities	93	28.79%
Education institutions	40	12.38%
Organisations of compulsory social insurance	23	7.12%
Institution for the execution of penal sanctions	13	4.02%
Police administrations and police stations	11	3.41%
Directorates within the ministries	11	3.41%
Special organisations	11	3.41%
Social protection institutions	10	3.10%
Republic institutes, directorates and agencies	7	2.17%
Health institutions	3	0.93%
Independent public authorities	3	0.93%
	2	0.62%
<b>Public companies</b>	<b>323</b>	

By 31 December 2012, the authorities implemented 197 recommendations (70%) within the given time limit, failed to implement 77, and as regards 49 recommendations, the time limit did not expire by the date of reporting.



**Chart 20 – Percentage of failed recommendations implementation**

**Table 33 – Authorities that failed to comply with recommendations and the number and percentage of unfulfilled recommendations in relation to the total number of unfulfilled recommendations**

Ministries	36	46.75%
Local self-government authorities	31	40.26%
Education institutions	4	5.19%
Directorates within the ministries	2	2.60%
Independent public authorities and independent bodies	2	2.60%
Organisations of compulsory social insurance	1	1.30%
Social protection institutions	1	1.30%
<b>Total</b>	<b>77</b>	

The highest percentage of unfulfilled recommendations in relation to the number of recommendations addressed to various authorities refers to the ministries, given the fact that the ministries were sent 96 recommendations, 36 of which have not been fulfilled, which is 37.50% compared to the number of the recommendations.

**Table 34 – Number and percentage of sent and unfulfilled recommendations**

Authority	Number of sent recommendations	Number of unfulfilled recommendations	%
Ministries	96	36	37.50%
Local self-government authorities	93	31	33.33%

The authorities of the City of Belgrade and the authorities of municipalities (Zvezdara, Zemun), apart from six unfulfilled recommendations, fulfilled 15 recommendations, which represents about 8% of all fulfilled recommendations.

**Table 35 – Ministries that failed to comply with recommendations**

Ministry of Labour , Employment and Social Policy	9	25.00%
Ministry of Education, Science and Technological Development	9	25.00%
Ministry of Defence	4	11.11%
Ministry for Human and Minority Rights, Public Administration and Local Self-Government	3	8.33%
All other Ministries	11	30.56%
<b>Total</b>	<b>36</b>	

**Table 36 – Local self-government authorities that failed to comply with recommendations**

Authorities of Leskovac	13	41.94%
Authorities of the City of Belgrade and Urban Municipalities	6	19.35%
Authorities of the City of Niš	3	9.68%
Other Units of Local Self-government Authorities	9	29.03%
<b>Total</b>	<b>31</b>	

**Table 37 – Overview of the number and percentage of fulfilled recommendations in particular areas**

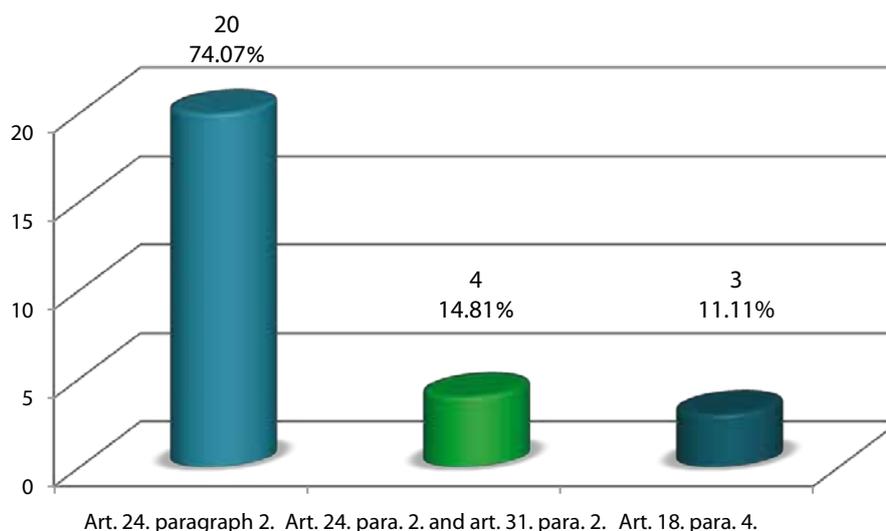
Area	Number	Fulfilled	%	Not fulfilled	%	Within time limit	%
General human rights	19	12	63.16%	7	36.84%	0	0.00%
Persons deprived of liberty	13	13	100.00%	0	0.00%	0	0.00%
Gender equality	3	3	100.00%	0	0.00%	0	0.00%
Child rights	95	64	67.37%	6	6.32%	25	26.32%
Persons with disabilities	38	20	52.63%	9	23.68%	9	23.68%
National minorities	54	22	40.74%	26	48.15%	6	11.11%
Good governance	101	63	62.38%	29	28.71%	9	8.91%
<b>Total</b>	<b>323</b>	<b>197</b>		<b>77</b>		<b>49</b>	

The highest percentage of not fulfilled recommendations is in the area of the rights of national minorities, where the percentage of non-compliance with recommendations is about 48.15% compared to the number of sent recommendations, and/or 33.77% of the total number of 77 not fulfilled recommendations.

## 5.2 OPINIONS

In 2012, the Protector of Citizens referred 27 opinions to public authorities, which can be classified into three different groups.

- 1) In accordance with Article 24 Paragraph 2 of the Law on the Protector of Citizens - the Protector of Citizens acts preventively by giving advice and opinions related to issues from its competency, with the view of improving the work of administrative authorities and protection of human rights and freedoms.
- 2) In case of the violation of the rights of citizens which has a systemic character, the Protector of Citizens may submit its opinion to the relevant authority in accordance with Article 24 paragraph 2, expressing its view of the situation, and at the same time, in accordance with Article 31 paragraph 2, it may refer a recommendation to the authority in question as to how to rectify deficiency which leads to the violation of the rights of a larger number of citizens.
- 3) The Protector of Citizens is authorized, pursuant to Article 18 paragraph 4, during the process of preparing laws and regulations, to submit its opinions to the Government and Parliament related to the draft laws and other regulations, if they concern issues relevant to the protection of citizens' rights.



**Chart 21 – Number and types of referred recommendations of the Protector of Citizens**

**Table 38 – Rights that are improved by the opinions of the Protector of Citizens**

Opinions in the area of economic, social and cultural rights	14	51.85%
Opinions in the area of the protection of the rights of vulnerable and minority groups of citizens	10	37.04%
Opinions in the area of civil and political rights	3	11.11%
<b>Total</b>	<b>27</b>	

The Opinions of the Protector of Citizens in the area of the protection of the rights of vulnerable and minority groups were related to the protection of the rights of persons with disabilities (4), minority rights (2), child rights, rights to gender equality and the rights of persons deprived of their liberty - one opinion in each category .<sup>167</sup>

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167 Full text of the opinion is available at : [www.zastitnik.rs/index.php/lang-sr/2011-12-11-11-34-45](http://www.zastitnik.rs/index.php/lang-sr/2011-12-11-11-34-45)

### 5.3 LEGISLATIVE INITIATIVES AND PROPOSALS FOR ASSESMENT OF CONSTITUTIONALITY

The Protector of Citizens pursuant to Article 18 Paragraph 1 of the Law on the Protector of Citizens submitted to the National Assembly an amendment to the Bill amending the Law on Non-Contentious Procedure and nine amendments to the Bill amending the Law on Salaries in Public Sector. These initiatives have not been passed by the National Assembly.

In accordance with Article 18 Paragraph 2 of Law on the Protector of Citizens, the Protector of Citizens of the Republic of Serbia submitted to the Government initiative to amend the Law on Non-Contentious Procedure with 10 proposed amendments to the Law. The Government has accepted this initiative and submitted to the National Assembly a Bill to amend the Law on Non-Contentious Procedure which contained proposed amendments initiated by the Protector of Citizens.

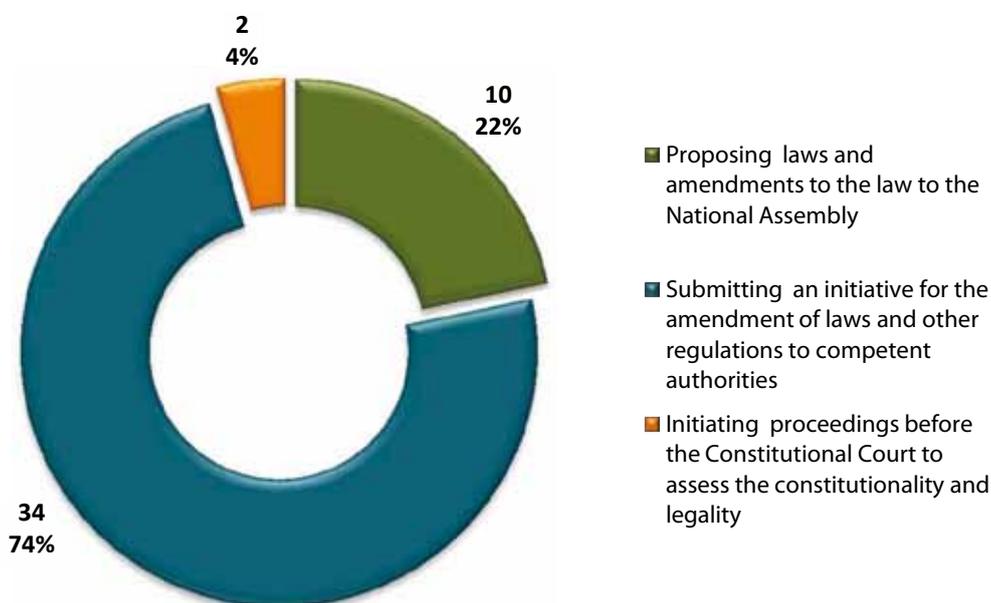
In accordance with Article 18 Paragraph 2 of the Law on the Protector of Citizens, the Protector of Citizens once again filed an initiative with the Ministry of Justice and Public Administration to amend the Criminal Code, with 24 proposed amendments. The proposed amendments should ensure exclusion of the possibility of mitigating punishment of perpetrators of crimes against sexual freedom. This initiative is being processed.

Pursuant to Article 19 of the Law on the Protector of Citizens, the Protector of Citizens submitted to the Constitutional Court of Serbia two proposals to initiate procedures to assess the constitutionality of the law, as follows:

- A proposal to initiate procedures to assess the constitutionality of the Law on Amendments to the Law on Planning and Construction (“Official Gazette of RS”, No. 24/2011)
  - provisions of Article 83 paragraph 2, according to which paragraph 3 is added in Article 193 of the Law on Planning and Construction, which provides that it shall be considered that a co-owner or co-user on the subject land has given consent to legalization if he/she knew or could have known of the construction of the subject facility and/or of execution of works, but did not oppose it at the time of the construction. The Protector of Citizens, in its proposal for the assessment of constitutionality of the law pointed out that, by applying the disputed statutory provision, the right to property is being restricted, with the simultaneous non-compliance with the principle of non-discrimination and legal certainty, guaranteed by international documents, the Constitution of the Republic of Serbia and the law. The Protector of Citizens explained its views by stating that the disputed provision put the citizens - the owners of the

facilities who built their facilities without building permit to a much more favourable position in relation to the citizens who built their facilities in compliance with legal regulations explaining further that along with the disputed provision, the provision of Article 135 Paragraph 3 of the *Law on Foundations of Property Law Relations*<sup>168</sup> is also in force, which provides for a mandatory consent of all co-owners over an individual thing in case of undertaking transactions that exceed the framework of regular management of the thing. The Constitutional Court of Serbia passed the Decision<sup>169</sup>, at its session held on 27 December 2012, which determined that the provisions of Articles 185-200 of the Law on Planning and Construction are not in compliance with the Constitution, and this Decision included the provision disputed by the Protector of Citizens. With regard to the submitted proposal of the Protector of Citizens, the Constitutional Court of Serbia noted in its Decision that the disputed provision in favour of illegal constructor, puts additional and disproportionate burden on third parties whose co-ownership or co-use on land gives this persons a right to peaceful enjoyment of the property and the legitimacy to build a facility on that land.

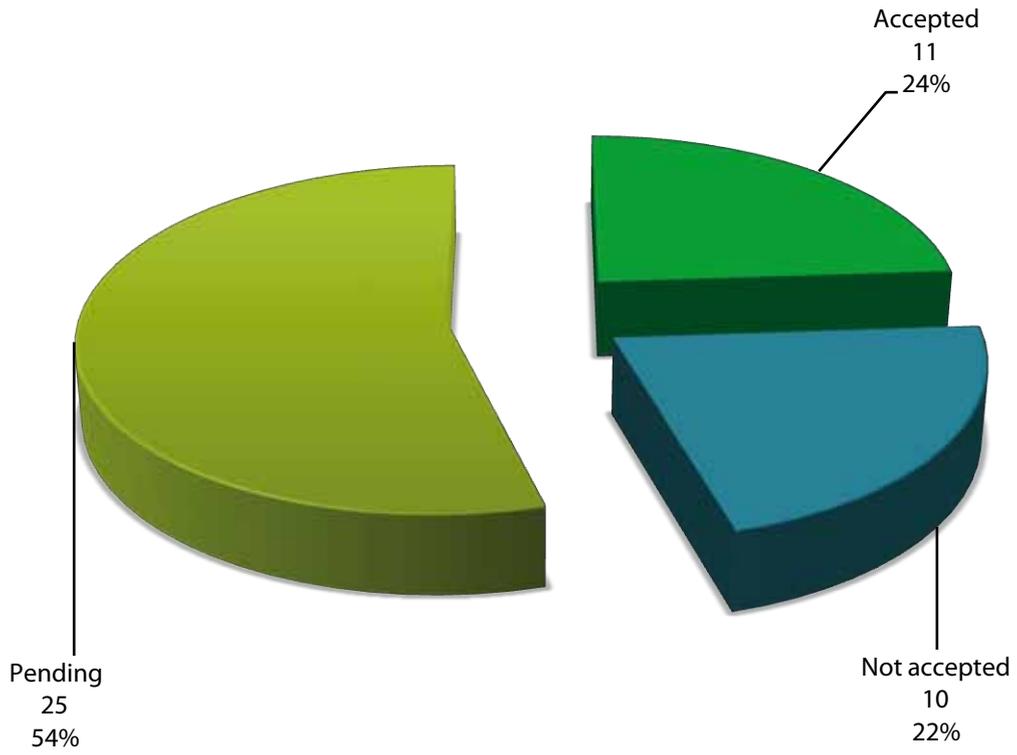
- The proposal to review the constitutionality of Article 286a of the *Criminal Code*, which allows police, against the order of the public prosecutor, to engage in the secrecy of letters and other means of communication. This proposal for assessment of constitutionality is still being processed. The proposal was submitted for the same reasons, due to which the Law on Electronic Communications (still in process) and the Law on Military Security Agency and Military Intelligence Agency, are being challenged before the Constitutional Court, which the Court found to be in contradiction with the constitutional guarantee stipulating that any interference into the privacy of the communication must be approved by the court.



**Chart 22 – Number and types of filed legislative and other initiatives**

168 "Official Gazette of SFRY", Nos. 6/80 and 36/90, "Official Gazette of the FRY" No. 29/96 and "Official Gazette of RS", No. 115/05.

169 Number IY3-295/2009.



**Chart 23 – Number and outcome of the filed legislative and other initiative**

## ANNEX I

### Human and Material Resources

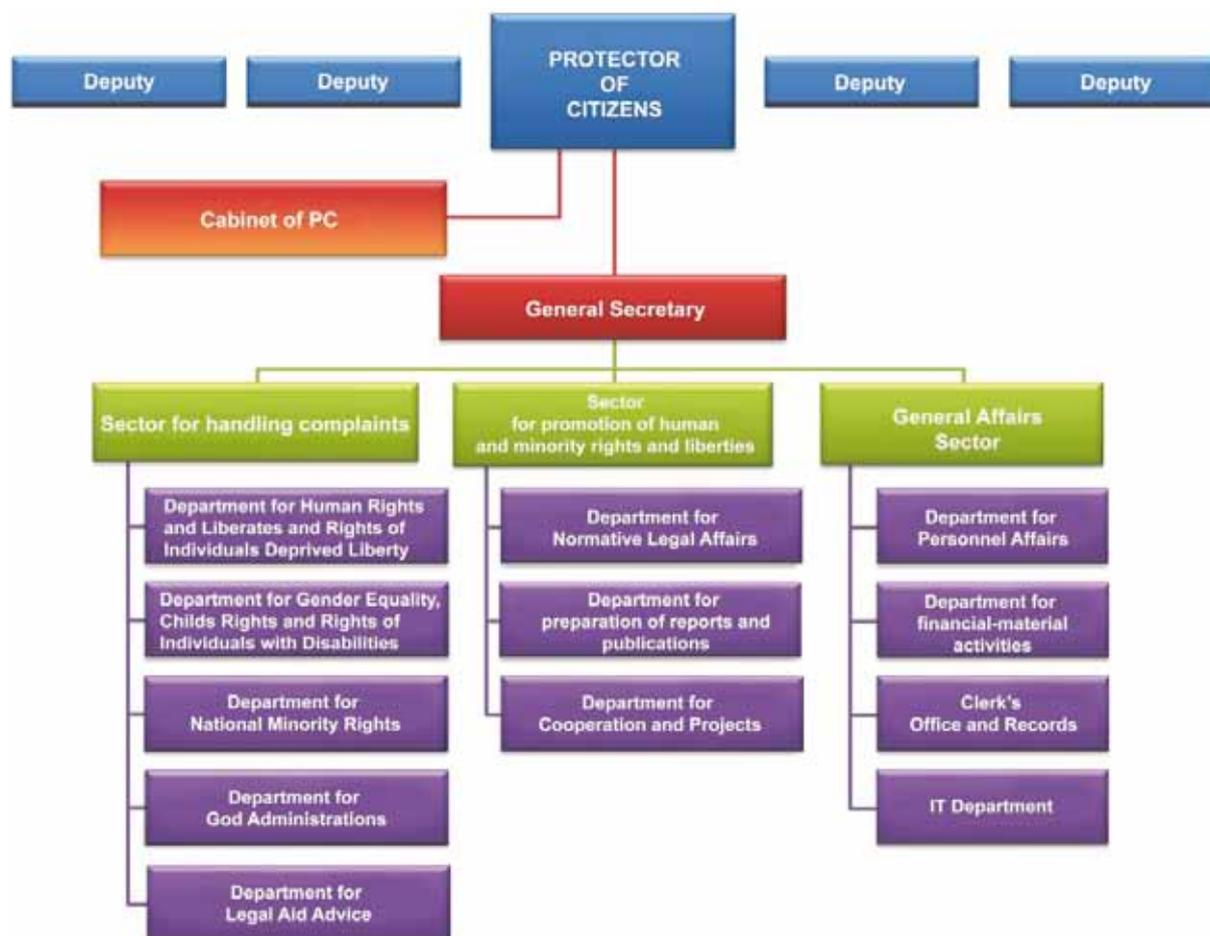
#### *Organizational structure*

The Secretariat was established for performing expert and administrative tasks from the scope of competences of the Protector of Citizens.

The Rulebook on Internal Organization and Job Classification in the Secretariat of the Protector of Citizens specifies total of 63 employees in positions, executive positions, and positions of appointees.

As of 31 December 2012, in the Secretariat there was a total of 79 employees. The number of 49 civil servants were employed for an indefinite period, and 30 civil servants and appointees for a definite period, whereby six employees were working in the cabinet, three civil servants worked for a definite period until the return to the employee from a sick leave and 21 civil servants were engaged due to the increased workload. A lawyer was engaged for the vocational training. Of the total number, 63 have university degree, and 16 employees have a high school diploma. The Secretariat employs 57 women and 22 men. The Protector of Citizens Saša Janković and his deputies - Tamara Luksic Orlandić, Miloš Janković and Prof. Goran Bašić are not included in the stated number.

Bearing in mind the volume of work, the existing number of employees is still not the optimum for accurate and high quality work of the institution. A steady increase in the number of contacts that the Protector of Citizens is establishing with the public, and consequently the increase of the inquiries arising from them, leads to a significant increase in workload, which is not appropriately followed by a change of the Rulebook on Internal Organization and Job Classification specifying a number of jobs in the Secretariat of the Protector of Citizens.



**“Organizational Chart”**

*Premises and equipment for work*

According to the Instruction No. 361-1652/2011 dated March 29, 2010 issued by the Committee for Allocation of Official Buildings and Offices of the Government of Serbia Premises in Belgrade, a part of the office space at No. 16 Deligradska St., was allocated to the Protector of Citizens, with total area of 1,237 m<sup>2</sup>, consisting of 43 offices, archive room, meeting halls, and a garage for five vehicles.

Using of the building in Belgrade, in Karađorđeva street, number 48, which according to the Instruction 77 No. 27 361-3066/2011 from 27 April 2010 issued by the Committee for Allocation of Official Buildings and Offices of the Government of Serbia Premises in Belgrade, was allocated to the Protector of Citizens, the Judicial Academy and the Commissioner for Information of Public Importance and Personal Data Protection, with the aim to provide a permanent office space required for the operation of the above stated authorities, has not yet begun, because the works on rehabilitation and adaptation required for putting the building into a usable condition have not yet been completed.

The head office of the Protector of Citizens is still in the premises in Belgrade, Deligradska No. 16, which it has been using since 4 May, 2010.

The space in Deligradska number 16 is sufficient to accommodate the current number of employees in the institution and is big enough for reception of citizens and meets the minimum requirements necessary for the reception of citizens and work of the civil servants – so as to preserve their right to security and privacy of the parties, healthy working conditions, body's dignity.

During 2012, independent provision of the means for the work was continued, especially computers and related equipment and other technical devices. The Department is equipped with a desk and laptop computer equipment for video presentation, telecommunications equipment, equipment for simultaneous translation and necessary office equipment. The current number of cars was increased for the needs of the Secretariat. A van to transport seven passengers is primarily intended for the execution of responsibilities in the National Mechanism for the Prevention of Torture, and two mid-range vehicles are designed for the transport the Deputy Protector of Citizens and civil servants on business trips in the country.

During 2012, on the building and in the premises the Protector of Citizens in Deligradska Street 16, in Belgrade the works were carried out in order to facilitate access for people with disabilities. At the entrance, was placed a tactile board with the name of the institution, tactile guides – stair treads for marking the entrance and tactile path from the entrance to the registry office, which facilities access and stay in the premises of the Protector of Citizens to visually impaired persons. Also, in the meeting rooms, the equipment for the transmission and amplification of sound was set up, which facilitates communication for people with hearing impairment. People with limited mobility can enter the building via the most modern access ramps.

In this way, with a minimum of effort, there was given a contribution to the equality of persons with disabilities, and the work of this authority has been made available to this group of citizens.

#### *Local offices in Preševo, Bujanovac and Medveđa*

Pursuant to the Law on the Protector of Citizens<sup>170</sup> and the General Act on Organization and Operation of the Secretariat, the Protector of Citizens reached a Decision on the establishment of local office of the Protector of Citizens in the municipalities of Preševo, Bujanovac and Medveđa<sup>171</sup>. The office was established to increase the accessibility of the institution of the Protector of Citizens and exercise more effectively protection and promote human and minority rights and liberties of citizens of this area.

The seats of the local offices of the Protector of Citizens are in:

- 1) In Preševo, in the building of the Co-ordination Centre for the municipalities of Preševo, Bujanovac and Medveđa, 12 Sava Kovačević St.;
- 2) In Bujanovac, at Karađorđev trg bb, in a room in the building of the Basic Court in Vranje, Judicial Unit Bujanovac. Since 6 December 2011, the Office of the Protector of Citizens, after a temporary residence in the building of the municipality of Bujanovac, in the hall of the Press Centre of the Coordinating Body for Preševo, Bu-

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170 "Official Gazette of RS", No. 79/05 and 54/07.

171 „Official Gazette of RS”, No. 91/09.

janovac and Medveđa has been moved into a new space, obtained by the approval of the Ministry of Justice;

3) In Medveđa, in the building of the Cultural Centre, 63 Jablanička St.

The Office employs two civil servants, junior consultants Ana Glišić Petrova and Bekim Ajdini.

Reception of clients in the Office is performed by the following schedule: Monday and Tuesday - the municipalities of Bujanovac, Wednesday and Thursday – the municipality of Preševo and Friday – the municipality of Medveđa. The offices were officially opened on 28 June 2011

The offices are equipped with office furniture, computers and communication equipment from the UNDP funds within the project PBILD programme "Capacity Building for Inclusive Local Development in Southern Serbia".

The offices are equipped with office furniture, computer and communication equipment from UNDP donation funds within the PBILD project, the program "Strengthening Capacity for Inclusive Local Development in Southern Serbia".

## ANNEX II

### Financial Statement

The Protector of Citizens, subject to the Law on Amendments to the Law on the Budget of the Republic of Serbia for the year of 2012, was provided funding in the amount of **RSD 162,836,000**, constituting an increase of 8.9% compared to the amount of RSD 149,712,500.00 allocated in 2011.

In 2012, the Protector of Citizens spent a total of RSD **148,237,423.73** constituting 91.03% of the total allocated funds, and an increase of 11.00 % compared to the amount spent in 2011, when the total of RSD 133,675,984.30 was spent.

The funds covered by the budget were used to finance the ordinary activities of the Protector of Citizens, in accordance with the financial plan.

**Table 39 – Execution of the 2012 Budget**

Balance sheet item	Description	Allocated	Spent	%
1	2	3	4	5
411	Salaries, benefits, allowances			
411111	Salaries based on minimum labour wage		73,061,426.12	78.74
411112	Allowance for overtime working hours		1,739,207.14	1.87
411115	Allowance for time spent at work (past labour)		5,017,217.64	5.41
411117	Sick leave up to 30 days		913,921.13	0.99
411118	Compensation wage during absence from work – annual leave, paid leave		6,410,822.29	6.91
411119	Other compensations and allowances for employees		1,422,056.58	1.53
411151	Compensation for unused annual leave		380,040.56	0.41
<b>Total 411</b>		<b>92,783,000.00</b>	<b>88,944,691.46</b>	<b>95.86</b>
412	Contributions			
412111	Contributions to pension and disability insurance		9,566,709.71	58.43
412211	Contributions to health insurance		5,350,592.48	32.68
412311	Contributions to unemployment		652,275.78	3.98

## Annex II

1	2	3	4	5
414	Social benefits to employees			
414111	Maternity leave		2,052,194.50	62.19
414121	Sick leave over 30 days		401,285.36	12.16
414411	Benefits in the case of medical treatment of employee		456,023.66	13.82
<b>Total 414</b>		<b>3,300,000.00</b>	<b>2,909,503.72</b>	<b>88.17</b>
415	Compensation for employees			
415112	Transportation allowance ( to and from work)		2,853,496.01	83.93
<b>Total 415</b>		<b>3,400,000.00</b>	<b>2,853,496.01</b>	<b>83.93</b>
416	Awards and bonuses			
416111	Jubilee awards		47,759.73	79.60
<b>Total 416</b>		<b>60,000.00</b>	<b>47,759.73</b>	<b>79.60</b>
421	Fixed expenses			
421121	Banking services		16,856.39	0.17
421225	Central heating		105,903.58	1.07
421323	Property protection services		2,671,675.88	27.04
421391	Contribution of construction land use, etc,		1,438,822.43	14.56
421411	Telephone, telex and fax		1,147,653.03	11.62
421414	Services of mobile phone ( <i>cell phones, internet</i> )		1,952,596.29	19.76
421422	Delivery services		807,087.68	8.17
421512	Car insurance		401,763.00	4.07
421512	Equipment insurance		56,355.00	0.57
421521	Employee insurance in case of accident		34,221.00	0.35
421522	Health Insurance for Employees		126,480.00	1.28
421612	Lease of non residential area		10,000.00	0.10
421622	Lease of administrative equipment		36,720.00	0.37
<b>Total 421</b>		<b>9,880,000.00</b>	<b>8,806,134.28</b>	<b>89.13</b>
422	Travel expenses			
422111	Travel allowance expenses for business trip		1,513,463.09	19.60
422121	Transportation allowances for business trip		137,010.89	1.77
422131	Accommodation costs for business trip		777,430.80	10.07
422199	Other expenses for business trip in the country		25,013.00	0.32
422211	Travel allowance expenses for business trip abroad		1,256,814.63	16.28
422221	Transportation allowances for business trip abroad		976,965.68	12.65
422231	Accommodation costs for business trip abroad		644,395.67	8.35
422299	Other expenses for business trip abroad		7,049.08	0.09
<b>Total 422</b>		<b>7,720,000.00</b>	<b>5,338,142.84</b>	<b>69.15</b>
423	Services on contract			
423111	Translation services		899,230.26	5.21
423211	Services for software development		125,866.88	0.73

1	2	3	4	5
423291	Other computer services, (installation of subscription packages - database of legal, economic regulation)		442,746.00	2.57
423311	Services of professional development and trainings		543,107.87	3.15
423321	Seminar fees		89,144.40	0.52
423391	Expenditures for professional examinations		34,000.00	0.20
423399	Other expenditures for professional education		18,250.00	0.11
423412	Services of printing publications		74,250.00	0.43
423419	Other services of printing publications		700,609.20	4.06
423421	Information services to the public		86,680.00	0.50
423431	Advertising services		1,286,535.05	7.46
423432	Tendering and informative ads		201,905.00	1.17
423439	Other advertising and propaganda		514,464.48	2.98
423499	Other media services		338,520.00	1.96
423599	Other professional services (outsourcing, experts)		3,643,909.09	21.12
423621	Catering services (organization of conferences, round tables, meetings)		679,790.17	3.94
423711	Entertainment costs (organisation of conferences, round tables, meetings)		406,333.75	2.36
423712	Gifts (appropriate gifts of foreign delegation)		164,236.02	0.95
423911	Other general services (membership in international organizations)		2,409,797.88	13.97
<b>Total 423</b>		<b>17,250,000.00</b>	<b>12,737,476.05</b>	<b>73.84</b>
425	Repair and maintenance services			
425114	Works on the roof		149,520.00	18.69
425211	Mechanical repairs		187,346.69	23.42
425222	Computer equipment		64,082.40	8.01
425223	Communication equipment		4,342.40	0.54
425225	Household equipment and catering		7,677.60	0.96
425227	Built-in equipment		323,282.70	40.41
<b>Total 425</b>		<b>800,000.00</b>	<b>736,251.79</b>	<b>92.03</b>
426	Material			
426111	Office stationary		2,140,643.65	30.49
426311	Professional literature for the regular needs of employees		231,482.53	3.30
426312	Professional literature for employee education		44,555.00	0.63
426411	Petrol		3,569,463.76	50.85
426491	Other material for transport means		474,107.09	6.75
426912	Spare parts		4,799.99	0.07
<b>Total 426</b>		<b>7,020,000.00</b>	<b>6,465,052.02</b>	<b>92.09</b>
462	Grants to international organizations			
462121	Current grants for international membership fees		279,835.70	55.97
<b>Total 462</b>		<b>500,000.00</b>	<b>279,835.70</b>	<b>55.97</b>
482	Taxes, compulsory fees, fines and penalties			
482231	City fees		210.00	0.11
<b>Total 482</b>		<b>200,000.00</b>	<b>210.00</b>	<b>0.11</b>

1	2	3	4	5
512	Machinery and equipment			
512111	Cars		2,265,020.00	63.80
512211	Furniture		5,899.99	0.17
512212	Built-in equipment		93,184.82	2.62
512221	Computer equipment		1,148,045.79	32.34
512241	Electronic equipment		23,217.56	0.65
512242	Photographic Equipment		13,924.00	0.39
<b>Total 512</b>		<b>3,550,000.00</b>	<b>3,549,292.16</b>	<b>99.98</b>
<b>TOTAL</b>		<b>162,836,000.00</b>	<b>148,237,423.73</b>	<b>91.03</b>

In addition to funds provided by the Law on the Budget of the Republic of Serbia<sup>172</sup>, in 2012 the Protector of Citizens obtained funds from donations of international organizations.

**Table 40 –Projects completed in 2012**<sup>173</sup>

No.	Project title	Financed by	Project budget	Project duration	Brief description purpose / users
1	Electronic access to the Protector of Citizens ( <i>Online Ombudsman</i> )	Government of the Kingdom of Norway	€ 100,250.00	16 months: December 2010 – April 2012	Contribution to improving human rights of the citizens, especially those living in smaller towns and cities. Citizens in inland areas will via video link have better access to the office of the Protector of Citizens. The project will be implemented in cooperation with public libraries and the local authorities in ten selected municipalities and cities in Serbia. The project will be implemented in cooperation with the Serbian Library Association.
2	Establishment of a regional office of the Protector of Citizens in the south of Serbia (PBILD)	SIDA through implementation modality of UNDP	\$ 214,493.84	19 months: November 2010 – May 2012	The project is part of a joint program of six UN agencies entitled "Peacebuilding and Inclusive Local Development", which aims to help southern Serbia to progress towards sustainable social and economic development for the benefit of all communities. One component of the program is strengthening the Office of the Protector of Citizens in the south of Serbia. The office employs two law graduates, from Preševo and Bujanovac.
3	Supporting human rights of the Roma community in Serbia	OHCHR / Embassy of Great Britain	€ 51,705.00	9 months: June 2011. – March 2012	Contribution to improving normative framework of human rights of the Roma in Serbia, by analyzing the current status of this population, and evaluating the measures taken so far within the Roma inclusion programme
4	Programme of Judicial Reform and Government Accountability	USAID	\$ 404,000.00	20 months	Contribution to promotion of accountable and effective Government, strengthening the capacity of the Ombudsman Institution and the supporting cooperation of the Ombudsman Institution with civil society and other independent institutions.

172 "Official Gazette of RS", No. 101/11 and 93/12.

173 More about projects in the Report section "International cooperation and projects".

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