



Protector of
Citizens

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Protector of Citizens

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THE REGULAR ANNUAL REPORT*

INTRODUCTORY SPEECH

Honoured Ladies and Gentlemen,

The Annual Report of the Protector of Citizens¹, the second one since this public institution has been introduced into the legal and social order of the Republic of Serbia, is hereby presented. There are several objectives of this document:

– to present to the Parliament, to the interested institutions and the public the state of human and minority rights` in the Republic of Serbia as well as the quality of implementation of citizens' rights before the institutions performing public authority and applying the laws of the Republic of Serbia

– to present to the Parliament and the general public the most important aspects of functioning of the institution of the Ombudsman in accordance with legal obligations and the principal of responsibility in performing public activities and

– to draw attention to necessary changes in public sector functioning which would promote better implementation of human and minority rights and liberties and contribute to better relations between the citizens and administration.

The Protector of Citizens has in the previous report expressed confidence and hope that the state administration and other institutions would recognize, not just their obligation, but their own interest to cooperate with the Ombudsman and accept the place and role of the new institution. The optimistic attitude has in many respects shown to be justified, which is proven by numerous proceedings lead in 2009 and their results. The institution of Ombudsman has been on a large scale accepted by the citizens, the public and the institutions. This has paved the road to the significant results achieved in 2008. Visible concrete results show that the institution of Ombudsman has started to justify confidence of the citizens and to give its contribution to promotion of more democratic character of relations between the citizens and the public authorities.

* "Official Gazette of Republic of Serbia" No.: 23/09.

1 The term citizens is used in this Report in a neutral form, and marks both female and male citizens.

As soon it has been established, in the first phases of its forming, the institution of the Ombudsman in 2008 finalized number of procedures in favour of citizens' protection and promotion of citizens' rights' respect. The most important and far-reaching effects have been achieved in the following cases:

- Appropriate reaction in the case of publishing the book: "The Jewel of Medina". Concerning this sensitive issue with potentially huge impact on social relations and human rights in Serbia, a fine balance has been successfully reached as a result of Ombudsman's mediation, between the necessity for protection of national and religious rights on one hand, and general constitutional principal of freedom of speech and artistic creation on the other hand.

- The recommendation concerning withdrawal of Regulations on Technical Terms for Internet Traffic Control which have already been accepted by the authorized regulatory body. In this case, in cooperation with the Protector of the Citizens, the corrected and more adequate document was subsequently adopted, leaving no space for any kind of illegal threatening of privacy of the citizens' communication.

- The Government of Republic of Serbia has accepted the initiative by the Protector of Citizens for correction of normative deficiency and lack of regulations concerning use of public property (official cars, for example). By deficiency and lack of regulations in this domain the principals of good administration had been violated, leaving space for misuse and irrational use of public property and violating rights of the citizens.

- In coordination with the Regional Ombudsman and the Local Governments Ombudsman, the recommendation has been given by the Protector of Citizens to the Ministry of Interior to improve activities concerning issuance and replacement of personal documents. In this respect, activities of more than 50 % police stations in Serbia have been checked. Numerous irregularities have been observed. Citizens sometimes had to wait for many hours in order to obtain personal documents. This practice caused enormous costs both for the citizens and the community.

- The Amendments to the Law on Personal Data Protection have been adopted and thus, protection of this citizens' right, guaranteed by the Constitution, significantly improved.

- Two important initiatives for adoption of laws given by more than 72 000 citizens and lost in administrative procedure between two bodies have been found and brought back to procedure.

The Protector of Citizens has also in number of separate cases, by determining shortcomings and giving constructive recommendations for their correction, given positive contribution to improving citizens' rights and correcting the attitude of administrative authorities towards the citizens in every day work by stressing the obligation of public officials to respect citizens' dignity and their rights.

Although the results are significant and already visible, it is certain that range of activities aimed at improving realization of rights of the citizens might have been larger if the institution of the Protector of Citizens had been given more space and basic conditions for work.

GENERAL REVIEW OF HUMAN AND MINORITY RIGHTS AND LIBERTIES IN THE REPUBLIC OF SERBIA

Generally speaking, taking into consideration unavoidable variations, always present in general assessments, the human and minority liberties and rights in the Republic of Serbia are respected and protected. It must be pointed out though, that the extent of protection of freedom and rights guaranteed by the regulations is higher than the degree of their implementation and protection in practice. A great deal of work is still ahead for all institutions aimed at achieving effective protection and implementation of human rights in practical terms, concerning the matters directly related to promotion of dignity and quality of life for all citizens.

A great number of disappointed citizens, mostly impoverished and belonging to marginalized groups, still consider the human rights as abstract, somewhat elitist concept, far away from their everyday life.

Equal treatment and accessibility of rights to all citizens, without discrimination, efforts to stimulate administration to pursue, and not limit political, economic, social and cultural rights, care for human dignity in everyday situations, responsibility of the authorities and other essential issues, important for dignified life of human beings are still kept in the second plan. The public and institutional discourse concerning human rights is burdened instead, with inessential and false dilemmas, such as, for example, a dilemma should the principal of freedom of speech include a right to promote Nazism and consequently propagate hatred and intolerance. Such pseudo-dilemmas are brought into the first plan by protagonists who would be considered periphery in case the state reacted efficiently. The previous remark is not given with the objective to deny the significance of political and civil – classical human rights, but in order to point out to the problem of change of thesis, the problem of avoiding dealing with essential issues, by focusing on issues which should be considered incontestable.

There is a worrying tendency of executive authorities to avoid solving the problems of implementation of human rights in manner they should be solved i.e. through efficient application of existing laws and through strengthening of the mechanisms of control and prevention. There is an inclination to form new institutions, instead, often existing just in numerous documents, repeatedly badly re-written over and over again. The fact that the existing regulations are not being implemented in a proper way can not always be justified, as it is usually the case, by their imperfection and by need for new laws to be adopted. In other

words, the responsibility of public administration for the existing state in domain of human rights should not be transferred on repeatedly formed new independent institutions, especially when it is well known that adequate conditions do not exist yet for functioning of the already established ones.

The quality and range of respect of civil and political rights is on higher level than implementation of liberties and rights in social, economic and cultural spheres of life.

The most important question which puts into relative perspective and potentially limits the results concerning political rights, derives out of ambivalent constitutional provisions, which may easily be misused, thus, for example, enabling dependence of mandates of members of the Parliament of wishes expressed by particular political parties.

Social and economic rights are mostly jeopardized by different administrative obstacles, non-transparency and inconsistency in their implementation and protection. The mentioned practice is justified by an excuse that there are insufficient financial "resources". Lack of the resources however is not an excuse for giving false public promises and accepting additional, non-mandatory obligations. Subsequent failing to fulfil those obligations presents violation of essential rights and expectations of the citizens.

The majority of citizens feel *poverty* as the most dangerous threat to their rights! Different sources state that approximately 10 % of citizens receive income below the limit necessary for survival. The economic assets are grouped in city centers, mostly in Belgrade. According to the assessments given by the World Bank the unemployment percentage is about 20 %. Huge demand for jobs gives opportunity to incorrect employers to blackmail the employees and use other illegal methods, using unfavourable position of workers. In addition, by the process of privatization number of those who consider themselves harmed and "robbed" increases every day. The waive of workers' lay-offs in Serbia is not just caused by the world economic crisis, but is also a result of instable and unbalanced relations between employees and workers, as well as undefined role of the state which should guarantee the basic rules by which these relations should be defined.

Another serious issue is a problem of implementation of the citizens' *right on fair trail in reasonable term*. The court proceedings lasting for ten or more years are not a rare exception and, the justice coming too late ceases to be real justice. The deficiencies in realization of this right have negative, decomposing impact on almost all other citizens' rights, because there is no possibility for them to be efficiently protected in court.

In many cases, seeking court proceedings for protection and realization of citizens' rights becomes a trigger for new violation of rights. Moreover, it is not so rare that even after delivery of court decision in certain term, a citizen is forced to start a new, long-lasting battle for enforcement of the decision, i.e. implementation of a right determined by court. It remains to be seen yet whether a much disputed package of reformed judicial laws and Constitutional Court proceedings related to complaints which have been lodged would lead to more efficient court protection of rights of the citizens and re-establish confidence in court authority.

Together with development of democratic values in the society, human rights begin to take more and more important place both in the structure of legal order and in consciousness of representatives of state authority and the citizens. Nevertheless, the *culture of respect of human rights* is not fully established yet. This is especially visible through

incidents occurring in crisis social situations when, as a rule, liberties and rights of vulnerable segments of population are violated.

Such incidents of intolerance have, for example been shown in violent reactions by certain groups and individuals against citizens belonging to the Albanian national minority, after self-proclamation of Kosovo independence in February 2008. What's more worrying and important than the incidents, has been failure of the state authorities to react decisively and efficiently in such violent situations.

The position of *Roma national minority* in the society is also an unavoidable issue. The seriousness of their permanently difficult position may be seen through mortality rate which is extremely high in comparison to other segments of population. Despite different "projects" and their implementation, conferences devoted to problems of Roma population, and somewhat more rare concrete activities – the conditions of life, education and health protection of Roma national minority citizens are in large percentage below minimal degree necessary for dignified life and full development of personal capacities.

One of the worrying issues is the current *position of non-governmental organizations and their leaders*. These organizations who struggle for uncompromised respect of human rights, condemnation of war crimes and bringing their protagonists to justice as well as for respect of rights of especially vulnerable society groups (national minorities, gay population, bisexual and transsexual persons) are often exposed to threatening behaviour, while the reaction of official institutions and bodies are often insufficient and inefficient.

Most worrying are examples when state representatives, public officials and media without adequate formal sanctions and/or broad social and political condemnation, promote discrimination, intolerance and narrow-mindedness.

Repressive measures, including police actions, district attorney's and court activities are able to provide respect of human and minority rights and liberties to a certain extent only. The key factor for true, long-lasting and firm respect of human and minority rights is their interfusion through whole tissue of the society and state structure. In this respect, the special importance belongs to the field of education, where it must be insisted on strengthening of social values essential for wellness of both individuals and the society, such as: promotion of human rights, respect for differences, nonviolence and individual and social responsibility. Unfortunately, there are events of violence among minority and school population, cases of national and religious intolerance, non-solidarity and promotion of ideologies similar to Nazism – which, ironically has in the past cost Serbia millions of lives.

Another issue is *gender equality*, which, despite broadly spread patriarchal stereotypes, especially in village districts, has entered into the public discourse and became a legitimate and recognized topic, not only in institutional work, but in everyday life as well. Violence towards women, sometimes with deadly outcome is still present, unfortunately, not to mention "milder" forms of sexual inequality.

The absence of complete institutional care for women-victims of violence leaves impression that the violence is spoken of, but that women-victims are not protected enough in practice and that the institutions do not offer an adequate or timely response. The civil sector tries to compensate such a situation by initiatives like "secure homes", but taking whole situation into account this is not enough to solve the complex problem.

In addition, women are often discriminated in their working places. This starts from the moment of employment (for example by bringing into relation potential pregnancy and getting employment) and is being continued during whole period of employment (lower salaries in comparison to men for identical jobs, sexist behaviour etc.).

There are still many laws lacking in the domain of sex equality. In addition, the strategic documents must be adopted, as was pointed out in the Annual Report for 2007. The Draft Law on Gender Equality as well as National Strategy for Gender Equality and Improvement of Position of Women wait to be adopted for years.

The official statistics does not distinguish yet, sex and age of victims of criminal, so no adequate data exists on number of adults, children, women and men who have been victims of particular crimes.

The sexual minorities are exposed to numerous prejudices and discrimination, and are mostly forced to live "double" life, that is to say to hide their sexual orientation from their employers and the people who surround them. Otherwise, both their security and their very existence would be endangered.

In comparison with 2007, progress was made in domain of homosexuality which was in May 2008 removed from the list of diseases. Human rights activists fighting for human rights of sexual minorities work in insecure conditions, on secret addresses. This fact was specially noted in the last year's annual report. A positive step forward was made concerning more timely and decisive police reaction in cases of violation of security of sexual minorities and cases of threatening their right of public assembly.

The children in Serbia have rights guaranteed in accordance with high standards, but their implementation in great extent depends on the social group they belong to. It is generally known that in Serbia there are especially jeopardized categories of children which are socially excluded: the poor children², children with special needs and with disorders in development, parentless children, especially children in institutions, children living on the street, children used as labour force, and also children from the category of so called "social orphans". Another vulnerable category of children are children coming from divorced marriages or children whose parents are in the process of divorce. Citizens' complaints are mostly related to unprofessional, slow and inefficient work of Social Care Centers, the institutions with a key role in divorce proceedings and of granting temporary custody over children to one of the divorced parents. Taking into consideration the high percentage of marriage divorces in Serbia (on annual level 1/5 of total marriages are divorced), the extent of the problem is quite obvious.

Among all mentioned categories of vulnerable children, the Roma children are most frequently endangered. They represent the majority among the poor children, the street children and working children. The Roma children are the least included in the process of education, beginning with pre-school education and further on. The consequence is their further social exclusion. There are also some worrying cases of concealed or even unconcealed racism towards the Roma children, even in educational institutions.

Violence over children (expressed in different forms, from negligence, different kinds of abuse to physical maltreatment) is still present, both in the family where it is least visible,

2 According to UNICEF there are about 155 thousand poor children, and the same number lives close to the poverty limit.

and among coevals or by other, unfamiliar adults. The fact that there is still no centralized data basis of cases of violence over children is worrying.

Although the fact that violence in general, including violence over children is forbidden should be indisputably accepted, violence over children is sometimes justified by tradition, mentality or by "parent's right". The positive concept of stimulation and guidance with measures of discipline if necessary (but not in form of physical or mental violence) is neglected in the public discourse. Inclusion of slightly disabled children in the educational process is minimal and greatly dependant on financial possibilities and willingness of rest of the family.

Education in Serbia is financed by funds almost half times smaller than the European average. This is more and more visible through bad result shown in comparison with different other countries. Investments in education are not sufficient and schools are lacking basic resources. The education is burdened by different problems, but the Ministry of Education has not even nearly used the potentials offered by cooperation with the Protector of Citizens in domain of supervision and prevention.

Despite existence of Law on Prevention of Discrimination against Disabled Persons, *the persons with disabilities* have in 2008 remained one of the most discriminated and socially excluded groups, almost in all domains of implementation of their rights. Not even their exact number is known, but it is estimated that there are about 800 000 such persons. Their insufficient social visibility causes underestimation of the problems they have in education, employment, health protection and other domains of life. These problems still begin with the basic fact– they are denied physical access to the state institutions, schools, social services and end by the fact that the laws and obligations the state is authorized for are not implemented. Lack of conditions for social care of parentless children with disabilities is especially worrying problem.

The persons with disabilities are still significantly excluded from public, political and cultural life and are confronted with problems in education, employment and realization of other rights. Particularly difficult are the cases from the practice of the Protector of Citizens when children with disabilities and their parents have to confront with a problem to provide necessary treatment and devices.

The elder persons with disabilities are the next especially threatened category. Their number is actually much larger than it is visible, because many of them are even not in a position to turn to someone.

Together with the problem of discrimination of persons with disabilities, there is a problem related to implementation of certain rights from the corpus of patients' rights. This problem which causes many objections given by the patients includes the right on efficient objection on quality of services or on the procedure of the employees of medical institutions. The problem is combined with high degree of corruption observed in the health system. The cooperation established between the Protector of Citizens and the Ministry of Health is the encouraging and secure way to identify and solve part of the problems the practice brings.

The inter-ethnic relations in Serbia are one of the issues the Ombudsman deals with. They are relatively stabile and it might be said that the ethnical hatred and intolerance do not prevail in the Serbian society. But, the existence of ethnic distance is visible, as well as lack of decisive and efficient state actions to identify particular cases of ethnic violence, to process them and sanction them in a serious manner

Deficiencies in system mechanisms designed to prevent misuses of rights and liberties (such as freedom of association and expression) are present. This has special significance, because misuses of rights and liberties are aimed at advocating hatred, intolerance, ethnical bigotry, etc. and violation of rights of the others.

For six years already Serbia expects the Law on Elections and Activities of National Councils of National Minorities. The executive authorities have long ago announced that the law preparation is in final phases. This law should promote institutional mechanisms for implementation of rights of the minorities. Its mechanisms should help actual implementation of individual and collective rights of the minorities. That is why the law adoption is of long-term significance.

The constitutional protection of national minorities is broad and guarantees most individual and collective rights of minorities recognized by the international standards.

The unsystematic approach present in the Law on Protection of Rights and Freedom of the National Minorities (2002) is already visible, especially in relation to normative regulation of position of the minorities. This unsystematic characteristic concerning normative arrangement of the position of minorities is also visible in other laws by which constitutionally recognized rights on education, use of official language, maintenance of cultural identity, informing, effective participation in political and public life are regulated. The normative deficiencies, accompanied by disorganization have been somewhat modified by establishment of the Ministry for Human and Minority Rights. Along with the central Ministry for managerial system of protection and implementation of rights of the minorities, sensible professionals and organizational units are needed in key ministries. They would be charged with implementation of rights of minorities – in culture, education, local autonomy. Together with this, the efficient control is necessary over implementation of the rights, and above all, the consistent policy towards the minorities which should imply their social integration and stimulate, not only “understanding of differences”, but civil and social responsibility.

It is particularly important to provide participation of national minorities in all domains of public administration – in police, district attorney’s office, court institutions, the army, in the field of education... For more precise evaluation of the present state information is needed concerning current presence of national minorities in public sector.

Another important issue in Serbia is current situation concerning *persons deprived of liberty*. Although the persons deprived of liberty in Serbia are not exposed to any kind of systematic torture or violation of human rights, the conditions in prison system are below minimal international standards and may be characterized as inhuman and humiliating, sometimes even cruel (for example lack of heating or enough blankets in police stations). There is lack of space and natural light, it is often impossible to provide enough time in fresh air out of prison cells, medical control is insufficient and inadequate, the conditions for prescribed 48-hour detention in police stations are bad.

There is not enough room in Serbian prisons for the existing number of imprisoned persons. In the previous period, the capacities have not been sufficiently enlarged, and in cases when adaptation of the existing premises was done, the capacities have even been reduced in order to accommodate the prisons in accordance with the valid standards. In Serbian prisons there are about 10 000 persons, which indicates the fact that in the last ten years number of inmates has doubled. It is therefore important to start building new prisons in future period.

Direct control by the Protector of Citizens and by Internal Control of Administration for Implementation of Prison Sanctions formed by the Ministry of Justice have increased responsibility of prison administrations and prison personnel, and contributed to better respect of rights of the detained persons. Development and change of concept by introducing alternative prison sanctions are necessary in order to solve some of the problems, especially concerning under-aged prisoners.

Prison conditions which violate human rights and dignity of the persons deprived of liberty can not be justified by their determined guilt or by lack of finances. Life in prison should, as much as possible, promote positive aspects of community life. The conditions of imprisonment should contribute to gradual reintegration of the detainees into the free society. That is why closer cooperation between imprisonment institutions and institutions of social protection and civil society is necessary.

One of the major preconditions for protection of rights of the persons deprived of liberty is efficient work on development of control mechanisms, both internal and external, such as parliamentary control and number of system activities in competence of the Ombudsman.

The term for establishment of National Mechanism for Prevention of Torture, prescribed by the Optional Protocol given with the UN Convention against Torture has expired. It is therefore necessary to fulfil the obligation as soon as possible. The institution of Ombudsman in full measure fulfils all requirements prescribed for national prevention mechanism. Additional quality in this respect would be provided by systematic cooperation with non-governmental sector.

The Law on Execution of Penal Sanctions adopted in 2006 prescribes high level of medical care for the imprisoned persons, and is mostly harmonized with the international standards. The range and quality of medical protection is enlarged, the right on privacy is introduced, and precise duties of medical personnel defined. But, the level of health protection is not fully implemented in practice. Bad and inadequate conditions of accommodation cause impossibility of adequate treatment of patients. The number of persons deprived of liberty is enlarged, and therefore there is lack of medical personnel, there is insufficient number of physicians and medical technicians. The prison medical clinics are inadequately equipped. Medical personnel is not independent, as it should be, because it is integral part of prison administration. This creates potential possibility for lack of correct medical documentation which would serve as a proof of possible cases of torture, i.e. excessive coercion.

The Constitution of the Republic of Serbia recognizes *the right of free religious orientation* and denomination in accordance with different religious believes. There are conditions for respect of this constitutional and civilization freedom, but there are certain issues insufficiently defined in public and legal system which prevent free religious practice.

After a long discussion the issue of restitution of property to churches and religious congregations is solved by Law adopted in 2006. But, the Law is not yet efficiently implemented in practice. There is also the problem of relations between the two institutionally recognized Moslem religious congregations, whose members show mutual intolerance, even violence. Also, there are occasionally some cases of attacks on people of faith, priests and premises of certain, specially small and unrecognized churches and religious congregations, and the violators are rarely discovered. Finally, although there is a Law and there are regulations concerning contents and manner of keeping the Register of Churches and

Congregations, an open issue still remains related to recognition of legal subjectivity of untraditional churches, in accordance with the Constitution and national regulations. The proceedings before authorized courts, lead by representatives of unrecognized churches and religious congregations and complaints which concerning this they have submitted to the Ombudsman, indicate that there are still unsolved issues between the state and churches concerning recognition of legal subjectivity.

Another very important issue in the Serbian society is the problem of *refugees* and internally displaced persons. There are around 100 000 refugees and a double number of internally displaced persons with the residence in Serbia, although many years have passed from the time of wars and conflicts which have made them leave their homes. In this respects there are two kinds of problems: the state efforts to enable efficient implementation of their proprietary rights, which is practically a precondition for possibility of their return home are not sufficient, on the other hand, the refugee and internally displaced population encounters with complicated, slow and bureaucratic procedures in realization of the rights they are guaranteed in Serbia.

The problem of respect of human rights and liberties and especially rights and liberties of the minorities is even more complicated in one particular part of Republic of Serbia, in the region of Kosovo and Metohia which, is by Resolution 1244 of the UN Security Council put under authority of the international community (UNMIK in civil, and NATO in military segment).

Implementation and protection of the Serbian and other non-Albanian population in Kosovo are far below international standards, especially in domain of security, freedom of movement, protection of property, religious and other rights. According to the reports of organizations existing and operating in the territory of Kosovo, freedom of life and security are mostly endangered there, as well as right of free movement. Stoning and other forms of threatening continue to endanger the Kosovo Serbs when they travel out of regions where they are majority. There are numerous reports on attacks on priests and believers of the Serbian Orthodox Church, as well as of vandalism directed to churches and their property. Since the rights of the citizens living in Kosovo are not implemented before institutions of the Republic of Serbia (except in small segment), actual conditions do not exist for duties of the Ombudsman in the territory of Kosovo and Metohia to be executed, and the authority implemented. This is why the situation in Kosovo is not reviewed in this report in more detail.

Along with implementation of the existing laws and development of mechanisms for execution of decision of the international bodies, *Serbia has a task to adopt and implement new regulations*, important for human rights protection. Primarily, the Law on Prohibition of Discrimination (general) has to be adopted, than Law Association of Citizens, Law on Gender Equality etc. Important international conventions and contracts have to be signed and ratified, such as Convention on Indemnification of Victims of Violent Crimes or revised European Social Charter.

QUALITY OF IMPLEMENTATION OF CITIZENS' RIGHTS BEFORE THE BODIES ENTRUSTED WITH PUBLIC AUTHORITY TO IMPLEMENT REGULATIONS OF THE REPUBLIC OF SERBIA (GOOD GOVERNANCE) – GENERAL ASSESSMENT

The Government of the Republic of Serbia in 2004 adopted the Strategy of Public Administration Reform. Decentralization, depolitization, professional standards, rationalization and modernization are determined as main strategic goal of the reform. None of the projected goals have been fully implemented.

The administration (executive) in the Republic of Serbia is still expensive, burdened by centralism, political influences, bureaucratic attitude towards the citizens, by too many unprofessional employees, outdated equipment, lack of motivation and proper kind of organization. There is a vast need of fast mechanisms for internal consideration of citizens' complaints, including the complaints indicated on vastly spread cases of corruption.

Large number of uncoordinated, sometimes excessive, and sometimes imprecise regulations completes the picture of non-transparency and arbitrariness. Obviously, lack of respect for dignity of the parties turning to public institutions is the main problem. The principal by which protection of the citizens' rights is guaranteed (obligation to enable parties to easily protect and realize their rights and interests) is vastly neglected. The principal of public interest protection is also not respected in an appropriate manner.

The significant number of citizens has to deal with an absurd situation – the court decisions are not enforced by public administration bodies. Many citizens complain of extremely slow procedures, stating that vastly spread corruption, inadequate organization and inaction are the main causes of such practice.

The attempt to remove direct political influence from just two political functions – the function of minister and state secretary – has been devaluated through nomination of large number of state secretaries in a single administration body.

Despite vastly spread notion that the salaries are very high in the public sector – part of public officials receive salaries below minimum necessary to fulfil basic needs and to maintain dignity of the institutions they are employed with.

Nevertheless, the administration officials have in great number shown readiness to cooperate with the Ombudsman in performing his supervisory and corrective function. There are highly professional motivated people working in public administration, ready not only to respect the regulations, but to follow ethical standards and continually develop their work. The real challenge is to motivate these people to stay in administration

despite relatively low salaries, unsatisfying work conditions and the atmosphere of insecurity caused by political turbulences which should not have any impact on their position. The strategy of public administration reform should, among other things, concentrate on identification and strengthening of position of good personnel, on stimulating their motivation and professional development. Only following these guidelines the public administration would strengthen within itself and regain the confidence of the citizens. In pursuing these goals, the Ombudsman is its faithful ally.

1. ON INSTITUTION OF THE PROTECTOR OF CITIZENS

a) Protector of Citizens – Ombudsman: nature of the institution, legal framework, independence, authority

The Ombudsman i.e. the Protector of Citizens of Republic of Serbia is an independent public body, introduced in the legal order of Republic of Serbia in 2005 by the Law on Protector of Citizens³ (hereinafter the law), and subsequently regulated by the Constitution of the Republic of Serbia⁴.

By the constitution and regulations of the Republic of Serbia the concept of Ombudsman as parliamentary, general type citizens' rights protector is established. The Protector of Citizens is a public body in charge of control and promotion of respect of citizens' rights in general. The Protector of citizens is elected by the Parliament which is in accordance with practice in most countries. However, there is small number of countries where specialized, sometimes even general Ombudsman is nominated by executive authorities.

The Protector of Citizens has a duty to control legality and regularity of activities of public administration institutions related to realization of individual and collective rights of the citizens.

The Protector of Citizens acts within the frame of Constitution, laws and other regulations and general documents, as well as the ratified international contracts and generally accepted regulations of the international law⁵. No one has a right to influence the activities and procedures of the Protector of Citizens⁶. It is prescribed by the Constitution and the Law that the Protector of Citizens is responsible for his work to the Parliament.

In a relatively fast procedure, free of unnecessary formalities, the Protector of Citizens examines whether a certain administration body or other organization performing activities under public authority has properly and regularly brought decisions on particular rights or interests of the citizens. If it is not the case, the Protector of Citizens requires a mistake to be corrected and suggests the manner in which the correction should be performed.

The Protector of Citizens controls much more than if the law has been formally respected. His duty is to examine ethical quality, conscientiousness, impartiality, professionalism, appropriateness, efficiency, respect of dignity of a certain party and other features by which public administration should be characterized if it intends to fulfil expectation of tax-payers.

3 Law on Protector of Citizens ("Official Gazette of Republic of Serbia" No.: 79/05 and 54/07)

4 The Decision on Proclamation of the Constitution of the Republic of Serbia has been published in the "Official Gazette of Republic of Serbia" No.: 83/06 and 98/06 (The Fifth Section – Authorities- Protector of Citizens, Article 138).

5 Article 2, paragraph 2 of the Law

6 Article 2, paragraph 2 of the Law

The Protector of Citizens has a duty to control activities of the public administration institutions, the body authorized to protect proprietary rights and interests of the Republic of Serbia (the Republic Attorney–General), as well as the activities of other bodies and organizations, enterprises and institutions with public authority.⁷ The Protector of Citizens has not the power to control the work of the National Assembly, President of the Republic, Government of Serbia, Constitutional Court, courts and public prosecution's offices.⁸

The Protector of Citizens has a right to initiate proceedings in order to determine whether there have been deficiencies in work of public administration, and along with that has a right to offer services of mediation between the citizens and the public administration bodies, as well as to act preventively by giving advices and opinions concerning issues within his authority. The activities of a Protector of Citizens are aimed on development of public administration activities and promotion of human rights and liberties. The Protector of Citizens also has a right of legislative initiative. If in his opinion, certain rights of the citizens have been violated because of legal deficiencies, or if according to his assessment realization and protection of rights of the citizens may be improved by adoption of certain laws, the Protector of Citizens may propose laws within his authority, give initiatives for amendment of old and adoption of new regulations. Along with this, the Protector of Citizens is entitled to give opinions to the Government and the Parliament on regulations which are in process of preparation⁹.

The opinions and recommendations of the Protector of Citizens are not legally binding, and a procedure before the Protector of Citizens is not a legal redress. The task of the Protector of Citizens is not to enforce decisions, but to convince, by his authority and reputation, that corrections of certain deficiencies and manner of work are necessary.

Nevertheless, the institution of Protector of Citizens is not a "voluntary" right institution. The public administration institutions have legal obligation to cooperate with Protector of Citizens, and when and if it is in interest of certain procedure underway, to enable him access to their premises, and to put at his disposal all the data they deal with, regardless of degree of confidentiality. Disregard of the above mentioned obligation by public administration institutions is a basis for initiation of disciplinary and similar procedures. The Protector of Citizens may recommend dismissal of an official considered responsible for violation of rights of the citizens, may initiate disciplinary procedures against public administration employees, and may require initiation of penal, offence or other adequate procedure¹⁰.

Together with role in development of work of public administration, the authority of the Protector of Citizens gives him important role in prevention, detection and sanctioning of corruption in institutions of public administration.

b) Procedure before the Protector of Citizens

The cases of violation of rights are examined by the Protector of Citizens upon citizen's complaint or by his own initiative. Everyone who considers that public administration institutions irregularly or incorrectly apply legal regulations of the Republic of Serbia or do not apply them at all has a right to turn to Protector of Citizens. That is to say, every citizen of Serbia,

7 Article 1, paragraph 1 of the Law

8 Article 17, paragraph 3 of the Law

9 Article 18, paragraph 1 of the Law

10 Article 20 of the Law.

the foreigners, stateless persons, refugees, displaced persons, associations, legal entities – all of them have a right to turn to the Protector of Citizens. A complaint to the Protector of Citizens is free of charge, and is submitted in written or oral form on record of the Protector of Citizens. In order to be taken into consideration, a complaint must not be anonymous. A parent or legal representative may lodge complaint for a minor person.

Before submitting complaint to the Protector of Citizens a party is obliged to try protection of violated rights in appropriate legal procedure. A procedure is not initiated by the Protector of Citizens before all other legal means are exhausted, except in case a person submitting complaint is under threat of irreplaceable damage, or a complaint concerns violation of the principal of good administration, and in particularly, in cases of incorrect attitude towards a complaining party, untimely work and other forms of unethical behaviour of public administration employees.

In the procedure after a complaint is lodged, the Protector of Citizens collects relevant evidence, determines the facts and circumstances important for bringing a decision whether a complaint is justified or not. In order to form an attitude towards the justifiability of a particular complaint the Protector of Citizens has different means at his disposal – talk with employees of the institution he has an authority to control, insight in institution documentation, access to the official premises or premises of possible imprisonment, a right to talk alone with an imprisoned person, and all other means which could enable him to evaluate whether omissions in work, or violation of individual or collective rights have occurred.

In case it is determined that there have been deficiencies in work of public administration institutions, the Protector of Citizens will note them, and recommend their correction, concerning both the concrete particular case and all other or future cases. If necessary, the Protector of Citizens will execute measures towards those responsible for violation of citizens' rights. A public administration body has obligation to inform the Protector of Citizens in term of 60 days, or earlier if it is required, whether the recommendation of the Protector of Citizens has been respected and the noted deficiency corrected. The Protector of Citizens may inform the public, the Assembly and the Government on refusal of the public administration body to act upon recommendation, and to require responsibility of head of the public administration body.

c) Deputies of the Protector of Citizens

The law prescribes that the Protector of Citizens has four deputies. They are in charge of helping him/her in performing activities determined by the law, and the range of their authority is determined by the Protector of Citizens. It is prescribed by the law that the deputies granted authorities from the Protector of Citizens have to be specialized in certain fields, especially in the field of protection of rights of persons deprived of liberty, in field of gender equality, field of children rights, minority rights and rights of the disabled persons. A request for specialization of the deputies of the Protector of Citizens is common in comparative practice and enables appropriate professional attention for specially vulnerable groups. At the same time high degree of integrity and protection authority are guaranteed in this way.

The deputies of the Protector of Citizens are also elected by the Parliament, by majority votes of total number of members of Parliament. The deputies of the Protector of Citizens have same immunity as members of Parliament. Their term of office is five years. The same person may be elected only two times in sequence for this function.

At the Fifth extraordinary session of the Parliament of the Republic of Serbia held on October 7, 2008 the members of Parliament have, upon proposal given by Sasa Jankovic the Protector of Citizens, with 168 votes elected the following deputies: Goran Basic, PhD, Zorica Mrsevic, PhD, Tamara Luksic-Orlandic and Milos Jankovic.

d) Office of the Protector of Citizens

For performing professional and administrative services within the range of activities of Protector of Citizens the professional departments has been formed, managed by general secretary.

During 2008, 23 persons have after public competition been employed with the Office. On December 31, 2008 the Office had total of 38 employees. The Parliament has accepted the Regulations on Internal Organization of the Office by which employment of 68 persons is prescribed. Taking into consideration the range of required activities, and practical experience, this is a minimum required in order to obtain high-quality and efficient work of the institution.

e) The premises and means

By the Decision issued on November 16, 2007 of the Committee for allocation of the Governmental official buildings and business premises the Protector of Citizens is granted the right to permanently use the business premises in Belgrade, 42 Resavska St. However, the premises are still unavailable, so the Protector of Citizens is given temporary use of new business office in Belgrade, 106 Bulevar Milutina Milankovica St. The temporary business premises (as well as the temporary business premises in the Palace of Serbia, in 2 Bulevar Mihajla Pupina St, the office on IV floor¹¹ and six offices on floor V) are not nearly sufficient to accommodate the employees who receive the citizens. The premises do not fulfill the necessary conditions for reception of citizens and the activities of the state officials, specially concerning their security and respect of privacy of the parties they deal with, healthy working conditions and the dignity of the institution. During 2008, 23 new employees have successively been hired, and the problem escalated. Considering the security problem (few incidents have happened when the police had to intervene) it was decided that the citizens would stop being received in 106 Bulevar Milutina Milankovica St., but exclusively in the Palace of Serbia, in 2 Mihajla Pupina St., room 19.

The business premises are located in two places and this significantly burdens work and communication. The necessary equipment, specially stationary, computers and other technical devices have been provided by authorized state administration personnel. Some of the items necessary for work have been provided by the Protector of Citizens himself. Inadequate accommodation and technical conditions present the most important limitation in work of Protector of Citizens.

11 The three premises of the cabinet accommodate the Protector of Citizens, his four deputies and five staff!

2. RESPECT AND PROTECTION OF HUMAN RIGHTS AND FREEDOMS IN THE REPUBLIC OF SERBIA, REVIEW OF THE SITUATION IN PARTICULAR DOMAINS

Introductory remarks

The economic and social rights in Serbia are much more threatened than civic and political ones. This is common not only for the countries undergoing transition, but may be justified by the fact that implementation and protection of economic and social rights have long been overshadowed by the necessity to promote realization of civil and political rights.

The most significant problem in this respect is inadequate functioning of the institutions authorized to protect human rights. Number of citizens has complaints concerning courts and public attorneys which is certainly an indication that citizens are not satisfied by work of these institutions. The Protector of Citizens is not authorized to control such complaints, and thus rejects them. The public prosecution's offices have rarely given any announcements concerning violation of human rights, and court procedures often last for unreasonably long time. When the court decision is finally given to a citizen after a reasonable or unreasonable term, a long battle is still ahead for court decision enforcement, i.e. implementation of the right determined by the court. By the set of court legislation recently adopted, a deep reform is introduced in the judicature. The reform will be considered successful only in case it enables the adequate conditions for implementation of independent, professional and efficient judicature.

Around 25 % of the complaints received by the Protector of Citizens are in relation to inactivity, i.e. silence of administration, disrespect of the principals of good administration, non-enforcement of court decisions or decision of administration bodies, as well as lack of possibility to implement rights on basic protection from the public administration bodies.

The concept of "good governance" includes necessity to promote and develop functioning of public services, and, thus, facilitate actual implementation of rights of the citizens.

In other words, the term "good governance" implies achievement of best results in the best possible way.

The good governance represents a special method in execution of activities of public interest and includes application of eight major principals:

1. participation of all citizens in governing process, directly or indirectly, through elected representatives
2. presence of the rule of law
3. transparency in delivery and enforcement of decisions
4. equality for all citizens

5. efficiency in work

6. responsibility

7. mediation between conflicted groups and interests in order to achieve consensus and implementation of public interest, and

8. good communication with other institutions and the citizens.

Special attention of Protector of Citizens is dedicated to development of work of this institution by following the principals of "good governance", in accordance with the experiences of the European Ombudsman and similar institutions in the European countries. The main objective however is to fulfil the needs of our national public administration practice.

In this respect, one of the most important issues in our practice is responsible behaviour of public officials. Their work in the institutions they manage must, along with efficient organization of activities they are in charge with, and implementation of citizens' rights in the best legally prescribed way, include the obligation to timely and correctly inform the public of the activities performed by bodies within their range of authority. It has been noticed however, that the public officials are sometimes inclined to undertake obligations or give statements which shortly show to be unrealistic. In this way, the principal of responsibility is violated and the concept of respect of basic legal expectations of citizens, accepted in practice of European ombudsman disrupted.

Good governance would also be improved by strengthening of internal control in public institutions. The analysis performed by the Protector of Citizens has shown that establishment of internal control mechanisms in the public institutions is the main precondition for development of their work. In this way the number of citizens' complaints to the Protector of Citizens would be reduced, as well as number of complaints lodged to the second-degree bodies and courts.

The public administration representatives owe to the citizens respect of the laws equally binding for everyone. But, all aspects of behaviour which should be attributed to public representatives can not be prescribed by legal provisions. Taking into consideration that behaviour of public representatives is of major importance for good relations between the citizens and the authorities in democratic society, the Protector of Citizens has initiated creation of the Ethical Codex for the public officials of the Republic of Serbia. The working group with participation of public representatives, civil sector and the Protector of Citizens has finalized the text of the Codex. The document is soon to be presented to the public.

The Protector of Citizens has included the principal of "good governance" as major point in organization of his professional activities and has put the citizen, as a party receiving services, in focus of considerations.

a) Rights of persons deprived of liberty

a.1. General remarks concerning rights of persons deprived of liberty

The term "persons deprived of liberty", although generally accepted and, included in our highest legislative acts, requires clarification due to possible linguistic misinterpretations. A person can be deprived of liberty only by precisely determined procedure

performed by a competent body. The category of persons deprived of liberty includes, along with the imprisoned persons, also all other persons who by reason of medical or financial state or other circumstances are dependant and compelled to stay in appropriate institutions, such as specialised hospitals, institutions for persons with development disabilities et al.

The circle of persons deprived of liberty includes all persons who are convicted and/or detained¹² by decision of the competent body i.e.: persons serving prison sentence, under aged persons serving prison sentence and persons in detention; under aged persons under rehabilitation measure of remand to correctional institution, persons detained by police, persons under security measure of commitment to medical institution – compulsory treatment of alcoholics, compulsory treatment of drug addicts, compulsory psychiatric treatment and confinement; patients in neuropsychiatry institutions, persons placed in welfare homes; persons in refugee camps.

The institutions persons deprived of liberty are confined in, are under jurisdiction of the Ministry of Justice¹³, Ministry of Internal Affairs¹⁴, Ministry of Health¹⁵ and the Ministry of Labour and Social Policy¹⁶.

The human rights of persons deprived of liberty are unalienable. They retain all freedoms and rights not reduced by the decision of the competent body whereby they are convicted or detained. Restrictions for these persons must be minimal, necessary and proportionate to the legitimate objective of their re-education. Living conditions infringing their human rights may not be justified by lack of material resources, their guilt for the committed offence or any other circumstances. Life in the institutions where such persons are confined should reflect, as close as possible, the positive aspects of life in community and enable, when prerequisites are fulfilled, their subsequent reintegration into the society.

The international conventions relating to torture¹⁷ and prison rules¹⁸, and positive regulations in the field of substantive and procedural criminal law, regulations in the field of enforcement of criminal sanctions, as well as regulations on police, welfare and medical care represent normative framework for actions of the Protector of Citizens regarding persons deprived of liberty.

12 We here use the word "detention"/*zadržavanje* as more appropriate than the word "custody"/*pritvor*, which is erroneously used in translations of ratified international conventions to translate the word "detention". In the English language the term "detention" denotes a concept that is much broader than the concept of "custody"/*pritvor* as defined by our regulations. The word "detention" derives from the Latin word "detentio" meaning "to detain", "to hold", i.e. in Roman law denotes the institute of exercising actual powers in accordance with authority.

13 District prisons and penal-correctional institutions.

14 Police stations, wherein the measure of 48-hour detention is carried out.

15 Neuropsychiatric institutions for treatment of chronic psychiatric illnesses.

16 Homes for children and youth without parental care, rehabilitation institutions for children and youth, institutions for accommodation of persons with disabilities, institutions for accommodation of elderly persons and pensioners.

17 UN Convention Against Torture and Other Cruel, Inhuman or Degrading Punishment or Treatment, Optional Protocol to the UN Convention Against Torture and Other Cruel, Inhuman or Degrading Punishment or Treatment, CoE Convention on Prevention of Torture and Inhuman or Degrading Treatment or Punishment.

18 Standard Minimum Rules for the Treatment of Prisoners (UN), European prison Rules (CoE).

a.2. Overview of the major activities

As far as the rights of persons deprived of liberty are concerned, the attention of Protector of Citizens has been maximally focused on the prison system. The prisons in Belgrade, Leskovac, Zrenjanin, Pozarevac, Sremska Mitrovica, Nis, Correctional facility for women in Pozarevac, Correctional facility for under aged persons in Valjevo and the Special prison hospital in Belgrade, have been visited. The Protector of Citizens visited the above institutions acting upon complaints and at the same time conducted general control of the state in these facilities. The fact that unsupervised private interviews have been enabled for inmates in all penal institutions, as well as access to all premises and availability of complete documentation, caused the Protector of Citizens to give positive evaluation related to improvement of state in these institutions. The Department for Enforcement of Criminal Sanctions has, on the other hand, shown cooperativeness in its domain of work, by delivering a detailed report on conducted internal supervision.

Acting upon a complaint, the Protector of Citizens has also visited the Transit Camp for foreigners in Padinska Skela, the centre under the jurisdiction of the Ministry of Internal Affairs.

In October and November the Protector of Citizens initiated, in cooperation with the provincial and local ombudsman control visits to 92 police stations. The fact that, despite certain deficiencies, access to all police stations was enabled and all requested documents made available by police is evaluated as positive and encouraging.

a.3. Conditions in institutions for confinement of persons deprived of liberty

The position of persons deprived of liberty is mainly determined by the conditions of their accommodation, medical treatment, established attitude of staff in the institutions and a number of other real-life circumstances.

The institutions the persons deprived of liberty are confined in, are overcrowded. No adequate measures have been undertaken in the past to construct new facilities, and the increase in number of persons deprived of liberty was not followed by even a proportional enlargement of accommodation capacities. Besides, even if adaptations have been made, the existing capacities were additionally reduced in order to fulfil the requested standards. Generally speaking, the quality of existing confinement institutions is not satisfactory and this has negative impact on all other aspects of prison – life of the persons deprived of liberty.

High degree of medical care for persons deprived of liberty, in accordance with the international standards has been prescribed by valid regulations, however, poor accommodation capacities, inadequate equipment and insufficient number of medical staff make adequate medical care unfeasible.

The conditions the persons deprived of liberty are exposed to could not as a rule be defined as torture, but may often be characterised as inhuman and degrading.

a.4. Conditions in the prison system

The available accommodations/confinement capacities/ in prisons are insufficient for the current number of persons deprived of liberty. The fact that number of imprisoned persons exceeds 10,000 shows that number of inmates has doubled over the past

ten years. Enormous increase in number of imprisoned persons has not been followed by even proportional increase in accommodation capacities.¹⁹ The situation might be improved by expansion of accommodation capacities²⁰, and through affirmation of the system of alternative measures and sanctions.²¹

Often, the imprisonment institutions have been constructed long ago, and many of them are located in densely populated areas and are inconsistent with modern standards for prison sentences' enforcement.²²

Some facilities are devastated, ruined and damp. Dormitories are inadequate, insufficiently equipped, and many do not have separate toilet facilities. Maintaining personal hygiene is difficult for inmates and in many institutions bathing is organised only once a week. Inmates obtain toiletries themselves, wash their own clothes, generally there are no adequate premises for laundry drying which is consequently, done in dormitories. The quality of nutrition is not entirely satisfactory. The inmates complain of tasteless food, lack of milk and dairy products, and particularly fruit.

Activities offered to inmates are fairly limited and they are mostly forced to be idle. Work activities are mainly reduced to daily tasks. The work the inmates are organized to perform is totally inefficient and does not fulfil the corrective function.

The inmates are allowed to contact the priests, and some institutions have separate chapels. Most institutions comply with special diet regimes required for different confessions.

There are numerous complaints by staff concerning the situation in the penal system, mostly concerning the low salaries and insufficient number of employees.

The Law on Enforcement of Criminal Sanctions prescribes high degree of medical care for inmates, in accordance with international standards. By the Law extensive and quality medical care has been established, right on privacy introduced, and precise duties of medical staff prescribed. However, the Law provisions are not fully implemented in practise. Adequate treatment of sick inmates is impossible to perform due to bad conditions of accommodation. Also there is lack of medical staff and clinics are inadequately supplied with necessary medical equipment. In addition, the independence of medical staff is not possible to provide since it represents integral part of prison administration. This often causes absence of valid medical documentation which could be used as evidence in cases of torture, i.e. excessive use of means of coercion.

19 There are different estimates on current capacities of prisons in Serbia, ranging from 6,500 to 7,500 inmates, meaning that there is a lack of approximately 3,000 confinement places.

20 A prison is currently under construction in Padinska Skela, with capacity for 400 inmates.

21 Estimates say that the prison population would thus be reduced by in excess of 500 detainees/inmates.

22 One of the major problems of the penal system in Serbia is the location and architecture of the District prison in Belgrade and the Special prison hospital in Belgrade that jointly represent a single architectural whole. A number of attributes of these institutions underscores that it is necessary, without any further delay, to construct at a location outside the centre of the city a new prison complex that would meet all requirements, both in terms of security and in terms of exercising of rights of persons deprived of liberty. The current situation, burdened with the fact that the structural entity wherein are the above mentioned institutions also includes a pavilion housing tens of families, underlines the necessity to urgently commence with preparatory works for construction of facilities for the needs of these custodial institutions.

a.5. Structure, classification and actions of Protector of Citizens upon complaints by persons deprived of liberty

In 2008 the Protector of Citizens received 80 complaints from persons deprived of liberty.²³ Persons in penal institutions (serving prison sentences or under custodial measures) have filed 76 complaints. Two complaints have been filed by persons detained by police and by persons accommodated in a Shelter for old and sick persons.

The persons deprived of liberty most frequently complained of inadequate medical care, unsuitable confinement conditions (accommodation, nutrition, possibilities for outdoor activities, recreational activities, labour engagement). Some of the complaints related to inadequate treatment (classification into unsuitable corrective category,) unlawful execution of disciplinary measures, denying transfer to another institution or untimely consideration of transfer applications, unlawful detaining in institutions after expiry of imprisonment period prescribed by a decision of an authorized court and of omission to forward petitions submitted to the authorities.

Two complaints have been related to incidents of torture by officials, and a petition because of discrimination based in religious affiliation has been filed in one case only. 12 % of total number of complaints has been filed by 10 women and less than 4 % of total number of complaints has been filed by 3 under aged persons. Of the overall number of complaints only 2 (2.5%) have been filed by persons sentenced to prison accompanied by medical security measures. 50 % of all complaints have been filed from the large penal institutions (where 40% of average number of detainees is confined). Out of them 19 persons filed complaints from Pozarevac prison, 16 persons from Nis prison and 5 persons from Sremska Mitrovica prison.

b) Gender Equality

b.1. Equality of women and men in Serbia

b.1.1. Normative framework and statistics

Equality of women and men in Serbia is prescribed by the Constitution and consistently regulated by law. Formal equality, however, does not necessarily mean equality in practise. In 2008 women are still in less favourable position than men. The claim is proven by real indicators which reflect continuation of traditional discrimination practises²⁴.

23 In action on complaints by persons deprived of liberty the Protector of Citizens rejected 44 complaints (55%) for lack of competent jurisdiction as these chiefly related to work of courts. Two complaints (2,5%) were conveyed to the competent jurisdiction of the Public Attorney of the City of Belgrade. On 20 complaints (25%) procedures were launched to investigate the legality and proper operation of administrative authorities, of which two were subsequently dismissed as the acting authority corrected the irregularities in work by itself. In 14 complaints (17,5%) where procedures have been launched, after determination of all relevant facts it was assessed that that the complaints were unfounded. Two procedures initiated before the Protector of Citizens on complaints from persons deprived of liberty have been concluded with recommendations for correcting the irregularities in the work.

24 Insofar as earnings are concerned, the average difference between the pay of men and women is 16%. Thus, for example, in many parts of Serbia patrimony is inherited by the son whilst daughters receive only a "dowry" despite the existence of statutory gender equality in inheritance for many decades.

51.5 percent of the complete population in Serbia are women. Out of 250 members of Parliament, 54 are women, the President of the Parliament is a woman, and 50% of deputy speakers are women. The situation on municipal level is much worse. Among 159 men holding office of municipal presidents, there are only 6 women, and women are represented only by 20% in municipal assemblies. The Government of Serbia has five women ministers, which is 18.5% of total number. There are 22.7% women among the State Secretaries, and 42.6% among Assistant Ministers. Women are prevailing among judges (approximately 64%), but they are present mainly in municipal courts and are not in the same extent represented among court presidents (approx. 40%). Since the year 2000 women have been elected as Presidents of the Supreme Court of Serbia, and since 2008 a woman is nominated as president of the Constitutional Court of Serbia. In this important judicial institution majority of judges (70%) are women.

80% out of total number of persons voluntarily resigning from their jobs for family reasons are women. Women also comprise 98% of those whose sole work engagement is household maintenance. 29.7% of total number of owners of title–deed registered buildings are women. On the other hand, women hold 30.5% of total number of managing positions in the country. 20.8% women hold posts of managers and 14.3% are heads of management boards. 95/5% of all pre–school teachers are women as well as 71.8% of primary school teaching staff, and 29.4% of faculty lecturers. Differences are also visible concerning educational profiles; 64% lecturers at language faculties are women, law faculties employ 45 % women lecturers, while at faculties of electrical engineering about 9% of women are among employees and at mechanical engineering faculties women employees are represented by 6%. So far, only six female university chancellors have been elected.

b.1.2. Violence against women

Family violence has for a long time been considered in our society as private shame a phenomenon somehow provoked by personal characteristics of the offender and the victim. Cases of violence were taken as something one should not talk about, something one should avoid to interfere with. In number of public speeches the Protector of Citizens expressed a firm view that any form of violence is a public matter, regardless of the place it happened, of who the victims and offenders are. The violence should be dealt with by all institutions within their competencies. Violence against women is one of the major obstacles in achieving gender equality, especially because this kind of violence represents one of the most serious cases of violating human rights, which may endanger the life itself. In spite of this, there are no precise data on the extent of violence against women in Serbia. One thing is obvious, the practise of violence against women is still very present in the society.

Most information and data have been provided from researches performed by non–governmental sector. The research results show that this form of violence is widely spread. During the traditional action under the title –“16 days of struggle against violence”– the Protector of Citizens met representatives of the non–governmental coalition against violence. Different experiences have been exchanged, and general conclusion was, that absence of reaction, untimely and/or inadequate reaction of institutions in years– lasting cases of family violence have so far been and still are the most serious problem.

The most present forms of violence against women in Serbia are violence in family/partner relations, sexual violence against women and women trafficking. According to research by several NGOs almost every second woman is subjected to some form of psychological violence in the family, every third woman is subjected to physical attack by a member of the family, while every fourth is threatened with violence. Statistic says that an average one woman per week is murdered in Serbia by her husband or common-law partner. In more than 92% cases the abuser is husband or cohabitation/common law partner. Family violence is not only widespread, but is also characterised by continuity and persistency. It has been noticed that in 2008 the issue of violence against women was given more space in media, but unfortunately, the dominant approach in writing of this problem was sensationalistic, with no respect for privacy and dignity of the victim. Gender dimension of violence against women has been marginalised.

Initiatives for institutional networking in dealing with the problem are encouraging. Another good example of treating the problem was signing Protocol on Intersector Cooperation in the process of treatment of victims of family violence in October 2008 in the city of Kragujevac. The Protocol was signed by the representatives of the city of Kragujevac, the Kragujevac Welfare Centre, Police Administration, city Medical Centre, Department for emergency medical assistance, Clinical hospital and the NGO "Oasis of Safety". The protocol is considered to be the first step towards achieving coordinated cooperation between NGOs, governmental institutions and local government involved in prevention and protection of victims of family violence. The Kragujevac Protocol is unique in Serbia and may become the model for cooperation in other cities.

b.1.3. The issue of employment of women and men

The unemployment rate for women is half times higher than that of men. Women represent 44% of the employed population and 54.3% of the unemployed. The difference in salaries between men and women is 16%. As most serious, are considered the problems of employment of women over 45 years of age, of housewives, agricultural labourers, young women and women from multi-discriminated groups. There is a significant percentage of difference in unemployment of women from these groups (for example, refugee women are by 15% less often employed than the average for unemployed women, displaced persons by 32%, Roma women by 39% and more). In practice, there is the traditional division of occupation to "male", better paid and more prestigious, and "female", less paid and less prestigious.

A "camouflage" for female unemployment is mass work of women in the "grey economy". Unemployment, low wages and job insecurity affect their negotiating position, thus making women unequal in respect to the employer. A trend is noted from the complaints to the Protector of Citizens of lengthy and inefficient judicial proceedings in labour disputes, as well as inefficiency of inspection services.

b.1.4. Institutionalising mechanisms for gender equality and active involvement in the decision making process

The current mechanisms for gender equality in Serbia were augmented through appointment of a deputy Protector of Citizens for gender equality. A general increase in involvement of women in decision making processes at all levels of society and in all spheres

is encouraging, and is an impetus for further development of democracy and society. This, concurrently, is a prerequisite for inclusion of gender equality in creation of social policies as a contribution to implementation of democracy, institutional transparency, rule of law, justice, development and peace. These mechanisms should be present at national, province and local level, both in elective and executive bodies.

b.1.5. Education of women and men

There is almost no difference in the approach to education of boys and girls, with the exception of Roma children (77.9% boys as against 69.7% girls), whilst problems exist in respect of children in rural areas and children with disabilities in development.

Gender inequality is also reflected in segregation of educational profiles, with continued prevalence of differentia to traditionally "man's" and "women's" occupations. Technical illiteracy among women is greater, which subsequently marginalises them further on the labour market. Stereotypes on the role of genders are further fuelled to considerable extent also by the traditionalist content of curricula and textbooks. Although there is no discrimination in teaching material, patriarchal concepts and androcentric models permeate through stereotype contents starting with elementary school readers and continuing through other textbooks, particularly in social sciences. Lack of adequate education in reproductive health and insufficient encouragement to involve girls in sports is noticed.

b.1.6. Laws and social strategies

Concluding Observations in respect of Serbia of the UN Committee on the Elimination of Discrimination Against Women, adopted on 11 June 2007, have become more accessible and better known in 2008, and there are different initiatives for their promotion and application. The National Strategy to empower women and promote gender equality was developed in 2008 and by the year's end passed through the adoption and commenting procedure in all ministries. The method of gender budgeting represents a crucial contribution to equal opportunity policy, as the current manner of allocation of funds and public expenditure has different impact on men and on women. The Protector of Citizens is particularly aware that there continues to be a significant lack of public statistics concerning data classification by gender. Despite all initiatives and warnings, there is still no even elementary victimology statistics, as well as a whole number of other elementary data classified by gender and age.

b.2. Rights of lesbians, gays, bisexual and transgender (LGBT) persons

b.2.1. Prejudices and discrimination

Sexual minorities continue to face numerous prejudices and discrimination. Consequently, they are mainly forced to lead a "double" life, i.e. to conceal from their employers, family and environment their sexual orientation in order to protect their personal and social safety and to retain their social and material status and elementary livelihood. This necessitated discretion

regarding sexual orientation often inhibits reporting specific cases of violence and discrimination they are subjected to in public institutions, which in turn prevents actions by the police and courts and makes the dimension of the problem invisible.

b.2.2. Homosexuality is not an illness

Progress was made in regard to 2007 in the area of medical treatment of homosexuality as same-sex orientation has been taken off the list of illnesses²⁵ in Serbia in May 2008, thus ending even the formal possibility for enforced treatment and hospitalisation of these persons. As homosexuality ceased to be a criminal offence in Serbia 15 years ago, and as it is no longer considered an illness, the issue of continuing discrimination and violence against persons of same sexual orientation is becoming all the more problematic, since exclusion, marginalisation and different treatment of those who are neither criminals nor ill can no longer be justified by any argument.

b.2.3. Freedom of assembly

One of the key human rights problems of sexual minorities is the right to public assembly that is the focus of attention every year, particularly in June when pride marches are organised worldwide, i.e. gatherings in public places to call attention to the discriminated status of this social group. There are still no conditions in Serbia for safe organisation of such events. Progress in comparison to 2007 is reflected in the fact that two public manifestations were organised in 2008, although in closed premises – the Summer Festival of Lesbian Culture, organised by the Novi Sad Lesbian Organisation (NLO) and the Queer Festival in September, in Belgrade. As a precaution, the first event was held without announcement, with media reporting only after ending of the exhibition and other cultural programmes, while at the other – the Queer festival – participants were physically attacked which was publicly condemned by the Protector of Citizens. Timely reaction of the police is encouraging, and significant sign that safety of sexual minorities and their right to cultural manifestations is seriously taken and that necessary measures are being undertaken to safeguard such assemblies.

b.2.4. Security of LGBT rights activists

Activists for human rights of sexual minorities continue to work in unsafe conditions and at secret addresses. Only a limited number of activists appear in public under full name. Internet threats increase in frequency after each public appearance of one of them or launching any topic related to LGBT existence. Even those who support LGBT persons bear the consequences of public animosity and are also subjected to threats. In many public appearances the Protector of Citizens has pointed out to the international commitment of the state to adequately protect human rights defenders, including activists for LGBT rights. After the escalation of threats in December following the announcement of the Ministry of Culture to financially support the "Kvirija" group, the Protector of Citizens has defined a joint strategy for protection of LGBT activists. It is encouraging that the first ever sanction for threatening a gay person was pronounced in 2008.²⁶

25 Albeit two decades after the decision of the World Health Organisation that homosexuality is not an illness.

26 On 23 December 2008 the city magistrate in Belgrade fined B.P. 10,000 RSD for multiple serious threats made in April 2008 to L.P., a member of the Gay Alliance, because of his affiliation with an organisation defending human rights of the LGBT populace in Serbia, thus attacking his life and safety.

b.2.5. Treatment of transsexuals

The approach to the Protector of Citizens by transsexuals and their associations opened a new issue, namely the lack of medical coverage for sex-change operations and post operative treatment in Serbia where approximately 250 operations of urogenital reconstruction are performed annually. Specifically, the Protector of Citizens launched an initiative for resolving the issue of medical treatment of transsexualism as non-induced illness, taking the standpoint that it is essential that social (medical) insurance recognise at least the basic costs for surgical sex-change as the only medically accepted therapy for transsexual persons.

b.2.6. Hate speech against LGBT persons and "silence of administration", i.e. the Republic Broadcasting Agency (RRA)

LGBT groups regularly address protests to media editors and inform the public on hate speech cases. Progress was made in 2008 when some of the media started giving public apologise for publishing hate speech attitudes. Apologies have for example been given by popular daily papers *Politika* and *Blic*, and by *B92 radio and TV station*. This presents a positive shift in comparison to 2007, although the apology made by *Blic* newspaper was considered formal and insufficient. Nevertheless, cases of apology in media should be welcomed as a first step towards awareness that public insults against the LGBT population are unacceptable. LGBT population must not be identified in public with paedophiles, criminals and other socially dangerous persons. Despite clear statutory prohibition of media defamation based of any form of sexual orientation, some media popular TV Pink, for example, continue to ignore justifiable protestations against cases of hate speech related to sexual preferences.

b.2.7. Political will

The Protector of Citizens is regularly in touch with representatives of the LGBT community concerning human rights protection, as this is one of the most endangered groups in the society. The attention in joint discussions is especially focused on right of public assembly of same-sex oriented persons. Presence of committed LGBT activism in Serbia is encouraging, and represented through activities of Geyten, Gay Strait Alliance, Kvirija, Labris, NLO and various other groups and individuals.

b.2.8. International aspect

The Protector of Citizens regularly follows the activities of international organisations concerning promotion of LGBT persons' rights, and particularly follows the reports of the Council of Europe and the EU Agency for Fundamental Rights, as well as the decisions of the European Court for Human Rights (Strasbourg) and the European Court of Justice (Luxembourg). Starting with 18 December 2008 Serbia has joined the group of sixty six countries that have endorsed the UN Declaration on LGBT Rights. Particularly important is the fact that this happened without any prior lobbying by LGBT organisations, thus affirming existence of political will to improve the current status

of sexual minorities in Serbia. The declaration, among other things, expressed concern over violence, harassment, discrimination, exclusion, stigmatisation and prejudices directed against persons because of sexual orientation or gender identity. Consequently, the declaration condemned all kinds of violations of human rights based on sexual orientation or gender identity.

c) Child Rights

c.1. Legal and institutional framework for the implementation of the rights of the child

The Constitution recognises the concept of the rights of the child and provides that these rights should be regulated by law. Unfortunately, an opportunity has been missed to proclaim as constitutional principles the basic principles of the Convention on the Rights of the Child – the right to life and development, the right to non-discrimination, the appreciation of the best interest of the child and the right of a child to be heard in all s procedures affecting him/her.

In 2008 there was neither amending of existing laws nor enacting of new laws related to or having direct impact on the rights of the child. It should be noted that there was significant progress in the statutory regulation of the rights of the child since 2000 (legislation governing education, the Family Law, Juvenile Justice Act). Nevertheless, there is still enough room in said and other legislation for a full integration of the concept and principles of the Convention on the Rights of the Child into the legislation pertaining to children. This is the reason why in the circles of experts on the rights of the child a need is stressed for enacting a specific law on children, which is also a priority for the Protector of citizens and a goal to be pursued in the upcoming period. The current situation with laws and by-laws in this area resulted in a recommendation of the UN Committee on the Rights of the Child requiring from Serbia to ensure the harmonization of all laws with the Convention and also to consider enacting a comprehensive law on children. The same is suggested by the Commissioner for human rights of the Council of Europe.

In 2008 the government of Serbia enacted four strategic documents defining development objectives and priorities that fully or partially concern children – the National Youth Strategy, the National Strategy for Prevention and Protection of Children from Violence, Birth Rate Incentive Strategy, and Sports Development Strategy.

At the institutional level, progress is visible only a decade and a half after Serbia became a signatory to the UN Convention on the Rights of the Child. For a short period of time, from May 2005 to November 2006, there was a sub-committee for the rights of the child as a body within the parliamentary committee for gender equality; however, initiatives for giving it the status of an autonomous working body did not materialize.²⁷

27 At the time of finalizing this Report, the National Assembly adopted new Rules of Procedure, but there is no committee for the rights of the child among the standing working bodies of the Assembly. Even a step back was made, as a Working Group for the rights of the child has been set up under the parliamentary committee for the reduction of poverty; this is certainly not a good solution and is also illustrative of a lack of understanding and even irresponsibility of the members of parliament, in particular in view of the constitutional provisions on the rights of the child.

The Council for the Rights of the Child (set up in 2002) drafted in 2004 the National Action Plan (NAP) that defines the general national policy for children until 2015. However, the existence of the Council has not yet sufficiently strengthened the cross-sector cooperation between the key sub-systems – educational system, social protection, judiciary, police, health sector and finance sector.

There are similar problems between the governmental and civil sectors. No new modern legal framework for the work of civil associations has been adopted; hence their treatment is still somewhere in between, which prevents the public sector to show more trust to the non-governmental sector in service provision. This is best illustrated at the example of the work of the “Shelter for Street Kids”, an innovative project of the Centre for the integration of young people from Belgrade. The media nowadays frequently stress the problem of lack of understanding for this project by some competent authorities.

Central role in proposing and implementing policies in various domains concerning children's interests belongs to the authorized Ministries – the Ministries of education, health protection, labour and welfare policy, internal affairs, justice, youth and sport. However, the cooperation between the mentioned ministries is still not developed enough.

Starting with July 1, 2006, and continuing the practice in 2008, specialized judges or specialized court councils deliver court decisions in the procedures concerning family relations. Special education for judges and other professionals concerning children's rights has been prescribed by the Family Law; the education is conducted in accordance with the special program of the Judicial Centre for Professional Education. The assistant judges are also selected among professionals with experience in working with children. However, it is disappointing that the proceedings in family disputes last for too long without a justifiable reason, which is negatively reflected upon the rights and status of children, in particular in litigations over custody over minors.

c.2. Draft law on the Protector of the rights of the child

In the end of 2008, the government of Serbia prepared a draft law on the Protector of the rights of the child and submitted it to the National Assembly for consideration and adoption. The Protector of Citizens presented his opinion to the government, but the government failed to state their view. The main reasons for a generally negative standpoint of the Protector of Citizens about this draft law are as follows: the draft law provides for introducing an institution that would annul a constitutionally defined concept of a general parliamentary ombudsman; it is in a collision with the Law on the Protector of Citizens which provides for a deputy protector of citizens who is specialized for the rights of the child; it is inconsistent with the legal solutions in the majority of European countries; adoption of this law is not (despite the argumentation in the official rationale of the draft law) the obligation of the Republic of Serbia required by any international organization; it opens the issue of introducing specialized ombudspersons for other vulnerable groups of citizens (national minorities, women, the disabled, persons deprived of liberty); to set up a new autonomous institution would require considerable resources and facilities that are provided from the budget of the Republic of Serbia, and not even the funds for several existing autonomous institutions, including the Protector of Citizens have been provided yet; it gives the specialized child's ombudsman the same level in the government structure as that of the general

ombudsman, thus leading to an 'inflation' of institutions and shifting of responsibility from the executive branch to supervisory institutions that have no executive powers; opens the issue of the conflict of jurisdiction of ombudsmen; it does not offer a single new mechanism for the protection of the rights of the child by the ombudsman; however, by isolating the rights of the child from the purview of the institution that deals with the protection of all human rights, it hinders uncovering of violations of the child's rights in the proceedings initiated from other reasons.

In view of this, it should be noted that the UN Committee on the Rights of the Child, the most referential international expert body, speaking about the need to have an independent institution for the protection of the rights of the child, does not insist on a specialised child's ombudsman, but points to an alternative –the general parliamentary ombudsman with a specialized deputy. The deputy Ombudsman in charge of children's rights has been established in Serbia, in the meantime. In addition it has been expressly stated by the Commissioner for Human Rights of the Council of Europe that there is no need to introduce a new institution under current circumstances. Detailed opinions concerning disadvantages of introducing another supervising institution, may be found in various reports given by independent international experts (Laura Diez Bueno, Professor of constitutional law from the University of Barcelona: *The Report on Special Mechanisms for the Protection of the Rights of Juvenile and Discriminated Persons, August 2008, commissioned by the OSCE Mission to Serbia.*)

c.3. Monitoring

According to the Republic Statistics Bureau, the population of Serbia includes 1,589,090 children up to 19 years of age,²⁸ which accounts for 21.5% of the total population, while according to the same source, the total number of children in 2007 was 1,662,029 or 22.2% of the total population, which unequivocally points to a fast ageing of Serbia's population and a drop in the number of children up to the age of 19. Indirectly, this means that there are approximately 1,500,000 of children up to the age of 18 living in Serbia.

One of the biggest problems encountered in monitoring of children's situation and respecting of their rights and in proposing the measures to improve their situation lies in the fact that there is no comprehensive database that would involve all categories of children. Partly, this problem was solved after the adoption of the NAP for children, through a system of monitoring through an appropriate database. However, the database does not contain all indicators, data are not regularly updated²⁹, and thus they are not fully reliable. Along with that, the data of general interest are collected by the Republic Statistics Bureau which does not use the age limit of 18 years, but of 19, and this considerably blurs the available data on children from this official source. A database on children containing various criteria is a *condition sine qua non* of any analysis, and in particular of policy measures. There are still areas that are not systematically screened by the competent bodies and not covered by official statistics, such as child work, trafficking, domestic violence against children, children living in the street; besides, gender-indexed statistics on most rights does not exist yet. The UN

28 The RSB uses 19 years as the age limit, while in accordance with the Convention on the Rights of the Child, children are persons up to 18 years of age.

29 The database contains 396 indicators and data are fed for 321 indicators.

monitoring bodies warned the Government of Serbia of all these deficiencies in the reports concerning implementation of international treaties to which Serbia is a signatory.

In absence of a unified database, there are numerous social actors who carry out their own research and produce reports on situation in specific areas of significance for the rights of the child. Besides competent ministries, there are international organizations like UNICEF and *Save the Children*, as well as national NGOs, and, as particularly encouraging, children themselves.³⁰

Although the Committee on the Rights of the Child considered Serbia's report in May 2008, the government did not present the Concluding Observations to the public by the end of 2008; instead, the non-governmental organization Centre for the Rights of the Child did so.³¹

c.4. Actions of the Protector of Citizens related to the protection of the rights of the child

In 2008 the Protector had 56 cases concerning the rights of the child. Fifty-one cases were initiated upon citizens' complaints, and five upon the Protector's initiative. The complaints did not concern the rights of the child only, but some other rights as well. The complaints most often related to work of various authorities. Thus, the Protector had to deal with the following authorities: centres of social work – 35 cases; schools – 7 cases; Ministry of Labour and Social Policy – 6 cases; Ministry of Education – 4 cases; Ministry of Interior – 4 cases; Ministry of Justice – 2 cases; Ministry of Health – 2 cases; Republic Fund for Health Insurance – 2 cases; health care institutions – 1 case; Republic Fund for Pension and Disability Insurance – 1 case; local self-government authorities – 5 cases.

The complaints concerned possible violation of at least one right, and often more than one right, as follows: the right to participation – 7 complaints; the right to adequate standard of living – 7; right to social care services – 13; right to education – 4; right to health care – 4; right to living with parents – 4; right to relationship with a parent who is separated or temporarily prevented from parenting – 11; right to identity – 3; right to maintain relations with the biological family and close persons – 8; right to preserving personal identity – 8; right to protection from violence, ill-treatment and neglecting – 12; right to protection and timely reaction of government authorities in cases of parental kidnapping of child – 2; right to respecting personality and dignity – 2; right to protection from trafficking – 3; right to freedom of movement and settlement – 1; right to protection from discrimination – 1; the principle of the best interest of the child – 19.

Protector's activities in relation to the complaints included not only official communication in writing with the authorities concerned, but also visits and direct inspection of documents, conversations with professional teams and heads of centres for social work, parents, foster parents, headmasters, etc.

30 The Coalition of Children and Young People with the Centre for the Rights of the Child, consisting of 25 children of the age from 12 to 17 from youth organizations, institutions for children without parental care, children with handicap and children living in the street, prepared the Alternative Report on the Situation of Children and submitted it to the Committee on the Rights of the Child. In Geneva, in May 2008, the representatives of these children defended their findings and conclusions before the Committee.

31 Beginning from 2009 and throughout the period until the end of the first regular report to the Committee, the Protector shall monitor the implementation of these conclusions by the competent authorities.

c.5. Problems related to the implementation of the rights of the child

c.5.1. Violence against children

One of the most frequent problems encountered in the cases of protection of children's rights is violence against children.

In 2005, the government passed the General Protocol on the Protection of Children from Maltreatment and Neglect, and the authorized ministries adopted special protocols including those for social care institutions, the police, and rehabilitation and education institutions. There are still no protocols related to health care institutions and protocols concerning institutions which should be delivered by the Ministry of Justice.

Previous experience and research in this country indicate that the main obstacles to a more efficient protection of children from ill-treatment and neglecting are unclearly defined steps in the process of child protection and unclearly defined roles of the participants in this process. In order to improve the system of protection, cross-sector approach is prescribed by the Protocol, and the main coordinating role assigned to centres for social work. The main objective is to improve the system of protection in all phases – from reporting and registering all forms of ill-treatment and negligence, to assessment of received reports on suspected ill-treatment and neglecting, and appropriate intervention in each individual case.

In 2008 the Protector got involved with the prohibition of physical punishment of children, following an initiative coming from children. At a conference the Protector organized on this occasion with the participation of all relevant actors,³² it was concluded that physical punishment of children, as a method used by parents/guardians to discipline a child, is socially unacceptable, as it inflicts suffering and violates the dignity of the child, having consequences on the health, physical and mental development of children, their ability to learn and advance, especially for children with handicap. The elimination of physical and mental punishment of children in the family has to be a synchronized process of various social actors, whose synergy should lead to all-encompassing changes in the society regarding punishing of children in the family and otherwise. This requires precise definition of legislative measures in the family law through amendments to the existing Family Act or a separate act, which requires consultation with experts and the ministry in charge of drafting the appropriate legislation initiative. The national Strategy for Prevention and Protection of Children from Violence that the government adopted in the end of 2008 is a framework within which these procedures will be carried out, and the Action Plan shall determine the exact schedule and terms.

c.5.2. Position of a child in cases of divorce

Dealing with the complaints, the Protector identified a number of problems in the work of centres for social work, which is directly reflected on exercising the rights of the child. Namely, when giving their opinion about the custody of the child in divorce litigation, it can be seen that centres for social work fail to exercise all powers at their disposal, in particular:

32 Representatives of all relevant government agencies, UNICEF, Save the Children, national NGOs, experts for the rights of the child were present, however, the children, although invited were not present, with a reason, though.

- Rarely order the measure of correctional supervision over the parent who is neglecting the child, and if ordered, they rarely monitor the compliance with such order; thus the measure of correctional supervision may be out of force for up to two years;
- Hardly initiate criminal proceedings due to neglecting, non-payment of alimony, failure to order a measure of protection against violence, etc.;
- Usually do not pay due attention to and consider the opinion of the child, in accordance with developmental abilities of the child;
- Stick rigidly to a pattern of seeing the child, without the attempt to adjust it to the needs of the child;
- Fail to keep a record of measures and procedures undertaken, or keep irregular and incomplete and unclear records;
- Fail to take measures at their disposal when one parent obstructs the other to see the child;
- Fail to do counselling or motivation work with the child or parents or correctional supervision over the parent who discourages the child to take part in the counselling or motivation work, or who themselves refuse to take part in it.

When assigning a child to a foster family, the centres often fail to make a plan of services and protection measures for children growing in a foster family; this plan should also contain a plan of activities for the preservation of personal and family identity of the child and maintaining of personal relationship with the biological family and close persons. In such cases, the centres refer child's relatives to a court. There is no any or there is meagre support to parents of handicapped children, especially when the parents have to decide whether they want and can take care of the child or would rather let it to the social care institution.

Having in mind that according to the Republic Statistics Bureau, nearly every fifth marriage is divorced (41,083 marriages in 2007 and 8,622 divorces in the same period), it is clear that the number of children with a similar problem is considerably higher than the number of the complaints (either from parents or children) submitted to the Protector. Truth to tell, parents themselves bear big responsibility here by reflecting their differences on children and inflicting them pain, suffering and sometimes irrecoverable damage.

In some cases the citizens complain of manner of activities of the Ministry of Labour and Social Policy as the body supervising the social care institutions. The complaints are related to the problem of a lack of response or insufficient information given after the supervision which causes certain doubts about impartiality of the supervising body.

Considering citizens' complaints the Protector of Citizens has also noticed problems in implementation of certain laws which has direct impact on realization of children's rights; The Law on Financial Support to Family with Children, is a good example. Although primarily aimed to support mostly affected families with large number of children, the law does not provide adequate help for such families. The problem is increased by the fact that socially aimed financial transfers account to 1.4% of GDP which is the lowest percentage in the whole region.

c.5.3. Rights of the child in the educational system

Structural reforms of Serbia's educational system that began in 2000 were stopped in 2004, when, *inter alia*, the focus was shifted from children to teachers. Allocations for education range from 3.5% to 3.8% of the GDP³³, but it can not be said precisely how much goes for children as the budgetary allocations for children are non-transparent. However, it is certain that these funds are the lowest in Europe (the European average is 6% of GDP).

Apart from a lack of funds, there are other deficiencies: high "hidden" costs that do not allow to say that the primary and secondary education is free; inadequate skills for the use of modern teaching methods; not all children start school in time and a high percentage drop out in the course of schooling, most of them come from the most vulnerable groups, primarily Roma children; low quality education and poor status of children from the most vulnerable groups; education in the languages of national minorities and education for refugees and internally displaced is not up to desired standards, and training for teachers working with these children is very slow; training on human rights and rights of the child is not adequately incorporated in the training curricula; underdeveloped programmes and activities for encouraging tolerance and differences or prevention of peer violence and violence against pupils, as well as of pupils against teachers; discrimination in schools as a consequence of rootedness in the society; inadequate opportunities for schooling and training, in particular for technical vocations, as well as for children who dropped out of school.

Pre-school, primary and secondary education is regulated under the Law on the Foundations of Educational System from 2004, which, given the solutions contained there, constitutes a hindrance to the reform and modernization of the educational system, and adoption of European standards in this field. Reasons for such situation should above all be looked for in a lack of a comprehensive national educational strategy, which is the responsibility of the Ministry of Education and the National Council for Education.

Disabled children are permanently denied a fundamental right on education. Schools often try to refuse their inclusion in tuition process. This is why from 60% to 85% of disabled children remain out of any educational system. The health condition of these children is still tested by special medical boards, whose members have contradictory views on the same case and thus make discriminatory decisions. Because of unnecessarily prolonged decision-making of mentioned medical boards before registration for school of disabled children, they actually lose the possibility to enrol for school on time.

The desired and projected inclusive system of education requires, generally speaking, the entire educational system to be tailored to fit all children and each child. The mentioned deficiencies have had negative effect on results achieved by our students in two reputed international contests PISA and TIMSS.³⁴

The complaints presented to the Protector in this field mostly concern situations where the teacher depreciates and mocks a pupil, humiliating their personality and dignity and discouraging their creativity. Also, a number of complaints referred to peer violence and inadequate and untimely response from the school, school administration, and educational

33 In 2008, they accounted for 3.8%, and in 2009 unfortunately dropped to 3.5% BDP.

34 Programme for International Student Assessment and Trends in International Mathematics and Science Study.

inspections in such cases. In certain cases, the complaints were related to hidden and open discrimination against pupils, members of national minorities, Roma specifically, by other children and also the teaching staff.

More detailed information on education of national minorities is given in a separate section of the report.

With regard to complaints related to education, an aggravating factor is the slowness of the Ministry of Education to reply to a request of the Protector related to citizen complaints within a legal time limit. One of noticed deficiencies is the fact that the Ministry does not have enough competent staff dealing with the rights of the child, which is rather shocking, given the impact of the educational system in the development of every child.

d) Rights of national minorities

d.1. National minorities rights

The status and implementation of the rights of national minorities in Serbia have not significantly changed since 2007. The proclaimed normative regulation of the status of national minority councils failed to be realized. Along with that, other regulations have not been adopted or measures undertaken that should have led to improved implementation of constitutionally and legally guaranteed individual and collective rights of national minorities. For more than half a decade, a professional and public debate has been going on adoption of a law by which the status of local minority autonomies would be regulated; questions have been raised concerning normative equalization of right on use of official language; there are also no adequate regulatory solutions concerning other issues in the domain of cultural autonomy – information and education in the languages of national minorities, as well as the status of institutions of culture; also, the issue has been raised concerning effective participation of national minorities in public life, and finally, there is no defined plan of activities, measures, priorities, competencies and responsibilities regarding the improvement of the Roma position.

With the establishment of the Ministry for Human and Minority Rights, activities have been initiated concerning statutory protection of the rights of national minorities; however, unfortunately, none of the above mentioned issues have been resolved by the end of the year.

It should be added that it is difficult to assess the situation of human and minority rights in absence of adequate methodology and clear and measurable criteria for monitoring of their status. Monitoring of the situation of national minority rights is a frequently neglected aspect of the system of protection of national minority rights in Serbia. Examination of the reports of government authorities concerning compliance with the obligations accepted by ratified international instruments has shown that most information, without pre-defined methodology, selection and checking, is obtained from the reports and records of state and provincial bodies, and partly from the reports of NGOs. Lack of a systematized database increases the risk that the reported data are not accurate and opens the possibility for concealing the real situation in some multiethnic communities. Although the Protector intensively works on methodology development for monitoring these rights, sufficient information has still been impossible to obtain, on

the basis of which a precise report could be given to the Parliament on national minority rights. During the initial phase of the examination the Protector has performed in sixty-eight multiethnic municipalities in Serbia, it was already proven that, despite clear legal obligations, adequate attention has not been devoted to the national minority rights.

d.2. Implementation of regulations on the protection of rights and freedoms of national minorities

Pursuant to the Constitution, the Republic of Serbia is founded on the “rule of law, principles of civil democracy, human and minority rights and freedoms and upholding of European principles and values” (art.1), besides, “the state shall guarantee special protection to national minorities for the purpose of ensuring full equality and preservation of their identity” (art. 14), the legal rights of national minorities are not equally respected in all parts of the country. Namely, there is still a difference, and it seems to be increasing, between exercising of these rights in the Province of Vojvodina and the central Serbia. The conventional justification is that in Vojvodina there is a social and institutional tradition of multiculturalism, and majority of national minorities live in Vojvodina. However, pointing to a high standard of national minority rights in Vojvodina has sense only if measures are taken to reach this standard in other multiethnic communities, and it is worth mentioning that the Census showed that Vojvodina has 615.930 citizens who are members of a national minority, while in central Serbia this number is 462.822. In communication with authorized bodies in local autonomies in central Serbia, the Protector found out that in certain municipalities there is no awareness of the obligation of implementation of rights of the national minorities, and that in some local autonomies, municipal assemblies knowingly violate the constitutional and legal obligation.

As regards a different approach to the protection of national minority rights, the term “national community” is more frequently used in public and administrative communication in Vojvodina. The Protector would like to draw attention to the article 2, para 2 of the Law on the Protection of the Rights and Freedoms of National Minorities (2002). By this Article it is formally prescribed that the term of national minority, which is used in international law and international instruments, Serbia has ratified, shall replace all other terms, including the term “national community”. “National minority” has been used in the Constitution of Serbia since 2006. Besides the fact that the term “national community” has a broader sociological and political meaning than the term “national minority”, legally speaking, institutionalization of this term in public communication would only weaken the legal framework for the protection of national minority rights in Serbia.

Finally, pursuant to the Law on the Protector of Citizens „The Protector shall ensure the protection and promotion of human and minority rights and freedoms” (art. 1, para 2). In order to achieve this, the Protector needs to cooperate with bodies that are responsible for regulatory improvement of the status of national minorities, especially through giving opinions on draft laws and other regulations that, inter alia, regulate the issues relevant for the status of national minorities in Serbia.

Although in 2008 there were several legislative initiatives of competent government bodies regarding laws, by-laws and general acts that concern the status of national minorities, the Protector was neither consulted nor notified.

d.3. Activities of the Protector of Citizens related to rights and freedoms of national minorities

The Protector organized a regional expert conference on the "Protection of individual and collective rights of national minorities and monitoring of their implementation"(25–27 September 2008). The representatives of the authorized ministries and the government, international organizations, ombudsmen and their deputies, judges of constitutional and supreme courts from the region, representatives of national minority local autonomies, experts and representatives of NGOs took part in the conference. The discussion has shown that despite the fact that national minority rights are guaranteed by the Constitution, there is an urgent need for regulation of individual and collective rights of national minorities and improvement of their implementation in local communities. Comparative experiences presented in the conference unambiguously illustrate the fact that Serbia lags behind most countries in the region in regulation of the status of national minorities, and that, given that there are no reliable and systematized data, it is hard to assess the quality and effects of the guaranteed rights, and it is nearly impossible to assess their impact on the social integration and cohesion.

In order to contribute to overcoming the problem of recording the extent of actual implementation national minority rights, the Protector of Citizens in the end of 2008 started a research with the objective to collect, systematize, update and present to the public data concerning these rights implementation. Questionnaires were drafted and sent to multiethnic towns and municipalities, provincial and state bodies, national councils of national minorities with the request to provide information about exercising of national minority rights in accordance with their legal competencies. The received information, will be checked and published by the Protector and he will try, through cooperation with the above mentioned bodies, to update the information and improve the technical possibilities for their recording and presentation.

In 2008, the Protector of Citizens received 22 complaints concerning violation or denial of guaranteed individual and collective rights of national minorities. Most of them were related to right of education in the language of a national minority. Seeking to identify problems and give appropriate recommendations for overcoming the problems, the Protector, carefully considered each complaint, and organized a round table "Problems of education in national minority languages" that gathered representatives of the Ministry of Education, Ministry for Human and Minority Rights, and national councils of national minorities. The round table discussions as well as talks with teachers in national minority languages from Kovacica, Padina, Ruski Krstur, Subotica, Novi Pazar and other towns, revealed the main problems the citizens–members of national minorities encountered: lack of quality teaching manuals and tuition equipment; lack of clear criteria for text books' import; insufficient number of teaching staff; outdated, inadequate and incomplete rules and instructions given by the Ministry of Education; teaching programs not prepared and approved for all national minorities; inconsistent criteria in supervision carried out by the Ministry of Education; unfounded decisions of school inspectors etc.

Despite the fact that the Protector of Citizens carried out proceedings concerning the complaints, and on several occasions organized meetings, pointing out to the authorized Ministry on problematic issues, decisions have not in any single case been delivered in favour of citizens. This is the main reason why it might be stated that the cooperation with the Ministry of Education is far from being satisfactory.

d.4. Violations of national minorities rights

The Protector of Citizens may state that cases of violations of national minority rights, are still present in this phase, as well as inter-ethnic tensions and attacks on members of national minorities. The attacks are unfortunately repeated and mostly directed against members of the Albanian and Roma minority and members of small or unrecognized religious communities and churches. Violence, spreading fear, and inflaming of national, racial, ethnic and religious intolerance have been especially expressed in the period of unilateral proclamation of independence of Kosovo. Stressing the problem, the Protector issued a statement unequivocally pointing out that the security of all citizens is a primary goal of a democratic and unified Serbia. Upon examination of the results obtained by checking work of police administrations in municipalities where the largest number of incidents occurred, the Protector of Citizens determined that in most cases criminal charges have been initiated against an unknown person. In several cases only, the offender has been identified. The general conclusion is that in this sphere, there is a lot of room for improving work of the police and cooperation with the municipal prosecutor's offices.

d.5. Rights of Roma national minority

Upon consideration of the position of the Roma population and implementation of their national minority rights, the Protector has concluded that there has been no real institutional or actual progress in resolving the socio-economic, educational, and cultural aspects of social integration of the Roma minority, despite existence of the normative basis (the Constitution, the Law on the Protection of Rights and Freedoms of National Minorities, Poverty Reduction Strategy, government action plans for improving the situation of the Roma), institutional infrastructure (Government Council for the Roma Integration, Integration Office within the Ministry of Human and Minority Rights, etc.) Lack of Roma social integration strategy is apparent, and the fact that adoption of the document has been constantly delayed since 2003 only aggravates the situation of the Roma minority. Despite some efforts undertaken concerning social integration of the Roma in Vojvodina and rare examples of good practice in municipalities in central Serbia, problems persist related to education, housing, social and health care. Expressed discrimination of members of Roma national minority, is occasionally alleviated by rare examples of good practice and implementation of measures intended to ensure full equality for all citizens.

Almost all deficiencies in the government programme for improvement of Roma minority position have been shown during dislocation of unsanitary settlements in Belgrade. Several attempts to displace these settlements provoked protests of citizens against the decision to resettle Roma citizens to their neighbourhoods. The complexity of the issue was shown by a recent example: an attempt to relocate the "Gazela" settlement in centre of Belgrade to Ovca, suburban village near the capital, which provoked huge citizens' protests. Besides, by choosing Ovca, one of the three city areas with prevailing national minority population especially Romanian, traditionally living there, a constitutional provision has been violated stating that "it is forbidden to take measures that would cause artificial change of national population structure in the areas where members of national minorities live traditionally and in a significant number". The Protector of Citizens has established that the city authorities failed to act in the interest of citizens, to take adequate decisions, and to

prepare the local population and infrastructure for the newcomers. Consequently, it was recommended that alternative solutions should be found for cases of necessary displacement of some Roma settlements. It has also been concluded that further steps must be taken in the process of full social integration of the Roma minority.

e) Rights of persons with disability

e.1. Discrimination of persons with disability

The social position of persons with special needs has not changed since the last year's report. The report contained information concerning the problem of their general exclusion from the public, political and cultural life and particularly stressed the necessity of solving the problems in transport, education and employment of the disabled persons.

The information the Protector of Citizens received during 2008, show that the rights of disabled ex-soldiers and military veterans are considerably larger than those of the civilians. The absurd fact has been revealed that persons who became disabled due to different accidents, and who are neither ex-soldiers nor labour accident victims are not categorized at all.

Upon consideration of various complaints received by the Protector of Citizens, the conclusion has been confirmed that easy access for the disabled to public facilities and infrastructure has to be strictly respected in designing of new building constructions. At present, this obligation is more often disregarded than respected.

Complaints from persons with disability in 2008 also stress the problems related to granting funds for the projects intended for improvement of the position of the disabled. The funds are often allocated according to unclear criteria by the Ministry of Labour and Social Policy, Sector for persons with disability.

The discrimination of persons with disability is also visible on example of patients in health care institutions and institutions for elderly persons. In these cases the problems of persons with disabilities often interweave resulting in multiple discrimination and violation of more than one right of such persons.

e.2. Access to the labour market

Persons with disability have very limited access to the labour market; this is partly the result of a widely spread discriminatory practice by which the disabled are hardly likely to find a job in the social environment where there are lots of unemployed people among "the healthy" job-seekers. Prejudices concerning efficiency of persons with disability contribute to high rate of their unemployment.

The statistics of the National Employment Bureau says that around 25,000 persons with disability are registered as unemployed. However, there are much more unemployed among this population group, as many failed to be registered, having no expectations that it would change anything in their status.

In Serbia, the poverty rate among the disabled in 2008 was 70%, and only 13% had the possibility to work. Physical access to workplace is a precondition for engagement of

the persons with disability. This is especially true for those persons with disability who have a reduced mobility capacity. The authorities and individual employers should by all means try to make the working premises accessible to the persons with disability, as prescribed by the Law on Preventing Discrimination of Persons with Disability. As every problem has its other side as well, the Protector of Citizens has noticed that in some cases the cause of unemployment is insufficient motivation for work. This is partly the result of poor educational opportunities, i.e. a low access to secondary education and by meagre prospects for finding employment after school completion.

In this respect, the initiative of the National Employment Service which enables several hundred of persons with disability a year to find a job seems encouraging.

e.3. Young persons with disability

Particularly difficult in the Protector of Citizen's practice are cases when children with disability and their parents are encountered with the problem of providing the necessary treatment and medical devices.

The fact that decisions on the category of disability of under-aged persons are made by authorized social centres often proves to be a problem. For instance, under-aged persons with amputated limbs may exercise their rights (on parking, discounts, etc.) only upon a decision on necessity of external medical nursing and assistance. In absence of such a decision, they are not able to exercise any of the rights guaranteed by the law.

By complaints addressed to the Protector of Citizens by the citizens, it has been pointed out that in social insurance no distinction is made between persons belonging to different categories of disability.

e.4. Elderly persons with disability

The next particularly affected category are elderly persons with disability who lack literally everything and whose number is actually much higher than visible, as many of them are not even able to approach anyone in order to exercise their rights.

In Serbia there are nearly 1.3 million persons older than 65. It is estimated that 500,000 live in poverty having a monthly income below RSD 8,000, which combined with the disability, makes their financial, social and health situation even more complicated. This is aggravated by a persistently high intolerance and lack of understanding by institutions for the problems of elderly persons with disability, as may be seen from numerous complaints.

e.5. Allowance for external nursing and financial support allocated to persons with disability

One of the main problems identified by the citizens in their complaints to the Protector of Citizens concerns the allowance for nursing. Namely, the citizens complain on very low threshold, as this allowance is granted only to one quarter of persons who file a request. The monthly allowance for nursing and external assistance to a disabled person granted by the Pension and Disablement Insurance Fund currently amounts to RSD 13,500. The persons entitled to receive this type of allowance are those who are not able to move, the blind,

demented, those who can not take food or dress, without someone's assistance or move around the house without help, patients who are on dialysis at least three times a week if the case is declared as medically complicated.

The interview with the disablement board should be delivered and scheduled two months upon request, but, the response period is much longer, which is excused by allegedly large number of 'unjustified and unacceptable' requests. The recently introduced practice in Belgrade, Novi Sad and Nis where medical experts visit those who, according to medical documentation, are unable to appear before the board is encouraging.

e.6. Prosthetic devices for persons with disability

In the past, the state used to permit the citizens to make supplementary payments on the welfare prices of prosthetic devices; those who wanted better quality devices than those offered by the state, were allowed to pay extra money. Now, according to the citizens' complaints to the Protector of Citizens it is no longer possible. Another problem is that state provided prosthetic devices, can satisfy only the most basic needs, not allowing better mobility or ability to perform working activities. It should be pointed out that, for instance, an artificial upper leg of medium mobility costs EUR 7,000.

In their complaints addressed to the Protector of Citizens, the citizens have drawn attention on lack of the system for devices' quality control, as well as on incompetent, administrative personnel.

e.7. Homes for persons with disability

Visits to homes for old and persons with disability and complaints received from the citizens provide detailed information on life conditions in these institutions which are hard and complex. There is a lack of personnel in these institutions, and often the employees are under-qualified. The employees often have to work for many overtime hours which is not possible to pay. Along with that, due to nature of their work, they employees often get sick and are forced to take a sick leaves. There are no general standards for working with the persons with disability. The fluctuation of the beneficiaries is low, while the fluctuation of the employees is high.

A special problem is related to the status of these homes, as they are categorized as institutions of social and not health care, which creates numerous problems regarding the status of the employees and implementation of rights on health care of the beneficiaries.

A positive sign is the proclaimed goal to place as few persons as possible in the institutions. As a consequence, their number has already dropped. However, there are some worrying indications that this is achieved by simply turning down persons with disability who have no other alternatives for accommodation; the worrying indications are supported by the fact that the Ministry of Health is still under unreduced pressure to provide accommodation in the institutions for persons who do not have where to live, as the families are unable take care of them and there are no other alternative solutions. This is the reason why direct cooperation with municipalities in development of alternative systems of care for the disabled, like home assistance or daily care centres, is necessary. It is planned to strengthen the institution of foster care and special foster care services for the persons with special needs, however, these plans have still not entered the implementation phase.

It is encouraging that the government adopted the strategy for care of vulnerable and persons with disability for the period from 2007 to 2015. The strategy stimulates increased use of communal accommodations and other services.

e.8. Activism of persons with disability

The presence of organized activism of the persons with disability is a positive sign. The Protector has had numerous official contacts with organizations dealing with protection of the persons with disability. Along with that, various joint public activities have been organized; for instance on 17 December the publication under the title: *Women with Disability as Victims of Violence* was presented in a jointly organized public presentation.

A good example or model of good practice is the work performed by the organization called "Iz kruga" (Out of Circle), a female non-government organization established in 1997 with the objective of helping persons with disability, above all women who are victims of some form of violence and discrimination, through psychological counselling and free legal aid. Their activities are aimed at supporting women with disability who are due to manifold discrimination exposed to much suffering. The activities of this organization are carried out within a project against violence and a health project. Free legal aid is provided for beneficiaries of Belgrade, Novi Sad, Kraljevo, Trstenik, Nis, Sabac, Smederevo. „Iz kruga“ organization has for already ten years through SOS call centres provided free legal and psychological counselling.

3. ACTIVITIES OF THE PROTECTOR OF CITIZENS UPON COMPLAINTS

Introductory remarks

One of the main tasks of the Protector of Citizens is to examine whether an administrative authority or other organisation with public authority has in a legally correct manner delivered decisions on certain rights or interests of the citizens. The Protector of Citizens examines the cases of violation of rights based on complaints filed by citizens or upon his own initiative. Any person believing that an administrative authority or other organisation incorrectly applies or fails to apply regulations valid in the Republic of Serbia may address the Protector of Citizens.

In order to be informed on such violations of rights, the Protector of Citizens has established various forms of communication with the citizens. In 2008, the Protector of Citizens had 4,863 recorded contacts with citizens.

Table 1

Number	CONTACTS WITH CITIZENS	Number of contacts	%
1	Telephone conversations with citizens	2.232	45,9%
2	Appointments	1.395	28,7%
3	Filed complaints	1.030	21,2%
4	Legal aid in drafting complaints	117	2,4%
5	E-mail messages	89	1,8%
	Total	4.863	100%

a) Number, classification and action upon received complaints

In 2008, total of 1,030 complaints were formally received by the Protector of Citizens. Due to lack of adequate working conditions (office space, number of employees, technical equipment), the Protector of Citizens has not always been able to give timely response concerning some of the received complaints, the number of which continued to increase on a weekly basis. In an effort to overcome this problem, in 2008 the Protector of Citizens recruited 23 new members of the staff, instructed the staff to work overtime and introduced counselling services for citizens. In addition, the employees of the Professional Department organize everyday talks with the citizens who have complaints.

a.1. Action of the Protector of Citizens upon complaint

Acting upon the filed complaints, the Protector of Citizens rejected 409, and dismissed another 40 complaints after procedures completed, with the conclusion that the complaints were unfounded. Nine citizens withdrew their complaints during the proceedings. In case of 27 complaints, administrative authorities eliminated irregularities either after, or even before the Protector passed his initial document (especially concerning complaints related to pension and disability insurance). Five hundred and forty-five complaints are still pending in various proceeding phases (proceedings initiated, amendment to complaint or further information requested, administrative authorities are expected to provide reply, etc.).

Table 2

Number	COMPLAINTS FILED AND ACTION TAKEN	Number of complaints	%
1	Rejected	409	39,7%
2	Dismissed as unfounded	40	3,9%
3	Withdrawn by complainants	9	0,9%
4	Discontinued proceedings – administrative authorities eliminated irregularities	27	2,6%
5	Pending	545	52,9%
	Total	1.030	100%

Table 3

Number	RESONS FOR REJECTING COMPLAINTS	Number of complaints	%
1	Rejected on the ground of lack of competence	234	57,2%
2	Rejected on the ground of being filed too soon – all legal remedies failed to be exhausted	109	26,6%
3	Rejected as untimely	31	7,6%
4	Rejected as irregular	34	8,4%
5	Rejected as anonymous	1	0,2%
	Total	409	100%

*a.2. Classification of the complaints according fields
the rights belong to³⁵*

Considering the fields the violated rights belong to, the largest number of complaints relate to violation of economic and social rights. According to the complaints, the most violated are rights on pension and disability insurance (12.2%), as well as rights arising from employment and right to work (10.7%).

Table 4

No.	TYPES OF RIGHTS	Number of complaints	%
1	2	3	4
A	CIVIL AND POLITICAL RIGHTS		
1	Right on fair trial	97	9,4%
2	Right on trial in a reasonable time	26	2,5%
3	Right on citizenship	16	1,5%
4	Right on healthy environment	11	1,0%
5	Prohibition of all forms of discrimination	10	1,0%
6	Right on identification documents	8	0,8%
7	Right on access to information	7	0,7%
8	Right on human dignity and equality before the law	7	0,7%
9	Prohibition of torture, and cruel and inhuman treatment and persecution	5	0,5%
10	Right on life and right on human dignity	4	0,4%
11	Freedom of political, trade-union and other association and activities	4	0,4%
12	Right on privacy	3	0,3%
13	Voting right	2	0,2%
14	Right on freedom of establishment and movement	1	0,1%
15	Right on rehabilitation	1	0,1%
16	Right on liberty and personal security	1	0,1%
17	Right on presumption of innocence in criminal proceedings	1	0,1%
18	Rights of internally displaced persons and refugees	3	0,3%
19	Right on religion	2	0,2%
	Total A..	209	20,3%

35 It should be noted that information given in Table 4 differs somewhat from that given in Chapter 2 of this Report (Respect and Protection of Human Rights and Freedoms in the Republic of Serbia; Summaries by Specific Fields); Table 4 shows eight types of rights rather than six as referred to in Chapter 2 (Table 4 shows two extra types of rights, namely Civil and Political Rights, under A, and Economic, Social and Cultural Rights, under B), giving a more precise classification of the complaints (1,030 in total) than in Chapter 2.

1	2	3	4
B	ECONOMIC, SOCIAL AND CULTURAL RIGHTS		
1	Right on pension and disability insurance	126	12,2%
2	Rights arising from employment and right to work	110	10,7%
3	Right on protection of property	40	3,9%
4	Rights arising from social protection	38	3,7%
5	Right on housing and rights arising from housing relations	31	3,0%
6	Right on property and peaceful enjoyment of possessions	27	2,6%
7	Right on health care and health insurance	19	1,8%
8	Shareholders' rights	14	1,4%
9	Old foreign exchange savings	5	0,5%
10	Rights arising from expropriation	5	0,5%
11	Right on inheritance	1	0,1%
	Total B.	416	40,4%
C	RIGHTS OF NATIONAL MINORITIES MEMBERS		
1	Right on education	6	0,6%
2	Prohibition of causing inequality based on nation, race, religion and other	5	0,5%
3	Collective rights of national minorities	4	0,4%
	Total C.	15	1,5%
D	RIGHTS OF THE CHILD		
1	Rights of the child	31	3,0%
	Total D.	31	3,0%
E	RIGHTS OF PERSONS WITH DISABILITY		
1	Rights of persons with disability	14	1,4%
	Total E.	14	1,4%
F	RIGHTS OF PERSONS DEPRIVED OF LIBERTY		
1	Rights of persons deprived of liberty	67	6,5%
	Total F.	67	6,5%
G	GENDER EQUALITY		
1	Domestic violence	6	0,6%
	Total G.	6	0,6%
H	GOOD GOVERNANCE		
1	Right on legal protection before administrative authorities	83	8,0%
2	Right on respect of principles of good governance	68	6,6%

1	2	3	4
3	Silence of administration	57	5,5%
4	Non-enforcement of court judgements	26	2,5%
5	Non-enforcement of resolutions passed by administrative authorities	18	1,8%
6	Abuse of procedural powers by administrative authorities	6	0,6%
	Total H.	258	25%
I	Other (unclear) complaints	14	1,3%
	Total	1.030	100%

a.3. Authorities most targeted by complaints

Most of the complaints have been related to work of the bodies with public authority (254), followed by the complaints concerning activities of different ministries (220).

Table 5

Number	AUTHORITIES MOST TARGETED BY COMPLAINTS	Number of complaints	%
1	Bodies with public authority	254	24,7%
2	Ministries	220	21,4%
3	Local-government authorities	132	12,8%
4	Administrations and inspections operating within ministries	87	8,4%
5	Other	337	32,7%
	Total	1.030	100%

a.4. Ministries most targeted by complaints

One third of all the complaints related to activities of the ministries, concern work of the Ministry of the Interior (80). Most of these complaints are related to implementation of right on identification documents (identification cards and passports), the right on citizenship and the right on obtaining weapon permits and the procedure of weapon seizure; certain number of objections concern failure of the Internal Control Sector to act upon citizens' complaints. Two complaints only, have been related to torture, and cruel and inhuman treatment by the police. Number of complaints concerning Ministry of Interiors does not come as a surprise, considering the fact that this ministry has largest number of contacts with citizens, in performing police, administrative and other functions. The level of cooperation established between the Ministry of Interior and the Protector of Citizens in conducting preventive, control and corrective functions is very high.

Table 6

Number	MINISTRIES MOST TARGETED BY COMPLAINTS	Number of complaints	%
1	Ministry of the Interior	80	36,4%
2	Ministry of Defence	26	11,8%
3	Ministry of Economy and Regional Development	25	11,4%
4	Ministry of Labour and Social Policy	21	9,5%
5	Ministry of Education	18	8,2%
6	Other ministries	50	22,7%
	Total	220	100%

4. IMPROVEMENT OF HUMAN RIGHTS AND FREEDOMS THROUGH LEGISLATION

General

The position and role of the Protector of Citizens in the legal system of the Republic of Serbia's are determined, among other things, by significant authority the institution has in the domain of improvement of regulations concerning human rights and liberties. The Protector of Citizens has a general right to propose laws within his authority, and is also authorized to initiate amendments and supplements to the laws, by-laws and other regulations when in his opinion the citizens' rights have been violated due to deficiencies in legislation.³⁶ Furthermore, the Protector of Citizens may initiate adoption of new laws, by-laws and other regulations if he considers them significant for implementation and protection of citizens' rights. In addition, the Government and/or relevant Parliament committees are obliged by Law to consider initiatives taken by the Protector of Citizens. Finally, it has to be pointed out that the Protector of Citizens has a right to give his opinion to the Government and the Parliament on draft laws and regulations, he/she considers relevant for protection and implementation of citizens' rights.³⁷

a) Proposals for amendments of laws, by-laws and other regulations

The Protector of Citizens has processed 23 proposals for adopting new and/or amending the existing laws, by-laws and other regulations, out of which 21 have been proposals for amendment of the existing regulations and two for adoption of the new ones.

Proposals were filed by individuals (12), citizens' associations (5), other legal entities (3), and proposals given on Protector of Citizens initiative (3). The proposals have been related to economic, social and cultural rights (12), civil and political rights (7), child rights (2), gender equality (1) and good governance (1).

Table 7

The rights targeted by proposed legislation	
Prohibition of discrimination	1
Right on identification documents	1
Right on participation in public affairs	1

36 Article 18 of the Law

37 Article 18 of the Law

Right on personal data protection	2
Voting right	1
Right on equal protection of rights and on legal remedy	1
Shareholders' rights	1
Right on social protection, health care and health insurance	5
Rights arising from employment	2
Right on pension and disability insurance	3
Right on protection from mental, physical and any other exploitation and abuse	2
Gender-based violence	1
Abuse of procedural powers	1
Right on protection of moral and material interests arising from artistic, literary and scientific work	1

a.1. The proposals received for amending laws, by-laws and other regulations

The Protector of Citizens has received 20 proposals for adopting new and/or amending existing laws, by-laws and other regulations. Most of the proposals have been related to social protection, health care and health insurance.

a.1.1. Health care

Analysis of the issues addressed in the proposals revealed number of problems in the field of the health care. As far as the Law on Health Insurance is concerned, one of the problems concerns limited scope of health services available to specific categories of insurees outside their place of residence. Namely, insurees who are pension beneficiaries staying outside of their place of residence for extended periods and, hence, outside the jurisdiction of their own health insurance branch cannot exercise their right on some basic medical services, such as getting prescriptions for medications.

In consideration of the Law on Health Care amendment, the attention has been drawn to the issue of unequal position of medical workers who perform additional work in private medical institutions (not permitted) compared to those who do so in state-owned medical institutions (permitted up to 1/3 working hours). The proposers of the law amendment stated that discrimination was present towards certain categories of medical workers and that the principle of equality of all forms of ownership has been violated by allowing medical workers working for state-owned medical institutions to contract additional work with state-owned employers, while contracting with private medical institutions was not permitted. Along with that, there is also an issue of correlation between the Law on Health Care and the Labour Law as the latter allows the employees to contract additional work with other employers.

a.1.2. Social protection

As regards the Law on Pension and Disability Insurance, the citizens' complaints are focused on the fact that individuals owning agricultural land, irrespective of whether they farm the land or not, automatically become socially insurance beneficiaries as farmer-insurees. Besides, no possibility is offered for them to cancel such insurance for as long as they own fertile land. Namely, the said law neither establishes the criteria for the size of agricultural land one must own in order to become or stop being farmer-insuree nor other criteria for determination whether an individual is engaged in agricultural activity or not. Due to potentially large number of individuals whose rights may be violated as a result of this deficiency, the Protector of Citizens has written to the Republic Geodetic Institute and the Republic Pension and Disability Fund, asking them to take position on this issue, but has received two contradictory replies.

There is another issue regarding the Law on Pension and Disability Insurance. The persons living in extramarital union for many years proposed the law to be amended, convinced that their rights have been violated, since the law did not prescribe family pension for extramarital partners, despite the constitutional proclamation that extramarital union is equal to marriage.

Along with that, the Protector of Citizens received three proposals for amendments to the Law on Citizens' Social Protection and Provision of Social Security. The proposals, however, included mutually conflicting requests. Insurees retired from the army believed that their rights had been violated as they were not entitled to an increased allowance for care and assistance provided by other persons, while other insurees expressed conviction that they had been discriminated in comparison to army pensioners because the increased allowance they received was lower than the allowance paid to army pensioners.

a.2. The Protector of Citizens initiatives for amendments of laws, by-Laws and other regulations

In compliance with his legally determined authority, the Protector of Citizens initiated amendments to the Law on Personal Data Protection, the Law on Civil Servants and the Rules of Procedure of the Parliament.

a.2.1. Law on Personal Data Protection

Having considered the draft of the Personal Data Protection Law, the Protector of Citizens submitted to the Parliament 15 amendments to the document. Essentially, the proposed amendments have been aimed at enabling effective exercise of the right on personal data protection, as guaranteed under the Constitution. The law adopted on 23 October 2008, included 7 out of 15 amendments proposed by the Protector of Citizens. Nevertheless, since the law still does not fully meet the EU standards and, as such, jeopardizes the signing of visa regime agreement, the Commissioner for Information of Public Importance invited the Protector of Citizens, to take part in the drafting the strategy for further development and implementation of the law.

The following amendments by the Protector of Citizens have been incorporated in the law:

1. The amendment to the Article 1 which defines more precisely the provision concerning the rights on personal data protection granted to everyone, irrespective of their age, current social status or social background;

2. The amendment to the Article 6 by which more integrated and comprehensive system of personal data protection, than the proposed one is prescribed. In other words by the amendment obligatory protective measures are defined for the process of data processing. The amendment prescribes that the data collected for other purposes may exclusively be used for historical, statistical or scientific–researching objectives;

3. The amendment to the Article 10, specifies that data processing is not allowed without explicate approval of the person whose data are processed, and prescribes as well the form and manner in which a person whose data are processed may give a valid consent, since this was not provided for by the draft law;

4. Amendment to the Article 11 prescribes that a person who has given approval for data processing may validly recall the consent and prescribes the form and manner (in writing or orally for the record) and term in which the approval may be withdrawn;

5. Amendment to the Article 31 prescribes harmonization of the extent of law application, equalizing legal responsibilities of editors–in–chef and media and other publications' publishers, considering the fact that violation of a right or a legally protected interest of a person may be performed both by data publishing in media and data publishing in other publications;

6. Amendment to the Article 40 eliminates the absurd provision that the Commissioner for Information, as an authority competent for implementation of the law, has a right to seek permission for access and review of specially protected data;

7. Amendment to the Article 44 establishes a more efficient and completed mechanism for protection of human rights and liberties, taking into consideration the authorities constitutionally and legally granted to the Protector of Citizens. By the amendment the Commissioner for Information has obligation to submit the Report both to the Parliament and to the Protector of Citizens.

a.2.2. Law on Civil Servants

The Protector of Citizens has, in accordance with his authorities, submitted to the Ministry of State Administration and Local Autonomy an initiative for supplement of the Article 78 of the Law on Civil Servants in order to harmonize this Article with the Article 20, paragraph 1, of the Law on the Protector of Citizens. Namely, the proposed amendment to Article 78 of the Law on Civil Servants prescribes dismissal of a civil servant responsible for violation of citizen's right in case the civil servant's employment is terminated as a result of public recommendation for dismissal made by the Protector of Citizens, in accordance with his authority under Article 20, paragraph 1, of the Law on the Protector of Citizens. By this supplement the Protector of Citizens is enabled to fully and consistently realize all his authorities. At the same time the recommendations of the Protector of Citizens are given adequate significance, while the obligations of the public administration bodies are harmonized with the activities of the Protector of Citizens.

The Law on Civil Servants was adopted by the Parliament on December 22, 2008, incorporating this initiative in the law in a somewhat changed form. Namely, the amended Article 78 now prescribes that a civil servant shall be dismissed if an authority or a body empowered to appoint the civil servant accepts the public recommendation given by the Protector of Citizens. Although full harmonization of the obligations of the state

administration with the authorities of the Protector of Citizens has not been performed, a step forward has been made towards recognizing the results of the control of the state authorities performed by the Protector of Citizens.

a.2.3. The Parliament Rules of Procedure

Considering the provisions of the Law on the Protector of Citizens by which the obligation of the Parliament is prescribed to harmonise its Rules of Procedure with this Law, the Protector of Citizens submitted to the Parliament 46 amendments to the Draft Rules of the Parliament Procedure. The proposed changes aim to regulate the relations between the Parliament and the Protector of Citizens in general terms, as it has been done concerning relations between the Parliament and other state authorities. The amendments essentially propose that the Protector of Citizens should take part in the work of relevant Parliament bodies in a manner that provides for the most effective exercise of his powers and, by doing so, contribute to the common goal, achieving a high level of protection and promotion of human rights and liberties.

b) Initiatives for assessment of constitutionality and legality of legislation

The Protector of Citizens has the authority to initiate proceedings before the Constitutional Court for assessment of the legality and constitutionality of laws, by-laws and other regulations governing the issues related to rights and liberties of the citizens,³⁸ and to file a constitutional appeal on behalf of any person who believes that their rights or freedoms guaranteed under the Constitution have been violated by a specific document passed, or an action taken by a state authority or organization with public authority, based on a written authorization by such a person.³⁹

In 2008, the Protector of Citizens received seven proposals for initiating proceedings for assessment of constitutionality and legality of laws, by-laws and other regulations governing the issues related to rights and liberties of citizens, and no authorisations for filing constitutional appeal. The Protector of Citizens took action in respect of the three proposals, while the other four are currently under consideration.

Two proposals concern proceedings for assessment of the legality and constitutionality of laws, and five proceedings for assessment of legality and constitutionality of by-laws and other regulations. Three proposals have been filed by individuals and four by legal entities, of which one was by a citizens' association. Four proposals are related to the right on property and five on rights arising from employment and pension insurance.

b.1. Filed proposals by the type of rights

b.1.1. Right on property

The Protector of Citizens received four proposals for initiating proceedings for the assessment of constitutionality and legality of laws, by-laws and other regulations governing the issues related to property and imperturbable enjoyment of property. The proposers are

38 Article 19 of the Law

39 Article 83 of the Law on Constitutional Court (Official Gazette of the RoS, no. 109/2007)

persons who became owners of property that belongs to companies with headquarters in former SFRY republics, based on lawful contracts and upon payment of all liabilities prescribed by law. The purpose of the applications was to contest certain provisions of the Decree on Protection of Property Owned by the Divisions of Companies With Headquarters in Former SFRY Republics, which, in the opinion of the applicants, were contrary to the Constitution and the Law Ratifying the Succession Treaty. Taking into account the aforesaid, the Protector of Citizens requested of the Serbian Government to inform him whether the Decree in question was still in force, in order to establish all legally relevant facts necessary for him to take a position on the proposals. The Serbian Government informed the Protector of Citizens that, following the receipt of the Protector's letter, the Government amended the Decree, deleting the disputable Article 2a, whereby, in the opinion of the Government, the reasons for the Protector of Citizens to initiate the proceedings before the Constitutional Court of Serbia for assessment of constitutionality and legality of that particular article ceased to exist.

b.1.2. Rights arising from employment and pension insurance

The Protector of Citizens received three proposals to initiate proceedings for the assessment of constitutionality and legality of laws, by-laws and other regulations governing the issues related to rights arising from employment and pension insurance. Upon proposal of citizens who acquired pension benefits based on their employment in both Bosnia–Herzegovina and Serbia, the Protector of Citizens undertook activities to initiate proceedings for assessment of constitutionality of the Law on the Ratification of the Social Insurance Treaty between the Federal Republic of Yugoslavia and Bosnia–Herzegovina. The proponents pointed out that the Law in question was prejudicial and that they were discriminated in favour of pensioners who acquired their pension benefits through employment in former SFRY republics other than Bosnia–Herzegovina, since the application of the above Treaty resulted in reduction of the level of rights they had already acquired. In their opinion, these legal provisions disrupted social insurance and social protection system due to methodology used to calculate pension benefits. Namely, the amount of pension benefits they receive is lower than that paid, for the same number of years of insurance, to beneficiaries who acquired their pension benefits through employment in the Republic of Serbia or any other republic of former SFRY.

The Protector of Citizens asked the Foreign Ministry to take position on this issue, which in turn supported the initiative, pointing out that the primary competence concerning the issue lay with the Ministry of Labour and Social Policy.

5. ACTIVITIES OF THE PROTECTOR OF CITIZENS

a) Opinions, recommendations and positions

The Protector of Citizens acts preventively by offering good services, mediating and giving advice and opinions related to the issues within his authority, with the objective of improving the work of administrative authorities and protection of human rights and freedoms.⁴⁰

In this respect, in 2008, the Protector of Citizens expressed his position in the form of opinion, advice or recommendation on 19 occasions, indicating to the administrative authorities that their activities or irregularities in their activities resulted in violation of human rights and liberties and that such situation should be rectified.

Opinions, recommendations and positions of the Protector of Citizens:

1. Recommendation to the City Municipality of Palilula to eliminate irregularities occurring due to failure to act on a final and binding decision of the Supreme Court of Serbia;
2. Recommendation to the Prison Administration, a body within the Ministry of Justice, on an irregularity occurring due to incorrect interpretation of regulations, having damaging effect on citizens' rights;
3. Recommendation to the Municipal Administration of the City Municipality of Čukarica on the violation of the principle of good governance;
4. Recommendation to the Belgrade Secretariat for Urban Planning on violation of the principle of good governance;
5. Recommendation to the Ministry of Finance of the Republic of Serbia on failure to provide a written reply to a question about tax situation that a taxpayer asked in the same form;
6. Recommendation to the Ministry of Education on irregularity resulting in unequal position of secondary-school students in exercising their right on accommodation in students' hostels;
7. Recommendation to the Ministry of the Interior of the Republic of Serbia on the established irregularities in activities taken in the procedure for annulment of an entry of a child's registration in the passport of one of the parents;
8. Recommendation to the Ministry of Justice on violation of the principle of good governance due to failure to act on application for entry into the Register of Permanent Expert Witnesses in accordance with the Law on the Requirements for Expert Testimony;
9. Recommendation to the Ministry of Labour and Social Policy concerning failure to act promptly on citizens' applications for certificates they need in order to exercise the right on exemption from customs duties on import of passenger vehicles;

40 Article 24, paragraph 2.

10. Opinion given to the Ministry of the Interior of the Republic of Serbia upon announcement of a public gathering of neo-Nazi and similar organizations;
11. Recommendation and position on the use of state vehicles; reply to the Protector of Citizens by the Administration for Common Affairs of the Republic Authorities;
12. Position and recommendation in a case of discrimination against a disabled person by JAT Airways;
13. Position and opinion on the events and questions initiated in the community concerning publishing the book under the title: The Jewel of Medina;
14. Recommendation to RATEL (Republic Telecommunications Agency) following the issuance of new technical requirements for sub-systems, devices, equipment and installation of the Internet;
15. Recommendation to the Ministry of the Interior on the need to provide to citizens adequate conditions for filing applications for new identification documents;
16. Opinion and recommendation to the Ministry of the Interior on voluntary consent for a contact microcontroller (chip) placing in new identification cards;
17. Recommendation to the Republic Pension and Disability Insurance Fund on violation of principle of good governance in conducting the procedure for pension amount re-determination;
18. Recommendation to the Ministry of Justice – the Prison Administration – on violation of the right of persons deprived of liberty to file their complaints to the Protector of Citizens in sealed envelopes, and
19. Recommendation to the Ministry of the Interior on the established irregularities in the actions of this administrative authority in the process of issuance of new passports.

b) Public statements

The Protector of Citizens issued 56 public statements in 2008.

In his public statements, the Protector of Citizens responded to topical negative phenomena in the society (violence, spread of hatred, and religious/national and other forms of intolerance and discrimination) that undermine not only constitutional and legal order as a whole, but also effective implementation of human rights, especially in the fields such as personal data protection, enforcement of decisions passed by international authorities and bodies, protection of the right on trial in a reasonable time, and protection of rights of persons deprived of liberty. The Protector of Citizens in his public statements cited the obligation of the state to make it possible for all citizens to exercise human rights and liberties without discrimination or limitation whatsoever.

One of the Protector's public statements dealt with an incident when the offices of the Helsinki Committee for Human Rights have been marked with a swastika.

One of the statements concerned violation of rights and liberties of the others, because of stating one's viewpoint and opinion.

The Protector of Citizens used communiqués to respond to the following issues: the position of National Minorities' National Councils; obligations of the state towards national minorities; the issue of undefined relationship between the National Minorities' National Councils,

the state authorities and local autonomies; the problems of education in the languages of national minorities; attacks on the members of Albanian national minority in Sombor and on participants of the Queer Festival in Belgrade; the incident of Molotov bomb throwing on the house of the Kujović family in Subotica; ban on book sale , i.e. imposition of censorship; and other issues.

In one of the statements, the Protector of Citizens demanded of Jat Airways to eliminate discrimination against disabled passengers.

c) Obligations under the Law on Free Access to Information of Public Importance

The Protector of Citizens received four requirements concerning exercising the right on access information of public importance in 2008. The requirements were filed by individuals, all of whom received complete responses within the term defined by the law. As a consequence, no fees have been charged for exercising the right on access to information of public importance.

Pursuant to the Article 43 of the Law on Free Access to Information of Public Importance (Official Gazette of the RS, No. 120/04 and 54/07), a report has been submitted to the Commissioner, informing him on actions taken in 2008 concerning enforcing of this law.

Comprehensive Information on the activities of the Protector of Citizens was published on web site www.zastitnik.gov.rs, on 18 August 2008.

6. COOPERATION ACTIVITIES OF THE PROTECTOR OF CITIZENS

a) Cooperation with the state authorities

In order to be able to perform efficiently the activities within his authority, the Protector of Citizens needs, among other things, to be informed in due time of the agendas for the Parliament and Government's sessions. While the Government failed to submit to the Protector the agendas for the sessions on which draft laws and other regulations concerning the issues relevant for protection of citizens' rights were discussed and defined, the Parliament did so. However, the amendments to the Draft Rules of Procedure of the Parliament submitted by the Protector of Citizens on August 15, 2008 have not been taken into consideration.

The Protector of Citizens has had successful cooperation with certain ministries, particularly with the Ministry of State Administration and Local Autonomy.

The Protector of Citizens established fruitful cooperation with a number of independent state authorities, especially with the Commissioner for Access to Information of Public Importance in the process of drafting the Law on Personal Data Protection, as well as on other issues.

To build and expand the network of local ombudsmen in Serbia, and promote cooperation, the Protector of Citizens in 2008 continued to actively communicate and work with provincial and local Protectors of Citizens. Eleven cities/towns and municipalities – Belgrade, Subotica, Bečej, Zrenjanin, Kragujevac, Šabac, Niš, Grocka, Voždovac, Vračar and Rakovica – have local Protectors of Citizens.

Several meetings have been held with local Protectors of Citizens. The Protector of Citizens organised meetings in Belgrade (in the Parliament and SANU) and Kanjiža, and the local Protector of Citizens of Kragujevac organised two. The meetings offered the opportunity for reaching agreement on concrete ways to expedite proceedings, through cooperation of institutions at various levels. The most characteristic cases of protection of human rights and liberties have also been discussed.

Joint control (September – October 2008) of the activities of police stations concerning the process of receipt and processing of applications for identification documents – passports and identification cards presents a concrete example of cooperation between the Protector of Citizens, Vojvodina Ombudsman and local Protectors of Citizens of Niš, Kragujevac, Rakovica, Šabac, Zrenjanin, Subotica, Grocka and Bečej. Preceded by the Recommendation of the Protector of Citizens to the Ministry of the Interior of the Republic of Serbia, the cooperation has been established in order to improve functioning of the administrative authorities and, thereby, expedite identification documents issuance procedure.

b) Cases of good practice and bad practice in cooperation with state authorities

The attitude the state authorities take towards the Protector's recommendations to eliminate irregularities in their work is not only an indicator of the degree and quality of cooperation with these bodies, but also an indicator of the extent of observation of the constitutional and legal provisions by the state authorities. The Law (Article 31), prescribes that administrative authorities are under obligation to inform the Protector of Citizens, at the latest in term of 60 days from the day of receiving the recommendation, if the recommendation has been observed and the irregularity eliminated, or on the reasons why they failed to proceed pursuant to the recommendation.

The administrative authorities acted on the recommendations of the Protector of Citizens in nine cases in 2008. Thus, for example, the Prison Administration of the Serbian Ministry of the Interior acknowledged the Protector's remarks given in two recommendations. Also, the Belgrade Secretariat for Urban Planning, Ministry of Finance of the Republic of Serbia, RATEL, Ministry of Interior of the Republic of Serbia (four recommendations) and the Republic Pension and Disability Insurance Fund acted on the recommendations given by the Protector of Citizens.

On the contrary, three administrative authorities (the Ministry of Labour and Social Policy, Ministry of Justice and Ministry of Education) failed to respond to the recommendations of the Protector, that is to say, failed to take any action to comply.

Similarly, Joint Stock Company for Air Transport Jat Airways – although a national air carrier – ignored recommendation to eliminate discrimination against disabled passengers.

In three cases the term given to the administrative authorities to act upon recommendations of the Protector of Citizens has not expired by the end of 2008.

c) International cooperation

The Protector of Citizens cooperated on an international level with both international institutions and ombudsmen of other, primarily European countries.

In 2008, the OSCE Mission to Serbia continued to support the institution of the Protector of Citizens in an effort to build infrastructure and capacities of the institution. Moreover, the OSCE Mission and the Protector of Citizens, with the financial support of the Catalan Ombudsman, have implemented a project of organizing conferences and seminars intended to explain to the public the position and mandate of the Protector of Citizens and discuss issues of utmost concern for the Protector of Citizens. One of such events was a conference on mechanisms for the prevention and protection of child rights in Serbia held in May 2008.

The Protector of Citizens established continuous cooperation with the Council of Europe (CoE). The cooperation between the CoE Commissioner for Human Rights and the Protector of Citizens unfolded in the spirit of dialogue and mutual understanding. With the aim of promoting further cooperation and familiarizing the Protector of Citizens with the organisation, the CoE organized for him a study tour to the CoE headquarters in Strasbourg, which included meetings with relevant CoE departments, the Office of the Commissioner for Human Rights, and the European Court of Human Rights.

In 2008, the Protector of Citizens attended international conferences organized by European Ombudsmen to mark the 60th anniversary of the Universal Declaration on Human Rights and anniversaries of institutions for human rights protection (ombudsmen of Ukraine, Bulgaria, Slovenia and Poland).

In 2008, the Protector of Citizens took part in the sessions of international bodies, such as UN Committee against Torture and UN Committee on the Rights of the Child. Also, the Protector of Citizens established cooperation with international bodies such as the CoE Committee for the Prevention of Torture, UN Sub-committee on Prevention of Torture, Network of national institutions for protection of human rights and association against torture.

Within the scope of regional cooperation, the Protector of Citizens has met with ombudsmen of Slovenia, Federation of Bosnia-Herzegovina, Republic of Srpska, Greece, Montenegro, Hungary and Bulgaria. In the discussions, the need was confirmed for intensified cooperation among institutions of countries which share similar experiences, problems and needs, in addition to having common historical or geographical background. Very good bilateral cooperation with ombudsmen of Slovenia and Greece continued. Also, negotiations are underway on cooperation with ombudsmen of Greece and the Netherlands to improve human and technical resources of the Protector of Citizens institution through implementation of a two-year EU IPA programme.

The Protector of Citizens joined and got involved in the activities of the Southeast European Network of Children's Rights Ombudsmen. In this field, he worked with Croatian Children's Rights Ombudsman and Macedonian Ombudsman, in both cases on forced removal of children from these countries to be brought to Serbia.

In the field of children's rights, the Protector of Citizens worked together with UNICEF, getting involved in the existing and/or new project activities that this international organization implements in Serbia and in the activities initiated by the Protector of Citizens (participation at two conferences in 2008 organised by the Protector of Citizens). Cooperation with Save the Children organization has been established in connection with an initiative to ban corporal punishment of children initiated by a group of children.

d) Cooperation with civil society organizations

The Protector of Citizens, as an independent state authority, has direct contact and cooperation with civil society representatives whom the Protector of Citizens recognizes as partners in a joint endeavour to protect citizens' rights and liberties. The quality of the cooperation is reflected by the fact that the Protector of Citizens decided to establish advisory bodies for specialized areas, inviting civil society representatives to work together, and in particular academic communities and non-governmental organizations.

In 2008, the Protector of Citizens had regular dialogue with civil sector representatives about the role and problems of independent state authorities and non-governmental organizations. In this respect, the Protector of Citizens had discussions with the representatives of the NGO sector, attended their meetings, and protested in his statements against attacks on NGOs and their activists, on number of occasions.

The Protector of Citizens focused particularly on organizations that protect rights of children and persons with disabilities, fight violence against women, and advocate respect of LGTB persons' human rights. A common topic of their discussions has been how to establish functioning ties between independent state authorities and NGOs.

The above issue was also a subject of discussion at a conference dedicated to the challenges of establishing independent institutions in Serbia. This event, held as a part of continued dialogue between civil society, media and institutions, and with active participation of the Protector of Citizens, has been organised by two non-governmental organizations, namely, Youth Initiative for Human Rights and Independent Association of Journalists of Serbia.

In the field of children's rights, cooperation has been established with all relevant organizations dealing with some aspects related to child rights. Especially successful cooperation has been established with the Children's Rights Centre, Youth Integration Centre (on temporary shelter for street children), Mental Disability Rights International (MDRI) and "BigSmall" Inclusion Initiative.

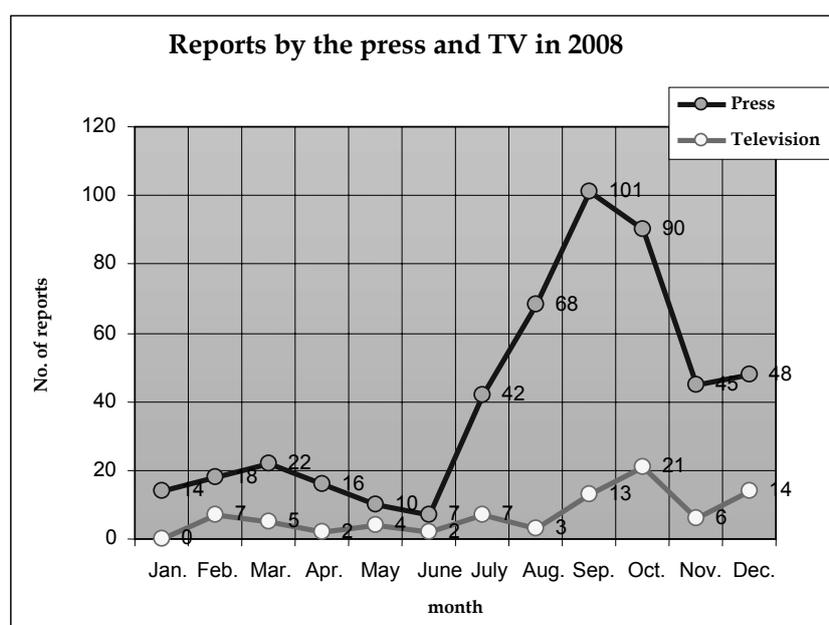
The Protector of Citizens has taken active part in a number of meetings organized by non-governmental organizations, such as Judges' Association of Serbia (round table discussion about evaluation of judges' performance and a set of judicial laws), Group 484 (round table "Towards White Shengen List") and Youth with Disabilities Forum (conference "Four Steps to Equal Opportunities" on research results concerning the position of persons with disabilities).

e) Protector of Citizens in the media

In Protector of Citizen's opinion, the cooperation with the media was successful throughout 2008. The Protector of Citizens made an effort to be cooperative with the media whenever it was possible and inform the public on authorities and duties of the institution of the Protector, as well as on various legal regulations, the activities undertaken for resolving certain issues, problems encountered in performing activities etc.

In 2008, printed media in Serbia published 481 articles (information, commentaries, and reports) about the institution of the Protector of Citizens, putting emphasis on the instances of lack of respect and violation of human rights by administrative authorities. At the same time, electronic media brought 86 reports about activities and initiatives of the Protector of Citizens.

Chart 1



The Protector of Citizens held three press conferences in 2008. The first one was in the city of Sombor on March 5. The meeting was organized with the local authorities to discuss violence against, and violation of rights of the Albanian national minority in this town following unilateral declaration of independence of Kosovo. The second press conference was held in Belgrade Media Centre on April 24 to mark the 2nd anniversary of adoption of the Law on Prevention of Discrimination against Persons with Disabilities. The third press conference, titled *Accessibility of Human Rights to Serbian Citizens, in Practice*, was organised on December 11 to mark the Human Rights Day. It was an opportunity to make a presentation for journalists concerning the state of human rights, in the fields followed up by the institution of the Protector of Citizens.

The Protector of Citizens gave five interviews / *Politika, Kurir, Danas and Blic*/ daily newspapers. In addition to the interviews, daily newspapers published 14 articles about activities and problems facing the institution of the Protector of Citizens.

Beside interviews, the Protector of Citizens has been given space for his commentaries in the newspapers. The *Danas* daily published a commentary by the Protector of Citizens on January 23 about initial operational problems facing the institution. The same daily newspaper published on May 23 the Protector's commentary on voting rights being denied to citizens. In the *Politika* daily, the Protector of Citizens commented on September 19 on the state of human rights in the Balkans, while in his commentary of September 25 in the *Danas* newspaper, he responded to debates concerning the book titled *The Jewel of Medina*. The *Blic* published two commentaries of the Protector of Citizens on the work of state administration and the amount of salaries paid by utility companies, on November 22 and December 30, respectively. Journalists wrote another 14 commentaries on the topical issues concerning work of the institution of Protector of Citizens.

In 2008, most reports in the printed media related to the activities of the Protector of Citizens were published by the *Danas* (88), *Politika* (53) and *Blic* (46) daily newspapers, whereas most reports in the electronic media were aired by RTS (31) and Television B92 (24).

The television stations followed up the work and responses of the Protector of Citizens on a regular basis, but only TV B92 (4 times), RTS (2 times) and TV Avala extended invitations for participating in their shows.

Chart 2

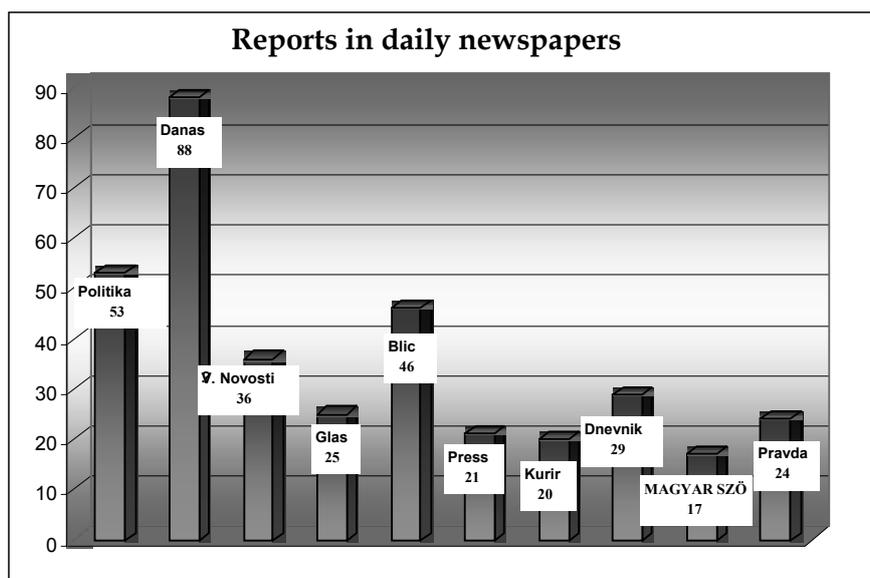
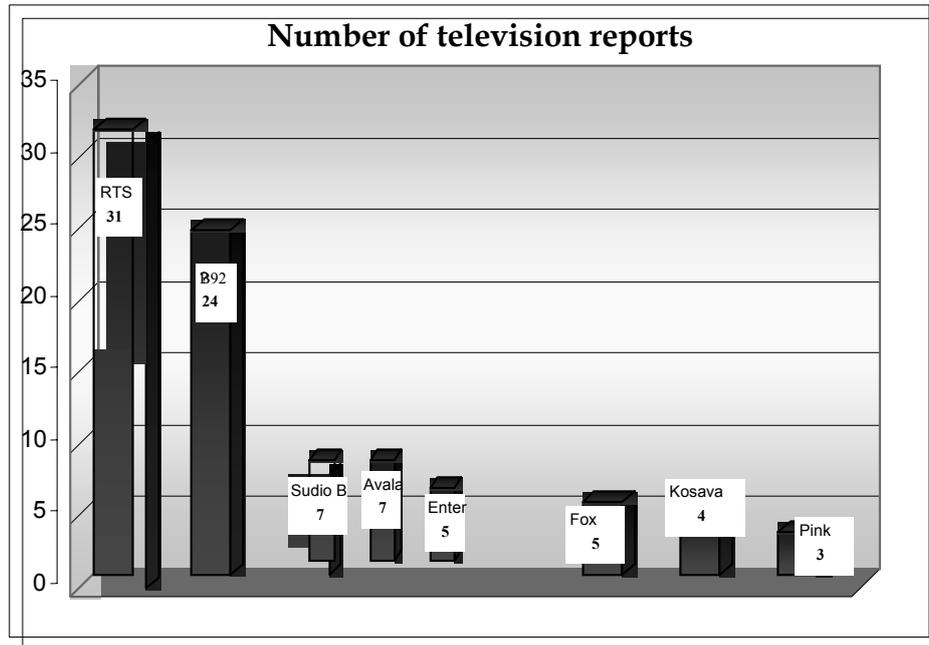


Chart 3



Concerning the activities of the institution of Protector of Citizens, the media have shown equal interest in information related to problems of establishment of professional offices (insufficient personnel, inadequate offices, one-year delay in appointing deputy protectors of citizens) and the responses given by the Protector of Citizens in relation to negative social phenomena and cases of violating human rights and liberties.

Printed media published reactions 34 and electronic media 5 times, on unsatisfactory conditions the Professional Offices of the Protector of Citizens work in, or the personnel frequently having to move from offices. In just three months (August, September and October), the printed media 36 times reported on delay in appointing deputy protectors of citizens, while electronic media aired reports concerning this issue 7 times.

The media have shown most interest /32 articles/ concerning the recommendation of the Protector of Citizens to RATEL on new regulations obliging the Internet service providers to enable, by providing adequate technical equipment, the relevant state authorities to perform electronic surveillance of the Internet users.

The Protector's response to the misuse of state vehicles by the administrative authorities of the Republic of Serbia featured prominently among the interests of the media with 23 articles and 1 TV report.

The intervention by the Protector of Citizens to prevent censorship of the book titled *The Jewel of Medina* has met powerful response. Newspapers published as many as 17 articles on the topic, making direct references to the intervention of the Protector of Citizens.

Legislative initiatives of the Protector of Citizens that generated considerable media attention include amendments to the Law on Personal Data Protection (28 articles and 6 TV reports). Furthermore, the media published 11 articles and 4 TV reports on the Protector's Recommendation to the Ministry of the Interior to provide normal conditions to citizens who apply for new identification documents.

A seminar organized by the Protector of Citizens following the initiative to ban corporal punishment of children within the family received significant media attention (22 articles and 9 TV reports).

Printed media (13 articles) and electronic media also reacted to a statement given by the Protector of Citizens about violence at public gatherings and to the statement condemning the incident caused by the members of neo-Nazi organizations in front of the office of the Helsinki Committee for Human Rights.

In the articles and commentaries not related directly to the activities and initiatives of the Protector of Citizens, journalists often referred to statements, initiatives or recommendations given or by the Protector of Citizens, such as those related to the case of RATEL, the Citizens' Associations Act, biometric identification cards and protection of journalists.

7. FINANCIAL STATEMENT

The Law on the 2008 Budget of the Republic of Serbia (Official Gazette of the RS, No. 123/07) allocated to the Protector of Citizens the funds amounting to RSD 92,247,657.00. The Protector of Citizens' expenditures amounted to RSD 51,854,564.00, or 56.21% of the allocated assets.

The allocated budget has been used to finance regular activities of the Protector of Citizens, in accordance with a financial plan.

EXECUTION OF THE 2008 BUDGET

Department	Chapter	Function	Economic classification	Description	Budgetary funds 2008 Budget Law	Budgetary funds 2008 Budget Rebalance	Execution 2008	% Execution
1	2	3	4	5	6	7	8	9
6				PROTECTOR OF CITIZENS				
		133		Other general services				
			411	Employees' salaries, benefits and allowances (earnings)	66.870.490	63.597.490	31.602.188	49,69
			412	Social contributions payable by employer	11.962.527	11.202.527	5.556.805	49,60
			414	Social payments to employees	985.000	985.000	12.848	1,30
			415	Cost refunds for employees	1.296.640	1.296.640	644.962	49,74
			421	Fixed costs	1.730.000	1.730.000	1.728.525	99,91
			422	Traveling costs	2.200.000	3.200.000	2.483.809	77,62
			423	Contracted services	4.900.000	6.900.000	6.896.777	99,95
			425	Current repairs and maintenance	80.000	880.000	609.824	72,95
			426	Material	1.700.000	1.744.000	1.743.682	99,98
			511	Buildings and building structures	223.000	223.000	115.088	51,61
			512	Machines and equipment	250.000	250.000	227.320	90,93
				TOTAL FOR THE OFFICE:	92.247.657	92.248.657	51.854.564	56,21

8. PROPOSALS AND RECOMMENDATIONS TO THE PARLIAMENT FOR PROMOTING THE STATUS OF CITIZENS IN RELATION TO ADMINISTRATIVE AUTHORITIES

The Protector of Citizens proposes and recommends to the Parliament, to insist on harmonization with the European standards in the process of adoption of laws concerning human rights and freedoms regulating the issues of relevance for the protection of citizens' rights. In doing so, particular attention should be paid to the laws by which EU standards and values of modern society are introduced into the legal system, primarily those required for the liberalization of the visa regime, the so-called "White Shengen". Furthermore, the laws should be realistic or, in other words, feasible in the conditions of global economic crisis and overall situation in Serbia.

The Protector of Citizens recommends as well the competent authorities to take appropriate steps that would, directly or indirectly, lead to improved status of citizens in relation to administrative authorities, and in particular the following:

- In the process of reviewing and adoption of new laws, it is necessary to insist on establishment of the mechanisms and guarantees for their practical implementation and supervision over their enforcement;
- The accessibility of all state authorities and public services to citizens without discrimination and regardless of place of residence must be improved;
- New regulations of relevance for the implementation and protection of human rights – primarily the Law Prohibiting Discrimination, Law on Citizens' Associations, Gender Equality Law, Law on the Election and Operation of National Minorities' National Councils must be adopted and implemented without delay;
- The Additional important international conventions and treaties, such as the Convention on Compensation of Victims of Violent Crimes and the Revised European Social Charter, and other documents should be signed and ratified;
- Constitutional ambivalence in respect of the "ownership" of the MP's office needs to be clarified;
- Quality and scope of implementation of rights and freedoms from the social, economic and cultural spheres of life should be improved, especially by eliminating administrative barriers, and increasing transparency and consistency in operation of executive authorities;
- Effects of judiciary reform on the exercise of the right on fair trial, especially the right on trial in a reasonable time, and enforcement of court decisions within legally prescribed terms should be monitored;
- It is necessary to establish a comprehensive system of institutional and legal protection of women from domestic violence and other forms of gender-based violence, which represent one of the most drastic violations of fundamental human rights of

women, namely of the right on life, body integrity, dignity, protection from torture and other inhuman and degrading treatment, and the like;

- To prevent, through educational measures and appropriate sanctions, any violence against children;

- To punish severely violence and racism against Roma children;

- To set up a centralized database on cases of violence against children;

- To improve work of custody authorities (social work centres), which play a key role in the process of divorce and giving temporary custody over children to one of the parents;

- To invest considerably more funds in education, along with improving curricula and restoring dignity and respect for children and teachers within and outside the school;

- To improve national minorities' rights legislation, especially the regulations concerning the rights on education, official use of language and alphabet, preservation of cultural identity, information, and effective participation in political and public life;

- To respond in a more determined manner to individual events of ethnic violence, and identify, prosecute and sanction offenders more efficiently;

- To establish the number of members of national minorities in the public sector;

- To take more radical and practical measures for improving position of the Roma national minority, especially in the fields of education, housing, health care and their civil status, as they are conspicuously and permanently in the most serious position;

- Steady and sincere approach is needed in elimination of discrimination and other violations of rights and liberties of the members of the vulnerable population, especially those who are vulnerable in more than one way (children, members of national minorities, persons with disabilities, persons deprived of liberty, LGBT persons, and other);

- To enable the sexual minorities, facing numerous prejudices and discrimination, to exercise guaranteed human rights and freedoms, including the freedom of assembly;

- To promote through comprehensive measures participation of the persons with disabilities in public, political and cultural life, especially in the fields of education, employment and labour relations, and health care;

- To facilitate access to the necessary treatments and medical devices for children with disabilities and their parents;

- To enable implementation of all patients' rights (including the right on effective complaint concerning the quality of service or an act of a member of a medical institution staff);

- To apply systemic measures to improve conditions in the prison system (build new prisons to increase capacities; make sure there are enough daylight and open-air activities for the imprisoned; increase the level of health care of convicts and detainees; and improve conditions of 48-hour detention in some police stations);

- To develop the concept of alternative sentencing, especially for under-age offenders;

- To improve cooperation of prison institutions with the social protection and civil society institutions in order to reintegrate the persons deprived of liberty into free society;

- To improve the effectiveness of control mechanisms, both internal and external, in order to ensure fast and more complete protection of the rights of persons deprived of liberty;

- National mechanism for prevention of torture (obligation under the Optional Protocol to the UN Convention against Torture) should be established. This function could be justifiably granted to the Protector of Citizens;
- To enable the refugee and emigrant population to effectively exercise their guaranteed rights in Serbia;
- Decisive and systemic protection of human rights activists is needed, in compliance with international documents prescribing the responsibility of the state for their protection and safety, instead of the current practice of *ad hoc* responses to concrete attacks;
- To provide for tax facilities for non-governmental, non-profit organizations engaged in the protection and promotion of human rights, in order to strengthen framework for freedom of association and activities in this domain;
- Education on human rights should continue to be included in the police training curricula, as well as in those for judges and lawyers;
- To refrain, in accordance with the comparative practice of vast majority of countries, from establishing specialized parliament ombudsmen, as it may lead to inflation and decline in the authority of the high controlling institutions, confusion among citizens, overlapping of competencies, transfer of responsibilities from the executive branch to institutions having no executive powers, while being associated with high costs. Instead, establishment of sector ombudsmen should be encouraged on the level of autonomous regions in which rights are exercised (patients, consumers, students, banking system...). In this respect the National Ombudsman could serve as an efficient and strong institutional superstructure;
- Internal controls within state authorities should be strengthened in order to perform internal surveillance of implementation of citizens' rights;
- Inspection controls over the legality of documents passed by employers should be strengthened;
- It is necessary to encourage expansion of local ombudsmen network and strengthen their offices, in order to ensure more balanced and accessible protection of their rights before the local autonomies;
- Three and a half years since adoption of the Law on the Protector of Citizens, and one and a half year since appointment of the Protector of Citizens, normal working conditions, primarily adequate offices, should be provided to the national Ombudsman institution.

