FOREWORD, OVERALL ASSESSMENT OF OBSERVANCE OF CITIZENS' RIGHTS AND KEY INFORMATION ON THE ACTIVITIES IMPLEMENTED BY THE PROTECTOR OF CITIZENS IN 2015

The Annual Report contains general and specific assessments and information on the observance of the rights of citizens (including in particular human and minority rights), deficiencies identified in the work of public authorities, proposals for improvement of citizens' status vis-à-vis public authorities and account of the activities carried out and the costs incurred by the Protector of Citizens.

The status of citizens' rights in Serbia in 2015 was marked by economic strife faced by many citizens and a lack of legal certainty. The government and the public administration have been preoccupied with their own reforms, which are yet to produce any tangible benefits for the citizens.

Compared with the previous reporting year, complaints pertaining to social and economic rights have outnumbered complaints relating to the so-called maladministration– including delays, negligence, obvious inadequate implementation of law and other cases of deviation from good governance – as the most common complaints filed with the Protector of Citizens.

Particularly vulnerable groups and citizens included: the extremely poor, children and the youth, persons with disabilities, elderly persons, refugees and other migrants, internally displaced persons, national minorities (with the Roma as the most vulnerable among them), persons deprived of liberty (including patients at psychiatric hospitals and beneficiaries of residential institutions), persons with severe diseases, victims of domestic and intimate partner violence, organisations and individuals advocating human rights, organisations and individuals who express critical attitudes, journalists and members of the LGBTI population. As many have pointed out to the Protector of Citizens, the "ordinary person" is at the greatest risk in Serbia.

STATISTICAL TRENDS

The number of complaints in 2015 increased by 28% compared to the previous year (6,231 complaints).

As citizens are becoming more familiar with the powers of this institution, their complaints are increasingly specific and efficiency of contacts with citizens increases: the number of investigations initiated pursuant to complaints and on own initiative was 47.5% higher (!) and reached 1,669.

This institution has achieved greater efficiency in conducting investigations by completing 34.5% more investigations than in 2014 (in 2015, the Protector of Citizens completed 6,457 investigations pursuant to complaints and on own initiative).

The number of submissions other than complaints as well as the number of telephone conversations decreased by 22% and 17.1% respectively. The number of citizens who came to the offices of the Protector of Citizens in person to raise their grievances was also lower (-6.7%).

Unfortunately, due to austerity measures and at the expense of efficiency and preventive and awareness-raising efforts of this institution, the number of control and preventive visits was 6.15% lower, as 107 such visits were conducted in total.

The share of implemented recommendations has declined slightly from 87.9% to 86.3% (there were 1,447 recommendations issued in 2015, of which 1,102 are due for implementation and 951 have been implemented). Another noteworthy development is the high rate of compliance of relevant administration bodies with the recommendations issued by this institution in its statutory capacity of the National Preventive Mechanism. There were 265 such recommendations issued, of which 167 are due for implementation and 155 have been implemented, which means the rate of compliance is 92.8%.

The efficiency of activities undertaken by this institution pursuant to legislative initiatives submitted by citizens has increased by 27.5% (with 65 such initiatives examined). The number of legislative initiatives and motions submitted to the National Assembly and other authorities by this institution remained the same as in 2014 (15). Four of those initiatives were adopted, as opposed to zero in 2013.

The existing capacity has been overwhelmed by the number of complaints for years now, as noted repeatedly in the Annual Reports. Notwithstanding all the strategies, action plans and promises, the capacity of the Secretariat has not been increased due to a number of administrative and political obstacles. The independence of the Protector of Citizens, which is guaranteed by the Constitution (as well as the independence of some other human rights institutions otherwise guaranteed by organic laws) has been gravely violated by the by Law on the Manner of Determining the Maximum Number of Public Sector Employees, although the same Law has managed to preserve the independence of some other authorities (specifically the Government, the President, the National Bank of Serbia, the High Judicial Council, the State Prosecutorial Council).

The government has not established a functional horizontally and vertically ramified remedial system in which the Protector of Citizens would only exceptionally be called upon to remedy irregularities and illegalities prejudicing citizens' rights (which is the underlying idea behind the institution of the ombudsman), while all other cases would be addressed through internal control and through the use of available remedies before administrative and judicial authorities. Without an available and effective means of raising and addressing their grievances in this way, citizens mostly tend to contact the Protector of Citizens as the first, rather than the last, place of resort in the hierarchy of oversight authorities. The long overdue and duly elaborated and planned amendments to the Law on the Protector of Citizens, which were, among other things, supposed to put in place internal control mechanisms in government authorities, have not been drafted or enacted.

EXTERAL INFLUENCES

A multitude of the existing and emerging issues, both in the region and globally, have combined to impair and hinder compliance with human rights standards and observance of human rights. A historic wave of refugees and migrants from Asia and Africa, which caught virtually all European countries and societies off-guard, has also brought to light an unwillingness to respect in practice the long-established human rights standards when a real-life crisis situation unfolds. This has caused suffering among refugees and other migrants, while also inflicting pain on the local population.

Serbia has treated refugees and migrants fairly, humanely, albeit sometimes haphazardly, mostly due to the *ad hoc* approach to tackling strategic challenges. The presence and the activities of international organisations and partners (including in particular specialised UN agencies and the European Commission) have proven to be of invaluable assistance. Cooperation with the authorities of the neighbouring countries of Macedonia and Croatia has been crucial in this process, coupled with close cooperation between national ombudsmen of all countries along the so-called "Balkan route". Serbia is a "transit" country for migrations from the South and the East. It can reasonably be assumed that even greater human rights challenges concerning the refugee and migrant situation, affecting both those people and the local population, are yet to follow.

Terrorist attacks and stepped-up counter-terrorism measures and powers have narrowed down the scope of citizens' freedoms to a thin line between hammer and anvil. Serbia has so far bucked the trend of imposing statutory restrictions on citizens' freedoms and rights on the pretext of ensuring a more effective response to terrorism. However, practical implementation of laws has seen an increasing number of agencies invading privacy and other citizens' freedoms, as they gain access to ever-increasing technical and financial resources, while democratic civilian oversight has faced funding shortage and has been gradually deprived of its ability to raise awareness, prevent and detect disproportionate, unjustified and otherwise irregular and unlawful invasions of citizens' rights.

The work of instruments of international justice, including in particular the International Criminal Tribunal for Former Yugoslavia and the international judiciary in Kosovo and Metohia, has not always inspired trust in their ability to fairly and efficiently, free from any political, ethnic or other bias, shed light on war crimes from the past and bring about a reconciliation in the region. However, certain officials have thwarted the purpose of the tribunal through their actions: on his return after serving a ten-year sentence for war crimes, a former high-ranking military officer was met ceremonially by top government and military officials, with the Minister of Justice saying he hoped that person's actions would inspire future generations.

There have been fewer new applications against Serbia before the European Court of Human Rights. By the end of 2015, there were 1,142 applications filed against Serbia. According to the statistical information provided by the ECHR, Serbia has 1.74 cases before the court for every 10,000 inhabitants, which is still above the average of other Council of Europe member states. In 2015, the ECHR passed 17 judgements in cases against Serbia, only one of which was exonerating. The most frequent causes for applications made by Serbian citizens to the ECHR include non-enforcement of final and enforceable judgements of national courts, violation of the right to a fair trial, excessive duration of judicial proceedings and discrimination. Since Serbia became a full member of the Council of Europe, the European Court of Human Rights has passed 132 judgements, 117 of which found violations of the European Convention on Human Rights. The Committee of Ministers of the Council of Europe, as the body in charge of overseeing compliance with ECHR judgements, took into account the opinion of the Protector of Citizens and at its 1250th session held from 8 to 10 March 2016 encouraged the Serbian authorities to address the outstanding issues and concerns of parents of "missing

babies", as pointed to its attention by the Protector of Citizens.[1] In typical cases before the ECHR, Serbian citizens have received invaluable assistance from Serbian non-governmental organisations, such as YUCOM and the Belgrade Centre for Human Rights.

"HUMAN RIGHTS" VERSUS HUMAN RIGHTS; FREEDOM OF EXPRESSION AND THE MEDIA

Extremist movements with ideological platforms that oppose equality, respect for differences and other foundations of human rights have been gaining momentum, increasingly by abusing the human right to freedom of expression, which has not been met by an efficient response from government authorities (it should be noted that a public announcement does not constitute efficient response, unless it is capable of preventing the offensive behaviour from re-occurring, which has so far not been the case). There have been attempts to relativize and trivialise the core terms and values such as non-discrimination, presumption of innocence, rights of the child, constitutionality and legality.

Certain public officials have invoked their freedom of expression as citizens as justification for using their official position to spread officially unconfirmed information or offensive and inappropriate personal opinions, all the while acting in their official capacity.

> In an interview for the "Nedeljnik" weekly, the Minister of Interior, when asked – quite appropriately – whom he, as a government official, perceived as the most credible opposition, answered: "The most prominent figures of the would-be opposition are a make-up artist and an actress, together with an assortment of failed scribblers." Another statement made by Minister Stefanović, PhD, in the same interview: "The fact of the matter is that the feeble opposition has largely shifted to the non-governmental sector", is representative of the systematic efforts to dismiss criticism of the government and freedom of expression, as the fundamental values of a free society and the essence of being a free citizen, as mere party-political smear campaigns and thus make them repulsive to the average citizen, while at the same dime discrediting the non-governmental sector as motivated by daily politics, thus depriving it impartiality and serving the common interest.

Implementation of the three reform laws in the media sphere (the Law on Public Information and the Media, the Law on Electronic Media and the Law on Public Service Broadcasting, effective since 1 July 2015) has in practice done little to strengthen the freedom of the media and the citizens' right to complete, impartial and timely information. The media remain crucially influenced by a non-transparent convergence of politics and money, formally posing as funding for broadcasting and advertising money. The expectations that the sale of all state-owned media outlets to private investors and a shift towards competitive funding of public interest broadcasting from municipal, city, provincial and national budgets, as provided for in the new media laws, would significantly increase the protection of public interest in the media sphere have largely been thwarted by the manner in which those laws have been implemented in practice. There is no true transparency of ownership. Judging by the structure

[1] For more information see: *Zorica Jovanović v. Serbia (Application No. 21794/08), Supervision of the execution of the Court's judgments*, available at: https://wcd.coe.int/ViewDoc.jsp?Ref=CM/Del/Dec(2016)1250/H46-23&Language=lanEnglish&Ver=original&Site=CM&BackColorInternet=C3C3C3&BackColorIntranet=ED.

of new owners of media outlets, it appears that Serbia now has party-political media outlets instead of public ones.

The process of the sale of state-owned media outlets to private investors was initially delayed by four months due to an obstruction by public media enterprises. Of the 70 such public enterprises, 50 complied with the requirements for auctioning of their capital within the specified timeframe, while the destiny of those that did not meet the requirements remains unknown. Over the course of the following four months (by the end of October 2015), 36 media companies found new owners, while 14 – including the state-owned news agency Tanjug – failed to do so even after two rounds of privatisation. Following the repeal of the Law on Tanjug and the explicit Decision passed by the Government[2], this agency was shut down; however, it continues operating and using the state symbols and other resources. As regards the press company "Politika AD", the government included it in the list of 17 strategic public enterprises, thus effectively freezing its status. On the other hand, the press company "Novosti", in which the state is a minority shareholder, was not even mentioned in the privatisation process.

Funding of public broadcasting services poses a specific challenge. The Radio Television of Serbia and the Radio Television of Vojvodina were supposed to shift to funding under the Law on Public Service Broadcasting as from 1 January 2016. However, they failed to prepare for this in due time (specifically the Radio Television of Serbia) and a special Law on Provisional Funding of Public Service Broadcasting was passed at the end of 2015[3] at the initiative of the Ministry of Mining and Energy, under which the citizens are required to pay a licence fee for the Radio Television of Serbia and the Radio Television of Vojvodina in the amount of RSD 150 dinars per month as part of their electricity bills, which has led to protests by some members of the public. It is estimated that the public service broadcasting will be co-financed with RSD 4 billion from the national budget in 2016 (half of last year's amount), together with the funds collected from licence fees.

Before the privatisation of public media enterprises, state-owned media outlets received direct co-financing from all levels of government in the total amount of approximately EUR 25 million per year, including EUR 5 million by the national government, EUR 3.5 million by the Autonomous Province of Vojvodina and 16.5 by local self-governments. As of November 2016, direct budget funding will not be allowed and a system of project-based (competitive) funding of media content in the public interest has been introduced.

Two calls for applications for media financing made in 2015 by the Ministry of Culture and Information were generally successful, unlike similar calls for applications made by local self-governments. The review committees are mostly comprised of representatives of journalists' and media associations; however, conflicts of interest and violations of procedures have been far more common at the local level. In several instances (for example in the case of Studio B), the new owners were effectively refunded most of the money they had previously previously invested in the state-owned media.

The Law on Public Administration and Local Self-Government does not provide for an obligation of local self-governments to allocate funds for the public interest in their budgets, nor does it specify the percentage of such allocation, if any. According to the information

[2] The Law was repealed on 31 October, while the Decision was passed on 3 November 2015.

[3] Official Gazette of RS, No. 112/15, усвојен 29.12,2015.

available to the Association of Serbian Journalists, local authorities have on average allocated one per cent of their local budgets for project financing, which professional associations finds as insufficient. The Association of Serbian Journalists has once again requested that the local self-governments commit to allocating two percent of their budgets for these purposes, a proposal which has been backed by other professional associations. However, public authorities have noted there is no constitutional basis for such a decision.

The Regulatory Authority for Electronic Media has been used as a battleground where the opposing media-related, commercial and political interests collide and its managing body – the Council – is incomplete. The public rightly expects the Regulatory Authority for Electronic Media to step up its response and make more effective use of its powers in cases of obvious violations of the Law on Electronic Media, journalists' codes of ethics and advertising rules.

> The Press Council, as the only self-regulatory body in the Serbian media sphere, received 109 complaints about the content of print and online media in 2015, which was slightly more than in 2014, when it received 80 such complaints. The number of cases in which violations of the Code of Ethics were found is significantly higher than the previous year at 60. Out of this number 36 public letters of warning were issued to those media outlets that refused to accept the full scope of powers of the Press Council.

According to the Council's Report[4], the most common violations were those covered by the section "Truthfulness of Reporting" in the Code of Ethics (35 violations), including in particular the violations pertaining to the prohibition of disseminating unjustified accusations, libels and rumours and as well as the obligation to distinguish facts from comments, guesses and assumptions. Provisions of the Code of Ethics which prohibit discrimination and hate speech were violated in 20 cases, while the authorship provisions were violated 17 times. Another common violation was the disregard for ethics and culture of public discourse (14 decisions), mostly due to failure to publish replies. Most of the cases involved violations of multiple sections of the Journalists' Code of Ethics.

> Certain media outlets have even gone so far as to disregard their duty to publish the Council's decisions passed pursuant to violations of the Code of Ethics: thus, "Vecernje novosti" did not publish four out of five decisions, "Blic" did not publish two out of six decisions, "Alo" did not publish two out of five decisions, while "Telegraf.rs" did not publish either of the two pertinent decisions.

The Council has amended its Statutes to revoke the power of veto which had previously been available to members of the Appeals Committee. This move was immediately met by sharp criticism and *ad hominem* attacks on individual members of the Appeals Committee from the *Politika* daily when the Committee reviewed an appeal against the decision passed in connection with the article dealing with US donations to the civil sector published by the said daily, which presented the Press Council with the greatest challenges it faced since its establishment.

The number of assaults and other forms of pressure against journalists was again on the rise last year. A register posted on the website of the Independent Association of Journalists of Serbia shows there were 38 such attacks in 2015, as opposed to 23 in 2013 and 2014

[4] Report available at: http://www.savetzastampu.rs/cirilica/izvestaji/110/2016/03/11/1019/izvestaj-o-radu-saveta-za-stampu-za-2015_-godinu.html.

respectively. According to the same register, last year there were 11 assaults on journalists, three attacks on journalists' property, 21 verbal threats and three cases qualified as pressure on journalists.

> The ruling party issued a press release in which it accused an editor of the public service broadcaster Radio Television of Serbia of "brutal political meddling" with an ongoing investigation after a tabloid reported she had said it would be "reasonable to call the editors of *TV Pink* and *Informer* daily for police questioning as well, rather than just the management of *Kurir* daily." All too predictably, this was followed by offensive and aggressive cover page headlines in the pro-government press, malicious reports on pro-government TV stations and clearly orchestrated verbal persecution (including insults and the basest *ad hominem* smears) in online comment sections of news portals and social media posted from predictably named accounts (the so-called "bots"). Such smear attacks are clearly organised and given free reign. An immediate or delayed effect of such actions is the withdrawal of public figures from the public sphere.

There has been no closure in the investigations of murders of journalists in the past and several recent assaults on journalists.

Highly experienced journalists are increasingly losing their jobs or choosing different careers. The journalist community has noted that their unknown colleagues are more likely to get employed than their professionally renowned fellow colleagues, which defies the "free market" logic. The social status of journalists is exceptionally low.

There is more freedom in the press and internet portals than on the TV stations. Radio Belgrade in particular is noted for the quality of its programming. According to the estimates of business insiders (in the absence of accurate statistics), in 2015 the printing runs of daily newspapers fell below 500.000 a day, which was less by a third than two years ago. It appears that the degree of "freedom" of the media is inversely proportionate to their influence, with television channels clearly being the most influential.

The authorities treat any journalists or editorial boards who are critical of their actions as their political adversaries. The authorities have also been boycotting certain media outlets, including public service broadcasters. Thus, the national government has been boycotting the Radio Television of Vojvodina.

The public sphere and social media have been used as a platform for fake public debate through organised efforts of party-political activists tasked to artificially promote or degrade an institution or a person through comments, tweets, posts and blogs, often resorting to spin, lies, insults and threats.

There is unregistered online media content, posted without any accountability and purportedly protected by alleged media freedoms, while in fact abusing the unprincipled and inconsistent legislation in this field. It peddles insinuations, tendentious constructions, pen and covert threats and blackmail. Influencing public opinion through spinning has been "legitimised" as ostensibly an inevitable consequence of the "freedom of speech and expression."

> Two media outlets – a private television network with national coverage and a tabloid with a large circulation, both of them very close to the establishment – published an authentic document from a psychiatric clinic which contained the

> medical history of a person who was at the time making serious accusations against the highest political figures in the country. The Commissioner for Information of Public Importance and Personal Data Protection responded urgently and proactively, found all relevant facts and examined all relevant circumstances within his sphere of competence and brought charges against unknown perpetrators for abuse of the most sensitive personal data, although the odds of the judiciary and the police effectively closing the investigation and actually identifying and punishing the perpetrators appear to be pretty slim.

The power struggle through tabloids and secret services tramples in the face of all legal, ethical and moral standards, while the regulatory mechanisms in the media and democratic oversight of security sector lack resources, capacities and *de facto* power to put an end to this.

The line ministry has contributed little in the way of public debate other than referring to the laws that have been enacted. None of the major adverse developments in the media sphere have been met with a public response, not even a public condemnation by the line minister.

The tabloidization of the media, the society and the government, which had been addressed in detail in previous Annual Reports, has reached its peak with the so-called "coup d'état", which was apparently prepared, proclaimed and thwarted only on the pages and in the programmes of the leading pro-government media outlets. Hopefully, the obvious bizarreness of this whole tabloid affair will mark the beginning of the end of this particular type of spin.

LEGAL CERTAINTY

Laws passed in a deficient, excessively short procedure, lacking mutual harmonisation and with conflicting provisions of the same law or other laws, stipulating solutions that often baffle experts, let alone all those who are affected with the specific legislation, and with uneven and selective implementation, coupled with uncertainties surrounding the case law applied in the disputes arising from or in connection with their implementation, have resulted in excessive formal normativism and not much in the way of actual legal certainty in Serbia.

According to the information provided by the Open Parliament, 182 laws were passed in 2015, 80 of which (44%) were passed in an expedited procedure. On the other hand, in cases where enactment in an expedited procedure was clearly necessary, more often than not the procedure was not carried.

> The Decision of the Constitutional Court of April 2015[5] declared the Law on Assembly of Citizens unconstitutional; however, until the day of its publication in the Official Gazette (which had been delayed by six months), the Ministry of Interior had not timely prepared a new draft of law that would govern the procedure of exercising of citizens' constitutionally guaranteed freedom of assembly. Until the passing of a new law, Serbia did not have any legislative provisions in place that would govern the procedure of exercising of the constitutionally guaranteed freedom of assembly; likewise, there were no provisions in place for exercising the public interest to lawfully restrict this freedom where necessary due to reasons provided for by the law, namely to protect public health, morals, the rights of other persons or national security. The new Law on Public Assembly still contains some of the elements which rendered

[5] Constitutional Court DecisionI Uz 2004/2013, Official Gazette of RS, No. 88/15.

the previous law unconstitutional, including reasons for restricting the guaranteed freedom of assembly and effectiveness of remedies available to protect that freedom. The new law deters the public from assembling by stipulating disproportionately high fines.

Withdrawal of the Bill on Gender Equality, which the Government and the National Assembly had intended to past in an expedited procedure, was an acknowledgement of the numerous objections which could not be made earlier due to a lack of public debate.

The lack of public debate on the Bill amending the Law on Public Information and the Media, the Bill amending the Law on Public Service Broadcasting and the Law on Provisional Funding of Public Service Broadcasting, coupled with a lack of opportunities for the public to voice its opinions on arrangements governing public service broadcasting, although it is by its very nature a service for the citizens (the public), has contributed to a confusion about the nature of public service broadcasting, its funding mechanisms and ways of ensuring its financial and any other independence.

Public debate and a regular legislative procedure are of particular importance when a new piece of legislation is passed which regulates a specific field in a new way.

After several decades without any legislation that would govern the inspection oversight, which had been identified as an issue in earlier Annual Reports of this institution, a Bill on Inspection Oversight was drafted and followed by a constructive public debate was held. The Bill was then submitted to the National Assembly for adoption in an expedited procedure for no obvious reason, which effectively did away with the final part of the debate and legislative fine-tuning. Even more baffling is the fact that the closing provisions stipulate the Law would take effect 12 months of the date of its coming into force (save for several organisational provisions, which will become effective three months of the date of coming into force).

In the field of employment relations, the laws affecting the status of a large number of citizens (e.g. the Bill amending the Law on Compulsory Social Insurance Contributions and the Law on the Manner of Determining the Maximum Number of Public Sector Employees) was passed in an expedited procedure. This denied not only the relevant authorities, institutions and employees, but also the users of services provided by different systems an opportunity to review the proposed solutions and point to any risks that may arise from their implementation.

Thus, the text of the Law on the Manner of Determining the Maximum Number of Public Sector Employees included a provision which replaced the existing *right* of women to retire before men their *duty*, which essentially turned an affirmative measure aimed at achieving gender equality[6] into its polar opposite. The Protector of Citizens and the Commissioner for Protection of Equality filed a joint motion for a constitutional review of that provision and applied for an injunction that would prevent the implementation of that provision in the meantime, due to

[6] The basis for affirmative measures is provided in Article 21 paragraph 4 of the Constitution of Serbia.

irreparable adverse effects it might cause. The Constitutional Court upheld this motion, after which the line minister, whose ministry had drafted the bill and ignored all warnings in the legislative procedure, publicly thanked the Constitutional Court (!?) for its efficient response in preventing a potential violation of women's rights, apparently completely oblivious to his own responsibility in the whole matter and the waste of institutional resources needed to avert this threat.

Administrative obstacles to the enforcement of the Law on the Manner of Determining the Maximum Number of Public Sector Employees have thwarted the development of a number of services provided by local self-governments targeted specifically at the most vulnerable populations, including children, victims of violence, persons with disabilities and others, which shifted the burden of austerity on the shoulders of the most vulnerable members of society. Only one public hearing on the Bill was formally held and no explanation was offered afterwards for the refusal to accept certain objections.

Two major changes in the field of education have been introduced in the legal system without previously offering an opportunity to those affected by the changes to provide their input. Students – whose status is affected by the amendments to the Law on Higher Education – and educators – whose status is affected by the amendments to the Law on the Foundations of the Education System, have not had an opportunity to state their views on those amendments, either in person or through their associations, and point to potential shortcomings.

After only one year into the enforcement of the Law on Public Notary, the Government has identified certain imprecisions and contradictions in its provisions, as well as certain gaps that were "for the most part such that they leave no room for finding any solution in specific situations" (quote from the official statement of reasons for the most recent amendments). For this reason, the Law was amended twice in 2015, with the second round of amendments resulting in changes to as many as 72 substantive articles. However, there is no indication that the Government acted in accordance with the provision of its Rules of Procedure which requires a public debate to be held whenever the provisions of an existing law are to be substantially amended. Indeed, the first amendments of January 2015 were made in response to a month-long lawyers' strike, as evident from the official explanation, which stated that based on the assessment of the legislative impact and the demands of the bar it was necessary to change and amend the Law. Although the public was able to hear numerous arguments concerning the new Law during the lawyers' strike, due to the fact that notaries pubic had become exclusive holders of significant powers, this could hardly be considered a public debate. Even with regard to the (for now) most recent amendments of 2015 there is no evidence that the proposer had consulted all stakeholders, including notaries public, courts, attorneys and companies, which could provide justification for the decision not to hold a public debate in accordance with the Government's Rules of Procedure. This was criticised by the Republic Secretariat for Public Policy, whose Opinion stated that the Assessment of Legislative Impact should have included the information on consultations held with all stakeholders (including information on whether such consultations were held, as well aswhere and when

they were held), the consultation techniques used, any objections, proposals and suggestions made and the reasons why some of them were incorporated in the text, while others were not.

While it is conceivable that amendments to the legislation which governs the role and powers of notaries public could be seen as a matter of urgency due to multiple devastating effects of the lawyers' strike on citizens' rights, it is much more difficult to find any justification for passing the Bill amending the Individual Income Tax Law in a hasty procedure. Namely, the purpose of this legislative instrument was to provide for tax relief for new employees and as such it should have been the result of well thought-out and well known tax policy. Similarly, if the aim of the amendments to the Law on State Prosecutorial Council and of the Law on High Judicial Council was to provide for publicly held sessions, the duty to provide a statement of reasons for each decision and availability of decisions on a website, their passing in an expedited procedure certainly cannot be properly justified by claiming this was necessary in order to comply with the obligations set out in the Action Plan on Chapter 23 of EU Accession Negotiations, which was the officially stated reason.

Likewise, the Draft Law on establishing the Public Interest and Special Procedures for Expropriation and Issuing Construction Permits necessary for the implementation of the "Belgrade Waterfront" Project was also submitted by the Government for adoption in a hasty procedure, although it encroached on the right of peaceful enjoyment of property as guaranteed by the Constitution. After The Protector of Citizens issued a public urging, the Draft Law was returned to the regular procedure.

There is also no sound rationale for hasty passing of two systemic laws – the Law on General Administrative Procedure and the Law on Inspection Oversight, as the former will take effect on 1 July 2017, while the latter will take effect 12 months of the date of its coming into force, which was in April 2015!

The Bill amending the Law on Tax Procedure and Tax Administration had not been through a public debate and was submitted to the National Assembly for hasty passing. Similar to the Bill on the Manner of Determining the Maximum Number of Public Sector Employees, the Bill on the Salary System in the Public Sector was put up for public debate strictly as a matter of formality. The public debate on a legislative act that would affect the rights and responsibilities of much of public administration and substantially change the labour law status of several thousands of public sector employees took less than a month and was not followed by a published report of the public debate, duly distributed to all stakeholders, that would summarise the main objections and issues and provide reasons for their acceptance or rejection. The professional community and trade unions have openly voiced their displeasure with such course of action, which led to tensions that could have been avoided by a genuine debate and communication with all stakeholders and the professionals.

The timeframe and manner in which the legislative branch of the government presented bills of laws to parliamentary committees and the plenum of the National Assembly , obtained and took into consideration the opinions of relevant authorities and submitted (or rather, did not

submit) to the National Assembly the legislative initiatives and amendments filed by the Protector of Citizens merit a special analysis, one which does not fall within the scope of this document; however, as an illustrative example, we will focus on one session of the Committee on Justice, Public Administration and Local Self-Government, in which the Committee reviewed amendments to nine laws in the field of the judiciary.

> The 55th session of the Committee on Justice, Public Administration and Local Self-Government was scheduled for 17 December at 9 AM; however, the Protector of Citizens received an e-mail invitation to attend the sitting on 16 December 2016 at 9.30 pm. The agenda included a detailed discussion of a set of nine draft laws on the judiciary submitted by the Government.[7] The first item on the agenda was a discussion of the Bill on Enforcement and Security, to which 141 amendments had been submitted, of which the Government had accepted 14. The Committee's chairperson Mr. Petar Petrovic failed to inform the members of the Committee on the amendments to the Bill on Enforcement and Security submitted by the Protector of Citizens; instead, he just noted during the discussion of that item of the agenda that the Government had not accepted those amendments. The chairperson's proposal for the Committee to summarily propose to the National Assembly to accept all the amendments previously accepted by the Government was accepted unanimously. The chairperson then first proposed a decision in which the Committee would recommend to the National Assembly not to accept the amendments that had not been previously accepted by the Government, after which he immediately corrected himself and proposed that "the Committee should recommend to the National Assembly to accept all the amendments that had not been previously accepted by the Government, and you know how you should vote!" The members of the Committee then summarily rejected by unanimous decision all amendments that had not been accepted by the Government.
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> The second item on the agenda was a review of the Bill amending the Law on Public Notary, to which a total of 104 amendments had been submitted, with the Government accepting six of them. The Committee decided without a debate to recommend to the National Assembly to accept those six amendments. All other amendments received the same voting treatment as those submitted under the previous item of the agenda. The initiative submitted by the Protector of Citizens for the Committee to submit an amendment to the Bill amending the Law on Public Notary was not mentioned in any way, let alone considered!
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> During the discussion of all the remaining draft laws, no one took the floor and the Committee supported all the amendments endorsed by the Government, while rejecting all those not previously accepted by the Government. In summary, a session convened to address crucial amendments to nine laws in the field of the judiciary and debate hundreds of amendments lasted 19 minutes in total.

Sometimes, the government addresses difficulties in attaining the guaranteed level of citizens' rights by lowering the guarantees that are in place. Thus, the Constitutional Court found there were no grounds to even initiate a constitutional review of the Law on Provisional

[7] (1) Bill on Execution and Security; (2) Bill amending the Law on Notaries Public; (3) Bill amending the Law on Organisation of Courts; (4) Bill amending the Law on Judges; (5) Bill amending the Law on Public Prosecutor's Office; (6) Bill amending the Law on High Judicial Council; (7) Bill amending the Law on State Prosecutorial Council; (8) Bill amending the Law on Judiciary Academy; and (9) Bill amending the Law on Court Fees.

Arrangements for the Disbursement of Pensions[8], which effectively reduced the amount of pensions (as an acquired property right) in 2014.

POLICE, SECRET SERVICES AND DEMOCRATIC CIVILIAN OVERSIGHT

Police Reform activities have been very contradictory, the most notable example being the preparations to dismiss a large number of police officers. The line Minister has announced layoffs of over 1,000 police officers, but was unable to decide the about the reasons - the lay-offs were at the same time justified by the fact that the police had been "criminalised" and that the police officers were redundant. After a meeting with trade unions, several hundred persons were removed from the unofficial lay-off list, which increased the doubt that the layoff procedure was arbitrary. Creation of numerous new posts for "risk analysis" at the Ministry, where certain police officers have been transferred on the basis of unspecified criteria, while it was announced that those posts would eventually be cancelled and the staff made redundant, is a blatant case of abuse of staff regulations to dismiss people without appropriate process and explanation.

Several dozens of high-ranking police officers who had been discharged from certain positions have been receiving salary for months, without being assigned to any post. The Rulebook on internal organisation and staffing table has been labelled classified. This institution has presented the National Assembly with evidence based knowledge that the internal security service of the Ministry of Interior (the Security Unit at the Cabinet of the Minister of Interior) had physically destroyed hard drives with official data and other IT equipment. No one had showed interest in this information and at the time the Protector of Citizens did not have grounds to link the destruction of equipment with his comptences, i.e. potential violation of human rights. Criminal charges brought a year later by an employee of that service, which was made public, alleged that the IT equipment had been destroyed in order to conceal evidence of unlawful secret (physical) surveillance of journalists and other public figures. It is rather unlikely that these criminal charges will result in criminal prosecution, because secret (physical) surveillance is not specifically identified as a criminal offence in the criminal legislation. However, such actions of employees of the Ministry of Interior, if indeed committed, would be thoroughly illegal and would constitute a serious invasion of persons placed under secret (physical) surveillance and a threat to the freedom of the media.

In the period preceding the submission of this Report, the Protector of Citizens found that an employee at the headquarters of the Ministry, in the Minister's Cabinet, did not know his exact job title or job description. His immediate superiors also were not aware. The employee in question has regular contacts with journalists and collects information which does not fall within the remit of the Ministry of Interior, or any other state authority, and then orally communicates them directly to the Minister of Interior. The Minister presented one such piece of information as officially obtained evidence in a public appearance in the national public broadcaster program, which – quite understandably – caused fear of unlawful wiretapping among journalists.

Polygraph, as an investigation tool that is increasingly seen as irrelevant by much of the scientific and professional community and the results of which are not admissible as evidence

[8] Official Gazette of RS, No. 116/14.

under the law, has been abused to such an extent that many have ironically publicly questioned the *raison d'être* of the police, the public prosecution and the judiciary.

> Eighty persons were deprived of liberty in a police action with a catchy codename "Shredder", which received detailed media coverage. It is difficult to explain the overlap of the most convenient time for arresting so many persons suspected of completely different and unrelated crimes committed at different periods. Shortly afterwards, however, almost all of the arrested persons were released pending trial, but this time without any media coverage.
>
> There has also been a strong public reaction after a press conference held by the Minister of Interior in a representative government building with a group of members of special units in full gear lined in the background, with balaclavas on their faces and assault rifles in their hands. Many have perceived this as excessive, or even as an act of intimidation.

The new Law on Police does not list the Protector of Citizens as one of the authorities in charge of external control of Police. Although a reference to this institution is not strictly necessary from the formal legal point of view, because his oversight function (which also applies to law enforcement agencies) is provided for in the Constitution and the pertinent organic law, the mere fact that the Protector of Citizens was omitted from the text of the Law on Police, while other authorities and entities vested with control functions under the Law were explicitly listed, has negative consequences on preventive and oversight function of this institution and cause unnecessary confusion. The opinion on this shortcoming of the Draft Law on Police was not taken into account by the backer of the Law and by the National Assembly in the legislative procedure, most likely due to the reasons publicly stated by a foreign expert in charge of project management, who also happens to be in charge of the same issues in his capacity as an advisor to the Minister of Interior.

> In the process of adoption of the new Law on Police, the Protector of Citizens issued an opinion in accordance with his statutory powers, in which he criticised certain provisions of the Draft. The foreign expert hired by international partners and donors to manage development and assistance projects for the Ministry of Interior also works at the Ministry as the Minister's advisor for the very same issues. In an official announcement issued as a public response to the Opinion of this institution, the said foreign expert, i.e. the advisor to the Minister, dismissed the Opinion by stating that views of the Serbian Protector of Citizens on the Draft Law on Police of the Republic of Serbia "for the most part stemmed from a failure to recognise the circumstances of the time of complex reform of the police system" in the Republic of Serbia The expert added that, "almost all comments made by institutions such as OSCE (Organisation for Security and Cooperation in Europe) were taken into consideration in the process of drafting the Law, especially those relating to such sensitive issues as internal control."[9] Without denying that the comments have been "taken into consideration", this institution has not been able to ascertain through direct talks with the top-tanking officers of the OSCE Mission to Serbia that the comments were actually accepted.

[9] For more information, see: http://www.rts.rs/page/stories/sr/story/125/Dru%C5%A1tvo/2009747/Votkins%3A+Novi+zakon+smanjuje+ovla%C5%A1%C4%87enja+policije+i+ministra.html.

The military security service (Military Security Agency - MSA) has increasingly been evading democratic civilian oversight. It has been denying access to data to the oversight authority and withholding information it is required to provide under the law. It has refused to take responsibility for the factually identified illegalities and irregularities in its work at the expense of political neutrality and legality. It has been established beyond all doubt, that MSA had obtained information on the activities of and cooperation between certain political parties and movements, although there were no indications of circumstances that would allow the exercise of its powers nor there were other legal conditions for its actions concerning civilians. Due to the obstruction of control, the Protector of Citizens has been unable to investigate verifiably the authenticity of other allegations. The MSA has been using the special methods and means available to it for completely different purposes against this oversight authority and its own members suspected of reporting irregularities. It makes no effort to conceal the fact it has collaborators among journalists.[10] In one case pursuant to a complaint, upon access to the necessary documentation about the events of 2000 it has been found that the military service surveyed the activities of the then-opposition. Certain chiefs of the MSA have enjoyed uncritical support, i.e. protection, of the chairperson of the parliamentary Committee for Oversight of Security Services, who is a former director of that Agency and member of the ruling party.

> On 28 January 2015, the Parliamentary Committee for Oversight of Security Services, held a public session in which Committee members, as well as other deputies from the ruling coalition, questioned the Protector of Citizens for a good six hours in order to determine how he had found facts about illegalities in the work of the Agency, all the while criticising his work. Immediately upon presenting a document of the MSA which contains information collected on the activities of certain political parties, the chairperson of the Committee closed the session by concluding that the MSA operated in full compliance with the law. Shortly thereafter, the Committee conducted its own oversight of the work of MSA and confirmed that the MSA document previously brought to the Committee's attention by the Protector of Citizens was authentic and contained "data and facts that are outside of the statutory scope of operations of the Military Security Agency."[11] The Committee then ordered the Inspector General of Security Services at the Ministry of Defence "to verify and find relevant facts within 15 days, in accordance with his statutory powers, and determine responsibility for the collection of data and facts outside of the statutory scope of work contained in the said document and report to the Committee about the results of such verification and the measures undertaken in this regard."[12] Under the Law on Military Security Agency and Military Intelligence Agency, the Committee is not

[10] Interview for the *Nedeljnik* weekly published on 12 November 2015.
[11] See:
http://www.parlament.gov.rs/Odbor_za_kontrolu_slu%C5%BEbi_bezbednosti_u_nadzornoj_poseti_Direkcije_Vojnobezbednosne_agencije_u_Beogradu,24827,941.html.
[12] Видети:
http://www.parlament.gov.rs/Odbor_za_kontrolu_slu%C5%BEbi_bezbednosti_u_nadzornoj_poseti_Direkcije_Vojnobezbednosne_agencije_u_Beogradu,24827,941.html.

authorised to issue orders to the Inspector General, who reports to the Minister of Defence. The current Inspector General of Security Services at the Ministry of Defence, appointed in 2015, is a recently retired military officer who had been the head of the unit in charge of implementing operational and technical measures immediately before his retirement. As the Inspector General focuses on activities that have been closed, he is now in charge of reviewing the lawfulness of measures he himself had conducted in his previous position. After receiving a report from the Inspector General, the Committee adopted the following conclusions: "1. No one at the Ministry of Defence and the Military Security Agency had ordered members of the Military Security Agency to collect information and facts about the activities of political parties; 2. The information about the activities of followers of the Serbian Radical Party which were contained in the contested document had been obtained through exchange of information and facts with other security agencies in the territory of the Autonomous Province of Vojvodina, pursuant to Article 6 paragraph 1 item 1 of the Law o Military Security Agency and Military Intelligence Agency and Article 5 of the Decree on Security Protection of Certain Persons and Buildings; 3. The Committee found that the Military Security Agency had obtained information about threats to the protected persons and buildings, rather than about political activities, which information it had duly provided to the Ministry of Interior of the Republic of Serbia at its written request."[13]

Oout of the 11 recommendation issued by this institution in 2015 for the purpose of rectifying the identified illegalities and irregularities in the work of the MSA, the MSA has not implemented a single one - not even the recommendation of this institution issued to the President of the Republic to remove the Director of the Agency from office due to the obstruction of the control process.

The Committee's attitude towards the powers and work of the Protector of Citizens has been criticised by multiple international actors, including the UN Committee against Torture, whose Concluding Observations on the Second Periodic Report of the Republic of Serbia (2015)[14] include concerns about the attempt of the Committee for Oversight of Security Services of the National Assembly of the Republic of Serbia to challenge the authority of the Protector of Citizens to act pursuant to complaints in cases where criminal proceedings have been initiated.

Serious illegalities and irregularities have been identified in the work of communal police in Belgrade on two occasions when it overstepped its authority in relation to journalists, which resulted in violations of their physical and mental integrity and dignity and prevented them from performing work of public importance. This institution is of the opinion that the powers

[13] For more information, see: http://www.parlament.gov.rs/16._%D1%81%D0%B5%D0%B4%D0%BD%D0%B8%D1%86%D0%B0_%D0%9E%D0%B4%D0%B1%D0%BE%D1%80%D0%B0_%D0%B7%D0%B0_%D0%BA%D0%BE%D0%BD%D1%82%D1%80%D0%BE%D0%BB%D1%83,25001.43.html.

[14] For more information, see: https://documents-dds-ny.un.org/doc/UNDOC/GEN/G15/112/60/PDF/G1511260.pdf?OpenElement.

of the communal police vis-à-vis citizens should not be expanded; instead, communal police should use its existing powers more properly and effectively.

PUBLIC ADMINISTRATION REFORM

Despite the adoption of the Action Plan on Implementation of the Public Administration Reform Strategy and a number of activities implemented in this area, public administration reform has failed to produce any substantial results. Instead of a systematic improvement of public administration, as envisaged by the Strategy and the Action Plan, there have been urgent interventionist measures aimed at reducing public expenditure through lay-offs and salary cuts in the civil service. The effects of these measures on the quality of work of the administration have been dubious, to say the least.

> Examples of such measures are the Law on Determining the Maximum Number of Employees in the Public Sector and the Law on the Salary System in the Public Sector. Both of these legislative instruments excluded public enterprises and the National Bank of Serbia from the scope of their application!

It would be reasonable to assume that reform would begin with organisational and functional restructuring of public administration, followed by the introduction of uniform arrangements governing the labour law status of all public administration employees; and only once the optimal organisation has been determined, as well as staff surpluses and shortages, to proceed with staff optimisation (lay-offs in case of redundancies and new employment where necessary).

Many laws have been drafted in a rather formal public debate, which failed to respond to the objections, questions and comments raised by stakeholders. Such approach often made it difficult to understand the intentions of policy-makers and resulted in solutions that were unclear, with terminology and content unharmonised with other instruments, with the public administration system and with the overall legal system. This resulted in inapplicable regulations and frequent need for interpretations, which ultimately undermined legal certainty.

This institution welcomed the announced introduction of uniform salary rates in the public sector, based on the principle of equal pay for equal work. However, in practice this "equalisation" remained merely declaratory, as the Law on the Salary System in the Public Sector avoids dealing with those salaries that are extremely "unequal" compared with the rest of the public sector (salaries in public enterprises and in the National Bank of Serbia). The said Law governs only one aspect of the labour law status of public administration employees (i.e. salaries), although no provisions had been put in place to regulate the system of employment relations first, which is necessary because the right to a salary is an employment right and the system of salaries is only one element of the system of employment relations. This institution drew the attention of the line ministry to this issue on a number of occasions, contending that such omissions would thwart the anticipated effects of the Law, thus once again making a sound Government policy a mere dead letter due to insufficient operational elaboration. Additionally, huge energy, time and resources are wasted without producing adequate results.

The ultimate outcome of such approach is a "reform" that results in a less professional, less motivated and less accountable administration, and the least of all less overstaffed. Reform processes are managed by external "experts" whose lack of experience or specific knowledge

are project-based rewarded far higher than the humiliated, marginalised and increasingly rare true experts who still remain in the civil service. The final outcome of these "cuts" could be a situation where the "surgery" is successful measured by formal project-related criteria, but the patient no longer has any reasonable vital signs.

KOSOVO AND METOHIA

The Protector of Citizens is still unable to exercise his powers in the territory of the Autonomous Province of Kosovo and Metohia, as provided by the Constitution and the law. According to the available information and the issues raised in complaints, the citizens in Kosovo and Metohia, especially non-Albanians who live in enclaves, are hostages to the ongoing political processes and face grave violations of human rights and freedom.

This institution addressed the EULEX Mission in Kosovo in August 2015, voicing his concern about the excessive duration of detention of Mr. Oliver Ivanovic, a political leader of Kosovo Serbs. Without prejudice to the outcome of the issues which the court deliberates independently and judges use their discretionary powers, the Protector of Citizens noted it was necessary to respect the temporary nature of detention, which involves a number of restrictions of human rights. In its response, the Head of EULEX Mission in Kosovo shared the Protector's concern for Mr. Ivanovic's health and noted that EULEX fully believed that relevant institutions would respect his rights. The Protector of Citizens has never addressed any Serbian authority in similar situations, not even with all the reservations made in the letter to the head of EULEX, as the Constitution of the Republic of Serbia includes a provision that exempts even those courts that have been established by the Republic of Serbia from the oversight powers of the Protector of Citizens.

RIGHTS OF PERSONS DEPRIVED OF LIBERTY

Progress has been made in the prevention of torture. During unannounced visits to penal and correctional facilities (Penal and Correctional Facility in Pozarevac, Penal and Correctional Facility in Nis, District Prison in Leskovac and District Prison in Belgrade), unsupervised interviews (without the presence of prison staff) were conducted with more than 200 persons deprived of liberty, none of whom complained about physical abuse by corrections officers or other convicts or detainees. Furthermore, none of them had any visible injuries. While this data cannot be interpreted as a definitive proof that there is no physical abuse in Serbia, they are nonetheless indicative and encouraging. Many of the interviewed recidivists noted a significant improvement in their treatment by corrections officers from several years ago, when abuse was almost "regular".

Although there have been no major improvements in terms of duration of detention, an encouraging development is the fact that the District Prison in Belgrade now has communal day rooms for prisoners, including dedicated rooms for conjugal visits.

The established practice of the public prosecutor's office to ask detained persons how they are treated by police officers, in order to determine whether they have been subjected to any form of torture of degrading treatment, is a positive development. Several detainees who had been remanded in custody up to 48 hours in holding cells before being detained stated they had been "slapped a couple of times" during questioning and insulted by police inspectors, but they could not prove this because they had no visible injuries. With the aim of continued prevention of torture and more effective fight against impunity for torture, police stations need to be provided with rooms for interrogation, which should be audio and video recorded.

The Penal and Correctional Facility "Zabela" in Pozarevac and the Penal and Correctional Facility in Belgrade complied with the recommendations of the Protector of Citizens and changed their security procedures which had required convicts to move with their hands crossed behind their back and with their head bowed down, which offended their dignity.

However, efforts to prevent torture and combat impunity for torture suffered a major blow during the reporting period when a prominent member of the ruling majority claimed at the 13th session of the Committee for Oversight of Security Services of the National Assembly that the Protector of Citizens was not authorised to investigate cases where criminal proceedings were ongoing. In connection with this statement made at the said session of the Committee, the UN Committee against Torture noted in its Closing Observations on the Second Periodic Report of the Republic of Serbia (item 21) that Serbia should ensure the effective and independent operation of the Protector of Citizens and enable fulfilment of his mandate, irrespective of the fact whether or not criminal proceedings had been initiated.

Serbia does not have a developed system of extra-institutional support and care for persons with intellectual and mental disabilities. As a result, thousands of these persons have been deprived of liberty by long-term institutionalisation (whether *de iure* – in psychiatric hospitals, or *de facto* – in residential social security institutions), usually in inadequate living conditions.

NATIONAL MINORITIES

The planned legislative activities under the Action Plan for Exercise of the Rights of National Minorities are fully in compliance with the recommendations and proposals given by this institution for the improvement of the legal and institutional frameworks for protection of the rights of national minorities. The results of their implementation remain to be assessed.

It is commendable that the issue of implementation of affirmative measures in the field of education, which should assist the Roma in achieving equality with other Serbian citizens, has been addressed. The fact that a systemic approach has finally been adopted in addressing the enrolment of Roma pupils and students, which ensures their vertical and horizontal representation, with the legal framework which should facilitate their implementation and make them more available, shows progress has been made and reduces the risks of irregularities and corruption.

The implementation of reform media laws threatened to undermine the achieved level of information in languages of national minorities in the field of rights of national minorities. As a result of insufficient capacities, coupled with "targeted" interpretations aimed at justifying one's own views regardless of the reasons and purpose for which regulations were enacted, a significant number of the media have not been sold or no public calls were made for their sale and their continued operation had to be ensured through transfer of capital free of charge ("distribution of shares"), where all legal requirements were met. The problems which arose in the implementation prompted the National Assembly to intervene shortly after completion of the privatisation procedure and adopt an authentic interpretation, without which the media that have been broadcasting programmes in the languages of national minorities for decades and which have been privatised through transfer of shares to employees free of charge to employees, would have to be closed.

Although public authorities (e.g. the Tax Administration) are obliged by the Constitution and applicable laws to ensure, where possible, the use of the Serbian language and the Cyrillic script and language, i.e. the language and script of a specific national minority, the operating systems used by these authorities equally violate the rights of and offend members of the majority national group and national minorities by using the Latin script, the use of which is

not provided for or referred to in any way other than through the insertion of the traditional reference "in accordance with the law". Until the legal framework which regulates this field is amended and until the mismanagement of "operating system" procurement is rectified, the only recourse citizens have at their disposal is to lodge complaints with the Protector of Citizens and request protection for and enjoyment of this part of their identity.

RIGHTS OF PERSONS WITH DISABILITIES

The legal framework governing the living and employment of persons with disabilities has been improved, but they have nevertheless not been sufficiently included in the community. The economic crisis and the insufficiently nuanced austerity measures resulted in the cancellation or downsizing of certain support services available to persons with disabilities and the elderly. Many public buildings remain inaccessible for persons with disabilities and the exercise of the guaranteed rights is either difficult or impossible for them.

Access to education is difficult for persons with disabilities, both due to the fact that a system for additional support to children with developmental disorders and disabilities is insufficiently developed and due to the inaccessibility of education institutions. Inacessibility of education, in addition to many other obstacles, also hinders the exercise of the right to employment. This largely prevents persons with disabilities from being independent and autonomous, which in turn precludes their equal and meaningful involvement in community life.

Assisted housing has in practice proved to be a successful, if underutilised, model. Extra-institutional protection is insufficiently developed, it is used selectively and there is a lack of coordination between competent authorities. Persons with developmental and mental disorders are in a particularly difficult situation.

GENDER EQUALITY AND RIGHTS OF LGBTI PERSONS

The adoption of the Law amending the Law on Budget System facilitated gender mainstreaming of all budget processes and restructuring of revenue and expenses with the aim of promoting gender equality. Gender-related objectives have been included in the 2016 budgets of 28 budget spending units.

There is still a lack of timely and efficient response of competent authorities to reports of violence against women and a lack of interdepartmental cooperation, including in particular exchange of information and training of employees in the system of protection of women from violence.

Exercise of women's rights and access to services for women are still fraught with unjustified difficulties. Women face significant delays in the exercise of their entitlement to salary compensation during pregnancy leave and leave for child care and special child care or even have no access to these benefits at all due to delays in the work of competent authorities or lack of interdepartmental cooperation. Women farmers who are the registered holders of farms and women who engage in temporary and occasional work do not have access to salary compensation during pregnancy leave, maternity leave, child care leave and special child care leave.

A Pride Parade has been held peacefully in Belgrade for the second year running, which symbolically paves the way towards enjoyment of the right to assembly by persons of different sexual orientation and gender identity. However, it is crucial to ensure respect for the rights of LGBTI persons in the fields of education, employment, health care, social security,

legal regulation of same-sex unions and legal consequences of sex and gender reassignment surgery, as well as protection of their physical and mental integrity.

CHILD RIGHTS

The legal framework for the protection of children against sexual abuse has been further improved by the adoption of the Rulebook on Keeping of Special Records of Persons Accused for Criminal Offences against Sexual Freedom of Minors[15] and the Law amending the Law on Police ("Tijana's Law")[16]. The Criminal Code must be further harmonized with the Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse[17] in terms of redefining certain criminal offences, introducing more stringent (minimum) sentences for certain offences and amending the provisions governing security measures and methods of criminal prosecution in specific cases.

Activities taken by the state and local self-government units for improving the position of children who live and work in the streets and the Roma children are not nearly sufficient. Austerity measures have further reduced the already limited allocations of budget funds and a small number of available services intended for them. For example, the city of Belgrade has not re-established a shelter for children, which it excluded from its Decision on Social Security Rights and Services[18], although it provided results in integration of children who live and work in streets. Consequently, the access to health care and social security services and services which would ensure their inclusion in education and the community are now even more difficult for these most marginalised and vulnerable groups of children. Their full protection against neglect, violence, abuse and exploitation is now even more difficult to be achieved. The competent authorities have not implemented recommendations the Protector of Citizens has been issuing since 2011 due to the lack of a systemic response of the state to this issue. No records are kept of children who live and work in streets, the extent and causes of this issue have not been recognized as well as violations of the rights of these children (whose lives, health and safety are jeopardized every day and due to neglect and lack of care they are at the highest risk of becoming victims of trafficking and other forms of abuse and exploitation). Sporadic and *ad hoc* activities are inefficient and fail to produce any significant results.

Protection of children against violence has not been sufficiently institutionalized although ten years have passed since the adoption of the General Protocol and the Special Protocols on the Protection of Children from Abuse and Neglect. The Government's National Strategy for Prevention and Protection of Children from Violence for the period 2009-2015 and the Action Plan for implementation of the Strategy (2010-2012) have expired. The problems in protection of children from violence and abuse are evident in all environments, in particular peer violence and domestic violence against children. In addition, there are no work standards in place, employees are insufficiently trained, there is a shortage of experts, a responsibility system for employees has not been developed and prevention is poor.

In spite of the significant progress, including the enactment of the "Marija's Law"[19], the criminal law status of child victims has not been sufficiently improved. It is necessary to redefine certain criminal offences, introduce more stringent (minimum) sentences for certain

[15] Official Gazette of RS, No. 76/15.
[16] Official Gazette of RS, No. 64/15.
[17] The Law on Ratification of the Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse, Official Gazette of RS – International Agreements, No. 19/09.
[18] Official Gazette of the City of Belgrade No. 55/11, 8/12, 8/12, 42/12, 65/12, 31/13, 57/13 and 37/14.
[19] Law on Special Measures to Prevent Criminal Offences against Sexual Freedom of Minors, Official Gazette of RS, No. 32/13.

offences and amend the provisions governing security measures and methods of criminal prosecution in specific cases. Four years ago, the Protector of Citizens submitted an initiative to the Ministry of Justice to amend the Criminal Code in order to harmonise it with the Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse (Lanzarote Convention)[20], but the Ministry has not considered the initiative. Recommendations and opinions issued to improve the status and to improve questioning techniques and protection of child victims from secondary traumatization and victimization in proceedings before administrative and judiciary authorities also provided no results.

The legal framework for the protection of child rights in family disputes and prevention of instrumentalization and abuse of children has been improved by the adoption of the Law on Execution and Security, which will take effect on 1 July 2016. The procedure for the enforcement of decisions in connection with family relations has been regulated more precisely, particularly enforcement of decisions for protection of child rights and protection from domestic violence. However, in practice there are still cases of final and enforceable decisions being reviewed in execution proceedings and often the outcome of such proceedings, after several years of failure of public authorities to enforce their own decisions, is that decisions are changed in favour of parents who violated and abused child rights and *de facto* situation is recognized.

Enforcement of court decisions in order to protect child rights (protecting the right of a child to support, to maintain personal relations with the other parent, protection from domestic violence, from parental abduction and abuse, surrendering of the child etc.) is often not efficient enough. Instead in expedited proceedings, court decisions regarding children are enforced in time-consuming proceedings, which are exhausting and traumatic for children and have negative effects on their proper development. In such cases there is no functional cooperation between judicial and other authorities (primarily the police and of centres for social work).

This year too was marked by the initiatives to establish a special institution with powers of the Protector of Citizens for child rights – Children's Ombudsman. In relation to this initiative, the Protector of Citizens emphasised on several occasions the harmful effects for child rights, public interest and legal order which may result from multiplying institutions with the same or related competences and powers in protection of child rights, particularly at the moment when the Republic of Serbia faces the lack of funds allocated for child services and when competent international institutions have explicitly advised in favour of the existence of a single national human rights institution.

YOUTH AND THE ELDERLY

A low number of young persons with higher education and a high percentage of unemployed young persons are the main characteristics of the youth status in the reporting period. Young persons aged between 20-29 account for one quarter of the Serbian population, among which only 14% have higher education and more than 50% completed only secondary education. The youth unemployment rate exceeds 40%[21], with young persons accounting for more than one third of the total number of unemployed persons.[22] Young people who are neither in

[20] Law on ratification of the Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse, Official Gazette of RS- International Treaties, No. 1/10.

[21] According to the report of the Statistical Office of the Republic of Serbia for IV quarter of 2015, 43% of young persons are unemployed.

[22] According to statistics of the National Employment Service, Monthly Statistical Newsletter No. 160 for December 2015, p. 19, available at: http://www.nsz.gov.rs/live/digitalAssets/4/4881_bilten_nsz_12_2015_-_broj_160.pdf.

education nor employed and live with their primary families do not have an option to have health insurance like insured family members, and they can be covered by compulsory health insurance only if they are included in compulsory social insurance, in which case they have the duty to pay contributions themselves. Services for prevention of addiction and risk behaviours of young people, assistance and support services for young people in particularly vulnerable situations and services for prevention and protection of mental and reproductive health are insufficiently developed. Many young people are exposed to numerous risk factors for their physical and mental health in various environments (school, community, family) and stress situations.[23] Appropriate educational support services and measures are not available for young persons with disabilities and developmental disorders. Support services in pre-university and university education, based on the principle of inclusive education and social inclusion, which contribute to the improvement of education of young people with disabilities and developmental disorders, increase the extent of inclusion of young people in secondary and higher education and provide equal opportunities for them to study and become involved in social activities, are not sufficiently developed.

The elderly are subjected to multiple violations of their rights, from the enjoyment of pension insurance rights, pension cuts and unpaid contributions to the pensions fund by employers to social security rights. According to the information obtained by the Commissioner for Equality in cooperation with the Red Cross, about 20% of the elderly population have been subjected to some form of violence or discrimination. The elderly living in villages in underdeveloped municipalities are in a particularly difficult situation. Their families, primarily due to their poor financial situation, are often not in a position to dedicate enough time and attention to them, while on the other hand the state has not provided appropriate assistance and support to them. The elderly are often victims of poverty and neglect within families, which also include management of their property without their consent. They are in particular need of increased availability of health care services and support at the local level.

Researchers at non-governmental organizations (the Centre for Democracy) have found that different forms of discrimination against the elderly are on the rise (institutional, social and family discrimination). Middle-aged persons are already "too old" for employers once they turn 45 and are subjected to frequent dismissals from their jobs, difficulties in finding a job and other forms of discrimination in the field of employment. Representatives of the civil society advocate for the introduction of social pensions as mechanisms to reduce poverty among single elderly persons who are outside the pension system (introduced by the Law on Social Security of 2011). Other problems faced by the elderly include insufficient information, lack of local services, inadequate housing arrangements (over 5,500 of elderly households are subtenants and most of the 18,000 homeless persons are older than 65), poor health and in particular risk for mental health due to widespread depression, poor media image and, above all, poverty.[24]

EDUCATION AND SOCIAL PROTECTION

The situation of educators remained difficult in 2015, particularly taking into account that it had already drastically deteriorated in 2014 with the austerity measures, while their work

[23] More than a half of high school pupils have been exposed to at least one stress event in the past two years. Source: the National Youth Strategy for the period 2015-2025.

[24] Data presented at a public hearing titled "Ageing-Years of Life: from Privilege to Discrimination" held by the Committee on Human and Minority Rights and Gender Equality of the National Assembly on 26 October 2015.

remains undervalued. Cost-cutting measures in the field of education had impact not only on the situation of educators but also on the education of children. The number of pupils in classes has not been reduced – although this should have been done during the previous year – and it often exceeds the maximum specified number; investments in facilities and equipment are insufficient; there have even been problems with toilet facilities in schools. Strict limitations have been imposed on the maximum number of teaching assistants, which is determined according to a mathematical formula based on the number of classes in a school, rather than on the pupils' needs. New bylaws which regulate this issue have done nothing to improve the education of pupils, including in particular inclusive education, or the system for protection of pupils against violence. Financial resources of schools are insufficient and schools that had their accounts blocked because local self-governments did not pay them funds, face a particular problem. Although the Ministry of Education, Science and Technological Development introduced provisions in the Draft Law amending the Law on Basic Elements of Education System which specify in detail the duties of the Ministry and local self-government units, the problem of schools with blocked accounts remains and it is a chronic threat to adequate quality of education for many pupils.

Austerity measures and staff cuts in the public sector have affected not only education institutions, but also health care and social security institutions. They prevent new employment for the provision of education and social security services, which is why some services have been cancelled and many more face the threat of closing. Measures that have been put in place to prevent any new employment have made it impossible or, at best, much more difficult to hire pedagogical assistants and personal aides for pupils who need additional support and to provide social security services such as domestic assistance, personal assistance and day care centres.

HEALTH

In the reporting period, no new systemic problems emerged in the field of the right to health care. Some of the preconditions for more complete exercise of citizens' rights under compulsory health insurance have been strengthened.

> The Serbian health care system has progressed six places from being at the last place at the Euro Health Consumer Index.[25] The improvement has been observed in three fields: patients' rights, availability of health care and treatment outcomes. Serbia achieved the greatest progress measured by these indicators by reducing the new-borns mortality rate.[26]

However, many citizens have complained to the Protector of Citizens that they did not have enough money to buy the medicinal products they need, including many severely ill persons whose family members are employed and they are thus not eligible for social security, but in practice their employers pay their salaries irregularly or do not pay them at all. A time in which health care was available to everyone and was of high-quality still lives on in collective memory. There is widespread disappointment, fear and even anger because of the collapse of that system during the past decades.

Waiting lists, one of the indicators of (un)timeliness, i.e. unavailability of health care services and one of the generators of corruption in the health care system, have been reduced compared with the previous period. Waiting lists are more transparent: individual and single

[25] See the Annual Report of the Protector of Citizens for 2013.

[26] See more at: http://www.healthpowerhouse.com/files/EHCI_2015/EHCI_2015_report.pdf.

waiting lists are available in electronic form at the official website of the Republic Health Insurance Fund.[27]

> The Budget Fund for the Treatment of Diseases, Conditions or Injuries that cannot be successfully treated in the Republic of Serbia began operating. More than 40 persons were referred for treatment or diagnosis to foreign countries. Secondary legislation was passed to set out detailed requirements, manner and procedure of allocation of funds from the Fund. Several dozens of children have been referred for treatment or diagnosis to foreign countries.

In compliance with the recommendation issued by this institution, the Republic Health Insurance Fund posts on its official website data on payment of salary compensation to pregnant women and all other insured persons during temporary incapacity because of diseases, starting from the 31st day of temporary incapacity.

Replacement of identification documents of insured persons with the Republic Health Insurance Fund has been initiated and, in spite of the opinion of this institution, is charged 400 dinars per person. There are about seven million persons insured with the Fund in Serbia.

A number of employed persons and their family members are still not able to exercise the guaranteed right to health insurance and health care because certain employers violate their legal duty to pay contributions, competent authorities fail to take efficient against them, while the law shifts the burden of negligence of employers and public authorities to the weakest point – employees.

After the adoption of the Law on Cell and Tissue Transplantation, citizens rightly expected that a public cell and tissue bank would be opened, which was supported by this institution. Six years after the adoption of this Law, a public cell and tissue bank has not been opened or started operating in Serbia.

Physical security of employees in the health sector is insufficient. In addition to measures for their protection, it is necessary to strengthen the effectiveness and availability of internal and external mechanisms to control observance of patients' rights and to strengthen cooperation with them.

The patient rights protection system is not fully functional in practice because competent authorities of local self-government units and the Ministry of Health have not taken all measures within their competence in the manner and within the time limit set by the Law on Patient Rights. This resulted in omissions which may cause legal uncertainty and worsening of the legal position of patients, as well as violation of their rights. This institution prepared a special report about this issue.[28]

Positive changes were made with regard to authorisation of specialisations, as advised by this institution in the past.

PENSION AND DISABILITY INSURANCE

Unpaid pension and disability insurance contributions remain the key causes of citizens' inability to exercise their right to pension. At meetings organised by this institution in order to address this issue, compulsory social insurance organisations (the National Pension and Disability Insurance Fund, the Republic Health Insurance Fund and the Tax Administration) recognised the need to improve their work in order to ensure more efficient control of

[27] See more at: http://www.rfzo.rs/index.php/osiguranalica/listecekanja/pregled-lista-cekanja.
[28] Report available at: http://www.zastitnik.rs/index.php/lang-sr/2011-12-25-10-17-15/4607-2016-02-22-12-22-20.

payment of contribution for beneficiaries' health, pension and disability insurance specified by the law.

By passing the Resolution on Adjustment of Pensions of Military Pension Beneficiaries, the Government began to address this long term issue. Only after it has been determined how many military pension beneficiaries have entered into out-of-court settlement and accepted the government's offer of to receive a one-off payment of the difference between the adjusted amount of pension and the amount of pension actually paid, we will be able to know whether a permanent solution has been found for this issue.

After the enactment of the Law on Provisional Arrangements for the Disbursement of Pensions, this institution issued an opinion to the National Pension and Disability Insurance Fund with a recommendation to pass without a delay individual decisions for each pension beneficiary, if the manner of payment of pension is temporary changed for him/her. Since the National Pension and Disability Insurance Fund has not complied with this opinion, pensioners face difficulties in the exercise of the right to legal remedy – to lodge a complaint – guaranteed by the Constitution.

A huge problem arose from retroactive establishing of the duty to pay agricultural insurance contributions for citizens who have never been informed they are insured on this basis nor received an appropriate administrative instrument to acquire the status of an agricultural insurance beneficiary. Thus, there have been cases of citizens who learned they have debt for unpaid agricultural insurance contribution in the amount of several hundred thousand dinars or even more than one million dinars, including the accrued interest, only after they filed requests to exercise their entitlement to pension.

LABOUR

Although the legal framework has been improved with the enactment of the Law on Requirements for Secondment of Employees to Temporary Work Abroad and Their Protection and the Law amending the Law on Employment and Unemployment Insurance, a high percentage of unemployed population in working age, coupled with low salaries, violations of citizens employment rights and insufficient protection of those rights, have been the key features of the enjoyment of the right to work and employment rights in the reporting period. According to the Statistical Office of the Republic of Serbia, the unemployment rate has been reduced and is about 18%. The exercise of employees' rights has been additionally burdened by the insufficient cooperation between the Tax Administration, the Republic Pension and Disability Insurance Fund, the Republic Health Insurance Fund and labour inspectorates. Citizens also often point to abuse at work and inadequate protection by employers. Although employees have a possibility to file lawsuits for violations of their rights, they refrain from exercising and protecting their rights in court because they fear losing their jobs.

As regards progress made in eliminating the practice which places the burden on the shoulders of employees and their family members when employers fail to comply their legal duty to pay contributions to health and pension insurance funds, steps towards improved legal protection of employees were made in 2013 and 2104. What remains to be done is to introduce in the legal system an arrangement which has been advocated by this institution for quite some time, which would ensure that if employers violate their legal duty to pay contributions specified by the law to compulsory social funds for their employees and

competent public authorities tolerate this, employees do not suffer harmful consequences, as has been the case so far.

Implementation of the Law on the Protection of Whistle-blowers has begun in case law and first injunctions have been imposed in court proceedings pursuant to lawsuits against employers, which is an encouraging sign. It is too soon to evaluate the effects of the Law.

JUDICIARY

Following the adoption of the Law on Protection of the Right to Trial within a Reasonable Time, the enjoyment of this citizens' right has improved considerably, even with the identified shortcomings of that Law.

The excessive amounts of fees charged to citizens for the work of bailiffs, which the Protector of Citizens stated as a concern in the previous reporting period, have been cut following the adoption of the Bylaw amending the Bylaw on Fee Rates and Cost Reimbursement for the Work of Bailiffs.

Furthermore, arrangements have been put in place to facilitate the enjoyment of the right of access to justice following the amendments to the Law on Court Fees.

Citizens have continued filing complaints against the work of judicial authorities (courts and public prosecutor's offices), although those authorities are exempted from the powers of the Protector of Citizens under the Constitution and citizens are well aware of that, but either do not have trust or do not have proper access to the authorities responsible for overseeing the lawfulness of work of judges and prosecutors, according to the Constitution.

The number of complaints pertaining to the work of the so-called "young" judicial professions – bailiffs and public notaries– has been on the rise, as these professions increasingly become the cause of grievances for citizens and the public. However, this institution does not have the power to oversee their work – that would require an amendment to the Constitution. However, the Protector of Citizens has established sound and constructive cooperative relations with chambers of bailiffs and public notaries, which are at the same time also organisations with delegated public powers and are thus subject to oversight by this institution in that regard, if the Ministry of Justice fails to perform its statutory oversight duties, as the first complaint mechanism to which the Protector of Citizens refers all citizens who have grievances against the work of bailiffs and public notaries.

There is a strong – yet difficult to substantiate – perception that judicial and prosecutorial functions are heavily influenced by the political authorities.

> A judge has resigned, clearly with much bitterness, after experiencing backlash for his judicial decision to return the passport to (against a multi-million bond in euros) a prominent businessman whose arrest had been hailed by the media and certain politicians as a symbol of fight against corruption. The Disciplinary Committee of the High Judicial Council found him guilty of a disciplinary infraction because he gave a statement about the circumstances surrounding that decision to a newspaper in response to an article previously published in the same newspaper, which insinuated he had not followed due procedure. He had previously been labelled a corrupt judge by a pro-government tabloid, while the Minister of Justice publicly criticised the decision to return the passport. The judge's term in office at the Special Chamber of the Higher Court, where he heard and ruled on some of the most sensitive criminal cases, had not been renewed. As his court refused to disprove the allegations levelled against him in the press, he took his protection in his own hands and suffered disciplinary action as a result.

As a demonstration of his essential disagreement with the meted punishment, he resigned as a judge.

A volunteer at a court had his volunteering contract terminated because he disapproved of the actions of a judge at the court where he volunteered, on his social network account. The judge had been at a celebrity's birthday party and posed together with the host for a photograph next to the decision to rehabilitate that person, which was hanged in a frame in that person's home. The rehabilitation proceedings had been heard by and the decision signed by the very judge who posed for the photograph. The photograph had originally been disclosed by the Public Service Broadcaster of Vojvodina, while the court volunteer criticised the judge's actions on his social network account several days later.

The High Judicial Council includes members who had earlier taken part in the passing of decisions which caused immensurable damage to the Serbian judiciary.

Experts believe that the Criminal Procedure Code has not produced satisfactory results after more than two years of application. It fails to provide sufficient guarantees for the protection of human rights due to both inherent systemic shortcomings and significant technical legal shortcomings which leave much room for different interpretations, thus leading to potential legal uncertainty and inequality of citizens before the law. Its implementation had begun without appropriate preparations and with a distinct shortage of prosecutors, taking into account their expanded powers. Legal practitioners claim that the inability of prosecutors to actually conduct preliminary investigations and direct the work of the police (although they have the power to do so under the Code) makes it difficult to obtain evidence for those criminal offences that are not in the focus of interest of the executive arm of the government.

The normative framework and the actual quality of election of public prosecutors have been improved. On the other hand, while the discretionary powers in the appointment of public prosecutors have been reduced, practitioners claim they still remain rather broad and the criteria which guided the Government in the nomination of candidates are not sufficiently clear.

The elections for elected members of the State Prosecutorial Council have been marked by a much better atmosphere than the previous ones. The five winning candidates had proposed programmes that fully endorsed the proclaimed objectives and ideas of the Association of Public Prosecutors and Deputy Public Prosecutors of Serbia, which has an impeccable reputation both among prosecutorial office holders and with the general public.

The judicial profession has identified the following three key problems:

- Insufficient (institutional[29] and actual) independence of the judiciary;

[29] The well-known problems at the constitutional level associated with the first election of judges, presidents of courts and all members of the High Judicial Council by the National Assembly, the presence of legislative and executive arms of the government in the High Judicial Council, the lack of constitutional reasons for termination and removal of judges from office and the problematic aspects of the trial term of office; at the level of laws, the issues include excessive powers of presidents of courts; participation of the executive government in the Managing Board of the Judicial Academy, which is seen as a key institution and a channel through which other branches of the government can influence the judiciary, as was identified in the summary of the negotiation position for Chapter 23, the Action Plan for Chapter 23 and the National Strategy for the Judiciary and the Action Plan on its implementation: those who enrol in the Academy in an insufficiently transparent procedure are effectively

- Uneven case load placed on judges and courts[30]; and
- Lack of trainings for judges, especially continual training.

However, executive and judicial-administrative authorities see the following as the main problems faced by the judiciary:

- Inefficiency (large volume and excessively long handling of outstanding cases, especially old ones); and
- Uneven jurisprudence.

However, recent trends have resulted in a more even distribution of caseload between judges and courts, especially in criminal proceedings before basic courts. These are positive effects of the judicial laws which came into force on 1 January 2014 and increased the number of basic courts, transferred the powers for the so-called lower appellate proceedings in criminal matters (second-instance powers for deciding on appeals against first-instance decisions, including detention) to higher courts and the "transfer" of investigations to the prosecutor's offices pursuant to the Criminal Procedure Code, which has been in general effect since October 2013.

On the other hand, the transfer of powers for lower appellate proceedings in criminal matters resulted in an uneven distribution of caseload between judges within the same courts of appeal in second-instance and third-instance departments. For this reason, at the end of 2015 there were on average 119.44 civil cases per judge in Belgrade, 164.91 in Kragujevac, 46.11 in Nis and 45.04 in Novi Sad, while the caseload per judge in criminal matters in the same courts was 7.28 in Belgrade, 6.61 in Kragujevac, 12.88 in Nis and 10.05 in Novi Sad.[31]

Many judges perceive the insistence of judicial authorities on faster proceedings (coupled with justifiable expectations of citizens to the same effect) and the measures undertaken in that regard[32] as a compromise that sacrifices the quality of trial for the sake of ostensible efficiency. If this is true, it means that citizens' right to a fair and just trial is being violated in this way.

The Judges' Association has warned that some judges have understood the demand for expediency as an imperative and have tended to hasten up all other cases as well. If a higher instance quashes their judgement, some of them simply (quite literally) repeat their earlier decision, thus shifting the burden of deciding on the anticipated remedy to the court of second instance. Courts of second instance can quash decisions only once and if they do not uphold the repeated decision of the court of first instance, courts of second instance are required to hold hearings, which slows down their work, both in such cases and in all other appellate cases. For this reason it has been suggested that courts of second instance have tended to

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appointed a judge or a prosecutor, far from the public's eye, outside of all procedures and even before they are formally appointed, by virtue of the mere fact that they enrolled in the Academy.

30 As a result of an unsuitable court network, inadequate powers of courts and lack of judges in larger cities; while the first two issues are the responsibility of legislative and executive branches of the government, responsibility for the third issue rests squarely on the shoulders of judicial authorities (the High Judicial Council).

31 Data obtained from the Judges' Association of Serbia.

32 In early May 2014, the president of the Supreme Court of Cassation first demanded of other presidents of courts to undertake measures to reduce the backlog of old cases (through urgent handling, ruling and expediting of cases outside of normal queue if they have lasted for more than 5 years in case of criminal proceedings or more than 10 years in case of civil proceedings, so that they are closed by 15 November 2014); several days later, all presidents of courts proceeded to implement this in respect of each individual case and formally ordered judges to close and expedite old cases by 15 November 2014. This was not only unlawful, but also impossible and ultimately was not achieved, due among other things to the attorneys' strike.

uphold repeated first-instance decisions, although they had previously quashed an identical decision in the same legal matter. There has been an increasing number of decisions of the Constitutional Court quashing the judgements of appellate courts because of violations of the right to a fair trial due to a lack of explanation of key facts.

This has the following consequences:

- Longer trials;
- Increasing backlog of old cases handled by courts of first and/or second instance;
- Declining quality of judgements;
- Dissatisfaction of citizens with the judiciary.

The following has to be ensured:

- Approximately equal conditions of work (offices, paralegals, IT equipment and access to the database of regulations and case law)[33];
- Approximately equal distribution of the burden in terms of the number (and preferably also structure) of cases[34]; and
- Continual training – sound, multi-faceted, systemic, predictable and actually available to all judges, building on the broader context and focusing on explaining the essence and purpose of the judicial duty and its ultimate aim (citizens' trust in the judiciary) – this applies in particular to the courts of the highest order (the Supreme Court of Cassation, the Commercial Court of Appeals and appellate courts), because consistent application of legislative provisions depends on the quality of their argumentation.

  In the course of 2015, courts handled a total of 4,973,951 cases, of which 2,087,332 have been closed. Out of the total number of pending cases, 1.7 million are executory cases, 800,000 of which were lawsuits for utility debt.[35]

  As regards the 26 higher courts, at the end of 2015 there were 764.60 pending civil law cases in Belgrade and 723 in Novi Sad, followed by 531 in Cacak, 378.40 in Nis, 256 in Prokuplje, 213 in Kragujevac... On average, all higher courts had 214 pending cases per judge at the end of 2015. However, there were 14 courts where

[33] The appellate court in Novi Sad is not provided with adequate working conditions (all courts are in the same building); the appellate court in Kragujevac does not even have its own building and instead shares a single, inadequate building with the basic court and the higher court; at the First Basic Court, judges use their courtrooms as their offices, with minute-keepers, paralegals, volunteers and a single computer.

[34] In criminal matters, at the end of 2015 there were 23.86 cases per judge in higher courts (p. 135 of the Statistical Report); however, in Belgrade there were 67.36 cases per judge, followed by Novi sad with 51.15 cases per judge, Kragujevac with 37 cases per judge, Nis with 32.50 cases per judge, Pozarevac with 28 cases per judge, Zrenjanin with 27.67 cases per judge and Jagodina with 25.67 cases per judge; on the other hand, in 10 courts the figure was in the single digits.

At the end of 2015, the 66 basic courts had an average caseload of 291.57 pending civil law cases (p. 430 and 431 of the Statistical Report); however, the basic courts of Belgrade had 572.46 cases per judge in the First Basic Court, 548 cases per judge in the Third Basic Court and 328.86 cases per judge in the Second Basic Court; Leskovac had 586.17 cases per judge, Lebane had 517.75, Nis had 653.50, Pirot had 888.25, Prijepolje had 447.50, Ivanjica had 494.33, Knjazevac had 428.50, while Backa Palanka had 408.50; five courts had more than 300 pending cases per judge, 15 courts had more than 200 cases per judge, while 34 courts had fewer than 200 cases per judge.

As regards criminal cases, at the end of 2015 basic courts had on average 106.95 pending cases per judge. The caseload was 324 cases per judge in Lazarevac and Lebane, 281 cases per judge in Brus, 253.75 cases per judge in Pirot, 230.50 cases per judge in Obrenovac, 189 cases per judge in Prijepolje, 188.67 cases per judge in Novi Pazar and 182 cases per judge in Smederevo, while 10 courts had up to 50 cases per judge.

[35] Figures presented in public by the president of the Supreme Court of Cassation.

the number of cases per judge was in the double digits, while one court (in Negotin) did not have a single pending case at the end of 2015 (source: Statistical Report on the Work of Courts in 2015).

The distribution of caseload has been uneven among commercial courts as well. Thus, at the end of 2015 there were on average 99.64 pending civil law cases per judge; however, the actual distribution by courts was as follows: 192.60 in Novi Sad, 150.65 in Belgrade, 123.33 in Pancevo and 113.67 in Zrenjanin, while the remaining courts had fewer than 100 pending cases; seven courts had 50 or fewer pending cases per judge (37.71 in Leskovac, 22.80 in Zajecar and 16.40 in Uzice).

Criminal cases tried in basic courts have seen the greatest improvement in terms of a more even distribution of caseload between judges.

Statutory provisions have to be adopted to govern the maintenance and use of a database of court and prosecutorial cases, which would contain citizens' personal data. It would be appropriate for judicial data to be kept by the Supreme Court of Cassation or the High Judicial Council, rather than by executive authorities.

FINANCE

The Tax Administration is the least compliant with the principles of good governance of all central administrative authorities. Its regulations are becoming increasingly complex and even citizens with a legal background increasingly need the services of tax advisors; tax procedures are non-transparent and incompliant with the general principles of administrative proceedings; decisions passed by tax authorities essentially contain no statement of reasons; practice often tends to be uneven; decisions are not passed within the required timeframe; remedies are ineffective; communication with citizens is overly bureaucratic; while penalties are draconian.

Citizens are required under the law to pay an (assumed) amount of property tax that has not been previously determined by a decision of the competent authority. The statutory arrangements governing the service of tax assessments make it all too easy for citizens to be effectively denied the possibility to learn about their rights and responsibilities, while the "service" of writs by pinning them to a notice board has tremendous negative effects. The Tax Administration has designed its model of communicating with citizens to suit its own needs and schedules, rather than adjusting its work to the objective circumstances of citizens' lives (for the sake of clarity, this does not apply to percentages and amounts of tax liabilities, but rather to the Administration's work arrangements, including work arrangements, procedures …).

After two years of application of an arrangement that harmed both private and public interests, against which this institution had protested in strongest possible terms, the provision according to which compulsory social insurance contributions are not statute-barred has finally been restored in the legislation, which has improved the situation of many citizens and increased public revenue from this source.

After two years of the adoption and one year of repeal of the Law on the so-called solidarity tax, this institution managed to obtain from the Government a Conclusion that attempts to alleviate some of the harmful consequences of unlawful and irregular collection of the solidarity tax on multiple monthly back-wages paid salaries (wage compensations) paid

cumulatively in arrears. The Ministry of Finance and the Tax Administration as its body had previously refused to implement a recommendation intended to prevent this violation of citizens' rights; if that recommendation had been implemented, there would have been no need for the Government to order the refund of improperly collected money by a subsequent Conclusion.

A new irregularity identified in the operations of the Tax Administration in the course of 2015 is the control of income reduction and passing of decisions which order citizens to pay tax liabilities after the expiry of statutes of limitation. Acting pursuant to citizens' complaints and following an investigation, the Protector of Citizens demanded of the Tax Administration to refrain from initiating and conducting enforced collection procedures and to void *ex officio* all decisions passed after the expiry of relevant statutes of limitation, with notice to the Administrative Court in order to expedite the resolution of administrative disputes and relieve the burden of the Court, which had already concurred with the opinion expressed in the recommendation of the Protector of Citizens in its judgements passed in individual lawsuits. If this recommendation is implemented, the principle of legality of operations will be maintained and the costs of lost lawsuits for the government would be lower. However, the fact remains that some citizens will not pay their due tax liabilities due to the excessively slow actions of the Tax Administration, which harms public interest. There is also an element of unequal treatment and injustice in relation to those citizens who duly paid their taxes.

The initiative to amend the Law on Tax Procedure and Tax Administration filed by this institution has been accepted and the provisions governing the protection of classified data in tax proceedings have been harmonised with the Data Secrecy Law as the primary law in this field.

ECONOMIC AND PROPERTY RIGHTS

Similarly as in earlier years, citizens have not been able to fully and timely enjoy their property rights vis-à-vis government authorities due to organisational weaknesses in the work of the administration.

The amendments to the Law on State Cadastre and Land Survey made in late 2015 should contribute to faster and more efficient acting of Cadastral Departments, as well as of the Republic Geodetic Authority, which was reinstated as the authority of second instance under the amendments because the Ministry of Construction, Transport and Infrastructure had been extremely inefficient in handling second-instance cases during the time when it was in charge. A timely and efficient decision-making procedure is paramount because any failure to pass in due time a decision under which a citizen is granted a property right (or any failure to implement such decisions) constitutes a violation of the right to peaceful enjoyment of property and there is a vast number of cases where citizens have had to wait for years to register their title to real estate.

The Restitution Agency has closed many proceedings pursuant to property restitution claims by returning more than 90% of all claimed property to its rightful owners and their heirs in kind, which is indeed praiseworthy. However, due to the complexity of the real estate appraisal procedure and the

shortcomings of the existing legal framework, those cases in which restitution in kind is impossible, but the owners or heirs are eligible for compensation, as well as cases involving restoration of consolidated land, have not yet been closed. The Protector of Citizens had submitted to the National Assembly a Bill on Restitution of Property and Compensation designed to remedy the identified shortcomings, but the Bill was never debated by the Parliament.

Although all privatisation procedures were supposed to be closed by the end of 2015, this goal has not been achieved. The Privatisation Agency has been wound up; however, even though the Ministry of Economy has assumed the responsibilities associated with conducting and overseeing the remaining privatisation procedures, an Agency for Managing Disputes in the Privatisation Process was set up to represent the government in privatisation procedures initiated before 1 February 2016. The actual purpose of this new agency remains unclear, as the State Public Attorney's Office is responsible for protecting the government's interests.

Citizens still face numerous issues in the enjoyment of their property rights due to shortcomings of the bankruptcy legislation and due to actions of bankruptcy administrators. Bankruptcy proceedings instituted against companies before Commercial Courts are still excessively long, estates are difficult to cash in, while the actions of bankruptcy administrators cause distrust among bankruptcy creditors.

The enactment of the Law on Legalisation of Buildings, the sixth of its kind in the past 20 years, should finally bring closure to the legalisation process after many years. Significantly, the new Law identifies legalisation of illegally constructed buildings as a public interest, although those citizens who constructed their properties in full compliance with the law have perceived this solution as an injustice. The Protector of Citizens has found in a number of investigations that building inspectors, even if they do identify irregularities, tend to hesitate to pass a relevant administrative instrument or do not follow-up on its execution, which is incompatible with the perception of legalisation of illegally constructed buildings as a matter of public interest.

ENERGY AND CONSUMER PROTECTION

The adoption of certain pieces of secondary legislation (the Decree on Vulnerable Energy Consumers, the Decree on Application of Fee Rates for the Calculation of the Cost of Access to the Electricity Distribution System and passing of the Bylaw on Energy Permit, the Bylaw on Licences for Energy Businesses and Certification and the Rules on Change of Supplier) improved the regulatory framework for implementation of the Law on Energy. The adoption of the Decree on Vulnerable Energy Consumers on proposal of the Protector of Citizens ensured protection of citizens whose lives and health would be at risk as a result of disconnection of supply of electricity. It is necessary to pass the remaining pieces of secondary legislation in order to ensure full implementation of the Law and higher improvement of the rights of buyers and consumers.

The number of citizens' complaints against violation of consumer rights has increased (246 compared with 217) compared with the previous year. Citizens have complained about the work of mobile operators and Internet providers, as well as about the manner of energy supply and calculation of costs by electricity and heat energy supply companies. Citizens face problems in relation to electricity supply, collection of bills, disconnection from the electricity grid and requirements for reconnecting to the electricity grid, as explained by the Protector of

Citizens in his Special Report "Issues in Exercise of Electricity Consumer Rights with Recommendations".[36]

ENVIRONMENT PROTECTION AND CLIMATE CHANGE

Notwithstanding the fact that several laws had been enacted in the previous year, the field of environment protection is still characterized by insufficient regulation. As regards the right to a healthy environment, no significant progress has been made compared with previous years. Although this is one of the main rights guaranteed by the Constitution, the efforts made by competent institutions are mainly declarative, externally imposed and urged by the negotiation process with the EU, without sufficient own initiative. Inefficient supervision of implementation of the existing legal arrangements and lack of cross-departmental cooperation are also reflected in the lack of citizens' awareness of the importance of the environment. In some towns in Serbia water is polluted and cannot be used for drinking anymore. In other countries treat this resource as a strategic one.

In late 2015, the Law on Recovery after Natural and Other Disasters was adopted, which finally addressed the decades-long issue of lack of clear, specific conditions, criteria and benchmarks for the provision of assistance that resulted in uncoordinated activities of authorities, inefficient recovery efforts and a high level of non-transparency of fund spending. For the first time, citizens' right to state aid is guaranteed and clear criteria and procedures for the exercise of the right to state aid and the manner of control are regulated. The Law is largely based on the Model Law on State Aid after Natural Disasters, prepared and submitted to the Government by the Protector of Citizens in mid-2015.

After the floods of 2014, lead, arsenic, manganese, antimony, iron and other metals poured into four rivers from the former Stolice main tailings near Krupanj, which have then been carried all across Serbia through water streams. This institution conducted the oversight, issued recommendations and visited tailings in person with representatives of the international community, national and local authorities, but the rivers are still being polluted, which also affects the citizens.

The Ministry of Agriculture and Environment Protection and the Ministry of Health have not fully complied with the recommendation of the Protector of Citizens to eliminate sources of pollution and ensure continual monitoring of air, water and soil pollution in Zajaca.

REFUGEES AND INTERNALLY DISPLACED PERSONS

Twenty years after the refugee crisis broke out, there are still 17 collective centres in Serbia for refugees from territories of former Yugoslav republics. Under the Framework Agreement on Implementation of a Regional Programme for Provision of Permanent Housing to Refugees signed between the Republic of Serbia and the Council of Europe Development Bank (CEB)[37], it was planned to close the remaining centres by 2017. The Call for Proposals for the provision of housing for refugees was not successfully implemented, although funds were provided.

Associations of refugees from Croatia addressed the Protector of Citizens because they have difficulties in the exercise of property and other acquired rights in that country, guaranteed under the Vienna Agreement on Succession Issues of Former Socialist Federal Republic of

[36] Report available at: http://www.xn--80aneakq7ab5c.xn--90a3ac/index.php/lang-sr/izvestaji/posebnii-izvestaji/4289-2015-08-19-13-46-17.

[37] Official Gazette of RS - International Agreements, No. 08/14.

Yugoslavia[38] ("Vienna Agreement"), in particular the provisions of Annex G. This institution will try to contribute to addressing of their issues in cooperation with the Croatian Ombudsman.

Many citizens, mainly the Roma, displaced from the territory of the Autonomous Province of Kosovo and Metohia since 1999 are still living in informal settlements without any infrastructure.

Acting in compliance with recommendations issued by this institution, the Government passed the new Decision regulating the back-pay of temporary work remuneration for workers in the territory of the Autonomous Province of Kosovo and Metohia, who are internally displaced persons and who were employed in state-owned and socially-owned organisations and enterprises at the territory of the Autonomous Province of Kosovo and Metohia.

AWARDS AND RECOGNITIONS PRESENTED TO THE PROTECTOR OF CITIZENS

In the reporting period, the Protector of Citizens received several Serbian and foreign recognitions and awards. The Republic of France presented to the Protector of Citizens the "National Order of Merit in the Rank of Knight". The Protector of Citizens was named "The Knight of Profession" by the League of Experts LEX. "Vreme" magazine named him "Person of the Year", as well as the student portal "Zurnalist" ("Journalist"). The House of Justice Strasbourg and the Federation of Trade Unions presented to the Protector of Citizens the Charter Award for Civil Bravery "Dragoljub Stosic", while the Serbian Public Relations Society named him the "Communicator of the Year". The European movement in Serbia presented him the "Contribution to the Europe - 2015" award. The Protector of Citizens also received the "Walker" award for civic activism from the Proaktiv organization. Finally, the "Liceulice" association named him its ambassador.

[38] Official Gazette of FRY – International Agreements, No. 6/02.

KEY STATISTICS ABOUT THE WORK OF THE PROTECTOR OF CITIZENS

The Protector of Citizens had in the previous reporting period reached maximum efficiency under the current circumstances, as stated in the previous annual reports. Since citizens' expectations have increased and the Protector of Citizens acquired new competences and higher institutional role, it is necessary to increase the capacity of the Secretariat, to change the organisation and to improve legislative framework governing the work of the Protector of Citizens.

Table 1 – Information on implementation of recommendations in 2015

	Issued	**Received**	**Accepted**	**% of accepted among those received**
Recommendations issued in the oversight procedure	624	377	238	**63.13**
Recommendations issued in the expedited oversight procedure	558	558	558	**100**
Recommendations issued in the preventive capacity (National Preventive Mechanism)	265	167	155	**92.81**
Total accepted recommendations	1.447	1.102	951	**86.30**

Table 2 – Comparison of implementation of recommendations in 2014 and 2015

	Issued		**Received**		**Accepted**		**% of accepted among those received**	
	2014	**2015**	**2014**	**2015**	**2014**	**2015**	**2014**	**2015**
Recommendations issued in the oversight procedure	212	624	203	377	137	238	**67.49**	**63.13**
Recommendations issued in the expedited oversight procedure	587	558	587	558	587	558	**100**	**100**
Recommendations issued in the preventive capacity (National Preventive Mechanism)	345	265	242	167	183	155	**75.62**	**92.81**
Total accepted recommendations	1.144	1.447	1032	1102	907	951	**87.89**	**86.30**

Table 3 – Information on contacts with citizens in 2014 and 2015

Type of contact	2014	2015	%
No. of citizens received in person	4.913	4.585	-6.68
No. of phone conversations with citizens	11.252	9.327	-17.11
Various citizens' submissions other than complaints	1.262	985	-21.95
No. of complaints	4.866	6.231	28.05
Total number of contacts with citizens	**22.293**	**21.128**	**-5.23**

Table 4 – Investigations completed by the Protector of Citizens in 2015 and comparison with 2014

Type of activities	2014	2015	%
Pursuant to complaints and on own initiative	4.798	6.457	34.58
Pursuant to legislative initiatives submitted by citizens	51	65	27.45
Pursuant to other contacts with citizens	16.165	13.912	-13.94
Total activities completed	**21.014**	**20.434**	**-2.76**

Table 5 – Number of investigations completed in 2014 and 2015

Work on complaints submitted in the current and previous years	2014	2015	%
Total number of complaints with completed investigations	**4.798**	**6.457**	**34.58**

Table 6 – Information on other activities in 2015 and comparison with 2014

Type of activities	2014	2015
No. of legislative initiatives submitted	15	15
No. of legislative initiatives adopted	0	4
No. of investigations initiated against authorities	1.132	1.669
No. of inspections and preventive visits to authorities	114	107

Table 7 – Distribution of complaints by fields and sectors, their numbers and percentage as a share of total complaints

	Sector	No. of Complaints	%
1	Labour and employment relations	708	11.36%
2	Justice and judiciary	649	10.42%
3	Local self-government	481	7.72%
4	Child rights	446	7.16%
5	Finance	421	6.76%

6	Persons deprived of liberty	370	5.94%
7	Rights of persons with disabilities and the elderly	293	4.70%
8	Pension insurance	271	4.35%
9	Persons deprived of liberty	251	4.03%
10	Consumer protection	246	3.95%
11	Gender equality	232	3.72%
12	Construction and infrastructure	225	3.61%
13	Economy	192	3.08%
14	Ministry of Internal Affairs-police affairs	188	3.02%
15	Health	171	2.74%
16	Energy and mining	151	2.42%
17	Education and science	131	2.10%
18	Rights of national minorities	119	1.91%
19	Ministry of Internal Affairs-administrative affairs	113	1.81%
20	Defence	79	1.27%
21	Social security	77	1.24%
22	Refugees and displaced persons	61	0.98%
23	Agriculture	54	0.87%
24	Natural disasters	48	0.77%
25	Restitution	47	0.75%
26	Environmental protection	45	0.72%
27	Culture	34	0.55%
28	Serbian language and Cyrillic script	21	0.34%
29	Security affairs	18	0.29%
30	Transport and transport infrastructure	17	0.27%
31	Independent governmental authorities and bodies	17	0.27%
32	Expropriation	13	0.21%
33	Protection of whistleblowers	13	0.21%
34	Public administration	12	0.19%
35	Foreign affairs and diaspora	9	0.14%
36	Youth and sport	8	0.13%
	Total	**6.231**	

Table 8 – Leaders in terms of non-compliance with recommendations issue after inspection: Ratio of issued and unimplemented recommendations to authorities

Authority	Number of issued recommendations	Number of unimplemented recommendations	%
Security services	11	11	100
Autonomous governmental authorities	6	4	66.67
Healthcare institutions	22	14	63.64
Special organizations	16	9	56.25
National agencies	8	4	50
Ministries	97	39	40.21
Compulsory social security organizations	48	16	33.33
Local self-government	200	37	18.5
Public enterprises	25	3	12
Administration within ministries	29	2	6.90

The largest ratio of non-compliance relative to the number of recommendations issued to various authorities has been identified in the case of security services (Military Security Agency): it was issued a total of 11 recommendations, none of which have been implemented.

In case of recommendations given in the expedited oversight procedure, authorities rectify omissions that caused initiation of the procedure without delay and the Protector of Citizens does not have to initiate inspection.

Table 9 – Authorities that rectified omissions in the expedited oversight procedure

Ministries	193	**34.59%**
Compulsory insurance organizations	94	**16.85%**
Local self-government authorities	76	**13.62%**
Social security institutions	49	**8.78%**
Special organizations	35	**6.27%**
Administration within ministries	33	**5.91%**
Bar associations	27	**4.84%**
Public enterprises	14	**2.51%**
Education institutions	12	**2.15%**
Penal and correctional facilities	12	**2.15%**
Other authorities	13	**2.33%**
Total omissions rectified	**558**	

The following authorities most frequently rectified omissions in the expedited oversight procedure:

- Republic Pension and Disability Insurance Fund (83);
- Ministry of Construction, Transport and Infrastructure (61);
- Tax Administration (31).