

2010 REGULAR ANNUAL REPORT OF  
THE PROTECTOR OF CITIZENS



PROTECTOR OF CITIZENS

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## INTRODUCTORY REMARKS BY THE PROTECTOR OF CITIZENS

Dear,

The 2010 Annual Report of the Protector of Citizens, the fourth of this kind, since the election of the Protector of Citizens and establishment of this institution in the Republic of Serbia, is hereby presented.

This document aims to achieve several objectives:

- to inform the National Assembly and other authorities, institutions and bodies, as well as the general public about the state of human and minority rights in the Republic of Serbia and about the quality of exercise of citizens' rights before authorities and organisations performing duties and enforcing regulations of the Republic of Serbia;
- to indicate the necessary changes in the work of the public sector which would enhance the exercise of human and minority and rights and freedoms contribute to the improvement of the quality of relations between citizens and public authorities;
- to present to the National Assembly and general public the most important aspects of activities of the Protector of Citizens, in accordance with the universally applicable principle of accountability in performing public service.

During the previous reporting year, the Protector of Citizens provided working conditions and achieved the approximate capacity of the institution envisaged at the moment of its establishment. Approximately 8,500<sup>1</sup> citizens addressed the Protector of Citizens in 2010, over 2,600 formal complaints were filed, 925 new control procedures of the legality and regularity of work of the public administration authorities were instigated, in 1,900 of cases proceedings were finalised, 90 recommendations for remedying omissions and improvement of work were implemented, while in 300 cases, the public administration authorities themselves eliminated omissions in their work, immediately upon the receipt of the Protector of Citizens' notification on the control procedure commencement. For the first time, the Protector of Citizens has successfully used the right to instigate the regulations constitutionality assessment procedure before the Constitutional Court, while the National Assembly has considered the amendments and proposals to the laws in parliamentary procedure he presented.

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1 Accurate data are contained in the statistical section of the Report.

In majority of cases, public and other authorities and organisations have recognised not only the obligation, but their own interest in cooperation with the Protector of Citizens. This has also enabled achievement of concrete results and elimination of effects of certain omissions made to the detriment of the guaranteed citizens' rights. These results, however, compared with the extent and diversity of irregularities and problems in the public administration work, are not remotely satisfactory. Changes are indispensable, either in the way the public administration perceives the nature of its duties and their performance, or in the capacity of the institution of the Protector of Citizens, unless we want it to collapse under the weight of delegated tasks and intensity of citizens' expectations.

Protector of Citizens Saša Janković

## EXERCISE AND PROTECTION OF CITIZENS' RIGHTS AND FREEDOMS IN SERBIA – GENERAL OVERVIEW

Citizens<sup>2</sup> are becoming more and more aware of their rights every day and they are claiming them more persistently and resolutely, but public administration authorities<sup>3</sup> fail to improve their work and efficiency in exercise and respect for rights and freedoms guaranteed by the legal system. Citizens' discontent with the work of public administration authorities and respect for their rights is becoming more evident, since the expectations, one decade after changes implemented in 2000, are reasonably much greater. The growing poverty prevents the increasing number of citizens to notice the progress in any sphere of life and work, therefore any talk about the betterment is considered almost an insult. What can be done is to use areas in which, objectively speaking, the Republic of Serbia has achieved progress or in which conditions are considered to have been met for it (such as, enactment of the set of laws providing additional guarantees for the exercise of citizens' rights; initiation of suppression of the long-tolerated violence; establishment of institutions specialised in human rights protection and combat against corruption; enhancement of international cooperation in bringing serious-crime suspects to justice, closing down of public companies unadapted to market conditions), as a basis for improvement of issues considered of utmost importance to the majority of citizens-economic welfare and access to effective justice.

Citizens of Serbia are faced with a disparity between the high standards of respect for human rights prescribed by the Constitution, laws and other documents and everyday life. This is particularly the case for vulnerable groups, such as the Roma and persons belonging to other national minorities, persons with disabilities, the sick, persons deprived of liberty, women, refugees and displaced persons, persons belonging to sexual and religious minorities, children, socially handicapped, foreign nationals... Their problems often do not draw enough attention by the general public, until one of them reaches drastic proportions (for instance, the case of the murder

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2 The term "citizens", like all other grammatically gender-oriented terms, is used in this Report in a gender-neutral and equal manner to denote both male and female representatives.

3 The term "public administration" in this Report, is used to cover both public administration authorities, as well as other bodies and organisations, companies and institutions with delegated public powers, that is legally authorised to decide on rights and obligations, as well as the interests of citizens in accordance with law.

of the French national Brice Taton which may not be contextually completely separated from the unpunished fire-setting to embassies a few years ago). Increasing poverty decreases the level of tolerance and solidarity towards such groups in particular. The fact that this process is not only typical of Serbia, does not diminish its harmfulness and danger.

While the number of citizens' addresses to the Protector of Citizens is increasing every year, the social welfare, pension and health care systems stumble under the pressure of the citizens' needs. Number and content of complaints filed due to the absence of efficient protection and exercise of social rights, right to a trial within a reasonable time, right of quiet enjoyment of property, right of respecting dignity by the administration and its accountable actions, as well as the nature of omissions in the work of public authorities, identified by the Protector of Citizens on a daily basis, do not leave much space for satisfaction.

## CIVIL AND POLITICAL RIGHTS

The Freedom House Report for 2010, put the Republic of Serbia at the top of the world list with respect to civil and political rights. Serbia is certainly the country where citizens freely elect their political representatives, according to a democratically determined procedure (which includes several weak points which will be discussed later). That, however, is not enough. The Constitution, for instance, guarantees the highest level of the media freedom, but the inadequate quality, lack of harmonisation and inconsistent application of regulations within the media sector, have enabled creation of situation in which it is widely believed that the majority of media is related to certain political parties. That, naturally, casts a shadow over the genuine freedom of the media, that is the rights of citizens to objective information about political issues. At the same time, the fact that brings hope is that, in the procedure instigated by the Protector of Citizens, the Constitutional Court has declared unconstitutional several provisions of the Law on the Amendments to the Law on Public Informing, which represented additional threat to complete realisation of the constitutional guarantee of the freedom of the media.

Citizens of Serbia cannot say that their political and civil rights are suppressed by the non-democratic regime, which cannot be changed in free elections, as it is the case in some parts of the world. All democratic mechanisms for exercise and protection of human rights, have been officially established and they serve their basic purpose. Nevertheless, this is not sufficient in the 21<sup>st</sup> century, for the country which strives towards becoming a member of EU.

Considerable improvement has been achieved by means of enactment of the adequate and properly applied Law on Associations of Citizens. However, problems arise due to non-transparent enforcement of the Law on Churches and Religious Communities, because certain minority religious groups stress out their objections to the treatment by particular state authorities, while the line of demarcation between church and state is vague, despite the constitutional provision prescribing their separation.

### **Protection of the Right to a Fair Trial and Judicial Reform**

There are specific problems in exercising the right to a fair and just trial, above all, with regard to trials within a reasonable time, which are the result of the long-term inefficiency of judiciary.

Citizens still file complaints to the Protector of Citizens against slow and unfair trials, even when they know that the Constitution excludes the supervisory jurisdiction of the Ombudsman over the work of courts, but they want to present their problem to the institution they trust or consider (mistakenly) that the previous address to the Protector of Citizens represents a condition for filing a petition to the European Court of Human Rights in Strasbourg. Citizens most usually complain about the duration of court proceedings, recurrent adjournment of hearings, absence of judges from trials, untimely delivery of court summons and documents, delayed decision-making or failure to decide upon legal remedies. Trials lasting for more than three years are not uncommon, while the justice coming too late ceases to be justice. Weaknesses in exercising this right lead to diminishment of the exercise of almost all other citizens' rights, which can no longer be efficiently protected in courts. In many cases, citizens addressing the court to decide on protection or exercise of his or her right, paradoxically becomes the reason for or introduction into a new violation of right, even when the citizen manages to reach a court decision, then a new fight begins for its enforcement, that is for the exercise of the right established before the court.

Legal aid is not available enough- lawyers' services are unattainable for many because of their prices, while municipal free legal aid services are conditioned by very strict criteria.

In cases of complaints against the work of courts, the Protector of Citizens advises complainants to file complaints to the president of the competent court, as well as to the Ministry of Justice, in accordance with regulations on the system of courts. As regards violation of the right to a trial within a reasonable time, citizens have been referred to the possibility of addressing the Constitutional Court by filing a constitutional complaint.

Occasionally, it is possible to hear public statements of the representatives of the executive power pertaining to actions before judiciary which are barely acceptable or unacceptable.

### *Judicial Reform*

The judicial reform conceived as a remedy, also had many omissions which cast a serious shadow over the regularity and legality of the (re)election of all judges and prosecutors, that is over the quintessential independence of judiciary from the executive power.

The Commissioner for Information of Public Importance and Personal Data Protection has identified a lack of transparency in that procedure, while the Constitutional Court of Serbia has reached a reference-court decision in favour of one non-elected judge. The Protector of Citizens received 178 complaints from participants of the competition for the general (re)election of judges, which the High Judicial Council had conducted in 2009. After the conducted supervision procedure, the Protector of Citizens has detected a number of omissions. Decisions on election or non-election of judges whose term of office has been discontinued, but for whom existed a legal presumption that they would be re-elected, were not elaborated; candidates were not informed about the facts due to which their eligibility for the position was refuted, nor could they state their opinions thereof; the election criteria were not transparently applied; it was not possible to confirm that measures had been undertaken to ensure the representation of persons belonging to national minorities among the elected judges. Apart from that, measures ordered by the Commissioner for Information of Public Importance were not consistently implemented, in order to ensure the exercise of the right of the general public to be informed about the election procedure.

In accordance with statutory obligation, the High Judicial Council has informed the Protector of Citizens about the implementation of recommendations. The Protector of Citizens has, however, informed the general public, the National Assembly and the Government of the Republic of Serbia about that, in accordance with the law, but this announcement has had no effect, nor reaction, except among the general public.

The assessments of independent supervisory bodies, however, was not accepted well by the High Judicial Council, unlike the assessments of European institutions received afterwards. The Commissioner's Decision was not completely implemented. The Constitutional Court received individual opinions of the Council members about his excess of authority, while the conclusion of the Ombudsman was strongly rejected as "late, superfluous and unnecessary".

### *Suggestions of International Actors*

Weaknesses in the rule of law and respect for human and minority rights, on which the Protector of Citizens insisted in annual reports submitted to the National Assembly, such as blank resignation documents, restitution, weak capacity and lack of coordination of administration, discrimination against weak groups, the media freedoms... met with much less response within national institutions than the same objections expressed later by international circles.

There is no harm in accepting criticisms and suggestions of foreign and international partners as friendly and constructive. Nevertheless, the Protector of Citizens is convinced that it would be much better for the accomplishment of the set national and political goal-membership in the European Union- and above all, for faster exercise of the citizens' rights, if European partners of Serbia were able to say that the Serbian Government made some omissions, but the national supervisory institutions detected and corrected mistakes following their conclusions, which would mean that the system is institutionally functional. Instead, the European Commission established omissions and expressed objections, as well to the insufficient respect for the authority of the independent supervisory and regulatory bodies and institutions.

Critical remarks should be made about the tendency of not responding to the needs and problems in exercising human rights by more efficient enforcement of existing laws, but by drafting new ones. Non-enforcement of regulations may not always be justified by their imperfection.

Tendencies towards setting up of more new "independent regulatory bodies", mostly just on paper, sometimes by means of the method of bad copying, implementation of "projects", even factually incorrect reference to corresponding examples in other countries, are fitted to the matrix of the populist "protection" of citizens' rights, that is, of passing the responsibility of executive authorities, for the situation in their fields, to the bodies which are originally supervisory, without executive and legislative powers, as well as factual capacity to perform duties of those whom they supervise, nor is that their purpose.

### **Right to Privacy**

Certain provisions of the Law on Electronic Communications and Law on the Military Security Services cause concern, as does the manner in which the Law on Civil Intelligence and Security Service is implemented. During the law adoption procedure in the National Assembly,

the competent committee has not supported one of two amendments of the Protector of Citizens, aimed at guaranteeing constitutionally stipulated court supervision over the invasion of privacy of communication. Generally accepted interpretation of the arguments of the Protector of Citizens, among the committee members, was the one national security services use in their work, meaning that court supervision procedures over the citizens' communication could be disclosed, while data such as the dialed numbers list, time and location of calls, type of equipment and similar information, do not represent part of communication, but statistical data. This is despite the fact that the Constitution prescribes that provisions on human and minority rights shall be interpreted in accordance with the practice of international institutions supervising their implementation<sup>4</sup>, as well as the fact that the European Court of Human Rights has repeatedly and explicitly expressed its opinion that the call list and other data which operators collect, are covered by the term "confidentiality of communication". Positive fact is that the competent committee has adopted the proposal of the second amendment which enables the Commissioner for Information of Public Importance and Personal Data Protection to supervise implementation of the law, in cases when security services accessed to obtained data on citizens' telecommunication.

The Protector of Citizens has publicly expressed regret for the fact that arguments and unanimous opinion of relevant independent national institutions for protection of citizens' rights, expert and general public, were not sufficient for the National Assembly to send back for revision the Government proposal of the law, which makes the privacy of citizens more vulnerable than it should be.

Therefore, upon the initiative of the great number of civil society organisations, national associations of journalists, judges, lawyers and other associations interested in human rights protection, the Protector of Citizens and Commissioner for Information of Public Importance and Personal Data Protection have initiated before the Constitutional Court the assessment of these provisions, considering them not only excessively threatening to the privacy of citizens' communication, but formally unconstitutional, as well.

### *Preventive Control Visit to the Security-Information Agency*

Building from the constitutionally and legally stipulated duty and obligation of the Protector of Citizens (PoC) to safeguard and improve human (and minority) rights and freedoms<sup>5</sup>, taking into account that security services have powers and means to undertake special actions and measures resulting in derogation from the principle of inviolability of human rights and freedoms, the Protector of Citizens has paid a preventive control visit to the Security-Information Agency (SIA).

The main purpose of the visit was to review legality and regularity (expediency, proportionality etc.) of work of the Security-Information Agency in performing duties within the scope of its competence, encroaching upon the guaranteed rights and freedoms of citizens and where appropriate, to give recommendations aimed at improving the legality and regularity of the work of the Security-Information Agency and enhance the respect for human rights in general. Particular attention has been paid to constitutional and legal well-foundedness, integrity, documentary evidence and regularity in general of procedures the Security-Information Agency uses in its work.

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4 The Constitution of the Republic of Serbia, Article 18, paragraph 3

5 The Law on the Protector of Citizens ("Official Gazette of RS", No. 79/09 and 54/07), Article 1, paragraph 2

On the basis of inspection of the Central Registry and documentation kept by the Security-Information Agency, pertaining to cases in which it has applied some of the specific methods, measures, actions or means which encroach upon certain guaranteed human rights, as well as according to the statements of the management and part of the Agency members, the Protector of Citizens has concluded that the Security-Information Agency abides by the positive law, when limiting certain rights and freedoms of citizens, guaranteed by the Constitution of the Republic of Serbia, in their work. The documentation of application of certain actions and measures is organised so that any potential misapplication would be registered and persons committing such act identified.

However, the need and possibility have been determined regarding improvement of protection and respect for human rights and freedoms which may be limited by the work of the Agency, at the following levels:

1. legal regulations;
2. by-laws;
3. procedures undertaken by the Agency.

The course and outcomes of the visit have been precisely presented in a special report submitted to the National Assembly, but it has not been under consideration.

### **Freedom of Thought and Expression**

Freedom of thought and expression has been respected in most of the cases, although certain formal and informal groups and organisations abused the freedom of thought and expression to the disadvantage of the rights of others and morals of a democratic society, which has been pointed out by the Protector of Citizen on several occasions.

What causes concern is that the abuse of this right is becoming more frequent in the forums and blogs, particularly on the Internet sites, by way of expressing racism, xenophobia, incitement to national, racial and religious hatred and intolerance, particularly towards certain national minorities (the Roma), to which responsible persons in the media and public authorities mostly do not respond<sup>6</sup>. The Constitution and laws prohibit and sanction hate speech and every form of discrimination, while Serbia has ratified the Convention on Cybercrime, therefore the acts of racist and xenophobic nature carried out through computer systems are punishable. However, despite the fact that the Office for Combating Cybercrime exists within the Ministry of Interior, as well as the special Department for Combating Cybercrime within the Higher Public Prosecutor's Office in Belgrade, at the moment there are no sufficiently effective mechanisms to protect against such an abuse of the right to freedom of thought and expression.

### **Electoral Right**

There are also certain weaknesses in the exercise of the electoral right. They are still overshadowed by parliamentary blank resignation documents and freedom of political parties, at the republic level, after the completion of elections, to determine the final composition of the

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6 Therefore, the response of the Editor of the Public Service RTS, journalist Zoran Stanojević, in his text published on the RTS web site, is worth mentioning, in which he strongly condemned racist attacks and abusive language directed against the Roma girl, about which the Protector of Citizens conducted the procedure against the Ministry of Education on the violation of her rights, and RTS prepared and broadcasted the report.

supreme public authority, thereby essentially creating conditions for the parties to assume the role of the electorate and to shape the electoral will of citizens as they wish.

For almost identical reasons, the Constitutional Court of Serbia has cassated the provisions of the Law on Local Elections.

The Protector of Citizens pointed out in previous reports that “blank resignation documents” and the power of parties to give mandates regardless of the order in the election lists, represented the greatest threat to complete exercise of political, that is electoral rights of citizens. The hope remains that this issue will be resolved within the next reporting period, in a way which does not pose a threat to the citizens’ electoral rights and which enables normal political and parliamentary life, using solutions existing in the corresponding practice.

### **Media Freedoms, Journalists**

The freedom of the media is not only the corner stone of the democratic system, but also a precondition for the exercise of the citizens’ right to information, guaranteed by the Constitution.

Transparency of the media ownership, solving cases of murders and attempted murders of journalists, protection of and support to investigative journalism, creation of conditions for fair competition on the local, regional and national level media market and safeguarding of economic and social rights of journalists are of the utmost importance for the freedom of the media in the Republic of Serbia.

In the procedure instigated by the Protector of Citizens, according to his statutory powers, the Constitutional Court has cassated a set of provisions of the Law on Amendments to the Law on Public Informing, which posed a threat to the media freedom and was contrary to the Constitution.

The Protector of Citizens initiated the constitutionality assessment procedure upon the initiative of associations of journalists, following the previously obtained opinions of the most esteemed national experts for the media and constitutional law.

Obligation of the state is not only to avoid jeopardising, but to create conditions for development of free journalism.

Other causes for concern are unsolved and new cases of violence and intimidation of journalists investigating criminal phenomena such as violence and corruption. For months, journalist Brankica Stanković has been under 24-hour police protection because of the TV series special called Insider, in which she disclosed the methods of operations of organised criminal groups. Investigation-oriented journalists assume, for a longer period of time, the duty of inefficient state institutions with capacity and obligation to eliminate, detect and sanction the most serious forms of crime, which is a bare social necessity for which these journalists suffer serious personal consequences.

The police was efficient in identification and deprivation of liberty of persons who brutally and publicly attacked journalist Teofil Pančić.

The positive fact is that the state security forces do not longer pose a threat to lives and security of journalists, as it was the case during the nineties of the last century. Nevertheless, the state in which it is crucial that elite police forces secure and protect journalists, a goalkeeper who has been transferred to the opposing soccer team, NGO sector leaders, citizens, even politicians who express unpopular viewpoints, from those who got used to their criminal acts

being tolerated, has to put much more effort into overcoming this situation, than it would be required in a stable society in terms of values and institutions.

Apart from public authorities, the media themselves have the responsibility to their freedom and citizens. Journalism ethics requires truth and legitimate rights of persons who are the subject of information, particularly the respect of the benefit of the doubt not to be sacrificed for the sake of circulation rate or viewers ratings.

Focusing attention on clothing style, changes of physical appearance and „trivia“ from the lives of persons connected to the most brutal criminal acts, as if they were show-business stars, intentionally or unintentionally increases the tolerance towards crime and criminals. Particularly vulnerable are the young who get the impression from this kind of informing, that a crime is a model of behaviour which attracts attention and not a denial of universal values on which human rights are based.

Associations of journalists will contribute to the media freedom if their ethics committees fortify as places where difference is made between freedom and not so unusual abuse of the power of public word, in the most adequate and expeditious manner.

The Protector of Citizens welcomed the response of the Republic Broadcasting Agency to everyday increase of vulgarity, pandering to the lower desires and unscrupulous commercialisation in the electronic broadcasting media of the Republic of Serbia, which represents the public good.

Not everything that people are willing to watch is allowed and not all believes that people are ready to express or accept may be presented through the public resource using electronic frequencies. A state is obliged to protect the minimum level of dignity of citizens and develop and safeguard the values which the Constitution includes as the moral of a democratic society, particularly in the state of ruthless commercialisation of almost everything that surrounds us.

### **Delay of Restitution**

Delay of the adoption of the Law on Restitution of Property causes continuation of violation of proprietary rights and basic justice in case of thousands of citizens of Serbia, who were promised restitution even before 2000, by political forces whose identity has been continually inherited up to this point.

The Protector of Citizens considers this problem to be twofold: lack of political determination to carry out restitution and lack of administrative capacities to undertake all necessary actions in an adequate and efficient manner. One of the key problems is the absence of complete, accurate and updated inventory of state-owned property.

While restitution is being postponed, certain legal solutions hinder the possibility of restoring the property to previous owners in the most rightful manner, that is in-kind. This is the case with regulations pertaining to public land which becomes private itself through the process of privatisation of companies which used it.

When interested citizens and associations address certain authorities, cities and municipalities, they claim they are not familiar with the conclusion of the Government of the Republic of Serbia regarding mandatory registration of movable and immovable state-owned property to the Property Directorate of the Republic of Serbia, which is supposed to prepare an inventory of the property of the Republic of Serbia.

The Protector of Citizens has mediated between citizens' restitution organisations and the Property Directorate of the Republic of Serbia. By recommendation of the Protector of Citizens, the Directorate ceased to refuse requests of interested citizens pertaining to property which could be the subject of restitution and in that respect, it started verifying whether local self-government units have registered the property referred to by citizens in the inventory, and if not, whether conditions have been created for this to be done.

After only few months from the beginning of this method of work of the Directorate, requested by the Protector of Citizens, state-owned property has been "identified" and registered, which includes:

- 35,288 hectares of agricultural land;
- 79,273 hectares of forest land;
- 3,712 hectares of construction land;
- over 3,000 of office buildings;
- around 24,000 of streets and roads;
- over 1,000 of residential buildings;
- 700 garages and similar facilities.<sup>7</sup>

The fact that gives particular aspect to this problem is that while restoration of unfairly seized property to citizens is being postponed, the Law on the Restitution of Property to Churches and Religious Communities is in force, which causes legal inequality. However, the method used to overcome this inequality is wrong: the Government has decided to actually cease to apply the Law on the Restitution of Property to Churches and Religious Communities, until the Constitutional Court reaches a decision on its constitutionality, eventhough this law has been implemented for many years and a significant part of the property has already been restored to some churches. While awaiting the decision, the Government of Serbia has also discontinued drafting of the law on the general restitution. The Protector of Citizens considers such a "halt" to be unfounded and basically incorrect process of buying a long overdue time.

## SOCIAL AND ECONOMIC RIGHTS

Particularly disturbing are the great problems citizens face in exercising their social and economic rights, whose neglect may always dispute the achieved level of political and civil freedoms. It has been reported that for every sixth employee in Serbia the employer does not pay the mandatory years of pension, which is an investment made into a social disaster! The increasing number of citizens is falling below the poverty line. However, low and irregular incomes, unemployment, lack of the place to live or other material needs for life, are not issues that can be directly solved by the Protector of Citizens (unless it is the consequence of irregular or illegal work of public administration authorities), eventhough some individuals express their disappointment with the institution of the Protector of Citizens and its inability to protect them as citizens. Serbia has signed the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights. However, this document has not been ratified in the National Assembly.

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<sup>7</sup> Data submitted to the Protector of Citizens by the Property Restitution Network of Serbia, association of interested citizens.

## Violation of Labour Rights

In 2010, citizens continued to complain to the Protector of Citizens about the problems in exercising labour rights. They referred to employers not respecting certain provisions of the Labour Law, lack of efficient protection of citizens before courts, but what was also evident were the consequences of the absence of efficient and timely social dialogue between the state, employers and employees' representatives (trade unions).

Employees usually address the Protector of Citizens after they lose their job, even though the Ombudsman cannot offer them effective support in such specific situations with employers. They are trying to prove they have been temporarily employed for years (despite the law in force which limits that kind of employment to one year), that during their employment, their rights to daily rest breaks, daily and weekly rest periods and paid annual leave have been violated, as well as the right to the overtime pay and other rights, that in their working environment, persons have been employed on the basis of "connections", party memberships or mutual favours, but they have been unable to seek protection because temporary employment keeps employee in uncertain position in comparison with the employer. Some employees have been temporarily employed for years. Legal provisions pertaining to the maximum duration of temporary employment are bypassed by employers by means of fake discontinuances or amendments to the employment contract, while courts refuse complaints and accept fictive documents (secondment agreements) as valid. This perception of law enforcement by those who should protect it encourages violation of the rights of employees.

A large number of elderly citizens have been driven to the brink of existence, because for years, employers have not paid for their work or pension years, making them ineligible for full pension and dependant upon the state social welfare, which is insufficient for living, while their former employers are not held accountable for that. The state is working on accumulation of years of service for employees of some companies. Nevertheless, it is not clear enough, according to which criteria the state is assisting some employers to accumulate years of service of their employees (since the obligation of payment of contribution was in favour of the employer and not employee), while others do not receive that kind of assistance, nor is it clear according to which criteria some employers are allowed not to pay mandatory contributions to the pension fund.

Relevant legal solutions still hold employees accountable for the employers' disrespect for the law, with respect to mandatory payments to social funds. The Republic of Serbia still has in force the mandatory pension insurance and payments to the pension fund represents a legal obligation of employers. The mandatory pension fund is public and not private, which implies that the employer makes payments to the community and not the employee. Nevertheless, the employee suffers the consequences of the employer's violation of the law. The Protector of Citizens considers that everyone should be entitled to full pension from the mandatory public fund, regardless of the fact whether their employer abided by the law or not. It is the responsibility of public authorities, and not citizens to provide for the respect of statutory obligations. Employers who do not pay contributions for the mandatory pension and health insurance, break the law most directly and competent public authorities, and not citizens are obliged to detect and sanction such occurrences.

Trade unions complain to the Protector of Citizens about the lack of mandatory social dialogue with employers and the state in the process of making crucial decisions of interest to employees.

Some employers use economic and value-related crises, labyrinths of privatisation process and inefficiency of legal protection mechanisms in order to profit from the free-of-charge work. Nevertheless, the state itself sometimes conditions redundant employees' participation in social programmes by requiring them to abandon legal disputes pertaining to the payment of arrears of wages, even asking them to renounce the rights laid down by final court decisions, even though the Constitution guarantees labour rights and stipulates no one is allowed to renounce them. The Protector of Citizens has closely cooperated in such cases with the Protector of Citizens of the City of Subotica.

The Protector of Citizens has visited strikers of a private (privatised) company, who locked themselves inside two rooms, while the employer with the help of the security, attempting to put a strike to an end, has sealed the factory premises and forbidden entering of food and medication supplies. The company management accepted the appeal of the Protector of Citizens, followed by the public statement that public authorities would not let starving of the strikers; a kind of "embargo" on food and medication was terminated, but the general public remembered the fact that it is possible to raise the level of antagonism between employees and employers to the point of annulment of fundamental human and ethical premises.

In a similar case, in another city, the Protector of Citizens has talked to employees who resorted to self-harming in order to illustrate the severity of their situation.

Certain legal solutions have diminished or made questionable the exercise of some rights of employees, even the basic rules from the Labour Law.

*The Protector of Citizens has initiated the procedure before the Government of the Republic of Serbia and the Ministry of Culture for amending Article 50 of the Law on Culture because it introduced temporary employment in cultural institutions as a rule, contrary to provisions of the Labour Law, while permanent employment is treated as an exception to which only employees exceeding a certain number of the years of service are entitled (20 years for men, 17.5 years for women). The opinion of the Protector of Citizens on the danger Article 50 poses to employees of cultural institutions has been accepted by representatives of numerous national and international associations of cultural workers. The Government has not responded to this initiative. Therefore the Protector of Citizens prepares the proposal of constitutionality assessment of disputable provisions.*

*Provisions of the Law on Civil Servants apply to employees in public authorities, but not to all public services, therefore they are not obliged to announce open application procedure for permanent employment of employees. That is the reason why citizens cannot find out about job vacancies in hospitals, various agencies, social services and other bodies and organisations, some of which have public competences, which significantly limits the scope of constitutional provision pursuant to which all jobs shall be available to everyone under the same conditions,<sup>8</sup> naturally encompassing the public sector to a greater extent.*

### **Abuse of Additional Work in the Medical Sector**

The right to preservation and improvement of the health of citizens, prevention, eradication and early detection of diseases, injuries and other health disorders and timely and efficient treatment and rehabilitation, achieved through health care services is one of the fundamental civil rights guaranteed by legal system.

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8 The Constitution of the Republic of Serbia, Article 60, paragraph 3.

The Labour Law, whose provisions apply to labour relations in medical institutions, prescribes that employees working full time may conclude a contract on additional work with another employer, not more than one third of the full working hours.<sup>9</sup>

The Law on Health Care, however, contains an exception to this rule and enables medical workers to additionally work, under specific conditions, in institutions in which they are already employed.<sup>10</sup>

This Law also enables provision of services within additional work, which are covered by mandatory health insurance if a medical institution "is unable to provide adequate staff otherwise".<sup>11</sup>

In the procedure the Protector of Citizens conducted, on the basis of initial information contained in complaints of two female doctors (one of them former), he has determined that the provisions of the Law on Health Care may be misapplied in a way which degrades and disables efficient and effective exercise of patients' rights.

*During the process of control of work, the Protector of Citizens has determined that the Institute of Oncology in Sremska Kamenica organised treatment of national policyholders through additional work at the Radiology Clinic, eventhough it was covered by the mandatory health insurance and the Institute provided permanently employed medical workers for that purpose. The Institute had commenced with additional work before it obtained a required licence from the competent authority, the Ministry of Health, while it concluded agreements on additional work with some employees of the Radiology Clinic, regardless of the fact that due to harmful working conditions, they were entitled to part-time work.*

*The Ministry of Health of the Republic of Serbia has subsequently given the approval to the Plan of Additional Work of the Institute of Oncology of Vojvodina, eventhough it included provision of medical services for national policyholders at the Radiology Clinic, covered by the mandatory health insurance and the Institute had medical workers for their provision. It has been determined that the Health Officer of the Ministry of Health detected certain irregularities, about which the Founder of the Institute, the Autonomous Province of Vojvodina was not informed, nor have efficient measures been undertaken for their elimination. Also, the Ministry has given the Institute the approval to the Plan of Additional Work, without establishing whether the Institute meets required conditions.*

*The Institute informed the Protector of Citizens, upon the receipt of established omissions and recommendations for their elimination, that it had already discontinued additional work at the Radiology Clinic. The Provincial Secretariat for Health Care, which has been instructed by the Protector of Citizens to assess the severity of omissions made by the Institute management and decide on potential accountability, informed the Protector of Citizens that "the severity level of established omissions, at that moment, did not require additional impeachment of the Institute management, particularly having in mind the fact that the management carried out the ordered measures for correction of irregularities that had occurred during additional work and they also performed all necessary activities in order to eliminate detected omissions". The Protector of Citizens has publicly expressed his disappointment with this outcome, while one of the female doctors who drew attention to the problem, claims that she had been facing the persecution at work ever since she had reported the irregularities, despite the communication of*

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9 Article 202 of the Labour Law.

10 Article 199 of the Law on Health Care.

11 Article 200, paragraph 2 of the Law on Health Care .

*the Protector of Citizens to the Institute management and the Ministry of Health, in which he requires protection for her, in accordance with the Law.*

Citizens are faced with delayed dates for the beginning of the treatment within the “regular” procedure, and being aware that timeliness plays a crucial role in treatment, they choose (if their financial situation allows them to do so), basically without the actual free will, to pay for the treatment during additional work, since it will commence much sooner.

Completely different procedure, instigated due to the information about the camera at the private gynecologist’s office, has shown another aspect of the problem.

During the control procedure, it has been determined that cameras were installed in the office for the purpose of protection of expensive medical equipment, which strangely enough had many failures. According to the reasonable doubt of the director of the institution, that happened because the proper equipment of the public hospital was decreasing the patient flow in private practices, in which the same medical workers additionally worked.

The Protector of Citizens has been informed that the cases of the abuse of additional work were not unusual and he will deal intensively with this issue in the next reporting period and control the work of health care institutions.

The Protector of Citizens believes, without prejudicing the outcome, that the National Assembly should reconsider, through a public hearing or other convenient method, the existence of the possibility for employees of the public administration authorities ( national, provincial, local authorities, public service, organisation with public competences...) to additionally perform, without special mechanisms of protection against the abuse, the same kind of work overtime (publicly or privately), avoiding the genuine conflict of interest.

## **Refugees and Displaced Persons**

The refugee chapter in Serbia has entered the second decade without the permanent solution for tens of thousands of people. In untangling of various knots and solving of various problems and issues of refugees and displaced citizens, international institutions, public authorities of our and neighbouring countries were involved, while international and European community offered financial and professional assistance and many actions included the participation of non-governmental and humanitarian organisations, as well as many others.

However, reports indicate that Serbia is still number one in Europe, and holds the 12th or 13th position for the number of refugees and internally displaced persons in the world.

Refugees and displaced persons are strongly affected by all problems common to the citizens. The cooperation between the Protector of Citizens and Commissariat for Refugees in deciding on filed complaints has been commendable.

## **THE WORK OF ADMINISTRATION AUTHORITIES – GOOD AND MALADMINISTRATION**

### **Right to Good Administration**

The Protector of Citizens believes that public administration authorities should not only conduct every procedure pertaining to duties, rights and legally based interest of citizens, in a formally adequate manner, as well as essentially fair, expedient, objective, transparent,

efficient, professional, timely and kindly manner, respecting the dignity of a citizen addressing the public authority, but also that every citizen should be entitled to this kind of work of public administration.

Every other complaint filed to the Protector of Citizens concerns the administrative silence, slowness, discrepancies of procedures, evidently inadequate law enforcement and other violations of the principle of good administration.

The right to good administration has been incorporated into the legal system of the European Union as a fundamental right of its citizens,<sup>12</sup> but it has not been recognised as such in the Republic of Serbia yet. The Protector of Citizens considers that the right to good administration should also be fortified in our country as part of the fundamental citizens' rights, guaranteed by the principal national legal regulations.

### **Code of Good Administration**

As the first step in that direction, taking into account positive experiences of other countries and the European Union (EU), the Protector of Citizens has drafted the Code of Good Administration and in the presence of the EU Ombudsman, he submitted it to the President of the National Assembly in June of 2010, in order for the Assembly to give its authorisation. As a model for this Code, they used the Code of Good Administrative Behaviour of the European Union, which, according to the special report of the European Ombudsman and on his own initiative, was adopted by the European Parliament by means of the Resolution from 6<sup>th</sup> September 2001. The European Parliament urged the European Ombudsman to apply this Code on a regular basis in assessing the regularity of work of the bodies of the European Community, for the purpose of enhancement of the citizens' right to good administration. The Code should represent a guide for the proper conduct of public administration authorities, either at the republic or provincial or local level. The National Assembly has not undertaken any action in this respect, until the end of the reporting period.

### **Public Administration Reform**

None of the set objectives of the public administration reform (depolitisation, rationalisation, professionalisation, modernisation) has been completely accomplished, while implementation of some, for the most part, has not even started. While the public administration reform is considered by many experts as a key problem of transition, extreme viewpoints go as far as to state that "a massive, inefficient, unprofessional, corrupt and ridiculously expensive bureaucratic apparatus, with more than 30 000 excess employees, is a natural ally of incompetent, greedy and criminal government, in a war they wage against their own citizens."<sup>13</sup> Thousands of addresses to the Protector of Citizens prove that citizens usually perceive public administration as a privileged group of loafers, a "sinecure" for deserving party members, relatives and friends, absolutely corrupt service, while from the interviews with public administration employees, conducted during the control procedure, it was not unusual to hear that they consider citizens to be excess cases, who put before them "probably legally based, but unrealistic requirements".

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12 Article 41 of the Charter of Fundamental Rights of EU.

13 Ljiljana Tatić, the essay "Public Administration Reform", February 2010.

The Protector of Citizens believes that for the genuine reform within the public sector, the crucial points are depolitisation of administration and abandonment of the practice of employment within the public sector as a social policy measure (attempt to find jobs for as many people as possible, which will be paid as little as possible, and who will not be required to show any quality and responsibility, within this aspiration towards social peace). A comprehensive functional analysis of the public sector is a prerequisite for rationalisation governed by the actual needs, and not populism.

At the same time, encouraging signs include the beginning of the state's uncompromising combat against violence and less tolerance towards violation of laws, particularly by its officials and public servants. Attention is once again focused on education, awareness is being raised about the healthy environment and other rights almost completely neglected until recently, which are vital for the quality of present and future life.

Among the positive examples is the one involving the Ministry of Labour and Social Policy and final ratification of bilateral agreement on the method of exercising the rights of 15, 000 pensioners with double Serbian and Bosnian pensions, which put them on equal terms with pensioners who earned their pensions in other former Yugoslav republics. Before the ratification of this agreement, they received reduced pensions, which was a subject of collective complaint filed to the Protector of Citizens, as well as of the constitutional complaint filed to the Constitutional Court.

From the overall work of the Protector of Citizens performed in 2010, it can be concluded that in the Republic of Serbia, still usual practice is the circumvention of the law, as well as finding and making use of the "loopholes" in it. That is the way to maintain the parallelism of normative and actual, declarative and practical, either among those who enforce the laws, as well as those to whom these laws apply.

The opinion of the Protector of Citizens is that it is impossible to change the harsh reality if everyone asks for compliance with rules and regulations, but expects this does not refer to him/her. This attitude is widely prevalent and it may be seen either during the control procedure of the work of public authorities or during interviews with citizens. The employees of public authorities undoubtedly have the largest responsibility, because the person whose duty is to apply laws to other people, has to set the example himself/herself, which is usually not the case. Omissions at the highest level of power, however, may not be used as excuses for non-compliance with the law and unaccountability at the lower level, nor even for non-compliance with the law by citizens themselves.

## **Legalisation**

The Protector of Citizens has established mass omissions in conducting the procedure of legalisation of facilities, demolition of illegal buildings and other procedures pertaining to these issues. Omissions included a years-long failure to implement issued decisions on demolition of illegal buildings, selective demolition, non-transparent procedures upon requests for legalisations and others.

All municipal and city governments, as well as the Ministry of Spatial Planning received a number of recommendations in order to improve the legality and regularity, above all transparency, impartiality and efficiency of legalisation procedures. In the process of determination of recommendations, the Protector of Citizens has cooperated with the competent ministry, as well as with the Standing Conference of Towns and Municipalities. The new law, however, has offered new solutions, whose implementation has been supervised.

### **The “Missing Babies” Case**

After many months of investigation, which covered several ministries, local self-government authorities and health care and other institutions, the Protector of Citizens has established the non-compliance with or non-existence of the series of relevant administrative procedures pertaining to the babies born during the past decades; that certain authorities, organisations and officials acted irresponsibly with the documentation, which is the reason why today it does not exist or it is not reliable; that some public servants showed an inhuman and bureaucratic attitude towards family members, as well as that today, due to all deficiencies in the documentation and passage of time (in some cases, several decades), it is impossible to determine with certainty and without special investigation procedure, whether someone has used the public servant’s negligence and irresponsibility to illegally separate a baby from its family.

Certain weaknesses in procedures still exist, therefore the Protector of Citizens have given recommendations for their immediate elimination, as well as for elimination of the possibility of occurrence of new and unpredictable cases of the “missing babies” in the Republic of Serbia. Recommendations have been submitted to the Ministry of Health, Ministry of Interior and the Ministry of Public Administration and Local Self-Government. The Protector of Citizens has concluded that enactment of the new law could contribute to disclosure of the real truth in these cases.

The Protector of Citizens has submitted to the National Assembly the special report on this procedure, which has not been considered.

### **RIGHTS OF THE CHILD**

Public authorities of the Republic of Serbia make evident efforts to provide the highest possible level of the children’s rights protection, particularly in the normative aspect, but when substantial norms and policies transfer into a specific case, numerous deficiencies may be detected.

The reporting period was marked by the introduction of the principle of inclusion (inclusion of children with some kind of developmental disability) in the process of education, which represents the greatest accomplishment, as well as challenge. Apart from many examples of efficient implementation of this new fundamental rule, cases of resistance by some education workers, as well as certain number of citizens, have been detected. The Ministry of Education expresses enormous satisfaction for the fact that the inclusive education principle has been achieved in many schools in Serbia. Nevertheless, problematic cases do not get much institutional attention and assistance, but their significance is diminished and relativised. For children and parents who have found themselves in these situations, however, the inclusion remains a missed opportunity for social integration and development of abilities to the highest attainable level, which is a vital right of every child.

There were the cases of violence against children, even the most extreme ones, such as death and sexual exploitation, as well as cases of violence committed by children. Convinced that school violence cannot be eliminated merely by sanctions, nor can be solved only by teachers and parents, the Protector of Citizens also urged the media to report on consequences of violence, on permanent effect it has on victims, their self-respect and dignity, as well as about detrimental effects it has on the social community which tolerates violence.

The most vulnerable groups of children are the children with disabilities or some developmental disorder, children without parental care, institutionalised children, Roma children and children living in poor families.

In order to act preventively, the Protector of Citizens has initiated amendments to the Law on Games of Chance for the purpose of relocating betting offices further from schools. The Protector has particularly praised the efforts made by the Mayor of Belgrade who engaged municipal inspection services and established that 61 betting offices and casinos in the capital city, do not meet the required conditions regarding the proximity to primary and secondary schools and asked all cities and municipalities to carry out similar activities and assist in protection of school children against illicit organisation and inappropriate influence of the games of chance.

### **Children of the Street**

It is estimated that around 90% of Roma population aged between 15 and 18, do not attend school and they are subject to various forms of labour exploitation. This especially noticeable in larger cities, where a large number of Roma children beg and clean windshields on busy and dangerous crossroads.

The media have covered the statement of the Protector of Citizens on this subject, claiming that "no one can pass through the street where children are forced to beg or cross the bridge under which some child sleeps, turn a blind eye and remain with his/her dignity intact".

Public authorities very rarely undertake adequate measures and such "actions" are justified by the fact that that is the Roma way of life, which is incorrect and unacceptable, if for no other reason, then because in Serbia, children under 15 years of age are not allowed to work.

The Government of Serbia adopted the initiative of the Protector of Citizens and during the last week of December of 2009, it put into circulation special charity stamps for *the children of the street*. All of the stamps were sold out, within a record period, and the amount of 6,667,680 RSD was collected. This money was used for assistance to the work of the Shelter for Street Children in Belgrade during 2010, and the plan was made to financially support similar initiatives in Novi Sad and Niš. The Protector of Citizens had successful cooperation on this matter with the Ministry of Finance and Ministry of Labour and Social Policy, which, acting as a competent public authority, controlled the expenditure of funds and supervised the implementation of the programme of activities for the children of the street during 2010.

However, systematic and permanent institutional solution for children doomed to life on the streets has not been found yet.

### **DISCRIMINATION**

During the procedures the Protector of Citizens conducted in 2010, as well according to other sources of information, he recorded discrimination in the work of public authorities against persons with disabilities, gender discrimination, discrimination against persons of minority sexual orientation, discrimination against persons belonging to national minorities, against the elderly and minority groups.

The election of the Commissioner for the Protection of Equality represents establishment of a new mechanism of legal protection from discrimination, which has its significance as a process and in its essence for the Protector of Citizens.

As a rule, the Protector of Citizens no longer instigate proceedings upon complaints of citizens concerning the discriminatory attitude of the public administration authorities, if, in accordance with the law, they have not used the available legal remedy and addressed the Commissioner for the Protection of Equality beforehand. Only if a citizen, even after the procedure before the Commissioner, makes substantiated claims about his/her rights and freedoms being violated by discriminatory actions of public administration authority, the Protector of Citizens may take such complaint into consideration.

For reasons stipulated by the law, the Protector of Citizens may decide to consider citizens' complaints against discrimination by public administration authority even before all available legal remedies have been used. The Protector of Citizens informs the Commissioner for the Protection of Equality about these exceptional cases, in the spirit of the principle of cooperation between public authorities.

### PROTECTION OF THE RIGHTS OF THE PERSONS BELONGING TO NATIONAL MINORITIES

Incomplete implementation and incompatibility between certain laws and basic laws governing the status of national minorities are the main obstacle to constitutionally and legally recognised individual and collective rights of national minorities.

Eventhough the point of cultural autonomy of national minorities has been defined by the Constitution and special laws, namely the Law on the Protection of Rights and Freedoms of National Minorities and the Law on National Councils of National Minorities, public administration authorities, which should facilitate the exercise of these rights, have not established appropriate methods for its implementation in the everyday life and under different conditions. In many fields, the exercise of particular rights of national minorities is impeded or prevented by the lack of by-laws, guidelines, rulebooks or other acts which administration authorities should enact.

Problems occur in the exercise of the right to official use of national minority language in local self-government units, public authorities, courts, as well as the right of the persons belonging to national minorities to have their full names written in their language and script in public documents. Different practice of local self-governments pertaining to the exercise of the right to official use of language and script, puts them in an unequal position within the same legal system.

The Protector of Citizens has had particularly efficient cooperation with the members of the Deputies' Club of National Minorities in the National Assembly, which he considers very important.

#### **Elections for National Councils of National Minorities**

Elections and constitution of national councils of national minorities in 2010 represented the most relevant institutional progress in creation of conditions for more comprehensive representation of minorities and exercise of their collective rights.

This extremely important process has been overshadowed by omissions which caused violation of the rights of some citizens (illegal use of personal data) and by encroachment on the autonomy of national councils as representative bodies of national minorities, which was the result of insufficiently deliberated and legally based, arbitrary role of the Ministry for Human and Minority Rights in some segments of this process.

After the control procedure and establishment of omissions, the Protector of Citizens has recommended a set of measures and activities, as well as normative modifications aimed at mitigating the consequences of omissions and preventing their recurrence in the future. He has also initiated some amendments to the Law on National Councils for the purpose of enhancing the guarantees of their legitimacy as representative bodies and their autonomy that is protecting them from the unjustified interference in their work by the state.

After the public warning about failing to complete obligation to inform the Protector of Citizens about implementation of recommendations, within a legally determined and prescribed deadline, the Ministry for Human and Minority Rights informed the Protector of Citizens about undertaken and commenced measures and activities.

During the procedure, a cooperation has been established between the Protector of Citizens and the Commissioner for Information of Public Importance and Personal Data Protection and the Commissioner for the Protection of Equality, who conducted previous procedures falling within their scope of competences, thereby creating the basis for the comprehensive approach of the Protector of Citizens to detected omissions.

### **Ethnic Intolerance and Distance**

The results of the study implying the increase of ethnic intolerance and distance and occurrences which substantiate such reports are reasons for concern.

In 2010, Banat village Jabuka, was a place of threats and violence against the Roma, triggered by a tragic event, but the actual cause was the neglect of ethnic intolerance for which the state and society often could not find an appropriate answer to, in the past. That caused the legitimate requests for individual responsibility of perpetrators of the criminal act in Jabuka to be replaced by the street persecution, violence against the whole ethnic group and cries for lynch of the innocent. The Public Prosecutor's Office in Pančevo responded professionally and firmly. The police acted in accordance with the rules of their profession. Local self-government officials demonstrated responsibility, while the President of the Republic of Serbia and the Protector of Citizens visited Jabuka on the village holiday, in attempt to put an end to the episode of extreme ethnic intolerance.

In another disturbing incident, the police have immediately resolved the bomb attack on the shop of the member of Goranci national minority in Borča, which caused a great material damage and fear.

After four fights in Temerin, whose perpetrators and victims belonged to different ethnic groups, taking into consideration the reactions of non-governmental organisations, the media and general public to these events, the Protector of Citizens visited that location, supervised the work of the local police station and talked to the representatives of local community and citizens.

Neither hate graffiti, written in the Serbian and Hungarian language, nor some media reports, sending such messages to the wider community in a sensationalistic and uncritical manner, taking them sometimes out of context, surely could not contribute to stability of the community and social safety of citizens.

None of the abovementioned cases is (merely) a local problem. Only few local communities may resist such challenges, relying solely on their own resources. In order for the society of Serbia to foster the richness of multiculturalism, constitutional and legal guarantees

are not enough, but it also requires the practical social integration based on trust and understanding. Legislation and institutions should constitute a part of accountable social policy which actively engages civil society in implementation of integration, as well as churches, religious communities and minority self-governments and the media, in particular. Constitutional solutions, based on international standards of protection of human and minority rights should be more practically transfused to lower normative frameworks and, more importantly, consistently implemented, in order to suppress a partial social disorientation which equally affects the majority and minority population.

### **Employment of the Persons Belonging to National Minorities in Public Services**

Based on the data collected through research on representation of persons belonging to national minorities as public servants and employees in public administration authorities, public services and companies, the Protector of Citizens has established that the majority of public administration authorities and public services do not apply regulations, do not plan measures regarding the increase of employment of persons belonging to national minorities and do not keep records of the ethnic structure of the employees, because required administrative procedures have not been developed yet, among other things. Exception to this negative practice are the authorities of the Autonomous Province of Vojvodina, as well as the Ministry of Foreign Affairs, Ministry of Interior, then the Customs Administration, Treasury Administration and Tax Administration of the Ministry of Finance, which keep the aforementioned records and envisage and implement the corresponding measures, according to it.

The Protector of Citizens has referred to the Prime Minister of the Republic of Serbia, who is also the President of the Council for National Minorities of the Republic of Serbia, the proposal to draw up and enact a legal basis for regulating this area. This proposal has not been considered until the end of the reporting period.

Also, by means of the opinion, he submitted to the National Assembly, he has seconded the amendments of the Deputies' Group of National Minorities which provided for taking care, during the rationalisation of the work of the local self-governments, of the adequate representation of persons belonging to national minorities in their work and offices.

### **Position of the Roma**

The Protector of Citizens pays special attention to the exercise of rights of the persons belonging to of the Roma national minority, which is particularly vulnerable issue. Despite the actions undertaken by the state and provincial authorities and certain local self-government units, the position of the Roma was not significantly improved in 2010. Apart from that, social insensitivity and institutional ambivalence for position and problems of the Roma, disclosed during the relocation of illegal Roma settlements in Belgrade, without the previous provision of necessary accommodation and resist attacks on the Roma in Banat village Jabuka, indicate that there are complex problems not only in connection with their social integration, but also in connection with discrimination, elimination of poverty and solving of social-economic and cultural rights. The Ombudsman has pointed out that the solution to problems like relocation of the Roma and other inhabitants from unsanitary illegal settlements has to be implemented observing the established general standards, having

provided realistic basis for further social-economic integration, prevention of segregation or interethnic tension, since otherwise, social and ethnic intolerance could spread out. In case of established discrimination against the Roma girl within the education system, the Protector of Citizens has asserted the lack of efficient and effective measures of inspection authorities, as well as of respective by-laws on specific criteria for identification of discrimination in education institutions and he has also proposed measures for solving this situation in practice.

Since he believes that the problems that the Roma are faced with, regarding the exercise of their rights are serious and numerous, and that the institutions are for various reasons inaccessible to them, the Protector of Citizens has extended his work to the Roma settlements, where he receives citizens' complaints.

### **Legally Invisible Citizens**

During 2010, the Protector of Citizens dealt with the issue of so-called legally invisible citizens, that is persons who have not been entered into birth or other registers (mostly internally displaced persons from the territory of Kosovo and Metohija, namely the Roma), thereby being unable to exercise their civil rights. The Protector of Citizens has conducted several control procedures which have resulted in registration in the register (of births, deaths and marriages) and issuance of documents for these persons, while for the purpose of systematic solving of this problem, the Protector of Citizens has mediated between the Ministry of Public Administration and Local Self-Government, Agencies of the United Nations, European Commission and relevant non-governmental organisations.

There was an important judgment by the European Court for Human Rights in case of Milanovic versus Serbia, by way of which in December 2010 the Court established that Serbia infringed Articles 3 and 14 of the European Convention on Human Rights, because, during the period of ten years, it had not protected the member of the Hare Krishna organisation from Jagodina from continuous physical assaults. The state failed to fulfill a positive obligation to protect persons belonging to vulnerable minority religious groups. Before the decision by the European Court, the Ombudsman had conducted procedure on that case, but did not succeed in obtaining an effective police investigation.

### **Risk of Politisation**

Solutions of the Law on National Councils of National Minorities may enable national minorities' political parties, and directly other political parties, as well, to directly influence setting up of minority self-governments and indirectly influence their work and decision-making process. This could fundamentally damage the concept of minority rights which is based in the sphere of cultural autonomy, within which rights to official use of minority language, to education and informing in minority language should be exercised and national identity fostered, independently from political processes.

## **RIGHTS OF PERSONS WITH DISABILITIES**

Even though Serbia was among the first countries in the region to adopt the Law on Preventing Discrimination against the Persons with Disabilities, as early as in 2006, it adopted the Strategy for Improvement of the Position of the Persons with Disabilities and signed

the UN Convention on the Rights of Persons with Disabilities, the citizens with disabilities are still faced with discrimination and marginalisation because the regulations are not implemented, but also due to omissions in other laws. The fact that implies this conclusion is the number of 100 complaints filed by persons with disabilities and received by the Protector of Citizens during 2010. One fourth of complaints has been considered to be grounded, procedures have been successfully conducted and citizens have exercised their rights.

People with disabilities are still considerably excluded from public, political and cultural life and they are faced with the problems in education, employment and exercise of other rights. From past experiences, the Protector of Citizens has concluded that the children with disabilities and their parents are faced with particularly difficult problems in attempt to provide them with the necessary treatment and medical aids, and so are the elderly people with disabilities, whose number is considerably greater than it appears, since many of them are not in the position to address the competent authorities in order to protect their right.

The priority of cooperation which the Protector of Citizens has established with the National Organisation of the Persons with Disabilities is the prevention of discrimination against disabled persons in education, for the purpose of protecting their rights most effectively.

The most controversial issue is accommodation of disabled persons in the closed-type institutions which prevent their social integration, to any extent. Usually, these institutions have poor conditions and lack professional and other staff, which is the consequence of the lack of resources and institutional inertia towards this state.

During 2010, the Protector of Citizens paid 15 control visits to institutions where persons dependent on other people for care and assistance are accommodated.

## GENDER EQUALITY

Serbia has finally adopted long-awaited systematic documents relevant for institutional regulation of gender equality, in the form of the National Strategy for Improvement of the Position of Women and Advancement of Gender Equality and the Law on Gender Equality. The Protector of Citizens welcomed the adoption of this Law, and before its adoption in the National Assembly, he had pointed out the importance of the preservation of the term "gender" and the need for establishing a standing working group or appointing employees in charge of gender equality and performing activities related to providing equal opportunities in the bodies of local self-government units. At the time of adoption of this Law, the National Assembly accepted the opinion of the Protector of Citizens.

Nevertheless, eventhough the basic normative frameworks have been established, the Protector of Citizens has noted the lack of capacities for the implementation of legal regulations and required practical measures. Decrease of the general level of violence, including street violence, violence at sports stadiums and other public places, begins with elimination of domestic violence, whose victims are usually women. The Protector of Citizens usually responds on his own initiative to cases of domestic violence, which is the most obvious consequence of structural discrimination. During the investigation of these cases, he detected weaknesses in exchange of information among institutions, mainly the

police, social work centres and health care services. Protocols on cooperation between these institutions in cases of domestic violence at the local level do not exist or they are inefficiently implemented in some cases. Administrative authorities usually resort to gender relations stereotypes in their organisational structures and methods of work, and treat domestic violence as a private matter of men and women and parents and children, which leads to inappropriate application of available statutory powers. There is also the lack of clearly defined actions and measures, "standard procedures", while civil servants have excessive discretionary powers to decide on the method of procedure in particular cases. It is also necessary to transfer the activities of the competent local authorities "from office to field", for the purpose of better monitoring and responding to these situations.

In that sense, more institutionalised and organised cooperation is required between expert teams, both within the social work centres, district police departments and judiciary, as well as other factors at the local self-government levels, which may be accomplished by adoption of detailed guidelines for procedures employees of these bodies should undertake in cases of domestic violence, which has been already done in some communities.

In a special commentary sent to the UN Commission on Human Rights, the Protector of Citizens has expressed his disagreement with paragraph 47 of the National Report on the Implementation of the Covenant on Civil and Political Rights, in which it is stated that gender equality and comprehensive protection of women are consistently implemented in practice, but that there are certain differences between the sexes due to the natural differences in psycho-physical constitution, because of the reproductive role of women and protection of motherhood. It could be concluded, based on the information that the Protector of Citizens has acquired through control and research, that in Serbia discrimination of women is present on every level of exercise of their rights and freedoms (certainly, not everywhere and anytime). This is illustrated by the fact that the Parliamentary Assembly of the Council of Europe threatened to suspend the right to vote for the delegation from Serbia, since it did not include a single woman.

### **Rights of Persons Belonging to Sexual Minorities**

For the first time, one annual public event organised by persons of minority sexual orientation and other citizens supporting the elimination of discrimination against LGBT persons, was held in 2010 in Belgrade, without any consequences to physical integrity of its participants.

Organisation of the Belgrade Pride Parade was welcomed by European institutions as a step forward for Serbia, but the 2010 Pride Parade has left a bitter taste.

Extremely powerful police forces for control and suppression of demonstrations secured several hundreds of participants of the Pride Parade from much more numerous attackers, who planned and committed their attacks in an evidently organised manner.

Presence and address of the Ministry for Human and Minority Rights was not sufficient to neglect the impression that political elite "had tuned a blind eye" and had left the police to use batons and tear gas to combat intolerance, hatred, prejudice, accumulated frustrations, consequences of the breakdown of the system of values, marginalisation of culture and education. Eventhough the physical integrity of participants have been preserved, the message of the Pride Parade that different does not mean dangerous per se and something

that should be hidid, has been overshadowed by images of violence and hatred on the streets of Belgrade. Populistic statements regarding damage to public and private property, have avoided the fact that damage was not caused by the Pride Parade participants, but by those who wanted to attack them, and such statements were more dominant than only few statements by the top government officials about the need to avoid compromises in case of violence and about the impossibility to justify it with anything.

During the Pride Parade, the premises of the Protector of Citizens were attacked and almost all windows broken. Apart from injured police officers and material damage, once again it has been confirmed that active and public dealing with "unpopular" issues in Serbia still poses a certain threat.

One of the consequences of the Pride Parade is also the great number of persons deprived of liberty in Belgrade and detained in prisons throughout Serbia until the end of a trial. The Protector of Citizens has concluded that it was hard to justify detentions in these cases explained by attempt to prevent repeated commission of a criminal act - the Pride Parade is not an everyday event and LGBT persons do not gather on the streets every day. In that respect, such detention could be perceived as a specific informal sanction per se. The Protector of Citizens has not received any complaint from these persons indicating they were subjected to ill-treatment or torture in detention units, nor they received worse accommodation than the others.

## PROTECTION OF RIGHTS OF PERSONS DEPRIVED OF LIBERTY

The Protector of Citizens monitors the implementation of exercise of the rights of citizens deprived of liberty, who are in detention, prisons, police custody, under security measures, in stationary social and psychiatric institutions.

During 2010, the Protector of Citizens acted in 230 cases on its own initiative and on complaints by the persons deprived of liberty, made about 50 control visits to police stations, detention units, prisons and stationary social and psychiatric institutions (15 visits to police stations, 20 visits to prisons and detention units and 15 visits to stationary social and psychiatric institutions). The complaints referred mostly to the shortcomings in accommodation and other living conditions for the persons deprived of liberty, and there were no complaints regarding torture as institutional, systemic occurrence.

According to results of conducted controls and continuous monitoring of the situation, the Protector of Citizens has concluded that systematic torture does not exist in Serbia.

Nevertheless, the existing accommodation conditions for persons deprived of liberty are so poor that in a certain number of cases they may be characterised as degrading and inhumane. The problems most usually occur due to overcrowdedness. The accommodation capacity of prisons in Serbia is the half the number of persons accommodated there.

A large number of citizens do not have beds, they sleep on the floor, stay in dump rooms without natural light and air. That indirectly affects the exercise of fundamental human rights of those citizens, and directly affect the society as a whole- poor living conditions, idleness and lack of adequate treatment, as well as lack of any prospects for the convicts, contribute to recidivism.

It is necessary to urgently build new and upgrade the existing capacities, apply alternative measures and sanctions. Information from the Strategy of the Government of

Serbia<sup>14</sup> about the weaknesses of prison capacities imply the preparedness of the state to adequately analyse and present the state of the prison system.

However, it is worrying that the mentioned deficiencies repeat year after year. With constant requests for harsher criminal policy, and introduction of significant number of offences for which prison sentence is stipulated; scope and dynamics of the measures envisaged by the strategy (alternative sanctions, construction of new prisons, probations, amnesty) do not create justified expectation as regards efficient resolution of the over crowdedness problem in the near future. The Protector of Citizens considers that the essence of the problem will not be resolved by building prison facilities that would not provide sufficient jobs and adequate salaries, which would enable the employees to devote a portion of their day to their children, family, and friendship, as well as without professionally envisaged and adequately implemented resocialisation of the persons deprived of liberty. Prevention is of the key long term importance – return of the humane contents to education, and provision of available and attractive alternative to delinquent behaviour (not via abstractive media campaigns but through creation of real possibilities to get involved in sports, culture, art...). Individuals placed in the social protection or health care institutions deserve particular attention. It is necessary to create conditions for return of the greatest possible number of citizens with psychiatric and intellectual disorders to their natural environment, and thus significantly reduce the number of individuals placed in the huge stationary institutions. During the visits to social protection and health care stationary institutions for treatment of mentally ill, the Protector of Citizens has determined they were too big, overcrowded and ruined. The aggravating circumstance is the fact that functioning of the institutions is not precisely regulated by law. Users of the asylums are frequently inadequately and permanently separated from the free people's community. The cases have been identified where the users, namely patients, have been placed in the institutions without their consent and judicial decision. A similar problem exists with the elderly staying in the state or private institutions for provision of institutional care – there is no legal basis for detaining patients in such institutions without their consent.

Serbia has ratified OPCAT (Optional Protocol to the Convention against Torture); however it is lagging behind several years in establishment of the NPM (National Preventive Mechanism). Aiming to implement systematic prevention of torture, the Protector of Citizens has established, in accordance with its competences and duties, Preventive mechanism for monitoring institutions housing persons deprived of liberty. The Preventive mechanism, multidisciplinary team consisted of lawyers, forensic doctors, psychiatrists and psychologists, is authorised by the Protector of Citizens, to undertake visits to institutions housing persons deprived of liberty, without prior notice, and to obtain access to all premises in the institution, review and provide copies of the relevant documentation regardless of its confidentiality level; as well as to carry out unsupervised and confidential interviews with persons deprived of liberty and the employees of the institution. When performing institution monitoring activities, particular attention is paid to the position of children, older juveniles, young adults, persons with disabilities, persons with special needs, the sick, the elderly, persons of LGBT orientation, women, persons belonging to national minorities, religious communities and foreigners.

The Protector of Citizens is of the opinion that solutions for fight against crime are not broadcasting arrest of the accused and long term detentions, but effectively and properly conducted judicial proceedings and practical preventive activities.

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14 The Strategy of the Government of Serbia for the Reduction of the Exceeded Accommodation Capacities in the Institutions for the Execution of Criminal Sanctions in the Republic of Serbia for the period 2010-2015.

## POSITION OF CIVIL SOCIETY ORGANISATIONS

The Law on Associations, adopted in 2009, has proved to be a solid normative framework for registration and operation of the civil society organisations. In the following period its upgrading is recommended in order to enable associations that operate in the public interest, as opposed to the associations that operate only in the interest of their members, to get a possibility to qualify for tax relief.

Civil society organisations that advocate for improvement in respect for human rights, particularly the rights of vulnerable groups, are still occasionally the target of the violence. Within a part of society, there is a certain dose of "animosity" towards non governmental human rights organisations, whose leaders are perceived as enemies of traditional values, sometimes even as betrayers.

The Youth Initiative for Human Rights (YIHR) received a threatening letter because of the activities it undertook, and which were directed towards the condemnation of war crimes and remembrance of the victims regardless of their nationality. The letter stated that YIHR members "should" leave Serbia within a year and move to the Federation of Bosnia and Herzegovina, because they supported the victims of the war in Tuzla. The letter stated that until they move, they would be followed and in case they fail to fulfil the request, they would be "tried by the summary court".

In April 2010, the Government adopted a regulation on establishment of the Office for cooperation with the civil society, the main task of which is promotion of cooperation between the government administration authorities and the associations and other civil society organisations. Following the adoption of the Regulation, the Minister of Public Administration stated that establishment of the Office should contribute to more efficient resolution of the social and other issues that demand engagement of all community resources.

The state's duty really is to create an environment that would be supportive to operations of the civil sector organisations, which arises from the international standards for human and minority rights, and the practice of international institutions that supervise their implementation.

Moreover, the public state authorities should restrain themselves from every act and deed that would, without a basis, violate the freedom of association. In October 2010, the Protector of Citizens received a complaint from the Judges' Association of Serbia because the High Judicial Council had requested from the Association to provide a number of data on the operations of its bodies, based on the non existing legal ground. The Protector of Citizens determined that freedom of associations was breached by such attitude of the high state authority, and until the date of the report the High Judicial Council has not fulfilled the recommendation of the Protector of Citizens on how to eliminate the omission.

In 2010, Biljana Kovačević, a prominent civil society activist, passed away. She is remembered for openness and uncompromisingness of her critical views on the cases and instances of human rights violations. Her death is a great loss to the civil sector and Serbia.

## KOSOVO AND METOHIIJA

On one part of the territory of the Republic of Serbia, namely in the Province of Kosovo and Metohija (K&M), the Protector of citizens cannot exercise its authority as provided for in the Constitution and the Law. In accordance with the operational paragraph 11(j) of the Security

Council Resolution 1244(1999), UNMIK is obliged to protect and promote human rights in K&M. The provincial Ombudsman office operates with the seat in Priština, and the Protector of Citizens has not established cooperation with it. At the same time, in accordance with the available information and based on the statements given in the complaints, K&M citizens, particularly non-Albanians who live in the enclaves, are the hostages of the current political processes and face violations of their rights that are incomprehensible to the rest of the modern Europe.

As much as it is possible, the Protector of Citizens endeavours to assist citizens of all nationalities from the territory of K&M, who turn to him, proceeding from the fact that it is a part of our country, based on the Constitution of Serbia, and the fact that humane and civil rights represent universal rights. Most of the complaints refer to the exercise of right to retirement and disability insurance, as well as the labour law.<sup>15</sup> However, the Protector of Citizens has not been allowed to inspect the activities of the state authorities on the territory of K&M, not even the ones that apply the national regulations. EULEX authorities have informed the Protector of Citizens via Ministry for K&M that its representative may only enter the territory of the Province if he/she informs the administration that the reason for the trip are private affairs, which was not accepted by the Protector of Citizens.

### **Organ Trade Report**

Concerned by the reports on the cruellest and most inhuman violations of human rights of the citizens of Serbia that occurred in the Republic of Albania, such as disappearances, deaths, inhuman treatments and trade in human organs, the Protector of Citizens proposed to the Albanian acting Ombudsman to advocate “an independent and full investigation”, of the given statements, “without political considerations and connotations,” with the Albanian public and institutions.

The Protector of Citizens received a reply from the top level of the Albanian Ombudsman institution stating that they agree with the views of the Protector of Citizens, as well as with advocating for independent and full investigation of all alleged crimes, at all times and in all places.

### **INDEPENDENCE, WORKING CONDITIONS**

Compared to most European countries, the institution of the Protector of Citizens, as an institution of ombudsman, was established relatively late, two centuries after it happened in the Nordic countries, half a century later than in most other countries. The concept of independent monitoring bodies is new to the Republic of Serbia and therefore it is not surprising that almost all of them face challenges to their independence and lack of understanding of their institutional roles. The Protector of citizens was established as an independent state body, with the purpose to protect the rights of citizens, control the work of state authorities and ensure protection and promotion of respect for human and minority rights and freedoms.<sup>16</sup> The concerned independent control state authorities are not advisory bodies and are not established to provide advice or recommendations every now and then, which may or may not be

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15 Detailed overview of actions upon complaints on the territory of K&M is provided in the separate section of the Report.

16 Article 138 Paragraph 1 of the Constitution of the RS, Article 1 Paragraphs 1 and 2 of the Law on the Protector of Citizens.

acknowledged by the authorities and their managers. Maturation of the knowledge, however, does not pass without the use of various forms of disavowal of the purpose of existence of the Protector of Citizens, and without making the operations of the institutions more burdensome, which may also be interpreted as putting a pressure on it.

More than three years after the first election of the Protector of Citizens and five years since the Law on the Protector of Citizens was adopted, in 2010, the basic space and technical conditions for operation of the state authority were created for the first time. In May 2010, the Protector of Citizens moved into the adequate premises (still temporary, fifth in the row) for the first time; despite the fact that the government was obliged to provide premises for the authority's operation, on proposal of the Protector of Citizens, until the act on the job systematisation of the Expert Services enters into force, whereas the act entered into force on 6<sup>th</sup> November 2007. Lack of space meant inability to employ associates during the first and most critical period of the operation of the institution.

In 2010, the Government of the Republic of Serbia proposed rebalance of the budget, without prior notice or prior approval of the Protector of Citizens, by which the resources for the employees' salaries were reduced. Thus, the Government, on one hand, provided a space for the Expert Services of the Protector of Citizens, while, on the other, it took the funds for the salaries from the ones who were yet to be employed in it, even though these funds had been stipulated by the original Budget Law. Normally, the law does not allow the Government to propose or even reduce the budget of the Protector of Citizens, without its consent, however this time it was overlooked. The error subsequently had to be corrected by the new budget revision.

The government has also refused to allow budget reserve funds to be used for procurement of the equipment stolen by the burglar from the temporary premises of the Protector of Citizens in Novi Beograd. Previously, the Protector of Citizens had officially and publicly alerted that his working premises had not met the requirements for operations of a state authority. Ministry of Internal Affairs refused to provide security services for the premises since it was not covered by the appropriate government regulation, although the police security was stipulated in the Protector of Citizens' Expert Services Act, approved by the National Assembly. It was only after the President of the Republic visited the Protector of Citizens in the office space and publicly expressed the view that the Protector of Citizens and other independent bodies had to be provided space for normal functioning, that the Government started to deal with the issue, at least as far as the Protector of Citizens is concerned.

By virtue of the Government Decision from 2007, the Protector of Citizens should have moved into the building of the Supreme Court of Serbia in Resavska Street immediately after the Serbian Supreme Court moved out, however, the High Judicial Council moved into the building despite the Decision of the Government. The Government later adopted a new decision by which the office space in Resavska Street (that had been previously assigned to the Protector of Citizens for permanent use) was also formally seized from the Protector of Citizens; and the Protector of Citizens was given an office space in Deligradska Street to use it on temporary basis, until the conditions for the relocation to the building in 48 Karadjordjeva Street are created, which is supposed to be the final solution. As per the estimate, 10 million euros is needed for refurbishment of the building.<sup>17</sup>

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17 The building in 48 Karadjordjeva Street, was built at the beginning of the last century, it has been decaying during the period due to the unresolved property issues and its utilisation for film recording, parties and similar purposes that are contrary to its function and significance.

The Protector of Citizens had to deny the statements of the Minister of Finance that the budget proposal for 2011 encompassed an increase in public spending due to the "several times" increased expenditures for operations of the independent bodies, where she also included the Protector of Citizens,.

An example of disavowal of purpose and actions of the independent monitoring bodies is the reaction of the High Judicial Council to decisions and stands the bodies have taken during the proceedings under their competences that related to the carried out (re) election of judges and public prosecutors.

The leaders of the independent monitoring bodies, in particular the Commissioner for Information of Public Importance and the Protector of Citizens were "singled out" in some media due to the height of their salaries (according to the Law, the Protector of Citizens is entitled to salary equivalent to the one of the President of the Constitutional Court, which has not always been the case, while the Commissioner is entitled to the salary equal to the one of the judges of the Supreme Court of Serbia, which also has not been the case). Due to the inability to spend the funds stipulated in the budget because they could not hire the needed associates, they deserved to be in the headline of a daily newspaper: "They Tailored the Budget."

*They are squandering!*

*It is interesting to know that five state institutions even have budget surplus! Rodoljub Šabić, the Commissioner for Information of Public Importance, Saša Janković, the Ombudsman, Anti-corruption Agency, State Audit Institution, and Coordination Body for Preševo, Bujanovac and Medveđa, have taken in total 202,744.341 RSD more from the annual budget than they actually need. As it is stipulated in the rebalance, the Assembly is about to adopt, the money will be returned to the state coffers. The next biggest 'surplus' of as much as 61,791.000 RSD<sup>18</sup>, following the record held by Rodoljub Šabić (69,499.435), has Radoslav Sretenović, the chief auditor.*

The correct information is that the percentage of the Protector of Citizens' budget execution amounts 92%, whereas the portion of the unspent funds that remained in the budget are under: salaries, allowances, benefits and employees' contributions (91% spent), social benefits to employees (54% spent), travel cost (95% spent), repairs and maintenance (66% spent), taxes and fees (75% spent).

The decision of the Protector of Citizens to officially attend the Nobel Peace Prize Award Ceremony, difficult enough by itself due to the conditions under which it was made since the Ministry of Foreign Affairs announced that Serbian ambassador to Norway would not attend it, suffered a further controversy after the media published the Government of Serbia's statement that the Protector of Citizens would travel there as a special envoy of the Prime Minister.

Cooperation with the Government had some rises. In August 2010, after a meeting with the Protector of Citizens, the Serbian Prime Minister called on all government authorities to fully respect the obligations to cooperate with the Protector of Citizens in undertaking control procedures and implementing the recommendations of this body. The Prime Minister and the Protector of Citizens had previously shared the opinion that the lack of accountability for the conscious and sometimes deliberate mistakes and violations of rights, crashes trust in institutions and discourages conscientious civil servants. They agreed on the need to deal, with particular urgency and attention, with all administration related to legal persons against whom proceedings were initiated on suspicion that their unlawful or improper conduct harmed the citizens.

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18 Daily newspaper *Kurir* of 23 November 2010, page 2.

The Prime Minister and the Protector of Citizens agreed that there is a need for greater efforts of the state authorities to ensure that employers carry out their legal obligations to pay contributions to the retirement and other mandatory public funds. The Protector of citizens insisted that the state authorities and public institutions should not do business with employers who do not regularly fulfil their obligations to their workers.

At the meeting with the Protector of Citizens, held in August 2010, the Prime Minister announced that the Government would, in accordance with its legal obligations, decide on the initiatives submitted by the Protector of Citizens, in particular the initiative to amend Article 50 of the Law on Culture, because the rights of employees in cultural institutions were threatened, and an initiative to concretise fulfilment of the Constitutional obligation to ensure presentation of people belonging to national minorities in the public authorities. However, until the end of the reporting period that did not happen.

In 2010, The National Assembly adopted changes to the Rules of procedure which created the possibility for political control of independent monitoring bodies through the mechanism of adoption/non-adoption of their report and the initiation of responsibility procedure in case the report was not adopted. Previously, the same rule had been provided for in the Bill on the National Assembly, and consequently withdrawn from it by the decision of the proponent, as the Protector of Citizens submitted amendments. The Protector of Citizens and other independent authorities pointed at the shortcomings of such a procedure, but it was only after the criticism of international community, primarily the European Commission and the European Parliament, that the Rules of procedure changed again, and new rules created a basis for achieving a balance between the constitutionally established principles of independence of the monitoring bodies, on one hand, and parliamentary supervision of their work as a reflection of the democratic principle of accountability of the public office, on the other hand. The Rules of procedure, however, still does not determine the manner the provisions of the Law on the Protector of Citizens on the cooperation of the National Assembly and the Protector of Citizens are to be implemented, although the Law on the Protector of Citizens, adopted in 2005, stipulated a six month deadline period from the law's entry into force, for the National Assembly to harmonise the provisions of its Rules of Procedure. Back in 2008, the Protector of Citizens sent the National Assembly a series of necessary amendments to the Rules of Procedure; however they have never been taken into consideration.

## EVEN CLOSER TO THE CITIZENS

During 2010, aside from the regular visit, the purpose of which was to perform monitoring of the activities of the public authorities, the Protector of Citizens made preventive visits on several occasions (five times) to the municipalities of Bujanovac, Medveđa and Preševo, then Sombor, Zrenjanin, Negotin, Užice, Dimitrovgrad and Kraljevo. During the visits, it held working meetings with the local self-government representatives, organised panels and roundtables, and received complaints from the citizens.

### **Cooperation with Provincial and Local Ombudsmen**

Cooperation between the Protector of Citizens and the Ombudsman of the Autonomous Province of Vojvodina and the local self-government Ombudsmen is regulated by the law, and conducted through formal forwarding of complaints and cooperation in handling

them, exchange of good practices, and occasional joint trainings for expert services employees. By the end of 2010, less than 10% of local self-governments elected the local ombudsman and many of them are facing serious problems in achieving their independence or ensuring the necessary conditions for work. The Ombudsman and the Provincial Ombudsman cooperate particularly closely in respect to the protection of minority rights whereas they provided small number of common recommendations in the areas of the right of the child and gender equality.

In practice, the problem of conflict of jurisdiction between the local, provincial and national ombudsmen is becoming more frequent; it arises from non-compliance between the Law on the Protector of Citizens and local and provincial regulations on the work of the Ombudsman. The provincial and a number of local regulations define the scope of work of "their" ombudsmen, which corresponds to the statutory scope of work of the national Ombudsman, and even go beyond it. The problems also arise due to the confusion of identity that arises from the fact that the Law on Local Self-Government provided for the Local Ombudsmen the same name as the Constitution and the Law on the Protector of Citizens have given the national Ombudsman.

In 2010, the Protector of Citizens received 314 complaints related to the work of local self-governments. Through the local Ombudsman the Protector of Citizens received 82 complaints, while nine complaints were forwarded to the jurisdiction of the local Ombudsmen by the Protector of Citizens.



## I KEY NOTES ON THE PROTECTOR OF CITIZENS

### Legal Framework for the Operation of the Protector of Citizens

The Protector of Citizens of the Republic of Serbia is an independent and autonomous public authority introduced into the legal system of the Republic of Serbia in 2005 by the Law on Protector of Citizens<sup>19</sup> (hereinafter referred to as: the law), and subsequently regulated by the Constitution of the Republic of Serbia.<sup>20</sup>

The independence of the Protector of Citizens is one of the fundamental principles of this institution which has been taken over from international legal documents on Ombudsman which means that the Protector of Citizens is both organisationally and functionally detached from the administration authorities<sup>21</sup> whose operations it controls.

The principle of independency yields the principle of autonomy of the Protector of Citizens, which implies that the Protector of Citizens is independent in performing its duties and obligations within its scope of competence i.e. that this principle prohibits anyone and anything from exerting influence on its work and activities.

By defining the Protector of Citizens in such constitutional and legal terms, the Republic of Serbia has established a concept of a parliamentary Ombudsman of general nature. The Protector of Citizens is a state authority tasked with the protection and promotion of human and minority freedoms and rights of citizens. The Protector of Citizens is elected by the national Assembly as compared with a relatively small number of countries in which general or specialised Ombudsmen are appointed by the authorities with executive power.

The Protector of Citizens acts within the framework of the Constitution, laws, other regulations and legal documents of general nature as well as within the framework of ratified international agreements and widely accepted rules of international law. At the same time the Constitution and the law prescribe that the Protector of Citizens shall be responsible for its work and activities to the National Assembly.

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

20 The Decision on the Promulgation of the Constitution of the Republic of Serbia was published in the "Official Gazette of the Republic of Serbia" No: 83/06 and 98/06 (Chapter Five – System of Authorities, Section five Protector of Citizens, Article 138).

21 An abbreviation has been introduced into the Law on the Protector of Citizens (Article 1) denoting state administration authorities, authorities in charge of legal protection of property rights and interests of the Republic of Serbia, as well as other authorities and organisations, companies and institutions entrusted with public authority, which are all collectively referred to as the "administration authorities". For the purpose of avoiding cumbersome linguistic phrasings in the text of the Report, the mentioned abbreviation shall also be used in this Report.

## **The Protector of Citizens' Scope of Work**

In a relatively brief procedure devoid of superfluous formalities, the Protector of Citizens controls the respect of the rights of citizens, establishes violations committed by virtue of legal documents, actions or failure to act by the administration authorities, in case of violation of laws of the Republic, other regulations and legal documents of general nature. The Protector of Citizens examines (the Constitution and the Law say – controls) whether an administration authority has acted in legal and regular manner when decided upon the matter that pertained to rights, freedoms or interests of citizens conferred by law. In case it has not, the Protector of Citizens notes the failure and proposes the ways to eliminate it, in this and any other case. The Protector of Citizens examines much more than mere formalities in the process of respecting the law, it examines the ethics, conscientiousness, impartiality, professionalism, effectiveness, efficiency, respect of client's dignity and other characteristics which should feature the public administration, which citizens as taxpayers rightfully expect.

The Protector of Citizens controls the operation of the state administration authorities, authorities in charge of legal protection of property rights and interests of the Republic of Serbia, as well as other authorities and organisations, companies and institutions entrusted with public authorities. The Protector of Citizens has no authority to control the operation of the National Assembly, the President of the Republic, the Government, the Constitutional Court, courts and public prosecutor's offices.

Aside from the right to initiate and carry out a procedure of controlling the operation of administration authorities, the protector of Citizens is entitled to act preemptively, by extending good services, mediating between citizens and administration authorities and by offering advice and opinions on issues within its scope of competence, for the purpose of enhancing the operation of the administration authorities and strengthening the protection of human liberties and rights.

The Protector of Citizens is also entitled to legislative initiative. Thus it can propose laws within its scope of competence, submit initiatives aimed at amending the existing or adopting the new regulations if it deems that the violation of citizens' rights is a direct result of their deficiencies or if this is important for the implementation and promotion of citizens' rights. The Protector of Citizens is also entitled to offer its opinion to the Government and the National Assembly on regulations under preparation. In addition, the Protector of Citizens has the authority to initiate the law constitutionality and legality assessment procedure before the Constitutional Court.

Recommendations, views and opinions of the Protector of Citizens are not legally binding. The Protector of Citizens' job is not to force, but rather to convince the concerned, by the power of arguments, as well as with the institutional and personal authority, that it is necessary to eliminate the deficiencies and improve working practices.

The administration authorities, however, have a legal obligation to cooperate with the Protector of Citizens, grant access to its premises and all the available data regardless of their level of confidentiality (in cases when this is in the interest of a procedure which is underway).

The Protector of Citizens may recommend that an official deemed responsible for the violation of a citizen's rights be relieved of his/her duty, it may initiate the launching of disciplinary procedure against employees working in the administration authorities, it may lodge a request or application for initiation of criminal, petty offence or other appropriate proceedings.

## **Cooperation with Public Authorities**

Although the public authorities' respect of the citizens' rights and their relation towards the citizens and their rights in general cannot be assessed as satisfactory, we may say that significant number of state and other authorities and organisations have recognised not just the obligation, but also their own interest in cooperation with the Protector of Citizens, during the four years of its existence and operations. Thus, in 2010, it was possible to raise the cooperation to a higher level, and better fulfil the purpose of the institution of the Ombudsman.

As an instance of good cooperation, relationship with the Ministry of Labour and Social Policy is to be pointed out, as regards implementation of recommendations in the area of protection of the right of the child. After the initial lack of understanding of the purpose and importance of the Protector of Citizens' recommendations, similar practice has been established with the Ministry of Education, which was visible through the Protector of Citizens' opinions and recommendations that pertained to the complaints of the parents of children old enough for school, who did not attend the obligatory preparatory preschool program due to the failure of the public institutions.

It has become tradition that the citizens file most complaints against the Ministry of Interior; however the Ministry, at the same time, maintains the most efficient cooperation with the Protector of Citizens in examining whether there is a ground for the complaints and in elimination of the detected omissions. Good cooperation has also been developed with the Ministry of Defence, in the interest of the citizens who have been encompassed by the activities of the Ministry, and more often, in the interest of the employees of the Ministry and members of the Serbian Army.



## II REMARKS ON HUMAN RIGHTS SITUATION IN THE AREAS WITHIN THE SCOPE OF COMPETENCE OF THE PROTECTOR OF CITIZENS

### 1. GOOD ADMINISTRATION

In 2010, number of citizens' complaints related to the actions of the administration authorities through which the principle of good administration is violated, significantly increased. Therefore the Protector of Citizens focused his activities on the control of the implementation of the good administration principle in the operations of the administration authorities.

Based on the number of the received citizens' complaints, the most significant cases that relate to good administration pertain to health care, protection of persons with disabilities, retirement and disability insurance and judicial reform.

#### 1.1. General Remarks on Implementation of Good Administration Principle

##### *Silence of the Administration*

"Silence of the Administration" is, by rule, the act of maladministration. It should be corrected not only by allowing a citizen to use the legal remedy in case of "silence of the administration", but also through the change of the attitude of the authorities towards the obligation to efficiently and effectively perform the entrusted competencies, which, among other things, is achieved by the actions of the Protector of Citizens.

The administration authority must not and should not refer clients to file silence of the administration claims with the Administrative court, in order to exercise their rights through the administrative proceeding. It is required by the positive regulations and the principles of good administration that the administration authorities act and undertake measures within the scope of their competencies and within the legally prescribed timeframe. Failure to perform the duties and the activities under the competence of the administration authority is the omission which, by rule, directly or indirectly results in legal uncertainty, more difficult legal status of the citizens – natural and/or legal persons and violations of their rights.

##### **Example:** *Possibility to initiate administrative dispute as a justification for maladministration*

Provincial Ombudsman of the AP Vojvodina forwarded complaints from the Jewish municipality Novi Sad to the Protector of Citizens; which indicated irregularities in the operations of the Directorate for Restitution.

Jewish municipality Novi Sad turned to the Directorate for Restitution, in accordance with the Law on Return (restitution) of Property to Churches and Religious Communities, submitting applications for return of two business buildings with building plots on two different locations in Novi Sad. Since the business buildings that are subject of the application for restitution of property have been used by the College of Teacher Education and Ballet School, the Jewish municipality Novi Sad stated several times during the procedure that, after the eventual decision is made on the return of the concerned real estate, it would not be requested from the schools to move out and they would be able to continue to use the same premises on the basis of the lease payments.

Based on the statements from the complaint, the Directorate for Restitution, regardless of the given statement, posed a question as a condition for issuing a decision on the return of the concerned real estate, whether return of the concerned real estate to the previous owner would jeopardize smooth performance of activities of the educational institutions, which used the facilities at the time. Therefore the Jewish municipality Novi Sad turned to the competent authority of the Autonomous Province of Vojvodina, as a founder of the educational institutions. Although all observations from relevant bodies have been obtained, based on the statements of the complaint, the Directorate for Restitution has not issued the decision on request of the Jewish municipality Novi Sad, requesting prior conclusion of a precontract on lease between the applicant, as a lessor, and the College of Teacher Education and/or the Ballet School, as the lessees. The Jewish municipality Novi Sad has pointed out that the Directorate for Restitution illegally conditioned the Jewish municipality Novi Sad on additional, unnecessary documentation, at the same time placing it at a disadvantage as compared with other applicants for return of the property.

The complaint also points out that the Provincial Secretariat for Education, in order to give assent for the conclusion of the precontract on lease between the complainant as a lessor and the College of Teacher Education and/or the Ballet School, as the lessees, requires prior filing of observation of the Executive Council of Vojvodina. Furthermore it is stated that the proceeding was not conducted in the identical manner when conclusion of an agreement between the Roman Catholic religious community from Subotica and the Technical School from Subotica were concerned.

During the control procedure assessing legality and regularity of operations, the Directorate for Restitution pointed out that it was indisputable that proceedings on the requests of the Jewish municipality Novi Sad regarding both subject matters were brought to the decision phase, but they were not made since the conditions for natural restitution were not met.

Upon the conducted procedure, the Protector of Citizens established that the Directorate violated the principles of legality, due to non efficient and purposless acting upon applications for return of the taken property, violating the right of the Jewish municipality Novi Sad to receive the decision within the legal timeframe.

Based on the established deficiencies in operations, the Protector of Citizens gave the Directorate for Restitution a recommendation to review the grounds of the Jewish municipality Novi Sad application for return of the taken property and to issue appropriate decisions without delay. In case, that not all the issues of the particular proceedings are mature enough for decision making, the Directorate for Restitution shall only make decisions on the indisputable issues, that is, it shall issue partial decisions.

The timeframe set for acting upon the recommendation has not yet expired.

### *Justifying the authority by bad organisation of work is Maladministration*

The authorities' and officials' failing by omission to deal with the core of the administrative matter, exhaustion with excuses, internal procedures, bad organisation of work and other internal difficulties and unresolved issues of the administration represent typical characteristics of "maladministration". The circumstances that objectively hinder efficiency of the procedure may not be neglected; however the priority duty of the authorities and the concerned officials is to do everything within their power to enable citizens to exercise their rights as soon as possible. It is only then that one should turn to reexamination of the reasons for the omission, determination of responsibilities and improvement of the work.

#### **Example: Misplaced application**

For more than a year and a half, the Ministry of Justice did not reply to a client's request for an opinion on the implementation of regulations relevant to exercise a right to war compensation claim. The client turned to the Protector of Citizens in order to have his/her right to "good administration" protected.

During the proceeding upon the complaint it was established that the client's request was "misplaced" on its way between the Administration for Joint Services, which maintains the Clerk's Office of the Ministry of Justice, and the Ministry of Justice. The Administration has informed the Ministry that the client's request had not been entered in the national authorities' Clerk's Office – in the data base for the Ministry of Justice – but the Ministry insisted, in the further course of the proceeding, that the concerned request must be found. The Ministry's replies upon the Protector of Citizens' requests were exhausted in its attempts to prove that they actually did not have the client's request, and in informing the Protector of Citizens on its fruitless communication with the Administration for Joint Services; whereas the Ministry did not demonstrate that its aim was to acknowledge the client's request as an undisputable fact and reconstruct it as necessary (if not in any other way, than from the documentation provided by the Protector of Citizens), and, finally, reply to it.

The Protector of Citizens noted the omission in the operation and stated that, during the proceeding, the Ministry should have made additional efforts to meet the needs of the client, having regard to the fact that it was more than a year and a half since the request had been submitted. Without searching the reasons which led to "misplacement" of the client's application and disregarding the willingness to further examine whether the omission of the Ministry's operation was caused by negligent work of the Administration for Joint Services, the Protector of Citizens issued a recommendation to the Ministry of Justice to immediately reply upon the client's request and issue an apology to the client because of the failure of the administration.

The Ministry of Justice has acted upon the recommendation, within the deadline, and informed the Protector of Citizens that it provided the client with the requested opinion on the interpretation of the regulation, and issued the client the written apology.

### *Inconsistency and Unequal Treatment of Citizens Who are in the Same or Similar Situation*

The administrative authorities are obliged to act upon the citizens' requests in a consistent manner, and within their legally defined competencies, that is, to provide equal treatment to all citizens in the same or similar situation. In accordance with the above, the administrative

authority must respect the citizens' justified and reasonable expectation. In case there are objective and determined reasons to act differently in a particular case, they must be justified.

The Protector of Citizens is of the opinion that each untimely action of the authority and failure to act upon the received communication and requests, or failure to provide information, represents a violation of the citizens' rights and the act of poor governance. The statements of the authorities that, according to the law, a citizen's request is considered rejected also in the cases where a citizen does not receive a decision within the legally prescribed timeframe, even though the legally prescribed requirements are met, may not in any case, serve as justification for the authority's failure to act.

**Example:** *The state authority does not respect the citizen's right to be informed*

Several citizens have turned to the Protector of Citizens, indicating that the Ministry of Youth and Sports fails to act upon the requests regarding award of the national sport award, and/or fails to issue notifications and justifications in regards to further acting upon them.

In 2007, the complainants turned to the Ministry of Youth and Sports, via competent national branch sports associations, the Serbian Soccer Association, and the Serbian Handball Association, submitting communications and requests for award of national sports awards, as the athletes who achieved significant results. Subsequently, in 2008 and 2009, they turned to the Ministry directly, for notifications on its actions upon their requests for award of national sports awards, however they did not received any notifications on their rights or the actions upon their requests. Following the conducted procedure, the Protector of Citizens established omission in the operation of the Ministry to the detriment of the citizen's rights, for violating the principles of good administration, the Ministry failed to reply to the requests of the Serbian Soccer Association and the Serbian Handball Association, in regards the awarding national sports awards to the citizens, and the communications submitted by the athletes themselves, for the same reason.

On the grounds of the determined failures in operation of the Ministry, the Protector of the Citizens issued recommendation to the Ministry of Youth and Sports to immediately, and within the scope of its legal competences, provide reasoned reply to the requests of the Serbian Soccer Association and the Serbian Handball Association for awarding national sports awards to the concerned citizens, and communications submitted directly by the athletes themselves, for the same reason.

The timeframe set for the authority's acting upon the recommendation has not yet expired.

## **1.2. Violation of the Principle of Good administration in the Area of Health Care**

In 2010, the Protector of Citizens conducted 46 control procedures assessing legality and regularity of medical institutions' operations. The particular attention was dedicated to the additional work provided in the medical institutions. The information obtained by the Protector of Citizens' expert services indicated that there were violations of regulations in some medical institutions. The information provoked great attention of the public and vocational associations.

### *Additional Work*

Based on the amendments to the Law on Health Care, of October 2010, each medical care provider is allowed to perform additional work outside working hours, in accordance with the contract, being it in the state institution he/she is employed at, or with the private employer, in the duration of up to one-third of the employee's working hours. The Law also allows, under the certain circumstances, provision of services encompassed by the mandatory health insurance. From the beginning of 2011, the medical employees are also allowed to perform additional work with the private employers, and for this, they do not have to ask to get approval from the director of the institution they are employed at.

Aside from the citizens and medical institutions' employees, representatives of the Union of Physicians and Pharmacists (the Primary Health Care Team) also turned to the Protector of Citizens and informed it on numerous violations of the patients' rights in the additional work, up to then, and required from the Protector of Citizens to get engaged in narrowing of this aspect of medical services provision. The Union representatives also pointed out that the announced amendments to calculation of the physicians' salaries would be to the detriment of the patients' rights.

The case of the patient who went to the physician for whom she had a referral, and had appointment booked seven months after, is significant as well. At the same time, she was offered to have the medical examination done very next day within the working hours and to pay for it, although the additional work cannot, under no circumstances, be performed within the normal working hours. The most concerning fact is that unscrupulous medical providers abuse the patients' fear that their treatment will be jeopardised if they report the illegal conduct.

#### **Example:** *(Ab)use of additional work in the Oncology Institute of Vojvodina*

Control procedure assessing legality and regularity of operations of the Oncology Institute of Vojvodina, which was initiated upon the information provided by its employees pointing out there were irregularities in the operations of the institution, is characteristic. During the procedure, the Protector of Citizens established that the treatment of persons insured by domestic health insurance for malignant diseases is organised through additional work. Although the treatment is encompassed by the mandatory health care insurance, the patients paid for it themselves.

In 2010, foreign citizens from B&H and Montenegro were treated in the Institute, which has limited capacities. The Institute had started to perform additional work before the necessary Ministry of Health approval was received and thus violated the provisions of the law which prescribes requirements and ways of organising the additional work. The Protector of Citizens established that the Oncology Institute of Vojvodina, by failing to comply with the law, also wronged the radiology specialists, whose health could be endangered by the additional work, considering that because of the health hazard due to radiation they regularly work shorter working hours. The radiology specialists did not receive monetary remuneration for the radiotherapy services they provided during their additional work to the persons insured by the National Institute for Health Insurance.

The Protector of Citizens issued a recommendation to the Provincial Secretariat, as a competent authority – founder, to determine responsibility of the management of the Oncology Institute of Vojvodina, because of the established illegality and irregularity in its operation. It was recommended that the Institute immediately adjust its operations to comply with the law, and the Ministry of Health to regularly inform, in the future, the founders of the medical institutions on the established omissions and the inspection findings.

The Protector of Citizens required from the Institute to suspend every procedure it may have initiated and not to impeach the employees because they pointed at the irregularities in the operation of the institute that were established, but to appropriately protect them from potential hazardous consequences, and to undertake all the necessary and available measures to eliminate them, in case the consequences already arose.

The Protector of Citizens requested from the Oncology Institute of Vojvodina to perform additional work, in case the Institute will organise it in future, exclusively in order to provide additional medical services or medical services for which the Institute does not have (employed) suitable medical providers. Accordingly, the additional work must not, under no circumstances, delay or obstruct provision of the services encompassed by the mandatory health insurance, and must not be performed to the detriment of the health, other rights or justified legal expectations of the patients, other citizens or the employees of the Institute.

The Protector of Citizens recommended that the Ministry of Health of the Republic of Serbia issues a new decision on additional work plan for the Institute, and submits the results of all inspection supervisions to its founder – the Autonomous Province of Vojvodina, that is the Provincial Secretariat for Health. The Protector of Citizens requested from the Ministry of Health to control, in the future, whether the conditions for organising additional work are fulfilled, and not to allow the subjects who request the approval to determine themselves whether the prescribed requirements are fulfilled.

The Institute recovered the funds of the citizens of Serbia who were charged for the cancer treatment services that are encompassed by the mandatory health insurance, and who submitted written request for reimbursement. Seventy five insured persons received the money, in the total amount of 552,629 RSD, through the Republic Institute for Health Insurance. Two more insured persons received the reimbursement directly from the Institute.

Since, there is a possibility that the Oncology Institute of Vojvodina was not the only one in Serbia that made mistakes in organizing additional work, it is pointed out that all medical institutions should, as prevention, review the recommendation issued to the Institute, in order to avoid making the same mistake.

Having regard to the stated issues, it is also necessary to amend provisions on additional work of the Law on Health Care and clearly define regular and additional work, so that the medical providers do not charge the citizens for the services that are already paid for through the medical insurance. For this purpose, it will be required from the National Assembly to reconsider the provisions of the Law that allow this.

### *Doctors' Responsibility for Doctors' Mistakes*

Until now, a small number of individuals have been convicted of doctor's mistake before the Serbian courts. Solidarity within the profession often obstructs the efficient investigation. Therefore, it is encouraging to see that during 2010, judgments were rendered and procedures for determination of doctors' liability were initiated; for it is necessary to distinguish between professional doctors and those who, due to their malpractice and unprofessional behaviour, often accompanied by taking bribe from patients and their relatives, cause severe health conditions in patients.

Based on the activities of the Protector of Citizens, it is noted that there is an increase in number of complaints, where citizens indicated that in a particular medical institution, due to inadequate treatment, a medical mistake was made, which caused certain consequences, and complaints were also received where it was pointed out that the medical mistake resulted in a patient death.

**Example:** *Determination of medical practitioners' responsibility for patient's death*

Complainant filed complaint with the Protector of Citizens, where the complainant expressed dissatisfaction with the operation of the Ministry of Health due to the inappropriately long procedure upon the filed complaint against the surgeons and anaesthesiologists employed with the Medical Centre Sveti Luka in Smederevo, where it was required from it to investigate responsibilities of the physicians for the death of his daughter who died in the Military Medical Academy in Belgrade, after having surgery performed on her in the abovementioned hospital in Smederevo.

The Protector of Citizens initiated a control procedure assessing legality of operation of the Ministry of Health, which informed the Protector of Citizens that immediately upon the receipt of the complainant's request it established a Commission for non-scheduled control of professional performance of the concerned doctors, and that after the professional monitoring had been performed it made a report and informed the complainant on it, and submitted a copy of the conclusion on the completed professional monitoring. In the subsequent communication, the Ministry of Health informed the Protector of Citizens that the complainant submitted an objection to the conclusion and the Ministry forwarded the concerned objection, in accordance with the procedure, to the Serbian Doctors Chamber. Since the complainant informed the Protector of Citizens that this way he had the opportunity to take further actions in the procedure for determination of the professionals' responsibility for his daughter's death, the omission in operation of the Ministry of Health was eliminated and the procedure suspended.

### *Protection of Patients' Rights*

In the procedures conducted for alleged violations of rights to medical care (patients' rights) it was noted that through the mechanisms for protection of the patients' rights negligible small number of violations of patient's rights was established upon the conducted procedures. According to the Law on Health Care, the mechanisms include in the first degree the Protector of the patient's rights and in the second the Medical inspection of the Ministry of Health. Patients either do not use the mechanism for protection of their rights or their appeals do not provide results, primarily because his/her independence from the institution, he/she is employed by, is not ensured.

**Example:** *Cameras in the gynaecologists' offices*

The Protector of Citizens, based on the information that in the gynaecology department office of the General Hospital in Jagodina, cameras for video surveillance had been installed, conducted a control procedure for assessment of legality and regularity of operations of this medical institution and the Ministry of Health. During the direct talks with the director and the Protector of the patients' rights in this medical institution, the Protector of Citizens determined that there were cameras in the gynaecology office and required that the Ministry of Health immediately take actions, have the cameras removed, and have the recorded material destroyed, which was done, and thus the violation of patient's rights stopped. However, it was established during the procedure that the Protector of patient rights did not find, not as prevention, or while the camera was operating, and not even during the control, that video surveillance was inappropriate safety measure which severely violated the patient's right to privacy, but justified it. Based on the reasons provided above, the Protector of Citizens required the Protector of patient rights to be relieved of her duty, and the director of the institution acted upon the request.

*Protection and maintenance of patient's personal data*

Sufficient care has not been provided as regards the safeguard of patient's personal data; as a consequence diagnoses, medical findings and records are available to very broad circle of people, whereas medical institutions forward them to various subjects. It happens often that medical files are not maintained in the appropriate manner, which consequently create problems to patients when they need them.

**Example:** *Institute lost patient's medical documentation*

A complaint indicates that a complainant who was treated, in several occasions, at the Institute for Orthopaedic Surgery Banjica due to paralysis of the lower part of his body, requested his medical documentation – magnetic resonance imaging before he had the metal implant, since the medical science advanced in the mean time and the possibility arose for his medical problem to be successfully resolved by surgery. The institute's reply mentioned that his documentation was lost, and there was possibility that the doctor who treated him at the time used it for his scientific papers. Initiation of the control procedure assessing operations of this institute is underway.

### **1.3. Violation of Good Administration Principle in the Area of Retirement and Disability Insurance**

In 2010, the Protector of Citizens received total of 184 citizens' complaints pertaining to the operation of the Republic of Serbia Retirement and Disability Insurance Fund. Out of the total number of the above mentioned complaints, 47 procedures were completed in 2010, whereas in 27 cases citizens exercised their rights after the intervention of the Protector of Citizens. Acting upon the numerous complaints from the citizens, the Protector of Citizens established the following irregularities in the operations of this authority:

*Unjustifiably Long Procedures Before the Authorities of First and Second instance of the Republic of Serbia Retirement and Disability Insurance Fund*

**Example:** *Two years needed for decision on the exercise of the right to pension benefits*

A number of citizens turned to the Protector of Citizens pointing out that they had been waiting even up to several years for decisions on their requests concerning exercise of their rights to retirement and disability insurance

With regard to complaint concerning operations of the Fund, due to its failure to comply with the legal timeframes for provision of the competent authority decision, and upon the filed request regarding exercise of his right to old age pension benefits, the Protector of Citizens initiated a control procedure assessing legality and regularity of operations of that authority and requested to be provided with the observations on the reasons for non issuing the decision within the timeframe prescribed by the Law. Department for internal control and judicial practice of the Republic of Serbia Retirement and Disability Insurance Fund informed the Protector of Citizens that the complaint was reasonable, and that the competent branch was instructed to decide upon the complainant's request as soon as possible. Upon the initiation of a procedure concerning the Republic of Serbia Retirement and Disability Insurance Fund, the competent branch, two years after, made a decision which established the complainant's right to old age pension benefits. The complainant informed the Protector of Citizens that he might suspend the procedure against the Republic of Serbia Retirement and Disability Insurance Fund and expressed his satisfaction with the actions of the Protector of Citizens.

*Non Expeditious Maintenance of Registry Books*

The Protector of Citizens received great number of citizens' complaints which state that despite the fact their contributions were fully and timely paid, the competent authorities do not have clear evidence on the periods for which the contributions were paid, dates of the entitlement for the insurance eligibility and suspension of insurance eligibility, insurance period and amount of the paid contribution; the citizens also complain that the obligation to submit necessary information is put on the citizens, and they are charged with already paid contributions. Due to the same reason, the Republic of Serbia Retirement and Disability Insurance Fund issues decisions on suspension of the entitlement, and on the reduced retirement benefit as compared to the previous one, replaced temporary decision and determined amount of benefit with the time lag of several years. This way, the complainants are obliged, due to the omissions of the operation of the Fund, to return the amount paid in excess of the pensions they have already received, or the difference in the amount of already received pensions.

**Example:** *Return of amount paid in excess of the pension that occurred due to the failure in operation of the Republic of Serbia Retirement and Disability Insurance Fund*

A complainant turned to the Protector of Citizens stating that she received a notice from the authorised Fund branch on the unreasoned payment of an amount she was obliged to return as a loan under the excess of the received pensions, although this occurred due to the failure in operation of the Fund. Based on the complaint, the complainant held temporary decision on the old age pension, which was temporary because not all information on the pension and income were entered,

and later on she received decision on the old age pension, which established lower amount than the one established by the temporary decision. Thus a loan the complainant is obliged to return, occurred.

Upon the conducted procedure, the Protector of Citizens established that the Fund, when the requirements for replacement of the temporary decision were fulfilled, decided to perform additional control of the data concerning the established pension time and income in the registry book; it was determined at the occasion that incorrect data on income was entered for the year 1988. Therefore the complainant was paid old age pension in the amount higher than the one she was entitled for. Upon the initiation of a control procedure for assessing legality and regularity of operations, the Republic of Serbia Retirement and Disability Insurance Fund, Directive of the RSRDIF Directorate of the Retirement and Disability Insurance, department for internal control and judicial practice, obtained the specifications of the subject matter from the branch, reviewed them and instructed the director of the branch to review all the data again. Following the new control of all data, a change in determination of the reason for the payment occurred, and now it is stated that "data irregularly determined or entered into the registry book" are the cause of the unreasoned payment, based on which the payment was made due to the wrongdoing (performance – failure to perform) of the employee, and the user of the right was not and could not be aware of it, and it resulted in suspension of repayment of the unreasoned payment which had been previously initiated due to the differently determined reason for the excessive payment, and in accordance with the instruction provided by the director of the Republic of Serbia Retirement and Disability Insurance Fund, on the procedure of determination, repayment and record keeping of the excessive payments of pensions and other pecuniary benefits.

#### *Deficiencies in Legal Acts of the Republic of Serbia Retirement and Disability Insurance Fund (RDIF) Regulating Citizens' Rights and Duties*

The Protector of Citizens received several complaints from citizens pointing at the fact that legal acts brought by competent authorities do not include segments required by the law, which prevents complainants from knowing the grounds on which those legal acts were brought. Besides that, such deficiencies cause a vast majority of cases to be overruled in respective redress proceedings, which is a derogation of the principle of efficiency and effectiveness in conducting proceedings.

#### **Example:** *Citizen receives a decision which does not include segments as prescribed by the law*

In the complaint filed to the Protector of Citizens, the citizen stated that the RDIF, in deciding on the claim of the right to attendance allowance, passed a decision which did not include any of segments it must contain as prescribed by the law, apart from listing the legislative acts which served to RDIF as a basis in deciding on the complainant's request. The complainant lodged a complaint against the decision pointing at the deficiencies in the explanation of the said decision, to which he did not receive a response from RDIF.

The mentioned deficiency represents a breach of the provision 199. of the Law on General Administrative Procedure, which stipulates the segments a decision shall include, and that the explanation in the decision shall include: a short overview of

the complainant's request, the established facts, decisive reasons in deliberating evidence if required, reasons for dismissing any of the complainant's requests and legislative acts and reasons which, with consideration to the established facts, lead to a conclusion as given in the wording of the decision. The Law on Retirement and Disability Insurance, on the other hand, stipulates that rights related to retirement and disability insurance which are exercised through the RDIF shall be granted in proceedings as prescribed by the law regulating the general administrative proceedings. Following the instigation of proceedings by the Protector of Citizens, the directorate of the RDIF passed an unambiguous and properly justified decision which contained all the required segments as stipulated by the law.

### *Failure to Provide Assistance to a Lay Client*

It often happens that the RDIF staff does not provide all required expert assistance to lay clients, they behave in a rude and unprofessional manner and thus act in contravention of the principles of good administration, thereby aggravating further the client's situation.

**Example:** *Instead of providing assistance, RDIF officer gives pieces of advice*

A female citizen addressed a complaint to the Protector of Citizens regarding the performance and conduct of the branch office in Kruševac. According to the points she made in her complaint as well as the attached documentation, the complainant had been invited to come in order to arrange terms of pension payments, based on the final decision on retirement she had received in 2010. On that occasion, as she claims, she was told that she was in debt by 230,000.00 RSD and that 10% would be deducted from her pension until the debt is settled. The complainant further stated that she addressed the branch office seeking assistance as she is in no situation to return the incurred debt, but the reply she received was that she must return the debt. She also pointed out that the officer in the branch office explained to her that she should not lodge a complaint as now she had received "the accurate amount of the pension", and for that reason she did not lodge a complaint against the decision of 2010. According to the points in the complaint, in the branch office she had been told that she could look at the new circumstances as if "she had received an interest-free loan, which no bank would ever give her", and since she has a husband who also receives pension, the amount in the instalments could even be increased, so she could pay off her debt as soon as possible! This represents a breach of the provisions of the Law on Retirement and Disability Insurance which stipulate (Article 88) that the Fund shall be obliged to provide expert assistance in proceedings concerning the exercise of rights pertaining to retirement and disability insurance and for ascertaining insurants' and beneficiaries' years of pension contribution. The principle of providing assistance to a client is also stipulated in the Law on General Administrative Proceedings in the provisions of Article 15 which states that the body conducting the proceedings shall ensure that ignorance or lack of skills of a party or other participants in the proceedings be not to the detriment of their rights to which they are entitled by the law.

### *Payment of Pensions Earned Abroad by Citizens of Serbia*

During the year of 2010, the Protector of Citizens was approached by citizens complaining against problems in payment of pensions they had earned working abroad, especially in the countries from the region.

**Example: Pensions from B&H**

During the years of 2009 and 2010, the Ombudsman continually received and took action upon a number of complaints by natural persons (16) and the Refugee and Internally Displaced Persons Association in Serbia, and the Association of Pensioners who acquired rights in Bosnia and Herzegovina in the Republic of Serbia, which related to problems concerning the application of the Law on Ratification of the Agreement on Social Insurance between the Federal Republic of Yugoslavia and Bosnia and Herzegovina. In the implementation of the above Agreement, one third of pension payments was suspended for pension beneficiaries who had earned a portion of their years of pension contribution in Bosnia and Herzegovina, in order to settle overpaid pension amounts between the insurers of the signatory states.

The received complaints state that the above mentioned Agreement violates the basic principles of rule of law – legal certainty, prohibition of retroactive application of the law, principle of irrevocability – whereas the re-determination of pension, i.e. suspension of one third of the pension, decreased drastically the amounts of pensions and jeopardised people's ability to make ends meet. It should also be emphasised that, after enjoying the right to pension in a certain amount of money for a protracted number of years, this right has become an acquired right which enjoys protection.

Having instigating procedures, the Protector of Citizens obtained information from the RDIF relevant for each individual case and for assessing the regularity and legality of this body's performance, and also participated in numerous activities of competent state bodies in order to find a solution. Simultaneously, a constitutionality assessment procedure was conducted before the Constitutional court regarding Article 2 of the Law on Ratification of the Agreement on Social Insurance between the Federal Republic of Yugoslavia and Bosnia and Herzegovina. As a result of all listed activities, a document was signed in Belgrade on amendments to that Agreement, whereby further deductions of one third of pensions for pensioners who had earned a portion of their years of pension contribution in Bosnia and Herzegovina was discontinued. The signing of this document solved the problem of nearly 15,000 pensioners with combined Serbian-Bosnian pensions, and its coming into effect on 1 July 2010 ensured payment of full amounts of pensions for these pensioners. Nevertheless, even after the signing of the above mentioned agreement, individual complainants (a total of three) informed the Protector of Citizens that one third of their pensions continues to be deducted in their pension payments; therefore a procedure for resolving these complaints is still ongoing.

#### **1.4. Deficiencies in the Implementation of the Judicial Reform**

The Protector of Citizens received a complaint from 178 applicants to the Call for Applications announced by the High Judicial Council for general (re)election of judges in 2009. They expressed their dissatisfaction with the fact that legal acts by which decisions were made regarding their rights did not include justifications, i.e. statement of concrete reasons why the non-elected judges had ceased to hold their judgeship, instead, identical explanations were written for all of them with a note that they did not meet the criteria to be elected to the courts for which they applied. Judges also had objections to the missing instructions on legal remedy in the decisions passed by the High Judicial Council, despite the fact that current legislation prescribes the right to appeal in cases of cessation of judgeship, and objections were also

made against the disregard of the need for proportional representation of persons belonging to national minorities in courts located in areas populated by minority communities.

As the submitted complaints related to the violation of principle of good administration, this body informed the High Judicial Council about instigating a procedure for assessment of regularity and legality of its performance. Based on the received explanation, the Protector of Citizens ascertained omissions in the performance of the High Judicial Council in the general (re)election of judges procedure, consisting of: denying the candidates who previously discharged the function of a judge the opportunity to provide explanation on circumstances which contravene the legally prescribed assumption that they do meet criteria and requirements to be elected; withholding a substantive and concrete particulars on the reasons why they had not been elected; withholding instructions on legal remedy, as well as fragmentary implementation of the final acts of the Commissioner for Information of Commissioner for Information of Public Importance and Personal Data Protection, and lack of efficient and well-conceived measures for assuring proportional representation of persons belonging to national minorities in courts located in areas which they populate. A recommendation was submitted to the High Judicial Council to redress the identified omissions in its work.

Even after the expiration of the deadline prescribed by the law, the High Judicial Council failed to meet its legal duty to inform the Protector of Citizens on the implementation of the expressed recommendation, or of the reasons why it did not act upon it. Considering that the identified omissions bear influence on the enjoyment of rights of not just complainants but also other candidates who participated in the (re)election process, appreciating the scope and nature of the omissions committed and the importance of heeding the recommendation for respecting citizens' rights, the Protector of Citizens informed the National Assembly of the Republic of Serbia, the Government of the Republic of Serbia and the general public about the High Judicial Council's failure to fulfil its legal duty.

The omissions identified by the Protector of Citizens were also confirmed by the European Commission with its statement that there were "serious omissions" in the process of re-election of judges and prosecutors, despite the progress achieved in the area of fulfilling political criteria in the process of accession of Serbia to the European Union.

### **1.5. Issue of Entering Personal Data into Public Documents in the Serbian Cyrillic Script**

The law and other legislative acts regulate particular issues of entering a person's name and surname into public documents in the Serbian Cyrillic script. The Protector of Citizens established that this right has been enjoyed not without difficulties. A good illustration of this was a procedure instigated upon a request of a citizen who, despite the fact that he met all legally prescribed requirements and submitted valid documents in his application for passport issuance, he was not able to enjoy his right to have his name and surname written in the Serbian Cyrillic script in the passport. After he approached the Protector of Citizens, the case was concluded favourably and represents a precedent in the practice of passport issuance in Serbia. The Protector of Citizens established that the Ministry of Interior does possess technical capacity to enter names and surnames of citizens into passports in the Serbian Cyrillic script and that the Law on Passports envisages this right, therefore this obviously is a matter of omissions in the performance of police directorates and stations, whose administrative staff are not sufficiently familiar with the procedure and technical capacities of the new system of passport issuance.

## 1.6. Complaints Coming from the Area of the Autonomous Province of Kosovo and Metohija

The Protector of Citizens does not have the possibility to take direct action in the whole area of the Province of Kosovo and Metohija (K&M), which is under international control. Regardless of that, the Protector of Citizens strives to assist citizens of Serbian, Albanian and other nationalities from K&M who approach him, as much as circumstances allow it, starting from the standpoint that, according to the Constitution of Serbia, it is a part of our country, and also from the standpoint that human and citizens' rights are universal. The majority of complaints relates to enjoyment of rights pertaining to pension and disability insurance, as well as labour rights.

### *Complaints Against the Performance of the Republic of Serbia Retirement and Disability Insurance Fund (RDIF)*

The Protector of Citizens received a fair amount of complaints from citizens who had previously had domicile, i.e. permanent place of residence, on the territory of the Province of Kosovo and Metohija, whose pension payments were suspended in 1999, while, according to their allegations, they had not been informed of the reasons for suspension of pension payments by any official notice of a competent body.

Several meetings were held with the representatives of the Republic of Serbia Retirement and Insurance Fund, with the aim to facilitate effective and expeditious enjoyment of citizens' rights. Despite the good will displayed by the representatives of RDIF, subsequently received complaints from citizens relating to identical problems indicate that the situation has not changed. In the year of 2010 alone, there were 31 complaints received relating to this issue.

#### **Example:** *Missing information on reasons for suspension of pension payment*

The complaints state that the complainants had approached the Fund on several occasions in order to obtain information on reasons for suspension of pension payments and that they had submitted requests for continuation of payments, upon which no action was taken. In the mentioned cases, the Protector of Citizens instigated procedures for performance control of RDIF and sought explanation on all relevant data. In providing explanation on the mentioned complaints, the office of the RDIF Directorate informed the Protector of Citizens that, related to those cases, they did provide a Conclusion on provision of evidence, which complainants were obliged to heed and submit all requested data so as to enable the RDIF to conclude the procedures.

Bearing in mind that, to this office's knowledge, the RDIF did not resume pension payments even after its requests stated in the mentioned Conclusion were met, additional explanation was sought about reasons for such action, or rather for not taking action. The Protector of Citizens was informed that the requests for continuation of pension payment cannot be met because the documentation submitted by the clients to the RDIF as per instructions in its Conclusion, cannot be verified. At the same time, the Protector of Citizens was informed that the RDIF acted in accordance with the standpoint of the line Ministry, which is pension payments shall not be made to beneficiaries from K&M because the source of income had ceased, since pension contributions are no longer made from that area. It was also emphasised that the RDIF has no possibility of cooperation with the newly established institutions in K&M.

During the year of 2010, the Protector of Citizens also received several complaints where complainants point at the fact that they are unable to exercise their rights because the RDIF does not possess data on paid contributions for years of service spent in K&M (for example, request for pension was dismissed on grounds that data on the years of service and earnings does not exist, the request for claiming the right to pension was not deliberated because the above data does not exist).

Following the instigation of performance control procedure of RDIF, the Department for Internal Control and Judicial Practice informed the Protector of Citizens that data on years of service earned in K&M are undergoing a check, i.e. that data on years or service and earnings from K&M had not been found on the microfilms, and that until they are found and verified, they cannot be entered into the data base.

### *Complaints Related to Enjoyment of Labour Rights*

In the year of 2010, the Protector of Citizens received three complaints against the performance of the Basic Court in K..., in which 10 temporarily unassigned employees, whose employment was terminated upon expiration of the 'unassigned period', complain against the actions of the above mentioned institution concerning the enjoyment of their rights stemming from employment status.

The complainants were requested to supplement the complaint by an explanation on legal remedies of which they had made use, as well as on any work they did during the period they were unassigned to any specific post for a salary compensation in the amount of 65% of the basic salary, which was a practice done in some courts in the country.

The acting president of the Basic Court in K... was requested to provide information on allegations stated in the complaints, which were and which refer to the decisions made by the Committee of the High Judicial Council on assigning employees to specific job posts, in accordance with which she had been acting.

These cases still remain open.

### *Complaints of Internally Displaced Persons Related to the Performance of Civil Registry Offices*

The complaints relate to the General Administration and Joint Affairs Section of the city of K... failing to take action on requests made by 561 internally displaced persons from K&M and submitted between October 2008 and July 2009 for issuance of certificates from register books, reconstruction of registry books and subsequent entry of records, as well as to the Ministry of Public Administration and Local Self-government failing to take action upon requests for oversight procedure.

The Protector of Citizens initiated a procedure for control of regularity and legality of the line Ministry's performance, and found that there were no omissions which would point at delays in the performance of this administrative body, since the Ministry did conduct an extraordinary inspection which ascertained that by 6 August 2009 (before complaints were filed to the line Ministry and to the Protector of Citizens) the City Administration of the city of K... had already made final decisions on 404 requests, while other requests could not be solved due to incomplete data and documentation submitted in their support or due to the complexity of the procedure of reconstructing registry books.

### *Acting on Own Initiative*

The Protector of Citizens was approached by citizens who were previously employed with UNMIK. According to their allegations, based on the Conclusion of the Government of the Republic of Serbia of 17 April 2008, twenty-four employees were taken over from UNMIK by the Tax Administration. They also claimed that the Tax Administration concluded special service agreements with them in the duration of 90 working days and that the contracted time expired on 19 May 2009.

Acting on his own initiative, the Protector of Citizens initiated the proceedings for control of regularity and legality of performance of the Tax Administration and of the competent Ministry. During this procedure, it was established that the competent Ministry and the Tax Administration did take measures aimed at resolving the employment status of the citizens who had been employed by UNMIK, as well as efficient implementation of the Government's Conclusion dated 17 April 2008. The proceedings were discontinued since the Tax Administration, in cooperation with the competent Ministry, continued taking actions aimed at finding a definite solution of the status of the mentioned citizens, by offering them a fixed-term employment.

It was also underlined that, as a results of the efforts taken, the Government of the Republic of Serbia adopted a Decision on amendment of the Decision on the maximum number of employees in state authority bodies, public agencies and organisations for mandatory insurance dated 26 October 2010, thereby increasing the number of permanently employed staff in the Tax Administration by 20, and that currently under way are also proceedings for adoption of respective amendments of by-laws on internal organisation and job classification within the Ministry of Finance – Tax Administration, which would facilitate a definite solution to this issue.

## 2. RIGHTS OF PEOPLE DEPRIVED OF LIBERTY

During the year of 2010, in the complaints filed on his own initiative, the Protector of Citizens controlled the respect of rights of people deprived of liberty, and aiming at improving the protection of rights of such people he developed an institution monitoring system and paid numerous visits to police stations, penitentiary institutions as well as social and psychiatric care institutions.

### 2.1. General Remarks

In the upcoming period, Serbia will have to tackle the essence of the issue of the position of people deprived of liberty and of the protection of their rights, i.e. acceptance and implementation of standards which warrant that restriction of the rights of people deprived of liberty shall be minimal, necessary and proportional to the legitimate aim.

In the year of 2010, the Protector of Citizens took action in 230 cases related to the violation of rights of people deprived of liberty, of which 169 were submitted complaints, 23 were proceedings started on his own initiative, and 38 were proceedings transferred from the previous year. The highest number of complaints was submitted either directly or via an attorney-in-fact by persons serving a prison sentence, detained persons and persons in police custody. Some of the complaints were submitted, or relayed, by non-governmental organisations, other state authorities and independent agencies, the Provincial Ombudsman and the municipal or city protectors of citizens. The highest number of complaints was related to health care, housing and hygiene, food, ranking, transfers, the right to work, the right to be informed and the right to legal counsel, irregularities in the conduct of proceedings, ungrounded deprivation of liberty, and in several cases allegations were made of torture and maltreatment.

In the year of 2010, in the area of the rights of persons deprived of liberty, the Protector of Citizens concluded proceedings in 177 cases and compiled a total of 15 recommendations, of which four concern more than one state body, as well as over 100 suggested measures for eliminating deficiencies in the performance of: the Ministry of Interior, Čukarica Police Station, the Directorate for Enforcement of Penal Sanctions, the penitentiary-correction institutions in Niš, Čuprija, Sombor and Šabac, as well as district prisons in Belgrade, Novi Sad, Zrenjanin, Pančevo, Subotica, Novi Pazar, Leskovac and Prokuplje.

During 2010, the Protector of Citizens organized 34 control and monitoring visits to police stations, institutions for enforcement of penal sanctions, as well as institutions for social and psychiatric care. Some of those visits were announced, and some, in accordance with the authority vested in him as the Protector of Citizens, were unannounced.

Visits were paid to: the Special Prison Hospital in Belgrade (January), Belgrade District Prison (February), Kruševac District Prison, Novi Pazar District Prison, Juvenile Correctional Facility in Kruševac, Kragujevac Police District, Novi Pazar Police District (March), Savski Venac Police Station, Detention Facility of the Belgrade District Prison within the Palace of Justice in Belgrade, Gornja Toponica Special Hospital, Belgrade District Prison (April), Novi Beograd Police Station, Padinska Skela Penitentiary-Correctional Institution (May), Niš Penitentiary-Correctional Institution, Ruma Police Station (June), Sombor Penitentiary-Correctional Institution, "Dr. Nikola Šumenković" home for children and persons with developmental disabilities in Starnica, Subotica District Prison, Sremska Mitrovica Penitentiary-Correctional Institution, Subotica Police Station, Sombor Police Station (July), Prokuplje District Prison (August), Zrenjanin

District Prison (September), Belgrade Metropolitan Police District, Bujanovac Police Station, Vranje District Prison, Kragujevac Police District (October), Leskovac District Prison, Penitentiary-Correctional Institution Čuprija, „Laza Lazarević“ Special Hospital (November), „Moja Oaza“ nursing home, Penitentiary-Correctional Institution Šabac, Čukarica Police Station, Novi Sad District Prison (December).

An overview of the main observations concerning the respect of rights of persons deprived of liberty.

## 2.2. Police Custody

In acting upon complaints as well as during the course of direct oversight over police performance and their conduct towards arrestees and persons taken in police custody, the Ombudsman did not come across any significant transgressions in relation to enjoyment of the right to legal representation, use of mother tongue, telephone call to the family, medical examination, nor of the right to be brought before the court having jurisdiction over the case within 48 hours from the moment of deprivation of liberty.

In acting upon complaints as well as during the course of direct oversight of police performance and their conduct toward arrestees and persons in police custody, the Protector of Citizens did not come across any significant transgressions related to enjoyment of the rights to legal representative, use of one's mother tongue, telephone call to one's family, medical examination, nor of the right to be brought before a competent judiciary authority within 48 hours from the moment a person was deprived of liberty.

In several cases, the Protector of Citizens pointed at inhumane and humiliating treatment of arrestees by police officers. The above stated is to a great extent a consequence of serious deficiencies in housing capacities for police custody. The necessity for improving the existing situation has been pointed out in the recommendations, reports to competent bodies and public statements made. The competent police authorities did not contest the identified flaws, or the necessity of providing adequate housing capacities, however they pointed out that there are no developed action plans or funds allocated for that purpose.

A large number of police stations do not have separate facilities for holding persons in police custody. Persons deprived of liberty are held in offices, or are placed in detention facilities within prisons upon the public prosecutor's warrant.

It is the standpoint of the Protector of Citizens that an end must be put to the practice of hours-long and especially whole-day long holding of persons in police custody in offices and other premises not intended nor meeting conditions for that purpose. There is no justification for keeping people in offices in police stations for longer than several hours.

Justifications for placing persons who have been taken into police custody into detention facilities in prisons have been provided in that it would be expected that they would have better housing conditions there. Escorting and placing people who are effectively in police custody into prison detention facilities creates numerous organisational problems and safety risks for the police. Besides that, detention facilities in prisons are overcrowded, and they also do not have sufficient numbers of prison guards.

Some police stations have separate facilities for keeping persons in police custody, but they often do not meet the minimum standards. Keeping people in such premises could be characterised as humiliating treatment, in some cases even maltreatment.

**Example:** *Suicide of a person in police custody in the Čukarica police station*

The Protector of Citizens established that the premises used for keeping people in police custody in the Čukarica police station in Belgrade are completely inadequate and recommended that people not be kept in police custody in that police station until premises satisfying current standards are provided there.

On his own initiative, the Protector of Citizens initiated proceedings for the control of legality and regularity of performance in the Čukarica police station regarding the case of M.J. who was found dead in the police custody premises on 2 December 2010.

During the visit to this police station, it was noted that the premises which had been used for police custody are completely inadequate, in a bad condition, small, with low ceilings, with no windows or any other source of daylight, unventilated, with no direct source of fresh air, heating, blankets and mattresses, with no toilet or running drinking water, with no alarm (button for calling the guards), no space for spending time in the fresh air and with no video surveillance. Besides all the above listed, there were items in the room which could serve as a tool for self-infliction of harm, including a metal hook placed at an approximately 2 meter height, which M. J. used to commit suicide by hanging.

Several-hour long holding of people in inadequate premises represents a violation of the right to a humane treatment of persons held in police custody and jeopardises their person and dignity. Premises intended for holding people in police custody must not contain any items which could serve for self-harm of the person held in custody.

The Protector of Citizens recommended that persons no longer be held in police custody in the Čukarica police station until premises satisfying the current standards are equipped there. A request was made to the Police Directorate of the Ministry of Interior to make an action plan with activities and measures to be taken, precise deadlines, in order to ensure an adequate number of premises in that police station intended for keeping people in police custody and meeting current standards.

### **2.3. Detention**

In the Republic of Serbia, detention is carried out in detention facilities of penitentiary institutions, which have insufficient capacities for housing the existing number of detainees. Placing detainees into overcrowded and unsuitable premises can be seen as humiliating treatment, even as maltreatment in some cases. Besides that, it has been noted that, for suspects, circumstances accompanying enforcement of detention often represent a punishment of sorts before the trial begins.

The Protector of Citizens deems that broadcasting video records of arrests of suspects and protracted detention are not the right means of fighting against crime and that solutions should be sought in efficient and well-conducted judicial proceedings, preemptive activities (among others, by bringing humanistic content back into the curricula) and effective resocialisation of criminal offenders.

It has also been observed that period visits to detainees by the competent court staff are superficial, which is also corroborated by lack of data on informing the ministry in charge for justice on any irregularities noted during visits to detention facilities. It has been observed that juvenile judges do not pay regular visits to detained juveniles in their charge, nor do they decide on their placement together with adult persons.

**Example: Placement of a juvenile in detention**

The Protector of Citizens established that in some penitentiary institutions juvenile detainees are placed in same rooms – dormitories with adult detainees, without an order of a competent juvenile judge to that effect.

As reason for such illegal action, it was stated that institutions lack sufficient capacities for separate placement of juveniles. Besides that, it was stated that the number of detained juveniles is relatively small and that they would mostly feel lonely, which would after a protracted period of time lead to damaging consequences in the development of the detained juveniles' personality.

Lack of housing capacities cannot serve as a justification for violating the rights of juvenile detainees. Placement of juveniles in detention is regulated in detail by laws and by-laws.

It is imperative that the norm of placing juveniles separately from adults in detention is observed, with the exception that, in certain conditions, a judge may approve their placement with adults as well.

Juvenile detainees cannot be placed together with adults persons without a decision by a competent juvenile judge, who is authorised to do so and who possesses appropriate knowledge and a licence to make such decisions. In deliberating on such a decision, the competent juvenile judge shall take into consideration the personality traits and needs of each juvenile detainee.

The Protector of Citizens established that the right of juveniles to have a juvenile judge decide on their placement in detention together with adult persons were violated in the Novi Sad District Prison and in the Šabac Penitentiary-Correctional Institution, and made a recommendation that juvenile detainees be placed in the same room with adult detainees in the detention sections of these institutions solely on the basis on a decision made by a competent juvenile judge. The Directorate for Enforcement of Penal Sanctions informed the Protector of Citizens that they have undertaken required measures to the effect of heeding his recommendation.

## 2.4. Prison

There are 28 penitentiary institutions in Serbia housing detainees, convicted persons and minor offenders sentenced to imprisonment, persons sentenced to juvenile imprisonment or mandatory psychiatric treatment and guarding in a health institution, mandatory treatment of drug addicts, mandatory treatment of alcoholics, as well as a correctional measure of committing into a correctional institution.

In the past 10 years, the number of such persons has doubled, which is among other reasons the result of a stricter penal policy and of the increased use of the detention measure. However, that was not followed respectively by construction of required housing capacities. There were also expectations that introduction of alternative measures and sanctions, which started in Serbia in 6 years ago, would lead to alleviation of congestion in prisons.

Currently, estimates are that all penitentiary institutions in Serbia together can take in approximately 7,000 persons. In 2010, they were populated by 11,500 persons on the average, which points at lack of room for approximately 4,500 persons. According to the current

legislation and standards, prescribing that at least four square meters is ensured per person in a dormitory, incarceration capacities in Serbia need to be increased by approximately 20,000 square meters.

In 2010, the Government of the Republic of Serbia adopted a Strategy for alleviating congestion of penitentiary institutions between 2010 and 2015. Although the Protector of Citizens welcomes the adoption of such a document, he remains concerned as to whether the envisaged measures will indeed facilitate alleviation of congestions in those institutions to such extent so as to ensure that housing and other living space for all persons deprived of liberty would conform to the current legislation and standards.

In acting according to complaints and based on the monitoring visits organised in 2010, the Protector of Citizens identified numerous failings in the performance, i.e. deficiencies in housing capacities and other living conditions in penitentiary institutions:

- Some persons deprived of liberty (mostly detainees) do not have a separate bed but instead sleep on mattresses which are laid down on floors before sleeping time, and in some institutions bed bunks are mounted on three “floors”;
- A large number of dormitories is dilapidated and damp, some of them do not have direct inflow of fresh air or natural light, instead it comes through a shared corridor, and artificial light is mostly insufficient;
- A large number of persons deprived of liberty are not provided sufficient time in fresh air. Time spent outside often lasts for half an hour a day, although regulations require a minimum of two hours. This is primarily a consequence of lack of enough space for taking a walk. Those spaces are mostly unsheltered, which prevents making use of them during precipitations. Also, by and large there are no adequate conditions for physical exercise;
- Insufficient housing capacities render it impossible to separate inmates as prescribed by the rules, depending on their previous criminal records and the committed offences. Juveniles are placed together with adults without proper decisions passed by competent juvenile judges. Those convicted of minor offences are not separated from those convicted of criminal offences. Joint housing of inmates classified in different correctional groups prevents their adequate treatment and renders largely futile the very purpose of criminal sanctioning;
- Convicts are dissatisfied with the activities of correction officers, i.e. absence of individual and collective work;
- The food is mostly unvaried, does not include sufficient amounts of fresh fruit and vegetables, milk and dairy products. It has been observed that in some institutions, in the absence of the cook, the cooking is done by a convict;
- Medical examinations upon arrival to the institution are arbitrary, there are no medical protocols, laboratory tests are not performed. Mandatory periodic medical examinations of convicts in prescribed intervals of less than three months are not conducted at all. There are no patient rooms in a large number of institutions, and in some of them the outpatient facilities are grossly inadequate. In many institutions, the presence of a medic is reduced to insufficient two hours a day, and on weekends and holidays there are no medics in the institutions at all. It is common practice that medical therapies are administered by non-medical staff;

- Educational activity is minimal. A large number of persons deprived of liberty is not engaged in labour activity, so they spend their time doing nothing;
- It has been noted that instead of pronouncing disciplinary and special measures, in the prescribed proceedings it is often resorted to an informal punishment – transfer to a worse accommodation;
- Persons with disabilities are mainly not provided with the accommodation that suits their needs. In most institutes the premises and toilet facilities have not been adjusted, there are no access ramps and doors are too narrow for their wheelchairs. Generally, the assistance to these persons has not been clearly established;
- Although a regulation was passed in 2010 on the protection of population from tobacco smoke, as well as the rulebook on house rules in institutions where smoking is prohibited in dormitories, it often happens that a non-smoker is accommodated together with 10 persons who smoke in the dormitory, which is particularly problematic in dormitories lacking a direct source of fresh air;
- Social support to persons deprived of liberty is almost non-existing, their position is additionally burdened by insufficient provision of social support to families, in particular to children;
- Separate discharge units have not been envisaged in the institutions. The programmes developed for the purpose of providing assistance to the convicted after their discharge are unrefined. Upon discharge, the convicted are not provided with the efficient social support, they are left to themselves, which, as they are persons not adequately adjusted to life outside the prison cell, increases the risk of committing another criminal offence very shortly afterwards.

The Protector of Citizens has forwarded to the competent bodies a number of recommendations and measure proposals for the purpose of eliminating the identified shortcomings in the work and/or violation of rights of persons deprived of liberty.

**Example: *Right to a separate bed***

The Protector of Citizens established that in particular institutions for enforcement of penal sanctions, a great number of persons deprived of liberty did not have a separate sleeping place, i.e. bed, but slept on mattresses laid on the floor instead.

Based on a number of complaints and direct observation during the visits to the Penal-Correctional Institution in Niš and district prisons in Belgrade, Novi Sad, Pančevo and Kruševac, the Protector of Citizens established that rights of some persons deprived of liberty on the appropriate accommodation, had been violated, pursuant to applicable regulations specifying that each person convicted shall be provided with a separate bed, including mattress and bed clothes.

It is indisputable that institutions for enforcement of sanctions are faced with the problem of over-crowdedness and a lack of material resources, but it may not be a justification for violation of the right established in the law and in accordance with the applicable standards.

Denial of the right to a separate bed is a violation of the right and an inadmissibly degrading treatment of a person deprived of liberty.

In order to correct the shortcomings in the work, the Protector of Citizens made a recommendation that all persons deprived of liberty be provided with a separate bed, so that, in the future, none of the convicted or detained persons in the said institutions would sleep on mattresses laid on the floor. The Administration for Enforcement of Penal Sanctions informed the Protector of Citizens that all necessary measures had been undertaken to act upon the recommendation.

**Example:** *Right to spending time in fresh air*

The Protector of Citizens established that in a number of institutions for enforcement of penal sanctions, persons deprived of liberty were not provided with a possibility to spend, in their free time, at least two hours per day outside the prison premises.

During the visits to district prisons in Belgrade, Novi Sad, Pančevo, Subotica, Zrenjanin, Leskovac, Novi Pazar, Kruševac, Prokuplje and in detention wards of penal-correctional institutions in Sombor, Niš and Čuprija, the Protector of Citizens established that some persons deprived of liberty were provided with a possibility to spend, in their free time, half an hour to one hour per day outside the prison premises.

The problem of over-crowdedness and the lack of prison yards for walking in institutions does not justify the violation of right of persons deprived of liberty. Denial of the right of persons deprived of liberty to spend, in their free time, at least two hours per day outside their prison cells is a violation of their right stipulated by the law.

In order to eliminate the shortcomings, the Protector of Citizens forwarded a recommendation to the Administration for Enforcement of Penal Sanctions to provide the conditions necessary for the exercise of the right of persons deprived of liberty to spend, in their free time, at least two hours per day outside their prison cells. The Administration informed the Protector of Citizens that all necessary measures had been undertaken to act upon the recommendation.

**Example:** *Special room for the accommodation of sick persons deprived of liberty*

The Protector of Citizens established that particular institutions for enforcement of penal sanctions lacked the rooms intended for the separation of the sick, resulting in the fact that during illness, they share the premises with other healthy persons deprived of liberty.

The institution is obliged to provide the convicted with all the conditions necessary for the exercise of health protection stipulated by the law and is also obliged to designate a separate room for the separation of the sick convicts, i.e. the room for patients. The room needs to be sufficiently spacious, have both natural and artificial light, be well aerated, clean, warm and equipped with the relevant sanitary facilities, hot and cold water.

The lack of a separate room intended for the separation of the sick in institutions for enforcement of penal sanctions is a shortcoming to the detriment of the right of persons deprived of liberty to health protection.

In order to eliminate the shortcomings, the Protector of Citizens forwarded a recommendation to the District Prison in Kruševac, District Prison in Pančevo,

District Prison in Novi Sad and Penal-Correction Institution in Sombor to designate a separate room for the accommodation of the sick persons deprived of liberty. The Administration for Enforcement of Penal Sanctions informed the Protector of Citizens that all necessary measures had been undertaken to act upon the recommendation.

**Example:** *Accommodation conditions for persons with disability serving the imprisonment sentence*

The Protector of Citizens established that in particular institutions for enforcement of penal sanctions, the persons with disabilities, who need to use a wheelchair to move around, were not provided with the accommodation and other living conditions appropriate to the type and extent of their special needs.

Acting upon the complaint pertaining to the treatment of the person with special needs, the Protector of Citizens performed supervision over the work of the District Prison in Novi Sad. It was established that the convicted D.B., a person with disability, who needs to use a wheelchair to move around, was not able to use the toilet facilities in the dormitory where he is accommodated, because the entrance door was not wide enough. In addition, there are no toilet or sanitary facilities at the institution, adjusted to the needs of persons with disabilities. The previously specified situation led to a denial of exercise of the convicted D.B.'s basic rights, placing him in an unequal position when compared to other convicts.

Persons with disabilities in detention, serving the imprisonment sentence or other security measure have a right to accommodation and other living conditions appropriate to the type and extent of their special needs.

A recommendation was made that the convicted D.B. be provided with the accommodation and other living conditions appropriate to the type and extent of his special needs, by providing him with an accommodation in a special dormitory on the ground floor, with the toilet and sanitary facilities adjusted to his needs, door of adequate width and an access ramp to ensure his smooth movement in a wheelchair and going out of the prison cell. The Administration for Enforcement of Penal Sanctions informed the Protector of Citizens that all necessary measures had been undertaken to act upon the recommendation.

## 2.5. Inpatient Social and Psychiatric Institutions

Inpatient social and psychiatric institutions in Serbia are generally too large, overcrowded and ruined. The inpatient social institutions providing accommodation to persons with mental diseases and psychiatric hospitals represent asylums where these citizens are permanently segregated from the community of free people.

There is a strategy in Serbia to abolish the large inpatient social and health institutions. However, the system of alternative institutions, which would efficiently admit the previously mentioned persons and provide them with life outside these institutions, has not been developed at the level of local community. Additionally, there are no regulations pertaining to the status and rights of persons with mental diseases, who will still require accommodation in inpatient institutions in the period to come.

Although based on applicable regulations, hospitalisation of persons with mental diseases in psychiatric institutions without a court decision, on the basis of consent given by these persons, has proved disputable in practice. The issue of legal relevance of such statements is evident, as they are made by persons considered to be mentally ill, and there is also a principal issue of the scope of one's own consent to any form of freedom restriction.

Particularly problematic is the restriction of freedom of movement in public and private institutions providing the accommodation to the elderly (imposing prohibition to leave the institution, locking them up in dormitories etc.). Neither will a possible consent given by the family, one's own consent nor consent given by the guardian of the person incapacitated for work, constitute a valid legal grounds for permanent keeping of these persons in locked premises and/or in conditions of deprivation of liberty. Respecting the need to keep particular elderly people in these institutions, under particular circumstances and in their best interest, it must be stated that there is a lack of legal regulation of such situation and, certainly, a need to regulate it.

## **2.6. Other Activities**

### *Development of the Monitoring System*

Pursuant to the Decision on Establishing a Preventive Mechanism of the Protector of Citizens, as well as the Preventive Mechanism's Methodology, in 2010 the Protector of Citizens established the monitoring system in institutions providing accommodation to persons deprived of liberty.

In accordance with the goals and principles of acting, the established organization, phases of visit and distributed duties of all members of multidisciplinary teams, comprising legal officers, psychologists, forensic physicians and psychiatrists, a number of questionnaires was prepared that are systemically related to the report model.

The established monitoring system provides an efficient and complementary acting of all team members during a visit. Each team member, in each phase of the visit, has their specific task and acquires information from various sources: official data, visual observation, statements given by persons encountered and by insight into the documentation. The information is entered in questionnaires on the spot, referring, as a whole, to all relevant aspects pertaining to the status of persons deprived of liberty in the institutions. Subsequently, all the information entered in the questionnaire forms, based on the existing codes, will be distributed automatically to appropriate sections in the visit report.

Consequently, the established system provides an objective description of the situation in the report, which is inter-comparable to the situation in other institutions and appropriate for a statistical processing and drawing of general conclusions.

During 2010, in the field of protection of rights of persons deprived of liberty, the Protector of Citizens focused on providing a better accessibility of the institution of Protector of Citizens to persons placed in institutions for enforcement of penal sanctions.

For that purpose, booklets, or so-called flyers were prepared in Serbian, English and national minority languages, which provided a clear and graphically recognisable description of competences and powers of the Protector of Citizens, explaining, in particular, the manner and conditions under which persons deprived of liberty could address the Protector of Citizens in order to protect their rights.

The above-mentioned printed material, together with the complaint forms and envelopes ready to be sent, marked by a noticeable and recognisable poster, was displayed in most frequently visited locations in several institutions for enforcement of penal sanctions.

### *Cooperation With Administrative Authorities*

In the field of protection of rights of persons deprived of liberty, the Protector of Citizens carried out the control of legality and regularity of work, first of all, of the Ministry of Internal Affairs – Police Directorate and Ministry of Justice – Administration for Enforcement of Penal Sanctions.

The above-specified authorities fully cooperated with the Protector of Citizens and provided him with an unhindered work, access to all rooms, in particular those providing accommodation to persons deprived of liberty, unsupervised discussions with these persons, as well as with all employees. All requested information that were at disposal in these authorities were made available to the Protector of Citizens.

Recommendations forwarded to administrative authorities to eliminate the shortcomings in the field of rights of persons deprived of liberty are mostly of a systemic nature. The bodies the recommendations were forwarded to notified the Protector of Citizens, in due time, that they had undertaken or were in the process of undertaking all the necessary activities and measures in order to act upon the recommendations. In the future, the Protector of Citizens will pay special attention to acting of bodies upon the forwarded recommendations.

#### **Example:** *Right to vote of persons deprived of liberty*

The Protector of Citizens detected that persons deprived of liberty were not provided with the opportunity to vote in the local elections held in May 2008.

The citizen G.K. addressed the Protector of Citizens in a complaint in which he specified that while he was detained in the District Prison in Belgrade, he had not been provided with the opportunity to vote in the election of councilors in the Municipal Assembly of Stari Grad, held on 11 May 2008.

In the conducted proceedings, it was established that in the local elections held in May 2008, persons deprived of liberty had not been provided with the opportunity to vote. Unlike other local electoral commissions, the City Electoral Commission of the City of Belgrade and Municipal Electoral Commission of the City Municipality of Stari Grad, envisaged the organisation of election in institutions for enforcement of penal sanctions. For that purpose, they addressed the Administration for Enforcement of Penal Sanctions in due time, with a request for delivery of information about the voters placed in detention or serving the institution sanctions. This Administration failed to deliver the information sought, which made it impossible to organise the local election in institutions for enforcement of penal sanctions. The reason, specified by the Administration, for failing to act upon the request of electoral commissions was that there were no organisational and security prerequisites in the institutions for enforcement of penal sanctions required for the organisation of local elections. The above-specified is in full non-compliance with the fact that the local elections were efficiently organised in 2004, pursuant to the same regulation-  
An omission in the work of the Administration for Enforcement of Penal Sanction

was established, as it failed to act upon the requests of electoral commissions to deliver the requested information, which directly lead to the violation of citizens' rights. It was established that in the local elections held in May 2008, the active right to vote of persons deprived of liberty placed in institutions for enforcement of penal sanctions was violated, because they had not been provided with the opportunity to vote. In addition, the issue was raised regarding the exercise of the right of all other persons deprived of liberty to vote in local elections – not only those placed in institutions for enforcement of penal sanctions, but all persons under any form of confinement, primarily those in inpatient social and health (psychiatric) institutions.. The Constitution and Law on Local Elections stipulate that an active right to vote shall be granted to all adult citizens of the Republic of Serbia who are incapacitated for work, without exceptions and regardless of whether they are on the loose or, in institutions for enforcement of penal sanctions or in other inpatient institutions.

The Protector of Citizens forwarded a recommendation to the specified electoral commissions and Administration for Enforcement of Penal Sanctions to inform the competent Ministry of Public Administration and Local Self-Government on the difficulties encountered in the process of implementing and ensuring the conditions for organisation of local elections. A recommendation was forwarded to the Administration for Enforcement of Penal Sanctions to provide the electoral commissions with all requested information in due time in the future. Administrative authorities that the recommendations were forwarded to, informed the Protector of Citizens that all necessary measures had been undertaken to act upon the recommendation.

In the following elections, the Protector of Citizens will monitor the effects of the measures and activities undertaken.

In order to ensure a systemic and permanent solution to evident problems pertaining to the exercise of an active right to vote of persons deprived of liberty, the Protector of Citizens forwarded an initiative to the Ministry of Public Administration and Local Self-Government, as the body competent for the public administration activities pertaining to election of local self-government bodies and the holder of preparation of the Draft Law on the Election of Councillors, to improve the legal framework for the exercise of an active right of persons deprived of liberty to vote in the local elections.

In addition to recommendations and a number of proposed measures for the elimination of shortcomings in the work of administrative authorities, the Protector of Citizens forwarded the opinions to competent bodies, for the purpose of improving human rights, and among others, in order to achieve a lawful and proper regulation of issues relevant for the prevention of torture, inhuman and degrading treatment.

**Example:** *Opinion of the Protector of Citizens regarding the request for chemical castration*

In the previous several years, the introduction of the penal sanction of chemical castration has been promoted by the media in Serbia. Such response to frequent cases of rape and pedophilia has been supported by statements of some of the state officials and a number of public figures. Such punishment has been claimed to be appropriate to the type and severity of the crime and to be applied in a number of countries.

In January 2010, the Protector of Citizens forwarded the opinion to competent bodies and the public, in which it was indicated that the introduction of chemical castration as a penal sanction, would be contrary to the Constitution of the Republic of Serbia, stipulating, in Article 25, the following: "Physical and mental integrity shall be inviolable. No one shall be exposed to torture, inhuman or degrading treatment or punishment, or subject to medical or scientific experiments without their freely given consent." It was referred to the position of the Council of Europe's Committee for Prevention of Torture, stating that surgical castration is a humiliating treatment and the call for a suspension of its application. The above-said, logically, applies to the chemical castration as well, if it is to be enforced without the full and freely given consent of the offender.

Human body and human organism may not be the subject of enforcement of penal sanctions. Punishments may take away or restrict people's freedom of movement or material goods, but may not change the hormones in their organism, because the integrity of organism is violated therewith.

Chemical therapy of sexual offenders is applied in some countries instead of an imprisonment, while in others it represents a therapeutical measure for persons serving the imprisonment sentence. In both cases, its purpose, together with other measures, such as psychotherapy, is to contribute to a resocialisation of the offender. In any case, such measure needs to be voluntary.

The Protector of Citizen's position is that the issue of a voluntary chemical therapy, as a special measure of treatment, and not punishment for rapists and pedophiles, indeed needs to be raised and discussed at the expert level, accompanied in particular, with the analysis of the "chemical castration" effects in cases where it is applied. Its application is reasonable under the condition that it is restricted to a precisely determined profile of sexual offenders – persistent offenders and only provided that the offender has consciously accepted it as a measure necessary for his treatment and suppression of his sexual drive, which he is unable to control.

The Protector of Citizen's opinion is that chemical castration should not be introduced in Serbia as a penal sanction for rapists and pedophiles. Furthermore, without touching on the general penal policy of the legislator, the Protector of Citizens is of the opinion that it is necessary to modify the practice of courts when deciding on the length of sentence for sexual offenders, which have, so far, been pronounced at the level of mandatory minimum in a large number of cases, and often even below that minimum.

### 3. GENDER EQUALITY AND RIGHTS OF SEXUAL MINORITIES

Serbia has finally obtained the long awaited systemic documents relevant for the institutional regulation of gender equality: the National Strategy for Improvement of the Position of Women and Advancement of Gender Equality and the Law on Gender Equality. However, the sphere of gender equality is still much more characterised by the violation of individual rights of women, rather than the violation of institutional nature.

#### 3.1. General Remarks

The data suggest a growing number of the unemployed women, their marginalisation in economic and political trends and hate speech in the public discourse. The great majority of women is employed in the least paid jobs and the poorest economic branches, and among them the most severely struck categories include single mothers, Roma women, rural women and middle-aged unemployed women.

In 2010, the Council of Europe passed two documents concerned with this field, the Resolution and Recommendation on Combating Sexist Stereotypes in the Media. Among other, it was envisaged that national parliaments should combat against the sexist stereotypes by adopting the legal measures which would introduce the punishment for sexist comments, insults provoking gender-based hatred or violence, as well as attacks on individuals and groups on the grounds of their gender. Since 3 April 2003, Serbia has been a member of the Council of Europe, so the documents of this international organisation are binding. Still, these documents have not been officially translated, nor have institutions paid attention to them. Therefore it is necessary for them to become known to the public and applied in practice.

Also in 2010, the European Commission passed the Geneva Charter and Strategy for Equality between Women and Men for the period from 2010 to 2015. Serbia is not a member of the EU, but intends to become one and the specified documents are binding for EU candidate countries as well. The institutional and media public in Serbia have not paid any attention to the specified documents, thus ignoring the fact that gender equality is one of the five values that the European Union is based upon. The commencement of work of the European Institute for Gender Equality in June 2010 has also remained unnoticed. The institutional cooperation with this institute, whose role is to support the European Commission and the EU member states, would certainly contribute to a more efficient exercise of the gender equality policy in Serbia on its path towards European integrations.

In 2010, the Protector of Citizens instigated five proceedings on his own initiative and received seven complaints. Out of the five proceedings on his own initiative, one referred to a murder of a mother committed by her son, the other to attempted partner homicide, while the remaining three included violence and partner homicide.

Below is an overview of the situation according to the main areas.

#### 3.2. Violence against Women

In cases of domestic violence, being one of the most obvious consequences of the structural discrimination, the Protector of Citizens most often responds on his own initiative. Based on the interrogation, the ombudsman established weaknesses in the information

exchange between the institutions, first of all the police, social work centres and health centres. Protocols on cooperation between these bodies in cases of domestic violence are either non-existing at the local level, or not applied in certain cases. In their organisational structures and methods of work, administrative authorities often rely on stereotypes regarding gender relations, treating domestic violence as a private relationship between a man and a woman and between a parent and a child, which causes an untimely application of available legal powers. The Protector of Citizens established a lack of clearly defined proceedings and measures, as well as a lack of standard procedures.

**Example:** *When women are victims of domestic violence*

The complainant filed a complaint, by a wire, to the Protector of Citizens, indicating the domestic violence committed by her former spouse. She stated that her former spouse broke the key in the lock of the entrance door of the flat they own together, thereby preventing her free movement. She stated that she had to put up with various forms of domestic violence in the past, too.

The Protector of Citizens instigated the proceedings against the Social Work Centre and the Police Administration. In addition, within his scope of powers allowing him to provide advisory legal assistance, for the purpose of protecting the rights of a complainant and preventing possible consequences of domestic violence until the finalisation of the instigated proceedings, the Protector of Citizens instructed the complainant to protect her right by requesting the pronouncement of a protective measure in the court proceedings, pursuant to the provisions of the Family Law Act. The complainant acted upon the advice given by the Protector of Citizens and instigated the proceedings. The Court determined the temporary measures for protection against violence, by prohibiting the complainant's former spouse to access her dwellings at the distance of less than 100m and disturb her in any way in the future. The Social Work Centre, Police Administration and Internal Control Department of the Ministry of Internal Affairs submitted the observation regarding the measures and activities undertaken to protect the complainant from domestic violence to the Protector of Citizens. The proceeding before the Protector of Citizens is still ongoing.

### **3.3. Non-Exercise of the Labour Rights**

The complaints submitted to the Protector of Citizens, pertaining to the labour rights of pregnant and childbearing women, indicate a number of evident problems pertaining to the payment of contributions and maternity benefits by the employer. This problem partly results from the financial difficulties encountered by employers and partly due to systemic failures, because the sanctions for "disobedient" employers in case of refusing to pay the maternity benefits during pregnancy/maternity leave, stipulated by the Law on Financial Support to Families with Children, are very mild when compared to the sanctions for non-payment of income, under the Labour Act.

For this reason, employers often decide to pay a lower fine, i.e. they do not make any payments to pregnant and childbearing women, because the fines for such offense are substantially lower (25,000.00 RSD, as compared to 700,000.00 RSD for the employed). The Labour Inspectorate, Tax Administration and the competent court play the major supervisory role regarding the meeting of obligations by employers.

**Example: Non-payment to pregnant women**

The complainant complained that her employer Elektronske cevi DOO Niš (Electronic Pipes Ltd.) did not pay her the maternity benefits or contributions for mandatory social insurance. She addressed the Labour Inspectorate, from where she was referred to the Tax Administration (contributions) and court (maternity benefits). The Tax Administration – Branch Office in Niš informed her that investigation of the employer was undertaken, but did not specify what was detected or whether any measures were undertaken in this respect, and if yes, what kind of measures they were. The Protector of Citizens launched the control procedure of the work of the Tax Administration. The response had not been delivered within the stipulated time frame, so an urgent note was forwarded and extended time frame provided for delivery of their observation.

### **3.4. Gender-Sensitive Use of Language**

In early 2010, the Protector of Citizens prepared the Instruction for a Standardised Non-Discriminatory Speech and Behaviour, the text that has stirred a lot of controversy in the public. The main purpose of preparing the instruction was to exercise the influence on actors present in the public domain, to ensure that they consistently observe the rules of non-discriminatory behaviour and expression when it comes to women, persons with disabilities and persons of LGBT orientation. The Instruction is also a reaction to several cases of citizens' addressing, referring to a scarce use of the gender-sensitive language in the official communication. The Protector of Citizens received a number of letters of support from individuals and organisations, while the instructions were put on websites of particular organisations and networks, namely: ASTRA Autonomous Women's Centre, Gay-Straight Alliance, Labris, Network of Local Gender Mechanisms in Serbia, "Women against Violence" Network, Committee for Human Rights Vranje, Reconstruction Women's Fund, Social Inclusion and Reduction of Poverty, Association of Women Peščanik (*Sandglass*), "VelikiMali", Women in Action and Women's Information-Documentary Centre. The first reactions of the public included a variety of comments, from approval to sneer. Sneer was mainly caused by certain incorrect interpretations of the Instruction, which by no means refers to the use of language in literature, personal relations and other private contexts, but to the official communication between authorities of public administration and between authorities of public administration and citizens. When analysing the language of the media and official communication today, after all, certain progress may be noticed in acceptance of a non-discriminatory speech.

### **3.5. Rights of Sexual Minorities**

In 2010, the Protector of Citizens received three complaints pertaining to the violation of rights of sexual minorities. The Protector of Citizen's response that followed was of a preventive character, concerning the bodies referred to in these complaints. The bodies responded positively to all suggestions and proposals made by the Protector of Citizens. The most significant activities of the Protector of Citizens during 2010, in respect of the rights of the LGBT population included the following: provision of efficient services, mediation and giving advices and opinions for the purpose of undertaking preventive action to enhance the work of authorities of public administration and improve the protection of human freedoms and rights, acting upon complaints due to hate speech, statements, articles, lectures etc.

### **3.6. Preventive Action**

The Protector of Citizens took preventive actions as regards the opening of the clinic for “healing of homosexuality” in September, as well as in the case of Halobeba in November. In both cases the said organisations dealing with the protection of rights of the LGBT population were advised, in order to protect their rights, to address, first of all, the competent administrative body – the Ministry of Health, noting that they have been instructed by the Protector of Citizens to do so. The Ministry responded efficiently and in a proper manner. Labris received an apology for the homophobic incident and an invitation to organise the education for the employees in Halobeba about the rights of the LGBT persons.

## 4. CHILD RIGHTS

During 2010, considering the possibility and significance of the preventive action of the Protector of Citizens in the field of protection and improvement of rights, the dominating topics referred to the exercise of rights to education, protection from discrimination, violence and insulting behaviour, protection from sexual exploitation and abuse, media exposure, breach of honour and reputation, violation of the right to privacy and inefficiency of the enforcement of court decisions on child custody in cases of a divorced marriage.

### 4.1. General Remarks

In 2010, the Protector of Citizens launched 227 proceedings in the field of the rights of the child. The total of 195 complaints was received and the Protector of Citizens acted in the additional 32 cases on his own initiative. In 2010, cases in the field of the rights of the child made 8,6% of the total number of complaints received, implying the slight reduction of the percentage of these complaints when compared to the previous year (9%). Apart from that, activities were continued in 86 cases from 2009 and 13 cases from 2008, either due to their complexity or an extensive waiting period to obtain the responses from competent bodies. Therefore, in 2010, the Protector of Citizens acted in the total of 326 cases in the field of the rights of the child.

Most frequently the complaints referred to violation of the right to respect the best interests of the child – 165 cases. A large number of cases referred to the right to a proper development of the child (107) and to protection from violence, abuse, neglect (79 cases). These are followed by the right to education – 58, the right to maintain personal relations with the parent who does not live with the child – 52, the right to social protection – 46, the right to adequate living standard – 32 and the right to participation – 25. Other rights were the subject of a fewer number of complaints.

The greatest number of complaints concerned the following bodies: social protection institutions – 110 (105 of which were social work centres); educational institutions– 53 (24 of which were pre-school institutions, regarding the enrollment of children in the Preparatory Pre-School Programme (PPP) and 29 were schools); Ministry of Education – 35; judiciary bodies- 24; units of territorial autonomy (of AP Vojvodina) and local self-government – 19; Ministry of Internal Affairs– 17; Ministry of Labour and Social Policy – 14; Ministry of Health – eight; health institutions– seven.

Acting upon 326 complaints in the field of the rights of the child in 2010, the Protector of Citizens finalised activities in 164 complaints, 12 of which had been from 2008, 53 from 2009 and 99 from 2010. The remaining cases in which activities had not been finalised, were transferred to 2011. Due to non-delivery and untimely delivery of the requested observations by the Ministry of Education and City Centre for Social Work, one case from 2008 and six cases from 2009 were transferred to 2011.

In 2010, control procedures were initiated in 99 cases and activities were continued in the control procedures initiated in 2008 and 2009 in 65 cases. In other cases, where acting of the Protector of Citizens could be applied (the complaint was not dismissed or rejected without the conducted proceedings), the Protector of Citizens examined and solved cases using the power of mediation.

In respect of the 15 cases he examined, in 2010, the Protector of Citizens performed 22 direct supervisions over the work of bodies, implying that two or three procedures of supervision and control were conducted in some complex cases. The number of direct supervisions

is significantly lower than in the previous year, first of all because of a far better communication between administrative authorities and the Protector of Citizens, when compared to the previous year, and the improved visibility of the Protector of Citizens.

In 2010, the total of 14 initiated control procedures were suspended, because the body the complaint referred to, eliminated the omissions related to their work, upon acting of the Protector of Citizens. Out of all complaints filed in 2010, 24 were rejected, after establishing that they were unfounded. Out of 86 cases that were transferred from 2009 to 2010, 26 complaints were finalised by being rejected. After establishing that there had not been any violation of rights and/or any omissions in the work of administrative authorities, in cases investigated on the Protector of Citizen's own initiative, the total of six cases were finalised. The total of 11 cases were finalised upon the conclusion that further conduct of the proceedings was no longer applicable. The total of 27 cases were finalised by rejection. In two cases, the Protector of Citizens responded by giving a statement. Five complainants withdrew their complaints. In 2010, 45 recommendations were made for cases in the field of the rights of the child.

A special method of acting by the Protector of Citizens, as regards the sphere of the rights of the child, is preventive action through mediation, provision of good services, giving advice and opinions of the case (seven visits were carried out in 27 cases – one visit to the Ministry of Education referred to several complaints). This less formal method of work has produced very good results. During the year, the Protector of Citizens, even after making a recommendation, used his powers of mediation by participating in meetings with the bodies the recommendation was forwarded to, in order to precisely determine the manner of acting upon that recommendation and achieve a common agreement for the purpose of solving certain procedural issues. For instance, it was acted in this manner after adopting the recommendation given to the Ministry of Education as regards the enrollment of children in the Preparatory Pre-School Programme. The proceedings was finalised in the manner ensuring the full protection of the rights of the child, while the risk of violation of rights of a substantial group of children was eliminated. A joint meeting was also held with the Ministry of Labour and Social Policy regarding the cases of children without parental care in foster families and the initiated child adoption procedures.

Below is an overview of activities according to the main areas in which the rights of the child are violated.

#### **4.2. Exercise of the Right to Education – Inclusive Education**

Since the beginning of 2010, the Protector of Citizens has paid much attention to the right to inclusive education, which existed only as a possibility until the adoption of the Law on Fundamentals of the Education System in 2009, while from the school year 2010/2011, the right to inclusion of children with some kind of developmental difficulties or disability in a regular education system has become a legal obligation. The Protector of Citizens has forwarded several recommendations to schools in the first half of 2010, stating that it was not in the best interest of the child with some kind of difficulty or disability to be out of the regular education system and his/her peer group and that it was necessary to prepare and implement an individual education plan in such cases, in cooperation with experts, parents and the child. After the primary resistance in cases when particular primary schools in Serbia insisted on the concept of special schools, stating the recognisable arguments, such as "the child has been categorised", "the parents are ambitious", "this child should attend a special school", the Protector of Citizens successfully finalised all instigated proceedings pertaining to the exercise of the right to education of children with some kind of difficulty or disability.

Of crucial importance for solving of this issue, in both concrete cases, as well as all possible similar cases in the future, was the acting of the Protector of Citizens in the case in which he was not only the “supervisor” of regularity and legality of work of administrative authorities, but also the coordinator of activities performed by crucial actors – relevant public authorities and schools.

**Example:** *The right of the child with developmental difficulties to a quality education*

Each institution and public body is obliged to ensure that a child with developmental difficulties acquire the education focused on the development of the child’s personality and mental and physical abilities to their full extent, facilitate the child’s optimal inclusion in the regular education and upbringing system and his/her becoming independent in the peer collective.

A twelve-year old boy attended one primary school in Belgrade by the end of the semester of the school year 2008/2009. The boy suffers from the Attention Deficit Hyperactivity Disorder (ADHD/ADD syndrome). After an incident, insufficiently clarified by the school, in which the boy took part, the school convinced his parents to withdraw their son from school and transfer him to the school for adult education, in which he completed the fifth grade. At the beginning of the new school year, the parents submitted a school enrollment application to a newly-opened school near the place of their residence, but this school dismissed the application, in oral form, without drawing up a decision. In conducting a direct supervision over the work of the two primary schools, the Belgrade City Administration’s Secretariat for Education and Ministry of Education, the Protector of Citizens forwarded the following recommendation to this Secretariat:

- The Secretariat is to facilitate the enrollment of the child in the adequate grade of the primary school in the school year 2010/2011, in accordance with the child’s place of residence and in the manner ensuring the boy’s education in the peer group;
- The Secretariat shall conduct supervision over the work of the primary school the child will enroll and thereby ensure that the school create and implement the individual education plan and provide the child with additional support in the field of education, should the need for that arise.

At the beginning of the school year 2010/2011, the school which the child’s school enrollment application was submitted to, refused to enroll the boy, as they explained, because of the pressure the Parents Council was imposing on the school bodies. Due to escalation of the problem and the fact that the child did not start attending the classes, the Protector of Citizens conducted another supervision over the work of the school, the Secretariat for Education and Ministry of Education, after which the boy was admitted to the school and started attending the classes. This implies that the recommendation of the Protector of Citizens was implemented.

#### **4.3. Criteria for Employing the Expert Assistants in Schools and Their Professional Qualifications**

During the campaign titled “The Days of the Ombudsman”, the Protector of Citizens held several meetings with representatives of schools in municipalities of Bujanovac, Preševo and Medveđa. On that occasion, he informed them on the insufficient number of expert assistants (psychologists, pedagogues, social workers, special educators), considering the number of students and their needs.

Upon launching the control procedure of the Ministry of Education's work, it was established that this problem is encountered by schools throughout the entire Republic of Serbia and that chances for resolving this issue are slim because of the binding provisions of the Rulebook on Standards to Determine the Price of Services in Primary Schools and Rulebook on the Price of Services in Secondary Schools. In addition, it was prohibited to increase the number employees in public institutions, pursuant to laws on budget for 2008 and 2009.

Anticipating the possible problematic issues after the introduction of inclusive education on the one, and taking into account the extent of peer violence in schools, representing the problem that is not diminishing, on the other hand, the Protector of Citizens proposed to the Ministry of Education to adjust the by-laws regulating the number and profile of expert assistants in schools (psychologists and pedagogues), to ensure that the children in need of expert assistance and support be provided with that assistance and support in due time.

The Association of Psychologists of Serbia, being the most comprehensive professional form of psychologists' organisation, supported this recommendation given by the Protector of Citizens.

**Example:** *Needs of the child instead of the mathematical formula*

The Protector of Citizens forwarded the following opinion to the Ministry of Education:

„The Ministry of Education would improve and increase the quality of exercise of the right of students/children to education and implementation of the inclusive education principle if it amended the by-law regulation, so the following may be facilitated and ensured:

- the necessary level of flexibility when deciding on the number of expert assistants (psychologists, pedagogues, social workers and specialists in the field of special education) depending on the number of students and/or classes in school, for the purpose of meeting the concrete and actual needs established, instead of observing the mathematical proportion set in advance, pertaining to the number of students and number of employed assistants;
- harmonisation of the professional qualifications of assistants (psychologists, social workers and specialists in the field of special education) with the actual and concrete needs established for each school.“

The Ministry of Education informed the Protector of Citizens that there were no grounds for introduction of new work posts, on account of the rights and duties of the employed in schools to professional development.

#### 4.4. Mandatory Preparatory Pre-School Programme

The Protector of citizens left a significant seal in the field of the [rights of the child](#) to education due to a growing number of complaints filed by parents of children throughout Serbia, who are old enough to attend the first grade of primary school, but were not included in the preparatory pre-school programme that lasts for nine months. This situation occurred due to a lack of the necessary communication between the bodies of local self-government, [school authorities](#) and pre-school institutions, which was the reason why it was advisable to postpone their enrollment in primary school by one year, in order to avoid the stressful situations, the inability to adjust and resistance put up by these children because of the absence of educational and psychological preparation for school, as the most important event for children of that age.

**Example:** *To plan the start of school and make it joyful for each first-grade pupil*

During the summer of 2010, the Protector of Citizens received 24 complaints and cca 80 phone calls from citizens complaining that pre-school institutions refused to enroll their children in the preparatory pre-school programme, explaining to them that their children were old enough to enroll the first grade of primary school.

In the control procedure, the Protector of Citizens established that the greatest number of those children did not attend the preparatory pre-school programme because the pre-school institutions and local self-government units failed to inform their parents about the obligation to enroll their children in the preparatory pre-school group at the beginning of the school year 2009/2010.

The Protector of Citizens forwarded the opinion to the Ministry of Education stating that all public and other bodies and public institutions were obliged to facilitate the children to attend the preparatory programme and failure of any body or institution to inform the parents about the preparatory programme must not be the reason to deny a child that educational institution.

The Ministry of Education was also forwarded the following recommendation:

- it should undertake measures necessary to ensure the enrollment in the preparatory pre-school programme of children who were not enrolled in the preparatory pre-school group in the school year 2009/2010;
- furthermore, this involves the children who have not completed the commenced preparatory pre-school programme in the school year 2009/2010, due to illness or other justified reasons; or
- the children having particularly justified reasons to repeat the preparatory pre-school programme they attended in the school year 2009/2010, in order to be able to fully master the school curriculum, provided that their parents consent to have their children enroll the school in the school year 2011/2012;
- in the school year 2011/2012, it should warn the public and parents in due time, about the obligation to enroll any child aged 5,5 to 6,5 in the preparatory pre-school programme;
- it should undertake measures to inform the schools about the new legal solutions, in order to abolish the previous practice that included the testing of children prior to enrolling them in school and issuance of documents confirming that the child is (not) ready to start school.

The Ministry of Education forwarded the instruction to school administrations, primary schools and pre-school institutions, which implies that the recommendation given by the Protector of Citizens had been fully accepted and implemented.

#### **4.5. Protection of Roma Children against Discrimination, Violence and Insults**

The issue of discrimination and violence towards the children of Roma origin in the education system has drawn the attention and led to the engagement of the Protector of Citizens in 2010.

The case that illustrates resistance at various levels and by different actors, is the proceedings finalised by a recommendation given by the Protector of Citizens, in which he established a violation of the right of the child to protection against discrimination, violence and insults, as well as violation of the right to privacy of the child.

**Example:** *When being different is annoying to those around you*

Roots of discrimination and violence towards the child may not be sought on the side of the victim, but in omissions of public authorities and institutions, which are obliged to provide every child with life and development in the atmosphere of tolerance, non-violence and respect of differences.

A mother, who is a foster parent of a Roma girl, addressed the Protector of Citizens in a complaint regarding the work of the school her child attended and that of the Ministry of Education. Statements in the complaint indicated a possible case of serious violation of the rights of the child: discrimination of the girl at school, violence towards her and her privacy. The mother added that children from the class excluded her daughter from their crew because of her Roma origin, ill-treated and insulted her („You Gipsy girl, you stink!“, „You can't change clothes with us, you are filthy“ etc.), which the teachers – in particular the head teacher – were aware of, but failed to do anything about it. On the contrary, the head teacher encouraged the discrimination towards the child with her actions: she asked the girl to read her palm. On top of this, she asked the girl, in front of the entire class, about her origin, emphasising the fact that she was adopted and asking for information about her biological mother. The head master ignored all comments of the mother, claiming that the girl was lying.

The girl was physically injured by her class mates in front of the school building. The school did not intervene in this case, considering that it was not within the scope of its competences, because the incident took place “outside the schoolyard”. Although the girl's mother addressed the education inspectorate a month after the beginning of the school year, the inspection was conducted only three months later, after the control procedure of the work of the Ministry of Education had been launched by the Protector of Citizens. Soon after that, due to the “lynch” atmosphere and the feeling of vulnerability in school, the mother transferred the girl to another school.

In the next year and a half, the time needed for the conduct of the control procedure by the Protector of Citizens, because the Ministry of Education's non-delivery of responses and observation, the education inspectorate conducted four inspections, neither of which included the control of the school's acting from the perspective of the Special Protocol for Protection of Children against Violence, Abuse and Neglect, containing the instructions that are binding for the school. The final outcome of these inspections was that the education inspectorate established that there had been no violation of the rights of the child.

Having established a number of omissions of the Ministry of Education, the Protector of Citizens forwarded the following recommendation to the Ministry:

- it should apologise to the child and her mother, in writing, for their inadequate and untimely acting, due to which the protection of the rights of the child was fully missing;
- it should ensure the conduct of urgent proceedings, upon the applications and petitions submitted to the education inspectorate, in which all facts will be established and full elimination of omissions ensured;
- it should forward the mandatory instructions to municipal and city administrations, which are to ensure a harmonised and timely acting upon petitions pertaining to the work of educational institutions;
- it should undertake measures within its authority, towards the education inspectors and inspectorates in municipalities and cities;

– it should pass more detailed criteria for recognising the forms of discrimination by the employee, student or a third party in an institution.

Observation of the Ministry of Education pertaining to the acting upon the recommendation comprised a range of observations provided by three different divisions of this body, of which the Division for School Administrations, Inspection and Supervisory Affairs informed the protector of Citizens that they would not act upon the recommendation and apologise to the child and her mother, because the right of the child had not been violated whatsoever, claiming that the Ministry provided professional, impartial and timely control of the school. The Ministry did not pass the mandatory instructions for city and municipal bodies that conduct the inspection in educational institutions, nor did it in any other way provide for urgent proceedings by all inspection bodies, as it considered that the Rulebook on the Protocol pertaining to the acting in an institution in response to violence, abuse and neglect – regulating the obligations of schools and other educational institutions, with the exception of administrative authorities (inspection bodies) – was sufficient.

In the TV show *Magazin Oko* on the Radio Television of Serbia, on 18 January 2011, the Public Broadcasting Service presented, through this case, the Protector of Citizen's method of work and the significance of the respect of his recommendations and/or damage in case they are ignored. Although the identity of the girl in the show was concealed, she received two threatening messages on the social network of Facebook, one of which could certainly be characterised as racist.

The family of the girl was advised to report that case to the Ministry of Internal Affairs, which they did. In further monitoring of this case, the Protector of Citizens launched the control procedure of the work of the Ministry of Internal Affairs, for the purpose of monitoring, detecting and instigating the proceedings against the perpetrators of the threat.

#### **4.6. Media Exposure, Breach of Honour, Reputation and Right to Privacy of the Child**

Media exposure, breach of honour and reputation and right to privacy of the child dominated the media scene in Serbia and was also the sphere dealt with by the Protector of Citizens in a number of complaints. The summary of the Protector of Citizen's interventions is as follows: for the first time since it was established in 2002, the Republic Broadcasting Agency (RBA) issued a warning statement to the Public Broadcasting Service – Radio Television of Serbia. Namely, in two cases the Protector of Citizens acted upon (requesting among others, the information about the measures undertaken by the RBA), the Public Broadcasting Service of Serbia allowed the disclosure of children's identity when broadcasting the information which could cause a breach of honour, reputation and dignity of the child, thereby violating the right of the child to privacy and right to protection of honour and reputation.

There are many kinds of omissions in the media coverage of children that cause a violation of their rights: the media are non-selective in covering the topics involving children as actors and their approach when processing the topic is almost identical to the one involving adult persons implying that sensationalism always prevails at the expense of the full information, while the children's identity is almost never protected, resulting in the fact that children may be easily recognised in given descriptions, often accompanied by children's

photographs. In particular cases this is done fully consciously and tendentiously, with the children's parents often being the source of information, thinking that the media exposure will provide for a faster resolving of the acute problem they or their children are faced with. In such cases, the media do not apply either the Law on Information or Broadcasting Law, which are explicit when it comes to the prohibition of disclosing children's identity in the information that may violate the right of the child or his/her interest. As a rule, neither the Ministry of Culture nor the RBA respond primarily as a directly competent body and/or authority. At least they did not do so in cases acted upon by the Protector of Citizens protecting the right of the child to privacy, honour and reputation of the child.

**Example:** *The case of children of Serbian origin in the USA*

Towards the end of 2010, the public in Serbia was shocked by the story about the children of Serbian origin living in the United States of America, who had been temporarily separated from their parents, pursuant to the decision of competent bodies of the USA, on suspicion of neglect, emotional injury and sexual abuse.

Although the children's parents did not address the Protector of Citizens, but did address the media and other officials, the Protector of Citizens requested the information about the case from the Ministry of Foreign Affairs, in order to be able to institutionally monitor the case and, possibly, respond in line with his authority. Upon receipt of the information, the Protector of Citizens concluded that the Ministry of Foreign Affairs and diplomatic and consular representatives acted in accordance with the law in the entire case, in a regular and expedient manner and that such activities should be continued.

As regards this case, the Protector of Citizen's Council for the Rights of the Child concluded that „in none of the societies, whether it be the Serbian or American, has the very existence of a photograph of a nude child indicated the abuse or molestation of the child“, but also adding that no one, except the competent court of the country whose citizens these children are and in which the case took place, will know or be able to assess all the circumstances vital for the nature of the case.

In its public statement, the Council reminded of the obligation of all countries that “their authorities, when deciding on the rights of the child, act urgently, particularly in cases pertaining to the exercise of the rights of the child to a family life with parents and protection from sexual molestation and exploitation “, stating that they expect „the proceedings in this case as well, to be finalised by meritory decisions of the competent authorities of the USA, to the best interest of the child and as swiftly as possible“. An appeal was made to the media not to present to the public any details, which could, even undeliberatly, violate the right of the children to privacy and right to protection of reputation, honour and dignity of the child.

The Serbian public generally supported the idea that the children had been unjustly taken away from their parents, while the Protector of Citizens was severely criticised by one segment of the public, because of his neutral position and the statement that only an American court may decide on the case and that appeals may be made to institutions of the other country only as regards their most urgent possible acting.

Upon expiry of the reporting period, the media informed that the competent American court decided to return the children to their parents, which was welcomed by the Protector of Citizens.

#### **4.7. Inefficiency of the Enforcement of Court Decisions on Child Custody in Cases of a Divorced Marriage**

Inefficiency of the enforcement of court decisions in cases of awarding the child custody to one parent after the divorce still remains one of the crucial problems of the current child protection system, as it contributes to the extended violation of the child's right to life with a parent, most frequently affecting the mental development of children, and consequently their best interests. A cause of concern is establishing that there is no cooperation between the executive bodies of the court, the police and social work centres, in particular when ignoring the necessary role of professional social workers and psychologists, first of all in delicate situations when a child is separated from the family of one parent to be handed over to another parent, pursuant to a court decision. The Protector of Citizens has provided his mediation services in such situations and managed to start things up, always starting from the best interests of the child. This sphere deserves to be thoroughly studied and its problematic issues solved, particularly due to the fact that the Protector of Citizens is not authorised to control the work of courts, which are competent in these situations, to enforce their own decisions, but do not rely sufficiently on other authorities (Ministry of Internal Affairs and Social Work Centre) which can and should share the responsibility with the courts for the efficiency of enforcement.

The fact that these cases exist demonstrates the extent to which the public authorities neither know nor understand the damaging effects the lengthy and inefficient court and other proceedings have on the child, whose life will be directly affected by the decision. They are also an example of a tolerant relation of public authorities towards the disrespect of their own decisions, which has recently resulted in verdicts by the European Court for Human Rights, in which the Republic of Serbia was found responsible for the violation of human rights. The first verdict of the European Court in which Serbia was found responsible, actually referred to the case of an inefficient enforcement of the court decision on the award of child custody to the mother (the case V.A.M.).

**Example:** *A manipulating parent, bodies not communicating, child exposed to fear, violence and suffering*

Public authorities, when enforcing the final and executive decisions concerning the child, are obliged to act as urgently as possible, establishing a close cooperation to ensure a full protection of the child's personality and best interests. Any acting contrary to this, in particular the absence of cooperation and lengthy, inefficient and untimely court and other proceedings, is damaging to the rights and best interests of the child, which must be the guiding principles of public authorities.

The Protector of Citizens started his activities on the case after being informed that the father would not allow the mother to see her child, a seven-year old girl, despite the fact that, pursuant to a final decision, the child custody was awarded to the mother, to exercise the parental right independently. The child would see her mother secretly, during the school lunch break.

During the control procedure launched at the Police Administration, Social Work Centre and the school attended by this child, it was established that the father unlawfully kept the child in mid 2006. The child has not been returned to her mother ever since, with the father preventing the contact between the child and mother. The very procedure of enforcing the final court decisions lasted for three years.

During this period, the Police Administration neither cooperated adequately with the Social Work Centre, nor filed criminal charges or undertook any other measures against the child's father (who is, by the way, a police officer at that police administration), despite having information about the criminal offence (taking away of a minor). When it comes to the unlawful behaviour of this officer, the administration had been tolerant for years. Neither has the Centre filed any criminal charges against the child's father, nor has it, as an authorised body, instigated the proceedings to deprive the father of his parental right.

After the representative of the Protector of Citizens conducted the supervision and visited the court in order to obtain the information about the launch of control procedures of the work of administrative authorities (the Social Work Centre and Ministry of Internal Affairs), two conferences were organised regarding the case, which helped in establishing the effective relations of all competent bodies and facilitated, at last, the enforcement of the court decision to hand over the child to her mother.

#### **4.8. Preservation of the Child's Identity and Family Relations**

In 2010, the Protector of Citizens was in the position to instigate proceedings for protection of the right of the child to preserve his/her identity and family relations at times when administrative authorities fully ignored this right of the child, by wrongful enforcement of regulations or pushing in the background the need of the child to preserve the emotional relationship with his/her closest family, brothers and sisters, in the adoption process. In one of the cases, the complainant was a fourteen-year-old girl.

The Protector of Citizens clearly advocates the position that that the institution of adoption is the most complete and most effective form of protection of children without parental care. Additionally, the Protector of Citizens insisted, during the adoption process, that the right of the child to preserve identity, family ties and relations should be fully protected, while the social work centre, being the institution in charge of adoption processes, should, prior to commencing this process, analyse the possibilities and establish the methods of maintaining the relationship between children and their family members, as well as to respect, throughout this process, the right of the child to participation, by planning their services and measures, while fully appreciating the opinion and active participation of children.

In both cases, although they were rather delicate, the administrative authorities acted entirely upon the Protector of Citizen's recommendations.

##### **Example:** *When the identity of the child is violated*

The method of protecting and exercising the right of the child to preserve his/her identity has been defined under the Family Law Act, whose provisions stipulate that a child's surname acquired at birth may be changed only in cases stipulated by the law.

Family members of the child addressed the Protector of Citizens, pointing to the fact that the competent public body had changed the child's surname acquired at birth, on the basis of the mother's request, but contrary to provisions of the national regulations and international documents.

Upon conducting the proceedings, it was established that the child acquired the father's surname at birth. After the death of the child's father, the mother filed a request to change the child's surname to a new, family name of the mother. The competent administrative body made a decision based on which the request was adopted, with the explanation that such a decision was in compliance with the law, because the parent exercising the parental right independently is authorised to decide on the child's name and surname, as well as to change it. Contrary to the position of the deciding body, the Family Law Act allows the change of surname (as part of the personal name) exclusively in cases of establishing/challenging the maternity and paternity and in the adoption process. Apart from this essential shortcoming, in the procedure for a surname change, the administrative body enforced a legal regulation / by-law that was not in force at the time of passing the decision, failing to determine the legal representative of the child, since the mother's request was contrary to the right of the child to preserve his/her identity.

Due to the established omission in the work, the Protector of Citizens forwarded the recommendation to the given administrative body to:

- immediately and ex officio, repeat the procedure for a child's personal name change;
- appoint the legal representative of the child in the new procedure, pursuant to Article 265 of the Family Law Act;
- decide again on the request, pursuant to provisions of the Family Law Act, which stipulates the procedures for a change of the child's personal name.

The administrative body acted entirely upon the Protector of Citizen's recommendation, passing a decision on repeating the procedure and appointing a legal representative of the child in a repeated procedure.

#### **4.9. Protection of Children Against Sexual Abuse and Exploitation**

In 2010, the Protector of Citizens paid special attention to issues such as the protection of the right of the child against sexual exploitation and abuse in Serbia on the one, and by engagements in the framework of the network of ombudsman for children in the SEE (CRONSEE), which dedicated two meetings in one year to this topic, on the other hand. Consequently, this network adopted joint conclusions, and each institution assumed the responsibility to commit at the national level, to their exercise. The conclusions start from the solutions contained in the Council of Europe's Convention on the Protection of Children against Sexual Exploitation and Abuse, ratified by Serbia in July 2010, being one of the first Council of Europe member states to do that, thereby acquiring the prerequisites for the Convention's consistent enforcement.

Taking into account the obligations assumed upon the ratification of the said Council of Europe Convention, the Protector of Citizens supported the idea initiated by the Incest Trauma Centre (ITC), to include the topic of sexual violence against children in the regular secondary school curriculum, as the first step of a comprehensive approach to this sensitive topic, which is still perceived as a taboo in both one's family and the education system. The Protector of

Citizens took part in the promotion of the ITC campaign named „Let’s Stop the Silence“, committing to the necessary amending of the criminal legislation regarding the issue of the statute-barred criminal offences of sexual violence, the record of perpetrators of this criminal offence and the need to continuously educate children and professionals on this topic. It should be emphasised that the Protector of Citizens also supports the campaign of the Council of Europe on the need to raise the public awareness in the Council of Europe’s member states, of the protection of children against sexual violence, launched in late November 2010. The Protector of Citizens will also support the public authorities to take part, in an organised form, in this pan-European campaign aimed at the protection of children against this gravest form of violence that strikes “one out of five children” in Europe, which is the motto of this campaign by the Council of Europe.

#### **4.10. Web-Site Intended for Children and the Panel of Young Advisors**

In the field of the right of the child, the year 2010 was also marked by activities aimed at promotion of the work of the institution in this field, namely: development of the web-site intended for children, [www.pravadeteta.rs](http://www.pravadeteta.rs) and establishment of the Panel of Young Advisors, as a form of continuous participation of children in the work of the Protector of Citizen’s institutions.

The Protector of Citizen’s web-site intended for children, in addition to providing some of the basic information about the rights of the child through a less formal approach and language, is used as a communication tool between the Protector of Citizens and children, in the way that children ask questions via e-mail and receive answers to them, also including their mutual communication using the Youth Forum.

The Panel of Young Advisors was established by the Protector of Citizens for the purpose of promoting the rights of the child to free expression of opinion and participation in making the decisions relevant for the child and concerning the child, furthermore, for the purpose of creating the conditions to ensure that children and youth become the subject of the law and full partners in activities aimed at improvement of respect and protection of their rights, and certainly contributing to the empowerment of children and youth and strengthening of their capacities for social inclusion and assumption of an active role in improving their own status and protecting their rights. It is composed of a group of thirty children and young people aged 13 to 17, elected in an open application procedure, for the period of two years. The number of young advisors will be permanent, while new members will be elected periodically or as required. Young advisors will meet the Protector of Citizens and/or Deputy Protector of Citizens for the Rights of the Child, at least four times a year. Their main role is to convey the topics to the Protector of Citizens that are relevant to children and youth, indicate the problems they encounter, present their positions and raise the issues significant for improvement of the status of youth in Serbia.

In 2010, the Protector of Citizens took part in an extensive survey of the Council of Europe named „Child Friendly Justice” in which the institution of the Protector of Citizens was presented to school children and 715 children aged 13 to 17, coming from 42 schools from the entire Serbia, were surveyed. Therefore, the institution of the Protector of Citizens contributed significantly to this survey (18%), based on which the Council of Europe adopted the Guidelines for Child Friendly Justice, representing a document relevant to all member states of the Council of Europe, in the field of administrative and court proceedings involving children.

## 5. RIGHTS OF PERSONS BELONGING TO NATIONAL MINORITIES

The constitutional and legal protection of national minority rights in the Republic of Serbia guarantees a high level of their protection, but the exercise of these rights is still not acceptable. This incongruity causes the persons belonging to national minorities to often feel discriminated, reducing their trust in the competence of the state to guarantee their secured rights. The fact that relations between the executive authorities and national minorities and their self-governments have been disturbed in several cases, only contributes to that. Luckily, these problems have not affected the situation in the sphere of interethnic relations.

### 5.1. General Remarks

In 2010, the Protector of Citizens received 91 complaints and acted in five cases on his own initiative. Activities pertaining to 22 complaints from 2009 were continued.

The greatest number of complaints, 52 of them, was filed by persons belonging to national minorities in relation to violation of human rights in general (right to employment or right to personal documents). The total of 29 complaints were filed that referred to violation of special collective rights, mostly pertaining to elections of national councils of national minorities (five), right to equality in the conduct of public affairs (five), information and cultural creative work in a national minority language (four), right to official use of languages and scripts (four).

The majority of complaints referred to the work of ministries – 40, namely: Ministry of Internal Affairs – 25, Ministry of Human and Minority Rights – seven, Ministry of Education – three, Ministry of Culture – two, as well as to the work of provincial authorities and bodies of local self-government – 21..

Apart from the increased number of the filed complaints, another thing pointing to the fact that persons belonging to national minorities do not fully exercise their guaranteed rights is that the Protector of Citizens forwarded four recommendations for the purpose of eliminating the established omissions and shortcomings in the work of public, provincial and local bodies, as regards the protection, exercise and improvement of the collective rights of national minorities.

Thus, by acting upon 118 complaints in the field of national minority rights, the Protector of Citizens finalised the activities in 99 complaints, including 22 complaints from 2009 and 77 from 2010. The remaining 19 cases, in which activities had not been finalised, were transferred to 2011.

### 5.2. Infringement of Independence of National Councils of National Minorities

The previous year was marked by the election of minority self-governments – national councils of national minorities. Organisation of elections and the election of national councils were a reason for acting of the Protector of Citizens and other independent bodies – the Commissioner for the Information of Public Importance and Personal Data Protection, Commissioner for Protection of Equality, as well as other public authorities. In the proceedings

conducted by the Protector of Citizens on his own initiative, it was established that the Ministry for Human and Minority Rights, due to a faulty Instruction on the Procedure for Registering a National Minority in the Separate Register of Voters, caused the occurrence of some omissions that were favourable for the violation of the citizens' right to protection of personal data, as regards the registration in the separate electoral lists of national minorities. It was also established that by adopting the rules of procedures of constitutive assemblies of national councils of national minorities, the independence of national councils as representative bodies of national minorities had been infringed. In respect of the established violations of the right of citizens belonging to national minorities, as regards the election of their self-governments, whose competences include education, culture, official use of languages and scripts and information, the Protector of Citizens adopted certain recommendations.

**Example:** *Omissions by the Ministry for Human and Minority Rights*

The Ministry for Human and Minority Rights made some omissions that were favourable for the violation of the citizens' right to protection of personal data, as regards the registration in the separate registers of voters of national minorities. The actions performed by this Ministry infringed the independence of national councils, as representative bodies of national minorities.

The omissions in the procedure of registering the citizens in the separate register of voters of national minorities facilitated an illegal processing of personal data. The collected data, which are protected by the law as particularly sensitive, came into possession of unauthorised persons and were processed illegally. When registering the citizens in the separate register of voters of national minorities, falsified registration requests were submitted, without the citizens' knowledge of or consent to it.

In the proceedings instigated by the Protector of Citizens on his own initiative, it was established that such situation was caused due to a possibility of requests for registration in the separate register of voters to be submitted by third parties, without authorisation of the citizens designated in requests as their submitters and without establishing the submitter's identification. This was facilitated on the basis of the Instruction on the Procedure for Registering a National Minority in the Separate Register of Voters, passed by the Ministry for Human and Minority Rights in December 2009. It is stipulated in the Instruction that submission of voters' requests by third parties shall be allowed, without any special authorisation given to the person submitting the request and that the voter requesting to be registered in the separate register of voters shall not be required to hand in their personal identity card or a copy thereof.

The Law on National Councils of National Minorities and Rulebook on the Method of Keeping the Separate Register of Voters of a National Minority stipulate that a citizen shall be free to choose whether to be treated as a person belonging to a national minority or not. Registration in the separate register of voters shall be voluntary. A written and signed request shall be submitted directly or by mail, to the administrative body of the local self-government unit, according to the place of residence of the person submitting the request. However, the Instruction on the Procedure for Registering a National Minority in the Separate Register of Voters, i.e. the way it was designed and applied, ignored that fact. The Instruction has provided a substantial possibility that the request be practically submitted without the

knowledge or consent of the person it refers to, implying that it would not be an expression of their free and clearly expressed will.

National councils of national minorities are representative minority bodies, whose independence in the exercise of competences is guaranteed by the law. This independence was infringed, because the Minister for Human and Minority Rights passed the rules of procedures of constitutive assemblies of national councils of national minorities. The Protector of Citizens did not find any authorisation in the Law allowing the Minister to pass this kind of rules of procedures. A provision in Article 42 of the Law on National Councils of National Minorities only stipulated an obligation of the Minister to convoke all constitutive assemblies of national councils, within 30 days from the date of the announcement of final election results, but nothing else apart from this.

A regular enforcement of laws may not be achieved by passing the regulations without legal authorisation. Establishment of minimum requirements to hold a constitutive session of a national minority council is one of the measures guaranteeing the council's legitimacy, in the interest of a proper representation of a national minority in the carrying out of duties within the council's scope of competences. However, the minimum requirements need to be established by the law. The state intervention in the sphere of minority self-government needs to be clearly stipulated in advance, implemented for the purpose of protecting the previously legally established goals, required and reduced to the minimum providing the purpose of intervention, which will facilitate the achievement of the intended legitimate goal, but at the same time prevent the arbitrariness of the state intervention in the self-government of national councils.

Having estimated the established facts and legal regulations, the Protector of Citizens forwarded a recommendation to the Ministry of Human and Minority Rights to:

1. Start preparing the draft amendments to the Law on National Councils of National Minorities, in order to include in the Law a provision that authorises the Government, Ministry or Minister, to regulate the necessary issues in more detail, in a by-law;
2. Propose the amendments to the Law on National Councils of National Minorities, in order to enhance the guarantees of freedom and clear expression of citizens' will to register in registers of voters, by amending the law and accordingly, by-laws;
3. Minister of Human and Minority rights was recommended to place out of force the rules of procedures of constitutive assemblies of national councils that he passed without the explicit authorisation provided by the law.

The Ministry failed to act in accordance with the Protector of Citizen's recommendation and it also failed to inform the Protector of Citizens, within a legally stipulated time frame, on the reasons of their failure to act upon the recommendation.

### **5.3. Hindered Exercise of the Minority Autonomy**

In the previous annual reports, as well as his recommendation, the Protector of Citizens pointed to different practices pertaining to the exercise of national minority rights in the AP Vojvodina and other parts of the Republic of Serbia. Enforcement of the Law on National Councils of National Minorities has clearly indicated that these differences still exist and are particularly emphasised in certain fields, such as the official use of languages and scripts and protection of culture.

The identified weaknesses are a result of the fundamental shortcomings of the Law on National Councils of National Minorities itself, namely:

- The Law has provided for an explicit influence of political parties, including both the direct influence of political parties of national minorities, as well as the indirect influence of other political parties;

- The Law has provided for the election and work of minority self-governments to be exercised in practice at the national level only, which is the reason why a direct and extensive approach to persons belonging to national minorities, in their exercise of minority autonomy, has not been ensured. Thus, a majority of citizens belonging to national minorities is left without a possibility to decide on the exercise of their recognised collective rights. The comparative practice in the region indicates that participation of persons belonging to national minorities in the decision-making is indirectly exercised at community, local and regional level.

Centralisation of minority rights and/or a legal solution stipulating that they are elected at the national level only, have conditioned a need for a more efficient protection of national minority rights in units of local self-government. The need for a mechanism of direct and efficient protection as regards the exercise of the recognised rights in local communities is particularly present among the persons belonging to dispersed national minorities and minorities lacking a well-organised central minority self-government. It was unjustifiably expected that this legal gap would be removed by the establishment and activity of councils for interethnic relations, which are, pursuant to Article 98 of the Law on Local Self-Government, to be established in local self-government units with ethnically mixed population. The expectations have proved unrealistic, most of all because the law has not provided these bodies with the role to exercise the competences pertaining to minority self-government, but to consider decisions passed by bodies of the municipal assembly, regarding the exercise of national equality.

**Example:** *Participation of national minorities in decision-making within the public life in multiethnic municipalities and cities*

In Serbia, without the territory of the AP Kosovo and Metohija, there are 68 local self-government units with ethnically mixed population obliged to establish the council for interethnic relations. The purpose of establishing the council is its role to consider the issues pertaining to the exercise of protection and enhancement of national equality. Establishment and activity of the council, which comprises representatives of the Serbian people and those of national minorities, should contribute to improvement of work and quality of decisions passed by local bodies on the one, and the exercise and improvement of human and minority rights, as well as the quality of life of all citizens in local self-governments, on the other hand.

The mandatory establishment of councils for interethnic relations in municipalities and cities in which persons belonging to one national minority constitute more than 5% of the total population or persons belonging to all national minorities constitute more than 10% of the total population, is regulated in a provision in Article 98 of the Law on Local Self-Government. Representatives of national minorities that have their elected national councils are elected at the proposal of the national council. If the Council for Interethnic Relations is of the opinion that decisions and other acts of the assembly of a local self-government unit directly violated the rights of persons belonging to Serbian nation and national minorities, it is entitled to instigate the proceedings before the Constitutional Court, to assess the constitutionality and legality of these acts.

Paying close attention to the activities of councils for interethnic relations, the Protector of Citizens detected some omissions that included the following: non-enforcement of legal provisions pertaining to launch of the procedure for establishment of councils for interethnic relations; absence of conditions required for the work of councils, non-convening of council sessions; non-submission of all draft decisions pertaining to national equality to the council for an opinion and absence of other necessary actions and conditions required for the work and an expedient exercise of the councils' competences.

In order to eliminate the identified omissions and ensure a consistent enforcement of laws and improvement of the work of municipal and city bodies in multiethnic environments, the Protector of Citizens forwarded a recommendation to all units of local self-government having a legal obligation to establish councils for interethnic relations, namely:

- To assume all measures and activities stipulated under the law in order to establish the council, as a mandatory independent working body required by the law;
- To provide conditions required for the work of the council for interethnic relations equal to those existing with other working bodies of the assembly of a local self-government unit;
- All bodies of a local self-government unit are obliged to timely submit all draft decisions pertaining to national equality to the council for an opinion, while that opinion will be taken into consideration when making final decisions.

Out of the total of 68 local self-governments, only 18 have informed the Protector of Citizens on the implementation of the recommendation, their acting, envisaged and already undertaken measures and potential problematic issues regarding their acting upon the recommendation.

#### **5.4. Discrimination and Racist Attacks of Persons Belonging to Roma National Minority**

It seems, despite the activities undertaken by public and provincial authorities, as well as certain local self-government units, that there has not been any significant progress in terms of improvement of the Roma status. This is indicated by insensitivity of the society and institutional ambivalence, expressed during the displacement of the Roma settlements, the racist attacks of Roma in a Banat village of Jabuka, as well as the growingly frequent expressing of intolerance and hate speech towards the Roma. It is true that there are complex problems as regards their integration, discrimination is very expressed, whereas the problems related to the suppression of poverty and solving of social, economic and cultural rights of the Roma still subsist.

In case of the racist incidents in the village of Jabuka, the Protector of Citizens appeared in public and stressed out that the suppression of the roots of racism, hatred and intolerance and prevention of the expression of such behaviour is not only a local problem, but the result of a general attitude of the state towards the problems of a multiethnic and multi-confessional society. The Protector of Citizens paid a visit to the vilage of Jabuka on Ilinden, a Macedonian national holiday, and, together with the President of the Republic, who accepted his invitation and joined him, conveyed a message of interethnic tolerance and understanding.

Despite the presented problems, a small number of persons belonging to Roma national minority have addressed the Protector of Citizens in a complaint. Considering that the problems they encounter regarding the exercise of rights are rather serious and numerous, and that institutions are unavailable to them for a number of different reasons, the Protector of Citizens organised his activities in Roma settlements, where he receives the complaints.

### **5.5. Exercise of the Right to Official Use of Languages and Scripts**

According to the information obtained by the Protector of Citizens, the right to official use of languages and scripts of national minorities, guaranteed under the Constitutions and administered by regulations, is not exercised pursuant to the law.

An opportunity to solve some of these problems was missed last year, at the adoption of the Law on Amendments to the Law on the Official Use of Languages and Scripts, whose solutions have not been contributing to a full exercise of the right to official use of languages and scripts of national minorities.

A specific problem in respect of the exercise of this right is the social resistance to introducing languages of national minorities in the official use in particular local communities. In this sense, despite the fact that the Protector of Citizens conducted the proceedings upon the complaint filed by the National Council of Bosniac National Minority in Serbia and other organisations of Bosniacs and gave a recommendation to the municipal authorities in Priboj to create the conditions required for the introduction of the Bosnian language in the official use in the territory of the municipality, pursuant to the law, this has not been done. The Protector of Citizens informed the Ministry of Public Administration and Local Self-Government thereof and requested this body to act pursuant to its powers.

Another illustration is the attempt to introduce the Romanian language as the official language of Vlachs. The initiative of the first National Council of the Vlach National Minority to introduce the Romanian language as the official language of Vlachs, in the official use in several local self-government units in which persons belonging to Vlach national minority constitute more than 15% of the total population, was denied by the decision and amendment to the Statute of the National Council of the Vlach National Minority elected in 2010. According to this decision, the language of Vlachs has not been standardised and until conditions are acquired for its official use, the Serbian language will be used for these purposes.

In 2010, the Protector of Citizens published the results of his investigation, dedicated to the exercise of the right to official use of languages and scripts of national minorities, in which a number of shortcomings was noticed in the field of exercise and enforcement of this right, namely:

- The extent of the exercise of rights of persons belonging to national minorities is not equal and the practice varies between the local self-government units in the AP Vojvodina and other parts of the Republic of Serbia. In municipalities and cities where the right to official use of languages and scripts of national minorities is exercised, there are problems related to the necessary human and financial resources;
- As regards the entering in registers the personal name in the national minority language and script, the practice in the work of register offices, i.e. their acting has varied, in particular when one's personal name is entered in registers only in the Serbian language and Cyrillic script. There is no possibility of entering the female surnames

in their feminine form, according to the tradition in languages of Bulgarian, Slovak, Czech and Macedonian national minority and bilingual forms of certificates from registers do not exist in the central Serbia;

- The level of awareness of citizens belonging to national minorities, of the legally stipulated conditions for issuance of documents with the personal name written in a national minority language and script, is insufficient;
- Writing of public inscriptions has been inconsistent, writing of the names of organisational units of republic authorities and republic public enterprises in languages of national minorities selective, noting that in most local self-government units these names have not been written in languages and scripts of national minorities;
- There are not any adequate capacities required for the efficient conduct of administrative and court proceedings in national minority languages, while in bodies of public authority, the share of persons belonging to national minorities or citizens who can speak minority languages is insufficient;

In addition, the Protector of Citizens forwarded a preventive recommendation to the Ministry of Education to pay special attention to improving the quality of:

- classes of Serbian language, when the instruction for persons belonging to national minorities is conducted in the native language and
- classes of national minority languages with elements of culture, in primary and secondary schools.

This is aimed at ensuring that upon completion of their education, students have an active command of the Serbian language and/or that students of Serbian nationality have an active command of a language of a national minority as the language of social environment. It was established in the investigation that not having the knowledge of the Serbian language and/or national minority languages is one of the factors causing the shortcomings in the capacities of human resources required for official communication in the work of local self-government bodies. A good command of a language, as a means of communication, contributes to a better understanding of the other and different in the development of a civil society.

**Example:** *The right to official use of Bosnian language and script in the municipality of Priboj*

Competent bodies of the Municipality of Priboj have not introduced the Bosnian language and Latin script in the official use by the Statute. Therefore, in the filed complaints the Protector of Citizens was asked to protect the rights of persons belonging to Bosniac national minority.

In the Municipality of Priboj, 18,33% of citizens are of Bosniac nationality. Although the legally prescribed prerequisites have been met, in terms of the percentage of persons belonging to Bosniac national minority in the total population, the Bosnian language and Latin script have not been introduced by the Statute in an equal official use. In the proceedings conducted upon the complaints, it was established that when the Statute was in the process of adoption, as in previous compositions, the majority councillors decided by voting, instead of introducing, by the Statute, the language and script of Bosniac national minority in the equal, official use. The amendment proposed by a councillor, to amend the article regulating the use of language and script and add an item stipulating that the Bosnian language and Latin script shall be in the official use

in the territory of the Municipality of Priboj, was not accepted. The Statute of the Municipality of Priboj stipulates the official use of the Serbian language and Cyrillic script. The Law on the Official Use of Languages and Scripts stipulates that local self-government units shall be obliged, by way of their statutes, to introduce the language and script of a national minority in the equal official use, if the percentage of persons belonging to that national minority constitutes 15% of the total population in its territory, according to the results of the most recent census.

Considering the fact that an omission was detected in the acting of competent municipal bodies and exercise of the right to an equal official use of the language and script of Bosniac national minority, the Protector of Citizens forwarded a recommendation to the President of the Municipal Assembly of Priboj and municipal bodies to comply the Statute of the Municipality of Priboj with the Constitution and other positive legal regulations.

The Municipality of Priboj failed to act upon the recommendation and did not inform the Protector of Citizens, within the given time frame, on the reasons of their failure to act. The Protector of Citizens first informed the public and President of the Municipal Assembly of Priboj thereof and pointed to the fact that failure to act upon the recommendation had, as a consequence, a multiple violation of rights of the citizens belonging to Bosniac community. Furthermore, the competent ministries for human and minority rights and public administration and local self-government were informed on the unlawful acting. The Ministry of Public Administration and Local Self-Government forwarded, a letter to the Municipal Assembly of Priboj in November, indicating the necessity of launching the procedure, in the first following session, to amend the Statute and introduce the Bosnian language and script in the official use, pursuant to the obligations established in the law and the recommendation of the Protector of Citizens. According to the information at disposal of the Protector of Citizens, the session of the Municipal Assembly has still not been scheduled.

### **5.6. „Invisible“ Citizens – Persons without the Citizens’ Rights**

In 2010, the Protector of Citizens tackled the issue of „invisible persons“, i.e. citizens who have not been entered in registers or other records, do not have the legal personality guaranteed in the Constitution and Universal Declaration of Human Rights and therefore may not exercise the citizens’ rights. The majority of them belong to citizens of Roma nationality. Until present, the proceeding have been conducted and successfully finalised in eleven cases, regarding the issuance of documents to these persons. For the purpose of solving this issue, the Protector of Citizens organised a meeting with representatives of the Ministry of Public Administration and Local Self-Government and the Agency of the United Nations in Serbia.

In the meeting, it was concluded that there are approximately 2500 persons whose personal identity has not been recognised and that it is possible for majority of them to be entered in registers, pursuant to the legally established procedure, while for a small number of persons who may not exercise that right, it is necessary to pass a special regulation in an envisaged procedure, pursuant to which their status will be resolved. The Protector of Citizens continues to mediate between the Ministry of Public Administration and Local Self-Government, the UNHCR and relevant non-governmental organisations, in the efforts to provide a systemic solution to this problem.

## 6. RIGHTS OF PERSONS WITH DISABILITIES AND THE ELDERLY

Although Serbia was the first country in the region to adopt the Law on Prevention of Discrimination against Persons with Disabilities back in 2006, as well as the Strategy for Improving the Status of Persons with Disabilities and the signed UN Convention on the Rights of Persons with Disabilities, it became evident that citizens with disabilities face discrimination and marginalisation due to failure to implement the law, as well as oversights contained in other legislative acts. They are, for the most part, excluded from public, political and cultural activities and face problems concerning education, employment, and exercising of other rights.

### 6.1. General Remarks

In the course of 2010, the Protector of Citizens received 94 complaints, out of which he instigated proceedings on his own initiative in four cases. The Protector of Citizens carried out 26 control proceedings on issues pertaining to realisation of disabled persons' and disabled veterans' pensions, with procedures concluded in over 60% of cases, and two cases ending with a recommendation. In 25 cases authorities took action once the Protector of Citizens instigated proceedings on the basis of complainants' complaints.

Particularly difficult cases from the practice of the Protector of Citizens are the problems faced by children with disabilities and their parents in an effort to provide them with necessary treatment and supplies, as well as elderly persons with disabilities whose number is actually bigger than appears, because many are not able to approach the authorities to protect their rights.

The priority of cooperation of the Protector of Citizens established with the National organisations of persons with disabilities in Serbia (NOIDS) is to prevent discrimination against persons with disabilities in education, for more effective protection of their rights.

In 2010, the Protector of Citizens acted upon complaints pertaining to various issues categorised by topic, such as: acknowledgment of the right to allow veteran's gratuity to be calculated into the basis for determining the amount of pension allocated; acknowledgement of the right to rehabilitation covered by public medical insurance; acknowledgement of the right to an increase in gratuity for personal assistance and care; the right to be recognised as a war veteran with disabilities; the right to a disability pension; inclusion of persons with disabilities in the preparation and implementation of the National HIV Strategy; the inability to obtain a ruling confirming the degree of bodily impairment within the legally stipulated time limit; inability of the state to act on legally recognised fiscal benefits, as well as the issue of inaccessibility of residential buildings.

### 6.2. Facilities for Accommodation of the Elderly and Adult Persons With Disabilities

From April to November 2010, the Protector of Citizens paid 13 visits to gerontology centres and nursing homes: Retirement Home at Bezanijska Kosa, Retirement Home at Karaburma, Retirement Home at Vozdovac, Home for the Elderly and Retired Persons in Smederevo, Gerontology Centre in Krusevac, Gerontology Centre in Mataruska banja, Gerontology

Centre in Sabac, Gerontology Centre in Kragujevac, Home for the Elderly and Retired Persons in Dimitrovgrad, Gerontology Centre in Kikinda, Gerontology Centre in Subotica, Home for the Elderly in Surdulica and Home for the Elderly and Adult Persons in Zrenjanin.

In most cases, notice was given prior to supervisory visits. Exercising his legal powers, the Protector of Citizens also paid a number of supervisory visits without any prior notice (mostly acting on complaints by non-governmental organisations, e.g. MDRI and People in Need).

Acting on complaints, upon supervision performed over the operation of these facilities and on the basis of information obtained otherwise, the Protector of Citizens determined that there is a total of 41 public and 42 privately owned nursing homes currently legally operating in Serbia. The capacity of public nursing homes is about 7000, while the capacity of legally registered, privately owned homes holding an operating licence is 1019. Some of the public nursing homes have been transformed into gerontology centres because, along with accommodation services, provide so-called out-home services to help the elderly in their homes. Currently, the public nursing homes accommodate about 8100 users, and in Belgrade, where needs are greatest, 1200 users are placed in these facilities.

Public nursing homes are overcrowded; there are still five-bed or six-bed rooms, where homes' administrations are trying to rationally use all the available space, literally "from basement to attic", placing beds in all the available spaces. There are vacancies in nursing homes in the interior of Serbia, especially in those of low level standard. This is one of the reasons why one has to wait for a bed in a nursing home for a long time, as well as the existence of illegal, unregistered homes in addition to government and privately owned registered homes.

A special category of accommodation refers to shelters accommodating elderly people who sign court notarised lifetime maintenance contracts with persons who agree to take care of them in return for their pensions, apartments or land. These elderly often end up residing in poor conditions.

It has been noted that private nursing homes often accommodate elderly persons without their consent, and that such consent is never obtained in facilities of this kind which are not registered. In these cases, the competent local social care institution is "bypassed" entirely and accommodation is provided in return for regular payment of lodging, as much as double the cost of public nursing homes. Relatives, neighbours and acquaintances often place elderly persons into these homes once they sign lifetime maintenance contracts with them, and in some cases it has been noted that social workers from official institutions do so as well. Employees in a medical facility, which by nature of their work are in contact with elderly people, signed with a person who is to be placed into the home a type of contract allowing them to take over his/her apartment, and opened private nursing homes, to easily reach the property of these people.

Homes are understaffed, especially when it comes to nursing and medical staff. It was also noted that in privately owned nursing homes, medical personnel is typically hired on contract rather than permanent, and that these homes often lack the most basic medical documentation (medical records of users with the history of their diseases and treatment administered). However, if there's documentation, usually there are no testimonials that they are placed with their own consent, and there is no evidence of guardianship or that are placed with the consent of a guardian.

Homes for the elderly are becoming more and more medical facilities and stationary parts intended for immobile users are becoming the largest departments of these facilities. Very common are also new departments of so-called palliative care, the name for the accommodation of patients with severe malignant disease.

The overall impression is the dilapidated state of rooms and poor hygiene. An atmosphere of depression is prevalent in almost all facilities of this type. One quarter of residents are male, and three quarters are female, with this percentage going up to 90% in some cases. Nursing homes tend to accommodate increasingly older persons, mostly over the age of 80, with progressively deteriorating health. The largest percentage of them are addicted and semi-addicted users, so it can be talked about institutional care of persons with disabilities or patients with chronic diseases and those who are recovering after surgery. An illustrative example is that out of 280 users reside in one institution, 240 are immobile!

As a rule, in Serbia elderly persons end up in gerontology centres or nursing homes only once they become an unbearable burden to their families and when no-one is able to care for them due to their poor health or overall condition. In Serbia, people rarely, if ever, sign up for nursing homes while they are still in relatively good health or at an age which allows them to spend extended periods of time in the company of their contemporaries, under the care of physicians and therapists, and have a better quality of life.

The structure of residents, their increasingly advanced age and evident defencelessness indicate the need to introduce specialised nursing homes, such as psycho-geriatric homes. This population is growing, and the need for their accommodation is increasing, as they weigh down on existing facilities which are not primarily equipped to provide for patients suffering from dementia, Alzheimer's or Parkinson's diseases in terms of human resources and logistics.

There is no predetermined proportion of certain groups of users in relation to payment method. The number of those who do not have funds to pay even the lowest cost of accommodation, is significantly declining in all visited nursery homes for the elderly. Nursery homes, under the market conditions, should be at least responsible for this phenomenon. Bearing in mind the social character of these facilities, it is necessary to find a different and more contemporary institutional solution that would enable multiple users of different financial status to be institutionally cared in the older age.

Serbia is increasingly becoming a country of old people, and solutions must be sought for the problem of escalating demand for places in nursing homes, keeping in mind that to spend one's old age with as much dignity as possible is a basic human right. A solution is maybe in expansion of the existing capacities for the stationary housing of the elderly, and the intensification of non-institutional care by providing home care and assistance to the households of such persons without their displacement.

Non-registered nursing homes, operating without a licence are a major problem. They are registered as companies, bed and breakfast lodging, retail shops, service agencies, hostels, etc., and as such are not liable for examination by the Ministry of Labour and Social Policy inspection. In order to solve this problem, all legal entities and their employees should be licensed as soon as possible, allowing only accredited facilities to perform these activities.

**Example:** *Accommodating of persons with disabilities and elderly persons in nursing homes without their consent*

A client of the "Moja Oaza" nursing home in Zemun states in her complaint – and the same facts are evident from available documentation – her three children placed her in the nursing home without her consent, after a fall in the street caused a broken collarbone and an arm injury resulting in a hospital stay. On arrival, her identification documents were confiscated, her children gained possession of her apartment and are opposed to her leaving the nursing home. She maintains that the facility is not her home and that she feels like a prison inmate, as she is unable to go outside or take a walk. The Protector of Citizens first requested the Ministry of Labour and Social Policy to undertake supervisory examination of the nursing home and report on the results of this inspection. In the meanwhile, as the complainant is being denied her liberty, the Protector of Citizens directly inspected the "Moja Oaza" nursing home in order to establish relevant facts. Management of the nursing home did not deny that the client is in the facility against her will and stated that they were willing to, should the Protector of Citizens so request, let her "out into the street". By the end of the period covered by this report, proceedings have not yet been finalised.

**Example:** *Mother placed in private nursing home against her will*

The complainant stated in her complaint that the Municipal Centre for Social Work – Palilula Department, refuses to file a report with the Rakovica Department in order for her mother to be placed into a nursing home. After a site visit by the expert team of the Municipal Centre for Social Work – Palilula Department and an interview with the mother of the complainant, the opinion of the Centre was that the mother of the complainant unequivocally refuses to be placed into the home because she was raised in an orphanage where she remained until her marriage. The report compiled by the Palilula Department states that, after the site visit, the daughter informed the Palilula Department that she placed her mother into a private nursing home and refused to provide an address for the facility where her mother currently resides. The proceedings are still underway.

### 6.3. Problems in Exercising the Right to Fiscal Benefits

The Ministry of Labour and Social Policy, as the body responsible for VAT refunds, has been unable to use allocated funds to settle outstanding amounts even up to December 2008. This mainly applies to the reimbursement of VAT for import of vehicles for persons with disabilities. This is mostly due to the fact that the Government and the Parliament, by intervening in the course of the adoption of the Law on Budget for the current fiscal year, significantly decrease expenditure items pertaining to various social subsidies, and in this way *de facto* render the concept of fiscal benefits meaningless.

### 6.4. Restriction or Loss of Legal Capacity

The Protector of Citizens does not receive many complaints regarding this issue, but cases for which control proceedings were carried out demonstrate the seriousness of the problem. Legislation regulating removal of legal capacity is not compliant to the Convention

on the Rights of Persons with Disabilities (which Serbia ratified in May 2009). Article 12 of the Convention treats equal rights before the law and legal capacity as a very serious issue and stipulates that legal capacity may not be restricted or removed purely on the basis of one's disability. Official expert verification of the degree of bodily impairment is also a problem, as the process takes a long time, preventing a considerable number of citizens from exercising their rights.

### **6.5. Examples of Good Practice**

The Protector of Citizens established that good conditions for accommodation of the elderly are offered by the Bezanijska Kosa facility in Belgrade, with a capacity of almost 800 users, and the Gerontology Centre in Subotica, accommodating almost 700. Both are large facilities which are generally regarded as an inhumane institutional solution, inferior to nursing homes with smaller accommodation capacities. These homes present, however, the most desirable option for potential users and their families.

After inspection was completed in 2010, the Protector of Citizens pronounced the Gerontology Centre in Subotica for the best inspected facility of its kind, as it provides a considerably higher standard for accommodation of the elderly than the national average, accepts without discrimination all categories of users, actively obtains both additional funding through projects and supplementary staff, maintains excellent cooperation with local authorities and offers a wide range of non-institutional services without relocating the elderly from their households. Personnel and management of this home show that impressive results can be achieved in the same system in which work and other social institutions of this type with the right attitude for work, consistent implementation of regulations on the care for the elderly and good organisation.



### III ACTIVITIES OF THE PROTECTOR OF CITIZENS ON IMPROVING LEGAL REGULATIONS

#### 1. GENERAL REMARKS

The position and role of Protector of Citizens in the legal system of the Republic of Serbia is also determined by his considerable powers in improving legal regulations in the field of human rights and liberties. The Protector of Citizens is, in addition to right to propose draft laws from his competence, also authorised to launch initiatives for new laws, other regulations and statutory instruments, where he considers it to be of consequence for exercising and protecting citizens' rights. At the same time, the Protector of Citizens is authorised to submit to the Parliament an initiative for amending laws, other regulations and statutory instruments, where he considers that lack of regulations causes violation of citizens' rights. The above powers of the Protector of Citizens are accompanied by the legal obligation of the Government, or the competent Committee of the Parliament, to consider initiatives launched by the Protector of Citizens. Finally, it is also important that the Protector of Citizens has the power to give his opinion to the Government and Parliament in the process of drafting draft laws and regulations, if they concern issues relevant for the protection of citizens' rights.

## 2. INITIATIVES AND ACTIVITIES OF THE PROTECTOR OF CITIZENS ON IMPROVING LEGAL REGULATIONS

### 2.1. Initiatives from Citizens

In the course of 2010, the Protector of Citizens prepared 57 initiatives for improving laws, other regulations and statutory instruments. The increase in the number of citizens' complaints noted in the previous years therefore continued in 2010, confirming that the Protector of Citizens validated their trust through his activities and results achieved. Out of the total number of initiatives for improving laws, other regulations and statutory instruments, 43 were submitted by natural persons, 11 by citizen's organisations (out of which one was not officially registered as a legal entity), two by public authorities (Ministry of Justice and Ministry of Defence), and one by the Provincial ombudsman.

Two cases were initiatives to the Protector of Citizens pertaining to laws under his competence; in 43 cases, initiatives concerned amendments or addendums to laws, other regulations and statutory instruments required should the Protector of Citizens judge that rights of citizens are violated through deficiencies in such legislation; in 11 cases, initiatives to the Protector of Citizens called for his opinion in the process of drafting of laws, other regulations and statutory instruments, where they concerned issues relevant for the protection of citizens' rights.

It was proposed, for the first time since the establishment of the institution (by a civil society organisation - Lawyers' Committee for Human Right), to the Protector of Citizens to submit an initiative for providing authentic interpretation of a law (Law on the Prohibition of Discrimination) to the Parliament.

### 2.2. Activities of the Protector of Citizens

In the course of 2010 the Protector of Citizens did not take advantage of the power to propose laws under his competence and considered it to be more expedient and appropriate to endeavour to ensure public administration authorities, with their adequate capacities and being responsible for managing policies in a certain area, undertake activities under their competence in proposing draft laws, other regulations and statutory instruments.

The Protector of Citizens did, however, publicly announce that, in cooperation with the Commissioner for Information of Public Importance and Personal Data Protection, other public authorities and experts, he will prepare a draft law on opening of dossiers maintained by state security agencies from the previous totalitarian period. This announcement gained considerable public support, and representatives from current security agencies, which had in the past been opposed to this law, expressed substantial interest in contributing to the preparation of a suitable law. However, one parliamentary party, in the meanwhile, announced own draft law of its kind, and the State Secretary of the Ministry of Justice revealed the existence of political will to adopt this draft. The Protector of Citizens, therefore, desisted from the establishing of working group for drafting laws, considering it would not be expedient in the new situation.

Considering the importance given to the rights of the child in developed legal systems, as well as the fact that the Council of Europe Commissioner for Human Rights in its

Report on Human Rights in Serbia (October 2008) and the UN Committee on the Rights of the Child in his concluding observations on the occasion of the initial report of Serbia on the implementation of the Convention on the Rights of the Child (June 2008) recommended the adoption of a comprehensive Law on Children, in 2010, the working group formed by the Protector of Citizens in 2009, continued activities on drafting law on the rights of child. In May 2010, in cooperation with UNICEF, a conference was held at which the framework and content of said legislation were presented. The working group for drafting the law finished the work on the Draft Law on the Rights of the Child. Public debate is planned to be launched in 2011, with the participation of relevant ministries and other public authorities, civil society and representatives of children. With this umbrella law, the legal system in the field of the rights of the child should be harmonised, in line with the Convention on the Rights of the Child and the modern needs of children in society.

### 3. POWER TO LAUNCH INITIATIVES FOR NEW LAWS AND REGULATIONS

The Protector of Citizens took under consideration citizens' initiatives for new laws and regulations, and the ones he considered founded were directed to competent administrative authorities for further procedures, including his opinion and an assessment of the justification of their adoption, with a request for information about measures and activities undertaken.

In addition, the Protector of Citizens, on his own initiative, under the powers stipulated by the law, submitted initiatives for adoption of new laws, other regulations and statutory instruments. The Parliament of Serbia and the Government of Serbia are obliged, by the law, to make decisions upon such initiatives.

#### **3.1. Initiative to the Parliament of the Republic of Serbia for Passing the Decision on Instituting the Code of Good Administration**

Respecting citizens' rights by the administration and its attitude to citizens and their rights in general has been assessed to be completely unsatisfactory by the Protector of Citizens in his previous annual reports. The administration in the Republic of Serbia is largely self-serving, without showing concern for citizens, their rights and lawful interests. The scales tend to tip towards the administration when it comes to rights and to the citizens' side when it comes to obligations. Acting contrary to the principles of "good administration" where citizens are exposed before the administration to pointless, useless, negligent, and sometimes degrading treatment by the administrative authorities, or officers and other employees in the state and other bodies and organisations exercising public authority, has, among others, characteristics of violations of the dignity of citizens.

The Protector of Citizens, therefore, directly cooperating with the office of the European Ombudsman, prepared the Code of Good Administration, endeavouring to reflect good practices in member countries of the European Union as well as case law from the European Court of Justice in Luxemburg and the European Court of Human Rights in Strasbourg. The contents and structure of the proposed Code correspond to the European Code of Good Administrative Behaviour, which is the result of an investigation first launched on the initiative of the European Ombudsman back in November 1998, when he advised institutions and bodies of the EU to adopt similar codes in their respective governments. Following the European Ombudsman's Special Report in April 2010, the European Parliament adopted a Resolution on 6 September 2001, approving the stated Code and called the European Ombudsman to apply it on a daily basis where it is a case of maladministration, in order to empower the right of citizens to good administration.

The Code – an easily readable and understandable document – codifies in a simple way the existing legal framework consisting of material and procedural principles of administrative laws accepted by EU member states individually as well as at the European Union level. The Code of Good Administration goes a step further, stipulating additional guarantees for citizens. The form of this Code makes it unique, where, for the first time, all rules are covered by one document, which, prior to adoption, were contained in various legal texts and judicial practices, which were, and still are, hard to access for an average citizen.

The Code may have a significant role in improving the quality of administration and its approach to the citizens. On the one hand, it can be very useful to personnel who deal with requests or complaints from citizens, since the Code gives in detail what rules should be observed when working with citizens. On the other hand, it informs citizens about their rights and standards that they may expect from the administration authorities and employees. The Code is, in a way, an instrument for empowering citizens, enabling them to hold the administration accountable, and remind government employees of responsibilities which may be expected of them.

The Parliament has not yet taken a vote on the initiative submitted by the Protector of Citizens.

### **3.2. The Initiative to the Minister Competent for Judicial matters to Adopt Regulations Stipulated in the Law on Amendments to the Law on Enforcement of Penal Sanctions**

The Protector of Citizens submitted to the Minister of Justice an initiative for adopting subordinate regulations required for lawful and proper implementation of the Law on Enforcement of Penal Sanctions on the one hand, and complete, timely, and efficient exercising of rights of persons deprived of liberty on the other. Said initiative states that the deadline for adopting subordinate regulations, stipulated by provisions of Article 121 of the Law on Amendments to the Law on Enforcement of Penal Sanctions ("Official Gazette of RS", no.85/05 and 72/09), has been exceeded by almost three months, and that the adoption of regulations needed for implementation of the Law on Enforcement of Penal Sanctions is of crucial importance for exercising and protection of rights of a considerable number of persons carrying out their sentences in prison, juvenile prison, security measures of mandatory psychiatric prison hospital facilities or undertaking mandatory treatment of drug addicts and alcoholics, serving time in juvenile detention or in jail. Therefore, the Protector of Citizens proposed that said regulations should be adopted in the shortest time possible. The Minister of Justice has enacted two subordinate regulations so far, out of 20 to be enacted, namely: the Rulebook on House Rules in correctional institutions and district prisons ("Official Gazette of the RS", No. 72/10) and the Rulebook on treatment, programme of acting, classification and subsequent classification of sentenced persons ("Official Gazette of the RS", No. 72/10).

#### 4. POWER TO SUBMIT INITIATIVES FOR AMENDMENTS TO LEGAL REGULATIONS

Under legislative competences directed at improving the legal framework for protection of civil liberties and rights, the Protector of Citizens submitted eight initiatives for amendments or additions to laws, other regulations and statutory instruments:

1. Amendments to the draft Bill on the Parliament;
2. Initiative to the Committee for Transport and Communications of the Parliament for submitting an amendment to the draft Bill on Electronic Communications;
3. Initiative to the Government for proposing the Law on Amendments of the Law on Method and Conditions for Recognition of Rights and Restitution of Land Transferred to Public Property on the Basis of Agricultural Land Stock and Confiscation to the Parliament;
4. Initiative to the Government for amending the Law on Culture;
5. Initiative to the Government for amending the Law on Government Employees and other laws prescribing the method of maintaining records on nationality of employees;
6. Initiative to the Government for submitting amendments to the draft Bill on Amendments to the Law on Salaries of Government Employees and Appointees;
7. Initiative to the Ministry for Public Administration and Local Self-government for improving the legal framework for exercising active voting rights of persons deprived of liberty at local elections;
8. Initiative to the Ministry for Human and Minority Rights for amending the Law on Ratification of Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

On the occasion of the enactment of new legislation in the Parliament, with the purpose of harmonisation of legal regulations regulating the relation between the Parliament and independent and regulatory bodies, organisations and agencies, the Protector of Citizens submitted to the Parliament two amendments to the draft Bill on the Parliament. The first amendment proposes, starting from the position and powers of the Parliament, and the position and powers of public independent and regulatory bodies, organisations and agencies, precise and clearly defined the power of the Parliament to decide on reports of independent and regulatory bodies, organisations and agencies only when it is stipulated under already adopted laws, keeping in mind that the same principle is stipulated regarding the power of the Parliament to review reports from aforementioned bodies, organisations and agencies. The aim was the full and consistent protection of the independence of independent and regulatory bodies, organisations and agencies, where it is stipulated under the Constitution and laws. The second amendment aims at harmonising the existing regulations, in part, which stipulate the powers of independent and regulatory bodies, organisations and agencies in the process of drafting laws, statutory instruments and other regulations with the Bill of the said Law. None of the proposed amendments was accepted, but it was decided, at a meeting of the Committee on Justice and Administration, that matters covered by the amendments are to be regulated by the future rules of procedure of the Parliament, uniformly for all public independent and regulatory bodies, organisations and agencies.

Due to the fact that the time from the drawing up the draft Bill on Electronic Communications by the Government of the Republic of Serbia, and up to commencement of discussion about said bill in the Parliament was insufficient to allow direct submission of amendments, the Protector of Citizens submitted to the Committee for Transport and Communications of the Parliament an initiative containing two amendments to the draft Bill on Electronic Communications. The first amendment proposes harmonizing of the draft Bill with the Constitution of the Republic of Serbia which only allows for invasion of privacy and suspension of the principle of secrecy of correspondence on the basis of a court order, as the draft Bill contained a provision allowing security agencies and internal affairs authorities to gain access or obtain information on who and when communicates, as well as how much and by what means, without a court order, based only on a decision of administrators of these agencies. The competent Committee did not endorse this amendment. The second amendment aims at establishing more comprehensive guarantees of citizens' rights regarding protection of personal data through providing independent control, activities of the Commissioner for Information of Public Importance and Personal Data Protection, which would make this provision not only compliant with international standards, but also represent a rule directly derived from the Law on Personal Data Protection. The Committee endorsed this amendment and it was included in the adopted text of the Law.

The Protector of Citizens submitted to the Parliament an initiative for proposing the Law on Amendments to the Law on Method and Conditions for Recognition of Rights and Restitution of Land Transferred to Public Property on the Basis of Agricultural Land Stock and Confiscation, in order to provide effective and efficient acting of committees in charge of conducting procedures and making decisions upon requests for restitution of land. Said initiative proposed the amendment to the existing provision so as to stipulate that, instead of a judge, a person having appropriate qualifications, who does not perform judicial function, is to be appointed as a president of the committee in charge of restitution of land, having in mind that acting on complaints from major number of citizens, former owners of agricultural land transferred to public property on various grounds, the Protector of Citizens noted that these committees do not function in a great number of local self-government units due to the fact that judges appointed for presidents of committees - in accordance with the provision of the Law on Judges, stipulating that a judge cannot be on positions in bodies in charge of passing regulations and executive authorities, public agencies and bodies of provincial autonomy and local self-government units - resign from the position of a president of the committee.

The reason for direct submission to the Government is the fact that, despite the agreement, the Ministry of Finance, the Ministry of Justice and the Ministry of Agriculture, Forestry and Water Management have not proposed amendments to the said Law.

This initiative to the Government remains without a response.

The Protector of Citizens also submitted to the Government of the Republic of Serbia an initiative for an amendment to the Law on Culture proposing harmonizing provisions of this Law regarding permanent or temporary employment in cultural institutions with the actual objective of adopting such provisions, and with provisions of other laws and internationally recognised standards, so that they may not present a lasting threat to guaranteed rights of citizens. The reason for this direct submission to the Government is the fact that during prior proceedings based on a complaint from a professional association

and cultural institution, the Ministry of Culture informed the Protector of Citizens that it does not consider said amendments necessary. The Protector of Citizens estimated that initiating correction of said provisions before the Government of Serbia would be more effective than launching proceedings for assessment of their constitutionality, as an authorised to propose.

This initiative to the Government remains without a response.

Ensuring international obligations are properly met, exercising of constitutionally guaranteed citizens' right, i.e. the obligation of public authorities, public agencies, provincial institutions and local self-government bodies to take into account the nationalities making up the relevant population, and appropriate representation of minorities, prompted the Protector of Citizens to submit to the Government an initiative to amend the Law on Government Employees and other laws prescribing the method of maintaining records on the nationality of employees. Aiming to increase the participation of minorities in administrative authorities, public agencies, provincial institutions, local self-government bodies and judicial institutions, said initiative proposes stipulating a legal basis for compiling and the method of maintaining records on the nationality of employees, taking into consideration the particular sensitivity of such data, in accordance with the Law on Protection of Personal Data, and endorsing the fact that declaring one's nationality is a matter of free will. Introducing a record of nationalities is a requirement for obtaining data on nationality of public institution employees, an exercise without which planning long term measures for employment of minorities is not possible.

Proposed amendments have still not been implemented, regulations have not been changed, and this initiative remains without response.

As the draft Bill on amendments to the Law on Salaries of Government Employees and Appointees was presented to the Parliament for adoption, the Protector of Citizens submitted an initiative to the Government of the Republic of Serbia for submitting an amendment to the draft Bill on Amendments to the Law on Salaries of Government Employees and Appointees. The amendment aims to establish a legal basis in said law enabling independent public institutions or administrators of independent public institutions to set down a special salary schedule for employees directly performing control activities on behalf of independent public institutions, by means of instruments which they are authorised to issue. In this way, salaries of employees of independent public institutions would be coordinated with existing special salary schedules for employees in other public institutions whose work and salaries they control. In the legal system of the Republic of Serbia, in addition to the general salary schedule prescribed by the Law on Salaries of Government Employees and Appointees ("Official Gazette of the RS", No. 62/06, 63/06, 115/06 and 101/07), there is a number of special regulations containing the legal basis enabling administrators of certain public institutions, through issuing special legal instruments, to manage the issue of salaries of employees performing particularly complex, sizeable, difficult and responsible jobs (Law on the Serbia Military; Law on Military Security Agency and Military Intelligence Agency; Police Law; Data Secrecy Law; Law on Tax Procedure and Tax Administration). Not long after, the Protector of Citizens was informed in writing that the Government referred this initiative to the Ministry of Public Administration and Local Self-government, a draft Bill amending the Law on Salaries of Government Employees and Appointees was adopted without the proposed amendment.

The Protector of Citizens submitted to the Ministry for Public Administration and Local Self-government an initiative for improving the legal framework for exercising active voting rights of persons deprived of liberty at local elections, to facilitate its effective and efficient exercising. The said initiative proposed to the Ministry of Public Administration and Local Self-government, as an authority in charge of public administration matters pertaining to elections for organs of local self-governments and a holder of drafting the Bill on Election of Councillors, to amend the resolution stipulating that active voting rights of persons deprived of liberty at local elections is to be exercised in accordance with the implementation of provisions of the Law on the Election of Councillors, since this resolution has showed to be ineffective not allowing persons deprived of liberty placed in institutions for the enforcement of criminal sanctions to vote, which violates their active voting right granted by the Constitution and the Law on Local Elections. The current version of the Bill on the Election of Councillors still contains the moot provision.

Considering that the Republic of Serbia has not established or designated an authority that would be in charge of conducting visits in order to prevent torture and other cruel, inhuman or humiliating treatment and punishment, wherever persons deprived of liberty are or may be placed (national preventive mechanisms) , although the Law on the Ratification of the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment established a long-expired deadline, the Protector of Citizens, in cooperation with the Ministry of Justice and the Ministry for Human and Minority Rights submitted an initiative for amending the Law on the Ratification of the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. Said initiative points out that the Republic of Serbia, as well as all other signatories of the Optional Protocol, undertook an obligation to establish or designate one or more bodies that will perform the functions of the National Preventive Mechanism. Shortly after the submission of this initiative, the Ministry for Human and Minority Rights drew up a draft law amending the Law on the Ratification of the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment to which the Protector of Citizen is designated as an authority competent to act as a National Preventive Mechanism. The Ministry referred said draft law to relevant public authorities for review to determine the Bill –the initiative is underway.

## 5. OPINIONS OF THE PROTECTOR OF CITIZENS IN THE PROCESS OF DRAFTING REGULATIONS

In the course of 2010, the Protector of Citizens, under his normative competence, issued four opinions in the process of drafting laws, statutory instruments and other regulations concerning issues relevant for the protection of citizens' rights, as follows:

1. At the request of the Ministry of Defence, the Protector of Citizens issued his Opinion on the Draft National Action Plan for Implementation of "Women, Peace and Security" the United Nations Security Council Resolution 1325 in the Republic of Serbia 2010-2015, expressing the view that said Draft presents a high quality statutory instrument expressing essential democratic tendencies of the modern society contributing to the respect of both security and gender equality in Serbia. At the same time, it was pointed out the need to amend said draft with the provisions of the latest legal acts of the United Nations, the European Parliament, and the Council of Europe, and to expand the concept of security beyond military and police contexts with human security concept. In the end, highlighted the need to recognise gender equality in a qualitative manner, not only a quantitative;

2. The Protector of Citizens, at the request of the Association of Gaming Providers, issued an Opinion on the need to adopt an amendment from Members of Parliament to Articles 35 and 38 of the draft Bill on Amendments to the Law on Gaming in order to fully realise the preventative objective of its adoption. Considering that the Ministry of Finance accepted the Initiative from the Protector of Citizens for amendments to the Law on Gaming in 2009, but the draft Bill on Amendments to the Law on Gaming does not contain all the necessary provisions, the Protector of Citizens expressed his view that, if prevention of participation of underage persons in gaming activities is to be achieved, it is necessary to formulate a provision stating in precise terms the definition of "distance" from educational institutions, as well as a provision prescribing the obligation of special surveillance of entrance to gaming premises, all of which said amendments accomplish;

3. At the initiative of a group of citizens, members of the Working Group of the Ministry of Health preparing the Rulebook on conditions, method, procedure and organisation for implementation of quality control of professional work in medical facilities, private practices, medical employees and medical assistants, the Protector of Citizens issued an Opinion on the need to include provisions on external quality control of professional work in said Rulebook. They were prompted to address the Protector of Citizens due to the fact that the notes submitted to the Minister of Health by the Legal Department of the Ministry of Health after the final copy of the Rulebook was agreed on express doubts concerning the legality of provisions enabling citizens, as initiators of extraordinary external quality control of professional work in medical facilities, to obtain insight into the Inspection report and their right to submit a legal remedy. In said Opinion, the Protector of Citizens pointed out that he cannot find reasons why the proposed provisions on external quality control of professional work are not in accordance with the legal system of Serbia, nor why they could not be accepted by the Ministry of Health. Moreover, in terms of jurisdiction of the Protector of Citizens, it was highlighted that clearly and precisely defined deadlines for making decision upon the request and to perform extraordinary external quality control of professional work can only enhance the work of administrative authorities, such as participation of citizens, upon whose requests, extraordinary quality

control in the particular control procedure is determined , not only contributes to openness and transparency of administrative authorities and better informed citizens, but allows the complete and proper determination of the relevant facts and circumstances. Finally, the Opinion stated that, in order to achieve its full efficiency, it is necessary to prescribe regulations that will regulate the procedure and legal consequences of acting in the case that the Minister accepts the submitted complaint, such as a request to supplement the report or carrying out a new control procedure, which would further strengthened the principle of legal security.

## 6. INITIATIVES FOR THE ASSESSMENT OF CONSTITUTIONALITY AND LEGALITY

In addition to powers within legislative competences already listed above, the Protector of Citizens is authorised to launch proceedings for the assessment of constitutionality and legality of laws, other regulations and statutory instruments before the Constitutional Court (Article 19 of the Law on the Protector of Citizens).

In the course of 2010<sup>1</sup>, the Protector of Citizens received 20 requests for initiating proceedings for the assessment of constitutionality and legality of laws, other regulations and statutory instruments. Fourteen requests were submitted by natural persons, while 6 requests were submitted by legal entities (one request was a collective request of most significant civil society organisations). One request for initiating proceeding for the assessment of constitutionality and legality was on own initiative of the Protector of Citizens.

At the initiative of a considerable number of civil society organisations (Bar association of Serbia, Belgrade Centre for Security Policy, Belgrade Centre for Human Rights, Civic Initiatives, Youth Initiative for Human Rights, NGO Women in Black, *Coalition* for Free Access to Information, Lawyers' Committee for Human Rights – YUCOM, Transparency Serbia, Independent Journalists Association of Serbia, Association of *Journalists* of Serbia, Judges' Association of Serbia, Fond for an Open Society, Helsinki Committee for Human Rights in Serbia, Centre for Non Profit Development, Centre for Regionalism, Queeria Centre, Civil Association of Hungarians in Serbia "Argus", Centre for Democracy and Human Rights in Toplica, Resource Centre Negotin, Civil Council of Kraljevo Municipality, People's Parliament Leskovac, Forum IURUS Novi Sad, Fond for an Open Society - Serbia, Citizens' Association Sretenje-Pozega, Centre for Advancement of Legal Studies, Centre for Civil Education in Vršac, Centre for Peace and Democracy, Regional Centre for Minorities, and a number of citizens), the Protector of Citizens and the Commissioner for Information of Public Importance and Personal Data Protection launched proceeding for the assessment of constitutionality of Article 128 of the Law on Electronic Communications ("Official Gazette of the RS", No. 44/10) and Articles 13 and 16 of the Law on Military Security Agency and Military Intelligence Agency ("Official Gazette of the RS", No. 88/09) before the Constitutional Court.

As the adoption of the Law on Electronic Communications attracted considerable attention from the general public, professional associations and independent institutions, in view of the content of certain provisions as well as the adoption procedure itself, the Protector of Citizens analysed in detail international documents and standards applicable to this subject, comparative legal study cases, cases from the European Court of Human Rights in Strasbourg and the Constitutional Court of Serbia. Based on the analysis, the Protector of Citizens concluded that certain provisions of the Law on Electronic Communications, are contrary to the Constitution and obligatory international statutory instruments, they restrict or eliminate certain guaranteed liberties and rights, and decided to launch proceeding before the Constitutional Court. At the same time, due to fact that certain provisions of the Law on Military Security Agency and Military Intelligence Agency restricts or eliminate certain guaranteed liberties and right in a similar manner, the Protector of Citizens decided to launch a proceeding for the assessment of constitutionality of the Law on Military Security Agency and Military Intelligence Agency before the Constitutional Court.

The Protector of Citizens launched proceedings before the Constitutional Court for the assessment of the constitutionality of the following:

1. Provisions of the Law on Electronic Communications stipulating the obligation of the operator to maintain records on electronic communications in accordance with the law regulating criminal procedure and in accordance with laws regulating the work of security agencies and internal affairs agencies, as this enables the implementation of special measures allowing for suspension of the principle of secrecy of correspondence and other means of communications, not only on the basis of a court order, but also without a warrant from the court;

2. Provisions of the Law on Electronic Communications stipulating the obligation of the operator to maintain records in a way that allows immediate access, i.e. in a way that allows them to be presented without delay at the request from a competent public authority, enabling the implementation of special measures allowing for suspension of the principle of secrecy of correspondence and other means of communications, not only on the basis of a court order, but also at the request from competent public authority;

3. Provisions of the Law on Military Security Agency and Military Intelligence Agency stipulating that the Military Security Agency, at the order of the Agency Director or persons he may authorise to do so, may implement special procedures and measures, including covert electronic surveillance of telecommunications and information systems for collecting information on telecommunication traffic and user location, without access to their content, which represents a procedure or measure undermining the privacy of correspondence and other means of communication, thus should be implemented only on the basis of a court order;

4. Provisions of the Law on Military Security Agency and Military Intelligence Agency stipulating that the Military Security Agency has the right to obtain information from telecommunication operators on users of their services, completed communication, users locations and other data relevant for the results of implementation of special procedures and measures, thus undermining the privacy of correspondence and other means of communication without a court order.

In keeping with current opinions and cases so far, the Protector of Citizens on this occasion also emphasised that the relevant Constitutional Court ruling on issues instigated in this case is extremely important for exercising and protection of liberties and rights which present the foundation and guarantee of further social development and the level achieved, according to constitutional guarantees, may not be lowered.



## IV OTHER ACTIVITIES OF THE PROTECTOR OF CITIZENS

### 1. THE PROTECTOR OF CITIZENS IN THE MEDIA

Compared to statistical data for the past three years, a significant increase has been observed in media interest for the Office of the Protector of Citizens of the Republic of Serbia. In 2009, the number of items about the Protector of Citizens in print and electronic media doubled compared to the previous year. Increased media interest for activities of the Protector of Citizens has been continued in 2010. This particularly refers to electronic media, where the number of items is three times bigger compared to 2008 and almost a third bigger compared to 2009.

In course of 2010, 924 newspaper articles were published (statements, reports, communiqués, comments, including items where the Office of the Protector of Citizens is only mentioned) in 29 publications and 280 various television features on 10 TV channels with national coverage.

The openness of the Office and the readiness of the Protector of Citizens and his deputies to cooperate with the media contributed to this considerable media presence.

53 comments on the Protector of Citizens were published. The majority was published in daily newspapers *Blic* (15), *Politika* (14) and *Danas* (11). Apart from journalists, the Protector of Citizens regularly published own texts in response to actual events within his competences. In the comments (published 12), the Protector of Citizens pointed out problems in our health care system, expressed opinions on the draft Bill on Electronic Communications, the functioning of judicial system through the prism of trial for the murder of Brice Taton, about the progress of Serbia towards the European Union, the confidentiality of information of public importance. Out of 10 interviews published in print media with the Protector of Citizens, 5 interviews were published in the *Politika* daily newspapers, 3 interviews in the *Blic* daily newspapers and 2 interviews in the *Danas* daily newspapers.

In 2010, daily newspapers *Blic*, *Politika* and *Danas* published the majority of the articles on the Protector of Citizens, while television channels showing the most interest in the activities of this Office were RTS, B92 and Pink. These television channels featured the Protector of Citizens and his deputies as guests a total of 12 times, while the number of statements given to these channels was 50 out of the 68 aired in total during this period.

Advocating of the Protector of Citizens for amendments to the Law on Electronic Communications, public information or disclosure of personal data, was fully supported by the public. Also, it was reported with great interest about a joint visit of the Protector of Citizens and the President to the local community Jabuka, near Pancevo, views of the Protector of Citizens about reappointment process of judges and the round table dedicated to the Code of Good Administration.

## 2. COMMUNIQUEÉS AND INFORMATION

In the course of 2010, the Protector of Citizens issued 57 communiqués, where he estimated that there are obstacles in the social environment and political system preventing the exercise of human and minority rights of citizens, and the public must be warn to such phenomena. The communiqués included views of relevant institutions about certain issues, but also a warning to public authorities who did not properly perform their primary function – exercising rights of citizens. They also presented issued discussed in terms of protection and promotion of human rights and ones that caused most controversy in the public were presented. They infringed into legal, but also a broad area of socio-political and economic system.

The public was regularly informed about the activities of representatives of the Protector of Citizens through 166 individual information, published on the official web site of the Protector of Citizens, which were in a large number taken and published by electronic media. The information mostly followed the activities of the Protector of Citizens and Expert Services of the Protector of Citizens, and included the regular and control visits to public institutions, cooperation with the network of ombudsmen in the country and abroad and international organisations, participation in the days of the Protector of Citizens throughout Serbia, lectures and specialised seminars and appearances in electronic media. Compared to previous years, the interest of the media for the activities of the Protector of Citizens is significantly increasing.

In 2010, regular meetings of the Protector of Citizens with media representatives have been established. This kind of communications was concluded to be necessary, as the Protector gets from media a majority of information on violations of citizens' rights by public authorities.

### 3. ACTIONS TAKEN BY THE PROTECTOR OF CITIZENS PURSUANT TO THE LAW ON FREE ACCESS TO INFORMATION OF PUBLIC IMPORTANCE

In the course of 2010, the Protector of Citizens received 13 requests for exercising the right to access to information of public importance, out of which 19 requests were submitted by citizens, one request by media, and 11 requests by non-governmental organisations.

All requests were handled by appropriate instruments of the Protector of Citizens in a timely manner. In 2010, no requests were dismissed. Two decisions on rejections of requests for free access to information of public importance were reached.

No fees for the exercise of the right to free access of information of public importance were charged, either.

## 4. INTERNATIONAL COOPERATION

During 2010, the Protector of Citizens continued maintaining intensive international cooperation at multilateral and bilateral levels. Cooperation with regional and European international organisations and institutions, as well as their specialised bodies, has been enhanced. Established mechanisms of cooperation with the ombudsmen of the European countries, adopted at international conferences and other meetings in previous years, are exercised on regular conferences, round tables, seminars, trainings and other educational and all other meetings organised in the country and abroad.

The Protector of Citizens Office is accredited as the National Human Rights Institutions (NHRI) with the highest status A. This status was assigned by the International Co-ordinating Committee of National Human Rights Institutions for the promotion and protection of human rights. The International Human Rights Committee promotes national human rights institutions, strengthens their capacities in compliance with the Paris Principles and provides leadership role in the promotion and protection of human rights.

The Protector of Citizens has become a member of the International Ombudsman Institute (IOI), a global organisation for helping more than 150 Ombudsman institutions to cooperate. In addition to organising periodic conferences, the International Ombudsman Institute encourages the exchange of information at regional and international levels. Also, the Protector of Citizen has become a member of the Association of Mediterranean Ombudsmen (AMO), committed to promote democracy, rule of law and social peace in the Mediterranean countries.

In cooperation with the Ombudsman of Greece and the Netherlands and the European Public Law Centre, under the auspices of the European Union, the Protector of Citizen conducts the second year Twinning project of support to the strengthening of the Protector of Citizens, where numerous seminars and training for the employees of the institution were held.

### 4.1. Multilateral Cooperation

Multilateral Cooperation of the Protector of Citizens in 2010 was on the upswing. The following events are distinguished:

- International Ombudsman Conference entitled “The role and impact of the Protector of Citizens in enhancing human rights”, held in September in 2010, in Tbilisi (Georgia) was attended by 50 ombudsmen and international organisations. It was concluded that the rising powers of the Protectors of Citizens (Ombudsmen) in society and their influence on public authorities does not depend only on “political will” of the government and legal framework, but also on cooperation with media and civil society institutions;
- The Protector of Citizen participated at the international seminar „Control of Security-Intelligence Sector“, intended for the members of the National Security Council of Iraq and the members of the Iraqi Parliament, in Beirut (Lebanon). The Protector of Citizens was a lecturer on the role and possibilities of the institution of Ombudsman in protection of human rights and practical civil democratic control of intelligence and security services;

- The Protector of Citizen, in a period 20-21 October 2010, in Strasbourg, took part in separate working meetings with officials of the Council of Europe, the EU Ombudsman, officials of the European Parliament and members of the group “Friends of Serbia” where he presented methods and priorities in the work, and results achieved to date in the protection and promotion of human rights;
- In 2010, the Protector of Citizen was for the first time in a position to submit an independent report on the implementation of the Optional Protocol on the Sale of Children, Child Prostitution and Child Pornography to the Convention on the Rights of the Child to the Committee on the Rights of the Child in Geneva.

## **4.2. Bilateral Cooperation**

The Protector of Citizens intensified bilateral cooperation with ombudsmen from European countries, in particular with the Ombudsmen of Greece, the Netherlands, Spain, Catalonia, Austria, Norway and countries in the region. The aim of the meetings with Ombudsmen from these countries was to exchange opinions on the position, powers and working methods of Ombudsmen, and improve activities in protecting and promoting human rights and liberties.

In late 2010, the Protector of Citizens of the Republic of Serbia initiated the implementation of the project “Online access to the Protector of Citizens” (Online Ombudsman) funded by the Government of Norway. The purpose is to contribute to greater visibility and accessibility of the institution to the citizens who live in smaller cities and municipalities in Serbia. The project will be implemented in cooperation with the Serbian Library Association, libraries and local self-government bodies in 10 selected municipalities. With the help of librarians, citizens in these municipalities will be able to online contact the Protector of Citizens in the next year.

In 2010, the Protector of Citizens established particularly intensive cooperation with the Ombudsman for Children of the Republic of Srpska, who paid a visit to the Protector of Citizens, and a joint activity was taken place in terms of protection of child against inappropriate display in advertisements. Thanks to the reaction of the Protector of Citizens and successfully closed case of removing hoardings containing inappropriate pictures of children by an underwear manufacturer from Serbia, the intervention of the Ombudsman of the Republic of Srpska had the same epilogue, after he called on the decision reached in Serbia.

## **4.3. Regional Cooperation**

As a result of strengthening regional cooperation, a permanent association of the Ombudsmen of the Republic of Serbia, Macedonia, Montenegro, Croatia, Slovenia, Bosnia and Herzegovina and the Autonomous Province of Vojvodina was founded in May 2010 in Sarajevo. A statement of cooperation was signed at this conference, pledging continuous exchange of information and coordination of activities aiming to resolve citizens’ complaints more efficiently and endeavour to fully protect human and minorities’ liberties and rights. Regular meetings of ombudsmen are agreed to be held at least once a year.

Establishing regional cooperation between Ombudsmen paves the way for initiating as well as solving problems which constitute equally troublesome issues for all nations in the region. After Dick Marty published his report in December 2010, the Protector of Citizens asked his colleague, Ombudsman Florina Nina, to urge the Albanian public and institutions to undertake comprehensive investigation of Dick Marty's report, and she replied, promising to do so.

#### 4.4. Other Notable International Activities of the Protector of Citizens

- Organisation of an International Conference in June, presenting the a draft of the Code of Good Administration prepared by the Protector of Citizens of the Republic of Serbia, modelled on the Code of Good Administrative Behaviour. The Code was accepted by the European Parliament at the proposal of the European Ombudsman;

- Organisation of the round table "Monitoring of facilities where persons are deprived of liberty are placed – experiences and future challenges" in Belgrade, in cooperation with representatives of the Ombudsmen of Greece and the Netherlands, in February 2010;

- Participation in round table discussions on gender equality at the *International Conference of Ombudsmen for the Armed Forces held in Vienna in April 2010, as well as round table discussions in Crikvenica (Croatia) on establishing National Preventive Mechanism (NPM) in October the same year;*

- Representatives of the Protector of Citizens for the Rights of the Child participated at the Annual Conference of the European Network of Ombudspersons for Children (ENOC) in October in Strasbourg (France) and Ombudsmen for Children of South East Europe (CRONSEE) in November, 2010 in Banjaluka. Within these networks, information and good practice of member states are constantly exchanged, contributing to revision of own views and practices and their constant improvement. In 2010, members of the network in particular dealt with following issues: protection of children against sexual exploitation and abuse (Conclusions of CRONSEE reached at the meeting in Banjaluka, in May 2010, are regarded very important ), violence, issues in education, health of children and modern technologies;

- Representatives of the Protector of Citizens for gender equality participated at two International Conferences in October devoted to the strategic planning in gender equality, in Zagreb and Belgrade;

- In working meetings with the delegation of the *European Commission against Racism and Intolerance (ECRI)*, in June in 2010, the Protector of Citizens discussed racism and intolerance and implementation of recommendations of the Committee from the competency of the Protector of Citizens reached in the Committee's report from 2008;

- In individual talks with rapporteurs of the Political Affairs Committee of the Parliamentary Assembly of the Council of Europe in September 2010 in Belgrade, representatives of the Protector of Citizens presented activities to date and their results, anticipated challenges for the Office of the Ombudsman, as well as a brief summary of the status of human rights in Serbia;

- In December 2010 the Protector of Citizens received the special representative of the Secretary General of the European Council in Belgrade and members of the Monitoring

Committee of the Parliamentary Assembly of the Council of Europe. Invited by the organisers in Oslo (Norway), during the same month, he attended the Nobel Prize award ceremony when the Nobel Peace Prize was awarded to Liu Xiaobo, the imprisoned Chinese dissident, and after this event, held talks in Belgrade with the Rapporteur of the Council of Europe for Serbia, Jelko Kacin;

– In 2010, cooperation with the OSCE Mission (Organisation for Security and Co-operation in Europe) contributed to the implementation of a number of activities with the aim of greater visibility of the institution, building a positive public image and improving respect for human rights. Most important activities were: running subsites for the rights of the child and national minority rights, establishing the panel of youth advisors of the Protector of Citizens, promotional activities in the interior of Serbia, Days of the Protector of Citizens in Uzice (in July) and in Kraljevo (in September 2010), and organising study visits to the Catalan and Hungarian Ombudsman;

– UNIFEM (*United Nations Development Fund For Women*) supported the activities of the Protector of Citizens in promoting gender equality, through the implementation of the project “Gender Based Discrimination in the Workplace at Local and Provincial Level, in Cooperation with the Provincial Ombudsman”, with a regional conference attended by the Protector of Citizens and other independent institutions involved in gender equality. The conference aimed at emphasising the importance of applying protective mechanisms in terms of gender equality. The conference was attended by: the Ombudsman of Bosnia and Herzegovina, Deputy Ombudsman of Montenegro, the Attorney for Gender Equality of the Republic of Croatia, representatives of the Ombudsman of Slovenia, Romania and Macedonia and local ombudsmen;

– The Protector of Citizens started implementation of the project „Establishing regional offices in the south of Serbia“ which is a part of larger joint programme implemented by six UN agencies entitled „Peacebuilding and Inclusive Local Development“ , whose aim is to help the south of Serbia to make progress towards sustainable social and economic development for the benefit of all communities. The project was implemented with financial support of the *Swedish International Development Cooperation Agency (SIDA)*, in co-operation with the United Nations Development Programme (UNDP);

– Early 2010, with the financial support of the Council of Europe, the Protector of Citizens implemented the project “Child Friendly Justice”, whose purpose is to contribute to promoting the rights and position of children and youth in the justice system. A survey was conducted at more than 20 secondary and primary schools, which included more than 700 children and young people. The result of the survey are guidelines of the Council of Europe state members to improve the position and rights of children and youth in the justice system;

– The Protector of Citizens maintains close cooperation with UNICEF (United Nations Children’s Fund) in the field of promotion and enhancement of the rights of the child. In 2010, the successful cooperation with UNICEF was achieved in support of the Protector of Citizen’s initiative for drafting a separate Bill on Children. The Protector of Citizens also participated in two evaluations carried out by international experts on commission of UNICEF: the implementation of inclusive education and transformation of residential institutions for children, giving his independent opinion on the pace, risks and positive aspects of the both reform process.

## 5. ROUND TABLES, SEMINARS AND CONFERENCES

In 2010, representatives of the Office of the Protector of Citizens participated in numerous conferences, round table discussions and seminars, as well as held a number of lectures and presentations on the role of the Protector of Citizens in protection of the rights of the child, particularly vulnerable social groups (national minorities, persons with disabilities, LGBT population, persons deprived of liberty) and improvements in the operation of the administration with respect to recognizing citizens' rights.

The Protector of Citizens organised a round table on strengthening of cooperation and networking aimed at achieving and promoting national minority rights in Belgrade, 24 March 2010. The aim of round table discussions was to bring together all public relevant factors with whom the Protector of Citizens cooperate in exercising and improving of national minority rights in Serbia, to discuss the situation and ways for establishing and strengthening the existing communication channels between minority self-governments, relevant national and provincial authorities, the public administration, non-governmental organisations and other institutions performing activities in relation to the position of national minorities in Serbia and the Protector of Citizens of the Republic of Serbia. The round table was held within the Twinning project "Support the Strengthening of the Protector of Citizens Office 2009-2011", organised by the Ombudsmen of Greece and the Netherlands and the European Public Law Centre, with the financial support of the European Union.

A round table discussion was held at the OSCE office in Belgrade on 10 May 2010 concerning an inspection visit of the Protector of Citizens to the Security Information Agency (BIA). The Protector of Citizens stated that about 400 citizens' complaints were received pertaining to the operation of security agencies, but that an overwhelming majority does not provide sufficient basis for launching a procedure of assessment of legality and regularity of the operation of these agencies. Acting Head of the OSCE Mission in Serbia, Mr Thomas Moore, and Mr Peter Gill of the Geneva Centre for the Democratic Control of Armed Forces also participated in the discussion.

The Protector of Citizens, under the Twinning project, organised a round table discussion "The role of institutions in establishing gender equality" in Belgrade, on 20 May, 2010. It was outlined that the largest number of cases at the Republic Ombudsman in relation to gender equality related to violation of rights in the domain of social affairs, labour relations and domestic violence. The round table was attended by as NGO representatives so as local and foreign experts from Austria and Greece.

In cooperation with the Initiative for the inclusion by the organisation VelikiMali from Pancevo, the Protector of Citizens organised the conference "The right to make a decision - the issue of removal of legal capacity of persons with disabilities in Serbia" on 10 June 2010. The conference was held to draw attention to widespread practice and serious violations of the rights of persons with disabilities due to the deprivation of legal capacity and launch an initiative to change this approach in our country.

The vulnerability and safety of data, a topic which the Protector of Citizens paid particular attention to in the past year, was discussed at a conference organised on 18 June 2010 by the Faculty of Law and Faculty of Electrical Engineering of the University of Belgrade, and which was also attended by the Protector of Citizens. The importance of the security of IT networks was emphasised at the conference, as their abuse may cause enormous damage and serious injury to rights. It was concluded that plenty of information owned by the state actually belongs to the society and citizens and should be accessible to all, which also carries the risk of compromising security.

The Protector of Citizens participated, on 1 July 2010, in round table discussions on the topic "Reporting on Implementation of the UN Conventions on the Rights of Persons with Disabilities", organised by the Ministry for Human and Minority Rights, the OSCE Mission and the United Nations in Serbia. It was stated at the meeting that Serbia should submit its first Report on the implementation of the Convention on the Rights of Persons with Disabilities by August 2011, which should include a comprehensive review of the measures taken to exercise the rights under the Convention, monitor achievements, identify problems and identify policies and measures to be taken to deal with such problems.

With the aim of establishing closer cooperation and exercising and respecting human and minority rights, the Protector of Citizens organised on 8 October 2010, a round table in a multiethnic municipality of Bujanovac. The meeting was attended by representatives of national councils for national minorities of Roma and Albanians from the region of Bujanovac, Presevo and Medvedja, who supported this initiative of the Protector of Citizens. Deputy Provincial Ombudsman of Vojvodina also took part in this round table discussion.

The Protector of Citizens participated at a conference organised on 24 October 2010 in Novi Sad devoted to challenges in the implementation of the Law on Access to Information of Public Importance, the Law on Personal Data Protection and the Law on Data Confidentiality - documents of extremely importance to raise the level of institutional protection of human rights, organised by the Lawyers' Committee for Human Rights, with the support and cooperation of USAID and the Institute for Sustainable Communities.

The Protector of Citizens took part in a conference on administrative transparency in Europe organised on 18 November 2010 by the United Nations Development Programme and Programme SIGMA and the Commissioner for Information of Public Interest and Personal Data Protection. Participants of the conference agreed that transparency in the work of administration not only contributes to building a responsible state administration but is also one of the basic conditions for the fight against corruption.

On the occasion of the Day of Protection of Children against Violence, the Protector of Citizens participated in the conference "Safe Childhood" organised on 20 November 2010 by the Children's Rights Council of the Republic of Serbia. The aim of the conference was that all the actors playing a role in implementing the National strategy for the Protection of Children against Violence and the Action plan for its implementation, relevant ministries, representatives of civil society and researchers of the phenomenon of violence from the academic community, present their activities to date and future plans for the achievement of the objectives set in the Action Plan.

At lectures, seminars and public presentations in 2010, the Protector of Citizens tried to approach the role, the function and importance of the Protector of Citizens in respect of human rights, control of state bodies and institutions to representatives of different social groups from the media, nongovernmental organisations (NGOs), student population (undergraduate and graduate students of legal and political sciences at the University of Belgrade, Kragujevac and Nis, and students at master studies at the Law Faculty of Union University) and representatives of the authorities.

Some of the topics of lectures held by the Protector of Citizens to graduate and post-graduate students of Legal and Political Studies at the universities of Belgrade and Kragujevac were: the Office of the Protector of Citizens as a curative factor for monitoring the work of public administration, protection of human rights in Serbia, scope of competences of the Protector of Citizens' inspection powers, and mechanisms in the security sector in Serbia.

## 6. COOPERATION WITH CIVIL SOCIETY ORGANISATIONS

In the course of 2010, the Protector of Citizens, as an independent public authority, continued intensive cooperation with civil society organisations as partners in protection of citizens' rights and liberties. The quality of this cooperation was evidenced in the fact that the Protector of Citizens included civil society representatives, and in particular the academic community and non-governmental organisations, when forming advisory bodies for individual specialised disciplines.

A network of partner civil society organisations and experts has been established through which the actual information on the work are exchanged and cooperation on specific issues is established, both electronically and through direct exchange of information, which primarily assists the Protector of Citizens in his work to protect and promote human rights and liberties. This particularly become apparent in cooperation with NGOs involved in a specialist subject (e.g. street children, children victims of violence or trafficking, persons with disabilities, persons deprived of liberty, minority rights, etc.), so the Protector of Citizens continued or established cooperation with the Belgrade Centre for Human Rights, Centre for Youth Integration, Astrom, MDRI/DRI etc.

The Protector of Citizens protested against attacks on NGOs and their activists on many occasions in his public appearances and statements, and called on state authorities to undertake all available measures in keeping with the law to prevent and sanction violence, calls to violence, hate crime and hate speech, regardless of the identity of the perpetrators of these offences.

The cooperation of the Protector of Citizens with civil society organisations was also implemented through joint organisation of various meetings and other forms of partnership. Thus, the Protector of Citizens analysed, in cooperation with non-governmental organisations, situation in certain areas, exchanged experience, prepared legislative initiatives, etc. Complaints filed by numerous non-governmental organisations, upon which the Protector of Citizens directly took action, represent a specific form of cooperation. In some cases the Protector of Citizens used the information contained in the mentioned complaints, along with information obtained from otherwise, to launch proceedings at own initiative.

Significant cooperation has been established with a number of non-governmental organisations, such as: Belgrade Centre for Human Rights, Centre for Civil-Military Relations, Civic Initiatives, Helsinki Committee for Human Rights, Belgrade Fund for Political Excellence, Lawyers' Committee for Human Rights, Transparency Serbia, Humanitarian Law Centre, Fond for an Open Society, International Aid Network in Serbia, Centre for Human Rights - Nis, JAZAS (Yugoslavian Association against AIDS), Labris, Queeria Centre, Gayten, SOS Helpline for Women Victims of Discrimination at Work, Child Rights Centre, VelikiMali, SOS Helpline for Children, Centre for Youth Integration, Incest Trauma Centre etc.

## 7. PUBLICATIONS

Aiming to acquaint citizens with the activities and scope of competences of the Office of the Protector of Citizens, and ways to apply to the Office with regard to protection of their rights, the Protector of Citizens published a number of brochures.

Primary and secondary school students are the target group for brochures titled *Get to know the Protector of Citizens*. In addition to containing information regarding the rights of the child, brochures for children of various ages offer practical advice on ways to contact the Protector of Citizens in case rights guaranteed by international documents and laws of the Republic of Serbia are abused or threatened.

Another brochure detailing the activities of the Protector of Citizens serves to inform citizens of Serbia about the scope of competences and work of the Office and ways to contact the Protector of Citizens.

In cooperation with the Provincial Ombudsman of Vojvodina, the Protector of Citizens issued *Know Your Rights*, a guide to the Office of Ombudsman, familiarizing citizens with methods of protection of civil and human rights in the area of gender equality.

*You Have the Right* is the title of a publication aimed at persons deprived of liberty, advising incarcerated citizens of their rights and ways to protect them, regardless of their circumstances. The brochure offers detailed instructions on ways for persons deprived of liberty to contact the Protector of Citizens if they consider their human rights to be under threat.

The Protector of Citizens published, with the support of the OSCE, *Report on a Preventive Control Visit to the Security Information Agency with Recommendations and Opinions*, after the Protector of Citizens conducted preventive control visit to the Security Information Agency (BIA) in the January- February 2010 period, with the aim of gaining insight into the legality and regularity of the Agency's activities that impinge on guaranteed civil rights and liberties of citizens. The Report was translated into English language and printed, causing a significant attention by international professional circles.

The Protector of Citizens, within publishing activities, issued a publication "Recommendations, Opinions, Views and Legal and other Initiatives of the Protector of Citizens". This publication is a kind of summary of the Protector of Citizens' activities from the establishment of the institution 23 July 2007 to 23 July 2009 because it contains all recommendations made in this period. Its importance is that clearly shows what citizens complain about, to which state authorities and how much the authorities are willing, taking into account the recommendation of the Protector of Citizens, to rectify mistakes in their work that violated certain citizens' rights. The Protector of Citizens' plans involve issuing of this publication on a yearly basis, so in 2010 he prepared its release for a period 24 July 2009 - 31 July 2010.

The Protector of Citizens also published a summary of a book by Prof. Dr. Nenad Đurđević titled *Exercising Freedom of Religion and Legal Position of Churches and Religious Communities in the Republic of Serbia*.



## V INFORMATION ON THE PROTECTOR OF CITIZENS AND FINANCIAL STATEMENTS

### 1. THE EXPERT SERVICES DEPARTMENT OF THE PROTECTOR OF CITIZENS

The Expert Services Department was established for performing expert and administrative tasks from the scope of competences of the Protector of Citizens.

The Rulebook on Internal Organisation and Job Classification in the Expert Services Department of the Protector of Citizens specifies 50 positions, employing 63 persons: five civil servant managerial positions, 54 executive positions, and four appointees.

As of 31 December 2010, there was a total of 58 employees. 45 were employed for an indefinite period, and 13 civil servants and appointees for a definite period. Of the total number, 45 have university degree, and 13 of IV degree vocational studies, 46 are women and 12 men. The Protector of Citizens and his deputies are not included in the stated number.

Bearing in mind the number of contacts established with citizens, the number of received complaints and initiated proceedings upon those complaints, and all other activities of the Protector of Citizens, the Office is understaffed. The Protector of Citizens will endeavour in the coming period to adjust the Rulebook on Classification and Number of Employees in the Expert Services Department to the real needs and competences of this authority.

#### **1.1. Establishing Local Offices in Presevo, Bujanovac and Medvedja**

Pursuant to the Law on the Protector of Citizens ("Official Gazette of the RS", No. 79/05 and 54/07) and the General Act on Organisation and Operation of the Expert Services Department, the Protector of Citizens reached a Decision on the establishment of local office of the Protector of Citizens in the municipalities of Presevo, Bujanovac and Medvedja ("Official Gazette of the RS" No. 91/09). The office was established to increase the accessibility of the institution of the Protector of Citizens and exercise more effectively protection and promote human and minority rights and liberties of citizens of this area.

The Office employs two civil servants, bachelors of laws. As a number of people visiting this office and a number of written complaints submitted by citizens from this area, are significantly increasing, the need for more employees will be considered, with the upcoming amendments to the Act of Classification and Organisation.

Reception of clients in the Office is performed by the following schedule: Monday and Tuesday - the municipalities of Bujanovac, Wednesday and Thursday – the municipality of Preševo and Friday – the municipality of Medveđa.

Reception of clients by the following schedule is performed:

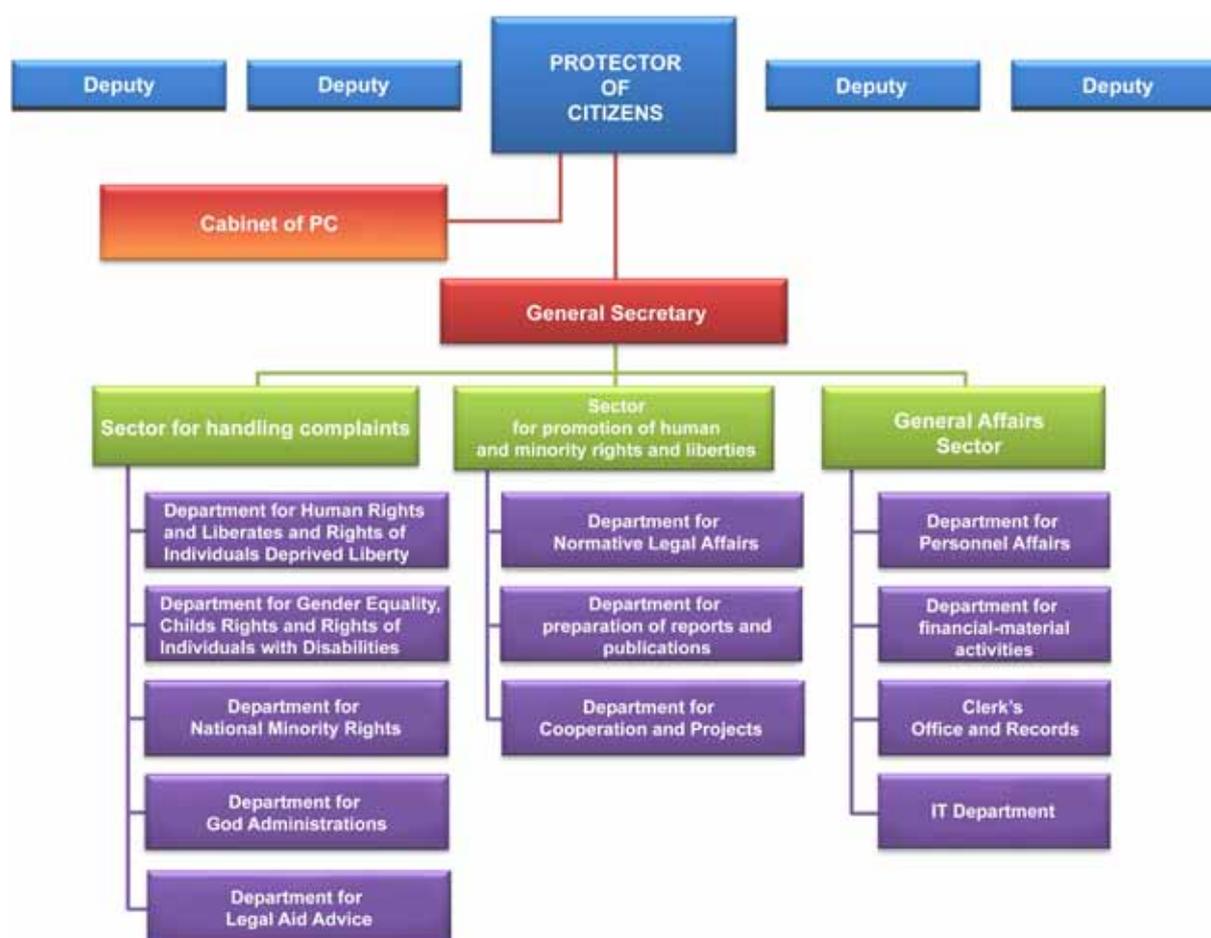
– In Preševo, in the building of the Co-ordination Centre for the municipalities of Preševo, Bujanovac and Medveđa, 12 Sava Kovačević St. ;

– In Bujanovac, in Bujanovac City Hall – press room of the Co-ordinating Body, 115/III Karađorđe Petrović St.;

– In Medveđa, in the building of the Cultural Centre, 63 Jablanička St.

The office officially started its operation on 28 June 2010.

## 1.2. Organisational Chart



### **1.3. Premises and Equipment**

Premises in Belgrade, at No. 16 Deligradska St., were allocated to the Protector of Citizens by the Instruction No. 361-1652/2010 dated March 29, 2010 issued by the Committee for Allocation of Official Buildings and Offices of the Government of Serbia, and cover a total of 1237 m<sup>2</sup>, consisting of 43 offices, archive room, meeting halls, and a garage for five vehicles.

The Protector of Citizens began operating from the premises in Belgrade, No. 16 Deligradska St. on 4 May 2010, when after more than two years of working from a temporary office at two locations (Belgrade, 106 Milutin Milanković Blvd. and offices in the Palace of Serbia, 2 Mihailo Pupin Boulevard 2), first time since its inception, the entire office began operating from a single building, making activities and communication between employees easier.

Difficulties in the work due to inadequate office space culminated in an event of 16 April 2010 when the offices at the Protector of Citizen's headquarters, in Belgrade, 106 Milutin Milanković Blvd., New Belgrade, were robbed. All computer and telecommunications equipment was stolen.

Premises in 16 Deligradska St. are adequate for accommodation of the current number of employees and for receiving clients. At the same time, the space fulfils the minimum requirements for reception of clients and work of civil employees – the right to safety and privacy of clients, healthy working conditions and dignity of the Office.

In cooperation with the competent services of the common state authorities, it was continued to acquire instruments of labour, particularly computers and other technical equipment, while a number of instruments of labour was purchased from the own means of the Protector of Citizens. The department is equipped with desk and portable computers, video presentation equipment, telecommunications devices and necessary office equipment. The premises in 16 Deligradska St. are equipped with office furniture inherited from the previous user. In addition to four cars, which the Administration for Joint Services of the National Bodies (AJSNB), pursuant to the Decree of the Government of Serbia, has allocated for use to the Protector of Citizens, one field and one passenger car obtained from the OSCE donation, three passenger cars of lower class were bought from the budget the Protector of Citizens for the functioning of the Expert Services Department.

## **2. FINANCIAL EXPENDITURES**

The 2010 Budget Law of the Republic of Serbia allocated funds in the amount of RSD 121,645,000 to the Protector of Citizens, constituting an increase of 13.4% compared to the amount of RSD 107,257,000 in 2009.

The Protector of Citizens spent a total of RSD 112,163,529, constituting 92.21% of the total allocated funds, and an increase of 14.4% compared to the RSD 98,001,217 spent in 2009.

**Table – Execution of the 2010 Budget**

Ec. class.	Description	Allocated	Spent	%
411	Salaries, benefits, allowances	77.174.000,00	70.351.649,96	91,16
412	Social contributions	13.623.000,00	12.411.403,54	91,11
414	Social benefits to employees	1.446.000,00	785.792,67	54,34
415	Transportation allowance (to and from work)	2.300.000,00	2.159.277,78	93,88
416	Awards and bonuses	1.000,00	0,00	0,00
421	Fixed expenses	4.400.000,00	4.365.439,72	99,21
422	Travel expenses	4.500.000,00	4.289.925,33	95,33
423	Services on contract	7.600.000,00	7.568.622,65	99,59
425	Repairs and maintenance services	700.000,00	467.432,47	66,78
426	Material	5.200.000,00	5.139.757,88	98,84
482	Taxes, fees	300.000,00	226.661,96	75,55
512	Machinery and equipment	4.400.000,00	4.397.565,40	99,94
TOTAL		121.645.000,00	112.163.529,36	92,21

In 2010, apart from funds allocated by the Budget Law, the Protector of Citizens used funds donated by international organisations.

Funds amounting to RSD 318,000.00 were provided by the Council of Europe, in accordance with the agreement between the Council of Europe on the implementation of project „Child Friendly Justice” from 3 August 2010. The funds were spent for the allowance of civil servants who participated in the project, and to a total of RSD 316.803,00.

In 2010, funds provided from the United Nations Development Fund for Women (UNIFEM) within the project “Gender Equality in Practice of Local Ombudsmen” were also used to a total amount of RSD 528.000,00 for writing and creation of concept, technical production and graphic design of posters and brochures entitled *Gender Equality – Protect your Rights!* An amount of RSD 523.838,00 was spent for these needs.

Tables below show an overview of completed and ongoing project activities.

## 2.1. Detail Data on the Execution of the 2010 Budget

Ec. Class.	Description	Allocated	Spent	%
1	2	3	4	5
411	Salaries, benefits, allowances			
411111	Salaries based on minimum labour wage		58.450.659,38	75,74
411112	Allowance for overtime working hours		1.654.850,84	2,14
411113	Allowance for work on national and religious holidays		4.325,96	0,01
411115	Allowance for time spent at work (past labour)		3.981.342,22	5,16
411117	Sick leave to up 30 days		867.704,66	1,12

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1	2	3	4	5
411118	Compensation wage during absence from work – annual leave, paid leave		4.331.900,20	5,61
411119	Other compensations and allowances for employees		824.634,18	1,07
411151	Compensation for unused annual leave		236.232,52	0,31
Total 411		77.174.000,00	70.351.649,96	91,16
412	Contributions			
412111	Contributions to pension and disability insurance		7.627.119,35	55,99
412211	Contributions to health insurance		4.264.253,10	31,30
412311	Contributions to unemployment		520.031,09	3,82
Total 412		13.623.000,00	12.411.403,54	91,11
414	Social benefits to employees			
414111	Maternity leave		453.883,49	31,39
414314	Benefits in the case of death of employee of employee's family member		47.921,00	3,31
414411	Benefits in the case of medical treatment of employee or employee's family member		283.988,18	19,64
Total 414		1.446.000,00	785.792,67	54,34
415	Compensation for employees			
415112	Transportation allowance ( to and from work)		2.159.277,78	93,88
Total 415		2.300.000,00	2.159.277,78	93,88
416	Awards and bonuses			
416000	Employee awards and other special expenses		0,00	0,00
Total 416		1.000,00	0,00	0,00
421	Fixed expenses			
421121	Banking services		6.344,13	0,14
421411	Phone, telex and fax ( because of the moving into new space, a change of user was made ; costs of subscriptions and usage of fixed telephone with ISDN connection)		789.849,55	17,95
421414	Cell phone services (use of cell phones, use of internet services; all employed civil servants and appointees in the Expert Services Department use company's cell phones for official business purposes i.e. the need to be 24 hours a day available, in compliance with the internal act (cell phone usage policy).		3.245.265,04	73,76
421421	Also, for business purposes in the Expert Services Department, mobile internet services are used.		3.310,00	0,08
421512	Cell phones were purchased within subscription at mobile telephony service provider (MTS), due to significantly lower prices than the regular sale price.		145.053,00	3,30
421521	Post services		172.550,00	3,92
421919	Car insurance (compulsory and KASKO insurance for five company cars)		3.068,00	0,07
Total 421	Insurance of employees in the event of an accident	4.400.000,00	4.365.439,72	99,21
422	Travel expenses			
422111	Travel allowance expenses for business trip		1.288.620,04	28,64

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1	2	3	4	5
422121	Transportation allowances for business trip		90.200,51	2,00
422131	Accommodation costs for business trip		625.385,00	13,90
422199	Other expenses for business trip in the country		88.756,78	1,97
422211	Travel allowance expenses for business trip abroad		1.183.508,34	26,30
422221	Transportation allowances for business trip abroad		580.259,00	12,89
422231	Accommodation costs for business trip abroad		351.436,00	7,81
422299	Other expenses for business trip abroad		79.359,66	1,76
422292	Taxi		2.400,00	0,06
Total 422		4.500.000,00	4.289.925,33	95,33
423	Services on contract			
423111	Translation services (simultaneous and consecutive interpretation at conferences, roundtables, meetings; written translation of reports, publications, documents, websites)		318.405,79	4,19
423291	Other computer services, installation and extension of subscription packages - database of legal, economic regulation)		625.291,20	8,23
423311	Services of professional development and trainings		308.070,00	4,05
423322	Registration fees for professional conferences		34.400,00	0,45
423391	Expenditures for professional examinations		49.000,00	0,64
423399	Other expenditures for professional education		7.500,00	0,10
423413	Services of printing publications		157.616,60	2,07
423421	Services of public information		197.790,00	2,60
423432	Announcement of tender procedures and informative ads		312.317,08	4,11
423499	Other media services		259.030,60	3,41
423599	Other professional services (outsourcing of experts to carry out the activities from the competence of the Protector of Citizens, particularly in the specialist field not covered by specialty of Deputies Protector of Citizens, within the regular planned and extraordinary activities in relation to control and supervision; services of experts within the technical expert working groups for drafting legislation and other documents and providing opinions and proposals about the passed laws and other documents of the state authorities, in keeping with the law)		2.122.496,83	27,93
423621	Catering Services (as part of the organisation of conferences, round tables, meetings, and visits of foreign delegations, working lunches and business dinners were organised; as part of the contractual obligation in the implementation of the Twinning project "Support to the Strengthening of the Protector of Citizens Office", working lunches were organised for all participants. For these purposes, AJSRB services (Administration for Joint Services of Republic bodies) were used, Catering sector)		1.134.420,50	14,93

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1	2	3	4	5
423711	Entertainment costs(promotional items for conferences, round tables, meetings, presentations of activities of the Protector of Citizens, during visits to municipalities, schools, detention centres, centres for social welfare, institutions for the execution of penal sanctions and other institutions throughout the territory of the Republic; for the purpose of the implementation of the Twinning Project "Support to the Strengthening of the Protector of Citizens" - banners, brochures, folders, pads, pins, badges, pens, gifts for the high guests and heads of delegations, New Year's gifts for children of personnel in the Department)		604.326,97	7,95
423911	Other general services (annual dues for membership in international ombudsman organisations; services not mentioned elsewhere - the maintenance of security video surveillance system; the annual lease fee and maintenance of internet domain name; subscription and maintenance of CDS services; rental of equipment for simultaneous interpretation services; programming and maintenance of the internal telephone system; registration of print publications at NBS (National Bank of Serbia) and MSL (Matica Srpska Library) - ISBN and CIP cataloguing)		1.437.957,08	18,92
Total 423		7.600.000,00	7.568.622,65	99,59
425	Repair and maintenance services			
425191	Ongoing repair and maintenance of buildings		35.400,00	5,06
425211	Mechanical repairs		30.587,56	4,37
425221	Furniture		73.552,60	10,51
425222	Computer equipment		194.534,55	27,79
425223	Communication equipment		5.145,98	0,74
425226	Office-technical equipment		88.461,78	12,64
425227	Built-in equipment		39.750,00	5,68
Total 425		700.000,00	467.432,47	66,78
426	Material			
426111	Office stationary		1.871.843,57	36,00
426131	Flowers and greenery		34.950,40	0,67
426191	Other administrative material		24.780,00	0,48
426311	Professional literature for the regular needs of employees		338.282,24	6,51
426312	Professional literature for employee education		363.625,93	6,99
426411	Petrol		1.901.000,11	36,56
426491	Other material for transport means		578.190,92	11,12
426919	Other material for specific purpose		27.084,71	0,52
Total 426		5.200.000,00	5.139.757,88	98,84
482	Taxes, fees			
482111	Permanent property taxes		162.971,96	54,32
482131	Vehicle registration		48.690,00	16,23
482231	City fees		5.000,00	1,67
482241	Municipal fees		7.000,00	2,33
482311	Republic fees		3.000,00	1,00
Total 482		300.000,00	226.661,96	75,55

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1	2	3	4	5
512	Machinery and equipment			
512111	Cars (provision of three lower class car )		3.366.772,80	76,52
512221	Computer equipment (computers, monitors, scanners)		870.217,60	19,78
512222	Printers		49.479,00	1,12
512241	Electronic equipment (two LCD TVs, video-projector)		111.096,00	2,52
Total 512		4.400.000,00	4.397.565,40	99,94
TOTAL		121.645.000,00	112.163.529,36	92,21

## 2.2. Projects completed in 2010

No.	Project Title	Financed by	Project Budget	Project Duration	Brief Description Purpose / Users	Distribution of Funds
1	2	3	4	5	6	7
1	<b>Introduction of Gender Equality into Local Ombudsmen Practice</b>	UNIFEM	16,000.00 €	6 months 8 September – 2 October	Contribution to higher degree of responsibility of local Ombudsmen and local government authorities towards women and women's rights through raising awareness and strengthening capacities for protection of working rights of women. Project beneficiaries are employed in the Protector of Citizen Offices, Provincial Ombudsman office, and include other local Ombudsmen.	Out of the funds allocated to be used in 2010, in the total amount of RSD 582,000 for writing and creation of concept, technical production and graphic design of posters and brochure entitled <i>Gender Equal – Protect Your Rights!</i> , total amount spent was RSD 523,838. Funds were paid out for services of professional consultants (designer, graphics editor, printing). The remaining funds were allocated to cover travel expenses for participants of seminars held as part of the project. <b>Funds were not used for reimbursements to civil servants employed by the Expert Services Department of the Protector of Citizens, or for any other personal income.</b>
2	<b>Support to the Strengthening of the Office of the Protector of Citizens</b>	OEBS	69,650.00 €	12 months 1 October – 12 October	Contribution to higher visibility of the Office and establishing a positive public image, as well as improvements concerning the respect of human rights.	Funds were spent for the following: Promotion of internet website www.pravdeteta.rs; travel expenses for the Survey on Official Use of Language of National Minorities; travel expenses for the public presentation campaign of the Protector of Citizens in Kraljevo, Negotin and Uzice; project "Panel of Youth Advisors"; preparation and publishing of documents for the project "Good Administration" in relation to the position of persons with disabilities; production and publishing of brochures on the of persons with disabilities; production and publishing of materials on rights of persons deprived of liberty (poster, brochure); participation at the meetings of ENOC Network (Paris, Malta, Strasbourg); expert services of outsourced consultants for the project "Strategy of Communication with Children"; expert services of outsourced consultants for the project "Strategy of Communication with Persons Deprived of Liberty"; travel expenses for Department of National Minority Rights educational visit to Hungary. <b>Funds were not used for reimbursements to civil servants employed by the Expert Services Department of the Protector of Citizens, or for any other personal income.</b>

V Information on the Protector of Citizens and financial statements

1	2	3	4	5	6	7
3	<b>Child Friendly Jus</b>	Council of Europe	3,050.00 €	March 2010	Contribution to improving the rights and position of children and youth in the justice system. Employees in the Expert Services Department visited 22 primary and secondary schools, two juvenile detention centres, two shelters, and collected and processed 713 questionnaires designed by experts of the European Council.	Funds were used for daily allowances of eight civil servants employed by the Expert Services Department of the Protector of Citizens, who travelled as a team to implement this project, to the total amount of RSD 316,803. <b>In addition to the above, funds were not used for reimbursements to civil servants employed by the Expert Services Department of the Protector of Citizens, or for any other personal income.</b>
4	<b>Twinning Project "Support to the Strengthening of the Office of the Protector of Citizens" (year I) Ombudsman of Greece, Ombudsman of the Netherlands and the European Public Law Centre</b>	EY	360,819.98 €	12 months 10 September – 11 October	Contribution to progress of capacities of the Office of the Protector of Citizens, support to the Office to realise its mandate and mission, to consolidate its internal structure, and to create a sustainable network of cooperation with all relevant organisations and institutions, both in the country and in EU member states. Project users are: employees in the Office of the Protector of Citizens, local Ombudsman and Provincial Ombudsman.	<b>Beneficiaries of funds allocated by the Twinning Project are foreign experts from Ombudsman offices of Greece, the Netherlands, Austria, Slovenia, and other Ombudsmen and Offices.</b> Funds were allocated for reimbursement of expenses for translator services, production of promotional and other printed materials necessary for the implementation of the project. <b>Funds were not used for reimbursements to civil servants employed by the Expert Services Department of the Protector of Citizens, or for any other personal income.</b>



## RECOMMENDATIONS FOR IMPROVING THE POSITION OF CITIZENS IN RELATION TO ADMINISTRATIVE AUTHORITIES

- The Parliament should include provisions relating to cooperation with the Protector of Citizens and other independent control bodies into its Rules of Procedure.
- The Parliament should ask the High Judicial Council to begin discharging statutory obligation to cooperate with the Protector of Citizens in cases within the competence.
- The competent Committee of the Parliament should discuss the special report submitted by the Protector of Citizens on the preventative inspection of the Security Information Agency (BIA).
- The Parliament should consider and support the implementation of the Code of Good Administration submitted by the Protector of Citizens.
- The competent Committee of the Parliament should discuss the report submitted by the Protector of Citizens pertaining to the case of the “missing babies”.
- The Government of the Republic of Serbia should decide about the initiative of the Protector of Citizens for amendments to Article 50 of the Law on Culture.
- The Government should discuss the initiative submitted by the Protector of Citizens on the normative elaboration of the method of implementation of the provision in the Constitution stipulating that national composition of the population and corresponding representation of national minorities must be taken into account in the employment procedure for administration authorities, public offices, provincial authorities, and local authorities.
- In its future activities, the Government should not propose any changes to the budget of the Protector of Citizens without prior consultation with the Office and its approval, in keeping with the law.
- The Parliament should emphasise the importance of full and effective protection of activists and civil society organisations advocating the promotion of human rights and call for establishing a stimulating working environment.
- Competent authorities should increase the efficiency of investigating and prosecution for criminal offences committed by expressing and spreading unlawful statements over the internet.

- The Government should more effectively inform competent authorities and the public about its decisions (conclusions...) affecting the exercise of rights of citizens.
- The Government should immediately start drafting a Bill on restitution (return of property)
  - The Government should ratify the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights.
  - Competent inspection authorities of the Ministry of Finance and other bodies should intensify their control over payments made for obligatory contributions for employees and act against employers who break the law.
  - The Government should maintain timely and effective dialog with representatives of employers and employees.
    - Competent ministries should prepare amendments to the law to include the obligation of announcing public competitions for job vacancies in all public authorities and organisations.
    - The Parliament should, through public hearings or using other appropriate methods, assess whether it should remain an option, without any mechanisms for protection from abuse, for employees of a public authority (state, provincial, local government body, public authority, organisation with public authorities, ...) to perform a similar job outside of regular working hours (public or private), without it being considered a conflict of interest.
      - „Right to Good Administration“ should be included in fundamental rights of citizens.
      - The Government of the Republic of Serbia should, through competent ministry, assess a possibility to stipulate conditions under which civil society organisations can be recognised as organisations conducting activities of public importance, and as such tax allowances to be approved them.
        - Amendments to laws should enable full transparency of media ownership.
        - It is recommended to national associations of journalists strengthening of self-regulatory role.
      - In primary and secondary education, the principles of inclusion in education should be implemented in a consistent manner, enabling the development of each child and their talents, mental and physical potentials to their maximum. In order to achieve progress in this area, the Rulebook on Additional Educational, Medical and Social Support for Children and Students should be implemented consistently, and conditions should be established for the functioning of district commissions for providing additional educational, medical and social support to children.
        - Violence and racism against Roma children should be vigorously combated, wherever it appears. Educational institutions, starting from preschools, have a special responsibility for overcoming this problem.
        - Continue preparation of the Law on the Rights of the Child (a working group of the Protector of Citizens), include competent authorities in consultations on the draft and provide expertise of the Council of Europe.

- Prepare protocols on cooperation between competent ministries - social security, justice, health, education and internal affairs – with the aim of timely and effective cooperation in enforcing court decisions in the field of family care of children, to effectively respond to parental child abduction, prevent child to make personal relations with the other parent and failure of parents / others by court decision on child custody.
- Facilitate children with disabilities and their parents access to necessary treatments and aids.
- Establish a centralized database on cases of violence against children, particularly sexual.
- In accordance with the Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse, amendments to the Criminal Law should be made, in the part pertaining to the statute of limitation for sexual violence crimes, establish and maintain records of the perpetrators of this crime as a part of preventive care, constantly educate children through education system at all levels, starting in pre-schools.
- Pursuant to the obligations laid down in the Convention and membership to the Council of Europe, Serbia should develop a long-term campaign to protect children against this kind of violence and establish a team to implement these strategies at national level.
- Authorities and bodies responsible for monitoring and implementation of media laws should react in cases when information which presents a breach of privacy, violation of dignity or defamation of a child is published in the media, and pronounce measures and propose sentences for such media as prescribed by the law.
- Adopt regulations that will determine the National Preventive Mechanism, in accordance with the Optional Protocol to the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (the deadline expired several years ago, the Ministry of Human and Minority Rights has prepared a draft proposal and obtained opinions from relevant ministries).
- Allocate funds in the budget of the Republic of Serbia for construction and renovation of police detention premises, to allow persons being detained by the police to be accommodated in keeping with current standards (construction of rooms for police detention in police headquarters and stations where they are not present, or renovation of existing ones which are below standard).
- Allocate funds in the budget of the Republic of Serbia for construction and renovation, as well as relocation from central urban areas of certain institutes for enforcement of criminal sanctions, to allow persons deprived of liberty to be accommodated in keeping with current standards.
- Adopt a law to regulate method and procedure, as well as the organisation and conditions for treatment of psychiatric patients, and their accommodation into inpatient medical facilities, and psychiatric institutions.
- Adopt regulations pertaining to freedom of movement for persons placed in inpatient institutions for persons with mental difficulties or developmental problems, including persons with disabilities and the elderly, first of all an option to voluntarily leave the establishments.

- Adopt regulations to ensure more intensive implementation of alternative measures instead of custody and alternative sanctions instead of prison, expand conditions for parole and early release, establish jurisdictions of judges for enforcement of criminal sanctions and probation service (in accordance with the Strategy of the Government of the Republic of Serbia for Reducing Overcrowding in Institutions for Enforcement of Criminal Sanctions in the Republic of Serbia (2010–2015)).

- Adopt regulations to ensure sentencing to alternative types of sanctions rather than the current sentencing to prison terms, and replacing detention in prison as a sanction for default of payment of fines with alternative types of sanctions, primarily with community service.

- Adopt regulations to ensure the best possible workforce and essential funding is made available to institutions for execution of penitentiary sanctions in order for them to provide accommodation and other necessities for persons deprived of liberty.

- Adopt regulations where health care services in institutions for the enforcement of criminal sanctions would be transferred from Ministry of Justice to the Ministry of Health.

- Amendment to the Law on National Minority Councils to provide: 1) direct participation of national minorities in the exercise of jurisdiction of minority self-governments in local self-government units, 2) reducing the influence of political parties in the election of national minority councils and their activities; 3) reinforce the guarantees of freedom of citizens to register to electoral rolls.

- Arrange the financing of minority self –governments, in keeping with the Law on National Minority Councils

- Make amendments to the Law on Local Self-government to establish clear scope of competences of local authorities concerning the exercising of rights of national minorities.

- Make amendment to Article 98 of the Law on Local Self -Government to establish an effective and meaningful position, competences and election of members and relations with the authorities of local government councils for interethnic relations.

- Develop a system for monitoring and supervision of exercising rights of national minorities through strengthening of inspection; establishing precise sources of information for exercising such rights.

- Make amendments to the Law on the Official Use of Languages and Scripts to ensure full protection of the Serbian and Cyrillic script, and full exercising of the right to official use of languages and scripts of national minorities.

- Adopt subordinate regulations enabling all local self-government units to implement the same practice when entering names of persons belonging to national minorities, in their languages and scripts.

- Adopt, ensure and consistently implement anti-discrimination regulations in areas vital for the achieving human rights, particularly vulnerable groups, such as Roma, other national minorities, persons with disabilities, the elderly and others.

- Pursuant to the Strategy for Improving the Positions of Roma and Action Plans, adopt by-laws to provide and regulate the achievement of strategic objectives.

- Establish the obligation and provide institutional conditions for persons belonging to national minorities to master the Serbian language at a level necessary for social integration in the course of their education, and for Serbian people in local self-government units with a mixed population to master languages of local national minorities.
- Enable efficient and speedy entry or re-entry into the birth registry for unregistered persons.
- Provide conditions for the peaceful exercise of freedom of religion, which includes open and transparent procedure of registration of churches and religious communities in an appropriate registry.
- Ensure protection of the cultural identity of national minorities and strengthen integrative social bonds between persons belonging to different ethnic, linguistic and religious communities through educational and cultural system adjusted to the needs of the citizens of Serbia.



## STATISTICAL AND NUMERICAL DATA ON ACTIVITIES OF THE PROTECTOR OF CITIZENS

### A) CONTACT WITH CITIZENS

In 2010, the Protector of Citizens established 11,255 contacts with citizens (Table 1), constituting an increase of 28.05% compared to 2009, with 8,774 established contacts.

The increase in the number of contacts of the Protector of Citizens with citizens shows that citizens have recognised the Protector of Citizens as a public authority with considerable powers in the legal system of the Republic of Serbia in relation to the protection of their rights, as well as improvement of regulations in the area of human rights and freedoms.

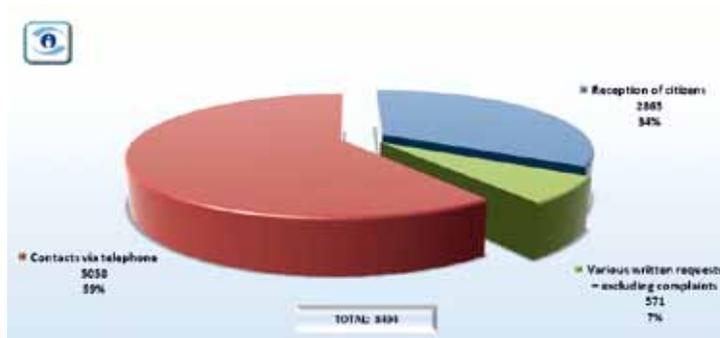
**Table 1** – All contacts established with citizens in 2010

No.	ESTABLISHED CONTACTS OF THE PROTECTOR OF CITIZENS WITH CITIZENS – INCREASE IN 2009-2010	2009	2010	Increase (in %)
1.	Received complaints	1.774	2.656	50,23
2.	Received legal initiatives	55	75	64,56
3.	Interviews with citizens in person	1.741	2.865	36,36
4.	Phone interviews with citizens	5.044	5.058	0,28
5.	Various submission excluding complaints	160	571	261,39
	Total	8.774	11.225	28,05

In 2010, the reception office of the Protector of Citizens in Belgrade and the local office for municipalities Preševo, Bijanovac and Medveđa, were visited by 2865 citizens, constituting an increase of 36,36% compared to 2009. At the same time, out of 5.058 telephone contacts made, 712 telephone calls were made outside normal working hours of the Protector of Citizens, via the emergency mobile phone which is operational 24 hours a day to help people in need with advice or support.

The chart below shows the different types of contacts with citizens, excluding written complaints submitted by citizens and legal initiatives, which will be elaborated in special sections of this Report.

**Chart No. 1 – Contacts with citizens (reception of citizens, telephone interviews, various submissions)**



Trained civil clerks in reception departments, in direct contact with citizens or by telephone, offer advice on ways to file complaints to the Protector of Citizens. When the need arises, they help citizens put together a complaint and/or offer expert advice i.e. direct them to authorities they should contact indicating actions they should take for the purpose of dealing with their problem. Chart No. 2 shows the ratio of verbal complaints recorded in reception departments, i.e. the ratio of citizens' problems stated which are within the scope of competences and those which are outside the scope of competences of the Protector of Citizens. Staff in reception departments manage to shift this ratio in favour of written complaints submitted which are within the scope of competences of the Protector of Citizens.

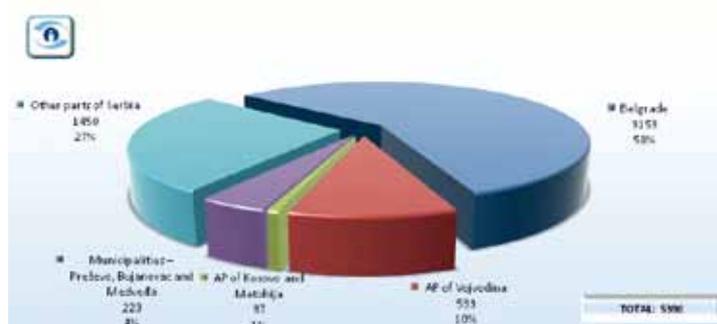
**Chart No. 2 – Reasons for verbal referral of citizens to reception departments of the Protector of Citizens**



Citizens directly contacting reception departments of the Protector of Citizens, either by visiting them or through telephone calls are mostly from Belgrade. This is the result of inaccessibility of offices to citizens outside the Belgrade district, with the exception of local offices in Preševo, Bujanovac and Medveđa, which will be elaborated further on in this

Report, but also the increase in cost of telephone services for citizens living outside of Belgrade. In the coming period, the Protector of Citizens will focus on finding solutions to providing citizens with better access to their offices.

**Chart No. 3 – Residence of citizens contacting reception departments of the Protector of Citizens**



Male population contacting the Protector of Citizens for the reception purpose is much greater than female, but the number of women referring to the Protector of Citizens is increasing compared to the previous years when it was just under 30%.

The number of women who visit local reception offices of the protector of Citizens in the municipalities of Prešev, Bujanovac and Medveđa is still a very small compared to



## B) ACTIONS OF THE PROTECTOR OF CITIZENS ON COMPLAINTS

Each and every natural or legal person, either local or foreign, who considers their rights violated either by a legal document, action or failure to act by an administration authority, may submit a complaint to the Protector of Citizens. The Protector of Citizens is obligated to act upon each complaint unless one of the basis for taking actions upon complaints defined by the law is missing, in which case the Protector of Citizens shall reject the complaint and inform the complainant thereof and state the reasons for doing so.

### 1. NUMBER AND CLASSIFICATION OF COMPLAINTS

Anyone (residents of Serbia, foreigners, legal entities, stateless persons, refugees, displaced persons, adults and children, various associations) who considers that the administration authorities are incorrectly and/or unfairly implementing or failing to implement the regulations of the Republic of Serbia can contact the Protector of Citizens. Complaints are submitted to the Protector of Citizens free of charge and are submitted in writing or verbally and recorded in official minutes with the Protector of Citizens.

In 2010 the Protector of Citizens acted upon 2,656 complaints.

**Table 2** shows data on characteristics of complainants and methods of submissions.

Men	1400	52,77%
Women	803	30,27%
Natural person	1925	72,56%
Legal entities	141	5,31%
Own initiative of the Protector of Citizens	81	3,05%
Complaints submitted on behalf of other person	141	5,31%
Parent on behalf of child	161	6,07%
Anonymous complaints	16	0,60%
Domestic Residents	2295	86,51%
Foreign Residents	42	1,58%
Individually filed complaints	2193	82,66%
Collective complaints	174	6,56%
Submitted by regular post	1259	47,46%
Submitted in person	513	19,34%
Complaints received on the record	14	0,53%
Submitted by e-mail	543	20,47%
Submitted by local ombudsmen	48	1,81%
Submitted by foreign ombudsmen	4	0,15%

### 1.1. Number and Classification of Complaints by Administrative District and/or Place of Residence

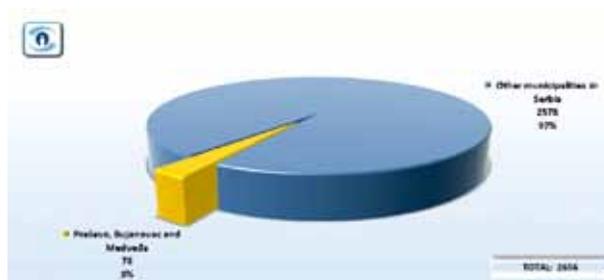
Complainants are mostly from Belgrade; however there are complainants from all districts in Serbia. This is easily understandable since Belgrade has more inhabitants than any other city in Serbia, and, as the capital city, majority of administrative authorities have their seats in it.

**Chart No. 6** – Number and classification of complaints by administrative district of complainants / place of residence



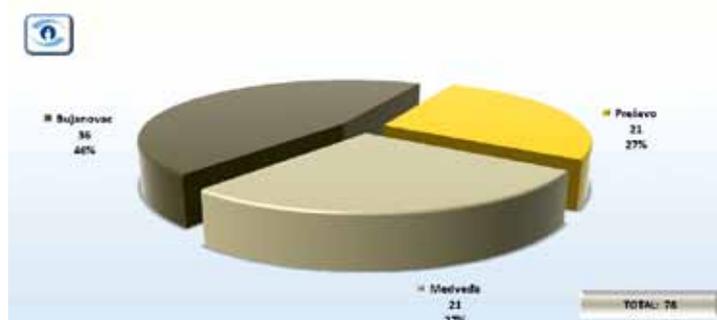
After reaching a Decision of the Protector of Citizens on the establishing of local offices in the municipalities of Prešev, Bujanovac and Medveđa (“Official Gazette of the RS”, No. 91/09), in order to increase the accessibility of the Protector of Citizens and exercise more effectively protection and promote human and minority rights and freedoms, in 2010 a total of 78 complaints were received from this area, which is 3% of total number of complaints received in 2010.

**Chart No. 7** – Number of complaints submitted by citizens from the municipalities of Prešev, Bujanovac and Medveđa in relation to a total number of received complaints



The Protector of Citizens, Deputies of the Protector of Citizens, and employees in the Expert Services Department, by previously established schedules, once a month go to the local offices to provide technical support to employees in these offices. On that occasion, they also conduct interviews with citizens and take their complaints, but at the same time conduct interviews with representatives of local authorities who exercise delegated powers in the implementation of government regulations.

**Chart No. 8** – Number of complaints filed by citizens from the municipalities of Preševo, Bujanovac and Medveđa



Number and classification of complaints by violated rights, received from citizens from the municipalities of Preševo, Bujanovac and Medveđa

The content of complaints indicates that citizens of these municipalities, as well as citizens from other parts of Serbia, in most cases, make complaints pertaining to the violation of “good administration” principle. In relation to 2009, when only 3 complaints about national minority rights were received from these municipalities, in 2010 the number of complaints has risen to 14.

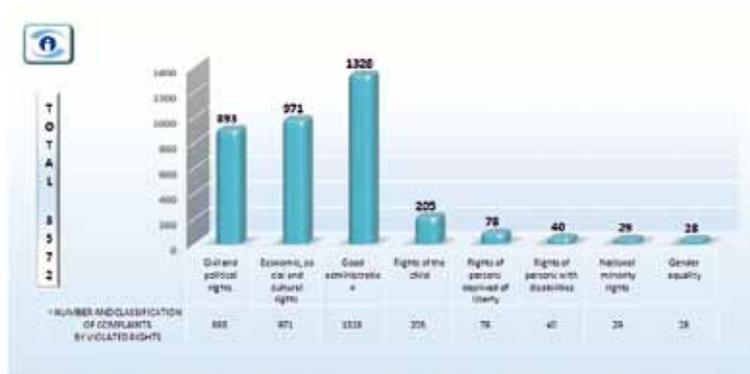
**Table No 3.**

Rights	Bujanovac	Preševo	Medveđa	Total by rights
Good Administration	18	11	14	43
Civil and Political Rights	3	4		7
National Minority Rights	7	2	5	14
Rights of the Child	3		2	5
Rights of Persons with Disabilities	2	1		3
Right to Fair Trial	2	1		3
Gender Equality	1	1		2
Rights of Persons Deprived of Liberty		1		1
Total by Municipalities	36	21	21	78

## 1.2. Number and Classification of Complaints by Violated Rights

Number and classification of complaints by violated rights indicates that most cases pertain to the violation of “good governance” principles, economic, social and cultural rights, and violations of civil and political rights.

**Chart No. 9 – Number and classification of complaints by violated rights**



Note: The number of violated rights is greater than the number of complaints as numerous complaints indicate the violation of more than one right.

### 1.3. Number and Classification of Complaints in Respect to Authorities Targeted

The largest number of complaints pertains to the activities of representatives of authorities with executive powers, and ministries of the Government of the Republic of Serbia in particular; activities of authorities operating in the field of pension and disability insurance, employment and medical insurance; as well as activities of public utility providers, tax authorities, social work centres, schools, children’s institutions, courts and prisons.

**Chart No. 10 – Complaints by authorities targeted**



### 1.4. Number and Classification of Complaints by Ministries Targeted

The largest number of complaints pertains to the activities of the Ministry of Internal Affairs (Chart No.11), considering the fact that this ministry has powers to make decisions on the vital rights and freedoms of citizens. In addition, this Ministry in 2010, as well as in

previous 2009, conducted a comprehensive work on the replacement of identity documents. Significant omissions occurred in these activities, which were also pointed out by the Protector of Citizens, but it should be keep in mind that majority of these omissions resulted from objective difficulties. The Protector of Citizens submitted several recommendations to the Ministry of Internal Affairs, which handled almost all recommendations in a timely manner.

**Chart No. 11 - Complaints by ministries targeted**



## 2. RESULTS OF ACTIONS TAKEN BY THE PROTECTOR OF CITIZENS UPON COMPLAINTS

The Protector of Citizens acts upon each and every complaint except in complaints outside the scope of competences, or untimely, premature anonymous, incomplete complaints, as well as those submitted by unauthorised persons.

The Protector of Citizens notifies the complainant and the authority concerned on the launching and closing the procedure. The administration authority concerned is legally obliged to respond to all requests submitted by the Protector of Citizens and to submit him all requested information and documents within 15 to 60 days.

In 2010, the Protector of Citizens acted upon 2,545 cases launched by complaints or at own initiative, where he also acted in 1,559 cases related to complaints from previous periods. There were no activities up to 31 December 2010 upon 44 complaints received during December 2010.

In 2010, out of 2545 cases, the Protector of Citizens closed 1,929. In most cases (952) complaints were rejected due to lack of grounds for initiating procedure, while in the remaining cases (977), procedures were completed in an appropriate manner (Table 4). The remaining initiated cases (680) are underway.

**Chart No. 12 – Actions upon complaints received in 2010**



In 2010, the Protector of Citizens acted upon 924 complaints filed in the previous periods out of which 465 cases were closed, 264 complaints were rejected and the remaining 205 cases are underway.

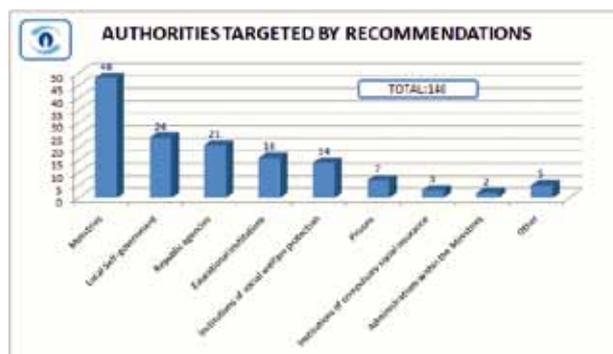
**Table No. 4 – Actions completed by the Protector of Citizens on complaints in 2010**

No.	ACTIONS COMPLETED BY THE PROTECTOR OF CITIZENS ON COMPLAINT IN 2010	Number
1	Complaints rejected as groundless	574
2	Recommendations – individual and collective	229
3	Procedure discontinued – administration authority eliminated deficiency in operation	134
4	Complainants withdrew their complaints	39
5	Opinions – pursuant to Article 24 (2) of the Law on the Protector of Citizens	1
	Total:	977

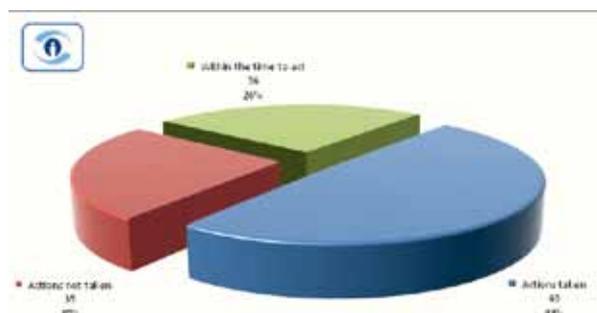
## 2.1. Recommendations

In 2010, 140 recommendations were made, which referred to 272 complaints as the fact that 21 collective complaints referred to more than one submitted complaint. By 31 December 2010, authorities targeted acted upon 69 recommendations, failed to act upon 35 recommendations and regarding the remaining 36 recommendations to the due deadline has not yet expired when the authorities were obliged to inform the Protector of Citizens about the acting upon recommendations.

**Chart No. 13 – Authorities targeted by recommendations**



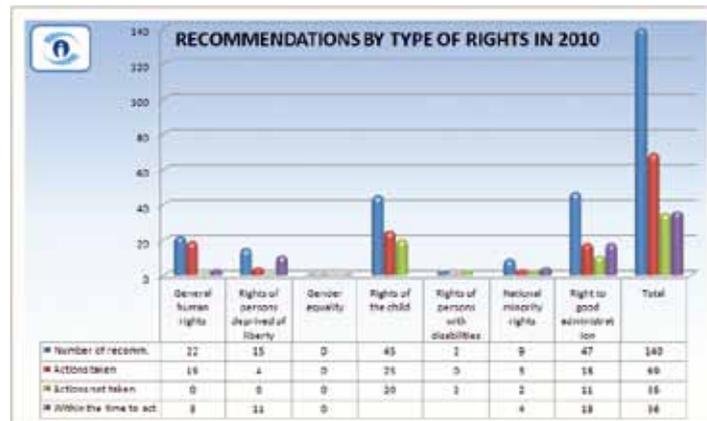
**Chart No.14 – Percentage of actions taken upon recommendations**



**Table No. 5 – Authorities which failed to act upon recommendations and number of recommendations**

Ministries	18	51,43%
Institutions in social welfare protection	7	20,00%
Bodies of local self-governments	5	14,29%
Republic agencies	2	5,71%
Educational institutions	1	2,86%
Organisations of compulsory social insurance	1	2,86%
Autonomous state authorities and independent authorities	1	2,86%

**Chart No. 15 – Recommendations by type of rights in 2010**



## 2.2. Rejected Complaints

In 2010, out of 2,656 complaints received, 952 were rejected. If the Protector of Citizens found no grounds to initiate proceedings in respect of complaints it had no authority over, which were submitted in an untimely manner, prematurely submitted, anonymous, incomplete or submitted by an unauthorised person, in those cases such complaint had to be rejected. An integral part of the notification of the Protector of Citizens notifying citizens that no valid grounds for initiating a procedure were found due to one of the previously mentioned reasons is at the same time a form of advisory assistance and legal aid to complainants. Namely, complainants have always been directed towards adequate legal procedures and/or competent authorities.

### *Outside the competence*

The Protector of Citizens rejected the majority of complaints due to the lack of basis (463), most of which pertain to the operation of courts (mainly basic courts). Nine complaints were forwarded to competent local Ombudsmen. Citizens also submitted 35 complaints to the highest state authorities for whose operation the Protector of Citizens is not competent. 22 complaints related to the operation of the Government, 5 complaints to the Constitutional Court, 4 complaints to the President of the republic, 3 complaints to the Republic public attorney office and 1 complaint to the Parliament.

In numerous public appearances, the Protector of Citizens has indicted the legal scope of competence it has, in particular pointing out the authorities whose operation it has no authority to control. In spite of this, the Protector of Citizens continues to receive a considerable number of complaints pertaining to the work, activities and operation of these authorities, and courts in particular. This indicates not only that citizens lack information on the scope of competence and authority of the Protector of Citizens, but also indicates evident problems in the operation of courts to which the citizens refer in their complaints. They mostly protested against the length of court proceedings, the loss of cases in courts, lack of transparency in their operation, delays in making ruling and other judicial acts, lack of organisation of judicial administration, difficulties in enforcing court rulings and the lack of information about the status of filed criminal charges to prosecutor's offices.

### *Premature complaints*

314 complaints were rejected on this basis. Before submitting a complaint the complainant is obliged to try and protect his/her rights through suitable legal proceedings while the Protector of Citizens is obligated to instruct the complainant to launch the appropriate legal procedure, if such procedure is available. The Protector of Citizens does not undertake activities until all legal remedies have been exhausted. Exceptionally, the Protector of Citizens may launch a proceeding before all available legal remedies have been exhausted, if the complainant would suffer irretrievably damage or if the complaint pertains to good administration principle violation, in particular unfair treatment of the complainant by the administration authorities, untimely operation or other violations of rules of ethical conduct for employees working in an administration authorities.

### *Incomplete complaints*

115 complaints were rejected as they were incomplete. If a complaint does not contain information necessary to take action and if the complainant fails to eliminate said deficiencies during the subsequently allowed time to supplement the complaint, this period usually being 15 days or if they fail to contact the Expert Services Department of the Protector of Citizens for expert assistance to help them eliminate such deficiencies, the Protector of Citizens rejects such complaints.

### *Untimely complaints*

28 complaints were rejected due to their lateness. A complaint may be submitted one year following the citizen's right violation at the latest, or one year at the latest following the last action taken or not taken by the administration authority in respect of the committed violation of a citizen's right. Furthermore, the Protector of Citizens may take actions only in cases occurred upon the enactment of the Law on the Protector of Citizens (24 September 2005).

### *Anonymous complaints*

The Protector of Citizens rejected 16 anonymous complaints. The Protector of Citizens does not act on anonymous complaints except in special cases when it assesses that the anonymous complaint contains grounds for taking action and that there is a possibility that a citizen's rights were blatantly violated, and in such cases the Protector of Citizens launches the procedure at its own initiative. The assessment of the Protector of Citizens constitutes the basis for action, based on information provided in the anonymous complaint that an administration authority has, by virtue of an act, action or failure to act, violated a citizen's right or liberty, which did indeed occur on several occasions.

### *Complaints filed by unauthorised entity*

The Protector of Citizens rejected 16 complaints filed by unauthorised entity. A complaint may be filed to the Protector of Citizens by any natural person or legal entity, local or foreign person, who believes that his rights are violated by act, action or failure to act

of government authorities. In case of violation of the rights of the child, a complaint can be filed by child's parent or legal guardian. Children are encouraged to contact the Protector of Citizens in person where there are valid reasons, and in such cases the Protector of Citizens may launch proceedings at own initiative on the basis of the type of violated rights referred to by the child in his contact. In the case of violation of rights of a legal entity, a complaint can be filed by a legal representative of the entity.

**Chart No. 16 – Reasons for rejection of complaints**



### 3. ACTING UPON COMPLAINTS PERTAINING TO SPECIALISED AREAS

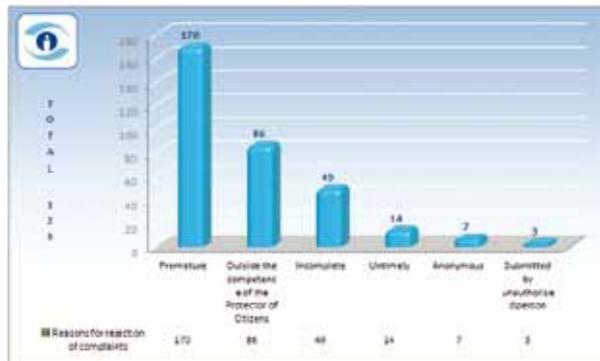
#### 3.1. Good Administration

In 2010, out of 1300 received complaints pertaining to good administration matters, 823 cases were closed. The Protector of Citizens initiated proceedings in 514 cases and completed acting upon 494 submitted complaints. At the same time, 329 complaints were rejected due to legal reasons. In 2010, the Protector of Citizens initiated 90 proceedings related to complaints submitted in 2009, closed 254 complaints and rejected 104 due to the legal reasons.

**Chart No. 17 – Acting completed in relation to good administration matters**



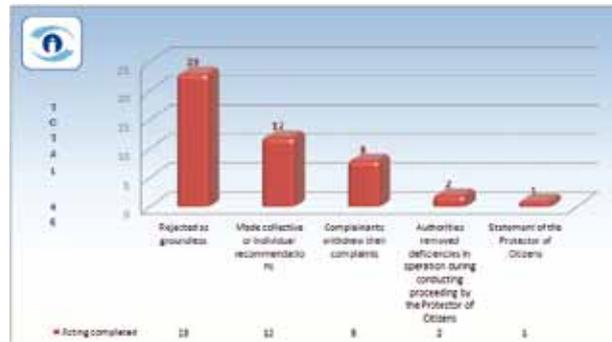
**Chart No. 18 – Rejection of complaints in relation to good administration matters**



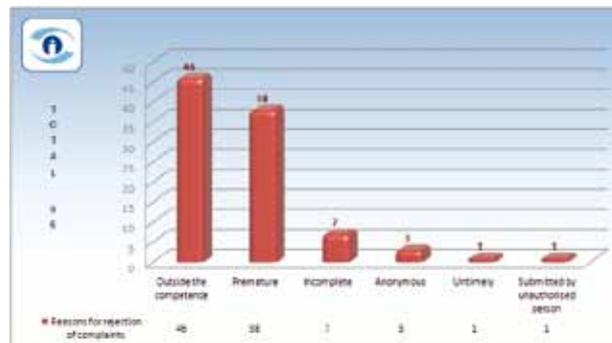
#### 3.2. Rights of Persons Deprived of Liberty

In 2010, out of 189 received complaints pertaining to rights of persons deprived of liberty, 142 cases are closed. The Protector of Citizens initiated proceedings in 31 cases. The Protector of Citizens completed acting upon 46 submitted complaints. At the same time, 96 complaints were rejected due to the legal reasons. In 2010, the Protector of Citizens initiated 3 proceedings related to complaints submitted in 2009, where 23 complaints were closed and 12 rejected due to the legal reasons.

**Chart No. 19 – Acting completed in relation to rights of persons deprived of liberty**



**Chart No. 20 – Rejection of complaints in relation to rights of persons deprived of liberty**



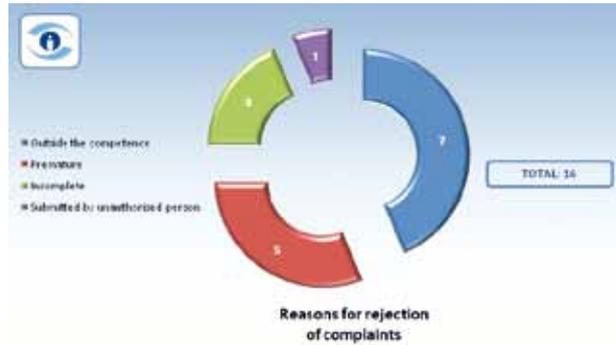
### 3.3. Gender Equality

In 2010, out of 58 received complaints about gender equality matters, 33 cases were closed. The Protector of Citizens initiated proceedings in 35 cases. The Protector of Citizens completed acting upon 17 submitted complaints. At the same time, 16 complaints were rejected due to legal reasons. In 2010, the Protector of Citizens initiated 1 proceeding related to complaint submitted in 2009, and his acting upon 4 complaints received in 2009 was completed in 2010.

**Chart No. 21 – Acting completed in relation to gender equality matters**



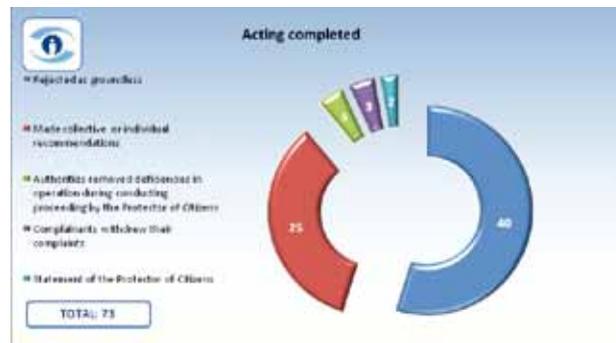
**Chart No. 22 – Rejection of complaints in relation to gender equality matters**



### 3.4. The Rights of the Child

In 2010, out of 227 received complaints about the rights of the child, 99 cases were closed. The Protector of Citizens initiated proceedings in 88 cases. The Protector of Citizens completed acting upon 73 submitted complaints. At the same time, 26 complaints were rejected due to legal reasons. In 2010, the Protector of Citizens initiated 11 proceedings related to complaints submitted in 2009, where 52 complaints were closed, and one complaint is rejected due to the legal reasons. Also, in 2010, the Protector completed 12 cases submitted in 2008.

**Chart No. 23 – Acting completed in relation to the rights of the child**



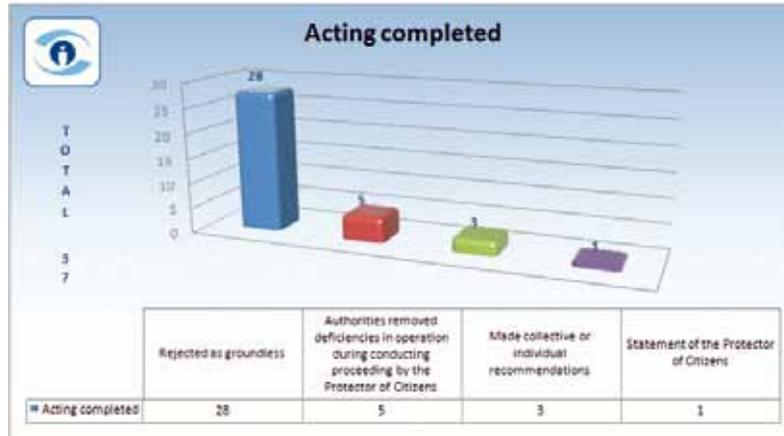
**Chart No. 24 – Rejection of complaints in relation to the rights of the child**



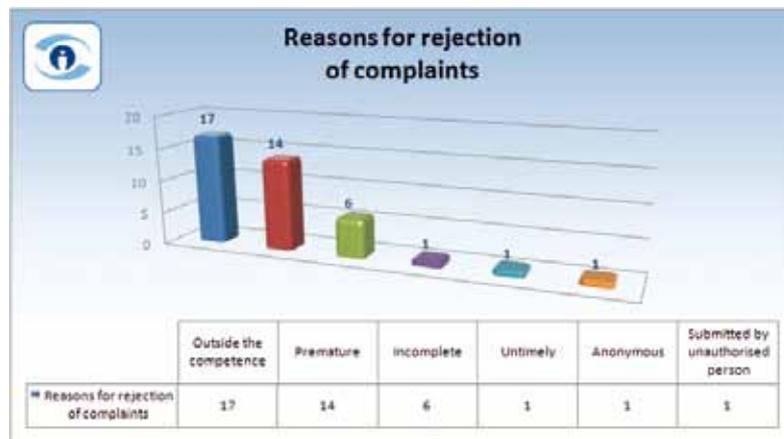
### 3.5. National Minority Rights

In 2010, the Protector of Citizens received 91 complaints and acted in 5 cases at own initiative. The Protector of Citizens completed acting upon 37 submitted complaints, and 40 complaints were rejected due the legal reasons. Acting upon 22 complaints received in 2009 was completed, where 13 cases were completed and 9 complaints were rejected due to the legal reasons.

**Chart No. 25 – Acting completed in relation to national minority rights**



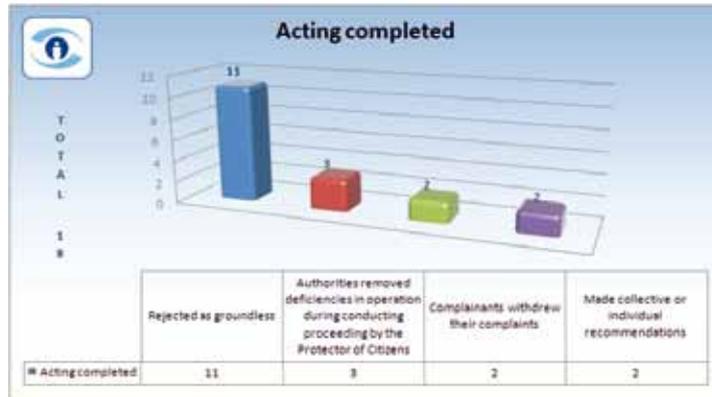
**Chart No. 26 – Rejection of complaints in relation to national minority rights**



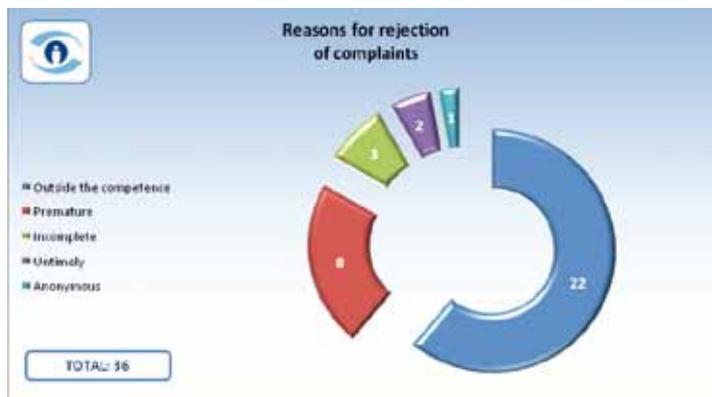
### 3.6. Rights of Persons with Disabilities and the Elders

In 2010, out of 94 received complaints about rights of persons with disabilities, the acting upon 99 complaints was closed. The Protector of Citizens initiated proceedings in 24 cases, completed acting upon 18 submitted complaints and 36 complaints were rejected due to legal reasons. In 2010, the Protector of Citizens initiated 7 proceedings related to complaints submitted in 2009, where he closed acting upon 17 complaints, and six complaints were rejected due to the legal reasons.

**Chart No. 27 – Acting completed in relation rights of persons with disabilities**



**Chart No. 28 – Rejection of complaints in relation to rights of persons with disabilities**



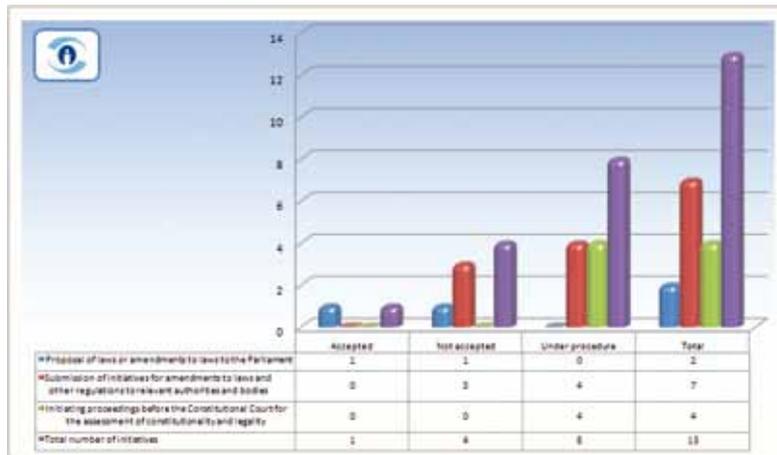
### C) LEGAL AND OTHER INITIATIVES

The Protector of Citizens pursuant to Article 18 (1) of the Law on the Protector of Citizens submitted to the Parliament two amendments to the Draft Law on Electronic Communications.

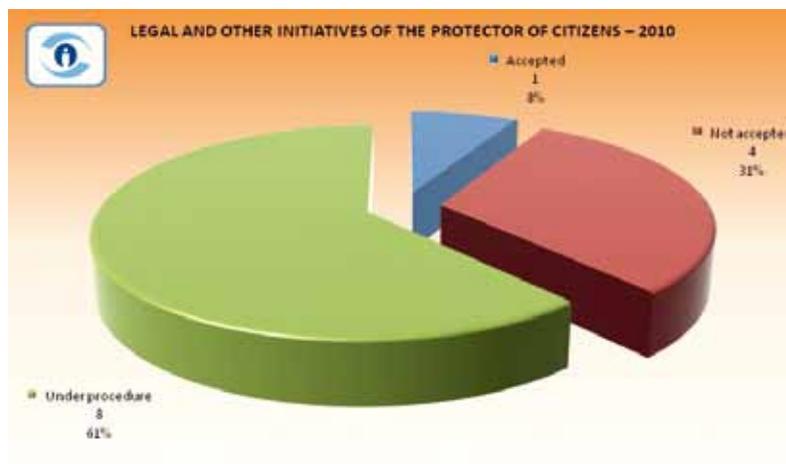
Within legislative activities, aimed at improving the legal regulations for the protection of human rights and freedoms, the Protector of Citizens submitted to the relevant authorities and bodies seven initiatives for amendments to laws, other regulations and statutory instruments, in accordance with Article 18 (2) of the Law on the Protector of Citizens.

In 2010, the Protector of Citizens submitted a proposal to the Constitutional Court for initiating proceeding for assessment of constitutionality and legality, which refers to the four statutory provisions, and that two of the Law on Electronic Communications and two of the Law on Military Security Agency and Military Intelligence Agency.

**Chart No. 29 – Types of legal and other initiatives**



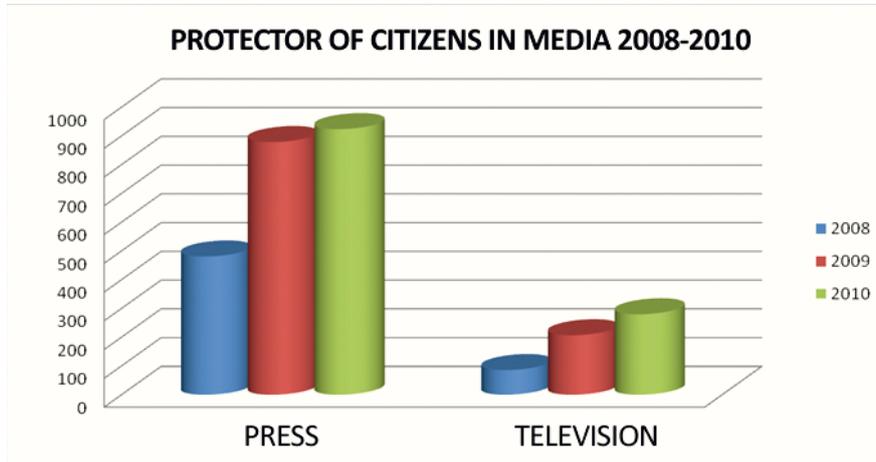
**Chart No. 30 – Outcome of submitted legal and other initiatives**



D) OTHER ACTIVITIES OF THE PROTECTOR OF CITIZENS

The Protector of Citizens in the Media

Chart No. 31



In 2010, 924 newspaper articles were published in 29 publications and 280 various television features on 10 TV channels with national coverage.

Media published a total of 53 comments about the Protector of Citizens and 10 interviews with the Protector of Citizens.

Television channels RTS, B92 and Pink showed the most interest in the activities of this Office. These television channels featured the Protector of Citizens and his deputies as guests a total of 12 times, while the number of statements given to these channels was 50 out of the 68 aired in total during this period.

Chart No. 32

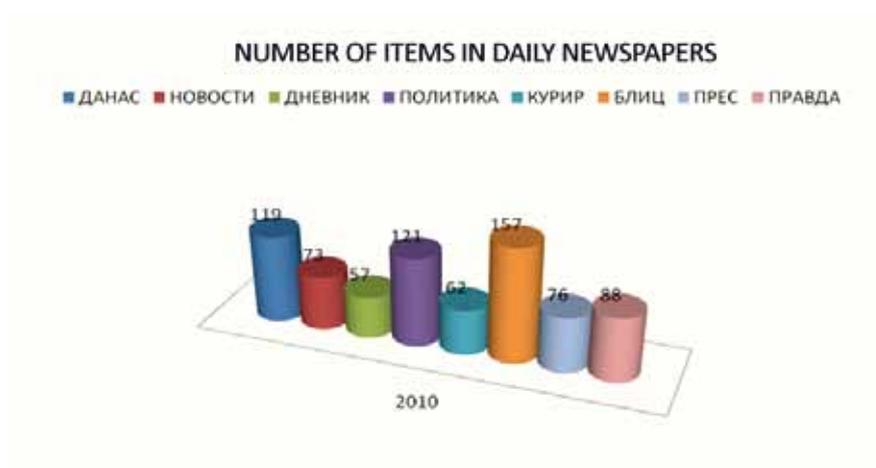
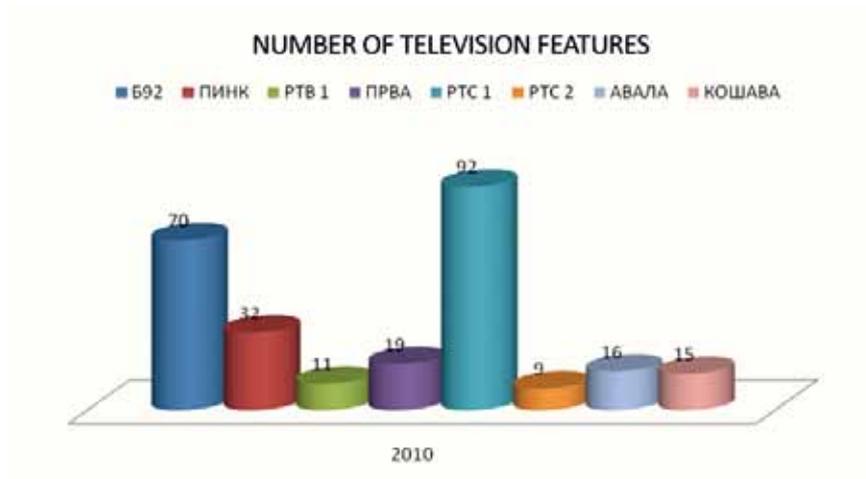


Chart No. 33





*Cover Design*  
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*Preparation and printing*



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