

REGULAR ANNUAL REPORT OF THE PROTECTOR OF CITIZENS FOR 2016

1. INTRODUCTION

1.1. FOREWORD

Respectable Members of Parliament,

You are hereby presented with the Annual Report of the Protector of Citizens for 2016, the tenth one since this institution was introduced. The creation of this Report was a special challenge, having in mind that Saša Janković, as the first Protector of Citizens of the Republic of Serbia that led this institution since its establishment, resigned on 7th February 2017. Due to the efforts of the Deputy Protector of Citizens and the Secretariat, the Report has been brought into light within the time prescribed by the Law. It contains general and specific assessments and information on the observance of citizens' rights in Serbia, deficiencies identified in the work of public authorities, proposals for improvement of citizens' status vis-à-vis public authorities and account of the activities carried out and the costs incurred by the Protector of Citizens during the reporting period.

Throughout 2016, there has been a continual trend of threatening the independence and diminishing the importance of the institution of the Protector of Citizens. In particular, his work and accomplishments have been contested by intensive media campaign in which the highest state officials took part. In addition, the communication between the most important public authorities and the Protector of Citizens was suspended, and in certain investigations of work of public authorities, the prescribed cooperation was entirely left out. It is encouraging that, in spite of the imposed polarization, civil servants and most heads of authorities managed to maintain the achieved level of extremely good cooperation with the Protector of Citizens. The awareness prevailed on the contribution of the Protector of Citizens to improving the status of all citizens, among others, civil servants and employees in administration bodies.

Instead of strengthening the position and independence of the Protector of Citizens, during 2016 the activities aimed at reducing its competence were conducted. The introduction of a special Ombudsman for children has been announced, despite the previous extraordinary accomplishments of the Protector of Citizens in that field. The introduction of a special Ombudsman for Children is justified by the need to increase the protection of child rights. This gives rise to the absurd that the authorities, whose duty is to ensure that protection, advocate the introduction of another, supposedly better mechanism that should oversee them. Improvement of rights is achieved by better work of the authorities, not by changing the institutions that should oversee them, and certainly not according to the wishes of those who need to be monitored. In addition, the above idea is contrary to declared commitment of reducing the number of state authorities, agencies and bodies. Given the size of our country and its administrative apparatus, it is entirely inappropriate to establish a new body. With regard to this, the potential approval of those in charge of Serbia's budget would be in complete contradiction with the already introduced austerity measures. It would be far

more meaningful and justifiable to increase the personnel capacity of the Protector of Citizens and prescribe by the Law the increased autonomy of the work of Deputy Protector of Citizens for child rights.

Besides the existing pressures and announcements of contesting the reduced competence of the Protector of Citizens, the drafting of this Report was discomfoting because the National Assembly, contrary to the Law on the National Assembly and its Rules of Procedure, during 2016, for the second year in a row, has not discussed at the plenary session the Report of the Protector of Citizens for the previous year. Such (lack of) actions ignored the work of the Protector of Citizens, and his reports containing relevant information about the problems in certain fields as well as the recommendations on how to rectify these omissions, remain beyond the reach of the Members of Parliament and the public. The oversight function of the National Assembly, which is obliged to oversee the legality of work of the Government and administrative authorities on one hand and monitor the observance of human rights, on the other hand, has also been neglected. It is devastating that the supreme representative body and the holder of constitutional and legislative power in Serbia is becoming a place where regulations are violated. Contrary to this, the Committee on the Judiciary, Public Administration and Local Self-Government, as well as the Committee on Human and Minority Rights and Gender Equality have discussed the Annual Report of the Protector of Citizens for 2015. However, up to this moment, even those Committees have not adopted the Reports with recommended conclusions and submitted them for consideration and adoption at the plenary session. We hope that regarding this Report the applicable regulations shall be obeyed and the purpose of its composition be achieved in a way that the Members of Parliament shall discuss its contents, at the plenary session, before the eyes of the public.

The conclusion of the National Assembly provides for the obligation of the Government to report to the National Assembly every six months on the implementation of the recommendations of the Protector of Citizens. The Protector of Citizens lacks information on whether the Government submitted to the National Assembly any Report during 2016 on the implementation of recommendations of the Protector of Citizens or if the National Assembly has discussed them.

Serbia has not established a functional system for remedying irregularities in the work of public authorities, in which the Protector of Citizens would remedy only exceptional irregularities and illegalities to the detriment of the citizens' rights, which is the intended purpose of the Ombudsman. There is no efficient system that would ensure the oversight of the public authorities is primarily conducted at the level of internal control as well as by exhausting prescribed legal remedies before the administrative and the judiciary authorities. Without an available and effective option at their disposal to present and solve the problem that way, citizens in most cases turn to the Protector of Citizens as the instance of first instead of the instance of last resort.

In ten years of existence, the Protector of Citizens has been addressed by nearly 150,000 citizens filing over 35,000 complaints. In 2016, this body was addressed by about 20,000 citizens, which is one third more than the previous annual average (for the period 2007-2015). In 2016, citizens filed 6,272 complaints to the Protector of Citizens, which is almost 88%, more complaints annually than the he annual average measured during the period of nine years. In 2016, in his oversight investigations and in the capacity of the National Preventive Mechanism, the Protector of Citizens submitted 1,340 recommendations to the

competent bodies. The percentage of compliance with these recommendations is 88, 88% which represents an increase compared to the previous years and is within the average percentage of compliance with the recommendations for the period 2007-2015.

Criticism of the work of the Protector of Citizens so far, also uttered by certain Members of Parliament, has been marked by a rhetorical question of why the Protector of Citizens has harboured a critical attitude towards the authorities even though he receives a "big salary". This utterly overlooks the fact that the critical attitude towards the authorities is a constituent part of his competences stipulated by the Constitution and the Law, which he is obliged to exercise, and that his salary is determined by the Law and equals the salary of the President of the Constitutional Court. It is obvious that power-holders express tendency concerning the salary of the Protector of Citizens to be inversely proportional to his willingness to oversee public authorities.

Let us hope that the future Ombudsmen shall be encouraged by the expressed courage and uncompromising efforts to protect human rights so far, demonstrated in the first ten years of this institution's work as well as that, along the way, they shall have the support of the National Assembly.

We are confident that in this comprehensive Annual Report we have succeeded in showing the actual status of respect for citizens' rights in 2016, identified deficiencies in the work of authorities, proposals for improving the status of citizens, as well as the information on numerous implemented activities of the Protector of Citizens and costs incurred in their implementation.

Acting Protector of Citizens

Miloš Janković

1.2 OVERALL ASSESSMENT OF OBSERVANCE OF CITIZENS'S RIGHTS IN 2016

GENERAL OVERVIEW

As in the previous period, the status of the rights of citizens in Serbia was marked by an unfavourable economic situation and an expressed lack of legal certainty. The announced and implemented activities of the authorities still have not led to the desired results. In support of this view lies the fact that the Protector of Citizens was addressed by the largest number of citizens regarding the violations of social and economic rights. In addition, one third of all the addresses related to the so-called maladministration, primarily due to untimely work of the administration, negligible attitude towards work and obviously the incorrect implementation of the Law.

Starting from the fact that every citizen is exposed to the above- mentioned, the Protector of Citizens has pointed out that in such circumstances, the following groups and individuals are especially vulnerable: the very poor, children and youth, persons with disabilities, persons deprived of their liberty in psychiatric hospitals beneficiaries of residential institutions, the elderly, women, victims of domestic and intimate partner violence, members of the LGBTI population, national minorities, primarily the Roma, people with serious diseases, internally displaced persons, refugees and other migrants, as well as organizations and individuals advocating human rights and all those who express critical attitudes towards the authorities.

Serbia has ratified the key international instruments, thus adopting the most important standards in the field of human rights. The provisions of these instruments have become part of our domestic legislation. Advocates of the death penalty, forced confessions, physical punishment, chemical castration, ban on public gatherings, expulsions of migrants etc. are not aware that their commitments contradict the highest values Serbia has adopted, i.e. incorporated into its legal system, so that in case of their non-compliance Serbia would suffer numerous consequences at the international level. Today in Serbia, the respect for human rights, rule of law, division of powers and cherishing independent institutions, must be finally accepted as indisputable values we have already committed to. Violation of human rights of any individual, especially members of vulnerable groups, causes multiple damage. The denial of human rights completely opposes the commitment to European integration.

KOSOVO AND METOHIA

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

In spite of being unable to exercise its competence in the territory of the Autonomous Province of Kosovo and Metohia and the exclusion of oversight competences of the Protector of Citizens over the courts and prosecutors' offices according to the Constitution and the Law, the Protector of Citizens addressed the EULEX Mission in Kosovo in 2015, expressing his concern about the excessive duration of detention of Mr Oliver Ivanović, a

political leader of Kosovo Serbs. During 2016, the Protector of Citizens continued to monitor this case and welcomed the decision to terminate custody.

FREEDOM OF EXPRESSION¹

Situation in the field of freedom of expression and the media has not changed compared to last year, i.e. everything presented in the last year's Report of the Protector of Citizens also applies today. The European Commission in its Annual Report on Serbia for 2016 stated that in the past year no progress had been made in the field of freedom of expression, i.e. that the overall atmosphere was not conducive to the full enjoyment of this right.

Suspension of financial support to the media in view of their reporting that is not in favour of political structures is another form of pressure and threat to the media. The reason for the termination of the agreed co-financing between the Municipality of Apatin and TV Apatin were the news and footage on the abduction of a certain politician, now a councillor of Municipal Assembly of Apatin, broadcast in the news program TV Apatin in May 2016. After the release of this information, councillor denied being kidnapped, despite the TV Apatin footage, the authenticity of which has still not been disputed by any authority. As of June 2016, the municipal administration shall cease to make payments to TV Apatin based on valid contracts on co-financing, not even after the Commission for State Aid Control adopted the decision on 4th October, 2016. This was followed by a number of pressures on the members of the editorial board of TV Apatin, in the form of personal intimidation, as well as the threats to their families. Afterwards, thirteen employees terminated the employment, at their personal request, although TV Apatin, despite financial difficulties and up to the moment of termination of the employment contract, paid them full wages and on time.

Great expectations from the Media Strategy and a set of regulations in 2016 proved unjustified while coping with the present situation in the media predominantly indicates the weaknesses of legislation in this field.

Privatization of the media officially ended. However, the businesspersons, who in most cases had never dealt with the media before, used it to purchase several radio and TV stations in various cities and municipalities in Serbia. In such circumstances, public concern regarding the exercise of media functions in Serbia, above all, the authenticity and objectivity of media content is reasonable.

Threats, violence and intimidation of journalists remained a topic of concern, which was noted as well by the European Parliament Rapporteur for Serbia David McAllister.² The pressures on the media are evident in different ways, from open to hidden forms. In most cases, the reporters complained about being exposed to pressure and verbal threats during the reporting.

¹For more information see the third part of this Report (3.7).

²European Parliament, Committee on Foreign Affairs, *Draft Report on the 2016 Commission Report on Serbia* (Rapporteur: David McAllister), p. 6, <http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-%2f%2fEP%2f%2fNONGML%2bCOMPARL%2bPE-594.161%2b01%2bDOC%2bPDF%2bV0%2f%2fEN>.

Minister of Interior sued the NIN weekly, i.e. the journalist who marked him in the text as the person most responsible for the affair "Savamala", referring to the document issued by the Protector of Citizens, in which in this case he found unlawful actions of the police for whose work the Minister is responsible. The trial ended in an unusually short term with a judgment of the Higher Court in Belgrade in favour of the Minister. The Commissioner for Human Rights of the Council of Europe Nils Muižnieks³ expressed his concern about the potential negative impact of the judgment on the freedom of the media pointing out that, according to well-established case law of the European Court of Human Rights the limits of acceptable criticism are wider in regards to politicians than private individuals and that the Serbian judiciary must ensure that judicial practice in cases of defamation is consistent with the jurisprudence of the European Court.

Database run by the Independent Association of Serbian Journalists recorded dozens of attacks on journalists during 2016.⁴ In his public announcements, the Protector of Citizens has repeatedly warned the public about the threats to journalists, suppression of media freedom, censorship and self-censorship. Due to illegal conduct towards the team of journalists of Istinomer and Krik, in February 2016, the Protector of Citizens publicly recommended that the Chief Municipal Police of Belgrade be dismissed. The Belgrade City Administration failed to act upon this recommendation.

During 2016, the journalists of the print media violated the Code of Ethics in as many as 5,477 articles, above all, the Serbian Telegraph and Informer.⁵ The most common offenses were the violation of the presumption of innocence, the violation of the right to privacy, the presentation of assumptions without stating the source and the fact. In 2016, there were 49 percent more offenses than in the same period of 2015 and it is a devastating image of the profession.

Particularly worrying are the numerous cases in which public officials invoke their freedom of expression as citizens abusing their official position to express unconfirmed information or offensive and inappropriate personal opinions, acting in their official capacity.

JUDICIARY⁶

The public and media scene has been shaken by scandals pertaining to political complicity, interest, corruption and other illegal influences on the course and outcome of court investigations.

Citizens have continued filing complaints to the Protector of Citizens against the work of judicial authorities - courts and public prosecutor's offices, although those authorities are exempted from the oversight powers of the Protector of Citizens under the Constitution and citizens are well aware of that, but they either do not have trust or do not have proper access

³ "Commissioner of the Council of Europe concerned about the judgement NIN", *TV N1*, 10th January 2017, <http://rs.n1info.com/a220226/Vesti/Vesti/Komesar-Saveta-Evropa-zabrinut-zbog-presude-NIN-u.html>.

⁴ For more information see: <http://www.bazenuuns.rs/srpski/napadi-na-novinare>.

⁵ Press Council, Violations of the Code of Journalists of Serbia in daily newspapers (March-December 2016), http://www.savetzastampu.rs/doc/monitoring-2016/szs_monitoring_mart-decembar_2016.pdf

⁶ For more information see the third part of this Report (3.13).

to the authorities responsible for overseeing the legality of the work of judges and prosecutors, according to the Constitution and Law.

Basic problems regarding the work of judicial authorities, which have repeatedly been addressed by professional associations, are still present. These are, primarily, the uneven distribution of caseload of judges and courts and their perception of being forced to sacrifice the quality of trial for the sake of ostensible efficiency (which is a justifiable expectation of citizens), which consequently causes the passing of deficient judgments that are often overruled by judgments of the courts of higher instance. In the end, it will, certainly, not lead to increased efficiency of the courts.

The public perceives the prosecutorial and judicial functions to be under the influence of political power. On the other hand, the professional community emphasises that the Criminal Procedure Code, which has been in place for several years, has not given satisfactory results. It is stated that it does not provide sufficient guarantees of human rights protection, both because of the inherent system deficiencies as well as the significant legal and technical deficiencies that leave much room for different interpretations and therefore may lead to legal uncertainty and inequality before the Law. Its implementation started without adequate preparations and with the insufficient number of prosecutors considering the extended competences, which is the area in which no significant improvements have been undertaken.

There are publicly present views that the existing legal solutions and, above all, the actual relations do not allow the Public Prosecutor's Office to fully perform the leading role in the criminal proceedings, especially when it comes to criminal liability of police officers.⁷ Moreover, particularly problematic is the prosecution of politically sensitive cases, i.e. cases where the potential suspects are among the police officers. In the current situation, it could hardly be expected that a public prosecutor would be in a position to obtain the requested information from the police authorities and ensure their proper involvement, having in mind that he/she is unable to oblige them.⁸

On the night between 24th and 25th April, in the part of Belgrade by the River Sava known as Savamala, a group of masked men with the help of heavy construction machinery carried out the demolition of a large number of the existing massive construction facilities. It was then that dozens of people who happened to be there at the time, both passers-by and facility guards have been detained for several hours. During the night, numerous witnesses of the event have repeatedly called the police and other competent authorities requesting them to come to the scene and prevent the ongoing action described above. However, the statutory authorities' responses did not follow, being stated that it was ordered "from the top of the police".

Acting on complaints, the Protector of Citizens identified the stated facts a few days after the described incident. Numerous citizens who witnessed the event, the management of the Belgrade Police and police officers who were on duty that night were interviewed. The existing written documentation was inspected

⁷Belgrade Centre for Human Rights, Analysis of the Constitutional Status of the Public Prosecutor's Office in the Republic of Serbia, with recommendations for improvement, the OSCE Mission in Serbia, Belgrade, 2016, p. 53.

⁸Belgrade Centre for Human Rights, Analysis of the Constitutional Status of the Public Prosecutor's Office in the Republic of Serbia, with recommendations for improvement, the OSCE Mission in Serbia, Belgrade, 2016, p. 52.

and the recordings of conversations between the Belgrade police sentry operators and citizens who repeatedly reported the event to the police were listened to. Pursuant to the established facts, the Protector of Citizens determined shortcomings in the police actions issued recommendations for their elimination. All findings were explained in detail.

In response to the publication of those findings, the complete interruption of cooperation and communication between the authorities and the Protector of Citizens followed. An intensive media campaign was conducted to discredit the personality of the Protector of Citizens, with the participation of highest-ranking state officials, which resulted in the endangering of the institution he represents. It is indicative that such a reaction of the authorities was missing in numerous previous investigations conducted by the Protector of Citizens, which indicates a special interest of the authorities in this case. The case has been minimized in public for months with stories about the justification of the demolition of "three illegal shacks". At one point, the Prime Minister publicly stated that the above-mentioned was an act committed by „complete idiots", and afterwards that "there was no doubt that the highest authorities of the City of Belgrade were responsible for what happened in Savamala."

Nocturnal demolition and the absence of police action in Savamala, i.e. everything that happened that night, as a blatant violation of legality, has become less important compared to what has not happened from then on until today and it should have. Namely, the Internal Control Sector of the Ministry of Interior, which is responsible for supervising the conduct of police officers, did not fulfil its role. What is particularly worrying is that neither the Protector of Citizens nor the public are aware of any progress made by the prosecution. It seems incredible that the prosecution stated the police had not cooperated in accordance with the law, claiming the prosecution was helpless in this situation.⁹ According to applicable regulations, there are mechanisms and the prosecution was supposed to use them. The prosecution is the one to conduct the investigation, and any interference in the investigation, particularly on the part of police officers who fail to act by the order of the prosecutor, should require criminal sanction or disciplinary action within the police, and at the request of the prosecution.

The lack of effective reaction of the competent authorities, above all the judicial ones, in the case of Savamala and attacks on the Protector of Citizens who identified numerous irregularities while investigating the case, has many harmful consequences. Among other things, failure to conduct adequate investigation and take appropriate legal actions in the case of Savamala, has put Serbia into unfavourable position in the international arena and burdened it with another obstacle on its road to European integration. The opportunity is missed to timely put an end to the case of Savamala by way of identifying all those responsible for the events that occurred on the night between 24th and 25th

⁹„From the Prosecutor's Office response to Insider can be concluded that the Ministry of Interior obstructs the investigation on Hercegovacka“, Insider, 14th October 2016, <https://insajder.net/sr/sajt/tema/1776/>; and „the Prosecutor's Office on Hercegovacka: Insider questions are not in accordance with the Law, Insider, 10th January 2017, <https://insajder.net/sr/sajt/tema/2679/>.

April, especially those who subsequently did not do what they were supposed to do or obstructed the work of the competent authorities.

Although the Protector of Citizens has no authority to oversee the work of bailiffs and notaries, the citizens often file complaints to the Ombudsman about their work anyway. However, the Protector of Citizens indirectly monitors them, through the oversight of Public Notaries Chamber of Serbia and Chamber of Bailiffs, i.e. the Ministry of Justice, in the absence of statutory oversight of these bodies, to which the Protector of Citizens refers the citizens dissatisfied with their actions.

In our legal system, there is no normative framework, which would further govern the execution of judgments and decisions of the European Court of Human Rights. The Protector of Citizens has submitted the opinion to the State Attorney's Office, pointing out the need for establishing legal framework for actions of this authority in the execution of judgments / decisions of the European Court of Human Rights and the procedures this authority will apply in cases when for establishing a fact the expertise that the authority lacks is required.

Particularly worrying is the position of the injured party in criminal proceedings. The injured is affected, as "collateral damage", by the consequences of inability of timely and full enjoyment of rights also faced by other citizens. At the same time, the injured party is deprived of a number of such rights, for example the right to an effective remedy, the right to attend the reaching of a plea agreement etc., enjoyed by other participants in the proceedings that are far less affected by the committed offense. Therefore, it is encouraging that one of the first activities in the Action Plan for Chapter 23 envisages the improvement of the legal framework that should lead to enhancing and strengthening the position of the injured, particularly their right to be heard, i.e. to take more active part in collecting material evidence.

The reporting period was marked by irregularities in the work of the High Court Council, which caused reasonable mistrust of the work of that body among both public and the professional community.

At the beginning of September 2016, the High Court Council announced a a selection competition for a larger number of judges in some courts, although at the time it has not met the legal obligation of passing a by-law that would prescribe the program and manner of taking the exam to assess the expertise and competence of judicial candidates, which is a prerequisite for the lawful and proper implementation of the announced competition. In the oversight procedure, the High Court Council informed the Protector of Citizens that on the same day in November 2016, it cancelled the judicial selection competition and adopted two necessary ordinances. Announcing the judicial selection competition in a situation when the appropriate ordinances have not yet been adopted raises a reasonable doubt in the motives the High Court Council was led by during the announcement of this competition, as well as the successful implementation of the competition. The Protector of Citizens addressed the High Court Council pointing to the need for effective actions and obeying the prescribed procedure in the process of judicial selection, noting that arbitrariness and inconsistency should not be present at any stage of the selection process. If the very procedure of judicial selection is accompanied by a suspicion of

illegality, irregularity or guided by criteria and standards that are not grounded in the applicable regulations, the consequences can be far-reaching and have an additional negative impact on the already low level of public trust in courts.

Law on Free Legal Aid is still pending, which continues to be a barrier to access to justice, especially for financially vulnerable population and vulnerable groups. The Protector of Citizens has been pointing out the necessity of passing this Law for years. The Protector of Citizens has been addressed by a large number of citizens who seek legal assistance regarding the ongoing proceedings or the ones they intend to launch before the courts and other competent bodies for the purpose of exercising and protecting their rights. As the Protector of Citizens has no power to provide legal assistance to citizens, he refers them to the legal aid services in at the local level. The problem of exercising the right to legal assistance is particularly important when the citizens are unable to hire a lawyer, i.e. when legal aid services have not been established at the local level or citizens have no trust in their work.

LEGAL CERTAINTY

The legal certainty, predictability and irrevocability with regard to legal relationships, including the legal, timely and efficient operation of judicial institutions have still not become attainable to the citizens of Serbia. The Ministry of Justice has failed to administer a functional supervision over the work of judicial administrations, the acting of courts within the set deadlines and the handling of citizens' complaints and petitions.

Laws enacted in an incomplete, hasty procedure, lacking mutual harmonisation and with conflicting provisions of the same law or other laws, stipulating solutions that experts find confusing, let alone all those who are affected by the specific legislation and with inconsistent and selective implementation, coupled with the lack of any case law applied in the disputes arising from their implementation, resulted in excessively formal normativism along with, essentially, a modest level of legal certainty in the Republic of Serbia.

In 2016, according to the publicly available information, 88 laws were adopted, 51 of them were adopted in a hasty procedure (59%). Out of the total number of 88 adopted laws, 86 of them were proposed by the Government (98%) while the remaining two were proposed by the members of the Parialementary majority. None of the proposals made by the opposition MPs was put on the agenda of the National Parliament.¹⁰ Public debates and regular legislative procedures are very important, particularly when adopting a piece of legislation, which introduces new solutions in an area.

PUBLIC ADMINISTRATION REFORM¹¹

The public administration sector has come into focus following the announcement of reform activities relating to the organization of the public administration system and enhancement of the electronic administrative services for the citizens. The adoption of the Law on General Administrative Procedure, which further enhances the status of citizens and governs their rights and obligations before the administration bodies, is a huge step forward from a normative point of view. The extent of the actual advancement brought forward by this law will depend on its appropriate implementation. The inadequate implementation of the law is a crucial problem in the implementation of the public administration reform, as well as in

¹⁰ „In 2016, in 75 days, MPs adopted 88 laws at the Plenum“, *Open Parliament*, 30 December 2016, <http://www.otvoreniparlament.rs/aktuelno/5>.

¹¹ See more in the third part of this Report (3.6).

all other segments of our society. The implementation of the law and public policy primarily depends on realistic planning, objective implementation monitoring as well as the adequate human resources. Bearing in mind that insufficient human resources appear to be the main problem in the public administration sector, any normative improvements achieved in this area are consequentially called into question.

The reform processes in the field of public administration have not managed to address the main challenge: consistent implementation of professionalism, depolitization and rationalization. Instead of abolishing unnecessary jobs, simplifying the procedures, reducing the number of employees that have been made redundant, but without affecting the effectiveness and efficiency of administrative performance, downsizing has been carried out without any preliminary or realistic assessment of the requirements for the specific jobs and their scope.

This has resulted in the reduced number of required staff in those fields that are essential for the enjoyment of citizens' rights, among others, the social and health care protection, education, etc. At the same time, the employment in public companies, as well as the organizations founded by the Republic of Serbia, such as the National Bank of Serbia, is still out of control.

It is a matter of concern that not even 10 years since the Law on Civil Servants came into force, has the management staff been appointed (civil servants holding managerial positions) in accordance with the legal provisions.

The public administration activities are being implemented in a random manner and are inconsistent with the planning documents. The salary system in the public sector has been developed before was aligned with the employment relations system, which resulted in the interference with the civil servant employment system and inconsistent changes introduced to this system, but failed to bring about the desired harmonization of salaries in the public sector, that was supposed to provide the "equal pay for equal work". Again, it turned out that the pace of adopting the laws, particularly the systemic ones, precluded any adequate analysis of the status in this area or any meaningful dialogue with relevant participants in the process of legislation adoption.

Ad hoc measures undertaken for reducing expenses do not represent a replacement for systemic solutions and they must not be adopted without a more thorough analysis of its effects. The adoption of the Law on Salary System in the Public Sector that was followed by many remarks and opinions provided by competent authorities and pointing to the serious omissions in the process, failed to yield positive results but, instead, it represents the example of a hasty legislative activity – the activity *per se*.

The fact that the same law, in the year of its adoption, was amended in the part that prolonged deadlines for adopting individual laws necessary for the implementation of the original law, was indicative of the fact that at the time of adoption there had been no agreement of all the relevant stakeholders with the solutions provided therein nor had it been any clearer what consequences its implementation would bring about.

The afore mentioned points to the fact that there is still no awareness among the governing authorities that the reform of public administration reform presents necessary grounds for any other reforms the country and the society.

CHILD RIGHTS¹²

In 2016, respect for and observance of child rights have been improved in certain areas, but numerous setbacks that either jeopardize or diminish the achieved level of observance of child rights are still present. One of the key issues are austerity measures introduced without conducting any previous assessment of their impact on child rights and in the manner that additionally lowers the achieved standards. Consequentially, services for children and support measures for parents are not being developed, while the support measures for families with children, such as the VAT return for the food and equipment for babies are being reduced. Due to the imposed employment limitations and budget cutting, there is not enough day care or resting services for children, paediatricians, social service and education experts, personal assistants, pedagogical assistants and other required child service providers.

Amendments to the Criminal Code introduced in 2016 contributed to the enhanced protection of children from sexual exploitation and sexual abuse, but the legal protection against criminal offences against children has still not been fully established. The proceedings where they participate as victims of violence, children are still being interrogated several times, they are often interrogated in court and cross-examined, although in 2013, the Protector of Citizens emphasises the need to use the procedures and techniques that have been legally prescribed in order to protect child victims from additional traumas.

The Government has not adopted the new National Action Plan for Children even though the previous one expired in 2015. Also, a new National Strategy for Prevention and Protection of Children from Violence has still not been adopted, while even 11 years since the adoption of General and Special Protocols on Protection of Children from Abuse and Neglect, no efficient system has been established to protect children from violence. In cases of violence against children, there is no cooperation of the competent protection systems envisaged by the law and there is no prevention, combined with untimely and irregular response to cases of violence.

There have been no support or assistance mechanisms established for children living and working in the streets, who remain outside the education system and often have no access to services and health and social protection measures or measures of protection against violence, abuse, neglect and exploitation. The Law on Public Peace and Order does not recognize the fact that the children involved in child begging, child prostitution and other forms of child exploitation, including the worst forms of child labour, are the victims of abuse and exploitation, but rather treats them as perpetrators and offenders and envisages their responsibility if they have reached the minimum age of criminal responsibility.

The competent authorities have taken no action to introduce the lacking services for children and parents, in particular the support and assistance services for parents who care for children with developmental disorders, children with disabilities or severely ill children whose condition requires constant care, attendance and support. Almost four years have passed since the Protector of Citizens submitted appropriate draft laws to improve the position of parents of these children and they have not been discussed in the National Parliament until today.

The lack of cooperation between the competent bodies prescribed by the law (the courts, prosecutor's offices, guardianship authorities and the police) is one of the reasons why the

¹² For more details, please see Section three of this Report (3.1).

effective and valid court decisions that involve children are carried out in the proceedings that last for years, instead of being urgently processed. Moreover, the guardianship authorities, whose role in these proceedings is crucial for the child, encounter the problem of insufficient number of expert staff because of the employment limitation policy in the public sector.

The media have continued to publish articles and to broadcast programs that violate the rights of children, while the competent media regulatory bodies take no adequate and effective measures in cases of violations of the media laws that affect the child rights.

Not even after the special report of the Protector of Citizens about the cases of the „missing babies“ from 2010 and the judgement of the European Court for Human Rights passed in 2013, did the Republic of Serbia undertake to comply with its obligation to establish the mechanism for investigating the cases of „missing babies“.

The National Parliament of the Republic of Serbia and the Committee on the Rights of the Child of the National Parliament did not discuss the annual reports of the Protector of Citizens for the years 2014 and 2015 nor has the Committee discussed any recommendations, opinions, estimates, positions statements or initiatives made by the Protector of Citizens in the field of the child rights.

RIGHTS OF PERSONS WITH DISABILITIES¹³

Despite the efforts to improve the position of the persons with disabilities by improving the legal framework, this vulnerable group still finds it hard to exercise even their basic rights. Inaccessibility, lack of social protection services, unemployment but also insufficient public awareness of the problems and difficulties encountered by the persons with disabilities are only some of the reasons for such a situation. Existential challenges, as a consequence of the above mentioned factors and the global poverty, along with the austerity measures at all levels present in this year as well, have pushed this vulnerable group to the margin of the society.

The number of persons with disabilities who address the competent authorities with requests for social benefits is on the increase, which is clearly indicative of their difficult position and existential vulnerability.

Their independent moving is still hampered due to insufficient accessibility of public areas and buildings, while a percentage of unemployed persons with disabilities has raised by several times compared to the general population.

Persons with disabilities find it difficult to exercise their rights to health insurance, education, right to professional rehabilitation and employment, to retirement and disability insurance, which all together, along with insufficiently developed service and support system, makes them marginalized and socially vulnerable, instead of supporting their full involvement in the society. On the other hand, such state of affairs seems to be expected to an extent since no preconditions have been met to create effective policy for protection and enhancement of the rights of persons with disabilities or to establish the register of persons with disabilities.

The data about the persons with disabilities, their number, residence and type of disability are crucial for planning the policy to improve their status and, therefore, the lack of such database makes impossible any development of such policy or the implementation of the

¹³ See the third section of this Report (3.4).

support system. Without such data, it is not even possible to implement the education policy and the policy of harmonizing the education with the labour market requirements, which results in persons with disabilities being socially excluded instead of their full social integration.

Persons with mental disabilities encounter particular difficulties, considering that there is still no clear decision or a plan for their deinstitutionalization. The deinstitutionalization process involving the provision of conditions to include the persons with disabilities into the society and any social activities continuingly remains without any clear development guidelines. Most often, this process is perceived as closing down psychiatric and residential care institutions, without any synchronized activities to plan and establish a sufficient number of adequate support services in the community, both to persons with disabilities as well as their families, including some other preconditions that would enable the families of children or adults with any type of disability to take care of their family members without encountering existential problems. The lack of any clear status and needs assessment consequentially places this group of persons with disabilities in a "vacuum" between the institutions and the lack of existence of service or support system in case leaving these institutions.

Nevertheless, in addition to the lack of qualified staff of all profiles, the institutions lack adequate accommodation capacities and there is an insufficient participation of beneficiaries in organized physical and other free activities, inconsistent availability of programs for social and psychological rehabilitation, lack of available aids, lack of information of beneficiaries about their rights, which all together significantly affects exercising of rights of persons with disabilities, as pointed out by the Protector of Citizens on several occasions.

Among the persons with disabilities, persons with autism are in a particularly difficult position, as it seems that the social protection system does not recognize their existence. There is no centre for early detection of autism or a registry of persons with autism, whereas the services for beneficiaries and their families are only provided sporadically and unsystematically, despite the statistical data showing a drastic increase in the number of persons with autism.

DEPRIVATION OF LEGAL CAPACITY

The Protector of Citizens finds that the human rights issues of persons deprived of legal capacity, whether fully or partially, have not been caused by the nature of the very institute. In particular, the unwanted legal consequences arise from numerous laws that additionally limit the rights of such persons, even in a much wider scope than the limitations related to concluding legal transactions per se. Under such circumstances, deprivation of legal capacity leads to the essential limitation of their legal capacity. This means that, in view of the existing legislation, unlike other citizens, the persons deprived of legal capacity are, for example, deprived of their voting right and providing consent to medical treatment, while in practise, the fact that a person is deprived of working capacity is considered as the grounds for their deprivation of liberty.

GENDER EQUALITY¹⁴

The domestic and intimate partner violence against women remains one of the key issues in the society. The intimate partner and domestic violence against women is widespread while the state provides no adequate response. The system of protection for women exposed to

¹⁴ Please see more detailed information in the third section of this Report (3.3).

gender-based violence is characterized, among other things, by a lack of timely or efficient response, information exchange, the inter-sectoral cooperation and inadequate training of the employees. The adoption of the Law on Amendments to the Criminal Code and the Law on the Prevention of Domestic Violence is encouraging as the initiatives of the Protector of Citizens submitted to the Ministry of Justice in 2011 and 2012 have finally been accepted¹⁵ as well as the proposals and recommendations from its regular annual¹⁶ and special reports¹⁷.

Media reporting on women has been fraught with sensationalism and gender-related stereotypes¹⁸, without respect for women's privacy, dignity and integrity, despite the adoption of the Bylaw on the Protection of Human Rights in the Provision of Media Services. It is therefore necessary that the competent authorities act efficiently and timely and take actions in cases of violations of media regulations.

Women face significant delays while exercising their right to salary compensation during maternity leave and special childcare leave or even have no access to these benefits at all due to delays in the actions of competent authorities or lack of interdepartmental cooperation. Women farmers and women occupying temporary and occasional job positions do not have access to salary compensation during maternity leave, childcare leave and special childcare leave.

RIGHTS OF LGBTI PERSONS¹⁹

The Pride Parade has been peacefully held in Belgrade, for the third year running, which paves the way towards enjoyment of the right to assembly by persons of different sexual orientation and gender identity. Nevertheless, the LGBT persons have still not been fully able to exercise their rights in the fields of education, employment, health care, social security, legal regulation of the living unions and legal consequences of gender reassignment surgery, including the protection of their physical and psychological integrity.

There are no services in place for young LGBTI persons who disclose their sexual orientation and gender identity are there any services for young LGBTI persons who were forced to leave their homes because after being disowned by their families disowned upon coming out with their sexual orientation and gender identity, due to which these persons very often become homeless. The spread intolerance among the young population towards the LGBT persons indicates that an additional effort has to be made to educate and raise awareness of the society about the rights and status of LGBT persons.

In 2016, the Protector of Citizens made a recommendation to competent authorities regarding treatment of transgender persons deprived of liberty, with the aim of improving their position. It was recommended that, during their admission to the prison institutions, transgender women should have the body search conducted by a person of the gender selected by the admitted person. Additionally, the recommendation has been made with respect to addressing the transgender persons, which entails respect for their gender

¹⁵ The initiative is available at:

<http://www.zastitnik.rs/index.php/zakonske-i-druge-inicijative/1529-2011-10-14-09-40-39>.

¹⁶ Annual Reports are available at: <http://www.zastitnik.rs/index.php/izvestaji/godisnji-izvestaji>.

¹⁷ Special Report is available at

<http://www.rodnarodopravnost.rs/attachments/article/230/Posebani%20izvestaji%20Zastitnika%20gradana%20%D0%BE%20obukama.pdf>.

¹⁸ Republic Radio Broadcasting Agency "Gender equality and gender stereotypes at the first program of Radio Television of Serbia, Belgrade, June 2014, <http://rem.rs/uploads/files/izvestaji-o-nadzoru/Rodnarodopravnost-RTS-1.pdf>.

¹⁹ For more details see the third Section of this Report (3.3).

identity. Also, it was recommended that the employees of the Administration for Enforcement of Penal Sanctions should undergo appropriate training on gender mainstreaming mechanisms, standards and principles of equality and non-discrimination concerning sexual orientation and gender identity, including the appropriate communication with the LGBT population.

NATIONAL MINORITIES²⁰

An opportunity to create minority policy in Serbia that would establish a system based on the agreement of all the participants about the protection system which is suitable for both minorities and the society in general that would effectively protect the rights of minorities and enable their integration, has been missed many times so far. This system should recognize the objective differences in the needs and the achieved level of rights among the vast number of national minorities, differences among minorities in the Autonomous Province of Vojvodina and Central Serbia, minorities with larger or smaller number of members, those that have traditionally preserved such status and cherished their identity for decades, etc.

Despite the commendable adoption of the Action Plan for Exercising of the Rights of National Minorities, certain planned activities have already been delayed in the first year of its implementation. Thus, no amendments to the Law on the Protection of Rights and Freedoms of National Minorities planned for the second quarter of 2016 have been adopted. Therefore, still no legal grounds would enable the collection of data or keeping records about the nationality of employees in the public administration. This is the precondition for legal implementation of affirmative measures and providing a preference to the members of national minorities in employment/layoff in case of equal qualifications until the point of achieving the appropriate structure of employees in the public sector at all the levels of territorial organization.

For years already, the Protector of Citizens has been pointing to the systemic problems that prevent the full implementation of the right to official use of language and alphabet of national minorities. These reasons primarily include the lack of qualification and/or shortage of staff and funding; lack of understanding on the part of public administration employees of the importance of exercising the rights in one's mother tongue, but also the lack of accessible information to the members of national minorities relating to their rights and method of their achievement.

Within the reporting period, the privatization of local radio and TV stations was completed, involving among other, a significant number of those who used to broadcast information and other media contents in the languages of minorities. Although the media laws contain a number of protective provisions aimed at alleviating the consequences of privatization, while the Law on Public Information and Media defines the broadcasting of information in languages of minorities as the public interest exercised in three equal manners, the problems and obstacles with regard to the rights of minorities to information and appropriate and effective information system in the languages of minorities that would be in the interest of citizens and compliant with the needs and capacities of the Republic of Serbia have already emerged. The Protector of Citizens consequentially developed the Special Report on the right to information in the languages of national minorities following the privatization of media, in order to draw attention of competent public authorities to the requirement of legal and institutional measures aimed at improving the status in this area.

²⁰ For more details see the third Section of this Report (3.2).

The results and effects of the first implementation year of the Strategy for social inclusion of Roma women and men cannot be discussed, as no Action Plan for its implementation with the required budget funds has been adopted, despite the public debate held on the issue. Even though the Strategy recognizes the importance and role of coordinators for Roma issues in local self-governments, with regard to exercising and improving the rights of Roma population, the draft Action Plan failed to prescribe measures to eliminate identified deficiencies and obstacles as to their employment. Therefore, the Protector of Citizens submitted an Opinion to the Ministry of Public Administration and Local Self-government, specifying that the position of the coordinator for Roma issues must be regulated in a uniform manner throughout the entire territory of the Republic of Serbia. Another Draft Action Plan with its planned activities offers reasonable hope that, finally, considering that the Protector of Citizens had also been pointing to this requirement for years already, the health care mediation must be recognized in the health care system, while the job of health care mediator has been included in the job classification, that is, their number has been increased, to comply with the requirements and capacities.

OFFICIAL USE OF SERBIAN LANGUAGE AND CYRILLIC SCRIPT

The Protector of Citizens reported no significant achievement with regard to the official use of Serbian language and Cyrillic script. This has been made evident from citizens addressing this institution, but also from the practise of public authorities who often submit their official bylaws to the Protector of Citizens written in Latin alphabet. Recommendations and actions of this body may not be sufficient to eliminate all the systemic obstacles with respect to the official use of the language and scripts, whose resolution is under the competence of executive government. The key problem is that no authority is in charge of monitoring the implementation of laws and therefore, it proposes and takes the required measures for the improvement of the status of official use of language and scripts.

FREEDOM OF THOUGHT, CONSCIENCE AND RELIGION

The Protector of Citizens does not dispose with any indications that may provide an informed and documented assessment of the status of human rights in this segment. Complaints and addresses of citizens due to the violation of religious freedom and rights have continually been scarce, diverse and do not constitute grounds for actions to be undertaken by the Protector of Citizens.

Every year, regardless of whether they identify themselves as atheists or members of some other religious community, the citizens address the Protector of Citizens expressing their dissatisfaction with the obligation to pay charges for an additional postage stamp "Construction of memorial Church of St. Sava". Despite the legal regulation in place for this and all the other charged stamps, the dissatisfaction of some citizens is caused by the fact that it is a religious structure. The question has been put whether the same support would be provided for any reconstruction of a cathedral or mosque or any other religious community, representing the cultural heritage in the Republic of Serbia for centuries. The citizens who addressed us were also dissatisfied with acting of the RS President on the Christmas Eve that is celebrated according to Julian calendar, because of bringing "badnjak" into the Presidency building. The Protector of Citizens has no legal grounds to act on the complaints submitted against acting of the President of the Republic but finds itself obliged to notify the MPs of the National Assembly, considering the constitutional principle of separateness of the state from the church.

The Protector of Citizens was informed in this reporting period, during the meetings held with the representatives of Bulgarian and Romanian communities, that there are requests

logged by the citizens to enable holding the service in their mother tongue, that is, there is a continuing issue of free confession of citizens belonging to the Romanian Orthodox Church, living within the territory of East Serbia. The Republic of Serbia accepted the obligation to facilitate to the members of national minorities the access to religious services in their mother tongues by the Action Plan for Exercising the Rights of National Minorities, through the dialogue between the churches, with the source of the verification being the Report of the Protector of Citizens.

In view of the said and taking into consideration the competences in place, with full respect of the principle of separateness of the state and the church, the Protector of citizens requested to receive the relevant information from the Ministry of Justice – the Administration for cooperation with religious communities. According to the received information, the members of Romanian national community living in East Serbia are not able to use Romanian language in their religious services at the registered churches and/or religious communities. At the same time, religious services in Romanian are being conducted by the priests of the organization “*Protopresbyteriat of Cost Dacia*” that has been active in East Serbia for years. At the same time, the administration submitted the information that within the territory of Romanian Eparchy of the Orthodox Church “*Dacia Felix*”, seated in Vršac, the religious service is being held in Romanian language in 39 places (Vršac, Pančevo, Mramorak, Bela Crkva, Kovin and other). In addition, the Administration provided the information about services held in Bulgarian language according to which the regular service is being held in several places in which this was requested by the followers (Bosilegrad, Bresnica, Bistra, Donja and Gornja Ljubata and other).

Moreover, carrying out the activities set forth by the Action Plan was supposed to ensure the freedom of confession through the foundation and registration of religious organizations based on the principle of separateness of the religious communities from the state. In this respect, the Protector of Citizens points out that this year again it did not obtain the opinion of the competent authority on the Opinion about the requirement to improve the legal position of churches and religious communities and enable exercising the rights of free confession through the improvement of regulations and their more consistent implementation²¹, addressed as early as in 2009 to the competent Ministry.

RIGHTS OF PERSONS DEPRIVED OF LIBERTY²²

The persons deprived of liberty are the citizens whose freedom of movement is limited, according to the decision of the competent authority, that is, they are not allowed to leave the place of detention on their free will. These places include police stations, detention units, prisons, psychiatric institutions, residential institutions, reception centres for foreign persons, asylum centres, reception centres for migrants and any other places, including those in the open area where citizens are collectively under the police supervision.

The rights of detained persons are guaranteed by the Constitution and numerous laws, including the key international instruments the state is obliged to provide. Persons deprived of liberty are potential victims of torture, inhuman and humiliating treatment or punishing. Tortures and other forms of abuse are, possibly more than other punitive acts, of situational character. The enclosed institution isolated from outer space subdues the position of the

²¹ The Opinion is available at:

http://www.pravamanjina.rs/attachments/426_MISLIENJE%20O%20UNAPREDJENJU%20PRAVNOG%20POLOZAJA%20CRKAVA.pdf.

²² For more details, please see Section three of this Report (3.5).

detained persons to the power of guards and therefore, the detained person may easily become a victim.

Torture as a systemically organized or encouraged acting does not exist in Serbia. The statements of a large number of persons, who have been deprived of liberty, during visits by the Protector of Citizens /a National Mechanism for Prevention of Torture at detention places, indicate that a number of persons that suffered physical abuse has been considerably reduced. This is a significant improvement in the work of the state institutions. However, some deficiencies regarding the treatment of the detained persons still exist in terms of providing adequate accommodation, offering medical care and complying with the set procedures. These deficiencies, if continued, may acquire a systemic character over time and in certain segments, they practically already became systemic, due to which the competent authorities must correct the course of acting, immediately.

It is worrying that the competent bodies insufficiently use their role in preventing torture and other forms of abuse. Internal control mechanisms chiefly do not take measures under their competence in the cases where there are firm allegations that there has been a case of abuse, while the proceedings instigated on such cases are prevailingly inefficient. The lack of the regulated role of prosecutor's office in conducting investigations and their dependence on the work of the police brought about the partial inefficiency in this segment, resulting in a small number of instigated and completed criminal offence procedures including the judicial sanctions imposed to the perpetrators.²³

POLICE DETENTION, PRE-TRIAL ARREST AND IMPRISONMENT²⁴

The previous period was marked with notable efforts made by competent authorities to improve the treatment of detainees, persons under pre-trial arrest and the persons who have been sentenced to prison. It is encouraging that the number of complaints and allegations of the imprisoned persons about being physically abused has considerably reduced. Despite a number of improvement efforts as to the accommodation capacities, it is necessary to intensify activities in this respect. In addition, it is necessary to continue with improving the compliance with the set procedures related to exercising of rights by the detained persons. It is worrying that omissions related to the provision of health care are still recorded. An increased efficiency of internal control mechanisms would most certainly contribute to ensuring the compliance with the rights of the detained persons.

Special care should be paid in Serbia in the segment of security measures that need to be implemented in the cases of mandatory psychiatric treatment and safeguarding of persons, primarily in the segment of legislation and by creating conditions to implement these regulations. Other than that, it is necessary to, without any delay; improve the provisions of the Law on serving of prison sentence for organized crime offences, by providing an alignment with applicable standards and recommendations addressed to Serbia by the European Committee for the Prevention of Torture.²⁵

²³ Belgrade Center of Human Rights, *Human Rights in Serbia in 2016*, <http://www.bgcentar.org.rs/bgcentar/wp-content/uploads/2013/04/Ljudska-prava-u-Srbiji-2015.pdf>.

²⁴ For more details, please see Section three of this Report (3.5).

²⁵ European Committee for Prevention of Torture, *Report to the Republic of Serbia Government about the visit of European Committee for Prevention of Torture or Humiliating Treatment or Sanctioning SRT/Inf (2012) 17*, <https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=0900001680697c4f>.

PERSONS WITH MENTAL AND INTELLECTUAL DISABILITIES PLACED IN PSYCHIATRIC HOSPITALS AND RESIDENTIAL INSTITUTIONS ²⁶

A vast number of persons having mental and intellectual disabilities has been accommodated in psychiatric hospitals and residential institutions that are predominantly dislocated, outside of the core of settlements and many of their patients and/or users are hundreds of kilometres away from their families. The majority will never leave these institutions. The life is led there far from the eyes of the public and persons placed there on a long-term lose any ability to lead an independent life outside the institutions. On the other hand, the local community has no efficient mechanism to admit them, provide care and offer all kinds of needed support to both them and their families. Their families are often being mentioned in a negative context, claiming that they do not want to care about their relatives. Such standpoint does not take into consideration the complexity of living in a community with a person having mental or intellectual disabilities, meaning that one family member would have to be fully dedicated to such person.

Serbia should proceed with the implementation of its proclaimed commitment to deinstitutionalization. It is necessary to gradually, but systemically close large psychiatric hospitals and residential institutions. The prerequisite for this is an urgent initiation of establishing efficient mechanisms in local communities to accept, support and accommodate persons having mental or intellectual disabilities.

It is necessary to, immediately, regulate the terms and conditions and the procedures for depriving the persons accommodated in residential institutions from their free movement. Undoubtedly, certain persons have to, in their best interest, and depending on their mental condition or intellectual capacity, be deprived of freely abandoning the institutions. However, such deprivation must be precisely regulated.

In order to protect persons having mental and intellectual disabilities it is necessary to revise the provisions of regulations that prescribe the consent to medical treatment in a general manner. According to current regulations, if such persons are deprived of legal capacity, the guardian is to provide consent to medical treatment; however, such person is almost never present now when a medical intervention needs to be applied. In addition, it is important to set forth the role of persons with mental or intellectual disabilities in making decisions about medical interventions and/or in giving consent to the same. In this respect, it is necessary to ensure a reinforced protection of these persons when carrying out medical or scientific tests.

It is necessary to delete the provisions of the Law on Protection of Persons with Mental Disabilities, prescribing the isolation of psychiatric patients. Any agitated persons, whether physically restrained or not, should be attended by a medical staff member, as any forced isolation of a person having mental disabilities may have detrimental consequences on their psychological condition.²⁷ The Protector of Citizens expresses concerns as there are cases reported at residential institutions where persons having mental and intellectual disabilities are placed in isolated rooms, some of which are so inappropriate that they resemble the cages²⁸, without tap water or provided access to toilet. Such treatment is a form of abuse, and any prolonged treatment of this kind is deemed torture. In addition, in addition to

²⁶ For more details, please see Section three of this Report (3.5).

²⁷ Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Juan E. Méndez, para. 83, http://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session22/A.HRC.22.53_English.pdf.

²⁸ Identified during the visit by the National Mechanism for Prevention of Torture at the Home for mentally deprived persons "Otthon" in Stara Mitrovica, made on 6 October 2016.

isolation, the residential institutions have been reported to use mechanical prevention of movement of users by tying them, even though unlike psychiatric institutions none of such treatments is legally grounded.

HEALTH²⁹

In 2016, the process of replacing the medical identification documents has continued, without having previously ensured all the required preconditions for switching to medical insurance cards in the full capacity (regarding the established network for all health care institutions, functionality of e-records and other). The Integrated Health Information System of Serbia was introduced (the IZIS), whose implementation should improve the quality of services provided to patients, the transparency of work of health care institutions, timely notifying of patients and general public and an improved access to health care institutions by reducing the time of waiting for the treatment.

The Protector of Citizens was addressed by a large number of citizens claiming that they have been deprived of their rights to health protection but also that they did not use the statutory mechanisms to protect their rights before communicating the complaints, as they have no trust into the efficiency of such mechanisms, which consequentially points to the necessity of improving them.

LABOUR³⁰

High unemployment rate, low salaries, unfavourable position of employees at their employers, black market labour, unpaid salaries and contributions for social insurance are the most common reasons for the citizens' addressing the Protector of Citizens with regard to labour issues. The increased number of complaints by workers of companies undergoing a restructuring process, under bankruptcy or having their accounts blocked, having no mechanisms to protect their rights relating to employment. The lack of a social dialogue between the representatives of employees and employers, inefficient acting of labour inspection – also caused by an insufficient number of labour inspectors including the insufficiently developed cooperation between the authorities responsible for the protection of labour-related rights and social security, have additionally deteriorated the position of workers.

A trend has been identified in the previous period of violating the legally prescribed procedures for redundancy of civil servants who are not favoured by the management. Instead of having a disciplinary procedure that is often too complicated and may release the person from disciplinary liability, the tendency is to use a more 'efficient' method that enables an accelerated layoff a large number of employees, avoiding legal remedy procedures. This innovative but illegal method is being carried out by adopting the act on the job classification that includes employees who are not favoured by the managers, followed by adopting a new job classification act that no longer provides such "invented" jobs set forth by the previous ones, thus providing the possibility of such employees remaining unallocated and losing their jobs.

In the preceding period, the Ministry of Interior adopted an act on job classification, prescribing the formation of a thousand risk analysis jobs requiring different qualification grades. After this, the managers of the Ministry announced that a large number of police officers will be made redundant in the

²⁹ For more details, please see Section three of this Report (3.8).

³⁰ For more details, please see Section three of this Report (3.10).

near future, as many of them have made criminal offences or are allegedly unworthy to work in the Police, as well as that this will be conducted by way of amending the job classification act. The Protector of Citizens acted timely on such announcements, pointing to the fact that those police officers who committed criminal offences should be processed in criminal offence procedures, while those with reported misdemeanour conduct need to undergo a disciplinary procedure, instead of making them redundant by manipulating the amendments to job classification acts. Contrary to the intentions disclosed by the Protector of Citizens, very soon around one thousand police officers were transferred to newly formed jobs, and thirty days after adopting the previous job classification, a new one was adopted, to annul all the formerly established risk analysis jobs. After a number of warnings by the Protector of Citizens communicated in the course of 2016 that such acting has been illegal, the Ministry returned the majority of employees who remained redundant after the annulment of risk analysis jobs to their previous positions or other jobs corresponding to their professional qualifications. Thus, the Ministry managed to remedy the identified faults during the procedure taken by the Protector of Citizens.

SOCIAL PROTECTION³¹

By adopting the Regulation on designated transfers in social protection, the system of direct support to local self-government units was established, aimed at reducing poverty by ensuring a higher quality of protection to vulnerable groups of children, persons with disabilities and elderly persons, including the marginalized groups of citizens. However, the austerity measures and legal limitation of employment in the public sector hindered any timely or efficient provision of social protection while a shortage of social protection employees threatens to significantly undermine the quality of social protection services and even their provision.

PENSION AND DISABILITY INSURANCE³²

The Protector of Citizens has identified no achievements with regard to exercising of rights of citizens in the field of pension and disability insurance in the course of 2016. The Tax Administration and the Pension and Disability Insurance Fund (the PIO Fund) failed to introduce an efficient control mechanism of paying the contributions and submitting the applications for mandatory social insurance.

The PIO Fund, as the authority responsible for the process of pension reduction that has been carried out in cooperation with the Law on Temporary regulation of pension payment method, continues with failing to issue special Decisions on the reduction of pensions in each particular case, thereby causing gross violation to the Law on General Administrative Procedure and making it difficult for citizens to exercise their right to any legal remedy. Moreover, the competent authorities have not taken adequate measures to, in the event that the citizens are relieved from the burden of proof that requires the provision of documents, ensure an efficient exchange of data between the PIO Fund and Tax Administration about the taxpayers who need to account for and pay contributions, the amounts of due and collected contributions and other official data related to contributions. Furthermore, PIO Fund often oversteps its legally prescribed powers and imposes debts to the citizens for

³¹ For more details, please see Section three of this Report (3.9).

³² For more details, please see Section three of this Report (3.9).

contributions, contrary to the announced position of the Tax Administration as the competent authority.

The PIO Fund has still not taken measures to finalize the practise of a retroactive determination of obligation to pay the contribution for agricultural insurance for those categories of citizens who learn that PIO Fund recorded them as insured persons based on their performing of agricultural activities only when attempting to exercise their rights to pension, bearing in mind that contrary to the law, they have not been accordingly notified, that is, no decision on acquiring the rights of agricultural insured person has been issued to them.

The Ministry of Labour, Employment, Veteran and Social Affairs does not conduct the efficient labour control or control of the PIO Fund operations and acts, nor takes any required measures to supervise acting of the Fund as recommended by the Protector of Citizens.

ELDERLY CITIZENS³³

Particular vulnerability of the elderly is insufficiently recognized in the society. This group of citizens continues to be exposed to multiple violations of their rights, starting from their rights to pension insurance, reduction of pensions, unpaid contributions of employers to the pension fund, down to the rights relating to social and health care.

Also, the lack of or failure to provide certain services and support services contributed to the hindered exercising or failure to exercise the rights of the elderly population. Due to their poor economic status, they are not able to provide basic living necessities, among other, the required medicines. The competent authorities and institutions, instead of providing them with social security in the age when they are no longer able to work, impose a number of austerity measures that only make their position even more difficult.

A vast number of the elderly persons are exposed to some form of violence and discrimination. The elderly habitants of undeveloped rural areas are particularly being deprived. Their families are often not able to, due to their own poor economic standing or other objective reasons, to provide sufficient care to them while on the other hand; the state and local self-governments fail to provide adequate assistance and support. It is necessary to ensure more extensive and easier access to health institutions and services of support and assistance at a local level. The position of the elderly persons has also been marked with a number of other problems, such as being uninformed, having poor accommodation, poor health status and in particular, deteriorated mental health due to depression and dementia, being presented in an adverse manner in media and due to extensive poverty.

YOUTH³⁴

The position of youth is continually being worrying. One fourth of unemployed persons in Serbia are the persons aged between 20 and 29, while the unemployment rate among the young population in 2016 reached 43.2%. The rate of young population having secondary or higher education is extremely low. In 2016, 40% of children completed secondary schools, while 7.5% of young citizens completed universities. Despite the fact that the Government enacted several significant subordinate legislation act in this reporting period in the field of youth employment, there is still no comprehensive programme for their employment, education or professional development.

³³ For more details, please see Section three of this Report (3.4).

³⁴ For more details, please see Section three of this Report (3.7).

In addition to the high unemployment rate among the youth, a large number of young persons has been exposed to risk factors that undermine their physical and mental health: violence in different environments (at school, in the community, in the families), they have been exposed to stress, alcohol tobacco and such. There can be no significant improvement of the position of the youth without intensified efforts to plan and ensure services and measures of prevention and support to the young population, in particular to those being the young victims of violence and to the young persons exposed to risks.

The participation of youth is insufficient. Students remain insufficiently informed about their rights and mechanisms that may protect them, while the mechanism of students' participation often turn out to be dissatisfactory for the students who see them as deviating from actual problems and life of students. The participation of the youth in their communities has not been sufficiently ensured and the youth is not encouraged to be more involved in decision-making that will affect their everyday life.

EDUCATION³⁵

The education system has been burdened with issues that affect not only the employees and pupils and students, but also the educational system as a whole. Solving the redundancy issues in education is often a source of frequent disputes between the employees and the institutions and educational authorities. Violence in schools has spread, while the schools provide inadequate response to this problem or provide no reaction whatsoever. Numerous schools have insufficient resources for improving the work conditions or conditions of education and there is still a lack of an established system that would prevent blocking of commercial accounts of institutions and ensure their quick unblocking in the case that they have already been suspended. The regulations adopted in 2016 additionally reduced the number of experts supporting the work of educational employees in schools and preschools, and their number is far from adequate in terms of the needs of pupils. This further prevents the provision of obligations of institutions to protect the students from violence and offer them additional support they need.

CULTURE³⁶

The adoption of the Law on Amendments to the Law on Culture has enhanced the legal framework in this segment, considering that the key amendments refer to the change of the parts of the Law that turned out to be impracticable. Perhaps the most important amendment for artists is their being made equal with other employees in terms of being able to establish a permanent employment. In this reporting period, the Protector of Citizens particularly dealt with the improvement of the position of independent artists with regard to their exercising the rights arising from social insurance and recommended to appropriate bodies to provide for the health insurance for independent artists and enact the subordinate legislation that will provide a more detailed regulation of issues relevant for exercising the social insurance rights.

This reporting period continues to identify the lack of adequate control by the Ministry of Culture and Information and the Regulatory Body for electronic media towards the providers of media services, more specifically, imposing of inadequate sanctions and inappropriate measures in the event of law violation.

³⁵ For more details, please see Section three of this Report (3.7).

³⁶ For more details, please see Section three of this Report (3.7).

INTERNAL AFFAIRS³⁷

In 2016, the Ministry of Interior did not show the required level of cooperation with the Protector of Citizens, in particular with respect to the cases where systemic omissions in its work have been identified. The lack of timely and decisive acting on the recommendations of the Protector of Citizens resulted in a notable reaction of local and international public. Gaps found in current regulations including the delays with the adoption of a large number of subordinate legislation acts, created the space for a misplaced politization of police affairs, difficulties with exercising the right to peaceful assembly of citizens and a range of other civil and political rights.

It is necessary to improve the provisions of the Law on Police relating to competences, powers and autonomy of Internal Control Department, in order to ensure their more efficient performance and an increased level of independence from the Minister of Interior

DEFENCE³⁸

The financial position of professional members of the Army of Serbia and civilians employed at the Ministry of Defence has considerably affected the scope and essence of activities undertaken by the Protector of Citizens in the previous period. The union organization and individual addressing of their members highlighted some clear requests for having a more just distribution of burden of austerity measures and improved work conditions. The military pension beneficiaries and health-insured persons continue to face a range of legislative and organization and technical obstacles when exercising their rights. A requirement for having a more efficient cooperation has been identified along with the requirement to ensure a better exchange of information between military and civilian authorities.

DEMOCRATIC CIVIL OVERSIGHT OF SECURITY SERVICES³⁹

Systemic problems in the security sector still prevail, meaning that they have recorded no significant efforts to eliminate them, despite the proposal presented by the Protector of Citizens and the Commissioner for Information of Public Importance and Personal Data protection as early as in 2012, including 14 proposed measures to improve this status. The mentioned measures, but also other activities taken by the Protector of Citizens as a part of democratic and civil oversight of security sector have been recognized as the example of good practise in Europe.⁴⁰ The reporting period also recorded the complete lack of any initiatives by the parliamentary Board for cooperation with the Protector of Citizens that should naturally be a partner to this body in providing the external control of security services.

PROPERTY RIGHTS⁴¹

In exercising their rights to property, citizens encounter insufficiently effective work of administration, slow procedures, legal uncertainty and feeling of inability to enjoy their rights. Certain move, in particular in the legislation related to this segment have been made,

³⁷ For more details, please see Section three of this Report (3.11).

³⁸ For more details, please see Section three of this Report (3.14).

³⁹ For more details, please see Section three of this Report (3.17).

⁴⁰ Council of Europe Commissioner for Human Rights, *National human rights structures: protecting human rights while countering terrorism*, 06/12/2016, <http://www.coe.int/en/web/commissioner/-/national-human-rights-structures-protecting-human-rights-while-countering-terrorism>.

⁴¹ For more details, please see Section three of this Report (3.15).

however, they have not been accompanied with sufficient HR, technical or financial capacities or an adequate organization and job classification.

The Republic Geodetic Authority has failed to meet the requirement of an updated management of operations, even after having taken over the second instance competence for solving complaints against decisions of real estate Cadastral Departments, and therefore, the prescribed deadlines continue to be excessively exceeded.

The first effects of implementing the Building Legalization Law have become visible in 2016. According to this law, the state took over the responsibility for legalization of buildings. The number of adopted legalization decisions was far higher than the number of legalized buildings under former laws. However, the Protector of Citizens identified a range of irregularities. The Ministry of Construction, Traffic and Infrastructure failed to ensure all the conditions for their consistent implementation, so that the inventory and recording of illegally constructed buildings was not completed within the legally prescribed time limits. The basis used for implementing this law, the satellite images taken over the Republic of Serbia territory in 2015, used to decide which buildings could be legalized, has not been published on the website of the Ministry as at the effective date of the Law, but instead, this was done eight months later, while the access to the image is possible only with using the access parameters that is not available to the citizens.

Even more importantly, the published satellite image, other than lacking certain parts of the Serbian territory, contrary to the Law, shows the buildings that were constructed in 2016. Consequentially, the illegal construction continued in 2016 and this is particularly visible within the territory of Belgrade. In contract to the public promises coming from the top state officials, conditions have been created for an illegal legalization of buildings constructed after the effective date of the Law.

FINANCE⁴²

Positive effects of fiscal consolidation and austerity measures carried out in the public sector often result in limited rights of citizens as to the economic and property segment. The ambitious plans regarding the public revenue collection occasionally imply violation of basic institutes of tax and customs procedures, such as the legal remedy or hearing of the party. The tax burden imposes unequal charges to different categories of citizens, particularly the diverse categories of population, such as the impoverished population, while a long-standing crisis affects the financial status of citizens. The users of credit lies granted in Swiss Francs are in a particularly difficult position, along with users of other financial services, many of whom encounter difficulties with meeting their obligations. The efficiency with enforced collection from citizens is often not matched with the same efficiency of the state when the state is in the role of the debtor.

ECONOMY⁴³

Inconsistent implementation of the set goals and the lack of clear legal solutions, as well as slow resolving of identified problems in the transition process is reflected on economic and social status of citizens. Due to the gaps relating to the bankruptcy legislation, the citizens continue to encounter numerous problems with exercising their property rights but also with acting of authorities in charge of conducting the bankruptcy procedure. The

⁴² For more details, please see Section three of this Report (3.12).

⁴³ For more details, please see Section three of this Report (3.12).

bankruptcy proceedings before the Commercial Courts continue to be exceedingly prolonged, the property that remains behind the bankruptcy debtors are hard to cash while the acting of authorities who manage these bankruptcy procedures are mistrusted by the bankruptcy debtors.

The privatization procedure has still not ended for a number of strategically important privatization subjects. Some of them have been subject to a bankruptcy procedure while some are trying to find the solution for their status through their bankruptcy reorganization, while a buyer is still being sought for the others. The State has still not resolved the issue of the status of companies for professional rehabilitation and employment of persons with disabilities, who have been omitted by the Law on Privatization from the privatization procedure, whilst being unable to sustain on the market without the support of the state, for an extensive period already.

Employees and former employees of socially owned enterprises and companies having the majority socially-owned capital are still waiting for the Republic of Serbia to compensate their receivables, in accordance with the provisions of the Regulation on recording of outstanding debts of socially-owned enterprises following the enforcement of judgments on the employment-related claims. In addition to this, in 2016, there was a large number of complaints about irregularities with acting of administrative bodies and holders of public powers in the economy with regard to the dismissal of redundant employees, taking over the employees from one administrative body to another and concluding the employment contracts with new employees. This situation leads to the impoverishment of the citizens for whom the state has no adequate solution.

AGRICULTURE⁴⁴

The Ministry of Agriculture and Environment Protection has still not ensured a non-interrupted and efficient work of the commissions of the local self-government units for returning the expropriated agricultural land that has been turned into the state property. These proceedings last for years, while in some cases even for decades.

ENVIRONMENTAL PROTECTION⁴⁵

In 2016, there have been certain legislation activities aimed at harmonizing with EU legislation; however, there is still an unfortunate situation that in many local self-government units, the illegal landfills (depots) continue to be the main method of disposing of communal and other waste. The local self-governments have not earmarked sufficient funds required for the protection of environment in their budgets, or they tend to direct them without a steady plan or clear criteria and priorities defined in advance. At the same time, the Ministry of Agriculture and Environment Protection have failed to provide financial support in order to meet numerous obligations that have been set forth by the law.

NATURAL DISASTERS⁴⁶

The floods that struck Serbia in 2014 followed by the submission of applications by the citizens requiring the state support took place two years ago, however, in 2016, the citizens continued to conduct administrative procedures without obtaining any final decisions. At

⁴⁴ For more details, please see Section three of this Report (3.16).

⁴⁵ For more details, please see Section three of this Report (3.16).

⁴⁶ For more details, please see Section three of this Report (3.15).

the same time, in certain cases, the claims of the citizens were adopted and when the decisions became final, the established financial support was not paid out. The Law on Risk Management for Natural Disasters has still not been adopted, nor has the state taken over all the required measures to ensure a more efficient rehabilitation of landslides.

STATUS OF MISSING PERSONS

According to the International Committee of the Red Cross from March 2016, searches for 10,698 persons missing since the armed conflicts in the former Yugoslavia are still ongoing. For more than three years, there have been no new discoveries of remains in Serbia. The public authorities stated that investigations were carried out at the Kiževak site near Raška but were stopped due to lack of funds to be renewed in September 2016. The search for persons missing since the wars in Bosnia and Herzegovina (BiH) and Croatia is being conducted in cooperation with these countries. The associations of families of missing persons have found the progress slow and accompanied with insufficient cooperation, which is attributed to all parties. Despite the commitment of heads of states of Bosnia and Herzegovina, Montenegro, Croatia and Serbia, reflected in the Declaration on the role of the state in the process of resolving the issue of persons missing due to the armed conflict and human rights violations, signed in Mostar in August 2014 including the National Strategy for processing war crimes adopted by the Government of the Serbia, establishing the facts about the fate of missing persons is not seen as a priority in the course of revealing and prosecution of war crimes before the Justice Authorities in Serbia.

There are minimum 789 families of persons missing since the conflicts in former Yugoslavia.⁴⁷ Until today, there has been no special law to regulate the rights and the status of missing persons, although its adoption was recommended by the relevant international bodies. Consequentially, the families are forced to pronounce their missing family members dead in order to be able to exercise any rights.⁴⁸ The inadequate efforts of the state to find all the remaining cases of persons missing due to the wars in the period 1991–1999, as well as the failure to provide an adequate status and rights to the families of the missing persons, have been criticized and noted by international organizations dealing with this issue for years.⁴⁹

STATUS OF VICTIMS OF ARMED CONFLICTS

Civilian victims of war crimes and other serious violations of human rights due to the armed conflicts in the nineties, currently living in Serbia continue to form one of the groups that has been almost totally deprived of any rights. The existing laws, embodied in the Law on the Rights of Civilian Invalids of War, prevents the exercise of their rights, by setting a series of conditions that *de facto* exclude almost 90% of the victims. Moreover, the interpretation of this Law by the Ministry of Labour, Employment, Veteran and Social Affairs – which it

⁴⁷ Data about the number of families of the missing persons were presented at the session of the UN Committee on Enforced Disappearances, on 5 February 2015.

⁴⁸ Humanitarian Right Fund, *Transition justice in Serbia in the period from 2013 to 2015*, Belgrade, 2016, pages 57–66, available at: <http://www.hlc-rdc.org/?p=32161>.

⁴⁹ UN Committee on Enforced Disappearances, Conclusive remarks on the Report submitted by Serbia, in accordance with Article 29, Paragraph 1 of the Convention, in February 2015; the Commissioner for Human Rights of the Council of Europe, “Missing persons and victims of enforced disappearance in Europe”, Strasbourg, 22 February 2017, available at: <https://wcd.coe.int/com.instranet.InstraServlet?command=com.instranet.CmdBlobGet&InstranetImage=2962270&SecMode=1&DocId=2397560&Usage=2>.

applies only to the cases that took place on the territory of the Republic of Serbia, is in conflict with the Decision of the Constitutional Court of Serbia.⁵⁰

The only possibility for the civilian victims of war who do not comply with strictly set criteria is to file suits to claim damages against the Republic of Serbia, if the state is found liable for illegal treatment of the victim. In that case, the victims, as the plaintiffs in the litigation would face an unjustified extensive burden of proof, prolongation of the case, mistrust of the Court and in the event that it ends up with a success, with a humiliatingly small damages.⁵¹ The rights of civilian victims of armed conflicts in Serbia have been the matter of expressed concerns by the international bodies monitoring the implementation of obligations undertaken by Serbia by endorsing several international contracts.⁵²

Another worrying matter is the wording of the Draft Law on rights of veterans, war invalids, civilian invalids of war and members of their families that the competent Ministry released for adoption procedure by the end of 2014, containing not even a single aspect that would improve the status and rights of civilian victims and their families, but instead, making them even worse.⁵³

INTERNALLY DISPLACED PERSONS AND REFUGEES FROM THE TERRITORY OF YUGOSLAVIA

In 2016, there has been no increase in the number of complaints filed by refugees and internally displaced persons. The admitted complaints have shown that no significant changes occurred in terms of essence – that these persons are often enduring extremely difficult social and economic conditions, due to which it is necessary to have more efficient programs for ensuring accommodations for refugees and the programs for their economic recovery.

The process of closing the collective centres has not been finalized in 2016, despite the enactment of the Framework Agreement on Implementation of the Regional Programme for

⁵⁰ Decision of Constitutional Court Constitutional Complaint no. 9170/14 dated 2 August 2016.

⁵¹ Humanitarian Law Center, *Victims' Right to Reparation in Serbia and the European Court of Human Rights Standards*, Report for 2014/2015, Belgrade, 2016, available at: <http://www.hlc-rdc.org/?p=31034>.

⁵² Discussion on the Report of Serbia to the Committee against Torture, April 2015, available at: <http://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?LangID=E&NewsID=15912>; Report of Mr. Nils Muižnieks, the Commissioner for Human Rights of the Council of Europe following his visit to Serbia in the period from 16 to 20 March 2015, Para 27–32, available at: <https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=09000016806db7fa>; 2016 Progress Report of European Commission about the Republic of Serbia, page 67, available at: http://www.seio.gov.rs/upload/documents/eu_dokumenta/godisnji_izvestaji_ek_o_napretku/izvestaj_ek_srbija_2016.pdf; Resolution of European Parliament dated 4 February 2016, about the 2015 Report for Serbia, Para 26, available at: <http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+TA+P8-TA-2016-0046+0+DOC+XML+V0//EN>.

⁵³ Letter of Mr. Nils Muižnieks, the Commissioner for Human Rights of the Council of Europe, addressed to Aleksandar Vulin, the Minister of Labour Employment, Veteran and Social Affairs, regarding the issue of reparations to victims of war crimes and the response of the Government, are available at: http://www.coe.int/en/web/commissioner/country-monitoring/serbia/-/asset_publisher/mLRIkOZweJs0/content/letter-to-the-minister-for-labour-employment-veterans-and-social-affairs-of-serbia?inheritRedirect=false&redirect=http%253A%252F%252Fwww.coe.int%252Fen%252Fweb%252Fcommissioner%252Fcountry-report%252Fserbia%253Fp_p_id%253D101_INSTANCE_mLRIkOZweJs0%2526p_p_lifecycle%253D0%2526p_p_state%253Dnormal%2526p_p_mode%253Dview%2526p_p_col_id%253Dcolumn-1%2526p_p_col_pos%253D1%2526p_p_col_count%253D2.

Provision of Permanent Housing to Refugees, signed between the Republic of Serbia and the Council of Europe Development Bank (CEB).

As in the previous years, the Protector of Citizens again points to the particularly difficult position of internally displaced Roma citizens from the territory of the Autonomous Province of Kosovo and Metohia, who continue living in informal settlements, without any infrastructure.

The Protector of Citizens communicated the Opinion that the Government should, without delay, take all the necessary measures to ensure the Commissariat for Refugees and Migrations and the Commission for Housing and Allocation of Official Buildings and Offices of the Government proceed with activities to ensure the adoption of final decisions about the accommodation of refugees, fully respecting the rule of law and the best interest of the citizens. Even though this Opinion was addressed in December 2015, the competent authorities have not responded yet, nor have they notified the Protector of Citizens about any measures taken in this respect.

MIGRANTS AND REFUGEES FROM AFRICA AND ASIA

In recent years, the Protector of Citizens has been closely monitoring the respect for the rights of refugees and migrants who crossed the territory of Serbia on their way to the EU countries. We have made a number of visits to police stations, asylum centres, reception centres for foreign persons, reception centres for refugees and in the reporting period, the informal gathering places of migrants have been intensively visited. Based on the findings, the Protector of Citizens referred a large number of recommendations to the competent authorities in order to improve the treatment of the people and protect the rights of refugees and migrants.

Unlike the majority of EU countries, Serbia decided to take the so-called liberal approach to migrations, meaning that the migrants and refugees are not held in detention. They are provided free admission to Serbia, transit over its territory from the southeast to north-west borders, without preventing them to leave the country. The majority of migrants were provided the option to use support, with the assistance of international organizations and NGOs that included food, clothes and footwear, including any emergency health care. Despite a number of recommendations addressed by the Protector of Citizens to the competent authorities where he stated the opinion that full control needs to be established over migration process, the competent authorities acted contrary to these recommendations and thus allowed the situation that many of these people became an easy prey, that is, the victims of smugglers and others using their distressed position.

In the recent period, more than one million refugees and migrants crossed Serbia. In the beginning, most of the refugees were families from Syria and Iraq. The competent authorities issued more than 600,000 certificates to persons who expressed their willingness to seek for an asylum in the Republic of Serbia, even though almost none of these persons did assert that they would be seeking an asylum in Serbia, nor had such intention, but rather intended to continue their trip to the countries of EU. After having closed the borders, first the border of Hungary and then Croatia, the flow of migrants has considerably slowed down.

In the reporting period, about overall 144,000 migrants were recorded on the territory of the Republic of Serbia with more than one third of minors (54.882) included in that number. At the end of 2016, there were more than 6,000 migrants on the territory of Serbia, predominantly young men coming from Afghanistan and Pakistan. A vast number of them are minors and the competent authorities are paying special attention to them. The migrants

are predominantly accommodated in reception centres and centres for asylum, where they were provided the residence, access to sanitation facilities, food and medical care, however, with a notable lack of psychological support. A number of migrants (10-20%) refuses offers to have organized accommodation, but rather opt for informal gathering places, completely unsuitable for living, where they claim to have easier access to the representatives of informal system who are expected to enable them to continue their journey.

Serbia encounters a great number of migrants who are not able to continue their journey, and assumed increase in the number of migrants due to the winter period and their inability to proceed to the west due to the closed borders with Hungary and Croatia. The existing capacities in the reception centres and asylum centres are insufficient and not appropriate for a long stay, particularly not for the integration of migrants. Therefore, the competent authorities should, immediately, undertake to increase efforts to develop adequate living conditions for all the migrants who will obviously be staying in Serbia for a prolonged period and comply with the applicable standards.

During the reporting period, while enforcing the National Mechanism for Prevention of Torture, the Protector of Citizens paid special attention to the protection of the most vulnerable groups of migrants, in particular the children and women. During the visits of the National Mechanism for Prevention of Torture, the conditions of accommodation provided to children and migrant females were checked, including whether the competent authorities reacted timely to the cases of domestic violence, human trafficking and abuse and neglect of children.

The identification of unaccompanied minors was identified, due to which the NMPT addressed to the Ministry of Labour, Employment, Veteran and Social Affairs the recommendation to establish appropriate procedures and develop a mechanism to identify the unaccompanied minors, as well as other particularly vulnerable categories of persons requiring additional assistance and care. The recommendations were addressed in order to raise the level of efficiency and care. The recommendations were addressed in order to raise efficiency and quality of estimation whether the particular person is an unaccompanied minor and the procedure for taking care of him/her and prevent any abuse of minors.

1.2. KEY STATISTICS⁵⁴

Table 1 - Information on implementation of recommendations by the administrative authorities in 2016.

	Issued	Received	Accepted	% of accepted among those received
Recommendations issued in the oversight procedure	514	421	314	74,58%
Recommendations issued in the expedited oversight procedure ⁵⁵	508	508	508	100%
Total accepted recommendations from the oversight procedures	1022	929	822	88,48%
Recommendations issued in the preventive capacity (National Preventive Mechanism)	318	186	169	90,86%
Total accepted recommendations	1340	1115	991	88,88%

Note on Tables 1 and 2: the referred recommendations include those issued to authorities in 2016. Received recommendations are those that expired the deadline for acting upon them in the course of 2016, taking into account the deadline provided in the wording of the recommendation, regardless of the time of submitting the recommendation. Accepted recommendations are all those recommendations carried out by the administrative authorities or reported by them as accepted as at the last day of the reporting period - 31st December 2016.

Table 2 – Comparison of implementation of recommendations in 2015 and 2016.

	Issued		Received		Accepted		% of accepted among those received	
	2015	2016	2015	2016	2015	2016	2015	2016
Recommendations issued in the oversight procedure	624	514	377	421	238	314	63,13%	74,58%
Recommendations issued in the expedited oversight procedure	563	508	563	508	563	508	100,00%	100,00%
Recommendations issued in the preventive capacity (National Preventive Mechanism)	265	318	265	186	249	169	93,96%	90,86%
Total accepted recommendations	1452	1340	1205	1115	1050	991	87,14%	88,88%

⁵⁴All the statistical data from this report refer to the cases received in 2016, unless otherwise stated in the notes below the tables.

⁵⁵ Recommendations arising from the summary control procedure refer to the situations when the authorities have initiated the procedure to remedy the omission immediately upon having received the complaint notified by the Protector of Citizens.

Table 3 - Comparison of data on implementation of recommendations of the Protector of Citizens by the administrative authorities in the period 2007-2016.

	2007	2008	2009	2010	2011	2012	2013	2014	2015	2016
Number of issued and received recommendations by type										
Recommendations issued in the oversight procedure	0	37	126	151	214	327	233	303	570	266
Recommendations issued in the expedited oversight procedure	3	126	139	312	220	376	561	591	563	508
Recommendations issued in the preventive capacity (National Preventive Mechanism)	/	/	/	/	/	228	268	268	265	186
Total of issued and received recommendations	3	163	265	463	434	931	1062	1136	1398	960
Number of accepted recommendations by type										
Recommendations issued in the oversight procedure	0	32	100	122	156	240	138	321	407	185
Recommendations issued in the expedited oversight procedure	3	126	139	312	220	376	561	591	563	508
Recommendations issued in the preventive capacity (National Preventive Mechanism)	/	/	/	/	/	175	225	184	249	169
Total of accepted recommendations										
Total of accepted	3	158	239	434	376	791	924	1096	1219	862
Percentage of accepted recommendations										
Percentage(%)of accepted	100	96,93	90,19	93,74	86,64	84,96	87,01	96,48	87,20	89,79

Table 4 – Authorities that received most of recommendations in the oversight procedure in 2016 and their percentage compared to the number of recommendations in the oversight procedure

Authority	No. of issued	percentage
Ministry of Labour, Employment, Veteran and Social Policy	106	10,11%
Ministry of Interior	96	9,16%
Provincial Secretariat for Social	46	4,39%
Administration for the Enforcement of Penal	35	3,34%
City of Belgrade	31	2,96%
Ministry of Health	25	2,39%

Ministry of Agriculture and Environmental Protection	22	2,10%
Ministry of Education, Science and Technological Development	22	2,10%
Commissariat for Refugees and Migration	22	2,10%
Centre for Social Work Kragujevac	21	2,00%

Note: the table contains authorities that received more than 20 recommendations in the course of 2016.

Table 2 – Number and percentage of acting upon recommendations with majority of issued recommendations

Authority	No. Issued	No. Received	No. Accepted	% of accepted among those received
City of Belgrade	31	108	90	83,33%
District Prison Subotica	42	42	42	100,00%
Ministry of Interior	96	26	19	73,08%
Administration for the Enforcement of Penal	35	26	23	88,46%
District Prison Smederevo	35	23	19	82,61%
Ministry of Education, Science and Technological Development	22	22	14	63,64%
Centre for Social Work Kragujevac	21	21	21	100,00%
Ministry of Agriculture and Environmental Protection	22	19	6	31,58%
Police Administration Kruševac	24	9	9	100,00%
Ministry of Labour, Employment, Veteran and Social Policy	106	8	5	62,50%
Ministry of Health	25	8	5	62,50%
Police Administration Niš	25	8	6	75,00%
Commissariat for Refugees and Migration	22	5	4	80,00%
Provincial Secretariat for Social affairs	46	2	2	100,00%

Note: the number of received recommendations differs from the number of issued ones, since on one hand, some of recommendations are still within the deadline provided to the authorities to act upon them, while the other cases include recommendations issued in 2015 that became due for acting in 2016.

The cases that ended with recommendations from summary control procedure, the authorities remedied the omission the Protector of Citizens pointed to in his complaint immediately after receiving the notification of his instigation of procedure.

Table 3 – Authorities who acted as recommended in the summary oversight procedure, in most cases

authority	No
Ministry of Internal Affairs	46
Tax Administration	37
Republic Geodetic Authority	24
Republic PIO Fund	23
City of Belgrade	15
Ministry of Finance	10

Table 4 – Data about contacts with citizens in 2015 and 2016

Type of contacts	2015	2016	%
Citizens received in person	4585	4213	-8,11 %
Tel. calls made with citizens	9327	8149	-12,63%
Various submissions other than complaints	985	681	-30,86%
Number of complaints	6231	6272	0,66%
Total number of contacts with citizens	21128	19315	-8,57%

Table 5 – Overview of contacts with citizens in the period 2007- 2016.

Type of contacts	2007	2008	2009	2010	2011	2012	2013	2014	2015	2016
Contacts other than complaints	2556	3787	7343	8553	12185	15295	18504	17430	14897	13043
Number of complaints	406	1030	1764	2646	3638	4457	5021	4866	6231	6272
Total number of contacts with citizens	2962	4817	9107	11199	15823	19752	23525	22296	21128	19315

Table 6 – Investigations completed by the Protector of Citizens in 2016 and in comparison to 2015

Type of activities	2015	2016	percentage
Complaints and own initiatives	6457	6567	1,7%
Other contacts with citizens	985	681	-30,86%
Total activities completed	7442	7248	-2,61%

Table 7 – Legislative initiatives of the Protector of Citizens in 2016

	Number	%
Accepted legislative initiatives	2	22,22%
Unaccepted legislative initiatives	0	0%
Initiatives in the pipeline	7	77,78%
Total	9	100%

Table 8 – Other relevant data about the work in 2016 and in comparison to 2015

Type of activities	2015	2016
Number of initiated procedures	1669	1217
Number of control and prevention visits	107	174

Table 9 – Number of cases⁵⁶ received in 2016, allocated per fields and sectors with percentages compared to the overall number of cases in 2016

	Sector	No.	percentage
1	Labour and employment relations	774	12,34%
2	Local self-government	564	8,99%
3	Justice and judiciary	528	8,42%
4	Child rights	479	7,64%
5	Finance	331	5,28%
6	Rights of Persons deprived of liberty	320	5,10%
7	Pension insurance	297	4,74%
8	Construction and infrastructure	271	4,32%
9	Cadastre	258	4,11%
10	Health	248	3,95%
11	Rights of persons with disabilities and the elderly	236	3,76%
12	Ministry of Internal Affairs-police affairs	222	3,54%
13	Consumer protection	219	3,49%
14	Energy and mining	198	3,16%
15	Education and science	167	2,66%
16	Economy	166	2,65%
17	Gender equality	142	2,26%
18	Social security	100	1,59%
19	Rights of national minorities	99	1,58%
20	Culture	98	1,56%
21	Ministry of Internal Affairs-administrative affairs	98	1,56%
22	Defence	69	1,10%
23	Agriculture	64	1,02%
24	Environmental protection	51	0,81%
25	Restitution	48	0,77%
26	Transport and transport infrastructure	43	0,69%
27	Natural disasters	39	0,62%
28	Independent governmental authorities and bodies	32	0,51%
29	Youth and sport	25	0,40%
30	Refugees and displaced persons	18	0,29%
31	Expropriation	14	0,22%
32	Serbian language and Cyrillic script	14	0,22%
33	Public administration	14	0,22%
34	Foreign affairs and diaspora	14	0,22%
35	Security affairs	8	0,13%
36	Protection of whistle-blowers	4	0,06%
	TOTAL	6272	100,00%

⁵⁶Cases will be understood to mean the cases arising from acting upon complaints and at own initiative in specific individual fields /sectors.