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PREUGOVOR

INSTITUTIONAL
BAROMETER 2.0

November 2019

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List of abbreviations

EU	European Union
CH23	Chapter 23 (Judiciary and fundamental rights)
CH24	Chapter 24 (Justice, freedom and security)
AP23	Action Plan for Chapter 23
AP24	Action Plan for Chapter 24
RS	Republic of Serbia
NARS	National Assembly of the Republic of Serbia
ACA	Anti-Corruption Agency
NES	National Employment Service
BCSP	Belgrade Centre for Security Policy
AWC	Autonomous Women's Centre
CAES	Centre for Applied European Studies
CPT	Committee for the Prevention of Torture
MoI	Ministry of the Interior
MPALSG	Ministry of Public Administration and Local Self-Government
CSO	Civil society organizations
PoC	Protector of Citizens
SAI	State Audit Institution
RPPO	Republic Public Prosecutor's Office
SCOC	Service for Combating Organized Crime
ICS	Internal Control Sector of the Ministry of Interior
LPD	Law on the Prohibition of Discrimination
FOI Law	Law on Free Access to Information of Public Importance
LPDP	Law on Personal Data Protection

EDITORIAL

With a view to monitoring the measurable effects of the reforms in the European integration process of the Republic of Serbia, the members of coalition prEUgovor have selected six institutions whose competences fall under Chapter 23 (Justice and Fundamental Rights) and Chapter 24 (Justice, Freedom and Security). To this end, a methodology has been devised to measure the effectiveness of these institutions – the overall performance of some of them, and specific activities of others. The selected six institutions are: the Anti-Corruption Agency, the Internal Control Sector of the Ministry of the Interior, the Commissariat for Refugees and Migrations, the Centre for Human Trafficking Victims Protection, the Commissioner for Protection of Equality and the Commissioner for Information of Public Importance and Personal Data Protection. The pioneering results of the application of these methodologies are presented in the first edition of the Institutional Barometer.[1] In our approach, indicators were formulated which reflect the dimensions of outcome and process, with a special emphasis on the implementation, which is recognized as the main challenge and is therefore the focus of monitoring by the European Union (hereinafter: EU) as well. The indicators were divided into three "baskets" that reflect three dimensions of institutional functioning: internal efficacy, institutional embedment and institutional legitimacy. This approach has enabled us to group different types of indicators, which then reflect the different dimensions of management that they measure. It is precisely this approach that has provided us with the data testifying to the effectiveness of the institutional set-up. Further, monitoring the indicators in the period between the first edition and this one, as well as in the years to come, will allow us to identify the trend regarding the success of the state in improving the situation in specific areas. By grouping our indicators into the "baskets" we were able to choose from a myriad of indicators the ones that are relevant for a specific institutional design and by using various sources of data to juxtapose public perceptions and experience on the one side with pure administrative data on the other.

We are confident in this one-of-a-kind approach because the three baskets that reflect the three dimensions of institutional effectiveness are mutually balanced and create a unique checks-and-balance system with the measurement framework, thus minimising the possibility of arbitrary assessments and interpretations of results. The results obtained using this methodology could be a source of information for relevant actors, both the decision makers and civil society organisations, as they can use them to formulate concrete proposals on how to overcome the key shortcomings and problems and improve institutional design.

1 *The Institutional Barometer*, 2018, The Preugovor Coalition, available at: http://www.preugovor.org/Institutional-Barometers/1481/Institutional-Barometer.shtml

The Institutional Barometer 2.0 is a continuation of the prEUgovor coalition's persevering work, aiming to the extent possible to contribute to the reforms and concrete changes in the field through its findings. With this aim in mind, we have in the meantime improved specific indicators and formulated new ones, in order to provide as thorough as possible an analysis of the current state of the institutional set-up and its operation. We would like to invite you to continue reading this report and find out more about what has changed between two of our editions in the "area" of institutional effectiveness, what we have learnt, where we are now, and what our hopes for the future are.

SUMMARY

The Anti-Corruption Agency

Transparency Serbia has continued to monitor the efficiency, institutional embedment, and legitimacy of the Anti-Corruption Agency (hereinafter: ACA) through the analysis of four out of the total of twenty competences of the autonomous and independent state body whose role is prevention of corruption. For the purposes of this research, we have analysed the efficiency of the sector and department for the handling of submissions, regulations, control of the financing of political actors and election campaigns, as well as the monitoring of the implementation of the National Strategy for the fight against corruption. The Agency has a large number of activities and competences which are not prescribed in sufficient legal detail. Other actors affect greatly its role, and the Agency itself has not specified fully its duties, work priorities, or deadlines, which makes greater efficiency and attainment of expected goals all the more difficult. The new Law on the Prevention of Corruption, to come into force in September 2020, does not contain the solutions that would remove the problems in the operation of the Agency either, which we pointed out in last year's Barometer.

The Internal Control Sector of the Ministry of Interior

The internal control of the police includes preventive and repressive actions of a specific organizational unit of the police in order to ensure its accountability before the state, the laws and the citizens,[2] which is one of the conditions for the democratic operation of the police.[3] The focus of this research is the *Internal Control Sector of the Ministry of Interior (hereinafter: ICS),* the main internal police controller in Serbia. The aim of the research is to assess its efficiency, institutional embedment, and legitimacy.

The report was drawn up by analysing legal and strategic documents, the reports of independent state control institutions and the prosecutor's office, as well as by polling the citizens. The official data of the ICS were also used, as was the information obtained via responses to 184 requests for free access to information of public importance sent to courts, prosecutor's offices and sections of the Police Directorate. In addition, the responses of independent

2 Carty, Kevin. (2007). Guidebook on Democratic Policing. Vienna: OSCE, p. 26.

3 Council of Europe. (19 September 2001). Recommendation Rec(2001)10 of the Committee of Ministers to member states on the European Code of Police Ethics. Retrieved from https://polis.osce.org/node/4711, pp. 12, 68.

control institutions to the BCSP questionnaire were analysed as well, and four interviews were published.

The Commissariat for Refugees and Migration

Group 484 completed a new assessment of the efficiency of the *Commissariat for Refugees and Migration* regarding the exercise of the competences related to the system of reception of migrants and asylum seekers, as well as the system of integration of the persons with a recognized right of asylum. When compared with last year, the results of the analysis indicate that the process of ensuring higher guarantees of the protection of the rights of migrants, asylum seekers and persons granted the right of asylum continued; further, the monitoring of the operation of the system had been improved. In the upcoming period it is important to analyse the effects of the implemented methodology of assessing the system of reception (*sit profiling*) and consider whether there is a need for any amendments thereof; furthermore, the coordinated monitoring of the implementation of all measures of integration should be improved in substantially, and concrete activities geared towards strengthening both the system of reception and the system of integration should continue.

Centre for Human Trafficking Victims Protection

The ASTRA Anti Trafficking Action continues to monitor the efficiency and actions taken by the *Centre for Human Trafficking Victims Protection* as an independent institution within the system of social protection with public competences in assessing and planning the protection and identification of victims of trafficking. The Centre is under the direct jurisdiction of the Ministry of Labour, Employment, Veteran and Social Policy, and is tasked with assessing the trafficking victims' condition, needs, strength, and risks, identifying and providing adequate assistance and support to trafficking victims in order to ensure their recovery and reintegration.[4]

The developments from the previous period include the adoption of the *Standard Operating Procedures for the Treatment of Human Trafficking Victims* (January 2019), opening the *Shelter for Female Victims of Human Trafficking* (February 2019), adopting the Action Plan for the *Strategy of Prevention and Elimination of Human Trafficking, Especially Women and Children* for the period 2019-2020 (July 2019), a more detailed specification of the position and operation of the Centre through the Draft Law on Social Protection – seven years after inception (July 2019) and others.

This time the female researchers of ASTRA had a much better insight into the operation of the Centre as this institution's staff provided answers to the

4 http://www.centarzztlj.rs/images/download/StatutCZZTLJ.pdf

questions required for the report. It is clear from many documents, and oral and written communication with the those active in the area of preventing and combating human trafficking that the intention to set up, strengthen and ensure the efficient operation of an institution such as the Centre requires a continued investment in employee development and capacity building, as well as networking and national and international collaboration. Above all, it requires an even better exchange and collaboration with the organizations in Serbia with many years of experience in fighting against human trafficking in order to use the available resources in the best manner possible.

More details below.

The Commissioner for the Protection of Equality

The Autonomous Women's Centre (hereinafter: AWC) has continued to monitor the effectiveness of the institution of the *Commissioner for the Protection of Equality* as a central actor in the implementation of anti-discriminatory policy and the recommendations from the screening related to this topic. It has been established that the Commissioner does not monitor or analyse court practices surrounding the implementation of the Law on the Prohibition of Discrimination (hereinafter: LPD), as is claimed in the state reports on the implementation of activities from the Action Plan for Chapter 23 (hereinafter: CH23). There has been no change in the trend of a small number of opinions and recommendations regarding citizens' complaints, while the number of rejected complaints in the period of observation doubled. One of the possible reasons is a problematic interpretation of the phrase 'regarding the same matter' in Article 36 of the LPD.[5] The trend of public bodies not recognizing discrimination and/or the institution of the Commissioner for the Protection of Equality in a sufficient degree is still there. An ignorant and uninformed attitude of the members of parliament is entirely unacceptable, as are their discriminatory views and speech, all of which the Commissioner should respond to more resolutely. It is necessary for the Commissioner to devise a considerably better way of making available to marginalized social groups the information on what is discrimination, on the institution of the Commissioner, and the complaints procedure. It is also important for the Commissioner to improve the internal (electronic) records on the operation, in order for the different aspects of efficiency (such as the average time of processing received complaints, average employee workload in administrative and technical services, or average costs of operation of administrative and technical services per type of work) to be better monitored.

5 The Official Gazette of the Republic of Serbia No. 22/2009.

The Commissioner for Information of Public Importance and Personal Data Protection

The Centre for Applied European Studies (hereinafter: CAES) has continued to monitor the effectiveness of the institution of the Commissioner for Information of Public Importance and Personal Data Protection. This institution was selected for three main reasons stated in the first edition of the Institutional Barometer.[6] Between the two editions of the Barometer, the bad trends pointed out in the first edition have remained largely the same: the institution is increasingly burdened with cases without the much needed staff capacity improvements; enforced performance of the institution's decisions is blocked; the treatment of the institution on the part of the NARS is incomprehensible and unacceptable; and the very institution itself has performed its duties in a period of six months without its director. Despite all of the above, the institution has confirmed the findings from the first edition of the Institutional Barometer and manages for the moment to maintain a high level of efficiency and legitimacy. What remains is for us to monitor how successfully the institution of the Commissioner - with a new director, who faced at the very start of his term in office both the many problems brought about by the implementation of the new LPDP and the unknown fate of the Draft Law on the Amendments to the FOI Law – will continue to act in the future bearing in mind all the problems that he faces in the institutional set-up in which he is active.

More details below.

6 Reason number one is certainly the importance of the two constitutionally guaranteed humnan righs for the citizens of the Republic of Serbia. These right are protected by this institution and as such, they are relevant in the agenda of the EU integration as part of the CH23. Reason number two is the specific institutional design and the position of this institution, which is independent according to the letter of the law, as it represents the so-called fourth branch of government, with the role of ensuring the right of the public to know on the one hand, and protecting the right to privacy in its narrowest sense, i.e. protecting personal data, on the other. Reason number three is that the institution of the Commisioner is recognized as one of the few ones which stalwartly resists the noticeable and very dangerous trend of 'entrapping' institutions.

INTRODUCTION

From the day the EU opened accession negotiations with Serbia, it was obvious that Chapters 23 and 24 were going to be key chapters in the negotiation process: they were opened at the very start of negotiations and will be closed at the very end of negotiations. Opening, interim and closing benchmarks were laid down for each chapter. The benchmarks are based on screening reports and EU's common positions, and they are given in the form of recommendations and *de facto* transposed into action plans adopted by the Serbian Government.

Although action plans have an array of different planned measures and activities, the assessment of progress is still made solely on the basis of the number of fulfilled concrete measures and activities, and therefore does not reflect adequately the quality, extent, and degree of implemented reforms. The prEUgovor coalition has sent in detailed criticisms and comments on action plans as well as their revised versions, for the areas in which the coalition members possess expert knowledge and have been active many years. One of the biggest objections to the existing action plans had to do with inadequate assignment of result indicators, as well as the lack of adequate sources of information for the purposes of checking the progress in the implementation of specific measures and the achieved results. The formulations in the initial AP23 and AP24, as well as those from the presented revised APs, do not allow an actual analysis of progress made, as the measures reveal very little of the intended or achieved impact, reducing the reporting to either the sheer assessment of adherence to the timeline, or to 'yes/no' answers. Furthermore, a certain number of measures relates to the legislative and institutional design, and not its functioning, which opens the assessment of the quality of the implementation to various arbitrary interpretations, with few specific, precise data that the assessment is based on.

With the aim of monitoring concrete progress, we have developed indicators which include the operation of institutions tasked with conducting specific activities or measures envisaged in the action plans, whose impact can be an indicator of progress, in the sense of testifying clearly to the progress made in specific areas. In addition, we firmly believe that the ongoing and all future revisions of the action plans can and should include some of the developed indicators as indicators of impact for specific measures.

Why institutional effectiveness?

Over the past 15 years, Serbia has been implementing comprehensive reforms but with mixed results. Serbia's journey to the EU membership[7] started back in 2003, implying fundamental reforms in a number of key areas such as human rights, access to justice, security, and the functioning of democratic institutions. Although there have been significant legislative reforms in the past, the main problem has been and still adequate and effective implementation. After Serbia's membership negotiations with the EU officially opened in January 2014,[8] the country had to shift its focus from adopting new laws to the appropriate and efficient implementation of existing laws already harmonised with the *acquis communitaire*. However, practice proved to be different as we saw legislative hyperproduction by the Serbian National Assembly. Efficient implementation is still somewhere in the shadow, constantly missing. Yet, the progress made in the implementation of laws and the demonstration of institutional efficiency are of key importance, primarily for a normal and ordered functioning of the state, and then in the process of Serbia's accession to the EU. This is why the stress should be moved from the institutional design to implementing the existing laws and regulations and specifying measures to achieve better implementation that will ensure institutional efficiency.

Measuring institutional effectiveness is a constitutive element of the assessment of state efforts to achieve specific goals, as effective institutions are a prerequisite for successful implementation of specific measures and policies. For example, access to justice does not only depend on the existing legal framework but also on the effectiveness of the justice system, while the transparency level depends on how established and organised institutions are, i.e. whether their work methods and procedures ensure and guarantee free access to information. In other words, institutional effectiveness may be a good way to measure progress in the areas that are hard to measure, such as corruption. The more effective institutions set up to curb corruption or improve public integrity are, the more likely it is that there is a decrease in scale and severity of corruption within the system.

The methodological approach

The methodological approach used in our analysis is explained in detail in the first edition of the Institutional Barometer,[9] and will not be repeated here; rather, we will present the 'indicator baskets' in brief, explain their use, and point out the main advantages of this kind of approach.

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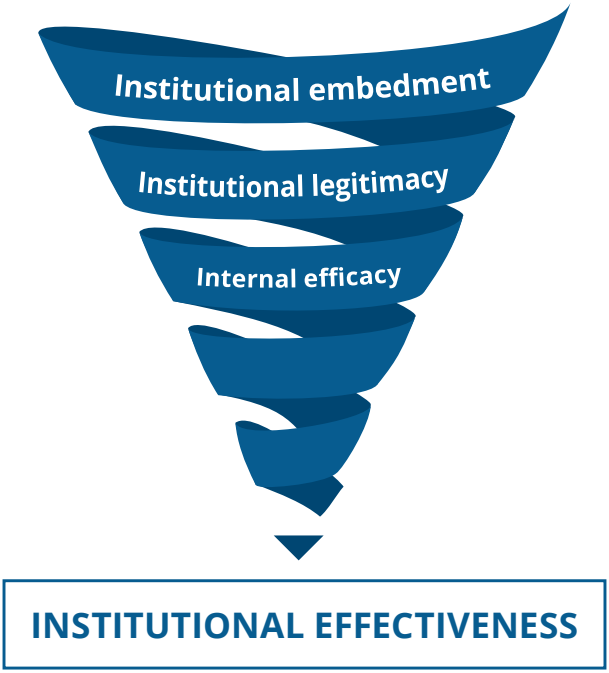
7 At the Thessaloniki Summit held in June 2003, the European future of the Western Balkan countries based on the individual progress of each country was confirmed.

8 On 21 January 2014, Serbia and the EU held their first inter-governmental conference in Brussels, marking the start of accession negotiations on the political level.

9 *The Institutional Barometer*, 2018, The Preugovor Coalition, pp. 15-18, available at: http://preugovor.org/Publikacije/1486/Institucionalni-barometri.shtml

"Baskets" of indicators



1) INTERNAL EFFICACY

This "basket" focuses on the **internal functioning of the institution and its capacities**. Productivity indicators (eg funds per employee, time required to handle the case, etc.) reveal the **total capacity of the institution** (for example, lack/surplus of the workforce or its qualification).

Indicators in this basket should give us answers to the following questions:

1. **Does the institution have adequate capacities to efficiently perform tasks within its competence?**
2. **Does the institution use available resources in an adequate manner?**

2) INSTITUTIONAL EMBEDMENT

The second "basket" of indicators focuses on the functioning of the observed institution within the institutional arrangement in which it operates. In this basket we measure responsiveness of other institutions, which together with the observed institution constitute an institutional arrangement, on the inputs they receive from the observed institution. In fact, we observe how the other

institutions within an institutional arrangement are responding to the "products of work" of the observed institution. The mentioned "products" represent a prerequisite for the further work of other institutions within the system.

By analyzing these "relations" we can accurately locate a problem within the system, i.e. where there is an "interruption point", whether in the observed institution or in the other parts of the system.

Indicators in this basket should give us answers to the following questions:

1. **How much are other institutions within the institutional arrangement responsive to the "products of the work" of the observed institution?**
2. **How responsive is the observed institution to the "actions" of the other institutions within the institutional arrangement?**

3) INSTITUTIONAL LEGITIMACY

The third "basket" of indicators measure the relation between the observed institution and its ultimate "users", ie, citizens. The basic premise is that effective institutions gain trust, i.e. results gaining trust. This basket has two dimensions - the perception of the citizens about the observed institution and their experience with it.

Indicators in this basket should answer the following questions:

1. **Do citizens recognize the institution (are they familiar with its role and responsibilities)?**
2. **Are citizens satisfied with the work of the observed institution?**
3. **Do citizens have trust in the observed institution?**

Applying the baskets of indicators to specific institution

In order to formulate the best indicators for a specific institution, it is necessary to conduct both qualitative and quantitative analysis of institutional design.

This analysis is conduced in five steps.

STEP 1:
Identify why the institution was introduced in the legal system, i.e. identify the desired outcome/change that the institution is supposed to achieve

STEP 2:
Identify the institution's input, process and output values with special attention to its key competences and mechanisms at its disposal

STEP 3:
Map the entire relevant institutional arrangement, i.e. other authorities/institutions with which the observed institution should cooperate to achieve the desired outcome/change

STEP 4:
Identify key links between the observed institution and other authorities, i.e. the institutional embedment of the entire institutional arrangement

STEP 5:
Identify key links in contacting citizens and users, i.e. general or specific groups that are end users of the 'services' provided by the institution

Main advantages of this approach

Our methodology has many advantages as it has allowed us to combine various indicators: administrative and empirical ones and those concerning citizens' trust in institutions. The main advantages are:

1. **It gathers the opinions and experiences of all stakeholders, especially citizens, really addressing the inclusivity and accountability of institutions. Effective institutions create trust in end users (citizens) and other specific actors.**

2. **"Baskets" of indicators can be modified in order to suit the needs of different institutions in the system, which certainly makes it possible to assess the effectiveness of the overall institutional structure. Consequently, it helps to identify poor institutional design or key defects and problems within it and to formulate specific recommendations and solutions for their overcoming.**

3. **It represents a robust monitoring and analytical "tool" and the results obtained by its implementation can be a good source of information for various stakeholders, both civil society actors and decision-makers.**

4. **It combines administrative data with perceptions and experiential data and provides a multidimensional perspective.**

5. **It narrows the space for arbitrary interpretation of the obtained results. "Baskets" of indicators are mutually balanced in order to avoid focusing on the individual indicator They reflect the three dimensions of institutional effectiveness and create a "checks and balance" system within the measurement framework;**

6. **The data for the analysis is already there; the records are already kept – they just need to be used in an adequate manner and to be regularly updated. This means that if the government took the same approach, it would not require any extra funding.**

The subject-matter of the analysis

In order to be able to measure concrete progress, we have continued with analysing the institutions selected in the drawing up of the first edition of the Institutional Barometer. As above, we have opted for institutions whose 'institutional ID' is presented below.

Institutional ID's

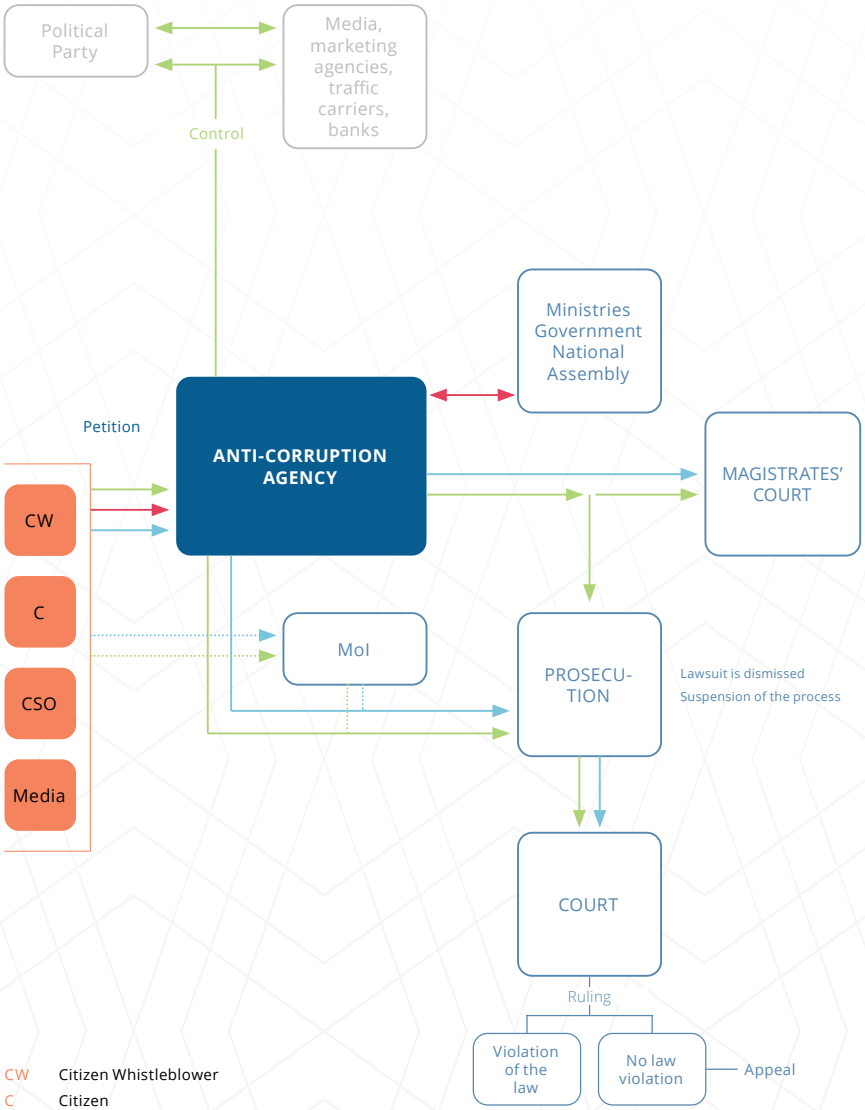
I) The Anti-Corruption Agency was founded and operates under the Law on the Anti-Corruption Agency as an autonomous and independent state body responsible to the NARS for performing the duties within its remit. The operating funds for the Agency are provided from the Budget of the RS at the proposal of the Agency, as well as from other sources under the law. The Agency manages its funds autonomously. The Law prescribes the numerous areas of the Agency's competence but not a wide range of powers for the exercise of these competences.

The Agency became operational in January 2010. Its scope of responsibilities includes prevention and education, while the elimination of corruption is in the hands of the police and prosecutors' offices. Among other things, the Agency deals with the issues concerning the conflict of interest of public officials, controls the property and income of public officials, deals with the issues pertaining to dual mandate, controls the funding of political entities and election campaigns, supervises the implementation of the Action Plan for the Implementation of the Anti-Corruption Strategy, integrity plans, training and international cooperation. The Agency has 10 sectors: Sector for the Oversight of Financing of Political Activities, Sector for the Oversight of Assets, Sector for Conflict of Interests and Issues of Lobbying, Sector for Prevention and Strengthening of Integrity, Sector for Cooperation with the Media and Civil Society, Sector for Registers and Records, Sector for Legal Affairs, Sector for External Affairs and Strategic Development, Sector for General and Administrative Affairs, and Sector for Research and Analysis.

The NARS adopted on 21 May the Law on the Prevention of Corruption, whose implementation will begin in September 2020 and which has retained all the competences of the Agency from the currently valid Law and has set down new ones in the area of lobbying and oversight of the implementation of a part of AP23. The new law is a stylized version of the Law on the Anti-Corruption Agency which has been implemented since 2010, and not a new act which, as the title might be seen to suggest, codifies anti-corruption legislation. The Law does not resolve the key problems which had arisen in the nine years of the operation of the Agency, and Transparency Serbia has sent to all the members of the Serbian Parliament suggestions for improvement of as many as 65 out of 144 articles of the Law, as well as over 20 amendments.

The Agency is headed by the Director, elected for a period of five years by the Agency Board in a public competition. The Director selects Deputy Director from among candidates in an open competition. The Director must hold a law degree, have a minimum of nine years of work experience and, under the law, must not be a member of a political entity. Nine members of the Agency Board are appointed by the National Assembly of the Republic of Serbia (hereinafter: NARS) for a period of four years, at the proposal of authorized nominators. The Board makes decisions by a minimum of five votes, regardless of how many members are appointed.

Illustration 3: Institutional map of the Anti-Corruption Agency



II The Internal Control Sector is a unit of the MoI. Despite the fact that the laws have been amended and the responsibilities of the police updated over the past 10+ years, the main task of ISC has remained the same: to control the legality of work of the MoI staff whilst exercising police authorities, with a focus on the protection of citizens' human rights and fight against police corruption.[10]

The Sector is managed by the Head of Sector, who is also the assistant minister for the interior. The Head of ISC must, without delay, inform the minister, in writing, about any action he/she considers illegal and get personally involved to help remove any illegality. The Head of ISC also reports any criminal offences that have been discovered to public prosecutors. ISC's police officers may use their powers,[11] measures and actions set out in the Criminal Procedure Code.[12]

The Sector acts at its own initiative, at the request of the public prosecutor, and on complaints and intelligence it gets from the citizens, MoI staff and legal persons. All organisational units of the MoI must cooperate with SIC in the realisation of their tasks, while ISC must not obstruct the work of the police.

ISC performs control using preventive and repressive activities. Based on preventive activities, ISC discovers illegalities and shortcomings in the work of the MoI's organisational units, proposes recommendations to eliminate them or institutes disciplinary procedures. The Sector may carry out special operations to uncover criminal activities at the MoI. When conducting tactical and technical operations, ISC finds evidence and uses it to report criminal offences in cooperation with the prosecutor's office.

In a wider institutional system, the Internal Control Sector communicates with the executive authorities, primarily with the MoI, which it is part of; the National Assembly and the Defence and Home Affairs Committee, which perform the external control of ISC; public prosecutors' offices;[13] independent government agencies tasked with control;[14] citizens and the MoI staff.

10 Article 225, The Law on Police, The Official Gazette of the Republic of Serbia, No. 6/2016 and 24/2018.

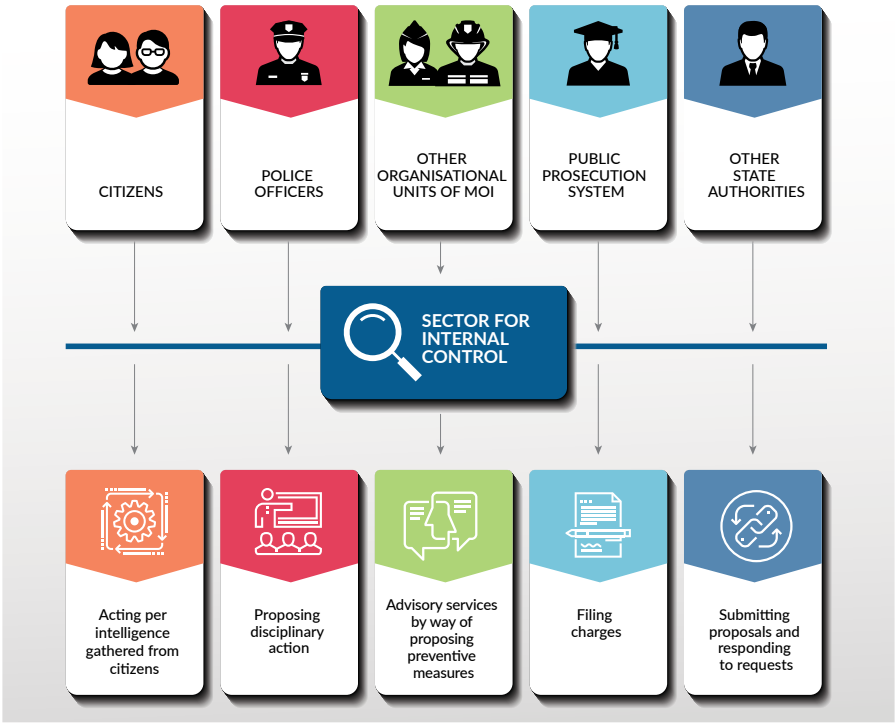
11 Chapter VII, The Law on Police, The Official Gazette of the Republic of Serbia, No. 6/2016 and 24/2018

12 Chapter VII, The Law on Criminal Procedure, The Official Gazette of the Republic of Serbia, No. 72/2011, 101/2011, 121/2012, 32/2013, 45/2013 and 55/2014.

13 The Public Prosecution system consists of the following: the Public Prosecutor's Office of the Republic of Serbia, appellate public prosecutor's offices (in Belgrade, Novi Sad, Niš and Kragujevac), higher public prosecutor's offices, basic public prosecutor's offices, and prosecutor's offices with special jurisdiction – for organized crime and war crimes (Article 13, The Law on Public Prosecution, The Official Gazette of the Republic of Serbia No. 116/2008, 104/2009, 101/2010, 78/2011 - law, 101/2011, 38/2012 – decision of the CC, 121/2012, 101/2013, 111/2014 - decision of the CC, 117/2014, 106/2015 and 63/2016 - decision of the CC).

14 Independent state control institutions in Serbia include the following: The ACA, the SAI, Commissioner for Information of Public Importance and Personal Data Protection, Commissioner for the Protection of Equality and PoC.

Illustration 4: Institutional map of the MoI's Internal Control Sector



III The Commissariat for Refugees and Migration (hereinafter: Commissariat) is a separate organization in the government system, established in 1992 under the name of the Commissariat for Refugees. This was made possible by passing the Law on Refugees,[15] which defined the competences of this organization with respect to the refugees from the territory of the former Socialist Federal Republic of Yugoslavia. However, the competences of the Commissariat were considerably expanded by the Law on Management Migration,[16] passed in 2012, when the Commissariat got its current name and an array of new competences, including those to do with the creation, monitoring, and implementation of migration policy measures. It is important to stress here that this law and the Law on Asylum and Temporary Protection[17] define the competences of the Commissariat which frame our analysis, i.e.

15 The Official Gazette of the Republic of Serbia, No. 18/92, The Official Gazette of the FRY, No. 42/2002 – decision of the FCC and the Official Gazette of the Republic of Serbia, No. 30/2010.

16 The Official Gazette of the Republic of Serbia, No. 107/2012

17 The Official Gazette of the Republic of Serbia, No. 24/2018

the competences regarding the persons granted the right to asylum, asylum seekers, as well as foreign nationals with an illegal residence in the territory of the Republic of Serbia. Following therefrom, Commissariat is responsible for providing the material reception conditions for migrants and asylum seekers, temporary accommodation for persons granted the right to asylum, as well as defining and implementing integration programmes for persons granted the right to asylum and voluntary return programmes.

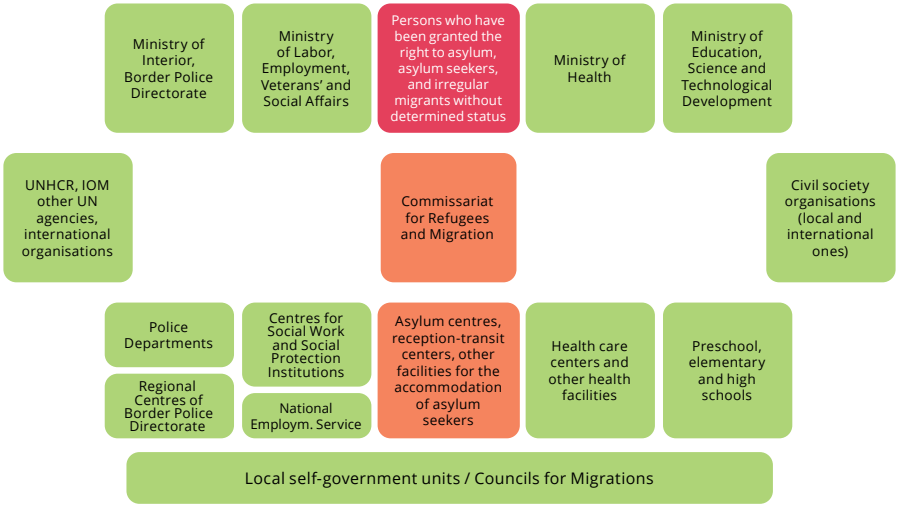
In addition to accommodation, the material reception conditions include provision of food, clothes and financial assets for personal needs. The Commissariat provides these conditions at asylum centres and other facilities used for accommodating asylum seekers and migrants. Exceptionally, when appropriate conditions cannot be provided at these facilities for unaccompanied minors and other persons in need of special reception and process guarantees, the material reception conditions are provided, based on the decision of the competent social welfare centre, at a social welfare institution, from a different accommodation service provider, or in a family.

The Commissariat also provides temporary accommodation for persons granted the right to asylum, according to a separate regulation,[18] in the form of accommodation facility assigned to the person in question for temporary use or, if temporary accommodation facilities are unavailable, in the form of monetary funds required for the provision of adequate temporary accommodation. Such accommodation is provided for a maximum of one year as of the day of coming into effect of the decision on granting the right to asylum, and the Commissariat also covers the cost of using and maintaining the accommodation facility in question. In addition, for the persons granted the right to asylum the competences of the Commissariat also include the implementation of the full integration programme, which is also prescribed in greater detail by a separate by-law.[19] The integration programme consists of the following: 1) having full and timely information regarding rights, possibilities, and obligations; 2) learning the Serbian language; 3) acquainting with Serbian history, culture, and constitutional order; 4) support in integrating into the educational system; 5) help in exercising the right to health care and social protection; 6) help in joining the labour market. In order to implement the integration programme, the Commissariat draws up an individual plan of integration for every person granted the right to asylum. The plan is drawn up for a period of one year.

18 The Regulation on the priority accommodation for persons who have been granted asylum or subsidiary assistance and on conditions for using temporary accommodation was passed in 2015 (The Official Gazette of the Republic of Serbia, No. 63/15), and its amendments in July 2018 (The Official Gazette of the Republic of Serbia, No. 56/18).

19 The Regulation on the Integration into the Social, Cultural and Economic Life of Persons Granted the Right to Asylum, The Official Gazette of the Republic of Serbia, No. 101/2016, No. 56/2018.

Illustration 5: Institutional map of the Commissariat for Refugees and Migration



IV Centre for Human Trafficking Victims Protection was founded by the Serbian Government in April 2012 under the Law on Social Welfare[20] and consists of two organizational units: *The Service for the Coordination of Protection of Victims of Trafficking* and the *Shelter for Female Victims of Trafficking.* According to the original Decision[21], the Centre provides the following: the services of accommodation for the victims of trafficking (emergency accommodation), the services of assessment and planning for the victims of trafficking, the services of counselling and therapy as well as socio-educational services for the victims of trafficking, as well as other activities under the law and other legislation. The Statute of the Centre for the Protection of Victims of Trafficking stipulates that the Centre is an independent social welfare institution under the direct jurisdiction of the Ministry of Labour, Employment, Veteran and Social Policy and that it performs the duties of assessing the trafficking victims' condition, needs, strength, and risks, identifying and providing adequate help and support to victims of trafficking, to ensure their recovery and reintegration.[22]

As the *Strategy of Prevention and Elimination of Human Trafficking, Especially Women and Children, and the Protection of Victims for the period 2017-2022*[23] states, the founding of the Centre marked the beginning of the process of institutionalization of support for victims of trafficking.

20 The Official Gazette of the Republic of Serbia, No. 24/2011

21 http://www.pravno-informacioni-sistem.rs/SlGlasnikPortal/eli/rep/sgrs/vlada/odluka/2012/35/1/reg

22 http://www.centarzztlj.rs/images/download/StatutCZZTLJ.pdf

23 https://www.paragraf.rs/propisi/strategija_prevencije_i_suzbijanja_trgovine_ljudima_posebno_zenama_i_decom_i_zastite_zrtava_2017-2022.html

In addition to the mandatory documents of this institution (The Centre Statute[24], The Rulebook on the Internal Organization and the Classification of Jobs and Tasks[25]), the position and activities of the Centre were specified in the broader legislative framework as late as this year – seven years after the inception: the Draft Law on Social Welfare, presented on 4 July 2019, stipulates that, '*the Centre for Human Trafficking Victims Protection performs the duties of identification, protection of the rights and interests of victims of trafficking, establishment of their status, assessment of their needs, and planning support under the law*',[26] The Draft Law on Social Welfare also stipulates the activities of the Centre, which rectifies the lack of reference to this institution in the relevant legislative framework (with the exception of the Regulation on the Network of Social Welfare Institutions).[27]

The Shelter for Female Victims of Trafficking was opened officially on 3 February 2019,[28] with the capacity of accommodating 6 persons. It admitted the first user in July 2019.

In July 2018, the *Memorandum on the Collaboration between the Ministry of Interior, the Ministry of Labour, Employment, Veteran and Social Policy* and the *Public Prosecutor's Office of the Republic of Serbia* was signed, defining the collaboration of the bodies and institutions in the conducting of the activities from specific competences relating to human trafficking. The Standard Operating Procedures for Handling the Cases of Human Trafficking (SOP) were drawn up in 2018 and adopted in January 2019[29] (SOP). The SOP set up the Centre as one of four relevant institutions that any information regarding a potential victim of trafficking should be reported to (The Centre for Human Trafficking Victims Protection, the prosecutor's office (in the town where the report is made), the MI/Police, and the Centre for Social Welfare (in the town/ municipality where the case is reported).

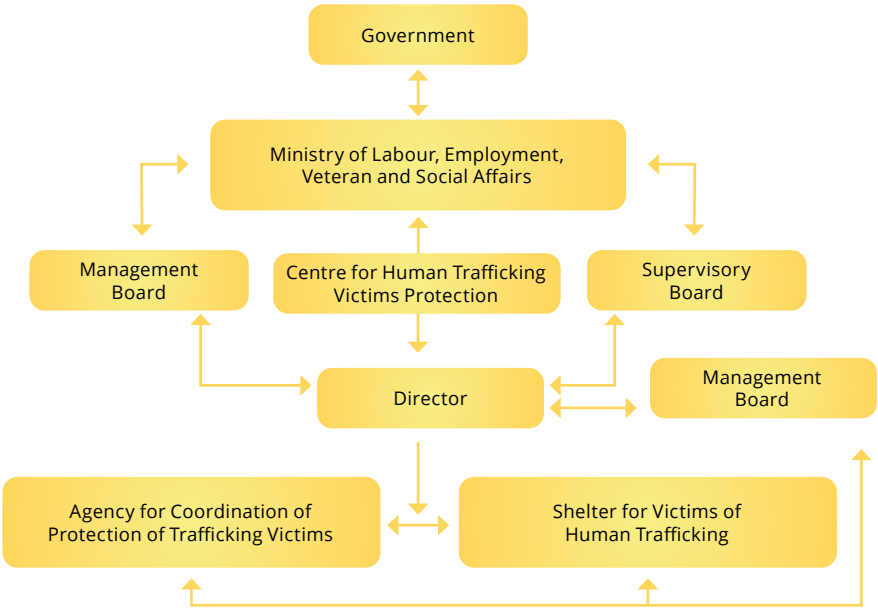
The Action Plan of the *Strategy of Prevention and Elimination of Human Trafficking, Especially Women and Children, and the Protection of Victims* for the period 2019-2020 was adopted on 11 July 2019.[30]

As the central institution of the national mechanism of referral of victims of trafficking, the Centre is yet to find and strengthen its position and develop contacts with the aim of improving the operation of the transnational referral mechanism. The expert opinion on the functioning of the Transnational Referral Mechanism and the relevant provisions of the Standard Operating Procedures

24 http://www.centarzztlj.rs/images/download/StatutCZZTLJ.pdf
25 http://bit.ly/sistematizacijaCZZTLj
26 https://www.paragraf.rs/dnevne-vesti/100718/100718-vest15.html
27 https://www.minrzs.gov.rs/sites/default/files/2018-11/Uredba%20o%20mrezi%20ustanova.pdf
28 https://www.minrzs.gov.rs/srb-lat/aktuelnosti/vesti/otvoreno-prvo-prihvatiliste-za-zrtve-trgovine-ljudima
29 http://bit.ly/SOPzrtvetrgovine
30 https://www.srbija.gov.rs/dokument/45678/strategije.php

(SOP) for the Treatment of the Victims of Human Trafficking in Serbia points out that the Centre must have the appropriate mandate and resources.[31]

Illustration 6: Institutional map of the Centre for the Human Trafficking Victims Protection

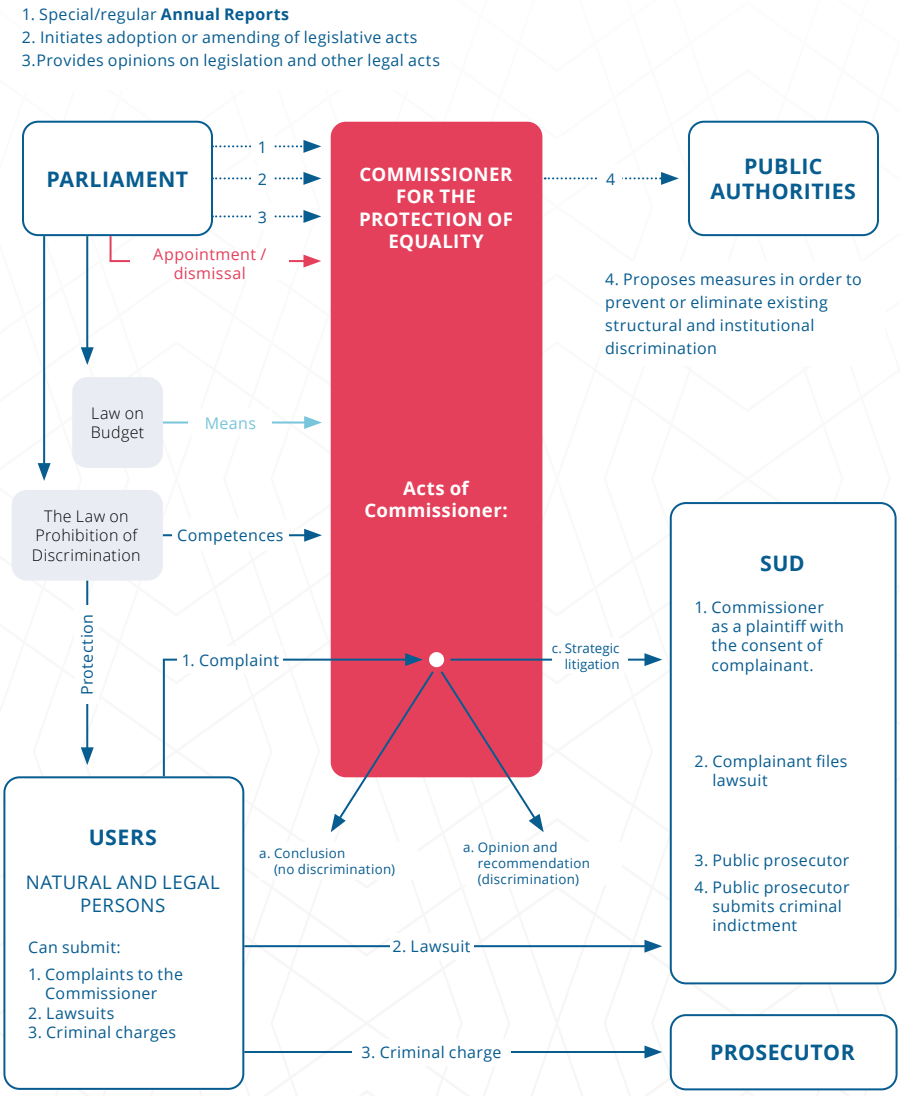


V The Commissioner for the Protection of Equality, as an autonomous, independent state body, was established by the Law on the Prohibition of Discrimination. The Commissioner was founded with the aim of *preventing* all forms, types, and cases of discrimination via its actions, protecting the equality of natural persons and legal entities in all social domains, overseeing the application of anti-discriminatory legislation, as well as improving the implementation and protection of equality in the territory of the Republic of Serbia. Its initial purpose was to also *teach* citizens about the phenomenon of discrimination and to educate them on its competences and the possibility of communicating with this body.

The competences of the Commissioner are broadly defined in Article 33 of the LPD. One of the basic competences is acting on *complaints* in all cases of discrimination against individuals or groups of persons, detailed in the Rules of

31 Expert opinion on the functioning of the Transnational Referral Mechanism and the relevant provisions of the Standard Operating Procedures (SOP) for the Treatment of Victims of Human Trafficking in Serbia, May 2018.

Illustration 7: Institutional map of the Commissioner for the Protection of Equality



Source: Centre for Applied European Studies

Procedure.[32] Following therefrom, the Commissioner can provide a *conclusion* notifying the applicant that it will not act on the complaint, if it determines that it is not legally authorized; it can furnish an *opinion* and make a *recommendation*, upon considering the complaint and establishing that there has occurred discriminatory conduct; in the event that a recommendation is not observed, it takes concrete measures (the Commissioner does not have the possibility of penalizing the person in violation of its measures); when the institution of the Commissioner is not competent or when the complainant does not remove the deficiencies within the prescribed deadline, the complaint will be *rejected*; the procedure is *dropped* when the Commissioner determines that 'there obviously exists no discrimination that the complainant is pointing out;' that court proceedings are under way or have been completed; that legal action has already been taken but no new evidence has been provided; that due to the passage of time it is not possible to further the purpose of legal action or the complaint has been retracted.

The Commissioner can file a *complaint* to the competent court due to the violation of the rights under the LPD on its own behalf and with the consent of the person discriminated against, if the proceedings regarding the same legal matter have not already been initiated or a final judgment has not been handed down in court. Within its legally mandated competence to act preventively and effect the improvement of protection against discrimination, the Commissioner is authorized to *monitor* the implementation of laws and other legislation relating to the exercise and improvement of equality and protection against discrimination, to *initiate* the passing or amending of legislation for the purposes of implementing and improving the protection against discrimination, and to furnish *opinions* on the provisions of a draft law and other legislation relating to the prohibition of discrimination. In addition, in order to efficiently perform all its duties, the Commissioner is authorized and bound to point out, as well as to prepare and issue *warnings* against, the most frequent, typical, and instances of severe discrimination, and to *recommend* to the public authorities and other persons the *measures* for ensuring equality.

The Commissioner is accountable to the National Assembly for its work and at the end of every year it submits an annual report. In addition to the *regular* annual report, it can submit an *extraordinary* report at its own initiative or at the request of the National Assembly, especially in the event of frequent multiple discrimination, when the public authorities engage in discrimination, or in the cases of severe discrimination.

32 The Rules of Procedure on the Operation of the Commissioner for the Protection of Equality, The Official Gazette of the Republic of Serbia, No. 34/2011.

VI The Commissioner for Information of Public Importance and Personal Data Protection is an independent and autonomous state body established by the Law on Free Access to Information of Public Importance[33] for the purposes of exercising the right to free access to information of public importance available to the public authorities. By passing the Law on Personal Data Protection[34] the array of competences of this institution was expanded – the previous LPDP expressly stipulated that *'the activities pertaining to personal data protection shall be conducted by the Commissioner for Information of Public Importance and Personal Data Protection.'*

We can therefore say that the basic role of this body is on the one hand the protection of the right of the public to know, and on the other the protection of privacy in the narrowest sense, i.e. the protection of personal data. In exercising its competences, the Commissioner should practically strike a balance between the abovementioned two rights, i.e. to ensure that the exercise of one right does not violate or infringe upon the other right (except, of course, in exceptional cases envisaged by the law itself).

The basic instruments for performing the role of this body are selected based on the competences prescribed for it by the two abovementioned laws.[35]. In addition to the 'basic' role of the body consisting of monitoring the fulfilment of obligations by those obligated, as per both laws, the main leverage in the activities of this body relates to the actions of the Commissioner taken on the complaints submitted in both its areas of activity. Nonetheless, a clear distinction should be made between the activities of the Commissioner in the areas of free access to information and personal data protection. In free access to information of public importance, the Commissioner does not have the option of proactive actions or acting *ex officio* – the initial act of the information seeker is required. Specifically, we are referring to the complaint submitted to the Commissioner because of withholding of information (factual withholding as well as cases of the 'silence of the administration') on the part of the information holder. The Commissioner can make a decision in a concrete case regarding the right of the information seeker only after the receipt of a complaint. The decision of the Commissioner is binding, final and enforceable, and it is only possible to conduct an administrative dispute against it, which takes the form of summary proceedings in accordance with the letter of the law. The Law further prescribes the mechanisms for the administrative enforcement of the decision of the Commissioner (fine) and envisages as the ultimate mechanism the direct enforcement by the Government at the request of the Commissioner. Further to this, an additional mechanism ensures the adherence to the Law

33 The Law on Free Access to Information of Public Importance (The Official Gazette of the Republic of Serbia, No. 120/2004, 54/2007, 104/2009 and 36/2010)

34 The Law on Personal Data Protection (The Official Gazette of the Republic of Serbia, No. 97/2008, 104/2009 - law, 68/2012 – decision of the CC and 107/2012)

35 Article 35 of the Law on Free Access to Information of Public Importance and Article 77 and 78 of the Law on Personal Data Protection.

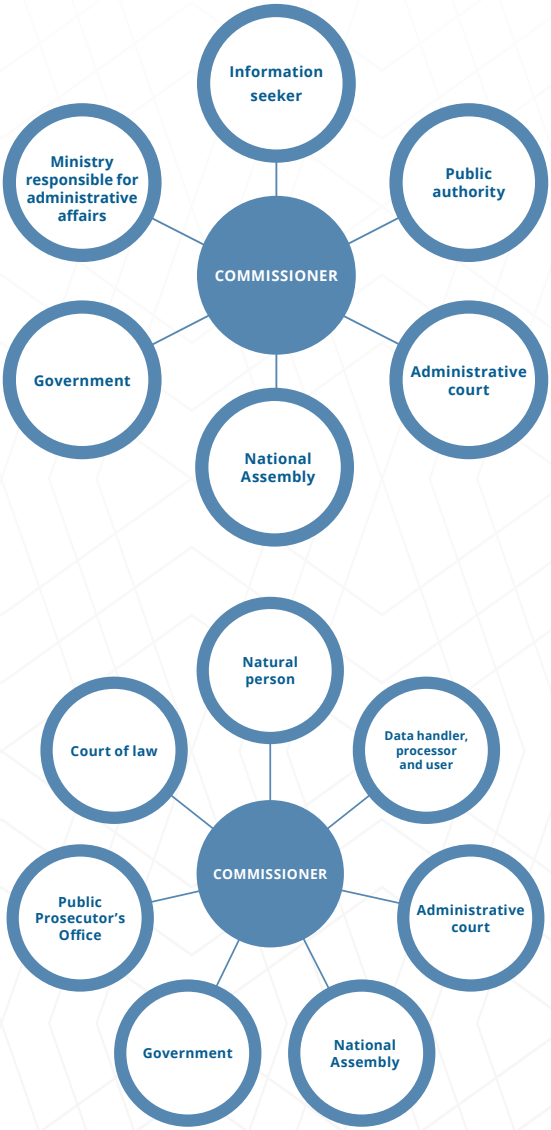
on Free Access by prescribing that, '*the oversight of the implementation of the law is conducted by the ministry competent for administrative affairs,*' and that inspection oversight is carried out through the administrative inspection of the ministry competent for administrative affairs. The Commissioner also submits notifications on violations of the Law to the ministry for the purposes of initiating misdemeanour procedures.

Unlike the area of free access to information, the Commissioner acts very differently in the area of personal data protection. The LPDP expressly prescribes that, '*the activities of monitoring the implementation of this law in accordance with the prescribed competences shall be conducted by the Commissioner ….*' [36] In the area of personal data protection, the Commissioner not only can but must react proactively and *ex officio*. In addition to the standard acting in response to a complaint, the Commissioner acts *ex officio* (starts the oversight procedure) in all cases where it notices a potential abuse in personal data processing. Furthermore, the Commissioner has the authority to file criminal offence and misdemeanour charges against those in violation of the LPDP, which is part of its role as an overseeing body.

In addition to all of the above, the annual reports submitted by the Commissioner to the NARS regarding the implementation of both laws stand out as a separate mechanism for performing the associated role.

36 Article 73 of the Law on Personal Data Protection (The Official Gazette of the Republic of Serbia, No. 87/2018)

Illustration 8: Institutional map of the Commissioner for Information of Public Importance and Personal Data Protection



TRANSPARENCY SERBIA

ANTI-CORRUPTION AGENCY

Transparency Serbia
Transparentnost Srbija

SUMMARY

The Anti-Corruption Agency does not have sufficient staff or material resources to be able to responds to all the tasks it has under the law, nor has it managed to enhance in the past year the results that we presented in last year's research.

According to the new Rulebook, the job classification at the Agency specifies 126 jobs, while as of 1 August 2019 there are a total of 78 employees, plus nine employed based on temporary contracts, which makes 61.9% of the full capacity. The number of employees continued to drop compared to 2018, when there were 83 employees at the Agency, and to 2017, when there were 87 employees in total.

Since its founding, the Agency has been **slowed down by inefficiency** due to, on the one hand, imprecise provisions of the Law which have not been removed in new solutions either, but also, on the other hand, due to **political pressures** because of which a new, more adequate, law has not been passed for years, as well as due to how the management is elected. The Agency Director, elected on 17 January 2018 after almost a year of operation without a director and with an incomplete Agency Board, was a member and financer of the ruling party, at whose proposal he was also a member of the election committee tasked with the organization of the presidential elections in 2017 in the Zemun Municipality.

These facts raise suspicions regarding the political links between the Agency Director and a political party, in itself a serious problem in terms of the trust in the impartiality of the Agency which makes direct decisions on the interests of political entities and public officials. This problem is not solved by the new Law as its text does not contain the proposals aiming to prevent similar situations from occurring, including the one specifying that a Board member and the Agency Director should not be candidates of a political entity in the elections held in the last four years, or members of election committees and panels appointed at the proposal of a political entity in the same period of time.

When the Law on the Prevention of Corruption comes into force, the Director, who was elected on 17 January 2018, will continue to perform this function until the end of his term in office – 2023. If the current Director has a full term in office, a new one will be elected under new terms – at the NARS, after a public competition organized by the Judicial Academy and announced by the Ministry of Justice. The Board, which has nine members now[37], will change its name to Council once the Law on the Prevention of Corruption comes into effect, and will have five members and be elected at the National Assembly, after a public

37 The Board appoints the Director and relieves him/her of duty, and decides, among other things, on increasing the Director's salary, on complaints against the decisions of the Director specifying measures under the Law on the Agency, adopts the annual report of the Agency which it submits to the National Assembly, oversees the operation and property of the Director, proposes the budget funds for the operation of the Agency, adopts the Rules of Procedure regulating its own operation, and performs other duties under the Law on the Agency.

competition organized by the Judicial Academy and announced by the Ministry of Justice. This can doubtless guarantee greater expertise. However, when this rule is juxtaposed with another new provision – that both the members of the Council and the Director of the Agency will be elected by the members of parliament from among all the candidates who have passed the test (regardless of the order), it is clear that the management of the Agency will be made up of the **candidates acceptable to the ruling party** even more than at the present moment, if this is in fact possible.

The current membership of the Board[38] also has political leanings. Due to ignoring of the proposal in Parliament, a candidate of the Serbian Bar Association was not elected for one and a half years, while the election of the Protector of Citizens (hereinafter: PoC) into Board membership represents a flagrant violation of the Law on the Agency, which stipulates that the PoC and the Commissioner for Information of Public Importance provide a joint proposal for a Board member.

The research sample

Four activities have been selected for the purposes of this research such that they reflect the various competences of the Agency and the implementation of various acts. In this way, the research ensures as comprehensive an overview of the Agency's operation as possible and gains accurate insights into this body's work.

We have investigated the following: monitoring and control of financing of political entities and election campaigns; actions taken based on citizen submissions; the analysis of the legislation and its corruption and anti-corruption potential; and the monitoring of the implementation of the Strategy and Action Plan for the fight against corruption in the period 2013-2018[39]. The Agency will continue to exercise all these competences under the new Law as well, from September 2020. However, the **National Strategy for the Fight against Corruption expired in September 2018** and there are no indications that work will start in the upcoming period on a new Strategy. Furthermore,

38 In the reporting period until 15 June 2018, the Board had the following members: Danica Marinković, retired judge of the Kragujevac Appellate Court, appointed at the proposal of the Administrative Board of the National Assembly on 27 December 2016; Dr Miloš Stanković, assistant professor at the School of Law of the University of Belgrade, appointed at the proposal of the President of the Republic; Dr Dragan Mitrović, professor at the School of Law of the University of Belgrade, appointed at the proposal of the Government of the Republic of Serbia; Slobodan Gazivoda, retired judge of the Serbian Supreme Court, apoointed at the proposak of the Supreme Court of Cassation; Ivan Kovačević, MA, General Manager of the Business System Đuro Salaj AD, appointed at the proposal of the Socio-economic Council; Dr Jelena Stanković, assistant professor at the Faculty of Economics of the University of Niš, appointed at the proposal of the State Audit Institution. The Board has eight members afrer the National Assembly appointed the following as Board members on 15 June 2018: Janko Lazarević, retired judge of the Supreme Court, at the proposal of the Protector of Citizens; Živojin Rakočević, MA, writer and journalist, at the proposal of the Journalists' Association of Serbia and the Independent Journalists' Association of Serbia. The member of the Board appointed at the proposal of the Bar Association of Serbia has still not been appointed.

39 http://www.acas.rs/zakoni-i-drugi-propisi/strategija-i-akcioni-plan/

all the AP23 deadlines have expired and a revision of this plan [40] is under way. When this year's research is compared to last year's, it can be concluded that the Agency has not accepted the expert recommendations aiming to improve efficiency and establish independence.

The new Law on the Prevention of Corruption has not taken on board the recommendations from last year's research in the area of controlling the financing of political parties and election campaigns, nor has it taken into consideration the objections to do with, for example, **the problem of the 'functionary campaign'**, whose resolution might have been pushed through by better legal solutions specifying the activities which public officials would be allowed to engage in an election campaign. The Draft Law that the Ministry published in October 2019 can be useful inasmuch as it reminds the 'forgetful' public officials of the prohibitions and obligations laid down by the laws. On the other hand, the main unresolved issue of the 'functionary campaign' is seen, according to the findings of Transparency Serbia obtained after observing the elections so far, in the fact that public officials conduct activities which provide further media promotion outside of the times designated for the promotion of participants of electoral campaigns, although there is no real need for this, nor is this about performing the legal duties of public officials (e.g. visits to and opening of schools, hospitals, households, construction sites, etc.)

Although **all the deadlines have expired**, a new Law on Financing Political Parties has not been passed yet[41], and the Agency has had the weakest performance precisely in the area of the election process control, the investigation of the financial flows into campaigns, and the abuse of public resources in campaigns. The Action Plan envisaged the passing of a new law by the end of 2014. The Draft Amendments to the Law on Financing Political Parties published in October 2019 stipulate that the Anti-Corruption Agency has a duty during election campaigns to **act on reports within five days**, establish if there has been a violation of a rule, and publish this decision. However, the current draft does not address many other problems recognized by both the general public at home and international organizations, nor does it solve any specific problems pointed out by the ODIHR after the 2016 and 2017 parliamentary elections and should therefore be updated to a significant extent.

40 https://www.mpravde.gov.rs/tekst/24658/prvi-nacrt-revidiranog-ap-pg23-izmenjen-na-osnovu-komentara-organizacija-civilnog-drustva-.php

41 https://www.paragraf.rs/propisi/zakon_o_finansiranju_politickih_aktivnosti.html

Who finances the 'Future of Serbia' campaign

What is especially problematic is that the Agency did not have an adequate response to the 'Future of Serbia' campaign, conducted from 7 February by the President of Serbia Aleksandar Vučić - its response to the report regarding this campaign was that President Vučić did not violate the Law on the Agency thereby. It is indicative that the Agency normally does not publish such conclusions on its website, but it did publish its view that the President of Serbia was not in violation of the Law, although it is not known who filed the objection. The source of money for financing this campaign not been published yet, and Prime Minister Ana Brnabić said in a response to a journalist's question whether the budget funds were used for the campaign that, 'an issue is created out of something that is not an issue,' and that the campaign was financed in accordance with the constitutional authority of the Government and President. However, there are clear indications that the campaign is run in a manner directly beneficial for the ruling Serbian Progressive Party, as well as that public resources are used for its organization. It is especially characteristic that employees of state bodies and public companies are included, as their attendance of the President's rallies is organized, they miss a day at work, but receive perdiems for such political engagement. The prominent local members of the SPP organize these rallies.

INTERNAL EFFICACY

Job capacity utilization

The number of employees at the Anti-Corruption Agency as of 1 August 2019 stood at 78 with permanent contracts and 9 with temporary contracts, which makes up 61.9% of job capacity utilization based on the most recent job classification, implemented since April 2019.

As regards the four areas covered in this research, the **capacity utilization stands at around 50 percent**. The sector of financing political parties employs 10 out of the 25 classified jobs, submissions employ 4 out of the planned 7, and strategy, plans and education monitoring 4 out of the planned 7; the risk assessment and integrity plans department has 3 out of the 7 classified jobs. This is the second job classification adopted by the Agency in the last year. The previous one was completed in November 2018. However, neither has been completed based on a needs analysis for the Agency, which would make its operation more efficient and justify the need for new staff and the internal organization of the sector. The last year's research concludes that the Agency **does not have enough staff capacity** to publish all the activities within its remit, and there has in the meantime been a new reduction in staff numbers – from 87 as of 31 December 2017 (out of the 139 in the job classification) to 78 as of 1 August 2019 (the new job classification specifies a total of 126 jobs).

The fact that there is no analysis of the Agency's needs confirms that the recommendations to the effect that its internal documents should set out the priorities and procedures for each job have not been taken into consideration. From the beginning of his term in office, the new Director stated that capacity utilization was the priority enabling the Agency to operate at full capacity, so on 26 April 2019 the competent National Assembly Board approved the hiring of 49 new staff at the Agency. However, this number is not accompanied by an analysis specifying which exact jobs will be taken up by the new staff and what is expected as a result of their work. This kind of decision notwithstanding, opening a public competition will have to wait for at least a few months because the Ministry of Finance must authorise any new employments. It is unlikely that new employments will take place by the end of 2019, and in the meantime the trend of experts leaving the Agency continues. According to the statements of current and former employees who wished to remain anonymous, there is a climate of uncertainty at the Agency that only grows worse by the good experts leaving as well as by the frequent job classification and the Director's decisions moving staff from one job to the next.

What testifies to the inefficiency of the Agency is the fact that in 2018 only 70% of the budget of the Agency was utilized, and this number is not accompanied by an analysis of what programmes had not been implemented and who was responsible for such a state of affairs. The new jobs and competences (i.e. the area of lobbying) notwithstanding, the 2019 Agency budget is over 100 million dinars less than in 2018.

The 2018 Annual Report[42] which the Agency submitted to the Parliament is considerably smaller in volume than the previous ones and contains far less information; also, certain regular assessments, which were included in the earlier documents, were now almost completely removed. For example, the 2018 annual report has 59 pages with all the appendices, while the 2017 report had 90 pages, and the 2016 one 86 pages. Further, it is noticeable that the 2018 report does not state the obstacles in the 'Most important results and obstacles' section, but only the results. This time an assessment is left out which was included in the earlier reports, relating to the operation of the submissions department, to the effect that, 'what constitutes an important obstacle is a great influx of documents and lack of adequate space for storing and maintaining the comprehensive documentation.' In addition, what is left out is the recommendation to provide the Agency with 'more workspace capacity'.

42 http://www.parlament.gov.rs/upload/archive/files/cir/pdf/izvestaji/2019/02-1409_19%20AZBPK.pdf

The control of annual financial reports on election campaign expenses

The ACA has an important role in the election process and the control of the regular activities of political parties. This is why the most important thing is for it to perform the duties of the independent state body which would **respond in a timely fashion to violations of the law and abuses on the part of public officials and the election process participants**. The absence of such activities doubtless diminishes the citizen's trust in the operation of the Agency and its role in the fight against corruption. In its report from May 2019 on the progress Serbia had made[43], the EC requested again the increase in the transparency of party and election campaign financing, the separation of party and state-related activities of public officials, and the provision of equal shares of media space for all election participants. We would also like to point out again that the Government and the National Assembly completely ignored the 2016 and 2017 ODIHR recommendations related to the election processes[44]. The latest drafts of amendments to the laws expected to be adopted by the end of the year will not solve the problems and specify what the Agency must do to ensure a timely and thorough control of financing of the political entities and election campaigns.

After a big delay, information was published on the control of financing of the election campaign for the City of Belgrade[45] and a number of other cities[46], but these reports (the report on the Belgrade campaign was published in August 2019 and the election was held on 4 March 2018) leave out the information on possible serious violations of the law pointed out by the non-governmental organization observers and the media.

Transparency Serbia has submitted a number of initiatives[47] for initiating the proceedings for the violation of the Law on the Agency during the Belgrade election, but the **Agency avoided acting under the terms of the Law**. The Agency did not think that organizing political rallies at schools, invitations to the rallies on the official municipal internet presentations, using public functions for party purposes, as well as distributing social welfare aid on behalf of political parties constituted violations of the law. The Agency has the authority to act on the objections raised by natural persons and legal entities, but no deadlines have been set within which it must respond to them.

The current draft amendments to the law stipulate that the Agency responds within five days to such occurrences in election campaigns. It is worrisome, however, that the representatives of this body stated in the public hearing that the deadline is unrealistic and that, on the one hand, they do not have enough resources and, on the other, that other state bodies will not be able to submit the requested data at such short notice.

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43 https://ec.europa.eu/neighbourhood-enlargement/sites/near/files/20190529-serbia-report.pdf
44 https://www.osce.org/odihr/elections/serbia/322166
45 http://www.acas.rs/wp-content/uploads/2019/08/BGD-izvestaj-kampanja-2018-FINAL.pdf
46 http://www.acas.rs/finansiranje-politickih-subjekata/
47 http://www.transparentnost.org.rs/index.php/sr/inicijative-i-analize-ts#a2019

This is why this problem should be resolved by treating these objections as election procedures with short acting deadlines and the right to initiate an administrative dispute. The Agency should also take it upon itself to provide regular reports on actions prohibited during campaigns during election campaigns, as well as to publish legal opinions on objections raised.

Decision after 15 months

Transparency Serbia requested on 4 February 2018 that the Agency establish whether a member of the Government violated the law by visiting the sites of construction works financed by the Serbian budget funds and speaking on behalf of the ruling party during the Belgrade election campaign. In 2018, we posed the same question to the Agency three times, and the response arrived 15 months after the election, when this had no bearing on the election itself nor was it interesting enough as media content to be treated in a satisfactory manner in the general public and so possibly ensure that such things did not happen in the future. The Agency completed the procedure more than a year later – by issuing a warning to the public official in question [48].

Millions given away without a procedure

The Agency did not respond after it was revealed at the beginning of this year that the ruling SPP had been given premises in Novi Beograd housing the party headquarters. It is a donation of 156 million dinars (app. 1.3 million euros), which exceeds the limit allowed by the Law on Financing Political Activities. Although this is an exceptionally large donation, above and beyond all the limits, it is unknown if the Agency started the proceedings which, under the law, could result in the removal of the premises from SPP ownership. Although it was first announced in the media that the donation had been made by one person, it was later announced on the site of the party that the premises had been jointly bought by 27 donors.

The courts have not resolved yet the cases from the elections of 2012, 2014 and the 2017 presidential elections, when a few thousand citizens, including social welfare beneficiaries, paid identical donations of 40,000 dinars each to the SPP, for which the Agency filed charges. Although there are obvious suspicions of money-laundering, such donations to the party during the campaign remain unresolved.

Although the parties and the media conducted the Belgrade election campaign as if it was no less than a presidential election, the Agency on the other hand was not active enough. Testifying to that is the fact that the Agency received

48 http://www.transparentnost.org.rs/images/dokumenti_uz_vesti/Odgovor_ACAS_Zorana_gotovo.pdf

from the Serbian budget 12,300,000 dinars for controlling the expenses for the 2018 election campaign for the Belgrade City Council and spent only 3,800,878 dinars (app. 32,000 euros, i.e. app. 30%), for services rendered under temporary contracts. As in previous years, the Agency did not utilize the received field work funds for **hiring experts for the purposes of additional control of the election campaign financing**, not only upon its completion, months later, but also during the campaign, when this could affect the voters.

The Agency observed the election activities of political entities from 29 January to 4 March 2018, when the Belgrade City Council election was being held. The Agency hired 27 field observers, six coordinators and one central coordinator for the purposes of collecting and compiling field data. The observers kept a record of the identified public events, distributed election materials, public advertisements, etc., based on which the Analysis of the Monitoring of Political Activities was carried out. Field monitoring of the election campaigns for the other local elections in 2018 was not conducted as the Agency made an assessment that hiring observers sometimes demands funds in excess of the expenses of the activities of the political entities in specific campaigns.

In 2018 the Agency controlled 12, and in the first three months of 2019 six annual financial reports of political entities for 2017. In addition, in 2018 the reports on the election campaign expenses for the Belgrade City Council, the Aranđelovac, Bor, Majdanpek and Smederevska Palanka Municipal Council, and the Sevojno Town Municipality Council elections were controlled. In the first three months of 2019, the reports on the election campaign expenses for the Doljevac, Kula, Kladovo, Lučani and Preševo Municipal Council election were controlled.

As many as 250 political entities were obliged to submit an annual financial report for 2018, out of which there were 113 political parties and 137 citizens' associations. By 24 April 2019, 110 political entities had submitted their AFR (44% of the total number). Political parties, especially those with seats in the Parliament, still demonstrate greater responsibility than citizens' associations in terms of submitting AFRs to the Agency.

Monitoring the implementation of the National Strategy for the Fight against Corruption

The National Strategy for the Fight against Corruption for the period 2013-2018 expired in September 2018, and it has not been announced yet if a new one will be drawn up in the foreseeable future. The Agency has submitted reports on its implementation for each year regularly to the National Assembly, with proposed recommendations. The Parliament has ignored these reports since 2015, but this year's report was adopted together with the 2018 Annual Report of the Agency. However, **there was no discussion in the Parliament**, nor did the Parliament take the opportunity to adopt the conclusions based on the recommendations provided and send them to the Government of Serbia for implementation.

The National Strategy contained 53 goals, with 113 measures and 250 activities to be implemented by various state bodies and institutions. As many as 149 activities (60%) have not been implemented by the expiry of the Strategy, which means that this document was not seen as the engine of reforms in Serbia and as an important tool for establishing the rule of law and instigating a fundamental fight against corruption. 92 measures have been implemented (37%), of which the majority after the expiry of the set deadline, while for 9 measures it was impossible to make an assessment due to poorly assigned responsible actors.

The analysis of the legislation

In its Annual Report, the Agency states that in 2018 it furnished opinions on corruption risk assessment in the provisions of 14 draft laws and 2 bills, as well as that specific ministries submitted their draft laws to the Agency for the purposes of obtaining an opinion regarding the corruption risk assessment. However, the Agency website states that the most recent analysis of legislation was performed on 27 February 2018.

The Agency reported that it had submitted all the opinions, containing findings and recommendations for improving the text of the analysed draft laws and bills, to the ministries. As in previous years, only some of the recommendations, relating to draft laws and bills which have been passed in the meantime, have been adopted in part or in full. In 2018 only 20% of the Agency recommendations were adopted, mostly those technical in nature (e.g. prescribing the deadline for public authorities' acting). On the other hand, the recommendations that required significant interventions in the draft legislation were not accepted as a rule. In this way, certain solutions containing risks of corruption were retained in all the draft laws that the Agency and analysed.

The number of opinions on corruption risk assessment in 2018 is considerably less than in 2017. There are multiple reasons for this drop. Above all, a smaller number of draft regulations were drawn up in the areas envisaged in the strategic documents, and for the most part there was no public hearing for these drafts. Also, draft laws were predominantly entered into the **summary parliamentary procedure**. We would like to point out that the ministries are still not obliged to submit the draft laws envisaged in strategic documents to the Agency for obtaining an opinion, so the Agency performs an analysis and furnishes opinions on corruption risk assessments only for those draft laws which are in the public hearing procedure or for which the competent ministries request an opinion. Further, the Agency only analyses the draft laws and bills from the areas marked in the strategic anti-corruption documents as especially corruption risk-prone. In 2017, the Agency drew up opinions on corruption risk assessments for the provisions of 18 draft laws and five bills, as well as one draft law and one draft regulation which govern issues envisaged by the strategic anti-corruption documents.

The new Law on the Prevention of Corruption expands these competences so that the Agency would be providing opinions on corruption risk assessment in draft laws from the areas which are particularly prone to corruption risk and opinions on draft laws regulating issues included in the ratified international treaties in the area of prevention and combating corruption. This, however, will not be enough if the by-laws do not oblige the Agency to develop **the methodology of corruption risk assessment** and if the authorized sponsors of the bill are not obliged to submit the Agency's opinion on the assessment of corruption risks and recommendations for removing the risks to the Parliament alongside each bill. Furthermore, this obligation of the Agency should also hold for other legislation, which is not primarily in the area of the fight against corruption.

The activities of the Division for Acting on Submissions

The Agency has amended the methodology of acting on submissions and defined the criteria for assessing submissions in terms of importance, urgency, complexity and typicality. A procedure has been established which sets out the order and manner in which submissions are acted on. Nonetheless, this methodology does not take account of the recommendations to determine a precise timeline for handling individual submissions, as well as the degree of engagement of the Agency in the events that the submission does not point out issues from its direct remit. There are still only four persons manning the Submissions Division although, given the number of cases and the utilization of all seven jobs specified in the job classification, this is not sufficient. The Division for Acting on Submissions is organized in the newly-formed Sector for Legal Affairs as the Department for Submissions and Collaboration with Other State Bodies.

Table 1: Acting on submissions by the Anti-Corruption Agency

Acting on submissions			
Year	No of closed cases	No of open cases	No of new cases
2012	313	966	577
2013	959	2302	1649
2014	916	2392	1049
2015	831	2699	750
2016	600	2567	699
2017	554	2502	535
2018	474	1088	583

In 2018, 583 new cases were opened, and 474 cases were closed. The Division for Acting on Submissions had a total of 1,088 open cases as of 14 January 2019, when these activities fell into the remit of the Department for Submissions and Collaboration with Other State Bodies. However, in 2013 an additional 1,649 new cases were received, while 959 cases were closed out of the total of 2,302 open cases (taking into account the unresolved cases from previous years). This number indicates a significant reduction of the number of submissions in the recent years.

INSTITUTIONAL EMBEDMENT

Acting in cases of violation of the Law on Financing Political Activities

Based on all requests for initiating a misdemeanour procedure filed up until the present moment, which totals 1,458 requests, due to violations of the provisions of the Law on Financing Political Activities, the Agency had received until 31 July 2019 817 first-instance judgements, of which 456 judgements became final. Up until 31 July 2019, the Agency issued 119 decisions based on final judgments which resulted in political entities losing the right to obtain public funds intended for financing regular operations in the upcoming calendar year. In 2018, 90 requests were submitted to initiate a misdemeanour procedure against political entities, and an additional 48 in the first three months of 2019. In 2017, a total of 273 requests for initiating a misdemeanour procedure were submitted, of which the majority – 237 – were due to failing to submit the report on the 2016 election campaign expenses. In its annual report, the Agency did not provide a detailed explanation as to why the number of submitted requests dropped by two thirds – due to insufficient capacity of the Agency or greater dedication and adherence to the Law on the part of political entities. Out of the total submitted requests in 2018, four were submitted over exceeding the maximum amount that a private individual can donate to a political entity annually.

In the previous period, nothing was done to facilitate the monitoring of the performance of the Agency in this area as the **procedures are initiated up to five years after a misdemeanour has been committed**. Also, this is further exacerbated by the fact that elections are frequently held at various levels of authority.

Monitoring the National Anti-Corruption Strategy

The NARS has not considered in plenum the reports of the Agency on the implementation of the National Anti-Corruption Strategy. The 2018 report was only adopted, without a public hearing, although less than 50% of the prescribed measures had been fulfilled. The MPs missed an opportunity to formulate conclusions which would oblige the Government of Serbia to implement the unfulfilled obligations, as well as to have a discussion on a new strategy, given

that the previous one had expired in September 2018. This testifies further to the lack of readiness on the part of the political structures to foreground the fight against corruption, as well as to the fact that there is no will to ascertain **the political responsibility for not fulfilling the prescribed obligations**.

The reason for a poor result in the implementation of the Strategy lies also in the fact that there was not any coordination between the Agency and the obligated parties – only two meetings were held in 4.5 years, one in September 2014 and the other in January 2016.

Also, 2018 did not see either the Agency taking the opportunity to initiate procedures against the heads of responsible institutions failing to fulfil their obligations and submit information regarding the implementation of activities set out in the Strategy. The only 'legal sanction' imposed so far stating in the Report that the competent body did not perform its duty.

Acting on submissions

In order to facilitate the monitoring of public authority actions which result in corruption, submissions are classified according to areas key to the development of system-wide anti-corruption mechanisms, as recognized by the National Anti-Corruption Strategy for the period 2013-2018, although this did not cover all other areas in which corruptive behaviour may arise. According to this criterion, 107 submissions in the area of education were noted in the reporting period, as well as 73 in local self-government, 68 in the judiciary, 62 in public finances, 52 in health, 40 in construction and urban development, 32 in labour and social policy, 23 in economy, 19 in mining and energy, 19 in police matters, five in culture and public information/media, four in political activities, four in environmental protection, two in sports, two in agriculture, two in defence, as well as 69 submissions categorized as irregular and/or those that the Agency is not competent to act upon.

Based on the actions taken on submissions by the Agency, in 2018 two indictments were filed for the crimes of tax evasion, criminal conspiracy, fraud, infringement of copyright or a related right, and illegal business practices. Four charging instruments were filed for the crimes of official misconduct, forgery of official document, obstruction of control, fraud, grand theft, unconscientious discharge of duties, non-avoidance of conflict of interest. After the completion of the court proceedings, a final judgement was reached in one case of which the Agency was notified, and the previous head of a public authority body was found guilty for a crime of official misconduct committed over an extended period of time. Eleven reports were submitted to the competent prosecutor's offices due to suspicions of corruptive criminal offences perpetrated by authorized public authorities, as well as three initiatives to start formal disciplinary procedures and three initiatives to the competent attorney's office to start the procedure of public property protection.

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Who the Agency writes to

The Agency has sent a total of 1,147 letters to the public authorities (in 2017 there were a total of 2,314 letters) and, in addition to public prosecutor's offices, it communicated the most with the Ministry of Education (74 cases), the Budget Inspection (34 cases), the Labour Inspectorate (29 cases), the Ministry of Health (26 cases), the Public Procurement Administration (16 cases), the Tax Administration (15 cases) and the Commission for the Protection of Rights in Public Procurement Procedures of the Republic of Serbia (6 cases).

Three first-instance judgements of conviction were reached (the first with a sentence of six months in prison; the second with a six months in prison suspended and a two-year period of probation; the third with a six months in prison suspended and a two-year period of probation), two final judgments of conviction (one with a five months in prison suspended and a one-year period of probation; and the other with a three months in prison suspended and a one-year period of probation), three acquittals, one final and the other two first-instance, against which the competent prosecutor's offices have appealed, one second-instance judgment confirming the first-instance acquittal.

Further four charging instruments were filed, and the proceedings are ongoing in competent courts. In 17 cases the process of gathering evidence is under way, in 14 cases the criminal charges were rejected based on the principle of opportunity, in 10 cases the criminal charges were rejected, in four cases the report submitted by the Agency was rejected as a criminal charge by the competent prosecutor's office.

Of the total number of closed cases (474), for 257 procedures initiated based on submissions sent in by citizens, the competent prosecutor's office notified the Agency that there were no grounds for bringing criminal charges, while for 26 cases the reports of the Agency regarding irregularities were considered criminal charges which were rejected once the checks were completed. In 18 cases, upon receipt of the response from the competent public prosecutor's office the Agency requested of the senior public prosecutor to issue a mandatory instruction to the subordinate public prosecutor to act in specific cases when it believed that there were suspicions regarding the efficiency and legality of the actions undertaken by the subordinate public prosecutor. Of these, in three cases the Agency's initiative was accepted. In 67 cases the Agency ended the proceedings as it was not competent and forwarded the submission to the competent body, notifying the submitter thereof. The inspection authorities undertook actions for a number of cases in 2018 based on the requests that the Agency for Oversight of the Operation of Public Authorities. Irregularities were found in 26 reports of inspection oversight, and therefore misdemeanour and criminal proceedings were initiated.

The majority of submissions are in the area of education

As in earlier years, the greatest number of submissions were related to the area of education, with five times as many submissions there than in other areas. What testifies to the extent to which the state bodies do not implement the recommendations of the Agency contained in the Report is fact that in 2018 the Ministry of Education had 23 activities stemming from the National Strategy, of which for as many as 16 it did nothing, three could not be assessed, and only four activities were implemented. The main recommendations of the Agency to the Ministry were the drawing up of a Code of Ethics for pupils, university students, and teaching staff, improving and regular publication of all reports, especially those submitted by the Commission for Accreditation, as well as the publication of all submissions on their website, with the specified deadlines for taking action and providing responses.

INSTITUTIONAL LEGITIMACY

In 2018 two large-scale research projects were conducted in the area of combating corruption. Although neither included the specific question of 'Do you trust the Anti-Corruption Agency', the answers seem to indicate that the citizens do not see the Agency among the first three key state bodies leading the fight against corruption. The 2017 and 2016 studies revealed low trust (37%) and recognition of this body as a fighter against corruption (26%).

The research on citizen perceptions of the fight against corruption conducted by the USAID Government Accountability Initiative (GAI) in October and

November 2018[49] revealed that as many as 57% of the citizens of Serbia think that corruption is widespread in a large measure and in a very large measure. 27% of the citizens think that corruption is widespread in some measure, while only 8% think that corruption is not widespread. As regards the Anti-Corruption Agency, it occupies fourth place among the state bodies combating corruption. Only 9% of the citizens think that the Agency is the leader in the fight against corruption. In first place is the President (23%), followed by the police (10%) and the Government (9%). What is interesting is that as many as one fifth of citizens who participated in the research – 19% – do not see any of the offered institutions as a body that leads the fight against corruption. Compared to the 2016 and 2017 studies, there is an increased percentage of citizens who recognize the Agency as an independent state body (54%). The citizens whose opinions were polled think that the fight against corruption could benefit first and foremost from a more resolute investigation of cases of corruption (23%), as well as allowing the reporting of corruption and an efficient protection of the citizens who do so (17%). The measures listed include prominently the views that it is necessary to provide more efficient protection of whistle-blowers, introduce harsher punishments, as well as strengthen the oversight and control roles of independent state bodies.

A research study conducted by the EC project Prevention and the Fight against Corruption[50] was published in September 2018 and revealed that more than one half of the participants (50%) is unhappy with the work of state bodies in the area of combating corruption. To this percentage should be added the 20% of participants who do not have a view of this, as well as the 14% of those unable to provide an assessment. Only 10% of the citizens whose opinions were polled is satisfied with the state bodies' fight against corruption. These research projects have demonstrated a stagnation stretching over many years in the fight against corruption, as well as decreased expectations and diminishing trust of the citizens in the bodies that should lead the way in this kind of work.

RECOMMENDATIONS

- Reduce the possibility of the political influence on the operation of the Agency;
- Appoint the missing Agency Board member;
- Conduct an analysis of the operation of the Agency and its staffing needs, and specify in internal documents which operations it should carry out, to what extent and within which deadlines;
- Hire experts and external associates in order to obtain timely high-quality results;

49 http://www.mc.rs/upload/events/2018/decembar/CeSID_%20USAID_GAI_prezentacija_111218_SR.pdf
50 https://www.protivkorupcije.rs/download/2018_Istrazivanje_Stavovi_o_korupciji_SR_Lat-1.pdf

- Amend the Law on Financing Political Entities and thus remove the ambiguities, strengthen the powers and specify the duties of the Agency during election campaigns and during controls of financing of political entities;
- Be proactive during election campaigns. The Agency should regularly produce statements on actions which are prohibited during campaigns as well as publish legal opinions on possible reports and initiatives;
- Identify in internal documents the priorities, time, and manner in which campaign financing reports and regular operation are controlled; the timeline for initiating misdemeanour procedures and the volume of information the Agency gathers;
- Ensure public availability of the information on election campaign financing sources;
- Ensure the execution of special operations of evidence gathering in the illegal campaign financing investigations;
- Specify the competences of the Agency with respect to monitoring other state bodies in the cases where suspicions of corruption are reported to it;
- Specify that a submission also relates to the violations of the law that the Agency is competent for, not only for corruption, which is the remit of public prosecutor's offices;
- Propose initiatives regarding the problems pointed out in the submissions;
- Develop a methodology for corruption risk assessment in legislation;
- Impose an obligation on all bill sponsors that they submit to the Parliament the opinions of the Agency regarding corruption risks and the recommendations for removing them;
- Organize a discussion on the implementation of the National Anti-Corruption Strategy and identify the responsibility for failing to fulfil the obligations;
- Start work on a new Strategy for the upcoming five-year period.

SAŠA ĐORĐEVIĆ, BELGRADE CENTRE FOR SECURITY POLICY

THE INTERNAL CONTROL SECTOR OF THE MINISTRY OF THE INTERIOR

SUMMARY

The Internal Control Sector (ICS) is an organizational unit of the Ministry of Interior tasked with controlling the legality of work of over 40,000 staff at the Police Directorate and the MoI, and placing emphasis on the protection of the human rights of citizens in exercising police powers, as well as on the fight against corruption in the police.

In 2018, the ICS broke numerous records, likely as a result of the long-awaited increase in employee numbers by 22 new staff, and the improvements in technical equipment achieved by purchasing seven new vehicles and IT, audio, and video equipment in the amount of nearly 700,000 euros. Nonetheless, there still are work-related shortcomings.

The ICS does not have the human and material resources required for it to be able to efficiently conduct the duties within its competence, but it manages to make use of the available resources in the best possible manner. Currently, 124 staff are employed at the ICS, and they brought 206 criminal charges in 2018 – the highest number since the inception of the ICS. Still, caution should be exercised in matters of statistics, as numbers do not provide an actual representation of the crime and corruption in the police, and it is difficult to determine how efficient the ICS criminal investigations really are.

There is no accurate data on the number of accepted or rejected criminal charges of the prosecutors' offices. The courts do not maintain a record of the outcomes of criminal proceedings against police officers and other employees of the Ministry of Interior. In practice, a criminal charge can be brought without appropriate evidence, which is recorded as a 'solved' criminal offense although the prosecutor's office has rejected the charge. Furthermore, the operating funds of the ICS used for conducting surveillance operations or paying for useful information on criminal offenses and their perpetrators – in itself very useful in criminal investigations – have been unavailable for two consecutive years.

The ICS staff have recommended 100 disciplinary responsibility measures more than in 2017, almost attaining the 2013 record, standing at 447. However, the effect of all these recommended measures is unknown. Information has been obtained that only one instance of disciplinary responsibility resulted in penalizing the police officer for actions taken – by reprimanding. Nearly 6,000 legal cases on potential unprofessional conduct of the employees of the MoI have been recorded – an increase by over 1,000 compared to 2017. Only two percent of these cases have not been closed. Nonetheless, as many as one half of the cases have been sent to other organizational units of the MoI for handling.

The ICS has improved the collaboration with the Prosecutor's Office, independent state control institutions, as well as international donors. However, the Sector still relies for the most part on own insufficient resources, while its operational independence is not guaranteed under the law. The ICS has communicated mostly with the prosecutors' offices, but the inspectors' operative work and the

results of preventive controls are what is crucial for new criminal charges, advice and recommendations regarding disciplinary responsibility. Independent state control institutions and the representatives of the international community are satisfied with the collaboration with the ICS.

In 2018, two opportunities to remove the possibility for the Minister of Interior to exert influence on the operation of the ICS as a political factor were missed, given that the Law on Police was amended twice. Its independence is under additional threat as security checks of the ICS personnel are conducted by the Data Protection and Security Affairs Service, whose staff are checked in turn by a special committee whose members are selected by the Minister.

The citizens are only beginning to gain trust in the ICS, but they are still not entirely satisfied with its work. No more than 16 percent of the citizens believe that the state is successful in fighting police corruption. Every other citizen believes that the state fights police corruption, but not in the appropriate manner. Every fourth citizen thinks that the state does not fight corruption in the police force at all.

INTERNAL EFFICACY

The beginning of this section of the *Barometer* provides an assessment of the success of ICS's operation in terms of its existing human and financial resources.

The Internal Control Sector finally gets new staff

After years of unfulfilled promises, the human resources at the ICS have increased. The employee numbers increased in the second half of 2018 by 22 staff (see Figure 1) after the Ministry of Interior adopted a new job systemization.[51] The Internal Control Sector currently employs 124[52] persons to control the legality of work of 41,157[53] Ministry of Interior staff. In terms of the adopted job classification, 95 percent of jobs have been occupied. Women make up slightly less than a third (39) of the total number of employees at the ICS.[54] The preliminary plan is to have 171 persons employed at the ICS by the end of 2021.[55]

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51 The Rulebook on the Internal Organization and Job Classification at the Ministry of Interior, internal, 01 No. 4685/18-13 dated 13 June 2018, the Rulebook on the Amendments to the Rulebook on the Internal Organization and Job Classification at the Ministry of Interior, internal, 01 No. 7777/18-5 dated 30 July 2018, the Rulebook on the Amendments to the Rulebook on the Internal Organization and Job Classification at the Ministry of Interior, internal, 01 No. 1643/18-5 dated 15 November 201, the Rulebook on the Amendments to the Rulebook on the Internal Organization and Job Classification at the Ministry of Interior, internal, 01 No. 4959/19-3 dated 10 April 2019.

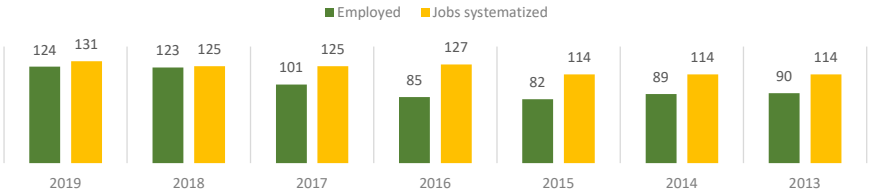
52 Ministry of European Integration. (May 2019). Report on the Implementation of the National Programme for the Adoption of the Acquis (NPAA), for the first quarter of 2019. Belgrade, Serbia: Ministry of European Integration, p. 118.

53 Ministry of Interior. (December 2018). Information Bulletin of the Ministry of Interior. Belgrade. Serbia: Ministry of Interior, p. 67.

54 Ministry of Interior, Internal Control Sector. (March 2019). The 2018 Annual Report of the Internal Control Sector. Belgrade. Serbia: Ministry of Interior, p. 21.

55 Ministry of Justice. (February 2019). The first draft of the revised Action Plan for Chapter 23. Belgrade, Serbia: Ministry of Justice, measure No. 2.2.10.12, p. 74.

Figure 1: The number of employees and work places envisaged by job classification at the Internal Control Sector[56]



Although the increase in personnel is a good and expected step, as the adoption of the Law on Police has assigned new competences to the ICS and amended its organizational structure in 2016, it is impossible to estimate the impact of the new ICS staff on the success in carrying out tasks and implementing goals. The reason for this is the lack of publicly available data. The number of temporarily accommodated and seconded staff at the ICS are unknown, as are the educational profiles of new ICS employees[57], the number of employees per organizational unit of ICS, and the number of inspectors.[58] In addition, the ICS staff work load was not included in the functional analysis conducted in August 2016.[59]

Professional development of the Internal Control Sector staff continues

ICS employees undergo regular professional development training. In 2018, they took part in 19 training sessions and study visits (see Table 2) which were mainly part of the activities geared towards improving ICS operation through the support of the OSCE Mission to Serbia or the USAID. Furthermore, the ACA has organized a training programme on reporting property as an anti-corruption tool for four ICS employees,[60] but what is interesting is that the ICS did not report on this training either in the annual report,[61] or in the overview of activities on the official web page.[62]

56 The Rulebook on the Internal Organization and Job Classification at the Ministry of Interior dated June 2018 provided a job classification for a smaller number of jobs at the ICS compared to the Rulebook dated November of the same year which came into effect on 1 January 2019: 125 to 131.

57 The previous research established that nearly 80% of ICS employees has an undergraduate degree, but the educational profiles were still unknown, so it is not known how many lawyers or criminologists work in this sector of the Ministry of Interior.

58 The Belgrade Centre for Security Policy tried to obtain the data based on a request for free access to information of public importance dated 10 May 2019, to which the ICS never responded as a result of which the BCSP filed a complaint with the Commissioner for Information of Public Importance and Personal Data Protection on 9 July 2019.

59 Ministry of Interior, Internal Control Sector. (December 2016). The analysis and actions of the Internal Control Sector in terms of functionality, organization, capacity, as well as the relationship between preventive and repressive measures, the number and training of staff, and the work methodology per specific matters. Belgrade: Ministry of Interior.

60 The response of the Anti-Corruption Agency dated 12 June 2019 to the BCSP questionnaire dated 16 May 2019.

61 See: Ministry of Interior, Sector of Internal Control. (March 2019). The 2018 Annual Report of the Internal Control Sector. Retrieved on 8 August 2019, from http://prezentacije.mup.gov.rs/sukp/rez.html.

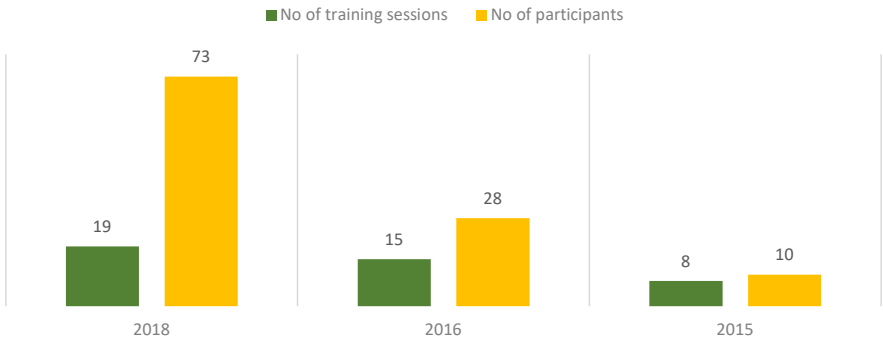
62 See: Ministry of Interior, Sector of Internal Control. (August 2019). Activities for 2017, 2018 and 2019. Retrieved on 8 August 2019, from http://prezentacije.mup.gov.rs/sukp/saopstenja.html.

Table 2: Professional development of staff at the Internal Control Sector

Month	Topic	No of participants	Type	Organized by
January	European Union	1	Training	Ministry of Interior
February	Fight against corruption	5	Study visit	OSCE Mission to Serbia
March	Fight against corruption	1	Training	OSCE Mission to Serbia
March	Fight against corruption	1	Training	The Embassy of the Kingdom of the Netherlands in the Republic of Serbia
March	Fight against corruption	13	Training	ICITAP
May	Reform of internal control	1	Training	Women's Leadership Institute
May	Reform of internal control	1	Study visit	United States Agency for International Development (USAID)
October	Fight against corruption	8	Training	OSCE Mission to Serbia
October	Knowledge of information technologies	10	Training	National Crime Agency of the United Kingdom
October	Fight against corruption	4	Training	Anti-Corruption Agency
November	Fight against corruption	1	Study visit	United States Institute for Legal Studies
During 2018	Prevention of torture and protection of human rights	27	A series of eight training sessions	Judicial Academy, OSCE Mission to Serbia

Slightly more than a third of the training sessions in 2018 addressed the fight against corruption, while a series of eight training sessions in Belgrade, Novi Sad, Kragujevac and Niš (two in each city) were organized on the topic of preventing police torture, which is in line with the basic judicial roles and goals of the ICS. Compared to the previous period, last year saw the highest number of participants (73) to attend the training, but it is not possible to ascertain how many different ICS staff took part in the training sessions.

Figure 2: The number of training sessions of the Internal Control Sector employees



In March 2019, the implementation began of a project worth 1,000,000 euros, supported and funded by the EU with the aim of assisting the ICS in the prevention of corruption at the Ministry of Interior and conducting the activities from the anti-corruption strategy.[63] The internal control services from Lithuania and Romania are providing technical support to the ICS on this project. The project results should be tangible: operative procedures have been developed and tens of ICS employees have been trained for the implementation of new anti-corruption measures envisaged in the Law on Police from 2016: the integrity test,[64] control of the Ministry of Interior employees' property,[65] and the corruption risk register.[66]

The results planned from the 1,000,000 euros' help to the Internal Control Sector

In addition to the guidelines and operative procedures for the implementation of new anti-corruption measures, as part of the project the ICS should train 10 police officers each for conducting the integrity test and a higher-quality analysis of the intelligence information; it should also train 5 officers for a safer maintenance of classified data from corruption investigations,15 for corruption risk analysis and the creation of a risk register, 20 for controlling the property of the Ministry of Interior employees, and 40 for conducting proactive corruption investigations.[67]

63 Interview, Simonas Grebelis, resident twinning advisor assistant on the project "Strengthening Capacities of Internal Control in the Fight against Corruption within the Ministry of Interior", 7 August 2019.

64 The Rulebook on Conducting the Integrity Test, The Official Gazette of the Republic of Serbia, No. 39/2018.

65 The Rulebook on Controlling the Reporting and Changing Personal Property at the Ministry of Interior, The Official Gazette of the Republic of Serbia, No. 49/2018.

66 The Instructions on the methodology for conducting corruption risk analysis at the Ministry of Interior, The Official Gazette of the Republic of Serbia, No. 94/2018.

67 European Commission. (February 2019). Annex 1: Twinning Fiche "Strengthening Capacities of Internal Control in the Fight against Corruption within the Ministry of Interior", Reference SR 15 IPA JH 01 18. Retrieved 8 April 2019 from https://www.bmwi.de/Redaktion/DE/Downloads/Twinning/Ausschreibungen-Archiv/20190205-serbien.pdf

There are no publicly available data on how much benefit the ICS staff have from the training, and to what extent the training sessions and study visits would change their everyday work, especially given that it is not known if the ICS implemented in any degree in the previous period the new anti-corruption measures,[68] which had been announced three years ago as the main instrument in the fight against corruption at the Ministry of Interior.

There is only the information from the Anti-Corruption Agency regarding the ICS staff training for property checks. Although no survey was conducted after the training, the participants said in statements that the training was very beneficial and that it would be helpful in their future work. At the same time, the Agency was fully satisfied with the participation of the ICS employees, which is a conclusion resulting from 'the work atmosphere, a very strong interest of the participants and their motivation to gain new knowledge'.[69] This is precisely why it is strange that the ICS did not report at all on this specific training, which then calls into question the quality of records on training programmes attended by the ICS staff, which must be kept as a legal requirement.[70]

Technical facilities are better, but the workplace capacity remains insufficient

The quality of the technical facilities at the ICS has been improved in 2018, but the workplace capacity remains insufficient. This is not good bearing in mind that there has been an increase in employee numbers and that further hiring is planned by the end of 2021.

Seven new cars have been added to the ICS vehicle fleet, of which four were obtained using budget funds, and three through foreign donations.[71] Furthermore, foreign funds were made use of in the purchase of operational analysis and hardware support software, as well IT equipment (servers, computers, laptops, scanners, and printers), and audio and video equipment in the amount of 684,320 euros. This purchase is doubtless significant, given that the computer equipment used at the ICS was about 10 years old on average, due to which there had been numerous malfunctions.[72]

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68 The 2018 Annual Report of the ICS does not contain the data on the number of integrity tests conducted and corruption risk analyses, or on the number of filed personal property cards and personal property checks; at the same time, the corruption risk register has not been made yet. Further, the ICS has not responded to the BCSP questions on this.

69 The response of the Anti-Corruption Agency dated 12 June 2019 to the BCSP questionnaire dated 16 May 2019.

70 Article 62, The Law on Records and Data Processing in Internal Affairs, The Official Gazette of the Republic of Serbia, No. 24/2018.

71 Ministry of Interior, Internal Control Sector. (March 2019). The 2018 Annual Report of the Internal Control Sector. Belgrade. Serbia: Ministry of Interior, p. 22.

72 Đorđević, Saša. (2018). "The Sector of Internal Control of the Ministry of Interior", Institutional Barometer, ed. Dušan Šabić. Belgrade: Belgrade Centre for Security Policy, p. 44.

Large-scale procurement of technical equipment with the use of a foreign donation

Through an EU donation of nearly 700,000 euros, the Internal Control Sector obtained in the second half of 2018 29 digital cameras with different specifications, 2 servers, 5 rack cabinets, 3 printers, 2 scanners, 2 desktop computers and 2 laptops, hard disks, as well as accessories. The equipment was obtained in an open procedure run by the EU Delegation in Serbia.[73]

In 2018 the ICS workplace capacity was not expanded. The ICS offices remain in the same buildings housing other Ministry of Interior organizational units, which has an adverse effect on the independent operation of the Sector. The operating funds of the ICS used for conducting surveillance operations authorized under the Law on Police and the Criminal Procedure Code, or for paying for useful information on criminal offenses and they have been unavailable for two consecutive years. The ICS plans to put more focus in the upcoming period on increasing technical and workplace capacities, as well as on the operating funds.[74]

The greatest number of documents received, but also forwarded to other bodies for review

Under the Law on Police,[75] the ICS can act on its own initiative, at the request of the Public Prosecutor, based on the gathered reports and information, or upon contacts by the Ministry of Interior employees, citizens and legal entities. Exceptions include cases not envisaged under the provisions of the law on the complaints procedure against employees of the MoI.[76] Upon undertaking action, the ICS can bring criminal charges, provide advice to the organizational units of the MoI on how to remove work irregularities, and order a disciplinary procedure against a police officer for violation of official duty.

In 2018 the Internal Control Sector received the greatest number of different documents since its inception, pointing out irregularities in the work of the Ministry of Interior employees. Last year the ICS received nearly 6,000 written communications, petitions, complaints, notes, and notices on potential

73 See: European Commission. (24 June 2019). Supply of video, audio and IT equipment for strengthening the capacity of the Internal Affairs Sector (IAS) of the Ministry of Interior. Retrieved on 16 August 2019 from http://bit.ly/360aTIF.

74 Ministry of Interior, Internal Control Sector. (March 2019). The 2018 Annual Report of the Internal Control Sector. Belgrade. Serbia: Ministry of Interior, p. 22.

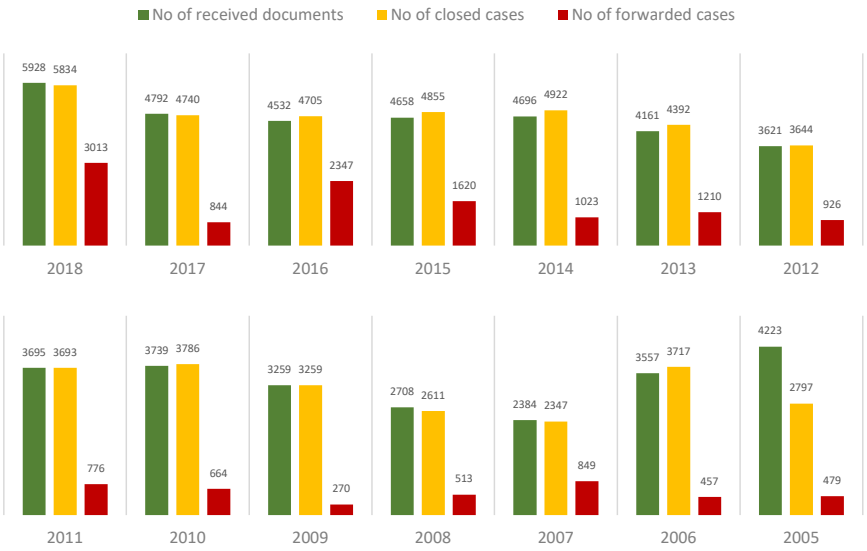
75 Article 227, Par. 1, Law on Police, The Official Gazette of the Republic of Serbia, No. 6/2016, 24/2018 and 87/2018.

76 See: Articles 234-243, Law on Police, The Official Gazette of the Republic of Serbia, No. 6/2016, 24/2018 and 87/2018 and the Rulebook on the Complaints Procedure, The Official Gazette of the Republic of Serbia, No. 54/2017.

unprofessional conduct of the MoI staff – over 1,000 documents more than in 2017. Further to this, a trend was identified of a very small number of cases remaining unresolved in the course of a year or being carried over into the next year. For example, in 2018 only 94 out of 5,928 cases were not closed, which is less than 2%.

In addition to last year's significant increase in the number of communications to the ICS, there was also a drastic increase in the number of cases forwarded to other MoI organizational units for resolution. In 2018, over 3,000 cases – one half of the total received – were forwarded for resolution to other internal controllers of the MoI, which is possible on condition that the document received by the ICS does not have elements of a criminal offense. The percentage of forwarded cases was smaller earlier than in 2018, with the exception of 2016 (see Figure 3).

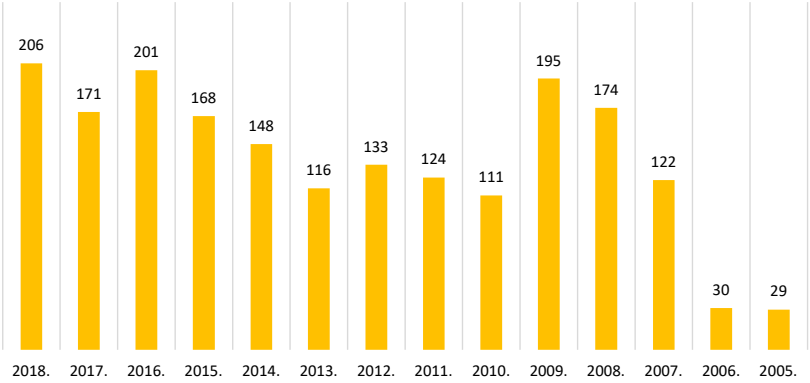
Figure 3: The ratio of the total received, resolved, and forwarded cases at the Internal Control Sector



Little is still known about the criminal responsibility of police officers

The Internal Control Sector brought between 2005 and 2018 a total of 1,928 criminal charges (see Figure 3). Last year, a record number of 206 criminal charges were brought, the most since the inception of the ICS. However, it is still difficult to assess the quality of work of the ICS in gathering evidence and conducting criminal investigations. There is no accurate data on the number of accepted or rejected prosecutor's offices' criminal charges, although they are brought solely at the order of the prosecutor. Furthermore, courts in Serbia do not keep records of the outcomes of criminal proceedings against police officers and other Ministry of Interior employees.

Figure 4: The total number of criminal charges brought by the Internal Control Sector



Indirect findings on the efficiency of ICS criminal investigations can be obtained based on the analysis of the responses from 77 out of 85 prosecutor's offices regarding the criminal responsibility of the employees of the Ministry of Interior. The prosecutor's offices rejected in 2018 as many as 130 criminal charges against the MoI officers, 15 more than in 2016. The most common reason provided is that there is no ground for suspicion that a criminal offense has been committed which is prosecuted ex officio (63), in 16 cases criminal prosecution was postponed, and for five criminal charges the prosecutor's office established that the reported offense is not prosecutable ex officio. It is not possible to determine the precise number of rejected criminal charges brought by the ICS, as the prosecutor's offices do not keep records per profession, or the answers received were incomplete. It was established, however, that at least 36 criminal charges brought by the MoI against its own employees were rejected.[77]

77 The information was obtained by analysing the responses of 52 out of 58 basic public prosecutor's offices, 23 out of 25 higher public prosecutor's offices, the Prosecutor's Office for Organized Crime, and the Prosecutor's Office for War Crimes at the request of the BCSP for free access to the information of public importance dated 8 May 2019. The replies of the prosecutors' offices arrived in May and June 2019.

No penalty after the disciplinary procedure

The Internal Control Sector almost attained the 2013 record in 2018 in terms of the number of recommended disciplinary responsibility measures against police officers: 426 compared to 447. In addition, the statistical indicators from 2018 are significantly better than in 2017. Thus, the ICS recommended last year 100 disciplinary responsibility measures more than in 2017. There was a significant increase in the number of recommendations for initiating a disciplinary procedure due to grave violation of duty, as well as for issuing warnings and calls to disciplinary hearings, but there was also a decrease in the number of recommendations for managers regarding how they should treat certain employees (see Table 3).

Table 3: The number of recommendations and trends identified in issuing recommendations for taking disciplinary action by the Internal Control Sector

	2011		2012		2013		2014		2015		2016		2017		2018	
Measures taken due to grave violation of official duty	**204**	0%	**248**	22%	**246**	-1%	**280**	14%	**178**	-36%	**253**	42%	**245**	-3%	**343**	40%
Measures taken due to light violation of official duty	**37**	0%	**27**	-27%	**46**	70%	**26**	-43%	**14**	-46%	**16**	14%	**19**	19%	**21**	11%
Warnings and disciplinary hearings	**54**	0%	**46**	-15%	**45**	-2%	**45**	0%	**8**	-82%	**36**	350%	**25**	-31%	**50**	100%
Implementation of adequate measures as per the assessment of the superior officer	**73**	0%	**79**	8%	**110**	39%	**73**	-34%	**59**	-19%	**79**	34%	**34**	-57%	**12**	-65%
Total	**368**	0%	**400**	9%	**447**	12%	**424**	-5%	**259**	-39%	**384**	48%	**323**	-16%	**426**	32%

Increasing the number of recommended measures did not significantly alter the structure of ICS recommendations as compared to the previous period since 2011. The greatest number of recommended measures (65%) is still related to police officers committing grave violation of duty – from refusing to carry out an order of a superior, through abuse of the status of the police officer, to obstruction of conducting criminal proceedings.[78] Almost every sixth measure (17%) pertained to police managers and had to do with their treatment of individual officers. Warnings and calls to disciplinary hearings make up 10 percent of the ICS recommendations, while the smallest number (7%) relates to

78 Article 207, The Law on Police, The Official Gazette of the Republic of Serbia, No. 6/2016 and 24/2018.

taking disciplinary measures over light violation of duty – unjustified absence from work or improper keeping of official records and data.[79]

In its 2018 annual report, the Internal Control Sector did not report on the extent to which their recommendations for disciplinary responsibility were implemented, although higher-ranking police officers are legally required to notify them of this. This is why the exact effect of all these recommended measures, totalling over 3,000 in a period of eight years, remains unknown. Partial data can be obtained based on responses of 3 out of 7 organizational units of the Police Directorate which were subjected to preventive controls last year: the Despotovac Police Station, the Kruševac Police Department, and the Regional Centre of the Border Police Department towards the Hungarian border.[80]

The abovementioned three organizational units received from the ICS seven recommendations for initiating disciplinary actions due to grave violation of official duty. Four of these were accepted, but not a single case resulted in penalizing the police officer in question over actions taken. In two procedures the police officer was freed of all charges, one was dropped as the police officer in question went into retirement, and the remaining one is ongoing. The situation is not very different with the recommendations to initiate a disciplinary procedure due to light violation of official duty. The organizational units of the Police Directorate accepted all eight recommendations, but only one resulted in penalty – a reprimand, and the police officers in the remaining seven cases were freed of all charges.[81]

The Internal Control Sector advice is taken

In 2018 the Internal Control Sector offered to other organizational units of the Ministry of Interior the smallest number of pieces of advice in the past ten years.[82] Last year, there were 28 advisory recommendations fewer than in 2017 – 41 to 16. The number of good practice examples identified by the ICS increased minimally – from four to five. Although the ICS maintains a register of advisory recommendations made and implemented, and reports to the Minister of the Interior on the results,[83] the annual report of the ICS does not contain

79 Article 206, The Law on Police, The Official Gazette of the Republic of Serbia, No. 6/2016 and 24/2018.

80 The remaining four organizational units of the Police Directorate (the Velika Plana and Zemun police stations, Čačak police department and the Regional Centre of the Border Police Directorate towards the Romanian border) did not respond to the request of the BCSP for free access to information of public importance dated 8 May 2019.

81 The response of the Despotovac Police Station dated 5 July 2019 to the request of the BCSP for free access to information of public importance dated 8 May 2019; The response of the Kruševac Police Department dated 24 May 2019 to the request of the BCSP for free access to information of public importance dated 8 May 2019; The response of the Regional Centre of the Border Police Directorate towards the Hungarian border dated 12 June 2019 to the request of the BCSP for free access to information of public importance dated 8 May 2019.

82 The aim of advisory recommendations and examples of good practice is removing omissions and oversights, as well as improving the quality of work of police departments which the ICS prepares after preventive controls and during operative work.

83 Ministry of Interior, Internal Control Sector. (March 2019). The 2018 Annual Report of the Internal Control Sector. Belgrade. Serbia: Ministry of Interior, p. 15.

the information regarding the extent to which the advice is implemented in practice. At the same time, the number of advisory recommendations made has been on the decrease since 2013. The analysis of the responses from the three subjects of preventive controls carried out in 2018 - the Despotovac Police Station, the Kruševac Police Department, and the Regional Centre of the Border Police Department towards the Hungarian border – reveals that the ICS recommendations are implemented in full. However, there is also a discrepancy, as only these three subjects of preventive control (and there were four more) submitted 29 recommendations in 2018, which is 13 more than the ICS specified in its annual report. This calls into question the quality of the register of advice issued and implemented maintained by the ICS.

INSTITUTIONAL EMBEDMENT

The second part of the *Barometer* investigates the operation of the ICS within the institutional system made up of the following: the executive power bodies, above all the Ministry of the Interior, the National Assembly of the Republic of Serbia and the Defence and Internal Affairs Committee, tasked with external control of the ICS, the public prosecution system[84], independent state control institutions,[85] and citizens.

Fully independent operation of the ICS is not made possible

The existing legal framework does not allow the ICS to work fully independently, although the Law on Police was amended twice in 2018, in March and November.[86] Opportunities were thus missed to ensure full political, functional, operational, and financial independence of ICS operation and enable the ICS to exercise all its legal functions without any external or internal influence, which is one of international standards.[87]

The possibility of the Minister of Interior as a political factor having influence on the operation of the ICS is not fully removed. The Law on Police allows the Minister to provide guidelines and mandatory work instructions for the ICS, except in the pre-investigative process and investigation initiated at the request

84 The Public Prosecution system consists the Public Prosecutor's Office of the Republic of Serbia, appellate public prosecutor's offices (in Belgrade, Novi Sad, Niš and Kragujevac), higher public prosecutor's offices, basic public prosecutor's offices, and prosecutor's offices with special jurisdiction – for organized crime and war crimes (Article 13, The Law on Public Prosecution, The Official Gazette of the Republic of Serbia No. 116/2008, 104/2009, 101/2010, 78/2011 - law, 101/2011, 38/2012 – decision of the CC, 121/2012, 101/2013, 111/2014 - decision of the CC, 117/2014, 106/2015 and 63/2016 - decision of the CC).

85 Independent state control institutions in Serbia include the following: The Anti-Corruption Agency, The State Audit Institution, Commissioner for Information of Public Importance and Personal Data Protection, Commissioner for the Protection of Equality and Protector of Citizens.

86 The National Assembly adopted the first amendments on 22 March 2018 (The Official Gazette of the Republic of Serbia No. 24/2018), and the others on 9 November of the same year (The Official Gazette of the Republic of Serbia No. 87/2018).

87 European Partners against Corruption. (2012). Setting Standards for Europe Handbook: Anti-Corruption Authority Standards and Police Oversight Principles. Retrieved on 18 August 2018 from https://www.iaca.int/images/sub/activities/EPAC/EPAC_Handbook.pdf.

of the Public Prosecutor.[88] Further, the Minister prescribes the internal control procedure and controls the work of the ICS head.[89] Thus, the independence of the ICS is jeopardized.

There is quite a bit of room for the Minister to be able to instruct the ISC not to take action on specific information so that the case does not reach the prosecutor's office. Similarly, the ISC operation does not only include gathering information for bringing criminal charges before the prosecutor's office, but also implementing new anti-corruption measures. By providing guidelines and instructions, the Minister can affect the integrity testing or interfere with further action taken if the ICS establishes that there are irregularities regarding the personal property of specific Ministry of Interior employees.

The independence of the ICS is additionally jeopardized as the security check of the Internal Control Sector staff is conducted by the Data Protection and Security Affairs Service, whose staff are checked in turn by a special committee whose members are selected by the Minister.[90] This is an organizational unit fully subordinated to the Minister and which, among other things, initiates and conducts security checks for private individuals and legal entities with the aim of obtaining classified information access certificates.[91] This kind of chain of competences in conducting security checks is not good and results in the control of security checks by the Office of the Minister.[92]

It is impossible to assess the financial independence of the ICS as its budgetary funds are presented as part of the Ministry of Interior funds and cannot be presented separately.[93] The National Assembly of the Republic of Serbia and its Defence and Internal Affairs Committee still do not discuss autonomous and independent operation of the ICS.

The Internal Control Sector still relies mostly on its own inspectors

The Internal Control Sector relied in 2018 as well for the most part on the operative work of its inspectors and the results of preventive controls – 19% more than in 2017. Thus, in 2018 the ICS brought 70% of criminal charges based on the outcome of its own operative work and preventive controls. Last year there was a considerable increase in the number of criminal charges brought based on the information the ICS received from other organizational units of the Ministry of Interior (47 to 16), while at the same time there was a decrease

88 Article 233, The Law on Police, The Official Gazette of the Republic of Serbia No. 6/2016 and 24/2018.

89 Article 232, The Law on Police, The Official Gazette of the Republic of Serbia No 6/2016 and 24/2018.

90 Article 141, The Law on Police, The Official Gazette of the Republic of Serbia No. 6/2016 and 24/2018.

91 Ministry of Interior. (February 2018). Information Bulletin of the Ministry of Interior. Belgrade. Serbia: Ministry of Interior, p. 72.

92 Mandić, Sofija, Sonja Stojanović Gajić and Saša Đorđević. (December 2017). Improving the Draft Amendments to the Law on Police. Retrieved on 18 August 2018 from http://www.bezbednost.org/All-publications/6716/Improving-the-Police-Amendment-Bill.shtml, p. 10.

93 See: The Law on the Budget of the Republic of Serbia for 2018, The Official Gazette of the Republic of Serbia No. 113/2017 and the Law on the Budget of the Republic of Serbia for 2019, The Official Gazette of the Republic of Serbia No. 95/2018.

in the number of those based on the information received from citizens from different sources (33 to 14). The least number of criminal charges (7%) was brought by the ICS based on the information received from citizens.

The Internal Control Sector communicates most frequently with the Prosecutor's Office

The Internal Control Sector communicated mostly with the prosecutor's offices in 2018, while the independent state control institutions are fully satisfied with the collaboration with the ICS. Last year there was a sudden increase in the number of reports sent from the ICS to the prosecutor's office (see Table 4), doubling the number from 2017. The reports to the prosecutor's office are almost always sent for the purposes of gathering the required information necessary for a criminal procedure. Only two cases have been recorded where the ICS did not submit to the prosecutor's office the requested report.[94]

There are no indications that the deficiencies in the prosecutor's offices collaboration with the ICS, identified in the pilot study, have been rectified. Public prosecutor's offices still do not submit to the ICS the full and timely information on the number of rejected criminal charges, open investigations, and indictments brought against the MoI employees.

Table 4: The numbers and trends identified in submitting information by the ICS to the prosecutor's office, courts and independent state control institutions

	2015		2016		2017		2018	
Number of reports on request for information of the prosecutor's office	**462**	0%	**397**	-14%	**394**	-1%	596	51%
Number of reports on request of the prosecutor's office on different grounds	**42**	0%	**22**	-48%	**17**	-23%	91	435%
Number of reports on request of the courts	**40**	0%	**44**	10%	**27**	-39%	40	48%
Number of reports on request of the Commissioner	**49**	0%	**55**	12%	**70**	27%	48	-31%
Number of reports on request of the Anti-Corruption Agency	**24**	0%	**27**	13%	**65**	141%	26	-60%
Number of reports on request of the Protector of Citizens	**24**	0%	**34**	42%	**20**	-41%	24	20%

94 The information was obtained by analysing the responses of 52 out of 58 basic public prosecutor's offices, 23 out of 25 higher public prosecutor's offices, the Prosecutor's Office for Organized Crime, and the Prosecutor's Office for War Crimes at the request of the BCSP for free access to the information of public importance dated 8 May 2019. The replies of the prosecutors' offices arrived in May and June 2019. It is important to note that the prosecutor's offices reported on far fewer ICS requests sent – 84 to 596.

The Commissioner is the second body that the ICS communicated with the most in 2018, as was the case in the three preceding years, as a result of obligations laid down in the Law on Electronic Communications and the Law on Records and Data Processing in Internal Affairs. Nonetheless, the number of reports of the ICS to the Commissioner is three times less in 2018 than in 2017. Unlike other independent state control institutions, the Commissioner was unable to assess the quality of the collaboration with the ICS as it receives a collective report of the Ministry of Interior, which does not contain the data on specific organizational units, including the ICS.[95]

Following the Commissioner, last year the ICS communicated the most with the courts and the Anti-Corruption Agency, but the number of submitted reports of the ICS dropped considerably in 2018 compared to 2017. The Agency is fully satisfied with the collaboration with the ICS.[96] In 2018, two meetings were held on the topic of drawing up the register of personal property of the Ministry of Interior employees, as well as the report form for income and personal property of public officials, which is used by the Agency but is modified for the needs of the MoI.[97] The last place is occupied by the communication with the PoC, but the number of submitted ICS reports increased fourfold. The PoC is fully satisfied with the collaboration with the ICS, as well as with the reports on criminal and misdemeanour charges filed. They are mostly satisfied with actions taken by the ICS at PoC requests.[98]

There is still no publicly available data on the number of notices that the ICS forwarded to the Service for Combating Organized Crime, the Minister of the Interior or the Police Director.

INSTITUTIONAL LEGITIMACY

Lastly, an assessment is made of the relationship of the ICS to the users of its services: citizens, institutions, and international donors.

Enhancing the legitimacy of the Internal Control Sector continues

One of the basic legally mandated tasks of the ICS is the fight against corruption in the police. This is why it is not good that only 16% of citizens believe that the state has been successful in fighting police corruption. Every other citizen of Serbia (50%) believes that the state fights corruption in the police, but not in the appropriate manner, while every fourth (26%) thinks that the state does

95 The response of the Commissioner dated 21 May 2019 to the questionnaire of the BCSP dated 8 May 2019.

96 The response of the Anti-Corruption Agency dated 12 June 2019 to the questionnaire of the BCSP dated 16 May 2019.

97 Ibid.

98 The response of the Protector of Citizens dated 3 June 2019 to the questionnaire of the BCSP dated 16 May 2019.

not fight police corruption at all. There are minimal differences between the attitudes of men and women, as well as between regions in Serbia.[99]

The fight against corruption in the police should be conducted by the police internal control (22%), which as the participants' first choice for four years running may seem satisfactory on first glance. The second place is occupied by the Minister of Interior (16%), followed by the Government (15%). Bearing in mind that the Minister is a member of the Government, it would appear that it is the Government that should ultimately be the instance 'leading the way' in the fight against police corruption, and not the ICS. All things told, 31% of citizens believe that the fight should be spearheaded by the Government. [100]

Citizens were more willing last year than in 2017 to call the ICS and report corruption in the police force, but the 2016 record still has not been attained or broken. The Internal Control Sector received in 2018 7,151 calls from citizens via an open telephone line for reporting corruption – a 14% increase compared to 2017, but also a third less than in 2016, when the ICS received 10,846 calls. The data for 2012, 2013, 2014, and 2015 is not available.

Box 3: The international donors' satisfaction with the collaboration with the ICS

The representatives of the international community, especially the EU and the OSCE Mission to Serbia, providing financial and technical assistance to the ICS, are satisfied with the day-to-day collaboration, in particular with the professional part of the Sector. The EU representative in charge of the implementation of the twinning project underscored the fact that his office is located in the same building used by the Belgrade ICS staff, and particularly the fact that he works near to the office of the ICS staffer in charge of international collaboration. Such an environment contributes to the collaboration. Nonetheless, the first official meeting was not held until July, although it had been five months since the start of the project.[101]

How many complaints against police officers are submitted to the Internal Control Sector by citizens remains unknown

The 2018 report of the Ministry of Interior regarding the resolution of complaints about the work of police officers does not contain the data on the organizational unit in which the citizens' complaints are filed although the law stipulates that.

99 Đorđević, Saša. (2018). The Public in Serbia on Police: Results of the 2018 Public Opinion Survey. Belgrade: Belgrade Centre for Security Policy, p. 19.

100 Ibid, p. 20.

101 Interview, Simonas Grebelis, resident twinning advisor assistant on the project "Strengthening Capacities of Internal Control in the Fight against Corruption within the Ministry of Interior", 7 August 2019.

The MoI must keep a record of which organizational unit a complaint is filed in.[102] Due to incomplete information, it is impossible to precisely identify the trend in the number of complaints filed, as well as submissions and communications of citizens to the ICS since its inception to the present day. The Internal Control Sector maintains a record of the total number of documents received (submissions, complaints, official notes, notices, and other documents) which point out illegal or unprofessional conduct of police officials.

A small number of requests for free access to information of public importance

Compared to the Ministry of Interior, which has for years been a record-holder in the number of requests and complaints filed, the Internal Control Sector receives few requests for free access to information of public importance. In 2018 the ICS received 48 requests, which is only three percent less than the total number of requests received by the Ministry of Interior in the same year. In addition, the number of requests is one third less in 2018 than in 2017. However, in 2018 the ICS dismissed and rejected more than a half of the requests received (see Table 5). The annual ICS reports do not contain an explanation of why the requests were rejected or dismissed, while the Commissioner does not have the information for specific sections of the Ministry of Interior, but rather collectively for the entire Ministry.

The number of complaints due to rejection, dismissal, or failure to act upon request dropped considerably in 2018 - as much as by 65% compared to 2017. Only eight complaints were submitted to the ICS last year, mostly for rejecting a request (3), failure to act (2), while the reasons for submitting are unknown for three complaints. Nonetheless, this is still a very small number of complaints received by the ICS compared to the Ministry – as little as 2%.

Table 5: The ratio between, and the trend identified in, the number of requests for free access to information of public importance received, adopted, rejected, and dismissed by the ICS

	2014		2015		2017		2018	
Received	**69**	0%	**49**	-29%	**70**	43%	**48**	-31%
Adopted	**61**	0%	**43**	-30%	**60**	40%	**20**	-67%
Rejected	**7**	0%	**0**	-100%	**0**	0%	**14**	0%
Dismissed	**1**	0%	**1**	0%	**9**	800%	**14**	56%
Complaints	**5**	0%	**6**	20%	**23**	283%	**8**	-65%

102 Article 53, the Law on Records and Data Processing in Internal Affairs, The Official Gazette of the Republic of Serbia, No. 24/2018.

RECOMMENDATIONS

- It is necessary to supplement the functional analysis of the ICS with the data on employee workload, and make a projection of the increase of ICS staff based on that;
- It is necessary to record all training sessions attended by an ICS employee, and attach thereto the information on how and to what extent the training affects the day-to-day work of the employees;
- It is necessary to improve the technical and workplace capacities of the ICS, whose funding will not depend exclusively on the financial support of the EU;
- It is important to determine if forwarding a great number of cases regarding potentially unprofessional conduct of police officers to other units of the Ministry of Interior increases the workload of the ICS staff;
- It is necessary to regulate the maintenance of judicial records so that it is possible to monitor the criminal proceedings against a Ministry of Interior employee;
- It is necessary to establish the reasons for rejecting the criminal charges against the Ministry of Interior employees submitted by the Ministry of Interior or the ICS;
- It is important to introduce the practice of public reporting on disciplinary actions taken by the ICS;
- The operation of the ICS should be fully independent and autonomous

GORDANA GRUJIČIĆ, GROUP 484

COMMISSARIAT FOR REFUGEES AND MIGRATION

SUMMARY

The subject-matter of the analysis are the measures and activities of the Commissariat for Refugees and Migration of the Republic of Serbia in the context of the implementation of competences set out in the Law on Asylum and Temporary Protection[103] and the Law on Migration Management[104] with respect to providing migrants and asylum-seekers with accommodation as well as implementing the integration programme and providing accommodation for persons granted the right to asylum.

Moving for the most part within the space of the previously developed indicators,[105] we attempted, with the analysis of the gathered information, to assess the performance of the Commissariat in the implementation of relevant activities envisaged in the draft of the revised AP24. More specifically, the subject of our analysis were the activities related to provision of accommodation, setting up mechanisms for regular monitoring of accommodation and reception, then implementing the integration programme, as well as the activities relating to the existing mechanisms of coordination in the sense of considering the situation in the area of migration and asylum, with special emphasis on the systems of reception and integration.

INTERNAL EFFICACY

Irregular migrants are equal to asylum-seekers in terms of access to the material reception conditions

In the period between May 2018 and June 2019, various categories of migrants that differ in terms of legal status, including asylum-seekers, were housed in 16 facilities operated by the Commissariat for Refugees and Migration of the Republic of Serbia (5 asylum centres and 11 reception centres), while three reception centres (Dimitrovgrad, Divljana and Preševo) were on stand-by. Furthermore, with the support of the international community, the Commissariat continued in this reporting period as well to improve the existing accommodation facilities by strengthening the infrastructural resources of

103 The Official Gazette of the Republic of Serbia, No. 107/2012.

104 The Official Gazette of the Republic of Serbia, No. 107/2012.

105 *The efficiency indicators* are related to the total number of beneficiaries accommodated at the asylum and reception centres, their legal status, the measures taken to identify the members of vulnerable groups in the overall population of accommodation beneficiaries, as well as the measures taken with the aim of ensuring special reception guarantees. In addition, the efficiency indicators analyse the activities of the Commissariat in order to provide access to programmes of integration for persons granted the right to asylum. *The legitimacy indicators* analyse the mechanisms through which the persons accommodated at the centres can express their opinions and assessments of the relevance and quality of services, their availability and functionality, as well as the measures taken by the Commissariat in order to provide a functional assessment of the services rendered at the centres. *The indicators of institutional embedment* analyse the level of coordination and the links of the Commissariat to other relevant institutions and organizations in the area of providing adequate accommodation and access to rights, as well as implementing the integration programme.

individual centres, procuring the equipment needed for the operation of the centres, and improving and unifying the standards of services provided to the migrants at the centres.

A total of 27,072 persons were accommodated at the asylum and reception centres in the reporting period (8,748 from Pakistan, 8,535 from Afghanistan, 3,538 from Iran, 2,055 from Bangladesh, 1,666 from Iraq, 574 from Syria, 361 from India, 222 from Algeria, 171 from Morocco, 169 from Libya, 161 from Somalia, 93 from Palestine, and 779 persons of other nationalities).[106]

Table 6: The number of people accommodated at the asylum and reception centres

Period	Total	Men	Women
Persons who arrived before 1 May 2018 and left before 30 June 2019	2,664	2,382	282
Persons who arrived after 1 May 2018 and left before 30 June 2019.	21,318	19,745	1,573
Persons currently housed at the centres[107]	3,090	2,292	798
Total	**27,072**	**24,419**	**2,653**

According to the data available from the UNHCR website,[108] in the specified period of time a total of 10,657 intentions to apply for asylum were registered, while 9,872 persons with issued certificates of expressed intention to apply for asylum contacted Commissariat in the same period for the purposes of obtaining accommodation.[109]

Pursuant to the Law on Asylum and Temporary Protection, material reception conditions are provided at the asylum centres and other facilities for housing asylum-seekers. The phrasing of the legal norms regulating the right to the material reception conditions (Articles 23, 50-52) leaves room for different interpretations as to whether only asylum seekers shall be considered as right holders, or whether certain elements of the material reception conditions are provided for the persons whose intention to seek asylum has been registered, but who have not subsequently applied for asylum. *De facto,* but *de iure* as well, access to accommodation, food, and clothing is guaranteed and provided for all persons whose intention to seek asylum has been registered. Moreover, it

106 Source: The Commissariat for Refugees and Migration, July 2019.

107 According to the data in July2019.

108 Source: UNHCR Serbia, http://www.unhcr.rs/en/dokumenti/statisktike/azil.html, Asylum Office Statistics March 2019 and Asylum Office Statistics June 2019.

109 Source: The Commissariat for Refugees and Migration, July 2019.

is important to emphasize that access to accommodation and services at the reception centres is provided also for persons who *stricto iure* do not have a regulated basis for stay.

In addition to accommodation, food and clothing, the material reception conditions also include the right to a financial assets for personal needs.[110] For all persons housed at the centres, irrespective of their legal status, these funds were secured from alternative sources in this reporting period as well – from the project budgets of international organizations, in the form of monthly disbursements. At the present moment, the funds are secured until December 2019, when it is expected that the Commissariat takes on the funding obligation. Additionally as a precondition: it is necessary to first adopt a separate bylaw on the terms under which the material reception conditions are provided, the procedure for their reduction or termination, including the right of appeal, and other issues related to the reduction or termination of the material reception conditions, as well as a bylaw on the manner of disbursement of funds for personal needs.

Establishment of database as a tool for further development of the reception system

The process of creation of database as tools for regular monitoring of accommodation and reception and improving the mechanism of coordination and management of accommodation facilities was recently completed.[111] The database is currently in the testing phase. In addition to the data on the available accommodation capacities, the database also contains data related to the existing infrastructural and staffing capacities for each centre,[112] as well as the identified needs. In developing this tool, the EASO Guidelines were also taken into account: operational standards and indicators.[113] It is expected that this database will contribute significantly to a faster and more efficient coordination between the asylum centres and other accommodation facilities on one hand, and the Commissariat headquarters on the other, especially in terms of meeting the identified institutional or staffing needs of the centres.

It is important for monitoring the conditions at the centres that the database also stores the data that individual centres submit to the Commissariat in the form of reports. Depending on the kind of report, the type of data that are collected differs (weekly; monthly; special; reports on malfunctions and technical interventions). Special reports submitted to the Commissariat headquarters may contain, for example, the data on the type of incident that has occurred

110 Article 50, Par 1 of the Law on Asylum and Temporary Protection.

111 As part of the project *The support for the management of information, communications and capacities for planning in managing migration in Serbia*, financed by the EU and implemented by the International Organization for Migration.

112 Property inventory, information on the date of expiry of the vehicle registration, professional profiles of persons engaged in centre management, and the data on the type and duration of the employment contract, etc.

113 More on EASO Guidelines: http://bit.ly/EASOsmernice.

(physical violence; domestic violence; physical injury; infection; assault against staff; violence towards women; poisoning, etc.), the number of participants (per category: users, employees, unaccompanied minors, and single persons), the number of injured persons (per users and employees). Further, data on who of the other actors was involved, are also delivered (has there been an intervention of the police or the ambulance; were CSOs contacted and which ones), and how the persons involved in an incident were subsequently treated (were they taken to a medical institution, were they arrested, or are they in isolation).

This database, together with the database on persons accommodated in asylum centres and other accommodation facilities, which includes the vulnerability parameters,[114] will have a significant contribution to the monitoring of the implementation of the activity 1.3.2 in the section on Migration, from the standpoint of the Commissariat, as well as activity 2.3.4 in the section on Asylum. Furthermore, the Commissariat will be able to use the results of data processing only as the basis for advocacy activities directed towards the provision of additional budgetary funds, in line with the identified needs (activity 2.3.2).

Start of implementation of the mechanisms and identification of special reception guarantees

Pursuant to Article 17 of the Law on Asylum and Temporary Protection, the personal circumstances indicating the specific situation a person is in, and/or their vulnerable position, imply at the same time a need for the provision of special reception and process-related guarantees. Hence during reception at a centre and a further stay there the specific situation of each beneficiary is taken into account, especially in terms of identifying the persons in need of special reception guarantees. In this connection, and with the support of the Government of Switzerland, a database on persons accommodated at the asylum centres and other accommodation facilities, persons granted the right to asylum, and persons included in the programme of assisted voluntary return, is in the final stage of creation. In addition to the data specified in Article 98 of the Law on Asylum and Temporary Protection, the database also contains the parameters specified in the EASO guidelines for establishing vulnerability; pursuant to these parameters, the database distinguishes between 14 vulnerability categories (*See the table below.*) It is important to emphasise that the database in question contains therefore a broader range of vulnerability categories than the list of personal characteristics stipulated in Article 17 of the Law on Asylum and Temporary Protection. The database will be updated regularly with data on subsequently identified forms of vulnerability.

114 More details on this database in the next section.

According to the unified statistical data of the Commissariat for Refugees and Migration, the following categories of vulnerability have been identified at the asylum and reception centres in the reporting period:[115]

Table 7: Vulnerable groups identified at the asylum and reception centres

Unaccompanied children	2,199
Single parents with underage children	122
Persons with disabilities	26
Elderly persons	0
Pregnant women	97
Persons with special dietary requirements	0
Persons suffering from a mental disorder (including problems related to alcohol and psychoactive substance abuse)	216
Persons with serious health issues	144
LGBTI persons	21
Persons with special gender-related needs	0
Persons who have been exposed to torture	0
Persons who have suffered rape	0
Persons who have suffered other forms of severe physical, psychological, or sexual violence	0
Victims of human trafficking	3[116]
Total	**2,828**

The tools for assessing the accommodation conditions and available services

The capacity of every accommodation facility is regularly assessed based on the tools established in October 2017. At the monthly level, the UNHCR performs a multidisciplinary assessment of the accommodation conditions and availability of services in the form of the so-called semaphore report[117] and submits it to the Commissariat. The reports are structured in line with the

115 Source: The Commissariat for Refugees and Migration, July 2019.
116 Ovaj statistički podatak odnosi se na period od 1. januara do 31. decembra 2018. godine.
117 The reports available at: http://www.kirs.gov.rs/wb-page.php?kat_id=118.

legislation of the Republic of Serbia, the EASO standards, Sphere, UNHCR, and the EU Directive on the Conditions of Reception. They consist of 14 chapters and follow 85 parameters; in addition to the statistical data on the overall capacity, current capacity utilization, and sexual and ethnic structure of the users, they also contain the following areas of assessment: accommodation; sanitary conditions; safety and security; food articles and non-food articles; health; education and leisure activities; protection of children; communication; asylum and identification; persons with special needs; coordination and management; freedom of movement; family unity; and also an overview of services provided at a centre, as well as information on each of the service providers.

According to the report from June 2019,[118] it is necessary to strengthen the efforts to provide a sufficient number of interpreters, set up video surveillance, enhance the establishment of community structures at the centres; in the context of the protection of children, open-air playgrounds should be constructed and spaces provided for mothers with babies. Further to this, in the context of protection of vulnerable categories, it is interesting that the report shows that all centres have set up a system of support for victims of gender-based violence and a system of referral for persons with special needs.

As regards the implementation of the regulation governing the issues of accommodation for persons granted the right to asylum,[119] in the reporting period 25 persons requested and obtained financial assistance for temporary accommodation (19 men and 6 women). According to a statement by the Commissariat, positive decisions were made for all persons who applied for this financial assistance.

Staffing capacity

In March 2019 a new Rulebook on the Internal Organization and Job Classification at the Commissariat for Refugees and Migration was adopted[120] and which, among other things, increases the number of executive jobs at the Department for the Coordination of Activities at the Asylum and Reception Centres, from six to 14. The findings of the Commissariat's functional analysis, conducted with the support of the Government of Switzerland, were used in the preparation of the Rulebook. In addition, unimpeded operation of the centres for accommodation of migrants and asylum seekers was ensured by hiring an additional number of employees from the MADAD 2 project funds. Therefore, in June 2019, 331 persons were hired in this way. Also, established

118 http://www.kirs.gov.rs/media/uploads/Azil/profili-centara/PC-SR-2019-06.pdf

119 The Regulation on the priority accommodation for persons who have been granted asylum or subsidiaryassistance and on conditions for using temporary accommodation, The Official Gazette of the Republic of Serbia, No. 63/2015, No. 56/2018.

120 Source: The Report on the Implementation of the AP Activities for Chapter 24 for the period January – July 2019. More at: http://bit.ly/MEIpoglavlje24.

database of institutional and staffing capacities for each individual centre also contains information on completed training[121] of persons engaged in the reception system (field workers, administrative support, centre coordinators, interpreters, etc).[122]

The challenges of implementing the integration programme

According to the statements of the Commissariat, in this reporting period an information-gathering interview was conducted with each person who was granted the right to asylum and has contacted the Commissariat, for the purposes of gathering information relevant to filling out the questionnaire on the types of integration measures that need to be implemented, i.e. drawing up an integration plan.[123] In most cases the integration measures proposed relate to accommodation, learning the Serbian language and alphabet, introduction to Serbian culture, history and constitutional order and, if necessary, assigning one-off aid. In conducting these activities, the Commissariat has the support of the UNHCR, while civil society organizations, on the other hand, offer help to persons granted the right to asylum by collecting the required documentation (e.g. the documents needed to register with the NES[124]). However, during the reporting period, the Commissariat did not use the possibility of launching a public call for the selection of associations that could assist Commissariat in the development of the integration plans, as the activity in that segment was covered from other available sources of support.[125]

Persons granted the right to asylum obtain the information on their rights and duties from the management of the centres at which they are accommodated, from their representatives, the officials of the Commissariat, other actors involved in the system of their reception, and to a certain extent also from the Asylum Office. In addition, when filling out the questionnaire for the purposes of drawing up the integration plan, each person is notified of all available information on relevant support programmes organized by international organizations and civil society organizations. In collaboration with the competent ministries and relevant institutions, and with the support of the Belgrade Centre for Human Rights, a draft of information materials has been drawn up, but the process of obtaining formal approvals of relevant institutions has not yet been finalized. However, one should bear in mind that

121 The training of persons engaged in the reception system is classified into ten categories: reception and provision of care; gender equality and sexual and gender-based violence; children; human trafficking and smuggling; asylum-related procedures and practices; assisted voluntary repatriation and reintegration; general migration; project management; specialized training; training for interpreters.

122 Source: The Commissariat for Refugees and Migration, Plandište, 27-29 September 2018. http://www.kirs.gov.rs/wb-page.php?kat_id=53.

123 Source: meeting with the representatives of Commissariat for Refugees and Migration, July 2019.

124 National Employment Service.

125 Article 9 of the Regulation on integration stipulates that in drawing up the integration plan the Commissariat **can be** assisted by associations with experiences in providing legal and psychosocial assistance to various migrant categories. The Commissariat announces a public call in order to select these associations.

the information materials need to be regularly updated, as relevant support programmes are a form of support with a limited duration and depending on the project duration and the labour market needs.

A total of 37 attendees started to learn the Serbian language in the reporting period (of which 31 adults and 6 minors aged 16). Compared to the previous reporting period, there is a noticeable increase in the number of those who have joined the programme of learning Serbian language among the persons granted the right to asylum[126] This indicates that the affirmative measures of the Commissariat and other actors have contributed to an increased interest in learning the Serbian language and alphabet.[127] In addition to the Commissariat (fund of available classes: 300 plus 100 additional), the UNHCR also organizes Serbian language courses, with a total of 80 lessons. When organizing courses, the Commissariat and the UNHCR regularly hold consultations in order to avoid overlaps – the same persons attending same-level classes twice. However, to interested and active beneficiaries, both classes organized by the Commissariat and those organized by the UNHCR are available.

When planning the Serbian language classes, the aim was for the lessons to be organized in all places where persons granted the right to asylum reside. So, for example, in addition to Belgrade (a total of 18 attendees), Serbian language lesson were organized in Vranje (2), Novi Pazar (2), Novi Sad (5), Lazarevac (2) and Bogovađa (8).

The program of acquainting with Serbian culture, history, and constitutional order, consisting of 30 lessons, developed and adopted in the previous reporting period, was implemented in this reporting period as well. Of the 15 attendees, only eight completed the programme.[128] The comparatively small number of attendees and those who successfully completed the programme provides a clear indication that the persons granted the right to asylum are still insufficiently stimulated to participate in this programme.[129]

Monitoring the integration measures related to providing support for inclusion of children of preschool, elementary school and secondary school age, including adult illiterate persons, in the education system of the Republic of Serbia, as

126 A total of 42 decisions were made in the reporting period approving the asylum request.

127 By passing the amendments to the Regulation on the Integration into the Social, Cultural and Economic Life of Persons Granted the Right to Asylum, the legal obligation for persons granted the right to asylum has been implemented in the integration programme, stipulating that within 15 days as of the day of coming into effect of the decision they are to register with the Commissariat for taking the Serbian language and alphabet lessons and to have regular attendance. Otherwise, the Commissariat will not be obliged to provide additional Serbian language lessons, and the person in question will lose the right to one-off financial assistance. However, in this reporting period, the Commissariat allowed access to the Serbian language and alphabet learning courses to persons granted the right to asylum who approached the Commissariat after the expiry of the 15-day deadline as of the day of coming into effect of the decision.

128 Source: http://www.bgcentar.org.rs/upoznavanje-lica-koja-su-dobila-utociste-na-teritoriji-republike-srbije-sa-srpskom-kulturom-istorijom-i-ustavnim-uredenjem/.

129 Pursuant to Article 5 of the Regulation on Integration, for persons granted the right to asylum, attending the programme of acquainting with Serbian culture, history and form of government is not mandatory.

well as providing help when accessing labour market still poses a particular sort of challenge. The reason for this is primarily that specific activities included in these measures are not yet precise enough, nor is the role of the Commissariat in implementing them.

As regards children, access to the systems of preschool, elementary school and secondary school education is provided to all migrants in the territory of the Republic of Serbia, irrespective of their legal status. Children granted the right to asylum, as a rule, were included in the formal education system even before the positive decision on their asylum request was made. Therefore, gaining a new status does not really change their position with respect to access to education.

Necessary textbooks and school equipment were provided from alternative funds, primarily from donated funds of international organizations in this reporting period as well. The Commissariat still provides assistance in education through the collaboration with civil society organizations that implement informal educational activities for migrant and asylum seekers children.

The data on including adult illiterate persons granted the right to asylum in the educational system of the Republic of Serbia is still not possible to obtain. In fact, the adult education system does not recognize these persons as a separate category of attendees of its education programmes.

The measure of securing financial assistance to children and adult illiterate persons for the purposes of their involvement in extracurricular activities is still not implemented. For this to happen, it is necessary first and foremost to regulate more precisely the terms under which this assistance is provided, the approval procedure, as well as the role of the Commissariat in the process.

On the other hand, according to the statements of its representatives, acting within its competences, the Commissariat aims to facilitate access to the labour market for persons granted the right to asylum through: the efforts of identifying employers who need workforce with educational and professional profiles that correspond to the qualifications of persons granted the right to asylum, and by notifying economic entities of the possibility of employing these persons. In addition, the UNHCR provides support by organizing vocational training courses, as well as by approving grants to start a business. However, the effectiveness of these activities depends very much on the extent to which the employment policy will recognize the persons granted the right to asylum as a separate and important target group.

Lastly, in this reporting period no persons granted the right to asylum applied for a one-off financial assistance (which, in line with the law, is provided only in cases of special social and health-related need).

INSTITUTIONAL EMBEDMENT

The mechanisms of coordination at the national and local levels

For the purposes of analysing the conditions at asylum and reception centres and presenting previously conducted activities and projects, as well as plans and strategic goals for the upcoming period, the Commissariat has organized in the reporting period two bigger coordination meetings at which the representatives of international organizations and civil society organizations also took part: in Plandište in the period between 27 and 29 September 2018[130] and the Obrenovac Reception Centre on 26 March 2019.[131] Furthermore, according to the statements of the Commissariat, in order to regulate reception and accommodation of migrants, asylum-seekers and persons granted the right to asylum, regular and frequent information exchange is carried out between the relevant competent authorities. In 2018, only one session of the Working Group on Mixed Migration Flows was held[132], while the competent institutions meet regularly at the operational level. At the local level, the needs of the accommodation beneficiaries are taken into consideration in coordination meetings which the management of individual centres organizes regularly together with the service providers present at that centre.

At the national level, meetings of thematically different coordination groups were organized in this reporting period as well. In these meetings representatives of the Commissariat regularly participated, in order to exchange information regarding the accommodation facility conditions, the identified needs, and planning and coordination of joint activities. Coordinated by the Ministry of Education, Science and Technological Development, meetings focusing on the issue of the education of children were organized. The Ministry of Health organized meetings which considered the issues related to the provision of health care for migrants and asylum seekers. UNICEF and the Ministry of Labour, Employment, Veteran and Social Policy organize regular monthly meetings of the child protection working group. In addition, the UNHCR organizes periodic coordination meetings to discuss the asylum-related issues.

Based on all of the above, it can be concluded that regular meetings as part of the above coordination mechanisms indicate that activity 2.3.11 from AP24 was actively implemented in the reporting period.

130 Source: http://www.kirs.gov.rs/wb-news-more.php?id_category=4&id=343.
131 Source: http://www.kirs.gov.rs/wb-news-more.php?id_category=4&id=489.
132 Source: The Report on the Implementation of the AP for Chapter 24 for the period July-December 2018.

How was the issue of integration policy discussed within the established mechanisms of coordination?

Analysing the content of the agenda from the meetings organized as part of coordination mechanism at the national level in the reporting period, it can be observed that the issue of integration of persons granted the right to asylum was taken into consideration and monitored only sporadically and through individual elements of the integration policy (such as the question of issuing travel documents and naturalization of refuges). In other words, monitoring of the comprehensive integration programme was missing. Changing this state of affairs towards a regular and comprehensive monitoring of the situation in the area of the implementation and development of integration programmes, may lay down a foundation for the strategic advocacy for the development of institutional and personal capacities of the Commissariat and other institutions competent in planning and implementing individual measures of the integration policy.

INSTITUTIONAL LEGITIMACY

In addition to three complaints mechanisms described in the previous report (complaints submitted electronically; complaint boxes; and meetings of the centre management with migrants), in this reporting period two additional mechanisms were identified through which the persons accommodated at the centres, can express their opinions and assessments of the relevance and quality of the services. This is: AGDM assessment and the information received through the activities of the civil society organizations. AGDM ensures a participatory assessment of the needs and satisfaction of the users accommodated at the centres, in terms of age, gender, and diversity mainstreaming, based on a structured dialogue.[133] It is an activity conducted once per year by the UNHCR in collaboration with the competent civil society organizations.[134] On the other hand, with the continued or *ad hoc* activities of civil society organizations, which conduct direct work activities with the beneficiaries at the centres, an important mechanism for expressing opinions on various aspects of the life at the centre is provided. Moreover, it is important to note the periodical visits of the National Mechanism for the Prevention of Torture.

Twenty electronic complaints were submitted in the reporting period, as well as eight through the complaints box. As in the previous reporting period, the complaints were mostly about the choice of food and noise at the centres, but additionally about being transferred from one accommodation facility into another, and the conduct of other accommodation beneficiaries. One

133 Separate sessions are held with men, boys, women, and girls; the specific risks that each listed group is exposed to are discussed and analysed together with them.

134 Participatory Assessment in Operations, UNHCR, 2006, https://www.refworld.org/pdfid/462df4232.pdf.

complaint was related to access to secondary health care (the possibility of having an abortion). According to the assessments of the Commissariat, 60 to 70 complaints were resolved. One of the circumstances which can affect the extent to which complaints are resolved is the presence of the complainant in the period after the submission of the complaint.

The accurate number of accommodation beneficiaries included in the assessment activities cannot be ascertained precisely. According to the views of the Commissariat, assessment activities are conducted every day through conversations with people accommodated at the centres. Furthermore, focus groups are organized weekly with the aim of service assessments. The subject of the assessments are not only the services offered by the Commissariat but also the services offered by other actors conducting activities at the centre.

According to the statements of the representatives of the Commissariat, in the reporting period, in addition to the abovementioned and other internal assessment-related activities, mostly external actors were implementing activities directed towards the evaluation of various kinds of services offered at the centres: food quality was examined by the consortium of civil society organizations as part of the MADAD project (CARE, Caritas, Oxfam, The Red Cross of Serbia); DRC conducted an efficiency assessment of the so-called cash cards; UNICEF considered the services related to working with children at the centres, including the children's corner, the corner for mothers with babies, and the activities focused on including children in the formal education system; in the health care sector, IOM conducted an assessment of medical field staff, and WHO an evaluation of health care services, including the distribution of medications.

With the aim of improving the quality of service provision, as well as unifying the quality of programmes and activities organized at the centre, with the support of the Government of Switzerland, the Commissariat developed a document on the standards for providing services of social support, informal education, and legal aid to persons accommodated at asylum centres and other accommodation facilities.[135] Immediately after the document was adopted, work started on its operationalization. So, on 23 April 2019 a public call was announced for financing the programs of civil society organizations which are significant for the populations of migrants, asylum seekers and persons granted the right to asylum in the Republic of Serbia, within which social support, informal education and legal aid programmes, prepared in line with the drawn-up Standards, were given priority.

135 More details on standards at: http://www.kirs.gov.rs/wb-page.php?kat_id=55.

RECOMMENDATIONS

- Organize discussions on the standards of assessment for accommodation conditions and services (the *site profiling* methodology) pursuant to the EASO standards, for a broader group of actors included in the reception system, in order to ensure the implementation of activity 2.3.6 from AP24 through a well-organized participatory process.
- Affirm the issues of comprehensive monitoring of the integration programme implementation and a further strategic development of the policy of integration of persons granted the right to asylum within one of the existing coordination mechanisms at the national level.
- Further improve the system of planning of integration measures, as well as the system of developing individual integration plans and monitoring their implementation, with a timely consideration of possible changes.
- With the aim of strengthening the social inclusion of migrants and asylum seekers, as well as enhancing the possibilities of their rapid work activation, it is necessary to develop, make available to all persons accommodated at the centres, and additionally promote different programmes and mechanisms of support, for the purposes of gaining elementary knowledge of the Serbian language and attending relevant professional training.

ASTRA – ANTI-TRAFFICKING ACTION

CENTRE FOR HUMAN TRAFFICKING VICTIMS PROTECTION

ASTRA anti trafficking action

INTRODUCTION

Unlike in the case of the previous issue of the *Institutional Barometer*, this time the management of the Centre for Human Trafficking Victims Protection submitted the completed questionnaire, *the 2018 Report on the Work* and the replies to the researcher's follow-up questions. Also, the head of the Service for Coordination of Protection of Victims of Trafficking in Human Beings presented the staff of ASTRA with the methodology of work of the Service – from the application, through the process of identification, provision of support and development of individual service plans, to their monitoring and revision. At the end of June 2019, representatives of ASTRA visited the Shelter and got acquainted with its employees, the organisation of space, and with this institution's planned method of operation.

Recognising victims of trafficking in human beings is a special expert assessment process which serves to establish the presence of general and specific signs indicating that a person is be a victim of trafficking. Based on the above procedure, the Centre expert drafts the findings and opinion, which are then forwarded, at a special request, to the court, to the investigative authorities, and to other bodies and institutions in accordance with the laws and secondary legislation. The draft new Law on Social Protection also brings a novelty in the form of status of an official granted to professional employees of the Centre for Human Trafficking Victims Protection, as well as to the professional employees of the social welfare centres.[136]

In addition to working directly with victims of trafficking, including the process of identification carried out upon all the reports received from other actors in the territory of Serbia, four employees of the Centre (with the occasional assistance of a secretary in the capacity of a lawyer) also participate in other activities of the Centre – primarily those that concern the projects, but also in the organisation and realisation of conferences and seminars, the process of drafting strategic and operational documents, etc., which sometimes prevents them from being able to sufficiently perform their main activity and confirms their excessive workload. Among its activities, the Centre lists production and publication of professional literature relevant for the protection of victims of trafficking, informing the community about their activities and promoting their work through annual reports, using the website and brochures, etc., all in accordance with its work programme and information strategy, as well as other tasks in accordance with the law, standards and other regulations.

The Centre's annual report also states that the **availability of services is ensured in close cooperation with social welfare centres and police officers, as well as specialised CSOs.**

136 Draft Law on Social Protection, Article 159 – Public Powers

INTERNAL EFFICACY

The *2018 Work Report* of the Centre for Human Trafficking Victims Protection points out the following: "*In the course of the year, we worked with 332*[137] *beneficiaries, and we carried out 2,885 individual activities*." Using the pre-structured questionnaire as well as additional oral and written consultations with representatives of the Centre, ASTRA researchers tried to ensure a better understanding, i.e. obtain a more precise explanation, of this and other allegations contained in the questionnaires, reports and other publicly available documents of the Centre.

According to the replies provided in the questionnaire which was submitted to the Centre for Human Trafficking Victims Protection regarding the year 2018, the Centre employs 16 persons (although there are 13 classified [planned] job positions) while the Shelter employees 7 (although there are five classified job positions). The number of expert staff in the Protection Coordination Service is four (plus the secretary who is occasionally involved in the work in the capacity of a lawyer), while the number of professional staff in the Shelter is five. As stated in the Centre's annual report, the facility in which the Shelter is located is owned by the Republic of Serbia, and it meets all the requirements and standards for providing this service. The Shelter is intended for the accommodation of women who have experienced trafficking in human beings and girls older than 16, that is, for the urgent accommodation of victims regardless of their level of traumatisation at the moment of detection and placement. The Centre accommodates women with children (male children up to a certain age, as will be specified in the licensing process).

It is stated in the Centre's Annual Report that the Decision of the Ministry of Labour, Employment, Veterans' and Social Affairs[138] envisaged 24 Centre employees, instead of 18, with an increase in the number of executives in the job position of professional in charge of direct performance of tasks related to identification, protection planning and coordination, as well as the number of professional staff who work directly on providing accommodations for victims of trafficking.

According to responses provided by the Centre, in 2018, one professional employee of the Service processed an average of 47.5 applications, while the number of cases was almost twice as high - 83 per employee. The reason for the higher number of cases than applications per professional employee is that cases are transferred from one year to the next. The average number of 83 victims per professional employee represents the sum of the number of assisted victims who have been identified in the previous years and the number of victims who were undergoing the identification process during the reporting year.

137 As regards 2018, 334 beneficiaries are listed in the text of the Centre's Work Report from then on.
138 No. 112-01-554/2018-21 of 17 October 2018

The Centre for Human Trafficking Victims Protection makes the final identification of the victims based on preliminary identification, i.e. report that can be submitted by any actor, including citizens. Currently, there are indicators for the preliminary identification of victims to be used by employees of the social security system, police officers and people working in the education system.[139] Only indicators intended for employees of the social protection system have been made formal, i.e. their use has become compulsory and ought to be based on the instruction that was issued by the Minister for Labour, Employment, Veterans' and Social Affairs in July 2017. In its written response to the question about the indicators, the Centre for Human Trafficking Victims Protection states that it makes a final identification of the victims based on the UNODC's and International Labour Organisation's (ILO) Operational Indicators of Trafficking in Human Beings. The Action Plan of the *Strategy for Prevention and Suppression of Trafficking in Human Beings*, *Especially Women and Children and Protection of Victims* 2019-2020 envisages development of specific indicators for formal identification of victims of trafficking in human beings to be used by the Centre, as part of the project funded by the OSCE Mission to Serbia.[140] It remains unclear why the Centre has not yet developed its own indicators and criteria for the formal identification of victims of trafficking. A request for further clarification on this issue generated a response from the Center stating that they are "waiting for funds" required for this activity. One of the recommendations of the EU Twinning project "Supporting the Fight against Trafficking in Human Beings" under IPA 2014 programme[141] was that this activity should be given priority.

In the year under review (2018), out of a total of 190 reports of suspected trafficking in human beings, in three cases an expert arrived at the scene within 24 hours of the report of a possible victim.

None of the first interviews victims were conducted on the premises of the Centre, given that these were completely unsuitable for the purpose. As explained by the Centre, most of the interviews are conducted at social welfare centres, at the police, on the premises of civil society organisations or elsewhere. The Centre does not keep official records of the location of the first interview.

When asked about the average amount of time that usually passes from the identification of the victim's needs to their realisation i.e. provision of appropriate service, the Centre responded that support to victims is provided from the moment of the first emergency assessment, regardless of whether the victim has been identified or not, and that it is continued for as long as it is assessed as needed.

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139 Developped through project activities.

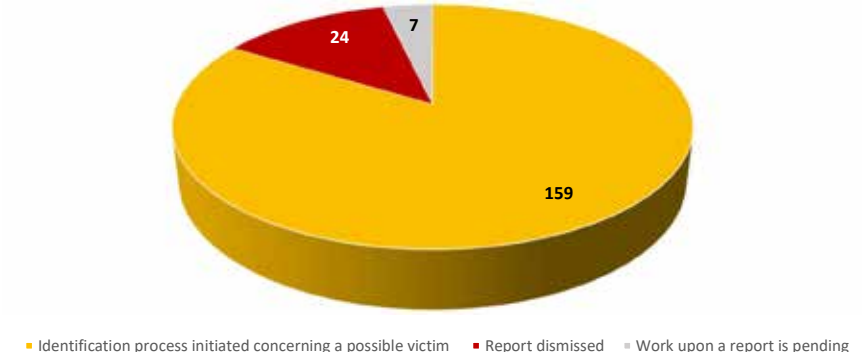
140 Measure 4.2, Activity 4.2.1. AP 2019-2020.

141 Support to strengthening fight against trafficking in Human Beings, Twinning Ref: SR 14 JH 01 18, http://www.cfcu.gov.rs/dokumenti/sr/456_478845_suport-to-strengthening-fight-against-traficking-in-human-beings-twining-fiche.pdf

According to the Centre, the length of support varies depending on the individual, ranging from a few months to three years, and exceptionally, if necessary, also beyond this period, that is, for as long as the victim needs support.

According to the Annual Report, on the last day of 2017 there were 170 beneficiaries on the active records of the Centre whose assistance continued in 2018. Also, 184 new users were registered in 2018. In 2018, the Centre considered **190 reports** of suspected trafficking in human beings. Of these 190, 181 were new reports that were received in 2018, while 9 were those that were transferred from 2017. Figure 5 provides an overview of the results of actions taken upon reports.

Figure 5: How the Centre for Human Trafficking Victims Protection acted upon reports



Seventy six victims of human trafficking were formally identified during the assessment process; 75 were found not to be victims, 27 identification procedures were discontinued, and 6 were carried over to the next year. The Centre states that in all the cases discontinuation was caused by unavailability of the victims. In 9 cases of discontinued identification process, plans were made to establish later contact with victims estimated to be at high risk of further exploitation.

As regards individual activities carried out in 2018 (2,885 in total), a more detailed analysis shows that their number was reached by adding up the following:

- Coordination activities,
- Professional procedures, and
- Independently provided direct support to victims.

It is a combination of all activities that are carried out during the year, including: drafting findings and opinions (151), drafting prescribed documents in the course of the expert procedure (598), and consulting support provided to social welfare centres and other associates (132).

Activities that directly involve the victim are listed as those that make up expert procedure: informing the victims about their rights, the criminal act and the court proceedings (293), informing the victims of possible types of support and service providers (211),[142] counseling and empowerment to overcome the trafficking experience (23), negotiations with beneficiaries with the aim of developing an individual service plan, making a victim accept support and take personal responsibility for part of the activity (45), supporting the preservation and enhancement of family relationships (53), empowering the victim to participate in court proceedings (46), empowering the victim to resume life in the community (220).

Table 6 from the Centre's report states that there was a total of 165 activities within the services that were provided independently: field work and home visits (92), transporting the victim (25), attending testimony in the capacity of a trusted person (21), engaging an interpreter (3), providing aid packages (food, hygiene, clothing, footwear) (2), payment of accommodation (1), provision of medical services, medicines and medical supplies (3).

More than 40% of all the Centre's activities in 2018 consisted of coordination made by telephone or email (1,189). By comparison, during the same period ASTRA recorded **3,500**[143] activities under its SOS hotline programme.

The Centre's self-assessment of certain aspects of its work in 2018 (from the Annual Report) should also be mentioned:

"During the year, the activity of rapid and efficient identification process was not fully implemented due to inability to perform field work, that is, to come to Belgrade to perform identification, due to lack of gasoline. Almost four months after the beginning of the year, when field work became possible, there were already a large number of reports that had suffered a significant delay; as new reports kept coming, professional employees were overloaded with work and unable to respond immediately upon receipt of reports."

In the report of the IPA 2014 project "Support for Strengthening the Fight against Trafficking in Human Beings", it was stated that "In the context of detecting and identifying potential victims of trafficking in human beings, people ought to be clearly explained that staff of the Centre for Human Trafficking Victims Protection have (mandatory) reporting duties." [144]

142 During the presentation of the Centre's methodology by the head of this institution to ASTRA employees (on 23 May 2019), a question was raised as to how victims were informed about possible types of support and service providers. It was replied that this information was provided verbally, because the Centre had used up the leaflets containing information on providers of services to victims of human trafficking.

143 Contacts and exchanges made via SOS hotline, e-mail, Viber application, field operations, client visits...

144 Support to Strengthening Fight against Trafficking in Human Beings, Twinning Ref: SR 14 JH 01 18,

Referrals and Services

When asked about the number and structure of referrals of victims of trafficking to competent authorities and organisations (police, public prosecutor's office, social welfare centre, social protection institution, health institution, educational institution, civil society organisation), the Centre stated that all beneficiaries referred to the Centre by partners (other than the police) are referred to the police (in 2018, all beneficiaries agreed to cooperate with the police, and in the cases of indictment, with the prosecution). For the time being, the Centre does not keep specific records on the involvement of these providers and institutions in victim support. This information can be obtained by reviewing the beneficiaries' files. In accordance with the Law on Social Welfare and the Competence of Social Welfare Centers, all children beneficiaries as well as the majority of adults were referred to a social welfare centre (as the guardianship authority).

In response to a question about referring victims to civil society organisations, it was stated that two persons were referred to ASTRA. Since ASTRA requested clarification, as no victims were referred to us by the Centre regarding a specific service, we received the following response: *"The Centre contacted ASTRA on several occasions with the intention of beneficiaries receiving necessary form of support from it, in cases where ASTRA had so far not been involved in victim support, which in our view represents referral of the victim."*

According to ASTRA's records, representatives of the Centre requested provision of specific assistance (psychological support, interpretation) concerning two victims, but despite the fact that costs were covered, ASTRA's consultants were not allowed to contact the clients. (IDs no: 5664 and 5780)

Also, at the end of 2018, a representative of the Centre requested that ASTRA discontinue providing legal assistance to one beneficiary because the Centre was to resume this activity. After checking with the client and confirming that there was no dissatisfaction on her part, or any realistic grounds for such a request, the Centre's representative continued to insist that she be in charge of communication regarding the ongoing procedure. (ID no: 4107)

As regards services that were provided by the Centre to victims of trafficking in 2018, classified according to the type of service provider (the Centre or another institution) and the types of measures and services, the Centre stated that the following services were provided in 2018, either directly or indirectly:

Table 8: Services provided by the Centre for Human Trafficking Victims Protection in 2018, according to the type of provider/measure/service

Vrsta pomoći/podrške	Broj	Napomene
Financial assistance	5	3 – medical services, 1 – accommodation, 1 – care package
Victim's accomodation	1	
Psycho-social counselling	334	
Legal aid	31	Criminal proceedings
	3	Civil proceedings
Medical services	3	(Already listed under "Financial assistance")
Other (packages)	16	

Answering the questions from the Questionnaire, representatives of the Centre provided explanations for each service by quoting parts of their Articles of Association. According to them, the Centre directly provides the following services: assessment and planning, counseling-therapy, social-educational services and accommodation services. All other services for which data were requested *are actually provided by other service providers, while the Centre coordinates and connects users with service providers*.

As regards placement in social welfare institutions, it is the centres for social work that refer victims to these services. According to the law, the Centre for Human Trafficking Victims Protection cannot directly provide financial assistance in cash, but only in the form of care packages and payment of certain costs. During the year, accommodation was provided to 48 beneficiaries in cooperation with centres for social work and CSOs. Accommodation services were used by 28 children and 19 adults. In the group that involved children, 25 girls and three boys used accommodation services. These data do not apply to the Shelter, as it was not yet open in 2018. Accommodation services for children (28) were provided by: foster families (10), CSO Atina (5), Shelter Vasa Stajić in Belgrade (3), facilities for children without parental care in Bela Crkva and 'Spomenak' (2 each). Adult victims (19) were mostly placed in the accommodation facilities of CSO Atina (15).

Specialised services for children are not provided by the Centre independently; instead, the Centre refers children to providers of specialised services (in accordance with the Rulebook on Professional Tasks in Social Protection). As part of the regular work of the Centre, its professional staff provide children with "child-friendly counseling support", which is outside the scope of specialised services.

One of the recommendations contained in the conclusions of the IPA 2014 "Supporting the Fight against Trafficking in Human Beings" Project Report relates to the Centre's then future accommodation facility – the Shelter: *"The concept of the shelter of the Centre for Human Trafficking Victims Protection needs to be clarified in relation to the beneficiaries (women, men, children), staff qualifications, victim safety concerns, freedom of movement and access to services."*

The Centre does not provide health services, and all beneficiaries in need of such services were provided with them through coordination of activities with state health institutions, the private health sector and in cooperation with CSOs. The Centre paid for the costs of medicines and medical examinations of three beneficiaries. As stated in the Centre's annual report, *"Primary health care services were made available to all the beneficiaries via the healthcare system, with occasional difficulties in coordination"*.

During the year, there has been no need to pay for forensic services because, where needed, they were obtained based on the order of a prosecutor.

While respecting the division the Centre used, there is still a clear disparity between the number of victims and the number of (in)directly provided services: for example, only three victims needed additional/emergency health care? Has there been a problem with the way records were kept, that is, were there many more victims that were provided with adequate and timely health care – as maybe documented in their personal files, but not in the annual report? The same question may be asked concerning other listed services, even for the (seemingly) most commonly provided service – psycho-social counseling: in 334 cases. According to the annual report, there were a total of 334 beneficiaries in 2018; does this mean that each of them has been provided with psycho-social support **once**!?

Regarding the average time required for the Centre to enable victims to receive financial assistance, it is stated that the Centre does not provide financial assistance directly, but rather provides funding in cooperation with civil society organisations and social welfare centres. In the case of cooperation with CSOs, funds are provided within a couple of days (depending on the need), while in the case of social welfare centres it takes a couple of days to one month or more, depending on the situation in the local self-government units regarding current financial assistance. Social financial assistance is provided in accordance with statutory deadlines. There have been no significant changes in comparison with the previous issue of *Institutional Barometer*.[145] According to the Centre's response, material assistance in kind is provided in most cases within a few days, two weeks at most.

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145 *"Victims of trafficking in human beings are entitled to material assistance under the same conditions and procedure as other indigent citizens. Once the necessary documents are submitted, a victim can start receiving financial assistance within a month. However, it usually takes a longer time to gather all the documents that serve to prove that the person is truly in need and that s/he is entitled to financial assistance. Victims of human trafficking usually first need to obtain a new identity card, birth certificate, certificate of residence 85, etc. In addition, what is treated by law as continuous financial assistance is actually provided only nine months out of a year."*

As regards victims' safety assessments, none have been requested by the police in 2018. Victim's safety is assessed for each specific case, together with the police and social welfare centres, but without any specific request or safety report. This is not in line with the envisaged procedure – for instance, when victims are referred to accommodations provided by ATINA. According to its license, ATINA must obtain a safety assessment for the victim it is accommodating. Representatives of ATINA have said that they have **not been submitted a single safety assessment** to date.

According to the data obtained, in 2018, the Centre produced 24 individual services plans, although the annual report states that a total of 32 plans have been drafted. Plans usually covered three to five areas of work. We remind that, in 2018 alone, the number of identified victims was 76 – namely, individual service plans have **not been drawn up for more than two-thirds of identified victims**, and this percentage is likely to become even higher when one adds the number of cases carried over from 2017. Also, there have been **only five revisions** of individual service plans. One of the possible reasons for the small number of developed and revised support plans could be the Centre's capacities and the excessive workload of professional staff (information obtained during the exchange of information with the Head of the Service).

In its Work Report for 2018, the Centre provided an assessment of the quality of its own work, as well as possible causes of certain problems:

> *"... Significant reasons for the problems in planning the work and monitoring its quality are: difficult acceptance of associates, especially in the NGO sector, of the accepted model of coordination, and of roles and responsibilities of individual actors in the protection of victims. Once the SOP is adopted, we believe that the social context in this regard will be improved, which will enable better planning and monitoring of protection efforts.*
>
> *...Through the continued involvement of the Service's professional staff, the cooperation procedures developed with partners, and in particular through the signed collaboration protocols, existing community services were made available to their users. The quality of services is uneven, and in some cases the Centre has no insight into the way the service providers operate. The problems are: missing services, lack of stable financing of services in the Centre itself, and the absence of coordination in the community regarding the development and quality of the needed services.*
>
> *In addition to the services provided to beneficiaries through professional procedures (assessment and planning services, counseling and socio-educational services), this year the Centre also provided a very small number of direct support services. The main reason for the Centre's decrease in direct victim support lies in small funds that have been available to the Centre for these purposes in the past year. The lack of 'opportunity funding', which serves as the basis for the Centre's direct support to victims, has directly affected the resources that are available to the institution for direct support".*

Financing of the Centre for Human Trafficking Victims Protection

In 2018, the Centre had funds from three sources at its disposal: funds from the budget of the Republic of Serbia, those provided by the Ministry of Justice to finance the project "Improving the Position of Victims of Trafficking in Human Beings in the Republic of Serbia", and funds resulting from the implementation of the institute of deferred prosecution (the 'principle of opportunity').

In 2018, the Centre received just over RSD 15 million from the budget (RSD 15.004,292 or EUR 126.864,73 according to the average exchange rate for 2018).[146] Almost **70%** of the RSD 15 million (to be more exact, RSD 10,445,820) was spent on employees: on the payment of salaries, associated taxes, contributions and fees, transportation costs and other expenses relating to employees (such as the jubilee award, for instance).

Other significant planned expenditures included financing of contracted services, such as: computer services (maintenance of the website and computer network and the website domain, in the amount of RSD 298,552.00), professional services (a total of RSD 841,708.88 was spent on the following: RSD 405,000.00 on lawyers' services, RSD 436,708.88 on translation services). Also, as stated in the Report on Material and Financial Operations for 2018,[147] the Centre purchased a new automobile (RSD 1,498,800) using funds from the opportunity project "Improving the Position of Victims of Trafficking in Human Beings in the Republic of Serbia".[148]

Funds raised through the use of the institute of deferral of prosecution (prosecutorial opportunity) have been made available to the Centre since December 2012. In addition to RSD 1.8 million received for the purchase of an automobile, the total funds carried over from previous years amounted to RSD 1,365,153.51. Of this, only RSD 83,724 was spent in 2018, while the remaining RSD 1,281,429 was carried over to 2019.

During the preparation of this document, ASTRA asked the Centre a question about the average amount of money that is usually spent to support a victim over a period of one year (lawyer's services, examinations and lab work in private medical facilities, hygiene packages, packages of food, clothing, footwear and other direct assistance to the victims - excluding the regular costs of the Centre such as salaries, transportation, fuel, etc.) In its response, the Centre stated that it had provided RSD 500,000 in 2018 for direct support to the victims – to hire lawyers, for health care needs, accommodation costs and material assistance. ASTRA requested additional specification of the budget item 4235 - *Professional Services*, funds in the total amount of RSD 841,708.88 which were spent to finance the services of lawyers (RSD 405,000.00) and those of interpreters (RSD

146 https://www.nbs.rs/internet/cirilica/scripts/kl_prosecni.html

147 The report was downloaded from the website of the Centre in June 2019.

148 https://www.mpravde.gov.rs/files/re%C5%A1enje%20o%20dodeli%20sredstava%202018.pdf

436,708.88). The Centre explained that the costs of lawyers' services generally had to do with direct support to victims, while interpretation services partly represented support to victims and were partly related to the other needs of the institution.

The Centre also emphasised that the amount of funds allocated by the state for specific purposes was actually far greater (that it included the costs of accommodation in social welfare institutions, financial social assistance, immediate financial assistance, health care, education, etc.). However, due to the manner in which funds are allocated, it is not possible to obtain a more accurate estimate of the average funds that were allocated for costs related to services provided to victims.

INSTITUTIONAL EMBEDMENT

As a social protection institution, the Centre is accountable to the Ministry of Labour, Employment, Veterans' and Social Affairs, which is in turn accountable to the Government. In addition to being directly accountable, the Centre cooperates with all relevant institutions in the field of combating and preventing trafficking in human beings, such as: the police, social welfare centres, judicial authorities, and non-governmental and international organisations. However, the Centre should also direct its activities to the wider public, i.e. citizens as potential beneficiaries of services, in accordance with the activities specified in the Centre's Articles of Association. So, the Centre coordinates activities related to the provision of social protection services to victims of trafficking in human beings and cooperates with social welfare centres, institutions that accommodate beneficiaries, as well as other bodies, services and organisations of the civil society to ensure the best interests and safety of victims of human trafficking.

When asked about the number of cases in 2018 in which an expert of the Centre was asked to submit findings or an expert opinion, whether in writing or by appearing at a hearing, the Centre replied that each time a victim was identified, the Centre's expert's findings and opinion were submitted to the police, which was obliged to forward them to the prosecutor's office. In some cases, findings were submitted directly to the prosecutor's office, based on prior communication. In 2018, the Centre's expert wrote one complaint concerning treatment by the police or a social welfare centre.

As regards the identification and cooperation processes of various relevant institutions and organisations, it is emphasised that the Centre is not the institution that performs preliminary identification; instead, it is the associates and partners that report suspected trafficking in human beings to the Centre following a preliminary identification process. As a result, all the Centre's

beneficiaries are actually referred to the Centre by associates. In 2018, the Centre itself identified two victims, while working in the field based on other reports. All the victims were reported to the Centre before prosecution was initiated, except in a few cases of victims that were discovered abroad (5).

In 2018, the Centre contacted civil society organisations that provide assistance and support to victims and received a positive response in a total of 17 cases, meaning that CSOs were able to provide the requested service at the time. No records are being kept on cases where support was requested and the contacted CSO was unable to provide it.

Asked about the number of case conferences that were scheduled in 2018 and the structure of stakeholders who were invited to participate, the Centre replied that no such official records are kept. They said that conferences are held as needed, and that they include institutions, authorities and organisations that can provide necessary support to the victims. **In 2018 (or 2017 for that matter), ASTRA was not invited to a single case conference, if any were organised.**

As at 2018, the Centre had signed a total of 10 cooperation protocols with other bodies, institutions and organisations.[149] Despite the Memorandum of Cooperation which was signed with the National Employment Service, not a single victim found, or consequently retained, a job in 2018.

As regards children victims of trafficking that were placed in foster families, in cooperation with social welfare centres 22 children were referred to this type of accommodation in 2018.

149 The Centre's annual report mentions the following institutions and organisations with which Memoranda of Understanding were concluded: Clinic for Psychiatric Diseases "Dr Laza Lazarević", the Red Cross of Serbia, Special Hospital for Addiction Diseases, and CSO "IDEAS".

LEGITIMACY OF THE INSTITUTION

In 2018, no potential victims refused to cooperate or withdrew their cooperation with the Centre, and no cases were closed because victims felt they no longer needed support. As explained in the Centre's response, the decision to discontinue support is always taken jointly and is a result of joint planning and work to implement agreed activities. Independent of the other participants in the support, no victim felt that she no longer needed it. Also, no complaints were filed about the work of the Centre in 2018.

The Centre does not yet evaluate the services it provides, so there is no official record of the quality and adequacy assessment of the services it provided.

In accordance with Article 40, paragraph 3 of the Centre's Articles of Association, it is the Supervisory Board of the Centre that makes proposals for the elimination of possible mistakes and for the improvement of the work of the Centre. However, according to the Centre's response, there were no Supervisory Board meetings or such proposals in 2018.

When asked about the number of persons – from the time of the establishment of the Centre until the end of 2018 – who have re-experienced trafficking once they left the trafficking chain, the Centre replied that no such official records were kept.

List of data concerning which the Centre does not keep official records

- *How much time it takes to complete identification (according to the Centre's professional guidelines, identification may take up to three months);*
- *Average amount of time that passes between the reporting of a potential victim of trafficking and the first interview (this is determined individually, and emergency support measures are often organised even before the first interview);*
- *Average duration of victim support (it can last from a few months to a maximum of three years; as an exception, it can last even longer);*
- *Funds spent on providing services to victims (it is currently not possible to keep complete and accurate records);*
- *Involvement of institutions and service providers in victim support (level of involvement, scope, quality). Insight into some of the involvement can be made by inspecting the files;*
- *Cases when support was requested, but the contacted CSO was unable to provide support/service (number, type and scope of service);*
- *Case conferences, type and level of involvement of institutions and organisations;*
- *Number of cases of re-trafficking after leaving the trafficking chain, since the Centre was established.*

It is not clear why there are still no official records for certain items. It was stated in the Annual Report that the Centre lacks **database software** used for entering data on victims of trafficking. It was emphasised that the Centre has carried out all the preparatory actions required for the creation of such a database (forms, cross referencing criteria, data on victims, etc.) and that the International Organisation for Migration is expected to announce a competition for the selection of contractors. It is anticipated that this software will be able to be upgraded to full interactive database capacity at a later date.

Given the mandate of the Human Trafficking Victims Protection Centre, the services and activities of the Centre, that is, of the Service for the Protection of Victims of Trafficking in Human Beings are available to potential beneficiaries around the clock. The Centre/Service has a full-time expert who is always on call, and a telephone number (+381 63 610 590)[150] which is available 24/7.

RECOMMENDATIONS

- The Centre has improved the availability of certain data related to its work (its Articles of Association, Rules of Procedure, and the Act on the Classification of Job Positions are available on the Centre's website). However, there is still much room for improving the availability, adequacy and transparency of data concerning its work with victims in the areas of identification, planning, coordination, and provision of services and protection.[151]
- The number of staff at the Centre is obviously not adequate, given the fact that only four professionals perform all the work related to the identification and coordination of assistance to all victims of trafficking in Serbia while also involved in all the other activities (participation in various events, trainings, seminars, conferences, etc.).
- The Centre should plan and provide sufficient resources to provide direct support to victims and ensure the continuous functioning of all aspects of its work (field work throughout the year, more comprehensive and more frequent direct support to victims).
- As soon as possible, the Centre should develop indicators for formal identification of victims of human trafficking, for its own needs.
- The Centre should develop and implement procedures for assessing the satisfaction of beneficiaries with the services it provides, and should

150 Not a licensed SOS hotline.

151 "...experts continue to report a lack of control and transparency in the official assessment of victims. "US Department Trafficking in PersonsReport 2019 – Serbia", translation: https://drive.google.com/file/d/15rvXQ7ym01KNZ1zkbMW92xCa0SovzQGt/view

periodically conduct an independent external evaluation as a basis for improving the quality of its work.

- The Centre should develop a clear and user-friendly complaints procedure, and should inform each user of its services about the correct procedure.
- The Centre should continually enhance and expand its cooperation with civil society organisations that provide services to victims, in order to offer victims a comprehensive support programme and better support their social inclusion (or return, if the victim is a foreign national).
- In the interest of victims and to raise their awareness, each victim should receive a clear, precise and concise overview of the services and organisations that are available to them, in writing, preferably including a signed acknowledgment of receipt of such notification.
- The Centre should continue to promote its position as an institution that coordinates the fight against trafficking, but it should also strengthen efforts to engage, support and enhance transparent cooperation with stakeholders with long-standing experience in this field (civil society organisations above all), thus strengthening the joint front in preventing and suppressing trafficking in human beings, in the best interests of the victims and with their maximum involvement in the process.
- The Centre should develop and strengthen contacts, at the operational level, with related and competent institutions in Southeast Europe and in countries that represent main destinations of Serbian victims of trafficking.

TANJA IGNJATOVIĆ, AUTONOMOUS WOMEN'S CENTRE

COMMISSIONER FOR THE PROTECTION OF EQUALITY

autonomni
ženski
centar
beograd

INTRODUCTION

The Autonomous Women's Centre continued to monitor the effectiveness of the institution of the Commissioner for the Protection of Equality as the central actor in the implementation of anti-discrimination policies and screening recommendations regarding the Action Plan for Chapter 23 (AP for Chapter 23).

When it comes to **internal efficacy** indicators, the way the office maintains internal records does not make it possible to obtain the necessary data on the employee workload, the labour costs and the costs of proceedings. The occupancy of job positions that have been classified (planned) in the Commissioner's professional service is *improving*, but has *not yet reached* the intended level. It is unclear why the 2017 budget, for the same planned number of employees (50), was significantly higher compared to that of 2016 (33.2%), and why it was 17% lower in 2019 than in 2017. The efficiency in responding to complaints filed by citizens is *inadequate*, primarily due to the large number of dismissed complaints and discontinued proceedings. Although a significant part of the Commissioner's activities (*from one half to two thirds,* at the annual level) involves consideration of complaints, only 8 to 12 percent of the reviewed complaints end up having an epilogue in the form of Commissioner's opinion and recommendation.

Institutional embedment indicators show that public authorities do not recognise discrimination and/or do not respect the institution of Commissioner, as most complaints are in fact filed against them. Still, the Commissioner's recommendations have been *complied with* in three quarters of the cases (recommended measures are complied with to an even greater degree), which is a solid indicator of respect for this institution. However, the key question is whether acting upon complaints leads to a *systemic* change in practice among those who have performed discrimination. When proposing mediation, the Commissioner should also *monitor* whether reached agreements are actually respected or their nature is merely declaratory. The institution of the Commissioner is *under-appreciated* by representatives of the legislative branch of power. The *responsiveness of the prosecutors' offices and the courts* in proceedings initiated by the Commissioner is also below satisfactory. At the same time, the number of instituted court proceedings appears to be *small*, as a consequence of a number of challenges mentioned by the Commissioner. Although properly authorised, the Commissioner *does not monitor or analyse the case law* regarding the application of the Law on Protection of Discrimination. The data collected by the Autonomous Women's Centre call into question a large number of proceedings that have been discontinued because proceedings carried out *regarding the same matter* are already pending or have been completed.

As regards indicators of the **legitimacy of the institution**, the visibility of the Commissioner and the percentage of citizens willing to turn to this institution have *increased considerably*, but citizens (male and female) from various

marginalised groups show less awareness and readiness to do so. Data on gender aspects of discrimination confirm that, among individuals who file complaints due to discrimination, women are generally consistently *less* present than men, and that complaints relate to personal attributes, which confirms the existence of "typical" gender identification. It is also worth noting that the Commissioner for the Protection of Equality *did not take the opportunity*, as an independent state body, to report to the UN Committee on the Elimination of Discrimination against Women on the state of affairs in this area, although she was in possession of relevant information.

INTERNAL EFFICACY

Employees' Workload

The occupancy of classified job positions in the Commissioner's professional service *is improving*, but has *not yet reached* the intended level. The Act on the Internal Organisation and Classification of Job Positions envisages **60** employees.[152] According to the Commissioner's staffing plan for 2018, for which budget funds have been approved, **44** civil servants and state employees were supposed to be employed by the end of the year (73.3% of the classified job positions); however, only **39** persons were employed permanently (65% of the classified job positions).[153]

When the number of employees planned and realised in the professional service of the Commissioner is tied to budgetary funds that were allocated and spent on employees' salaries, cash allowances and compensations (shown in Table 9), the following can be observed: a) that, in 2016 and 2017, the Commissioner *did not take the opportunity* to employ more people in the professional service by fully spending the allocated funds; b) that she *was not able* to employ the planned number of people, in relation to the allocated budget funds, considering the amounts she paid her employees in salaries, cash allowances and compensations; and c) that *it was not possible* to employ the planned 44 people in 2018, nor will it be possible in 2019, since the funds allocated for 2019 are only slightly higher than those that well allocated for the previous year, considering the amounts paid to employees in salaries, cash allowances and compensations as established by the Commissioner. What remains unclear is: why the budget in 2017 was significantly bigger (33.2%) than that for 2016, since it included the same planned number of employees (50), and why it is 17% smaller in 2019 in comparison with 2017.

152 57 appointed civil servants and civil servants in executive job positions, as well as three state employees.

153 Five permanent employees were hired, to replace four whose employment was terminated; one job competition failed although it was twice repeated. Regular Report of the Commissioner for 2018, p. 24.

Table 9: Number of staff in the professional service of the Commissioner in relation to budget funds allocated for salaries, cash allowances and compensations in 2016-2018

	Number of planned employees	Number of employees	Current appropriation	Spent	Percentage of execution	Possible number of employees*
2016	50	31	44,402,000	34,836,584	78.46	40
2017	50	36	59,178,000	39,740,908	67.15	54
2018	44	39	46,410,000	45,871,597	98.84	39
2019			49,389,000			

** The possible number of employees was derived from the budget funds allocated for the planned number of employees.*

It is not possible to estimate the average workload of the employees of the Commissioner's professional services.

Judging by a small number of cases that are carried over to the following year, the Office of the Commissioner is internally *very efficient*. In the observed period (2016-2018), the number of cases that were carried over was between four and nine percent, in relation to the total number of received complaints; in 2016, 56 of the 626 received complaints were carried over to the following year (8.9%), in 2017 - 21 of 532 (3.9%), and in 2018 - 56 of 947 (5.9%).

Labour Costs and Costs of Proceedings

Based on the available data, *it is not possible* to show the real costs of work of professional services according to type of work, i.e. the costs related to processing cases, complaints, conducting court proceedings, recommending measures, issuing warnings, and other activities reported by the Commissioner.

In the observed period, the Office of the Commissioner spent 59-79 percent of the funds that were made available to it. In 2018, budget funds that were allocated for the work of the Commissioner[154] were smaller (by RSD 12,902,000) than in the previous year, but that amount was higher by RSD 10,009,000 than the amount that was allocated to the Office in 2016. The funds available to the Commissioner per year *kept increasing* because of the inclusion of unspent donations from the previous year and funds received as donations during the current year. Table 10 shows the relationship between the initial appropriations (approved), the current appropriations (increased) and budget execution (spent) for the three observed years. Unrealised budgetary funds are generated, *inter alia*, by having fewer employees than allowed (especially in

154 "Official Gazette of the Republic of Serbia" no. 113/17

2016 and 2017, as shown in Table 9), but also because part of the project funds are carried over to the following year, which is a consequence of the timetable for the implementation of specific project activities (which does not coincide with calendar years).

Table 10. Izvršenje budžeta Poverenika za zaštitu ravnopravnosti u periodu 2016-2018. godina

	Initial appropriation (approved by the Budget Law)	Current appropriation (increased by donations and funds that were carried over)	Budget execution	Percentage of executed budget funds	Percentage of executed total budget*
2018	91,264,000	112,734,320	88,889,081	83.0	78.9
2017	104,166,000	118,549,299	69,488,579	64.0	58.6
2016	81,255,000	84,200,412	60,508,998	72.9	71.9

* *Including donations*

Internal Work Efficiency

Pursuant to the Rules of Procedure of the Commissioner,[155] acting upon a complaint *may not take longer than* 90 days. It would be *useful* to determine how long it takes, on average, to process complaints that are ultimately rejected, or discontinued, given that the highest number of complaints received tends to meet the above fate. However, the Commissioner keeps records in accordance with Article 63 of the Rules of Procedure, which makes it impossible to obtain the above information from electronic records.[156] It was stated that, in practice, "time limits represent a problem only in official cases, where, for example, more witnesses need to be heard, the proceedings were initiated against a large number of persons, it was not possible to deliver documents, in order to properly establish the facts properly present additional evidence there is a need to present additional evidence, request supplements to provided statements, etc." The Commissioner expressed the view that it would be far more appropriate if these types of cases were allowed a longer period of time for action, which should be envisaged by a future amendment of the Law on Protection of Discrimination.

155 "Official Gazette of the Republic of Serbia" no. 34/2011

156 Response of the Commissioner for Protection of Equality to a question posed by the Autonomous Women's Centre, communication no. 011-00-28/2019-04 of 25 September 2019.

Efficiency in Responding to Complaints

The primary function of the Commissioner is to handle complaints in all cases of discrimination. The available data confirm that a significant portion of the Commissioner's activities, *between one half and two thirds per year*, has to do with complaints. However, as shown in Figure 6, only 8 to 12 percent of the complaints get to have an epilogue in the form of Commissioner's opinion and recommendation.

Figure 6: Relationship between the number of cases, the number of complaints and the number of opinions issued by the Commissioner for the Protection of Equality in the period 2016-2018

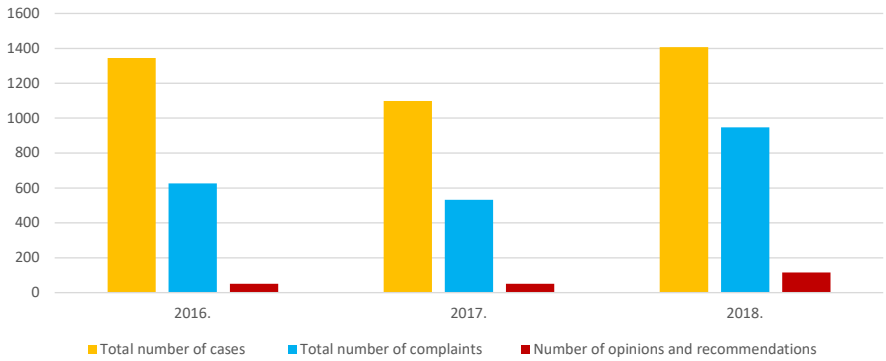
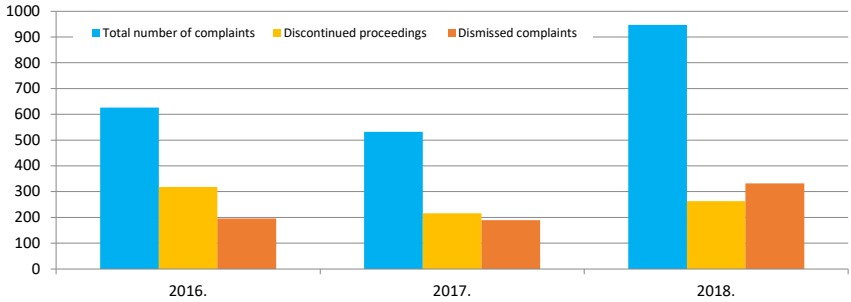


Figure 6 illustrates the relationship between the total number of complaints and the number of dismissed and discontinued proceedings. In all three observed years, *one-third* of the complaints that were received concerning discrimination were *dismissed*, while another *one-third to one-half* were *discontinued*. However, the number of discontinued complaints was reduced by half in 2018 compared to 2016. Complaints are dismissed when the Office of the Commissioner is not competent to act upon them, or when the complainant *fails to remedy* the deficiencies contained therein within the prescribed period of time. The most common reason for discontinuance is the assessment that "discrimination to which the applicant points clearly does not exist", but there are also other reasons, such as a finding that court proceedings are pending or have been concluded regarding the same matter, that action has been already taken and that no new evidence was offered, when the purpose of the proceeding could not be achieved due to the passage of time, or when the complaint has been withdrawn.

Figure 7: Number of complaints dismissed and proceedings discontinued by the Commissioner for Equality Protection in 2016-2017



The above data cannot be considered an exclusive indicator of internal efficiency (since the outcome in the acting of the Commissioner depends on the level of information and knowledge possessed by citizens, organisations and bodies that submit complaints). Still, they indicate that, on the one hand, too little is invested in educating and informing citizens about the competencies and role of the institution, and on the other, that the *resources of the office* are used mostly to inform applicants about how to remedy deficiencies in their complaints, to dismiss complaints or discontinue proceedings, and to draft justifications that must be prepared in this regard, and *least* to provide opinions and recommendations regarding discrimination.

In her regular annual reports, the Commissioner *does not list* key reasons for lack of jurisdiction and key deficiencies in complaints that have been assessed as incomplete (despite assistance that a complainant can obtain from the Complaints Department), with the exception of some of the examples of complaints that were not acted upon.

INSTITUTIONAL EMBEDMENT

Public authorities do not recognise discrimination and/or do not respect the institute of Commissioner

The data on the number and structure of complaints clearly indicate that state authorities *very rarely* contact the Commissioner regarding noted discrimination. As can be observed in Figure 8, in the period 2016-2018 the number of complaints filed by state authorities and bodies/institutions was *consistently low*, despite the significant increase in the total number of complaints in 2018 compared to the previous two years. This supports the claim that the authorities *do not recognise* discrimination, or do not recognise the institution of Commissioner as competent to handle complaints. However,

such an indicator has been expected, as in *most discrimination complaints* state authorities and bodies/institutions were designated as those against which complaints have actually been filed.

Figure 8: Persons who filed complaints against discrimination in 2016-2018

Mediation has been mentioned for the first time in the 2018 Report, as part of information that concerned the outcome of 88 complaints that have been filed by the organisation "Centre for Independent Living of Persons with Disabilities of Serbia", which investigated the accessibility of polling stations in the territory of urban municipalities in Belgrade, Kragujevac and Sombor. At the proposal of the Commissioner, a mediation process was conducted and a memorandum of understanding was signed with the City Electoral Commission and the city municipalities of Vračar and Savski Venac (City of Belgrade),[157] in which they agreed "to cooperate and take action in the future to improve all forms of accessibility of both polling stations and other public facilities, including physical but also functional accessibility for the visually impaired, hearing impaired, and persons with other forms of disability, with full commitment to the implementation of agreed activities and the achievement of common goals" (pp. 97-98).[158] Although the willingness of state authorities to change is a positive thing, it should be *monitored* whether the agreements (memoranda) will be complied with or remain declarative in nature, serving to delay obligations and find excuses.

In Activity 3.6.1.7 of AP 23, which refers to the development of a manual (in Serbian and in national minority languages) intended for employees of state administration and local self-government bodies, although it is stated that the manual has been created, it remains unclear whether 10 planned workshops

157 The city municipality of Novi Beograd (New Belgrade) did not concede to mediation, which led to the Commissioner's opinion on discrimination, while the proceedings against the cities of Kragujevac and Sombor were discontinued because the organisation failed to supplement the complaints. Bearing in mind the importance of these proceedings, the Commissioner has undertaken to analyse the accessibility of these facilities in order to make recommendations for equality measures.

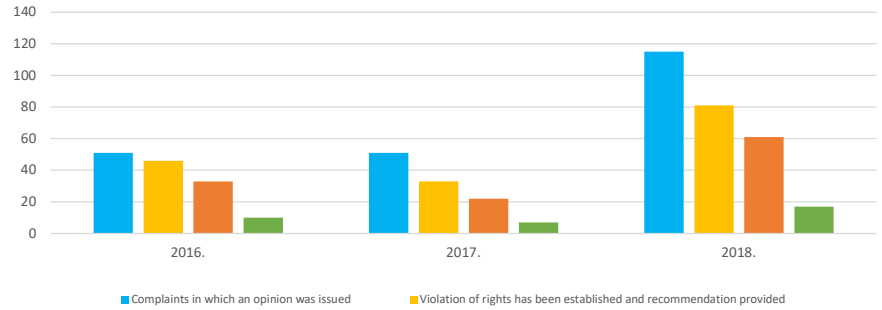
158 Additional information about the Memorandum of Understanding are available at: http://bit.ly/MoUsaopstenje.

have been implemented (p. 758),[159] or only five. Whatever the case may be, their number is insufficient considering the number of municipalities.

Compliance with the Commissioner's opinion

Commissioner's recommendations were *complied with* in three quarters of the cases, as shown in Figure 9, which is a solid indicator of respect for this institution.

Figure 9: Compliance with the Commissioner's opinion in the period 2016-2018



As regards *proposed measures*,[160] according to the reports of the Commissioner, a high percentage of them have been complied with in all three observed years (between 91.6% and 98.3%, which was the percentage that was achieved in 2018), which confirms that the institutions are responsive to this type of Commissioner's activity.

From the above data, the Commissioner has concluded, among other things, that discriminatory treatment is rarely a product of intent, although intent is not a decisive element of anti-discrimination proceedings (2018 Report, p. 68). However, the survey conducted by CRTA and A11 in 2019[161] states as follows: *The aforementioned number of recommendations and the relatively high degree of their implementation represent a significant success of the institution. However, the question that inevitably arises is: to what extent acting upon complaints leads to a systemic change in practice? Various examples show that complaints have resulted in no systemic changes whatsoever, i.e. that irregularities are eliminated and recommendations in individual case are complied with, but the same negative*

159 The Report is available at: http://bit.ly/izvestajAP23-2-2018.

160 In 2016, there were 665, in 2017 – 501, and in 2018 - 300 recommended measures. The deadline for action expired in two-thirds of them (462/69.5%) in 2016, and in three-quarters (369/73.7%) in 2017, while in 2018 the deadline for action expired in all the cases .

161 Trifković, M., Ćurčić, D. and Vasiljević, M. (2019). The Role and Position of the Ombudsman and the Commissioner for the Protection of Equality, Belgrade: Center for Research, Transparency and Accountability - Crta and A11- Economic and Social Rights Initiative, Available at: https://crta.rs/wp-content/uploads/2019/01/Uloga-i-polo%C5%BEaj-Za%C5%A1titnika-gra%C4%91ana-i-Poverenika-za-za%C5%A1titu-ravnopravnosti.pdf

practice continues in other similar cases. Although this involves the application of the same regulation and equal circumstances, from which it follows that the recommendation should set a general rule for future cases, the impression is that this is not happening (p. 12).

When asked for records/a list of institutions/organisations that repeated discrimination (towards other person/persons) even though they had complied with her earlier recommendations, the Commissioner replied that no such records were kept. (Article 63 of the Rules of Procedure does not envisage for such records).[162]

Importance of the institute of Commissioner for representatives of the legislative branch of power

Each year the Commissioner submits regular annual reports to the National Assembly of the Republic of Serbia, but they have *not been reviewed* (at plenary sessions) since 2014, from which it follows that there also have been no conclusions or recommendations aimed at reducing discrimination, despite the fact that the National Assembly is required to adopt them. The latest European Commission Progress Report for Serbia also points to this fact (p. 9).[163] For the first time since then, at the first meeting of the second ordinary sitting of the National Assembly in 2019 (held on 1 October 2019),[164] the Regular Annual Report of the Commissioner for Protection of Equality for 2018 and the draft conclusion of the Committee on Human and Minority Rights and Gender Equality were discussed and adopted. The impression is that the Commissioner did not make sufficient use of the opportunity to point to discriminatory speech that was present in the questions and comments of MPs when they were considering her Report, which would have had the effect of informing the public, given that regular sittings of the National Assembly are broadcast on Radio Television of Serbia.

The Commissioner's regular annual reports, as stated in the reports themselves, were *thoroughly* discussed each year by the Committee on Human and Minority Rights,[165] as well as at meetings of other committees[166]; however, the conclusions and recommendations of those bodies were *not provided*.

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162 Response of the Commissioner for Protection of Equality to the question posed by the Autonomous Women's Centre, communication no. 011-00-28/2019-04 of 25 September 2019.

163 Available at: http://www.mei.gov.rs/upload/documents/eu_dokumenta/godisnji_izvestaji_ek_o_napretku/Serbia_2019_Report.pdf

164 News are available at: http://www.parlament.gov.rs/Prva_sednica_Drugog_redovnog_zasedanja_Narodne_skup%C5%A1tine_Republike_Srbije_u_2019._godini.37437.941.html

165 At sessions held on 26 September 2016 and 20 July 2017, on 22 May 2018 and on 10 September 2019.

166 At the meeting of the Committee on Justice, Public Administration and Local Self-Government held on 14 September 2016. as well as on 3 April 2018, on the occasion of the International Roma Day, at the meeting of the Committee on Human and Minority Rights and on 30 November 2018, on the occasion of the International Day of Persons with Disabilities, at the meeting of the Committee on Labour, Social Affairs, Social Inclusion and Reduction of Poverty.

Responsiveness of the prosecutor's offices and courts in proceedings initiated by the Commissioner

Six requests were filed with the Constitutional Court during the reporting period (four in 2018,[167] and one each in 2016 and 2017); *three misdemeanour proceedings* were initiated (one each year); *nine criminal charges* were filed (three each year), as well as *four lawsuits* for protection from discrimination (three in 2017 and one in 2018[168]). The regular annual report of the Commissioner for Protection of Equality for 2018 (p. 198) states as follows: *Citizens' complaints that need to meet the requirements for so-called strategic litigation certainly represent a challenge in the work of the Commissioner in this domain, while obtaining evidence for the first hearing – at which all evidence, in accordance with the law, must be presented to the court – happens to be another problem... Sometimes obtaining the consent of the person who suffered discrimination can also be an issue, for various reasons such as fear, lack of trust, etc.* The Report also states that *consent does not have the character of a power of attorney, because the Commissioner files a lawsuit on his own behalf and in the interest of the public. Consent to file a lawsuit is required only when the exact identity of the persons who believe they have been discriminated against is known, and it is not required if the act of discrimination has been committed against a group of persons that cannot be identified.* This was also the Commissioner's response to the *additional question* regarding possible reasons for the small number of court proceedings. We were told that the Office of the Commissioner was invited (because of its experience with strategic litigation) to be a part of the ECVINET Working Group, which reviews cases that are pending before the European Court of Human Rights in which ECVINET might have an interest in interfering as a third party, and that since the beginning of the year no case that meets all the criteria of strategically important litigation has been found, which confirms how difficult they are to select.

The 2017 Report did not specify the stage of the requests for the instigation of *misdemeanour* proceedings. It also stated that one misdemeanour proceeding from 2011 was *discontinued due to the statute of limitations* (at the request of the Commissioner).[169] The proceeding initiated in 2018 is still pending.[170] This indicates that the misdemeanour court is not responsive to the issue of discrimination, although the number of misdemeanour reports filed by the Commissioner is extremely small.

As regards *three criminal* charges that were filed by the Commissioner in 2017,[171] *one* was dismissed by the competent basic public prosecutor's office on the grounds that there was no reason to suspect that it involved an offence that was

167 These proposals encompassed proceedings that have been initiated based on 110 complaints.

168 The 2016 Regular Annual Report does not state whether and how many lawsuits were filed that year, but provides information on the total number of lawsuits – at the time, there were 13.

169 For additional information, see the Report for 2017, pp. 172-173.

170 For additional information, see the Report for 2018, p. 203.

171 For additional information, see the Report for 2017, pp. 171-172.

prosecuted *ex officio*, while in the other two cases criminal charges were filed with higher public prosecutor's offices. However, it was not stated whether they have been accepted, and if so, what the current stages of these proceedings were. As regards *three* criminal charges filed in 2018, the Commissioner stated that in one case the prosecutor's office submitted a request to collect the necessary information from the Department of High-Tech Crime, and that one charge was dismissed, which led the Commission to contact the Office of the Republic Public Prosecutor.[172] These data also suggest that authorities in charge of criminal prosecution are *not sufficiently responsive to discrimination* and the institute of the Commissioner for the Protection of Equality.

The 2017 Report summarises the results of all the civil proceedings. Out of a total of 16 anti-discrimination *lawsuits* initiated by the Commissioner's office, *seven* were finalised in favour of the Commissioner (the court accepted the claims in their entirety). In *one* proceeding, the court upheld the Commission's claim, but the judgment is yet to become final (the defendant filed an appeal). In *two* cases, the Commissioner withdrew the lawsuit (in one case the defendant had the contested decision abolished, and in the other it amended the rulebook that gave rise to the lawsuit). *One* proceeding was terminated because the defendant was deleted from the register of companies. *Two* proceedings were finalised with the dismissal of the Commissioner's claim, and three proceedings are still pending.

In 2017, the Commissioner instituted *three* civil proceedings, *none of which was completed*. During the same year, one judgment was issued concerning the proceeding that had been initiated earlier, but that one was not concluded either because the decision was appealed.[173] In relation to three civil proceedings initiated in the previous year, the 2018 Report states that in one of them the Higher Court fully upheld the claim, but that the decision was reversed by the Appellate Court in favour of the plaintiff. As for the other two proceedings, one did not end with a final judgment and the other was never completed. The provided information indicates that the courts are *not sufficiently responsive* to discrimination.

This finding is confirmed also by the study on the analysis of the application of anti-discrimination regulations (Reljanović, 2017),[174] which states that the case law in the Republic of Serbia is very inconsistent when it comes to the application of statutory definitions relating to discrimination, that there are judges who are "hostages to prejudice and stereotypes" (p. 6), that the courts generally do not understand all the terms and some forms of discrimination, that they do not apply some of the rules of procedure, that they narrowly interpret their competencies and do not treat cases as particularly urgent

172 For additional information, see the 2018 Report, pp. 201-203.

173 For additional information, see the 2017 Report, pp. 169-171.

174 Reljanović, M. (2017), *Study on the Implementation of the Law on Prohibition of Discrimination in Serbia*, Belgrade: Committee of Lawyers for Human Rights – YUCOM, available at: http://bit.ly/reljanovic2017.

although they often appear to be more efficient in discrimination cases than in others. It should be noted that the Commissioner *did not implement* Activity 3.6.1.17 from the AP for Chapter 23 (planned for the first and second quarters of 2017), in the part related to the development and distribution of the manual for recognising and effectively combating discrimination (in Serbian and national minority languages) for judges, public prosecutors, deputy public prosecutors and police officers.[175]

Our attention was drawn to the Commissioner's interpretation that she is *not allowed to act* upon a complaint if court proceedings have already been initiated or finalised concerning the same matter (LPD, Article 36, paragraph 1). The number of complaints that have been dismissed on these grounds was *twice as high* in 2018 compared to 2016. In our 2018 text,[176] this issue was illustrated by the case of a complaint filed by the Autonomous Women's Centre, on behalf of a woman, for discrimination on the grounds of gender and marital and family status. Regarding that case, the Commissioner replied that court proceedings were pending concerning the same legal matter and that, for this reason, she could no longer act upon the complaint. However, in that case the proceedings before the court were not conducted for discrimination – it was in fact a divorce and child custody proceeding.

Research into this issue is associated with a number of difficulties. Although the Commissioner for Protection of Equality is legally authorised to monitor the implementation of the law (LPD, Article 33, item 7), which is also an activity that is listed in the AP for Chapter 23 (Activity 3.6.1.15) and has been reported to have been successfully implemented,[177] the fact remains that the Commissioner *does not monitor or analyse the case law* regarding the implementation of the LPD. Also, *it is incorrect* to state that the judiciary in Serbia has a good record when it comes to protection against discrimination.[178]

The Autonomous Women's Centre requested information[179] from the Ministry of Justice and the Supreme Court of Cassation on the total number of lawsuits filed in violation of the LPD in 2016, 2017 and 2018; the number of lawsuits filed by physical persons, organisations and the Commissioner for the Protection of Equality; the number of complaints based on gender (Article 20 LPD); and the number of judgments in which discrimination was proven - broken down according to claimant, type of court and year. The Ministry of Justice replied[180] that it *did not have the requested information* because the cases were not kept in separate registers. A similar response was provided by the Supreme Court

175 *Report no. 2/2018 on the implementation of the Action Plan for Chapter 23*, July 2018, p. 758. Available at: http://bit.ly/izvestajAP23-2-2018.

176 *Institutional Barometer,* 2018. p. 98, coalition Preugovor, op.cit.

177 Report no. 2/2018, Council for the Implementation of the Action Plan for Chapter 23, op.cit.

178 *Committee on the Elimination of Discrimination against Women, Seventy-second session, Summary record of the 1675th meeting* (28 February 2019, at 10 a.m.), para. 27. pp. 5, available at: http://bit.ly/CEDAWreport2019

179 Based on a request for free access to information of public importance.

180 Communication no. 7-00-00218/2019-32 of 30 May 2019.

of Cassation,[181] which stated that it did not possess the required information because there was no separate register. However, it provided the number of audits by inspecting registers "Rev" and "Rev2 - pending".

Letters with the same request were sent to the addresses of all Appellate and Higher Courts in Serbia. The responses confirmed that there were *tens of thousands of discrimination cases* that involved military reservists as plaintiffs, while the defendant was the Ministry of Defence. However, due to the large number of these cases and the fact that they do not carry specific labels, most courts are *unable* to search for them or classify claims according to the grounds of discrimination envisaged by the LPD.[182]

This was confirmed also by the above mentioned research (Reljanović, 2017), which stated that it was estimated that approximately 150 cases were brought before the courts in Serbia during the eight years of the application of the LPD, (p. 5), and that they are very difficult to track because they are not specially marked (p. 8).[183]

Because of these difficulties, the Commissioner stated in the 2018 Report that amendments and supplements to the Law on Prohibition of Discrimination should include the establishment of a single, centralised and standardised system for collecting, recording and analysing data relevant for monitoring discrimination and the functioning of the legal protection system[184] (the 2018 Report, p. 81).

However, these data raise the question of how it is possible that the Commissioner *discontinued work on all of 44 discrimination complaints* in 2018, and on a total of 98 complaints in the three-year period (2016-2018) due to court proceedings that were already pending or completed *regarding the same matter*. This indicates that, in most cases, citizens either neglect the legal restriction, filing a complaint to the Commissioner for the Protection of Equality together with the lawsuit, or the Commissioner *incorrectly interprets* its meaning, which, if true, would be extremely important to investigate.

All the above confirms that the assessment of successful implementation of the Activity 3.6.1.15 from the AP for Chapter 23 cannot be verified.[185]

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181 Communication Su II-17A 32/19 of 7 April 2019.

182 The exception is the Higher Court in Vranje, which reported *seven* gender discrimination lawsuits, of which two claims were upheld, while the Higher Court in Zrenjanin stated that there were only two other discrimination cases involving military cases reservists, none of whom were gender based.

183 Reljanović, M. (2017), op.cit.

184 The Commissioner also stated that the Draft Law on Amendments and Supplements to the Law on Prohibition of Discrimination, adopted by the Government, was not submitted to the Commissioner for opinion. The Draft establishes an obligation for the courts to submit to the Commissioner anonymised final decisions regarding protection against discrimination. She also added that no additional funds were provided for the creation of electronic records and the required number of employees who would perform these tasks (Report 2018 p. 81).

185 *Report no. 2/2018 on the implementation of the Action Plan for Chapter 23*, op.cit, p. 745.

LEGITIMACY OF THE INSTITUTION

Citizens know and trust the institution

Visibility of the institution of Commissioner increased significantly in the period 2013-2016, as shown by the results of an opinion poll that was conducted in both years using the same methodology.[186] The percentage of citizens who know that there is an institution that protects equality has increased from 33% in 2013 to 51% in 2016. However, segregated data from the survey report indicate that at least two groups of citizens have less than average knowledge of the fact that such an institution exists: only 37% of *young* citizens and only 40% of male/female citizens *of other nationalities* are informed about the institution of Commissioner (data from 2016).

Willingness of citizens to demand protection of their rights

The percentage of citizens who would approach the Commissioner in the case of discrimination was 18% in 2016; it was *significantly* higher than that of 2013, when there were only 2% of such people. The research report states that this trend "coincides with the increasing trend in the number of complaints filed with this independent and specialised body". At the same time, the number of complaints filed in 2017 was down 17.7% compared to the previous year. This research also registered an increase of the level of trust in other institutions, especially the police (which is trusted more than citizens of the EU trust their own police forces). So, the number of citizens who would turn to one of the institutions increased from 32% in 2013 to 63% in 2016, but their willingness to do so is strongly related to their socio-demographic circumstances.

Citizens' confidence in state institutions when it comes to protection against discrimination is lower in groups that are at a higher risk of being discriminated against: 47.2% among the *indigent*, citizens *with low levels of education*, and the population with unfinished elementary school - 55%, among the members of other *ethnic* groups - 50%, among women - 61% and 68% among men. This is quite expected, as well as in line with the types of discrimination complaints submitted to the Commissioner.[187]

Commissioner's regular reports state that the largest number of complaints, about 40 percent (i.e. 38.9% in 2016 and 43% in 2017), were filed against *state authorities,* while another five percent were filed against *bodies-institutions*. Despite the fact that public opinion polls conducted on the topic of discrimination show an increased trust in institutions, the number of discriminations committed by these same institutions is still high.

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186 Public opinion survey: "Citizens' attitude towards discrimination in Serbia", from 2016, available at: http://ravnopravnost.gov.rs/rs/izvestaj-o-istrazivanju-javnog-mnjenja/

187 Ibid, pp. 27-29.

Given that citizens who are potentially more discriminated against possess less information and are less confident in institutions, and that the largest number of discrimination complaints addressed to the Commissioner was judged to be "clearly not cases of discrimination", it is important to devise a way to effectiveli distribute information and content that specifically addresses the circumstances and needs of most vulnerable groups. This refers to information on what constitutes discrimination, the procedure before the Commissioner, and particularly how citizens can make it likely that discrimination has occurred.

Citizens' awareness of access to and protection of rights, and the efforts of the Commissioner to promote those rights

As already discussed, the main function of the institution is the the Commissioner's acting upon the citizens' discrimination complaints. Considering that the expert service of the Commissioner also provides *professional assistance* to complainants in drafting and filing complaints, collects, prepares and provides information to complainants regarding their rights and possibilities to initiate proceedings, directs complainants to the prescribed proceedings and competences of the authorities (when the case does not fall within the competence of the Commissioner) and deals with analyses, investigation and promotion of equality, the high number of dismissed complaints and discontinued proceedings indirectly indicates that citizens essentially *do not know how to differentiate between discrimination* and possible violations of their rights made on other grounds, i.e. that they do not know how to prepare information based on instructions received from the Commissioner.

An analysis of *all* cases that were found to be "clearly non-discriminatory", aimed at informing the citizens about what discrimination is and what it is not, would constitute important information on the work of the Commissioner not only because of these cases' high level of participation in the total number of complaints, but also due to the fact that the above is clearly *not obvious* to citizens.

It would be important to determine whether and how the Commissioner's Office examines and assesses *user satisfaction* in terms of availability, efficiency and professionalism of its work. It should also be noted that Activity 3.6.1.18 from the AP for Chapter 23, which is related to improving the recognition of discrimination cases and informing the citizens of the existing mechanisms (which was planned for the first and second quarters of 2017), and the Activity 3.6.1.19, which refers to the media campaign on these issues (planned for the third and fourth quarters of 2017), were implemented *only partially*.[188]

188 *Report no. 2/2018 on the implementation of the Action Plan for Chapter 23*, pp. 258-260.

Data on gender aspects of discrimination

Among the physical persons who file complaints for discrimination, **women** are generally consistently *less* present than men. They filed approximately two-fifths of the complaints in 2016 and 2017; however, this ratio changed in 2018, when women filed 58.5% of the complaints. The number of female complainants was much higher because 556 women filed 104 complaints regarding the application of certain provisions of the Law on Financial Support for Families with Children.

Gender is one of the most commonly cited *personal attributes* that cause filing of discrimination complaints. In 2016, this personal attribute was ranked *first* (together with disability) in terms of representation, whereas in 2017 and 2018 it was ranked *third* (after disability and age).[189] Of the 75 persons who stated that gender was the basis of discrimination in their 2016 complaints, as many as *three quarters* were women (57/76%). They were also the more represented complainants when it came to the *marital and family status* (32/68.1%), *citizenship* (5/71.4%), *gender identity* (3/75%) and *appearance* (3/75%), which confirms the existence of a "typical" gender identification which includes personal attributes.[190]

One might expect women to be more often discriminated against than men based also on their other personal attributes, but the number of filed complaints does not confirm this. Men filed more discrimination complaints regarding all other personal attributes.[191] It would be useful to find out whether women know how to recognise multiple (intersectional) discrimination; how important other personal attributes are to them, especially as a consequence of gender socialisation; and how this affects their willingness to react by filing a complaint.

In terms of *areas of social relations*, the largest number of complaints filed in 2016 and 2017 related to the area of *work*, that is, to the *employment process and the workplace* (one third of the total number of received complaints).[192] Their number was however smaller in 2018, and this basis consequently ranks second (20.8% of complaints). The percentage of women who filed complaints on this basis fluctuated between two-fifths (in 2017) and almost two-thirds (in 2018).

189 In 2016, gender was present as an attribute in 82 complaints (12.9%) and in 2017 in 71 complaints (11.2%).

190 The 2017 and 2018 Reports omit a summary statistical overview of complaints according to the complainant's personal attributes.

191 Men were more likely to file complaints of discrimination based on disability, age, nationality and ethnic origin, health status, membership in political, trade union and other organisations, religious and political beliefs, financial status, sexual orientation, criminal record, language, ancestry, genetic traits, birth, and other attributes.

192 In 2016, there were 212 (33.9% of the total number of complaints), while in 2017 there were 166 (31.2% of the total number of complaints).

In 2018, the largest number of complaints referred to the *provision of public services* or *use of facilities and surfaces* (almost one third), while in the previous two years this basis ranked third (approximately 10%). In all three years, women filed fewer complaints than men; however, the number kept increasing each year (from one third to almost half of the total number). Discrimination complaints concerning *proceedings held before public authorities* (court, municipality, ministry, commission) constituted one quarter of all complaints filed in 2016, one fifth in 2017 and just under a fifth in 2018. Women were minority complainants in this area as well, in all three years. The area of *social protection* experienced a significant increase in the number complaints in 2018 (13.1%) as well as the highest gender disproportion among the submitters – women filed all of 90.7% of the complaints (see Figure 10). In 2018, women also filed more complaints in the areas of *public information and media*, *education and vocational training*, as well as in a few other areas that used to have very few complaints.

Table 11: Areas of discrimination, according to the type of complainant, 2016-2018

Areas of discrimination, according to the complainants	2016	2017	2018
Total number of complaints	**626**	**532**	**947**
Employment and place of work	**212**	**166**	**197**
Physical persons	180	144	182
Women	95	60	112
Proceedings before the public authorities	**146**	**114**	**168**
Physical persons	86	99	149
Women	32	34	58
Provision of public services	**59**	**64**	**261**
Physical persons	46	47	61
Women	14	20	28
Social protection	**18**	**24**	**124**
Physical persons	15	22	119
Women	8	9	108

It should be noted that *two out of a total of three civil* proceedings that were carried out in 2017 were conducted on behalf of a woman or in relation to gender as a personal attribute that served as grounds for discrimination. In 2018, the Commissioner filed a criminal report against a Facebook user who was advocating violence against women in his comments.

It is *striking* that the Commissioner's reports for 2017 and 2018 *do not mention* the Fourth Periodic Report on the Implementation of the Convention on the Elimination of All Forms of Discrimination against Women (adopted by the Government at the session held on 27 July 2017), or the Response to Additional Questions to the Committee on the Elimination of Discrimination against Women in connection with the Fourth Periodic Report of the Republic of Serbia (adopted by the Government at the session held on 8 November 2018).[193] We note that the Commissioner for Protection of Equality, unlike PoC,[194] has **failed to take the opportunity** to report as an independent state body to the UN Committee on the Elimination of Discrimination against Women on the situation in this area, even though the Special Report of the Commissioner for Protection of Equality on discrimination against women was prepared in 2015.[195]

RECOMMENDATIONS

Institutional Efficacy and Productivity

- By amending and supplementing the Rules of Procedure, the Commissioner for the Protection of Equality should improve internal (electronic) records so as to make it possible to more fully monitor and report on various aspects of internal efficiency, such as the average time required for processing received complaints (including those that are dismissed or discontinued), the average workload of the employees of the professional services, or the average labour costs of the professional services according to the type of work performed.
- Bearing in mind that only 8 to 10 percent of considered discrimination complaints result in the opinion and recommendation of the Commissioner for the Protection of Equality, it is recommended that enhanced measures and activities be undertaken to inform citizens about the occurrence of discrimination, containing clear information about the reasons for dismissal or discontinuation of proceedings upon complaints.

193 Report and replies are available at: https://www.ljudskaprava.gov.rs/sr/node/156.
194 Report is available at: http://bit.ly/CEDAWreport2019.
195 Report is available at:http://ravnopravnost.gov.rs/rs/izvestaji/.

Institutional Embedment

- Although the National Assembly of the Republic of Serbia considered the Regular 2018 Annual Report of the Commissioner for the Protection of Equality for the first time since 2014, earlier disregard for these reports, as well as the discriminatory speech present in the questions and comments of MPs, constitute an unacceptable attitude of the National Assembly towards this institution. The Commissioner should use every opportunity to consistently draw attention to unacceptable views and speech of Members of the Parliament.
- Given that the data indicate that public authorities do not sufficiently recognise discrimination and/or the institution of the Commissioner for the Protection of Equality, and that most of the complaints are actually filed against them, it is necessary for the Commissioner to conduct additional training in accordance with Activity 3.6.1.7 listed in the AP for Chapter 23.
- Pay more public attention to those who do not follow the recommendations of the Commissioner, as well as those who repeat discriminatory practices in other cases, to apply additional pressure and increase public awareness of the discrimination issues.
- Persist in filing discrimination lawsuits, as these proceedings are strategically important, and implement Activity 3.6.1.7 from the AP for Chapter 23 (which was planned back in 2017).
- Consider the interpretation of the phrase "the same matter" in Article 36 of the Law on Prohibition of Discrimination, which discontinues the Commissioner's actions upon citizens' complaints, especially in the cases where the court was not addressed due to discrimination, but on other grounds.

Legitimacy of the institution

- Find a way to make information on discrimination, the institution of the Commissioner, and the complaints procedure more accessible to marginalised social groups, including women as targets of multiple discrimination.

DUŠAN ŠABIĆ, CENTRE FOR APPLIED EUROPEAN STUDIES

COMMISSIONER FOR INFORMATION OF PUBLIC IMPORTANCE AND PERSONAL DATA PROTECTION

CPES
CENTAR ZA PRIMENJENE EVROPSKE STUDIJE

SUMMARY

The institution of the Commissioner has improved its internal efficiency in the year under review (2018). It should be noted that the institution undoubtedly confirmed the high level of quality of its work, knowledge and employee dedication also in 2019, during which it functioned very successfully for almost six months without a formal head.

Unfortunately, almost nothing has been done about the problems to which we pointed in the first issue of the Barometer. Consequently, the institution continues to work with limited human resources and a constantly increasing workload. In addition, the mechanisms for enforcing the Commissioner's decisions are completely blocked. Violators of both laws protected by the Commissioner mostly go unpunished, which is certainly sending an extremely bad picture and message. The attitude of the institutions that, together with the observed one, make up the institutional arrangement is irresponsible, to say the least, and must be changed as soon as possible.

What is important to note is that, despite all the problems it is encountering, which will be described in greater detail below, the institution manages to play its role, i.e. to ensure the exercise and protection of citizens' rights, work efficiently, and make decisions based solely on the letter of the law. It is precisely for these reasons that the legitimacy of the institution, its recognition, and the confidence that citizens have in it – which are reflected above all in the constant increase in the number of citizens who address it, believing that it will be able to help them exercise the rights guaranteed to them by both the Law on Free Access to Information of Public Importance (FOI Law) and the Law on Protection of Personal Information (LPDP) – continues to increase from one year to the next.

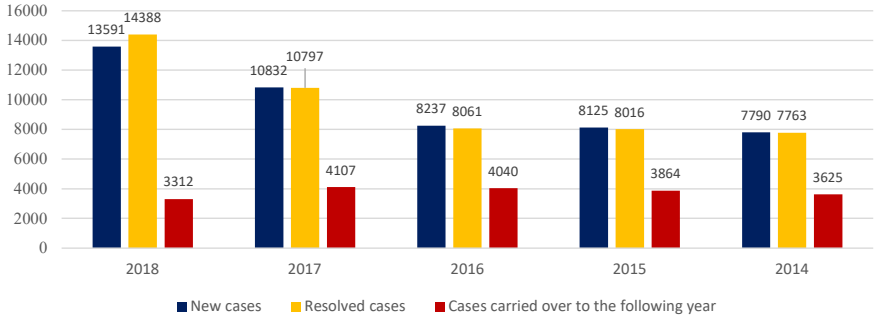
INTERNAL EFFICACY

Constant Increase in the Number of Cases

One of the most important criteria for evaluating an institution's internal efficiency is certainly how efficiently it handles cases. Looking at the institution of the Commissioner, we can immediately notice a constant increase in the number of cases from one year to the next. In 2018, the institution received 13,591 new cases. If we compare it to the previous years, this figure shows a significant increase in the number of cases. The Commissioner received 10,832 new cases in 2017; 8,237 in 2016; 8,125 in 2015, and 7,790 in 2014. If we look at the number of resolved cases, the situation is as follows: in 2018, the institution completed work on 14,388 cases, in 2017 on 10,797 cases, in 2016 on 8,061 cases, in 2015 on 8,016 cases, and in 2014 on 7,763 cases. Without any additional information, the situation might seem almost ideal; however, for years now, the

institution has been transferring unresolved cases to the following year. Thus, 3,312 cases were carried over to 2019; 4,107 cases to 2018; 4,040 cases to 2017; 3.864 to 2016; and 3625 to 2015. Looking at the complete picture, we can see that the situation is not quite as ideal as we thought; namely, the institution is carrying over a considerable number of cases to the following year. Still, after a constant upward trend, the numbers stopped growing in 2018 and have decreased significantly compared to 2017.

Figure 10: Actions of the Commissioner for Information of Public Importance, according to the types of cases



Information is Difficult to Obtain without Filing a Complaint

The institution received 3,346 complaints in 2018 concerning the area of free access to information of public importance, which corresponds to the average number of complaints filed in the last few years. Compared to 2017, though, when there were 3,680 such complaints, the number has decreased by 10 percent. Although there were fewer formally filed complaints, the institution resolved approximately 13% more in 2018 than in 2017 – a total of 3,974. Of the aforementioned number, as many as 88.86% were founded, and as many as 82.76% of the total number involved complaints that were filed because of the so-called "silence of the administration". In as many as 54.85% of the total number of substantiated complaints (3,444), upon learning of the complaint the person that was obliged to comply with the Law acted in accordance with the original request even before the Commissioner issued a decision. With this in mind, it is more than clear that our authorities are continuing, all of 15 years after the Law has been adopted, to apply the logic of "whomever complains will know, whomever fails to complain will remain blissfully ignorant". If we observe the previous years, the trend of this harmful behaviour of the public authorities presents the following picture: there were 61.8% such cases in 2017, 60.8% in 2016, 67% in 2015, and 59.8% in 2014.

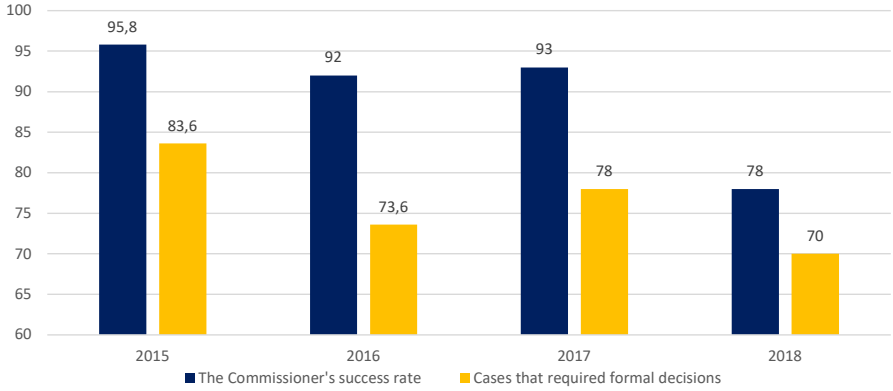
Briefly About the Number of Employees

Based on the Act on the Classification of Job Positions adopted by the National Assembly back in 2014, it was established that the Office of the Commissioner needed 94 employees. The number has not been changed to date. In reality, the numbers were quite different: in 2014, there were 56 employees in the Commissioner's service. The situation in 2015 was the same. In 2016, this number rose to 71, while in 2017 the number of employees was 78, which represented 83% of the total number of classified job positions. In 2018, the situation remained unchanged. Namely, 8 new persons were employed, but as many terminated their employment. Consequently, on 31 December 2018 the Commissioner's service was back to 83% of the total number of classified job positions. What is particularly worrying is that these data are in conflict with the Republic of Serbia's commitment from the AP for Chapter 23. Namely, the AP for Chapter 23 included a plan to reach the number of employees specified in the Act on the Classification of Job Positions by the year 2019. The same document stipulated that funds for this purpose would be allocated from the budget of the Republic of Serbia. The obligation was kept also in the draft Revised AP for Chapter 23, but the reality is completely different. The year 2019 is almost finished and nothing has changed. As a consequence, newly elected Commissioner Milan Marinović is facing the same problems. All we can do is monitor the situation and see how it will affect the efficiency of the institution, especially in view of the trend of constant increase in the number of cases from one year to the next and the stagnation of the number of employees.

The Institution Ensures the Exercise of Rights

In spite of all the institution's problems described above, it is extremely important to say that it does fulfil the role it was introduced into the legal system to play - **it ensures the exercise of rights**. The percentage of successful interventions of the Commissioner is still extremely high - in about 89% of cases the applicant did receive the requested information. However, where formal decisions were necessary, the percentage of their enforcement in 2018 **was the lowest since the institution started operating - about 70%**. Of particular concern is the fact that, in just one year, there was a decline of **as much as 8%** (in 2017 it was about 78%) and, in comparison with 2015, of as much as 13.6% (in 2015 this percentage was 83.6%). Such a fall is certainly the consequence of a complete blockade of mechanisms that should ensure the enforcement of the institution's decisions, which will be discussed in greater detain below. What we *can* say with certainty is that if this situation is maintained, it will inevitably affect the overall efficiency of the institution as well as its legitimacy.

Figure 11: Success of the interventions of the Commissioner for Information



INSTITUTIONAL EMBEDMENT

In this section, we will discuss how the system presented in the institutional maps "responds" to decisions and actions of the Commissioner.

In the area of free access to information, this issue can be considered first from the standpoint of effectiveness of the above mechanisms, which are available to the Commissioner under the letter of the law once a state authority decides to disregard its decision. The first thing t can do is impose a fine, that is, enforce the decision by indirect application. The fines the Commissioner used to impose under the previously applicable Law on General Administrative Procedure, in the amount of no more than RSD 200,000 per event – which the authorities largely paid voluntarily – did have certain effects; namely, they increased the number of the Commissioner's enforced decisions, thus also increasing access to information. However, after the adoption of the new Law on General Administrative Procedure,[196] the enforcement of Commissioner's decisions became impossible because other bodies' refused jurisdiction and cooperation in providing data necessary for the implementation of enforcement, and because of different interpretations of the relevant norms. Due to the above, fines that have not been paid voluntarily could no longer be collected, regardless of the fact that they represented public revenue of the budget of the Republic of Serbia. The full genesis of the problem was detailed in the Commissioner's Annual Report for 2017 – a document which National Assembly did not see fit to consider for four years in a row.

196 "Official Gazette of the Republic of Serbia" no. 18/2016.

Until 2012, enforcement of the Commissioner's decisions imposing such fines was carried out by the competent courts of general jurisdiction. In 2012, the First Basic Court in Belgrade (in charge of the highest number of enforcements, based on the seat of the authorities-enforcees) declared itself incompetent to enforce whenever the enforcee was the Higher Court in Belgrade. As other courts outside the territory had a different view and accepted the jurisdiction to enforce, the Commissioner requested that the Supreme Court of Cassation take a position on the matter. The Supreme Court of Cassation took the legal view that enforcement of the Commissioner's conclusions does not fall within the jurisdiction of the courts; that it is regulated in a special way in the Law on Access to Information; that the Commissioner's conclusion imposing a fine ***does not constitute an enforceable document*****;** *and that the Commissioner is the one who should enforce its conclusion by attaching funds deposited in the authorities' accounts. The practice of the courts remained uneven even after the legal position was taken. Beside the courts, other authorities potentially competent to enforce decisions or collect public revenues also declared themselves not competent to collect fines imposed by the Commissioner in the process of administrative enforcement namely: the Tax Administration of the Ministry of Finance, the National Bank of Serbia, the Misdemeanour Court in Belgrade and the Chamber of Public Enforcement Agents.*

Implementation of the new Law on General Administrative Procedure (1 June 2017), which significantly increased the fines in the administrative enforcement process (ranging from half of a legal person's monthly income to ten percent of the annual income generated in the Republic of Serbia in the previous year), introduced a new problem, not only concerning the enforcement of the Commissioner's decisions that involved sanctions, but also concerning the determination of the sanctions themselves, that is, obtaining data for the purpose of determining the fines (data on the annual revenue of the authorities for the previous year), which are necessary if one is to specify a fine in accordance with the law. The Ministry of Finance, as well as the Treasury Administration, categorically **refused** *to make such data available to the Commissioner, explaining that the concept of the total revenue of budget users was not defined by law, and that public revenues and income constituted general revenue of the Republic, not revenue of the individual authorities.*

The second mechanism, the only one that remains at the disposal of the institution after the "blockade" described above – which, at least according to the letter of the law, is applicable, if the Commissioner cannot ensure the enforcement of a decision by applying the available measures – is to address the Government of the Republic of Serbia, which is legally obliged to secure enforcement by direct force.[197] From 2010, when this obligation was prescribed, until the end of 2018, the Commissioner addressed the Government a total of 238 times, 65 of which in 2018. **Not once** did the Government ensure the enforcement of a Commissioner's decision. Such a truly unprecedented phenomenon should be mentioned particularly in the context of the conclusions

197 Article 28, paragraph 4 of the Law on Free Access to Information of Public Importance ("Official Gazette of the Republic of Serbia", nos. 120/2004, 54/2007, 104/2009 and 36/2010).

on consideration of reports that have been adopted by the National Assembly this year. In the aforementioned conclusions, which will be further elaborated below, the Assembly *"recommended that the Government, in accordance with the relevant legal provisions, ensure the enforcement of the Commissioner's final, enforceable and binding decisions..."* We can certainly agree that this is a first-class legal paradox, since the National Assembly, which *"elects the Government, supervises its work and decides on the termination of the mandate of the Government and Ministers"*,[198] **recommended that the Government comply with its legal obligation**. What we can add to this simply unbelievable sentence is that nowhere in the conclusions the National Assembly obliged the Government to take any action. Instead, it once recommended that it take it and twice invited it to take it.[199]

The National Assembly Does Not Respect the Law

As regards the institution's relationship with the National Assembly, it is best reflected in the fact that annual reports, which were duly submitted by the Commissioner in accordance with its legal obligations, **were not considered in the plenary for four years in a row**. Despite the fact that the Assembly is required by Law[200] and its own Rules of Procedure[201] to consider these reports, it grossly disregards this obligation, neither adopting conclusions nor supervising their implementation in order to improve the situation in the areas protected by the Commissioner. Thus, the very mechanism which, by the nature of its concept, should have been very effective, and should have provided a specific form of control by the National Assembly, was rendered completely senseless. As mentioned earlier, this year, after harsh criticism expressed in the European Commission Report on the progress of Serbia, the Assembly finally "considered" the Commissioner's report. We will not waste words here explaining what the debate looked like, but it is certain that it could and should have been used in a completely different way, and should have resulted in conclusions that were aimed at improving the situation in both areas protected by the Commissioner protects.

Of particular note is the fact that the National Assembly "allowed" the institution of the Commissioner to operate without a formal head from 22 December 2018 until 26 July 2019. Despite numerous appeals, made notably by the professional public and the civil sector, the National Assembly initiated the process of electing a new Commissioner only after harsh criticism expressed

198 Article 99 of the Constitution of the Republic of Serbia.

199 See the text of the Conclusions in Enclosure 1.

200 Article 58 of the Law on the National Assembly ("Official Gazette of the Republic of Serbia" no. 9/10) Article 58 of the Law on the National Assembly ("Official Gazette of the Republic of Serbia" no. 9/10).

201 Article 238 of the Rules of Procedure of the National Assembly of the Republic of Serbia ("Official Gazette of the Republic of Serbia" no. 20/12); Article 238 of the Rules of Procedure of the National Assembly of the Republic of Serbia ("Official Gazette of the Republic of Serbia" no. 20/12).

in the EC Report. During the above period, the Office of the Commissioner was discharged by Deputy Commissioner, Mrs. Stanojla Mandić.

The relationship between the Commissioner and the National Assembly, as well as the authorities from the executive branch of power, is also reflected in the institution's provision of opinions concerning the legal acts that govern the areas the institution protects. In 2018, the Commissioner issued more than 80 opinions on draft laws, bills, by-laws and other general acts which, unfortunately, **were not taken into account** by the competent authorities in the majority of the cases.

The Law on Free Access to Information Will (Not) Reduce the Attained Level of Rights

Although the Republic of Serbia made a commitment in the AP for Chapter 23 to amend the Law on Free Access to Information in the second quarter of 2016,[202] it subsequently moved that deadline to the second quarter of 2019 in the revised AP. However, not even the later deadline was respected. On the other hand, a Draft Law on Amendments and Supplements to the Law on Free Access to Information appeared in March 2017, prompting a number of discussions regarding the solutions contained therein. Two were particularly controversial. First, the Draft excluded state-owned enterprises registered as capital companies from the circle of entities obliged to comply with the Law. These are exactly the companies that in the past represented a "kingdom of darkness", that is, most frequently denied information to those who requested them. Needless to say, these companies have been repeatedly referred to as the focal points of corruption and nepotism. Obviously, the proposed solution made it very clear that it was much easier to make these companies "invisible" in terms of the FOI Law than to solve the above problems.[203]

The other solution that raised concerns was the introduction of the possibility for the authorities to initiate administrative proceedings against the decisions of the Commissioner in each individual case, thus delaying the enforcement of the Commissioner's decisions until a court decision was rendered. This solution represents a particular curiosity because, for **the first time in the legal system of Serbia, a first-instance authority has the right to bring action against a decision of a second instance authority**.

At the time of writing this text, we were in possession of information that the second solution was definitely abandoned. As for the first solution, after a strong and persistent civil sector campaign that lasted for almost a year, the

202 Activity 2.2.5.1 of AP for Chapter 23.

203 Particularly problematic was that such a solution was justified by saying that it "ensured equal market conditions" for the above entities, considering that it was necessary that they protect different business data. Given the existing Article 9 of the FOI Law, which provides for the protection of such data, it is more than clear that such reasoning is unsustainable.

Ministry of Public Administration and Local Self-Government announced that *"state-owned enterprises will be relatively exempted"*. On the same occasion, we were able to hear that the Draft has "grown" into a bill and has been referred to the Government. At the moment, it cannot be found on the websites of the Government, the National Assembly or the above Ministry. All we can do now is wait for the bill to find its way to parliamentary debate, when we will see the final solution.

The Penal Policy is Stimulating Lawbreakers

If we take a look at how the judiciary responds to inputs it receives from the institution of Commissioner, the situation is more than worrying. We are witnessing flagrant examples of violation of the Law on the Personal Data Protection on a daily basis. In this area, the Commissioner is authorised to file both misdemeanour and criminal charges. Most of these eventually fall under the statute of limitations. In the few where proceedings were initiated and completed, sanctions were lenient, prompting a conclusion that the judiciary stimulates violators of the above Law.[204] For the sake of illustration, in the period from 2010 to 2018, the Commissioner filed 39 criminal charges. Their epilogues were as follows: only two indictments were filed, one resulting in final conviction (a person was sentenced to 6 months probation) and one in acquittal. 19 criminal charges were dismissed, 14 of which due to the use of the institute of opportunity, three were dismissed because of the statute of limitations, while two were dismissed because they did not constitute offences that were prosecuted *ex officio*. Proceedings are still pending concerning the remaining 18 criminal charges.

In the area of free access to information of public importance, the situation is such that the Commissioner cannot initiate misdemeanour proceedings on his own; instead, he must addresses the Administrative Inspectorate of the Ministry of Public Administration and Local Self-Government with the request that it carry out supervision and initiate misdemeanour proceedings against violators. The Administrative Inspectorate rarely fulfills this obligation, so here too we have a situation where most proceedings that are carried out against violators of the Law on Personal Data Protection eventually fall under the statute of limitations. In the few cases that are concluded by misdemeanour courts, the average imposed sanctions are barely higher than the legal minimum. To illustrate, in 2018, the Administrative Inspectorate did not submit a single request for the instigation of misdemeanour proceedings despite nearly 4,000 well-founded complaints resolved by the Commissioner in the same year. The very absence of liability for violating this right – and not just misdemeanor liability – undoubtedly encourages responsible persons in the authorities to continue to violate it, certain that they will not have to bear any consequences. In

204 Source: Annual Reports on the Implementation of the Law on Free Access to Information of Public Importance and the Law on Personal Data Protection - https://www.poverenik.rs/sr-yu/o-nama/godisnji-izvestaji.html

addition, many years of absence of full liability for violation of rights is the main cause for the very large number of complaints submitted to the Commissioner which, as we have already pointed out, is constantly increasing.

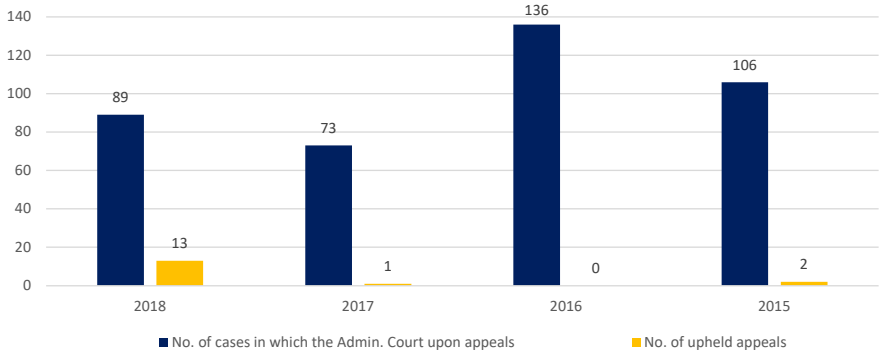
The Administrative Inspectorate did not file a request for the instigation of misdemeanour proceedings – not even on the recommendation of the Ombudsman – in the case of Air Serbia, ***which refused to comply with 20 final decisions*** *of the Commissioner and provide the complainant with requested information.*

Legality of the Institution's Decisions

The legality of the Commissioner's decisions can be reviewed in administrative disputes initiated against such decisions. Their outcomes show unequivocally that the decision-making of the Commissioner's institution adheres to the letter of the law. In 2017, out of 89 cases in which the Administrative Court acted on proceedings initiated against the decisions of the Commissioner, in 13 cases[205] the Court accepted the claim and returned the case to the Commissioner.

No decision of the Commissioner was ever reversed by the Administrative Court. As can be observed in the figure below, the situation in previous years was quite similar.

Figure 12: Review of Commissioner's decisions before the Administrative Court



205 The Administrative Court annulled and returned the case for reconsideration 13 Commissioner's decisions based upon claims of the Republic Public Prosecutor-s Office. Twelve of them referred to the cases in which the complainant was the Humanitarian Law Centre (HLC) against the Ministry of Defence, and they mainly involved information on the professional engagement of some of the members of the Ministry of Defence in the Yugoslav Army during the 1999 conflict in Kosovo, as well as their current status, that is, their movement within the Serbian Armed Forces (if they are still active).

INSTITUTIONAL LEGITIMACY

The constant increase of the number of pending cases clearly indicates that citizens recognise the institution of the Commissioner and believe that it can help them to exercise their rights. From just 270 cases back in 2005, the number rose to nearly 15,000 in 2017. Of course, this information is not exactly encouraging, as it speaks very clearly of the authorities' lack of awareness of the need to respect the law. On the other hand, it clearly shows that citizens do want to "consume" their rights, that they view the institution of the Commissioner as adequate, and that they trust it to help them. In addition, many years of successful cooperation of the Commissioner with civil society organisations, which manifested itself primarily through participation of representatives of the institution at numerous expert gatherings for the purpose of training, as well as affirmation – both of the right of the public to know and the right to protection of personal data – contributed not only to recognition of the institution but also significantly strengthened its legitimacy.

The planned public opinion survey and interviews with citizens who have had experience with the institution of Commissioner have not been conducted, and more detailed conclusions cannot be drawn at this time.

RECOMMENDATIONS

- It is necessary to ensure adequate staffing capacity of the institution of Commissioner and provide budget funds required to reach the number of employees planned in the Act on the Classification of Job Positions.
- Amendments and supplements to the Law on Access to Information of Public Importance must ensure a greater degree of rights, unblock the enforcement of Commissioner's decisions, and improve the entire system of free access to information in the the Republic of Serbia.
- The new Law on Personal Data Protection caused a number of problems and concerns from the day of its implementation. It is necessary for the state to systemically approach education in this area as soon as possible. Also, the state itself, before all other actors, must change its – to say the least – completely inadequate and irresponsible attitude towards compliance with the obligations arising from the above Law.[206]
- It is necessary to ensure that the work of the new Commissioner is completely free from any political pressure. Only in this way will it be possible to ensure the continuity of effectiveness of the institution and avoid "capture" similar to those witnessed in the past.

206 Out of approximately 15,000 administrative bodies in Serbia that are obliged to appoint persons in charge of personal data, only 200 have done this to date. Only six ministries fulfilled this obligation. Curiously, the line ministry which wrote the law did not name this person in respect of the provisions of the legal text.

- The authorities and institutions represented in the institutional map must have a much more responsible attitude towards both Laws that are protected by the institution of the Commissioner. This is a prerequisite for the effective functioning of the system of which the Commissioner is a part.
- Penal policy against violators of law must be adequate and effective and not serve as an incentive, like it used to.
- As can be observed from the results of the research, without establishing an adequate relationship, primarily between the Government / National Assembly and the institution of the Commissioner, i.e. without consistent adherence to the letter of the law, a decrease in efficiency and consequently in the effectiveness of the Commissioner's institution will be inevitable.

Z A K Lj U Č A K

povodom razmatranja Izveštaja o sprovođenju Zakona o slobodnom pristupu informacijama od javnog značaja i Zakona o zaštiti podataka o ličnosti za 2018. godinu

1. Narodna skupština konstatuje da je Poverenik za informacije od javnog značaja i zaštitu podataka o ličnosti u Izveštaju o sprovođenju Zakona o slobodnom pristupu informacijama od javnog značaja i Zakona o zaštiti podataka o ličnosti za 2018. godinu ukazao na stanje u oblasti slobodnog pristupa informacijama od javnog značaja i oblasti zaštite podataka o ličnosti, ocenjujući da je ostvareno stanje na polju zaštite i afirmacije prava na slobodan pristup informacijama od javnog značaja i prava na zaštitu podataka o ličnosti ograničenog napretka.

2. Narodna skuština poziva Vladu da u narednom periodu preduzme potrebne aktivnosti kako bi se omogućila efikasna primena načela koje propisuje Zakon o zaštiti podataka o ličnosti („Sl. glasnik RS“, broj 87/18), te da se donošenjem podzakonskih propisa obezbedi potpuno ostvarivanje prava građana na zaštitu podataka o ličnosti u skladu sa važećim propisima i međunarodnim standardima. Takođe, Narodna skupština podržava Vladu da intenzivira aktivnosti na pripremi izmena i dopuna Zakona o slobodnom pristupu informacijama od javnog značaja, kako bi se ova oblast unapredila i omogućilo poštovanje osnovnih načela slobodnog pristupa informacijama od javnog značaja.

3. Narodna skupština preporučuje Vladi da u skladu sa odgovarajućim zakonskim odredbama, obezbedi izvršavanje konačnih, izvršnih i obavezujućih rešenja Poverenika i da, koristeći postojeće zakonske mehanizme, preko nadležnog ministarstva, primenjuje mere iz svoje nadležnosti, pokretanjem postupka za utvrđivanje odgovornosti za propuste u radu državnih organa, kao i odgovornosti funkcionera koji nisu izvršavali obaveze u skladu sa zakonom.

4. Narodna skupština se obavezuje da će, u cilju stvaranja konzistentnog pravnog sistema u oblasti slobodnog pristupa informacijama od javnog značaja i zaštite podataka o ličnosti, u svojoj zakonodavnoj aktivnosti nastojati da se u pogledu predloženih pojedinačnih rešenja zakona obezbedi poštovanje osnovnih načela slobodnog pristupa informacijama od javnog značaja i prava na zaštitu podataka o ličnosti, posebno kada na to ukaže Poverenik za informacije od javnog značaja i zaštitu podataka o ličnosti.

5. Narodna skupština poziva Vladu da redovno podnosi Narodnoj skupštini izveštaj o sprovođenju ovih zaključaka.

6. Ovaj zaključak objaviti u „Službenom glasniku Republike Srbije“.

Illustration of the Baskets of Indicators

Given the completely different nature, roles and competences of analysed institutions, we formulated sets of fairly diverse indicators that suited the purposes of our research. As explained earlier, in the section on the methodological framework, after a detailed analysis at the very beginning of our work, a large number of indicators was placed in three "baskets" to be used for each of the observed institutions, either in the totality of their competencies or in certain parts,. For each observed institution, we then rationalised the number of indicators with the view to identifying those that will provide an adequate picture, i.e. those that could be applied in order to capture the most complete image of the three dimensions of institutional effectiveness. During the analysis and the testing of methodology, some of these indicators were modified based on their inability to capture effectiveness, embedment or legitimacy of institutions in question. In addition, due to the absence of available data required for the analysis, we were left with no other option but to choose "second best" indicator.

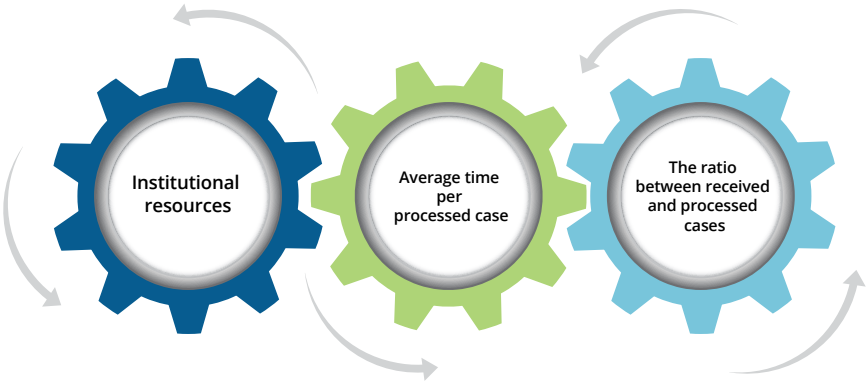
It is specifically because of the reasons mentioned above that it was impossible to identify either common indicators or those that could be universally applicable to all institutions. Needless to say, this has never been the intention of the selected methodological approach. As pointed out earlier, the effectiveness of the institutional arrangement as a whole could only be measured if separate methodological frameworks were produced for each of the institutions that comprise it. Along the same lines, due to the different roles of observed institutions, their fields of competences or the rights they are protecting, it is impossible to talk about common trends that would apply across the board or formulate common recommendations—only some very general ones.[207] Because of this, separate recommendations were provided for each of the observed institutions based on the conducted analysis.

For the purposes of easier understanding of the methodological approach, we will use illustrations to present the indicators, or sets of indicators, that are deemed adequate for comprehending the rationale behind each of the "baskets." It is worth noting once more that illustrations are offered for the sole purpose of easier understanding of our methodological approach. It goes without saying that neither of the indicators presented below is applicable to all of the observed institutions. Moreover, even in the cases where the opposite is true, it does not necessarily mean that the indicator's significance is the same, or that the indicator is equally relevant for the purpose of assessing the effectiveness of observed institutions.

Through the illustrations provided below, we present the approach of prEUgovor coalition which allows us to determine which "parts of the engine" do not function properly, i.e. which parts should be "fixed" or "replaced" and, most importantly, provides us with the answer as to how to go about it.

207 For instance, research shows that improving the capacities of all observed institutions is an absolute necessity, first of all human resources but also the budget funds dedicated for their work.

INTERNAL EFFICACY



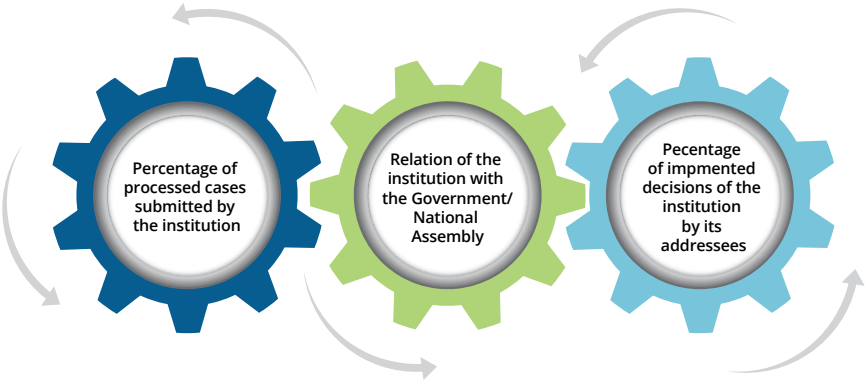
The three above shown indicators were selected to illustrate the internal efficacy "engine". In this manner, it is possible to take a closer look at the level of internal efficacy of observed institutions. The selected indicators are mutually intertwined. The ratio between the received and processed cases is one of the most important indicators of institutional efficacy.[208] On the one hand, it shows the extent of internal efficiency in handling cases within the prescribed competences, while on the other it provides insight into the actual workload. The institution could therefore be overburdened, i.e. having many cases to process with very limited resources/capacities. However, the situation can also be reversed, where an institution could have at its disposal capacities that exceed its actual needs, which would be a clear indicator that organisational restructuring and rationalisation might be necessary. These are the exact reasons why, when looking at internal efficiency, the most relevant set of indicators is grouped under institutional resources.[209] This includes not only human resources – although their importance cannot be stressed enough – but also those that are financial and technical, including resources relating to adequate working space. Therefore, this set is comprised of indicators that address the ratio between the jobs envisaged by the internal acts of systemisation of job position and the number of filled posts, financial resources earmarked in the state budget, percentage of the executed budget, availability of technical equipment necessary for work and, finally, adequate working space. Finally, we looked at how the observed institution utilises the resources at its disposal.

208 Used for all observed institutions.

209 Used for the Anti-corruption Agency, Internal Control Sector of the Ministry of the Interior, Centre for Human Trafficking Victims Protection, Commissioner for Protection of Equality, Commissioner for Information of Public Importance and Personal Data Protection.

In addition to the above considerations, another important factor is the average time spent on each processed case, which is directly related to the pre-existing case backlog.[210] If the deadlines for processing cases are prescribed by law, not only it is important to assess whether the observed institution acts within these limits, but the citizens' access to certain rights within the institutional competences directly depends on this. If the institution fails to act within the deadlines prescribed by law, in addition to infringing upon citizens' rights this also contributes to the increase in backlog cases. As described at the beginning of this publication, internal efficacy is therefore directly related to the perceived legitimacy of the institution. Lack of internal efficacy over longer periods of time inadvertently leads to the increased dissatisfaction of citizens and loss of trust.

INSTITUTIONAL EMBEDMENT



Even when presented like this, measuring of institutional embedment was the most difficult part to illustrate, given the fact that each of the observed institutions operates within its own unique "ecosystem" and cooperates with various other actors within a common institutional arrangement. This means that within the scope of this analysis we have actually observed six different "ecosystems". Therefore, indicators that comprise the institutional embedment basket should provide us with a clear picture of how other institutions, within the same ecosystem, respond to the observed institution. This is why we have selected the three indicators presented in this section. Therefore, the results of work of the observed institution represent, on the one hand, its outputs, whereas, on the other, they serve as inputs for other institutions.[211] This

210 Used for the Internal Control Sector of the Ministry of Interior, Centre for Human Trafficking Victims Protection, Commissioner for Equality and the Commissioner for Information of Public Importance and Personal Data Protection.

211 Used for the Anti-Corruption Agency, Internal Control Sector of the Ministry of the Interior, Centre for Human Trafficking Victims Protection, Commissioner for Protection of Equality, Commissioner for Information of Public Importance and Personal Data Protection.

relationship is of extreme importance for institutional effectiveness. If other parts of the same "ecosystem" are not adequately responsive, that could lead to a lower level of effectiveness of the institution in question. This is how we can identify "breaking points," i.e. determine whether the actual problem is caused by the lack of efficiency of the observed institution, or the actual issue lies elsewhere within the "ecosystem", or perhaps both. As we pointed out earlier, in this manner we cannot determine the exact reason for the lack of effectiveness of the institutional arrangement as a whole, but it is possible to detect where the problem is located and provide a general direction that could lead to its resolution.

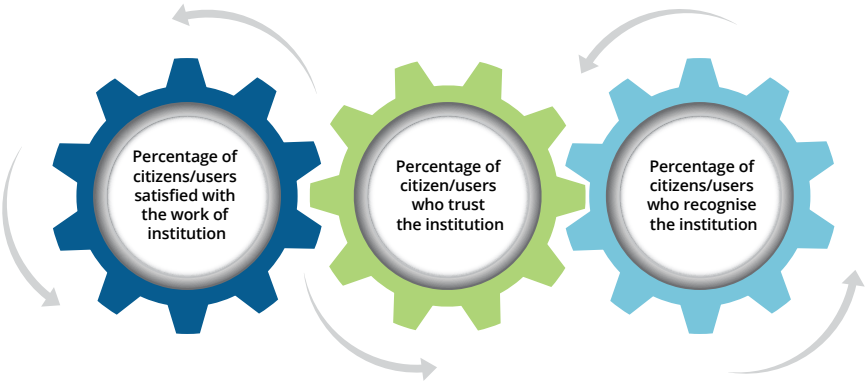
The second indicator described here represents the relation of the observed institution with the two branches of power, namely the National Assembly (legislative) and the Government (executive).[212] This relation, first and foremost, relies on the fact that the National Assembly regulates the "ecosystem" with its legislative powers by creating and amending normative acts. With this in mind, it is extremely important whether or not the observed institution has a role in this process and, if it does, how well the National Assembly responds to proposals, comments and suggestions submitted by the institution. In addition, the National Assembly provides the funding necessary for the functioning of institutions by adopting the budget, approves internal enactments that regulate the systemisation of job positions within the institutions, and frequently adopts reports submitted by them. The relation with the Government of the Republic of Serbia is also very important since the Government is in charge of governing the state as a whole, including the policy areas within which observed institutions operate. These are, in turn, dependent on the Government in various ways, whether being in charge of implementing strategic acts adopted by the Government or due to the fact that their work is conditioned by particular Government's actions.

Finally, the third indicator addresses the relationship between the observed institutions and the prosecution and judiciary.[213] This relationship is of utmost importance, especially in cases where the observed institution has legal prerogatives to initiate criminal or misdemeanour proceedings. However, even when this is not the case, efficient judicial protection and criminal policy is crucial for the functioning of each particular "ecosystem". A particularly important aspect of this relation is the case when the decisions of the institution itself can be challenged in the court of law, because in this manner it is possible to measure the legality of the decisions made by the observed institution.

212 Used for the Anti-Corruption Agency, Internal Control Sector of the Ministry of the Interior, Commissioner for Protection of Equality, Commissioner for Information of Public Importance and Personal Data Protection.

213 Used for the Internal Control Sector of the Ministry of the Interior, Centre for Human Trafficking Victims Protection, Commissariat Commissioner for Protection of Equality, Commissioner for Information of Public Importance and Personal Data Protection.

INSTITUTIONAL LEGITIMACY



Measuring institutional legitimacy within the applied methodology can be best illustrated by the three indicators presented here. The first and most important criterion that was taken into consideration is whether or not citizens or end-users that are referred to it actually recognise the observed institution.[214] This boils down to the relationship between the citizens and the institution, or to be more specific, to whether or not the citizens are: aware of its existence; know its competences; know how and when to contact the observed institution; know what to expect in terms of response, etc. Therefore, the precondition for assessing the institutional legitimacy is the issue of how well-known it is among the citizens/users. The second indicator presented here is the level of popular satisfaction with the service/work of the observed institution.[215] This satisfaction must be measured by observing two groups of respondents: the first is comprised of individuals who recognise the institution but have never had direct contact with it, and the second of those who have had. The third indicator presented here relates to the level of trust, which is also measured by observing two groups of respondents: those who have not had direct contact with the institution, with particular emphasis on their willingness to refer to it in cases where "it might provide help" (i.e. whether they would seek its services/help if needed); and those who have had direct contact, with focus on whether they would contact it again.[216] In both cases, the most important issue that needs to be addressed is the "success" of their petitions, in each specific case, namely whether the desired outcome has been achieved. Those who have not had "success" in this course are more likely to be dissatisfied

214 Used for the Anti-Corruption Agency, Internal Control Sector of the Ministry of the Interior, Commissioner for Protection of Equality, Commissioner for Information of Public Importance and Personal Data Protection.

215 Used for the Anti-Corruption Agency, Internal Control Sector of the Ministry of the Interior, Centre for Human Trafficking Victims Protection, Commissariat for Refugees and Migrations, Commissioner for Protection of Equality, Commissioner for Information of Public Importance and Personal Data Protection.

216 Used for the Anti-Corruption Agency, Internal Control Sector of the Ministry of the Interior, Commissioner for Protection of Equality, Commissioner for Information of Public Importance and Personal Data Protection.

with the performance of the observed institution, which inadvertently leads to lower level of trust.

In the course of this research, coalition prEUgovor did not have the means to conduct a detailed public opinion poll, which should have included both the general public and individuals who are the end-users of the six observed institutions. Therefore, the data used for this basket of indicators mostly came from other available sources, such as research conducted by the institutions that were the subject of this study (when available), other civil society organisations or various other actors. Unfortunately, for most of the six observed institutions it was impossible to provide sufficient amount of data to reach concrete and definite conclusions.

At the very end, it is worth noting once more that this is the first, pioneering edition of coalition prEUgovor's Institutional Barometer. The methodology used will undergo revisions and adaptations in years to come and, with a view to obtaining relevant and concrete data, additional efforts will be invested toward conducting public opinion polls, starting from the next cycle of measuring the effectiveness of institutions.

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