



INTERNATIONAL CONFERENCE  
**PERSONAL DATA  
PROTECTION**

Republic of Serbia

Commissioner for Information of Public Importance and Personal Data  
Protection

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# Personal Data Protection in the Republic of Serbia



## THE COMMISSIONER'S AUTHORITY

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- The Commissioner for Information of Public Importance was established under the Law on Free Access to Information of Public Importance in 2004
- Under the Law on Personal Data Protection of October 2008, he was renamed Commissioner for Information of Public Importance and Personal Data Protection, upon receiving new powers as of 1 January 2009



## THE COMMISSIONER'S AUTHORITY

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Constitution of the Republic of Serbia:

- everyone shall have the right to access information kept by state bodies and organizations with delegated public powers, in accordance with the law (Art. 51)
- Protection of personal data shall be guaranteed (Art. 42)



## THE COMMISSIONER'S AUTHORITY

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According to the Law on Personal Data Protection (Article 1) the duties of personal data protection shall be carried out by the Commissioner for Information of Public Importance and Personal Data Protection, as an **autonomous public authority**, who exercises his/her powers **independently**



## INDEPENDENT STATUS OF THE COMMISSIONER

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Article 32 on Law on Free Access to Information of Public Importance:

- The Commissioner shall be autonomous and independent in the exercise of his/her powers
- In the exercise of his/her powers, the Commissioner shall neither seek nor accept **orders** or **instructions** from government bodies or other persons
- The Commissioner **shall not be held liable for an opinion** he/she **expressed** or a recommendation he/she made **while performing** his/her **duties**; in the event of legal proceedings over a criminal offence committed in the exercise of his/her powers, he/she cannot be detained without the consent of the National Assembly.



## APPOINTMENT

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- **The National Assembly** of the Republic of Serbia **shall appoint** the Commissioner by a majority of votes of all members of parliament, acting on proposal of the Committee of the National Assembly responsible for information
- The Commissioner shall be appointed to a **seven-year term** of office
- The same person may be appointed Commissioner for maximum **two** consecutive terms



## COMPETENCES IN SPHERE OF PERSONAL DATA PROTECTION

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- **Supervise** the enforcement of data protection;
- **Decide on appeals** in cases set out in LPDP;
- Maintain the **Central Register**;
- Supervise and allow **transborder transfer of data** from the Republic of Serbia;
- Point out the identified **cases of abuse** in data collection;
- Produce a **list of countries** and international organizations with adequate provisions on data protection;
- Give his/her **opinion** on the formation of **new data files** or **introduction of new** information technologies in data processing;
- Give his/her opinion in **case of doubt** whether a data set constitutes a data file within the meaning of LPDP;



## COMPETENCES IN SPHERE OF PERSONAL DATA PROTECTION

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- Give his/her opinion to the Government in the procedure of enactment of instruments governing the methods of data filing and safeguards for particularly sensitive data;
- Monitor the implementation of **data safeguards** and suggests improvements;
- Give **proposals** and **recommendations** for **improving data protection**;
- Give prior opinion on whether a certain processing method constitutes specific risk for a citizen's rights and freedoms;
- Keep up to date with the data protection arrangements in other countries;
- **Cooperate with authorities** responsible for data protection supervision in other countries;
- Determine the way in which data are to be handled if a data controller ceased to exist, unless provided otherwise;
- Perform other duties within his/her sphere of competence.





## REPORTS

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- Within three months of end of each fiscal year, the Commissioner shall **submit to the National Assembly** an **annual report** on implementation of the Law on free access to information of public importance and the Law on personal data protection
- The Commissioner shall submit to the National Assembly also any other reports he/she deems appropriate
- The Commissioner shall forward the report he/she submits to the National Assembly to the President of the Republic, the Government and the Ombudsperson and shall make it available to the general public through appropriate means



# LEGAL FRAMEWORK

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- Constitution of the Republic of Serbia
- Law on Ratification the Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data and the Additional Protocol to the Convention
- LAW ON PERSONAL DATA PROTECTION
- Secondary legislation
- The Law on free acces to information of public importance
- The Law on administrative procedure
- The Law on the misdemeanors



# LEGAL FRAMEWORK

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## Constitution of the Republic of Serbia

- Collecting, keeping, processing and use of personal data shall be **regulated by the law**
- Use of data outside the purpose for which they were collected shall be banned and sanctioned according to the law, except for the purpose of conducting criminal proceedings or protection of security of the Republic of Serbia, in the way stipulated by the law
- Every person shall have the **right to notification** of data collected about him/her, according to the law, and the **right to court protection** in case of personal data abuse



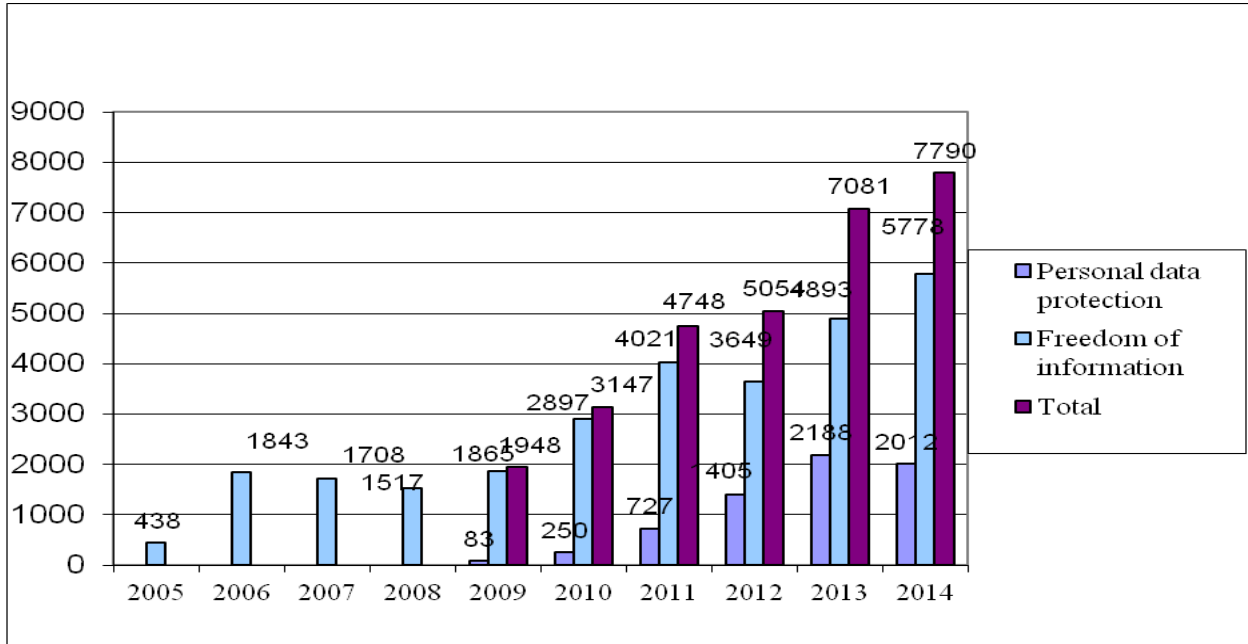
# LEGAL FRAMEWORK

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## LAW ON PERSONAL DATA PROTECTION

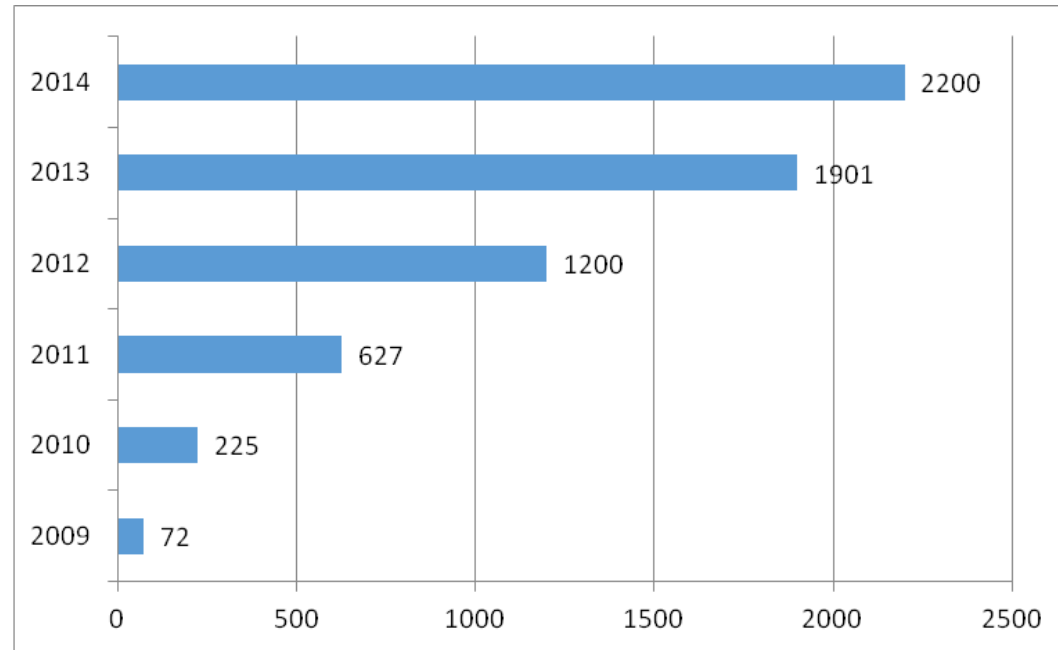
- This law sets a **general legal framework** for personal data collection, processing and transfer
- The Law guarantees personal data protection **to every person** regardless of their nationality, residence, race, gender, language, religion, political and other affiliations, ethnicity, social background, wealth, education, social position or any other personal characteristic, which implements **the principle of ban on discrimination in this field**

## COMMISSIONER'S ACTIVITIES- Number of cases received in 2005-2014 by years



# Commissioner's Activities in the Field of Personal Data Protection

*Overview of cases closed in the field of personal data protection by years*





## PERSONAL DATA PROTECTION

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Commissioner has two types of powers in sphere of Personal Data Protection

- **second-instance authority** responsible for protecting the right to data protection in appeal proceedings
- **supervisory authority** responsible for enforcing the law



## THE RIGHTS OF INDIVIDUALS WHOSE DATA IS BEING PROCESSED

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- The right to give or not to give consent to personal data processing
- The right to information on personal data processing
- The right to insight
- The right to copy
- The rights of data subject regarding insight performed (right to require of controllers to correct, modify, update or delete data, etc.)





## COMMISSIONER ACTING ON COMPLAINTS

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- A person who previously addressed a data controller with a request for the exercise of rights in connection with data processing and/or in connection with access to personal data **may lodge a complaint** with the Commissioner
- The Commissioner forwards a complaint to the data controller concerned for a reply and then **decides** on the complaint
- The Commissioner's decisions on complaints are **binding, final and enforceable**



## SUPERVISION OF PERSONAL DATA PROTECTION

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- The Commissioner perform supervision through **authorized officers- inspectors**
- The most frequently registered irregularity - processing of personal data without the consent of the data subject or without legal basis - is the first reason for inadmissibility of data processing



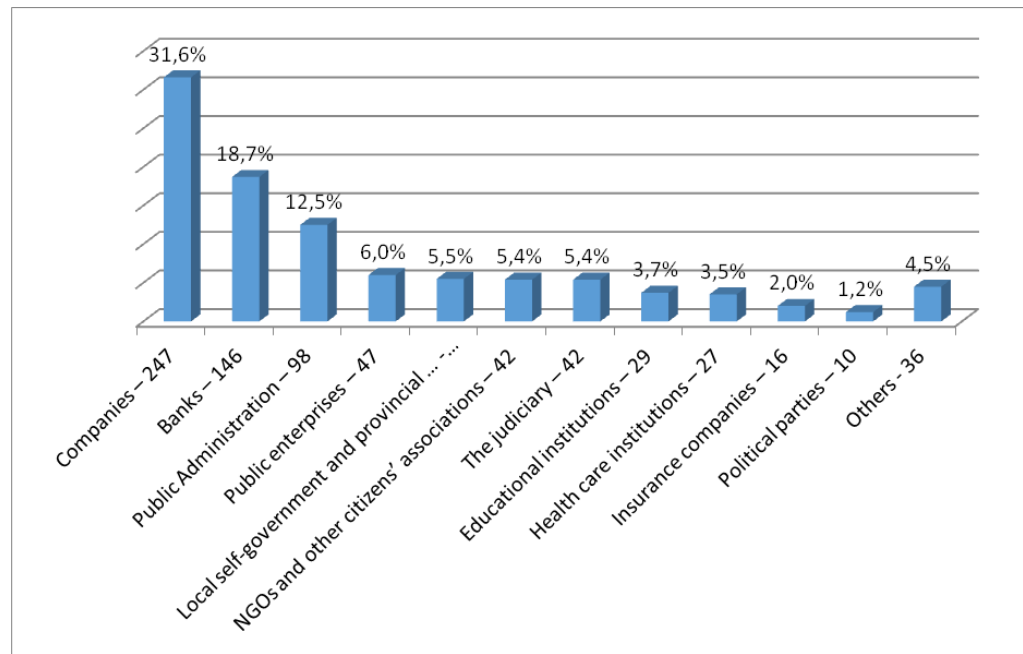
## SUPERVISION OF PERSONAL DATA PROTECTION

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On the basis of the findings of an inspector, **the Commissioner may:**

- Order the **rectification** of such irregularities within a specified period of time
- **Temporarily ban** any processing carried out contrary to the provisions of this Law
- Order the **deletion** of data collected without proper legal grounds

*Graph 3. Structure of data controllers inspected in 2014*





## KEEPING OF CENTRAL REGISTER

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- **Central Data File Register** is a **unique record** of data files established by all controllers processing personal data in the Republic of Serbia
- It is established and kept by the Commissioner
- It is public and it is published on the internet
- The purpose of the Central Register is to have every person acquainted with personal data processing, as well for **implementing all types of supervision over personal data processing**



## PERSONAL DATA PROTECTION- CURRENT SITUATION AND PROBLEMS

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- The existing legal framework for personal data protection **cannot provide** unobstructed exercise of the right to privacy and the right to personal data protection in all fields in individuals' lives
- Numerous provisions of LPDP are **inappropriate or incomplete**, while certain issues are not even regulated by LPDP nor regulated systematically by other, special laws
- Lack of certain implementing regulations the Government should have passed (Action Plan on Implementation of the Personal Data Protection Strategy)



# PERSONAL DATA PROTECTION- CURRENT SITUATION AND PROBLEMS

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Examples of the most important issues which are **not regulated** by LPDP:

- **video surveillance**
- **processing of biometric data**



## PERSONAL DATA PROTECTION- CURRENT SITUATION AND PROBLEMS

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The issues **inappropriately/incompletely** regulated by LPDP:

- procedure for **exercise of the right** to personal data protection
- unregulated **procedure for transborder transfer of personal data**
- insufficiently regulated **supervision procedure**
- insufficiently regulated Commissioner's **powers**
- lack of technology neutrality and inability of application in the existing **information and communication technologies**





## PERSONAL DATA PROTECTION- SUGGESTIONS OF NATIONAL LEGISLATION DEVELOPMENT

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- The Commissioner prepared the **MODEL LAW ON PERSONAL DATA PROTECTION**
- After a public debate and analysis or received comments, the Commissioner submitted the Model Law to the Ministry of Justice, the authority competent for preparation of regulations on personal data protection



## PERSONAL DATA PROTECTION- SUGGESTIONS OF NATIONAL LEGISLATION DEVELOPMENT

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The Model proposes several novelties, for example

- Processing of data by implementation of **biometric measures** is permitted, and it shall only be permitted if it is prescribed by law, and by way of exception, if it is not permitted, implementation shall be permitted only on the basis of a Commissioner's decision
- general obligation on data controllers in all spheres of use of **video surveillance** to display a notification that video surveillance is performed
- **designation of a data protection officer**
- it is prohibited to make the **unique personal identification number** publicly available on the Internet
- **photocopying and scanning of personal identity documents** and their retention shall be prohibited, unless otherwise provided by law



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THANK YOU  
FOR YOUR ATTENTION!

For more information please contact us on [office@poverenik.rs](mailto:office@poverenik.rs)