



European Network of
National Human Rights Institutions

State of the rule of law in Europe

Reports from National Human Rights Institutions

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Contents

Executive summary	4
Introduction	9
Overview of trends and challenges	22
Country reports	52
Albania	52
Andorra.....	78
Armenia.....	79
Austria	92
Azerbaijan	99
Belarus.....	110
Belgium.....	111
Bosnia and Herzegovina	126
Bulgaria	139
Croatia.....	152
Cyprus.....	166
Czech Republic.....	182
Denmark	189
Estonia.....	197
Finland.....	205
France.....	219
Georgia.....	228
Germany	242
Great Britain.....	251
Greece	261
Hungary	291
Iceland.....	311
Ireland.....	312

Italy	326
Kosovo*	327
Latvia.....	351
Liechtenstein	354
Lithuania	357
Luxembourg	366
Malta.....	372
Moldova.....	373
Monaco.....	396
Montenegro.....	397
Netherlands.....	413
North Macedonia.....	421
Northern Ireland	431
Norway.....	442
Poland	449
Portugal	461
Romania.....	470
Russian Federation	491
San Marino.....	509
Scotland.....	510
Serbia.....	522
Slovakia	532
Slovenia.....	554
Spain	579
Sweden.....	587
Switzerland.....	588
Turkey.....	589
Ukraine	598
Annex I – Reporting questionnaire/grid.....	610
Annex II – List and contacts of contributing NHRIs	616

Executive summary

NHRIs' contribution in monitoring and advancing the rule of law in Europe

Human rights and the rule of law are interlinked and mutually reinforcing principles: a strong regime of rule of law is vital to the protection of human rights, and the rule of law can only be fully realised in an environment that protects human rights. National human rights institutions (NHRIs), as independent, state-mandated bodies with a broad human rights mandate, are therefore key players in the protection and promotion of the rule of law in their countries.

The added value of NHRIs' individual and, through their European Network ENNHRI, collective engagement in efforts to promote and protect rule of law, human rights and democracy in Europe has been the object of increasing recognition by regional actors over the past year.

Such recognition rests on the crucial role of NHRIs as an essential component of the national systems of checks and balances and as key actors in the human rights enforcement chain. This has been reaffirmed in the Recommendation on developing and strengthening NHRIs recently adopted by the Council of Europe's Committee of Ministers. The Recommendation calls on each Council of Europe Member State to establish, maintain and strengthen an independent NHRI in compliance with the Paris Principles and to ensure an enabling environment for, and cooperate with NHRIs. At EU level, the important role of NHRIs as contributors and beneficiaries of the EU's efforts to promote and protect rule of law, human rights and democracy within and outside its borders, is clearly stressed within the newly established review cycle of the rule of law situation in EU Member States, the European Commission Strategy for the effective implementation of the Charter of Fundamental Rights of the EU and the new EU Action Plan on Human Rights and Democracy 2020-2024 which underpins the EU's external action, including in the context of the enlargement process and the Eastern Partnership policy. This has translated into an increased attention by regional actors to the need to support and cooperate with NHRIs when advancing and monitoring progress on rule of law, human rights and democracy across the region.

Building on their increased recognition, ENNHRI and its member NHRIs have further deepened their strategic engagement in European mechanisms and processes aimed at monitoring, promoting and protecting the rule of law, human rights and democracy. At the core of such engagement lies a united approach meant to enhance coherence and consistency while allowing to reflect the differences in NHRIs, national environments and regional processes relevant to each country across ENNHRI's membership.

NHRIs' joint rule of law reporting is one key aspect of such strategic engagement. Information on the extent to which NHRIs are able to independently and effectively fulfil their mandate is internationally recognized as an important rule of law indicator. Furthermore, reporting by NHRIs on the human rights situation on the ground – one of the core elements of their legal mandate – contributes to reflect a more accurate picture of the rule of law environment of each state, with a view to improving the rule of law situation across Europe. In turn, NHRIs find that joint reporting has a positive impact on NHRIs' own work, from contributing to a strengthened focus on rule of law issues, to facilitating targeted initiatives, raising awareness and visibility of NHRIs' work, fostering mutual learning and the exchange of information and strengthening solidarity among NHRIs – each of which can have a positive impact on rule of law.

Building on a first successful joint rule of law reporting experience last year, European NHRIs have again joined forces to reflect each institution's perspectives on the state of the rule of law in their country, based on their human rights monitoring and reporting functions and having regard to their mandate and their national strategic priorities. The result is a comprehensive 2021 regional rule of law report bringing together all the country reports prepared by ENNHRI's members in 42 countries across Europe, as well as information on NHRIs' establishment and accreditation in 8 additional European countries.

Key findings

The trends which emerge from these reports point to a number of challenges related to the rule of law environment across Europe. Key findings include the following:

- Persisting issues continue to affect the effectiveness of NHRIs in many states across the region, including limited mandates, lack of sufficient resources, poor implementation of NHRIs' recommendation by state authorities, flawed consultation practices and, for some, worrying threats to independence. While steps were taken in a number of countries towards strengthening the mandates of NHRIs, in some states regressive regulatory amendments were adopted, and in

those countries where an accredited NHRI does not exist yet, no significant steps were taken towards establishment and accreditation;

- Human rights defenders (HRDs) and civil society organisations (CSOs) are facing severe challenges in many states across the region, due to laws and practices restricting CSOs' enabling space and operations, limited funding, gaps in access to and participation in decision-making, measures negatively impacting the exercise of freedom of expression and peaceful assembly, as well as threats and attacks, in particular targeting CSOs and HRDs working with minority groups such as migrants or LGBTI+ persons. Against this background, many NHRIs are investing to further support and protect HRDs and CSOs;
- Weakened democratic checks and balances, especially reported in connection to the emergency situation created by the COVID-19 pandemic, are regarded as a potential threat to the rule of law framework and on human rights protection – especially in those countries where more generalised deficiencies exist as regards key safeguards such as judicial oversight, access to information and transparency of law and policy making. Commonly reported challenges include the widespread use of accelerated legislative procedures, lack of impact assessment and consultations and reduced parliamentary oversight. In this respect, several examples demonstrate how NHRIs exercise their role as part of the national systems of checks and balances, although a number of them experience difficulties such as lack of cooperation and consultations, limited direct access to information held by state authorities and insufficient resources;
- Concerns persist over the functioning of justice systems in many states across Europe, including insufficient resources, deficiencies in the enforcement of judgments, excessive length of proceedings and challenges affecting the right to access to a court and to a fair trial. While issues relate to a persisting systemic inefficiency of the justice system in a number of countries, in particular in the enlargement and Eastern Partnership regions, NHRIs in some EU Member States also express concerns, in particular over the independence of the judiciary. In this context, NHRIs continue to contribute to promote fair and effective justice, including by advising on reforms, dealing with complaints on the administration of justice and improving access to justice for vulnerable groups;
- In a worrying number of states across the region, journalists are reportedly subject to threats, intimidation, harassment including through abusive lawsuits and hate speech, as well as, in some cases, arbitrary arrests and prosecutions and obstacles to reporting on the part of government authorities. In various states across Europe, the

media sector reportedly suffers from concentration, political and economic pressure, while hate speech in the public discourse remains a concern. A number of NHRIs report being particularly active in this area, through monitoring and advising on reforms, litigation and public education initiatives to protect freedom of expression and foster media pluralism;

- Limited progress is reported in the fight against corruption, which remains at concerning levels in a number of states, also in connection with the reduced transparency and accountability determined by the pandemic context. Against this background, a number of NHRIs have been engaging in reforms of the anti-corruption framework and are actively contributing to the implementation of rules on whistle-blowers protection;
- Widespread human rights violations affect the national rule of law environment in some countries, including systemic violations of human rights of migrants and ineffective responses to hate speech and crime routinely targeting racialised groups and LGBTI+ people.

The country reports also reflect NHRIs' views on the impacts of the COVID-19 outbreak and of the measures taken to address the pandemic on human rights and rule of law. Among the concerns most frequently raised, NHRIs point to the impact of emergency regimes on checks and balances and on the democratic process, the specific challenges affecting the functioning of justice systems, the severe implications for people in a situation of vulnerability (among others, persons with disabilities, the elderly, Roma, migrants and homeless people) and the impact of the crisis on women and children, including in terms of rising levels of domestic violence. Concerns over long term impacts are also expressed as regards access to education, shrinking civil society space, and reduced transparency and information. The crucial role of NHRIs in monitoring, assessing and addressing these challenges is exemplified in many concrete initiatives, which NHRIs carried out despite the difficult working conditions experienced during the pandemic.

Looking ahead: a continued engagement and strengthened impacts for tangible progress on the promotion and protection of human rights, rule of law and democracy in Europe

By engaging in a regular monitoring of the rule of law situation in their countries, NHRIs can help European policy makers reach a more comprehensive and informed assessment of the situation in each state. This, in turn, can lead to stronger impacts of follow up action to drive progress in the national rule of law and human rights environment and towards a stronger regional and global system for human rights and democracy.

With a view to making NHRIs' engagement even more impactful, this year's report contains a number of concrete and targeted recommendations addressed to regional actors, including as regards:

- Prioritising the strengthening of fully independent and effective NHRIs in each country across the region, including through a more systemic inclusion of NHRIs' independence and enabling space – as reflected in NHRIs' international accreditation status and related recommendations – as indicator of progress on rule of law;
- Enabling NHRIs in bridging key benchmarks and objectives set by EU and other regional actors with national realities, including through additional support for NHRIs' regular rule of law reporting through ENNHRI, enhanced participation of NHRIs in key policy fora and effective support to NHRIs under threat;
- Supporting NHRIs in bridging national realities with efforts by regional actors, including by supporting follow-up by state authorities of NHRIs' recommendations and reinforcing the need for national actors to respect NHRIs' mandate, and facilitating mutual engagement;
- Strengthening complementarities across policy initiatives and enhancing cooperation among regional actors to address common concerns on the respect for rule of law, human rights and democracy, in particular through supporting, including through ENNHRI, implementation of the 2021 Council of Europe Committee of Ministers Recommendation on NHRIs.

ENNHRI and NHRIs are determined to invest, insofar as their resources and capacity allow, in a regular and comprehensive monitoring and follow-up of developments related to the rule of law in each State, as a means to making concrete progress in advancing rule of law, human rights and democracy across Europe.

Introduction

About ENNHRI and NHRIs

The [European Network of National Human Rights Institutions \(ENNHRI\)](#) brings together 47 National Human Rights Institutions (NHRIs) across wide Europe, including in 25 Member States of the EU and in 42 Member States of the Council of Europe. It provides support for the establishment and strengthening of NHRIs, a platform for collaboration and solidarity in addressing human rights challenges, and a common voice for NHRIs at the European level to enhance the promotion and protection of human rights, democracy and the rule of law in the region. ENNHRI is one of four regional NHRi networks, which together form GANHRI, the Global Alliance of NHRIs.

NHRIs are state-mandated bodies, independent of government, with a broad constitutional or legal mandate to protect and promote fundamental rights at the national level. They work with government, parliament and the judiciary as well as with civil society organisations and human rights defenders (HRDs). They are established and function with reference to the [UN Paris Principles](#) which require NHRIs to carry out their work independently and promote respect for fundamental rights, democratic principles and rule of law in all circumstances, including in situations of state of emergency.

While the specific mandate of each NHRI may vary, the general role of NHRIs is to promote and protect human rights, including civil, political, economic, social and cultural rights, and address discrimination in all its forms. Given the breadth of their mandate, each NHRI selects strategic priorities for their work, based on their considerations of the national context. Different models of NHRIs exist across all regions of the world, including across Europe, namely: human rights commissions, human rights ombuds institutions, consultative and advisory bodies, institutes, and hybrid institutions. Information on ENNHRI members, including on the institutions' type and mandate, can be found [here](#).

Irrespective of their specific mandate, NHRIs are unique in that their independence, pluralism, accountability and effectiveness is periodically assessed and subject to international accreditation. Such accreditation, performed by the UN Sub-Committee on Accreditation (SCA) of the Global Alliance of NHRIs (GANHRI), is reviewed by reference to each NHRI's compliance with the UN Paris Principles, international standards on the independent and effective functioning of NHRIs. This accreditation reinforces NHRIs as key

interlocutors on the ground for rights holders, civil society organisations, state actors, and international bodies. More information on NHRI accreditation can be found [here](#).

Taking stock of an enhanced recognition of the role of NHRIs in monitoring, protecting and promoting the Rule of Law

In line with the identification of democracy and the rule of law as ENNHRI's current priorities, and also reflected in ENNHRI's [Regional Action Plan on Promoting and Protecting Human Rights Defenders and Democratic Space](#), European NHRIs have been strengthening their strategic engagement within international and regional rule of law mechanisms over the past years.

Given the close interconnection and mutually reinforcing relationship between the rule of law, democracy and human rights, NHRIs are in a key position to report and participate in EU and regional rule of law monitoring initiatives as an integral part of their [mandate](#) to promote and protect human rights.

On the one hand, NHRIs' engagement has built on the international recognition of NHRIs as a rule of law indicator: when an independent and effective NHRI is in place in a state, international actors assess this as indicative of the state's respect for rule of law and checks and balances more broadly. Conversely, the lack of A-status NHRI in a country, the content of SCA recommendations on NHRIs' independence and effectiveness, or the existence of threats to the NHRI's enabling environment can be indicative of more general challenges for rule of law and checks and balances in a country, which may require international consideration and follow-up.

On the other hand, NHRIs' engagement in European rule of law monitoring processes has used NHRIs' unique position, based on their broad human rights mandate and taking into account their accreditation status, to provide information that can help international and regional actors to get a more accurate picture of the national rule of law environment. Indeed, monitoring and reporting on the situation of human rights in their country is an obligation under the Paris Principles and a central function of all NHRIs - NHRIs accredited as fully independent and effective (A-status NHRIs) being given independent reporting rights before the UN Human Rights Council, Treaty Bodies and other UN mechanisms.

NHRIs have recognised that a common and coherent engagement with international and European policy makers in their efforts to uphold rule of law, democracy and fundamental rights inside and outside its borders can help ensure a more comprehensive and informed assessment of existing challenges at national and regional level. This, in turn, has the potential to help policy makers identify the most appropriate responses, reinforcing the

impact of NHRIs' recommendations at national level and prompting timely interventions from international and regional bodies as needed.

Such engagement of European NHRIs, supported and coordinated by ENNHRI, led to the publication in June 2020 of the first regional ENNHRI [Report on the State of the Rule of Law in Europe](#) (hereinafter, 'ENNHRI 2020 Rule of Law Report'), compiling European NHRIs' country submissions and an overview of trends. The report was used to feed international and regional policy processes aimed at monitoring, promoting and protecting the rule of law, human rights and democracy across the region.

ENNHRI 2020 Rule of Law Report, and the follow-up engagement of ENNHRI and NHRIs, was greatly welcomed by European policy makers and successfully fed into key policy processes, in particular at the EU level. Crucial policy instruments adopted by the EU over the past year recognise the unique potential of NHRIs both as contributors to and beneficiaries of EU action to promote and protect the rule of law, human rights and democracy both within and beyond the EU – as it was also further underlined on the occasion of ENNHRI [Annual Conference](#) held at the end of 2020.

Independent and effective NHRI are an indispensable part of checks and balances in each state

International and regional actors have shown an increasing [recognition](#) of NHRIs as a key component of the institutional architecture that serves to realise the rule of law, human rights and democracy in each state. This is reflected in recent policy documents such as the [UN Human Rights Council's latest Resolution on NHRIs](#), the Council of Europe's Committee of Ministers' [Recommendation on developing and strengthening NHRIs](#) and its [Decision on Securing the long-term effectiveness of the system of the European Convention on Human Rights](#), the European Commission's [first report on rule of law in the EU](#), the [new EU Action Plan on Human Rights and Democracy](#), the latest [EU enlargement package](#) and the revised [Eastern Partnership framework](#).

The [2020 Rule of Law Report by the European Commission](#) expressly recognizes that NHRIs “play an important role as rule of law safeguard and can provide an independent check on the system in a rule of law crisis”. It also identifies the work of NHRIs as an indicator of the rule of law and stresses that “checks and balances rely on (...) effective independent authorities such as ombudsperson institutions or national human rights institutions.”

The [2021 Recommendation on developing and strengthening NHRIs](#) adopted by the Council of Europe’s Committee of Ministers stresses that “effective, pluralist and independent national human rights institutions (NHRIs) are among the pillars of respect for human rights, the rule of law and democracy” and calls Member States, on this basis, to “explore the ways of developing a stronger role for and meaningful participation of NHRIs and ENNHRI in the Council of Europe for the enhanced promotion and protection of human rights, the rule of law and democracy”.

Such recognition and support is key to drive progress towards the [establishment](#) and strengthening of fully independent and effective NHRIs in each country across the region. As also underlined by the EU Agency for Fundamental Rights (FRA) in its recent [report](#) “Strong and effective national human rights institutions – challenges, promising practices and opportunities”, this is in turn essential to enable regional actors to rely on independent counterparts at national level and thus reinforce the quality and impacts of their efforts to promote and protect human rights, democracy and rule of law.

NHRIs engagement in rule of law reporting serves to better address shortcomings and promote a national rule of law culture

International and regional actors agree that NHRIs have a key role to play in connecting the efforts by international and regional actors to promote and protect human rights, democracy and the rule of law to the national level.

Building on their monitoring functions, their cooperation with state and non-state actors and their role as interlocutors between the state and general public, NHRIs have great potential in raising awareness, mobilising support and maximising impacts of international and regional actors’ efforts at the national level. At the same time, giving a European dimension to NHRIs’ national work on human rights, democracy and rule of law is an opportunity to further promote and enhance the impact of NHRIs’ role and their recommendations. It also is a way to foster mutual learning, enhanced solidarity and possible joint initiatives among NHRIs.

NHRIs' common and coordinated rule of law reporting has clear value added for international and regional actors

International and regional actors have underlined the clear value added of joint rule of law reporting by NHRIs through ENNHRI, based on a common approach and indicators, in terms of feeding into the assessment of the situation of human rights, democracy and rule of law in the countries across the region in a consistent and timely manner.

Joint rule of law reporting based on a common and coordinated approach is also beneficial for NHRIs themselves, as a means to enhance solidarity among NHRIs, exchange information and inspire each other's action – which ENNHRI promotes and facilitates through coordination, support and peer learning initiatives.

About this report

Scope of the report

Building on the first successful joint rule of law reporting experience last year, European NHRIs have again joined forces to reflect each institution's perspectives on developments concerning the rule of law in their country, based on their human rights monitoring and reporting functions and having regard to their mandate and their national strategic priorities.

The result is a comprehensive regional report which brings together national rule of law reports drafted by ENNHRI members in 42 countries across Europe, as well as information on the establishment and accreditation of NHRIs in 8 additional European countries.

Building on this reporting exercise, sub-regional reports are feeding different consultation processes as relevant for NHRIs across ENNHRI's membership (in particular [EU Member States](#), [Enlargement countries](#) and Eastern Partnership countries). The report has also been used to inform the work of international and regional monitoring bodies including the UN Assistant Secretary-General on Reprisals.

Considerations on methodology

The reporting exercise, coordinated by ENNHRI, is based on a united approach by which NHRIs agreed to develop country-specific rule of law reports, using information extracted from relevant national reports and compiled on the basis of a structure and methodology common to all NHRIs, developed by ENNHRI.

The united approach underpinning this reporting exercise reflects the spirit of cooperation and solidarity that underlines ENNHRI membership, while acknowledging the differences in

roles, status, functioning and environment of NHRIs across the region. It is meant to frame a coherent engagement and reporting of ENNHRI in the different European rule of law monitoring processes as relevant to ENNHRI members across the region - while supporting the overarching work of ENNHRI on supporting its members' efforts to promote and protect democracy, rule of law and human rights at national level.

A detailed methodology paper, available [here](#), has been developed by ENNHRI to illustrate the common approach of its members to reporting and participation in European rule of law mechanisms.

The methodology has been revised and updated in the light of the preliminary assessment of the first pilot common reporting exercise that led to the publication of the 2020 ENNHRI Rule of Law Report and taking into account relevant policy developments at regional level. ENNHRI is committed to ensuring a continued evaluation of the common reporting structure and guiding principles through member-wide consultation at the end of each annual reporting cycle. This involves learning from experience and adaptation of the common methodology as appropriate, also having regard to the sustainability, effectiveness and impacts of the common approach at international, regional and national level.

The following paragraphs outline the key features underpinning the agreed methodology.

Key principles

The key principles underlying ENNHRI's member NHRIs' engagement in European rule of law monitoring initiatives, as identified for the purpose of the first ENNHRI Rule of Law Report of 2020, remain valid. These are:

(1) NHRIs' contribution as information providers, to help regional actors have a more accurate picture of the national rule of law environment, based on reliable, objective and verifiable information. NHRIs can take advantage of their unique position to collect and provide input concerning both:

- Their own features and concrete functioning, i.e., their formal and functional independence, pluralism and effectiveness (NHRIs as rule of law indicators); and
- The human rights situation on the ground (NHRIs regular reporting on human rights with rule of law implications, e.g., access to justice, media pluralism, civic space, etc).

(2) NHRIs' contribution to the identification and implementation of follow-up action to address detected issues at the national level, including facilitating discussions with national parliaments and, when covered by their mandate, through court proceedings.

(3) NHRIs' role in the active promotion of a rule of law culture, including by raising awareness with the general public and cooperating with civil society stakeholders.

The compilation of country-specific rule of law reports on the basis of a structure and methodology common to all NHRIs, and the collation and publication of these as one regional report, coordinated by ENNHRI, remains the privileged approach with a view to, at once:

- Supporting timely and coherent NHRI reporting under different EU mechanisms relevant to EU Member States, Enlargement, Eastern Partnership and other countries, and
- Promoting enhanced NHRIs' impacts on at national and regional level, in a spirit of cooperation and solidarity.

A common reporting structure

For each annual reporting exercise, ENNHRI develops a common reporting structure in order to facilitate and streamline the collection of country information on rule of law by all NHRIs in wider Europe. The common reporting structure generally contains information provided by European NHRIs in relation to:

- The NHRI as indicator of rule of law, and
- Country-specific human rights reporting by NHRIs with relevance to the rule of law.

The related questionnaires are developed by ENNHRI in a spirit of continuity with the previous year's reporting exercise, while being adapted and integrated as appropriate to:

- Integrate the priority areas and indicators identified by European institutions and bodies for the different rule of law mechanisms,
- Accommodate feedback on the previous reporting exercise(s), and
- Reflect relevant trends and policy developments.

The questionnaire shared with members for the purpose of this year's reporting is included as Annex I to this report.

The common reporting structure of this year's report mirrors the areas covered by the 2020 ENNHRI Rule of Law Report, while elaborating more in-depth on certain aspects. In particular, it covers:

- As regards the NHRI as an indicator of rule of law:
 - Progress in the establishment and/or accreditation of the NHRI;
 - Changes in the regulatory framework;

- The extent to which state authorities ensure enabling space for the NHRI to independently and effectively carry out its work;
- Significant changes in the NHRI's environment relevant for the independent and effective fulfilment of the NHRI's mandate;
- As regards human rights issues with relevance to the rule of law, evidence of problematic laws, measures or practices in five thematic areas:
 - Human rights defenders and civil society space;
 - Checks and balances;
 - Functioning of justice systems;
 - Media pluralism;
 - Corruption;
- The impact of measures adopted to address the COVID-19 pandemic, in terms of rule of law and human rights protection, long-term implications, as well as the impact on the NHRI's functioning;
- Any other pressing challenge in the field of human rights, or any other relevant developments or issues, having an impact on the national rule of law environment, relevant for the specific country situation.

In addition, this year's reporting structure further offers information on:

- The impact of last year's reporting exercise;
- Actions and initiatives taken by NHRIs to address the issues raised/to promote rule of law standards in each of the areas covered.

In order to encourage concise data provision, the reporting structure allowed NHRIs to reference existing resources as appropriate – including their general or thematic reporting activities at national or international level (see below).

In filling out the questionnaire, each NHRI was free to report on what it deemed appropriate, also on the basis of the NHRI's mandate, capacity, and national context. Insofar as the areas surveyed coincided with those covered by ENNHRI 2020 Rule of Law Report, NHRIs were encouraged to provide relevant updates concerning the issues reported on.

Each country report reflects the NHRI's autonomous choice of scope of its country-specific reporting. Each NHRI is also solely responsible for the information provided as well as the positions or opinions expressed in connection to the issues reported on – without those positions or opinions being attributable to other NHRIs or to ENNHRI.

Building on NHRIs' existing functions and expertise

In order to facilitate reporting, NHRIs are encouraged to develop their engagement in European rule of law mechanisms in synergy with their relevant work at national and international level. In concrete terms, this means that NHRIs engagement at the different stages is meant to build on or feed into:

- General or thematic national reporting initiatives;
- General or thematic reporting to other international monitoring bodies;
- The formulation of and follow-up of recommendations to national authorities.

Role of ENNHRI in the analysis, processing, collation and dissemination of NHRIs' reporting

ENNHRI members confirmed the importance for the Secretariat to support their engagement in European rule of law mechanisms, with a view to enhance relevance, impact and sustainability. This includes support in the analysis and processing, as well as in the collation and dissemination of NHRIs' reporting.

In particular, ENNHRI undertakes the following tasks in relation to the analysis and processing of the country information by NHRIs:

- The development and regular update of the reporting methodology, in consultation with members;
- Verification and consistency checks, performed via consultation with the relevant NHRI to obtain clarification or complementary information and data included in a country report – each NHRI remains responsible for the information and data provided therein;
- Highlighting emerging trends, through analysis and processing of the information included in the country reports received; and
- Provision of information in each country report on the NHRIs' establishment and accreditation status, including the latest report of the international accreditation committee with recommendations to improve compliance with the Paris Principles, in connection to the recognition of NHRIs as rule of law indicator.

Overview of contributing NHRIs and of information provided on national situation per topic

Country	ENNHRI Member	NHR establishment / accreditation status	Information provided on national situation per topic						
			NHRI Independence & effectiveness	HRDs and civil society space	Checks and balances	Justice systems	Media pluralism	Corruption	COVID-19
Albania	People's Advocate of Albania	A status	✓	✓	✓	✓	✓	✓	✓
Andorra	<i>No NHRI</i>	<i>No NHRI</i>							
Armenia	Human Rights Defender of the Republic of Armenia	A status	✓	✓	✓	✓	✓	✓	✓
Austria	Austrian Ombudsman Board	B status (applying)							✓
Azerbaijan	Azerbaijan Ombudsman Institute	B status	✓	✓	✓	✓	✓	✓	✓
Belarus	<i>No NHRI</i>	<i>No NHRI</i>							
Belgium	Interfederal Centre for Equal Opportunities and Opposition to Racism (Unia)	B status	✓	✓	✓	✓			✓
	Combat Poverty, Insecurity and Social Exclusion Service	No status	✓	✓	✓	✓			✓
Bosnia and Herzegovina	Human Rights Ombudsman of Bosnia and Herzegovina	A status	✓	✓	✓	✓	✓		✓
Bulgaria	Ombudsman of the Republic of Bulgaria	A status	✓	✓	✓	✓	✓	✓	✓
Croatia	Ombudswoman of the Republic of Croatia	A status	✓	✓	✓	✓	✓	✓	✓
Cyprus	Office of the Commissioner for Administration and the Protection of Human Rights (Ombudsman)	B status (applying)	✓	✓	✓	✓		✓	✓
Czech Republic	Public Defender of Rights	No status	✓	✓	✓	✓			✓

Country	ENNHRI Member	NHRI establishment / accreditation status	Information provided on national situation per topic						
			NHRI Independence & effectiveness	HRDs and civil society space	Checks and balances	Justice systems	Media pluralism	Corruption	COVID-19
Denmark	The Danish Institute for Human Rights	A status	✓	✓	✓	✓			✓
Estonia	Office of the Chancellor for Justice	A status	✓		✓	✓	✓	✓	✓
Finland ¹	Finnish Human Rights Centre Parliamentary Ombudsman	A status	✓	✓	✓	✓	✓		✓
France ²	French National Consultative Commission on Human Rights	A status		✓	✓	✓	✓	✓	✓
Georgia	Public Defender (Ombudsman) of Georgia	A status	✓	✓	✓	✓	✓		✓
Germany	German Institute for Human Rights	A status	✓	✓	✓	✓	✓		✓
Great Britain	Equality and Human Rights Commission	A status			✓	✓	✓		✓
Greece	Greek National Commission for Human Rights	A status	✓	✓	✓	✓	✓	✓	✓
Hungary	Office of the Commissioner for Fundamental Rights	A status (deferred)	✓	✓	✓	✓	✓	✓	✓
Iceland	<i>No NHRI</i>	<i>No NHRI</i>							
Ireland	Irish Human Rights and Equality Commission	A status	✓	✓	✓	✓	✓		✓
Italy	<i>No NHRI</i>	<i>No NHRI</i>							
Kosovo ³	Ombudsperson Institution of Kosovo	No status	✓	✓	✓	✓	✓	✓	✓

¹ The Parliamentary Ombudsman is consulted directly by the European Commission for its report and therefore the contribution to ENNHRI's report by the HRC does not include the Parliamentary Ombudsman, and no information on corruption.

² The country report on France was compiled on the basis of selected CNCDH's published reports and positions and statements by civil society organisations.

³ This designation is without prejudice to positions on status, and is in line with UNSC 1244 and the ICJ Opinion on the Kosovo Declaration of Independence.

Country	ENNHRI Member	NHRI establishment /accreditation status	Information provided on national situation per topic						
			NHRI Independence & effectiveness	HRDs and civil society space	Checks and balances	Justice systems	Media pluralism	Corruption	COVID-19
Latvia	Ombudsman's Office of the Republic of Latvia	A status	✓		✓				✓
Liechtenstein	Liechtenstein Human Rights Association	No status	✓	✓	✓	✓	✓	✓	✓
Lithuania	The Seimas Ombudsmen's Office of the Republic of Lithuania	A status	✓	✓	✓	✓	✓	✓	✓
Luxembourg	National Human Rights Commission of Luxembourg	A status	✓	✓	✓	✓	✓		✓
Malta	<i>No NHRI</i>	<i>No NHRI</i>							
Moldova	People's Advocate Office	A status	✓	✓	✓	✓	✓	✓	✓
Monaco	<i>No NHRI</i>	<i>No NHRI</i>							
Montenegro	Protector of Human Rights and Freedoms of Montenegro	B status	✓	✓	✓	✓	✓		✓
Netherlands	The Netherlands Institute for Human Rights	A status	✓	✓	✓	✓			✓
North Macedonia	Ombudsman	B status	✓	✓	✓	✓	✓		✓
Northern Ireland	Northern Ireland Human Rights Commission	A status	✓	✓	✓	✓	✓		✓
Norway	Norwegian National Human Rights Institution	A status	✓	✓	✓	✓	✓	✓	✓
Poland	Office of the Commissioner for Human Rights	A status	✓	✓	✓	✓	✓	✓	✓
Portugal	Portuguese Ombudsman	A status	✓	✓	✓	✓	✓	✓	✓
Romania	Romanian Institute for Human Rights	No status (applying)	✓	✓	✓	✓	✓	✓	✓
Russian Federation	Commissioner for Human Rights of the Russian Federation	A status (deferred)	✓	✓	✓	✓	✓		✓

Country	ENNHRI Member	NHRI establishment /accreditation status	Information provided on national situation per topic						
			NHRI Independence & effectiveness	HRDs and civil society space	Checks and balances	Justice systems	Media pluralism	Corruption	COVID-19
San Marino	No NHRI	No NHRI							
Scotland	Scottish Human Rights Commission	A status	✓	✓	✓	✓			✓
Serbia	Protector of Citizens of the Republic of Serbia	A status (deferred)	✓	✓	✓	✓	✓		✓
Slovakia	Slovak National Centre for Human Rights	B status	✓	✓	✓	✓	✓	✓	✓
Slovenia	Human Rights Ombudsman of the Republic of Slovenia	A status	✓	✓	✓	✓	✓	✓	✓
Spain	Ombudsman of Spain	A status	✓	✓	✓		✓	✓	✓
Sweden ⁴	The Swedish Equality Ombudsman	B status				No submission			
Switzerland	No NHRI	No NHRI							
Turkey	Human Rights and Equality Institution of Turkey	No status	✓	✓	✓			✓	✓
Ukraine	Ukrainian Parliament Commissioner for Human Rights	A status	✓	✓	✓	✓	✓		✓

⁴ In view of the ongoing process to establish an institution in compliance with the UN Paris Principles, the Swedish Equality Ombudsman (B-status NHRI) abstained from contributing to this reporting process.

Overview of trends and challenges

Follow-up to the 2020 rule of law reporting

Initiatives by state authorities

Initiatives by state authorities to follow-up to the 2020 rule of law reporting, as reported by NHRIs, have varied from country to country. NHRIs in several countries pointed to **general follow-up action**, such as within national action plans and strategies (such as in Croatia and Ukraine), systemic reviews of the rule of law environment to serve as basis for targeted reforms (such as in Kosovo*) or general discussions on rule of law issues (such as in Finland and Sweden). **Sectoral follow-up initiatives** were also reported, including on the fight against corruption (in Cyprus), on journalists' safety (in Serbia) and on disinformation (in Spain).

Initiatives by NHRIs

Most NHRIs followed-up to the 2020 rule of law reporting exercise through a **broad dissemination** of the 2020 ENNHRI Rule of Law Report, and of the European Commission's rule of law report, as well as **awareness raising initiatives** addressed at national authorities and/or the general public (Albania, Croatia, Germany, Hungary, Kosovo*, Lithuania, Montenegro, North Macedonia, Romania, Serbia). NHRIs also used their rule of law reporting to formulate **targeted recommendations** or to feed into their **annual reports** (Croatia, Estonia, Finland, Kosovo*, Montenegro, North Macedonia, Serbia). Some **joint initiatives** have also been reported, in particular a conference on protecting the rule of law and on the importance of an independent judiciary jointly organised by the German and Polish NHRIs. NHRIs also ensured follow-up through **sectoral initiatives** including through the organisation of events and meetings discussing rule of law matters (NHRIs in Finland, Greece, the Netherlands, Moldova), engagement with national parliaments (Azerbaijan, Greece, Poland), publication of thematic reports (Cyprus, Poland), development of tools (Serbia, Ukraine) and litigation (Georgia, Poland). These actions variably included a specific rule of law thematic focus, such as media pluralism and journalist safety (Hungary, Georgia, Serbia), justice system (Northern Ireland, Slovenia), hate speech (Slovenia) or vulnerable groups (Slovakia).

NHRIs generally indicated that the 2020 rule of law reporting exercise had a **positive impact on NHRIs' work** (see in particular reports on Albania, Kosovo*, Montenegro, North

Macedonia), for example as a **useful source of information** to get an overview of the rule of law situation across the region and learn from other NHRIs' practices (Albania, Croatia, Denmark, Kosovo*, Montenegro, the Netherlands, Poland, Ukraine) and as a basis for **cooperation and solidarity** among institutions (Cyprus, Denmark, Finland, Hungary, Luxembourg, Montenegro, the Netherlands, Serbia and Slovakia). For several institutions, the 2020 reporting led to a **strengthened focus on rule of law in NHRI's work** or served as a basis for some of their initiatives (Bulgaria, Croatia, Finland, Greece, Portugal, Slovakia, Ukraine). Some NHRIs indicated that the report generally **helped the NHRI get more visibility** (Georgia, Hungary) and also served to trigger follow-up inquiries on identified issues (Hungary) or improving cooperation with public authorities (Ukraine).

A number of NHRIs across the region (see in particular reports on Albania, Croatia, Estonia, Greece, Moldova, North Macedonia, Norway and Slovakia) stressed that impacts and follow-up initiatives were frustrated by the **challenges posed by COVID-19**.

NHRIs' recommendations to increase impacts of joint reporting

NHRIs were invited to formulate **recommendations to ENNHRI and regional actors** to further develop positive impacts from the joint rule of law reporting.

NHRIs generally expressed **appreciation for the work of ENNHRI** in this area, and some encouraged ENNHRI to continue facilitating joint reporting (Cyprus, Hungary, Norway). Various NHRIs made general and concrete proposals to **increase the impact of reporting in particular at the national level**. Some general recommendations include developing **capacity-building for NHRIs to better engage** and follow up on regional rule of law processes (from ENNHRI members in Georgia and Slovakia), using the joint rule of law reporting exercise as a basis to **enhance regional cooperation between NHRIs** (from ENNHRI member in Serbia) and **identify ENNHRI priorities** (from ENNHRI member in Norway). Some NHRIs also made more concrete proposals such as developing **guidelines or toolkit** for NHRIs for instance for their engagement with the EU representation in the country (as proposed in particular by ENNHRI members in Georgia, Slovenia); developing **model quantitative and qualitative indicators** on human rights and rule of law to help NHRIs measure progress at national level (as suggested by ENNHRI member in Greece); further **facilitating the sharing of best practices** as well as analysing differences in NHRIs' mandates and capacity to work on rule of law issues based on lessons learnt from reporting cycles (as suggested by ENNHRI member in Finland); publish an annual collation of NHRIs' good practices regarding their legislative and judicial mandates (as suggested by ENNHRI member in Azerbaijan), **sharing directly the rule of law report with state**

authorities, translated in national language to maximise its consideration and impact on the ground (as suggested by ENNHRI member in North Macedonia).

Some ENNHRI members (in particular from Croatia, Georgia and Germany) underlined the **importance for EU and regional actors to better value national rule of law discussions, in which NHRIs should be included**. The NHRI in Germany called for a stronger and more visible role of the representations of the European Commission in member states and possible cooperation with NHRIs in this area (for example through public debates on rule of law issues, including on the basis of NHRIs' reports), and stressed the importance for EU and regional bodies to **expressly refer to relevant NHRI reports, including the ENNHRI Rule of Law Reports**, when engaging with national governments or parliaments on rule of law issues. The institution in Kosovo* stressed the advantages of a consideration of the ENNHRI report by the European Commission in the **context of the EU accession process**.

Independent and effective NHRIs

Progress in NHRIs' establishment and accreditation

Support for the establishment and accreditation of NHRIs could be found throughout the region, including in countries taking **steps towards creating new institutions or strengthening existing bodies** to achieve A-status accreditation.

In Sweden, the bill to establish an NHRI was submitted by the government to the Swedish Parliament and [approved](#) on 9 June 2021. The new institution is planned to start operations on 1 January 2022. In Belgium, the Federal Institute for the Protection and Promotion of Human Rights, created in 2019, progressed with appointing its Board and recruiting initial staff. While the Institute's mandate is limited to federal and residual competences only, it intends to apply for international accreditation, and will seek cooperation with pre-existing Belgian bodies, including the B-status accredited institution, Unia. In the Czech Republic, a roundtable was organised in 2020 by relevant stakeholders, who reiterated their commitment towards having an accredited NHRI. In Italy, different stakeholders continued to encourage the establishment of an NHRI, and the Committee on Constitutional Affairs of the Italian Chamber of Deputies adopted a unified text that will serve as a basis for the discussions on the establishment of the NHRI. In Iceland, the government has decided to appoint a ministerial Working Group to explore the current scenario and possible avenues towards the establishment of an NHRI. In Switzerland, the Commission for External Affairs adopted a text for a draft bill to be discussed at the Council of States. The text does not foresee monitoring powers for the new institution.

As an outcome of the SCA Session in December 2020 two institutions received A-status accreditation the Slovenian Human Rights Ombudsman was upgraded from B to A-status; and the Estonian Chancellor of Justice was granted A-status following its first accreditation. Moreover, the B-status institution in Cyprus is scheduled for review by the SCA in June 2021, while the B-status institution in Austria has applied for review of its accreditation status with the SCA. The A-status NHRI in Serbia saw its review of accreditation status deferred.

Changes to the regulatory frameworks

While no major changes affected the national **regulatory frameworks** in which European NHRIs operate since the past year, some NHRIs in particular in EU Member States signalled relevant recent or **ongoing reforms**. In Austria, the constitutional framework regulating the NHRI's role as NPM has recently been improved, further strengthening the independence of the institution. In Romania, the institution's proposal to amend its obsolete legal framework was invalidated by the Constitutional Court, while the government has presented another legislative proposal to absorb the NHRI into the state authority combating discrimination, which causes **serious concerns** for the Institute and its staff. The NHRI in Finland is likely to be affected by a draft legislation aimed at clarifying the division of competences and tasks of the country's supreme guardians of legality.

Legislative initiatives aim at **supporting the work of NHRIs** in some European countries. In Serbia, the NHRI is involved in the drafting of this new law which follows consultations with SIGMA experts (Support for Improvement in Governance and Management, a joint OECD/EU initiative). In Moldova however, while the draft bill aims at consolidating the independence of the institution, the NHRI's recommendations are not being considered by the authorities. In Russia, the reform will take the form of a series of amendments to constitutional and regular federal laws. In Norway, the Parliament is discussing an evaluation to assess the NHRI's functioning and, in Latvia, changes were made to the appointment process of the Head of the NHRI and to the length of its mandate as a follow-up to the latest SCA recommendations.

A number of NHRIs reported about **new specific mandates**. In Azerbaijan, the NHRI mandate was strengthened by the establishment of a separate Department for the Protection of the Right to Information. In Croatia, the mandate for the protection of whistle-blowers recently granted to the NHRI was operationalized through new procedural rules, foreseeing, among others, the creation of a specific department devoted to this new task. In Hungary, the NHRI took over the role of two former institutions, one dealing with police complaints and the other with equal treatment. In Ireland, the NHRI was granted a

new role as National Independent Rapporteur on trafficking of human beings. In Northern Ireland, a new mandate was conferred to the NHRI together with the equality commission to monitor the UK Government compliance with their commitments to ensure rights in the country following Brexit. Finally, in Turkey, the institution was vested with a new mandate as rapporteur for the Council of Europe Group of Experts on Action against Trafficking in Human Being (GRETA).

By contrast, other NHRIs exposed **concerns related to their mandate**. The NHRI in Slovenia deplores the lack of progress regarding the recognition of the NHRI as monitoring body under the UN Convention for the Protection of Rights of Persons with Disabilities (CRPD), while the reporting institution from Belgium flags that the limited mandate of the institution restricts its actions regarding rule of law issues. The NHRI in Finland is concerned that, with the creation of new sectoral bodies with overlapping mandates, the human rights landscape is getting more fragmented, and the reduced resources available to each body may represent a challenge. Similarly, the NHRI in Moldova expresses serious concerns over the creation of new ombudsman for entrepreneurs' rights, on which the NHRI was not consulted although it will be significantly impacted.

Enabling environment

As regards resources, some NHRIs (in Hungary, Ireland, North Macedonia and Northern Ireland) reported a significant **increase of budget**, also consequent to their new mandates. This allowed for a revalorisation of the staff, including an increase of salaries, in Hungary and hiring of new staff in Ireland and Northern Ireland. The institution in Turkey also benefited from additional staff and acquisition of a new building; these changes followed a capacity assessment program that started in 2019, spearheaded by UNDP and involving ENNHRI and OHCHR. The budget of other NHRIs increased as well, such as in Bulgaria and in Spain (in connection to a digital transformation project aiming to eliminate bureaucracy and streamline processes for citizens). Progress in the appointment of additional staff was also reported by NHRIs in Cyprus and Slovenia. In Slovenia, a budget reform to enhance NHRI's independence from the government should also be triggered by a recent decision of the Constitutional Court. The NHRI in Norway is currently satisfied with its resources, however requested an increase to the Parliament to meet the increasing demand for the institution's services.

On the contrary, **several NHRIs continued to deplore a lack of sufficient resources**. In Albania, the NHRI pointed that, in spite of some progress over the past years, the institution is still faced with limited human and financial capacities which affect the effective exercise of its mandate. Similarly, the NHRI in Luxembourg lacks resources to fulfil its task,

such as monitoring the situation of people in closed institutions. In Serbia, the NHRI recently benefited from new recruitments but still operates in inadequate premises, as reported the NHRI in Croatia following the earthquake that destroyed its offices in Zagreb. Concerns over the lack of sufficient resources were also raised by the NHRIs in Belgium, Finland, Germany, the Netherlands and Romania. In Moldova, while the NHRI agreed with the authorities to decrease its 2020 budget to reallocate to COVID-19 response, it is concerned that in 2021 this decrease might affect the institution's financial independence.

Several NHRIs experience **generally good cooperation with national authorities**. This is the case for institutions in Austria, Belgium, Cyprus, Denmark, Finland, Germany, Hungary, Ireland, Kosovo*, Lithuania, North Macedonia, Northern Ireland, Norway, Serbia, Slovenia Spain and Turkey. Nevertheless, many NHRIs highlighted **issues with the implementation of their recommendations**. Follow-up by state authorities, notably regarding its timeliness, is reported as particularly flawed in Albania, Croatia, Cyprus, the Czech Republic, Kosovo*, North Macedonia, Slovakia, Slovenia, and Ukraine, and difficulties are also registered in Belgium and Luxembourg. A number of NHRIs stressed issues affecting the **effectiveness of consultation processes**, such as in Albania, Czech Republic, Germany, Hungary, Luxembourg and Slovakia. This includes the **lack of regular consultations** (Albania, Germany, Greece and Moldova – for instance recently on the creation of a new ombudsman) and **short deadlines** (Albania, Hungary). On the contrary, the NHRI in Norway acknowledges a good consultation framework on human rights impact assessment. Some NHRIs further reported about **reduced access to information**. This is the case, in particular as regards direct access to information concerning the treatment of irregular migrants, in Croatia as well as, especially in the context of the COVID-19 emergency, in Slovakia.

Some NHRIs continued to expose worrying **threats to their independence**. The situation has further deteriorated for the NHRI in Poland, where the very existence of the NHRI is threatened as no Commissioner was appointed since September 2020 despite some attempts, and the provisions on transitional arrangements [have been found unconstitutional before the constitutional court](#). In Armenia, legislative amendments were discussed which seriously undermined the NHRI by transferring its staff back to a civil service regime, and abolishing the budgetary guarantee for the NHRI institutional independence – they were eventually withdrawn in 2020. **Episodes of obstruction** were reported by the NHRI in Slovakia, after its request for information about health care for persons other than in the context of COVID-19. In Georgia, the NHRI is targeted by public authorities in relation to the institution's monitoring and reporting on the state's management of penitentiary establishments. By contrast, as regards concerns reported in

ENNHRI 2020 Rule of Law Report, some progress was registered in Cyprus, where an investigation by the Attorney General, after Auditor General's attempt to investigate the way the NHRI exercises its powers, which the NHRI considered an interference with its independence, was eventually discontinued. In Greece, a recently enacted law, prompted by the NHRI's proactive engagement, is meant to address some of the issues identified in the 2020 Rule of Law Report. The NHRI also informed of having been paid tribute by the President of the Republic for its contribution in promoting and protecting human rights in the country.

A few NHRIs underlined **developments undermining the human rights environment** in the country, on which the institutions rely to operate. In Finland, the increasing questioning of values related to human rights and rule of law protection from some segments of society and some political actors was identified by the NHRI as one factor that may affect the enabling environment of democratic institutions meant to protect those values, including NHRIs. In Great Britain, the NHRI identified several recent regressive developments in the UK equality and human rights legal framework, including the exclusion of the EU Charter of Fundamental Rights from domestic law as a result of Brexit.

Human rights defenders and civil society space

Several challenges continue to affect human rights defenders and the civil society space.

A number of NHRIs reported about **laws and practices negatively affecting the operations of civil society organisations** (CSOs). In Ireland and Germany, the **advocacy role** of CSOs remains negatively affected by existing rules (on political campaigning in Ireland, on charitable status in Germany), issues that recent legislative initiatives in both countries failed to fully address. In Georgia, the NHRI underlined that the **concept of HRD** is still not defined by law. New developments are reported by the NHRI in Greece, where **stricter administrative requirements** were imposed for the operations of CSOs working with asylum seekers and migrants; and in Slovenia, where the NHRI relates about the debate around the eviction of a well-known collective of CSOs from their premises. In Cyprus, the NHRI provides explanations over the questioned **de-registration** of a high number of CSOs over the past year.

Insufficient funding, and restrictions in relation to access to funding, are reported by NHRIs as a persisting challenge for CSOs. **General concerns**, exacerbated by the impact of the crisis triggered by the COVID-19 outbreak, are voiced by the NHRIs in Albania, Croatia and Ireland, which all called for increased state funding for CSOs. **Discriminatory practices** of public funding were exposed by the NHRI in Slovakia, affecting in particular progressive

organisations working on gender equality. Restrictions on access to **foreign funding** continue being reported in Hungary, while the NHRI in Denmark drew attention to a new bill that, with a view to safeguarding democracy and fundamental rights, would restrict CSOs' access to funding, in particular from foreign donations, in a manner which the NHRI considers overly vague and at risk of arbitrary decisions.

CSOs' participation in decision-making and their **cooperation with state authorities** is also said to be challenged in a number of member states. In Croatia, the NHRI repeated its recommendation to the government to adopt an action plan on civil society's enabling environment, and reports difficulties for CSOs in accessing information about the treatment of irregular migrants and in being granted access to shelters and detention centres. The NHRI in Romania reports the government's attempt to unduly influence the composition of the civil society dialogue council, while the NHRI in Slovenia reported new rules reducing CSOs' participation in environmental impact assessments. The institution in Kosovo* stressed issues related to CSOs **access to public information** and participation.

In some countries, NHRIs also reported about **attacks and threats targeting CSOs and human rights defenders** (HRDs). Cases range from **violent physical attacks** (as reported in Serbia especially as regards LGBTI+ rights defenders), **threats and hate speech** (as reported specifically in Armenia), to **public criticism** of HRDs by the authorities (see reports on Belgium, Georgia and Moldova). In some countries, NHRIs point to a **less favourable environment for HRDs and CSOs** defending human rights (see in particular reports on Finland and Greece). Several NHRIs stressed in particular the fragile situation of those supporting LGBTI+ people (Georgia, Greece, Serbia) and migrants (Greece). Reports expose how these defenders are indeed increasingly subject to hate speech and attacks, which the public authorities often fail to effectively address. In France, the NHRI pointed to a worrying trend as it concerns the **authorities' measures targeting** CSOs allegedly opposing the 'Republican order' or linked to radical Islamism. NHRIs in Albania and Kosovo* stressed the fragile situation facing the civil society sector in the **COVID-19 context** (see also below).

Several NHRIs also report about **restrictions to the exercise of civic freedoms** and in particular **freedom of expression and freedom of peaceful assembly**. Several NHRIs drew attention to issues in the **legislative framework**. In Bosnia and Herzegovina, the NHRI reported about disparities among regional legislations regulating public gatherings, while underlining several recent legislative initiatives on the issue. The NHRI adopted last year a special report on freedom of peaceful assembly. In France, two draft bills pose serious threats to civic space and the free exercise of freedom of assembly, notably through extended powers granted to the police. In Spain, no progress was made in reforming the so called "gag law" which negatively impacts the exercise of freedom of

expression and freedom to peaceful assembly. Several NHRIs in other countries also drew attention to **(disproportionate) restrictions of peaceful assemblies** also in the context of measures taken to contain the COVID-19 pandemic, including in Albania, Belgium, Bulgaria, Hungary, the Netherlands, Northern Ireland, Poland, Russia and Slovenia. NHRIs in some countries particularly reported the **disproportionate use of police powers towards peaceful protesters** – including arbitrary detention (Albania, Russia) and episodes of **police brutality** (Bulgaria, Poland). The NHRI in Moldova stressed **positive developments** with a new law on CSOs and freedom of assembly, taking into account most recommendations by civil society. Similarly, the NHRI in Lithuania pointed at the country's good rating by a prominent LGBTI+ rights NGO in terms of ensuring freedom of assembly and of expression for LGBTI+ people and rights defenders.

As regards **relations between NHRIs and other HRDs and CSOs**, most NHRIs stressed their investments in establishing **good cooperation** including in Bosnia and Herzegovina, Croatia, Cyprus, Denmark, Finland, Greece, Hungary, Ireland, Kosovo*, Lithuania, Montenegro, North Macedonia, Poland, Romania and Turkey. Such cooperation is also beneficial in view of **joint efforts to raise awareness and promote a rule of law culture**. For example, in Croatia, the NHRI took part in a conference on rule of law and human rights organised by a coalition of CSOs.

Specific **efforts were made by NHRIs to ensure better protection of HRDs** in Albania, Armenia, Azerbaijan, Croatia, Finland, Georgia, Germany, Greece, Ireland, Kosovo*, Moldova, Montenegro, Northern Ireland, Norway, Slovakia, Slovenia and Serbia. NHRIs support and protect HRDs including through enhanced monitoring and targeted inquiries, recommendations to relevant authorities, capacity building, awareness raising, public statements, legal and political support and spaces for dialogue and information exchange. In Germany, the NHRI advised the Foreign Office in the development of a protection programme for HRDs, that was launched in 2020 and is expected to be further developed in 2021.

Checks and balances

NHRIs report diverse issues which continue to affect the system of checks and balances in enlargement countries.

Some NHRIs have reported a **generally low level of trust in state authorities**, in particular in Albania, Cyprus, Poland and Slovakia. NHRIs in Albania, Croatia, Denmark, Georgia, Germany, Moldova, the Netherlands and Slovenia stressed a recently **decreased level of public trust**. In some cases, such development was linked to the authorities' management

of the pandemic: lack of transparency of measures taken in Albania, debate around mink culling in Denmark and unclear criteria for the adoption of COVID-19 measures in Croatia. In Georgia, the trust in authorities was affected by the political crisis and protests that followed **electoral shortcomings**, in Montenegro the NHRI stressed an overall discontent at the slowness and **inefficiency of state bodies** from citizens willing to exercise their rights, while in Germany the **authorities' accountability** is questioned in relation to structural racism within the police and the lack of independent police complaints bodies at the level of federal states. The NHRI in France reported a deteriorating confidence of the citizens in the police, which is being granted increasing powers. A generally **good level of trust** prevails in Finland and Norway.

Many NHRIs pointed at **problematic issues concerning law-making**, often in connection to the emergency situation created by the COVID-19 pandemic outbreak. Concerns relate to the use of **accelerated legislative procedures** particularly in Denmark, France, Greece and Slovakia. This has led to increasing powers of the executive as mentioned by the NHRI in Slovakia. The **lack of proper consultations and impact assessment** (especially of impacts on human rights), also partly resulting from expedited legislative procedures, has been reported by various NHRIs and namely in Albania, Bulgaria, Czech Republic, Denmark, Finland, France, Greece, Ireland, Moldova, Poland and Slovakia. In Croatia and Germany, reported issues seem to be more generalised and not necessarily linked to emergency law-making. NHRIs in Ireland, Slovenia and Ukraine further question the **lack of disaggregated data** to support relevant measures. In Greece, Hungary and Ireland NHRIs stressed the **widespread use of executive decrees and regulations**, which sometimes resulted in overregulation and poorly drafted decisions (as reported, respectively, in relation to Greece and Ireland). The NHRI in Luxembourg raised concerns about restrictions to human rights deriving from recommendations, bearing the risk of arbitrary decisions. The impact of reduced checks and balances and consultations in the process of law-making, in particular on **vulnerable persons such as persons with disabilities**, was underlined by NHRIs in Ireland and Luxembourg. On a more **positive note**, in Denmark, the NHRI reports that the extensive executive powers given to the Minister for Health in emergency COVID-19 legislation was mitigated as from February 2021 by the adoption of a new epidemics act which provides that some emergency measures taken by the executive branch in order to handle an epidemic can be vetoed by a parliamentary committee.

Reduced parliamentary oversight was reported as one of the main challenges affecting law-making in the context of the **COVID-19 pandemic**, as indicated by NHRIs in Austria, Croatia, Germany, Greece, Ireland, Moldova, Romania, Slovenia and Spain. In some cases, such as in Croatia, the government's decision not to activate the state of emergency was

questioned, insofar as it could have strengthened the parliament's say over measures restricting human rights and freedoms. Deficiencies in oversight over the executive were also reported **beyond the pandemic context**, for example in the Netherlands in connection with the 'child benefit scandal' case.

As regards **judicial oversight**, the NHRI in Poland reflected how the serious threats affecting judicial independence in the country negatively impact on the national system of checks and balances. The NHRI also reported on lack of resources in relation to a new mandate to file extraordinary complaints to the Supreme Court against all final judgements of ordinary courts. Other NHRIs touched upon the **lack of effectiveness in legality and constitutionality checks**, for instance due to the absence of a Constitutional Court (Albania), issues with the implementation of the Constitutional Court's judgments (Slovenia, Ukraine), or in Luxembourg where the NHRI pointed at practices undermining the role of the Council of State. Some NHRIs also reported **positive developments**. In Armenia, the Constitutional Court set a deadline for repealing provisions recognised as unconstitutional. In Slovakia, the NHRI stressed a positive change in the appointment system of Constitutional Court judges, aimed at preventing one political party from electing the majority of judges. The important **role of the constitutional review of measures taken in response to the COVID-19 pandemic** was highlighted in particular by NHRIs in Croatia and in Romania, as regards the judicial review exercised by Constitutional Courts, as well as in Finland, as regards the ex-ante review of draft laws submitted to the Parliament carried out by the constitutional law committee.

Issues with the **separation of powers** were underlined by the NHRIs in Estonia, Georgia and Poland, mainly regarding **independence and impartiality of judges**. In Poland, the NHRI stressed the undue influence of legislative and executive powers over courts. In Kosovo*, two laws regulating the public service were questioned by the NHRI and found unconstitutional by the Constitutional Court as contrary to the separation of powers. The Institution in Turkey pointed to the existence of **accountability tools**, including an electronic public service tool for the use of the right to petition and information, created by the Presidential Communication Center. On the contrary, the NHRI in Bosnia and Herzegovina underlined the unsatisfactory system of inspections of administrative authorities.

Some NHRIs also reported **challenges in the implementation of judgments by supranational courts**. The NHRI in Poland makes particular reference to the lack of implementation of judgments by the **Court of Justice of the EU** (CJEU) concerning the government's controversial reforms to the judiciary. The NHRI in Germany also draws attention to the possible impact of a recent ruling by the constitutional court on the

implementation of CJEU judgments. The NHRI in Bulgaria advocated for the establishment of a national inter-institutional coordination council to monitor the implementation of judgments of the **European Court of Human Rights** (ECtHR). Other NHRIs indeed raised concerns about the failure to implement ECtHR judgments (Albania, Greece, Slovenia, Ukraine).

A number of NHRIs pointed at **issues with the electoral system**, including due to the COVID-19 situation and the holding of online elections (Bulgaria, Estonia, Kosovo*, Poland, Romania). **General irregularities** were reported in Moldova, and in Georgia where the NHRI underlined problems in organising fair elections as well as pressure on voters, observers and the media. More specifically, the NHRI in Serbia pointed to problems as regards the reasonable **accommodation of the needs of persons with disabilities**, and the NHRI in Northern Ireland initiated a judicial review of the election law which required the publication of the home address for candidates standing in local elections, exposing victims of domestic violence. This led to an amendment to the law removing the obligation, now entered into force. In Great Britain, the NHRI is concerned about whether the policy change to **allow prisoners on temporary licence to vote** meets the UK's obligations under the ICCPR. This change followed the ECtHR ruling that the UK's blanket ban on prisoner voting was disproportionate and indiscriminate. The NHRI also underlined persisting issues with **equal participation and representation** in electoral processes in the UK, also in relation to a proposed bill establishing a legal requirement for photographic voter ID for participation in elections.

Difficulties in accessing public information were stressed by several NHRIs (Armenia, Georgia, Hungary, Kosovo*, Moldova, Poland, Romania and Ukraine). Such issues represent the focus of a third of the complaints addressed to the NHRI in Bosnia and Herzegovina in 2020, while in Kosovo* the NHRI reported issues either due to **delays in responding** to access to information requests or to the **lack of justification** when rejecting requests. In addition, the government has not yet appointed a Commissioner of the Agency for Information and Privacy to act on these issues. Other NHRIs underlined the **inadequacy of the legislative framework** (Moldova, Ukraine) and the worsening impact of COVID-19 context (Georgia, Moldova). In Armenia, the NHRI noted some steps taken in 2020 to improve the situation, however issues remain, especially for journalists and persons with disabilities.

Among the **other issues** affecting checks and balances, the NHRI in Germany stressed the need for a reform concerning the size of the Federal Parliament and the NHRI in Northern Ireland raised concerns over the new governmental approach announced by the UK to address the legacy of the past, backsliding on previous commitments.

The **contribution of NHRIs in the national system of checks and balances** is illustrated in the country reports by several examples. These include reviewing draft laws and addressing recommendations and advice to state authorities (Belgium, Bulgaria, Denmark, Georgia, Germany, Hungary, Ireland, Lithuania, Montenegro, the Netherlands, Northern Ireland, Norway, Slovenia and Turkey); litigation and triggering of judicial and constitutional review (Armenia, Azerbaijan, Belgium, Bulgaria, Germany, Hungary, Ireland, Kosovo*, Latvia, Northern Ireland, and Spain); organising trainings for state authorities and awareness raising initiatives (Finland, Greece and the Netherlands); supporting effective participation and holding of elections (Albania, Serbia); facilitating access to information and providing protection to whistle-blowers (Croatia and Hungary).

At the same time, a number of NHRIs report **challenges affecting their role as part of the system of checks and balances**. NHRIs in Greece and Slovakia mention a **lack of cooperation and consultation**, despite efforts to enhance cooperation in Greece. In Poland, the NHRI points at a particularly difficult situation, where the institution's recommendations are said to be ignored by the authorities, and its positions not considered by the courts. The Croatian NHRI reported a **lack of direct access to information** on the treatment of irregular migrants. Some NHRIs underlined the **need for additional resources** to support the NHRIs' role in the system of checks and balances, for instance to ensure effective monitoring and reporting (Finland, Germany), or for training activities (the Netherlands). The Institution in Turkey reported challenges in exercising its role as the **Institution's complaint mechanism superposes with a similar one** of another institution, potentially altering its efficiency.

Functioning of justice systems

Generalised deficiencies affecting justice systems were underlined by many NHRIs across the region. A general dissatisfaction of citizens is reported in Azerbaijan, Bosnia and Herzegovina, Croatia, Georgia, Moldova, North Macedonia, Poland and Serbia. In Croatia, the NHRI reports an increase in complaints related to the functioning of the justice system compared to previous years, in particular on the conduct of judges and of proceedings, while in North Macedonia, the NHRI stresses the need for a reform of the judiciary to address persisting issues such as the **lack of transparency**, an issue underlined as well by NHRIs in Moldova, Slovenia and Ukraine. The NHRI in France draws attention to two **worrying judicial reforms** affecting respectively the juvenile criminal justice system and the treatment of persons convicted of acts of terrorism. In Albania, which is entering the fourth year of its justice system reform, the progress made is considered by the NHRI

unsatisfactory, with the situation being also aggravated by the pandemic which led to the suspension of court activity.

On the other hand, **efforts to improve the general functioning** of justice systems were reported. **Ongoing reforms** were stressed in Moldova where a promising draft law on the justice sector has been adopted, in Northern Ireland where a review of administrative law and Human rights Act is ongoing, and in Slovakia where major reforms currently aim at increasing the independence and accountability of judges, improve the appointment and functioning of the Judicial Council, create a new Supreme Administrative Court and improve geographical distribution and access to courts. **Other positive developments** were underlined for instance by the NHRI in Albania on the quality of work on the administration of justice, and in relation to the High Court and the Constitutional Court which have begun to partially exercise their functions after several years without functioning.

A few NHRIs reported concerns over the **independence of the judiciary**, such as in Moldova. The case of Poland remains particularly worrying, with the NHRI reporting that the independence of the judiciary has continued to severely deteriorate over the past year, also due to the enactment of the so-called 'muzzle law', leading to a further erosion of the separation of powers. In Estonia, the NHRI pointed with concern at the fact that the Ministry of Justice can request judges to amend information included in the courts' information system – what would grant the Ministry a certain extent of supervisory power over courts. Issues concerning the system for the **appointment of judges**, in particular of the Supreme Court, were raised by the NHRIs in Georgia and in Slovenia, with little progress made to enact a reform. By contrast, efforts to modernise the appointment procedures are signalled by the NHRI in Ireland. In Hungary, the NHRI informs that the **functioning of the National Judicial Council** is currently under constitutional review. A few NHRIs also underlined the system's **failure to ensure independent and effective investigations**, regarding past human rights violations in Ireland, or regarding cases of assault and harassment of journalists in Kosovo*.

Concerns over the **insufficient resources** for a good administration of justice were raised by NHRIs in Albania, North Macedonia, Norway, Poland and Slovenia. **Excessive length of proceedings** remains a widespread concern, aggravated by the COVID-19 context, as reported by NHRIs in Albania, Armenia, Azerbaijan, Bosnia and Herzegovina, Croatia, the Czech Republic, Cyprus, Georgia, Greece, Ireland, Kosovo*, Moldova, Montenegro, North Macedonia, Northern Ireland, Norway, Poland, Portugal, Russia and Serbia. Some **progress** is reported in Slovenia, where the NHRI affirms that excessive delays in judicial proceedings

are no longer a systemic problem, and in Russia where legal amendments improved the situation for criminal proceedings. Concerns over the **lack of enforcement** of court decisions are shared by the NHRIs in Azerbaijan, Bosnia and Herzegovina, Kosovo*, Portugal and Ukraine, where a draft action plan is expected to address the issue. **Erosion of separation of powers** was underlined by the NHRIs in Estonia, Georgia and Poland, mainly regarding independence and impartiality of judges.

NHRIs variably report on **challenges affecting the right to access to a court**. The NHRI in Bulgaria stresses the urgent need to develop the **e-justice system**. Issues affecting the **legal aid system**, including delays in legal aid procedures and the difficult financial position of certain free legal aid providers, such as CSOs and legal clinics, continue to be reported by NHRIs in Albania, Azerbaijan, Croatia, Great Britain, Ireland, Moldova, the Netherlands, Portugal and Slovenia. A proposal from the Serbian NHRI to include LGBTI+ people as vulnerable beneficiaries for legal aid (as particularly exposed to threats and hate crimes) was not considered by the authorities, however some recommendations from the Albanian NHRI were taken in consideration and implemented in 2020. **Some progress** was also reported by the institution in Belgium, which informed about changes made to raise the income threshold to access legal aid. An audit to evaluate the existing system triggered by the government, and involving the participation of the NHRI, is ongoing in Denmark and in Norway. In Hungary, the NHRI reports about a draft law on administrative proceedings aimed at addressing the **lack of legal remedy against certain courts' decisions**.

NHRIs in Georgia, Moldova, the Netherlands, Russia, Serbia, Slovenia and Ukraine express concern over the **lack of respect of fair trial rights**. They stressed issues related in particular to **criminal proceedings**: rights of suspects and accused especially in the context of pre-trial detention (the Netherlands, Ukraine), victim's rights (Montenegro), unsatisfactory legal regime for foreigners (Moldova). ENNHRI members in Belgium, Germany, Great Britain and Moldova raise concerns about obstacles to **access to justice for certain vulnerable groups**, and in particular persons with disabilities, persons living in poverty, older persons, women victims of gender-based violence and victims of racist violence. The NHRI in Great Britain particularly underlined the persisting inadequacy of the justice system responses to **violence against women and girls**.

Issues with the **juvenile justice framework** were underlined by several NHRIs. While the NHRI in France expressed concerns over a recent legal reform, NHRIs in Albania, Georgia, Great Britain and Kosovo* call for better consideration and protection of juveniles in the justice system, including of those in detention.

NHRIs' contributions provide several examples illustrating the **role of NHRIs in contributing to promote fair and effective justice**. These go from statements, reports and recommendations on necessary improvements to the legal framework (see examples from NHRIs in Armenia, Croatia, Estonia, Georgia, Greece, Ireland, Kosovo*, Moldova, Northern Ireland, Norway, Russia and Ukraine); reporting to international bodies (Norway); the handling of complaints (Albania, Belgium, Croatia, Portugal, Slovenia) and follow-up actions to uphold the right to good administration in the delivery of justice (such as disciplinary proceedings against judges by the NHRI in Estonia); the provision of legal advice as well as litigation of key cases (Azerbaijan, Bulgaria, Denmark, Georgia, Ireland and Kosovo*); research, awareness raising and training activities (Lithuania – in particular as regards access to justice in relation to environmental protection, Romania, Russia, Finland – also highlighting specific initiatives addressed at improving access to justice for vulnerable groups such as the elderly and persons with disabilities).

Media pluralism and freedom of expression

Issues affecting the independence and pluralism of media and the framework for the protection of media and journalists were reported by NHRIs in several countries.

A **worrying trend regarding journalists' safety** is reported by NHRIs in several countries (including Croatia, Finland, Georgia, Ireland, Kosovo*, Montenegro, North Macedonia, Northern Ireland, Poland, Russia, Serbia, Slovakia, Slovenia and Ukraine). Several NHRIs underlined the aggravated situation in COVID-19 context (Germany, Moldova, Ukraine). While most cases involve **threats, intimidation, harassment and hate speech, sometimes gender-based** (Finland, Serbia), some episodes also relate to **violent physical attacks** such as reported by the NHRIs in Croatia, Kosovo*, Montenegro, Poland and Serbia. Concerns about **arbitrary arrests and prosecutions** of journalists by law enforcement authorities were shared by NHRIs in Poland, Russia and Slovakia, and about **arbitrary dismissals** of public television journalists by the NHRI in Georgia. The NHRI in Serbia stressed a significant aggravation of the situation compared to 2019, the NHRI in Russia stressed the problematic situation of bloggers as they are not protected by journalists' legal status, and the NHRI in Montenegro raised concerns over **police attitude** towards journalists. The Institution in Kosovo* furthermore underlined the **general impunity** in above mentioned cases.

Some NHRIs reported about **restricted access for journalists** (Ukraine) including access to institutional premises (Bulgaria, Poland), access to sensitive sites – namely refugee camps (France), access to public information (Armenia, Azerbaijan, Moldova). Some NHRIs

reported of journalists targeted by **abusive lawsuits** (see reports on Bulgaria and Croatia). In Montenegro, the NHRI also drew attention to the **precarious working conditions** journalists find themselves in, a situation which worsened as a consequence of the COVID-19 pandemic. Some NHRIs however also reported about **positive developments** such as a draft law on offenses against journalists (Ukraine) or the introduction of a new criminal offence of coercion against a person who performs activities of public interest or in the public service which includes journalists (Croatia).

A number of NHRIs have reported on issues relating to **media pluralism** (Georgia, Hungary, Kosovo* and Ukraine). In some cases, these are linked to **media concentration**, as reported by the NHRI in Poland, which informs about the ongoing acquisition of an important national media by a state-controlled oil company, which would grant state authorities a dominant position in the media market. Minor concerns on media concentration were also voiced by the NHRI in Finland, although the situation regarding media independence and pluralism there remains overall good and stable. Several NHRIs reported issues affecting **media independence** (Georgia, Moldova, Montenegro, North Macedonia, Poland, Slovenia and Albania - especially of the Audiovisual Media Authority), including **threats and attacks** (Georgia), **poor editorial autonomy and lack of transparency** in media ownership (Greece, Moldova). Other voiced concerns over the effectiveness of the legal framework to ensure **media diversity** (Hungary) and **discriminatory access to media**, in particular affecting minorities (Greece, Hungary). **Draft laws** on media are pending in Ukraine and in Armenia – to combat fake information, however the NHRI fears the text contains non-systemic solutions that may pose additional problems to the media sector and the **freedom of speech**.

Economic pressure is also reported by some NHRIs as affecting the media sector. This was exacerbated by the pandemic, as reported by NHRIs in Croatia and Finland. Dedicated financial support for media workers was offered by the Croatian Ministry of Culture and Media. By contrast, the NHRI in Poland warns that a new tax levied on incomes from advertisements, ostensibly presented by the government as a necessary measure to counter economic recession, will have a serious impact on small media enterprises.

At the same time, issues around **hate speech in the media** were also reported on by a number of NHRIs (Albania, Finland, Ireland, Kosovo*, Moldova, Serbia and Slovenia), especially targeting female journalists and politicians in Finland and Serbia. In Moldova, a draft law on hate speech is currently pending, while in Croatia, a draft law on **electronic media** was recently proposed – welcomed by the NHRI which however expresses concerns over its insufficiency to fight against illegal content on social media, including hate speech.

Freedom of expression online was also underlined as a concern by the NHRI in Albania and Great Britain, where the institution expressed concerns over the government's proposals to improve online safety, risking infringing individuals' freedom of expression. The NHRI in Hungary stressed the urgency to adapt the legislation to the rapid rise of social networks and platforms. The Hungarian NHRI further points to the **need to invest more in media education**, including to better protect children. In this respect, on a positive note, the NHRI in Ireland informs about the creation of an **online safety commissioner**. NHRIs are active in prompting better responses to hate speech, including a more effective monitoring and reporting framework, as recommended by the NHRI in Bulgaria, or a strengthened and modernised code of professional ethics for media, as called for by the NHRI in Ireland.

A number of country reports highlight the **role of NHRIs in promoting free, balanced and pluralistic media**, especially through **monitoring and recommendations** to public authorities, including for legal amendments (Azerbaijan, Albania, Georgia, Greece, Ireland, Lithuania, Moldova, Russia and Slovenia), **litigation** (Georgia, Poland) as well as **awareness raising and public education** (Finland, Lithuania). The NHRI in Azerbaijan established a new department for the protection of the right to Information and investigates cases related to journalists, and the NHRI in North Macedonia signed a MoU with journalists' association to strengthen their protection.

Corruption

ENNHRI members in some states report **high levels of corruption**, including Albania, Greece, Slovakia, Slovenia, Spain – with the **pandemic context** said to create, in certain cases (see report on Albania and Moldova in particular), a more favourable ground for increased corruption due to lack of transparency and accountability, which also led, as reported for example in Moldova, to episodes of intimidation of health workers exposing wrongdoings and mismanagement.

Among those ENNHRI members which included information on the regulatory framework to combat corruption, most pointed to an **inadequate legal framework and insufficient efforts to investigate and prosecute cases** (see in particular reports on Albania, Cyprus, Greece, Slovakia), while some mentioned **recent improvements** in legislation and its implementation (in Azerbaijan, Slovakia, Slovenia, Romania). Some progress is reported in a number of states on legislation on **whistleblowers protection**, including in Croatia, Kosovo* and Romania, while elsewhere ENNHRI members point to delays in enacting an adequate regulatory framework (such as in Albania, Greece, Slovakia and Slovenia), gaps

and lack of clarity of existing rules (such as in Hungary) or lack of awareness of rights and obligations (see for example report on Croatia).

A number of country reports showcase the **role NHRIs can play** in contributing to the effective prevention and fight against corruption. Reference goes, for example, to NHRIs' role in **carrying out investigations** and referring identified problematic practices to the competent anti-corruption bodies (Lithuania); **advising the government on improving the legal and regulatory anticorruption framework**, as illustrated in the report on Estonia; in **monitoring the transparency of public procurement procedures**, as reported by the NHRI in Albania or more generally **investigating corruptions related complaints**, as in North Macedonia; or in **contributing to the effective implementation of rules on whistle-blowers protection**, as illustrated in the reports on Croatia and Moldova.

Systemic human rights issues affecting the national rule of law environment

Some ENNHRI members pointed at a number of systemic human rights issues which are seen as affecting the national rule of law environment.

The NHRI in Cyprus pointed at serious deficiencies in safeguarding and respecting the **human rights of migrants**, while the NHRI in Greece raised concern over the growing racist rhetoric, the worrying incidence of **racist attacks** and delays in their investigation and prosecution. **Hate speech and hate crime** are also mentioned as a systemic issue by the NHRI in Serbia, specifically affecting **LGBTI+ people**.

The **inadequacy of the prison system and the respect of the rights of detained persons** are mentioned as a particularly pressing challenge by the NHRI in Russia.

The NHRI in Poland reported that **the lack of independence of Constitutional Courts limits the NHRI's ability to challenge legislation and practices violating human rights** – which is seen as particularly disturbing in the light of reported human rights violations, in particular by police, during the COVID-19 pandemic.

The NHRI in Finland underlined its efforts to promote a **better awareness on human rights**, such as through training and public education activities, as a means to reinforce the national rule of law environment.

Impact of measures taken in response to COVID-19 on the national Rule of Law environment

Reports from ENNHRI members from across Europe continued to stress the severe impact of COVID-19 on their countries' rule of law environment.

NHRIs raised concerns in particular with respect to challenges posed to the national systems of checks and balances during emergency regimes, due to the **weakening of oversight** by national parliaments and other actors including NHRIs on government's law and policy making as well as **reduced space for debate and consultations**, in a context where fast-track and accelerated procedures have been routinely used. NHRIs noted how this led to **unclear and poor-quality decisions** (see in particular reports on Ireland, Slovenia and Spain), including **inadequate impact assessments** especially as regards human rights (see the NHRI's remarks in the report on Finland), a **lack of publicity and transparency** (as reported with respect to Albania, Austria, Belgium, Georgia) and **legal uncertainty** (as in Hungary due to the possibility to derogate to existing laws by government decree or in Luxembourg). In some states, **judicial review** of these emergency acts was said to be insufficient (see for example reports on Georgia and Greece) or subject to pressure (as reported with respect to Luxembourg), while in others NHRIs commended the **role of constitutional courts** in promptly assessing the legality of government's decisions (see reports on Austria and Romania). In quite a few countries, NHRIs underlined issues as regards the **existence of a sufficiently strong legal framework and legal basis** governing the adoption of emergency acts restricting people's liberties, such as in Belgium, the Netherlands, Poland and Slovenia. Elsewhere, NHRIs pointed to **efforts to strengthen constitutional safeguards and guarantees** to ensure a better oversight of government's action (see for example reports on Denmark, Northern Ireland and Slovenia), including through the **formal notification of derogation from human rights obligations** under the European Convention on Human Rights (as reported for Albania).

A number of NHRIs also stressed a more general impact of COVID-19 on the democratic process, including **challenges to the holding of elections** according to international standards (Hungary, Kosovo*, Romania, Poland), **changes to the electoral system** (Hungary, Poland) and **consequences on decision-making at local level** (Hungary, Estonia).

Transparency and access to information, including for media, civil society and vulnerable citizens including persons with disabilities, was also said to be greatly challenged during the COVID-19 emergency, as reported in detail by ENNHRI members in Albania, the Czech

Republic, Luxembourg, Poland and Romania. Some NHRIs also expressed concerns about **privacy and data protection issues** in relation to quarantine measures, surveillance, tracing apps and data disclosures (see in particular reports on Croatia, Estonia, Lithuania and Ukraine). At the same time, NHRIs in some countries, such as Latvia and Slovakia, pointed to **initiatives to fight against disinformation and fake news**.

The negative impact of COVID-19 and measures taken to address it on civic space, including the **enjoyment of civic freedoms and the work of civil society organisations**, was underlined by many ENNHRI members. Issues raised included the severe restrictions imposed on the exercise of the right to **freedom of assembly** (see in particular reports on Armenia, Austria, Belgium, Estonia, Northern Ireland, Poland, Romania), which in some cases (as in Poland) led to violent police interventions; restrictions on **freedom of expression and of the media** (as illustrated for example in the report on Croatia and Moldova); and challenges to **freedom of association**, in particular due to obstacles to gathering in associations (see report on Belgium) but also the financial impact of the crisis on associations and the **lack of adequate financial support** from the state (see reports on Albania and Croatia).

In a majority of states, the measures taken to contain the spread of COVID-19 also had a severe impact on the **functioning of justice systems**. The use of remote hearings represented a challenge for the **respect of the right to a fair trial**, especially in criminal proceedings (as reported for example by NHRIs in Azerbaijan, Georgia, Greece, Ireland, Serbia), while the suspension of court activity led to a certain **uncertainty and a somewhat arbitrary handling of cases** (see report on Belgium, Czech Republic, Romania, Slovenia). In other cases, ENNHRI members reported a **general inefficiency and overburdening of the justice system** (as in Albania, Kosovo*, Moldova and Norway).

In terms of the impact of the COVID-19 pandemic and of measures taken to address it on human rights, many ENNHRI members expressed concerns over **long-term implications which risk to exacerbate inequalities and impinge on the rights of persons in vulnerable situations**. This includes in particular **persons in a situation of poverty and/or homelessness** (as reported in Belgium, Cyprus, Czech Republic, Great Britain, Hungary, Kosovo*, Spain), **persons with disabilities** (Azerbaijan, Belgium, Czech Republic, Great Britain, Hungary, Kosovo*, Ireland, Latvia, Northern Ireland, Romania), **ethnic minorities and in particular Roma** (Croatia, Great Britain, Hungary, Ireland, Portugal, Serbia, Slovakia, Ukraine), the **elderly** (Albania, Azerbaijan, Belgium, Croatia, Great Britain, Hungary, Ireland, Northern Ireland, Portugal, Romania), **people in detention and other closed facilities**

(Armenia, Austria, Azerbaijan, Belgium, Czech Republic, Greece, Ireland, Kosovo, Latvia, Lithuania, Moldova, Portugal, Slovenia, Serbia, Russia, Ukraine).

NHRIs also underlined the particularly severe impact of the crisis on **women** (Belgium, Czech Republic, Romania, Ukraine) as well as **youth and children** (Albania, Belgium, Great Britain, Hungary, the Netherlands, Romania, Ukraine), also as regards the rise in **domestic violence** and the challenges to effectively address it (see in particular reports on Albania, Armenia, the Czech Republic, Great Britain, Kosovo*, Lithuania, Ukraine). As regards children, ENNHRI members also highlighted the crisis' consequences on the enjoyment of the **right to education**, often in connection with challenges linked to distance learning especially for children in a vulnerable socio-economic situation or living in rural or marginalised areas (see reports on Albania, Armenia, Azerbaijan, Czech Republic, Estonia, Kosovo*, Hungary, Netherlands, Romania, Slovakia, Ukraine). NHRIs also drew attention to the situation of **migrants and people on the move** (Belgium, Czech Republic, Netherlands), while in a number of states NHRIs expressed concern over **disproportionate restrictions on free movement and access to the national territory** (see reports on Albania, Russia and Ukraine).

Reports by ENNHRI members illustrate the **important role that NHRIs play** in monitoring and advising on governments' responses to the crisis from a human rights perspective, and in helping to address the challenges and the consequences of the crisis. This has ranged from intense **involvement in the legislative debate on the constitutionality of the emergency regime** (as in Denmark, Estonia and Slovenia), to **specific interventions, thematic reports and targeted cooperation with state authorities** to help better protect the rights of people in vulnerable situations and mitigate the challenges brought by the crisis (see for example reports on Albania, Armenia, Austria, Azerbaijan, Belgium, Cyprus, Czech Republic, Georgia, Greece, Hungary, Kosovo, Ireland, Latvia, Lithuania, Northern Ireland, Moldova, Norway, Portugal, Serbia, Slovakia, Slovenia, Spain, Russia), as well as **efforts to facilitate citizens outreach, raise awareness and provide reliable information** to the public about the pandemic and its handling (see examples in reports on Albania, Armenia, Azerbaijan, Croatia, Hungary, Serbia). A number of NHRIs set up **specific monitoring mechanisms** on the COVID-19 impact on human rights or engaged in comprehensive research which led to **dedicated reports, guidelines as well as trainings** for state officials (see for example in Finland, Greece, Luxembourg, Romania, Russia, Turkey).

At the same time, ENNHRI members also stressed how the crisis also **impacted their institutions' functioning**. Concerns are raised in particular in terms of **challenges and delays in receiving and handling citizens' requests and complaints** (Austria, Azerbaijan, Kosovo*, Netherlands, Slovakia), **ensuring staff safety** (as reported for Armenia), and as regards the **lack of adequate resources** against the background of an increase of workload (as reported for Luxembourg). Many NHRIs pointed to difficulties in carrying out their functions as National Preventive Mechanisms and conducting similar on-site monitoring and interventions (see in particular reports on Czech Republic, Denmark, Greece, Kosovo*, Lithuania), while others expressed satisfaction with remote inspections (see reports on Albania, Austria, Moldova, Turkey) or managed to keep or resume key monitoring functions subject to the necessary adaptations and safety measures (Cyprus, Estonia, Georgia, Hungary, Portugal, Serbia, Slovenia, Spain, Ukraine). Nonetheless, NHRIs **generally managed to adapt to the challenging circumstances** to preserve their efficiency and thus be able to continue carrying out their mandates effectively, including by **enhancing their online and remote activities** (see for example in Croatia, Cyprus, Finland, Greece, Lithuania, Northern Ireland, Poland, Romania, Slovenia) and by **reorganising, and increasing where possible, staff and resources** (as in Albania, Slovenia).

Further strengthening rule of law and human rights frameworks in Europe through NHRIs' engagement: Key Recommendations to regional actors

The past year marked an intensification of efforts by regional actors to better advance and protect rule of law, human rights and democracy across the region. These efforts come at a critical time when countries are faced with ongoing human rights, democracy and rule of law challenges exacerbated by the persisting impacts of the COVID-19 pandemic.

Against this background, ENNHRI and its member NHRIs call on these regional actors to further foster and take advantage of new strategic opportunities to strengthen support of and cooperation with and among NHRIs, with a view to translating policy efforts into concrete positive developments on the ground. In this respect, ENNHRI's [2020 leadership webinars and Annual Conference](#) offered an opportunity to NHRIs to take stock of the experience and impacts of NHRIs' engagement in European rule of law mechanisms to date. Four key focus areas were identified where enhanced collaboration with and support for NHRIs by regional actors appears particularly crucial to advance the promotion and protection of rule of law, democracy and human rights in all countries across Europe.

A renewed push for the establishment and strengthening of Paris Principles compliant NHRIs in each state

Strong regional and national frameworks for human rights, democracy and rule of law need independent and effective NHRIs in each country. Indeed, this is reflected in the explicit recognition by the European Commission of NHRIs as an indicator of rule of law, as part of the system of national checks and balances, within its EU internal annual rule of law review cycle. Support to independent NHRIs in line with the UN Paris Principles is also stressed as a priority within the overarching objective of promoting a global system for human rights and democracy as part of the EU external human rights policy for the next 5 years. In acknowledging the role of NHRIs as pillars of the rule of law, human rights and democracy in Europe, the recently adopted Council of Europe's Committee of Ministers Recommendation on developing and strengthening NHRIs explicitly recommends each Council of Europe Member State to establish, maintain and strengthen an independent NHRI in compliance with the Paris Principles and to ensure an enabling environment for, and cooperate with NHRIs.

ENNHRI members across the region are committed to continue contributing, in line with their role and mandates, to healthy checks and balances and enabling space for HRDs. To enable them to do so, ENNHRI's first core objective is to support NHRIs establishment and compliance with the Paris Principles, including before, during and after the accreditation process.

NHRIs' and ENNHRI's efforts must however be better supported by regional actors. In line with the recognition of NHRIs as an essential part of checks and balances, and therefore of the democratic and rule of law infrastructure of each country, the establishment of an NHRIs in compliance with the Paris Principles in each European country, as well as support to their independent and effective functioning, should be regarded as a priority at regional and national level.

This priority should be adequately reflected in existing policy documents and processes. Reference goes, in particular, to the regular assessments conducted by the European Commission on the respect for rule of law, human rights and democracy in EU Member States and in third countries as part of its external action, as well as relevant monitoring mechanisms existing at Council of Europe, OSCE and UN levels.

To that effect, concrete action should be taken, including the definition of clear indicators, in line with the UN Paris Principles, to assess and ensure the independent and effective functioning of NHRIs in each country, based on existing standards. Enhanced support to ENNHRI's work to guide and accompany NHRIs' establishment and accreditation across the region is equally crucial.

Key recommendations

- Consistently integrate the establishment and compliance of NHRIs with the UN Paris Principles, as well as the enabling environment for NHRIs, as an indicator to assess each country's progress in areas related to rule of law, human rights and democracy
- Always include the establishment and strengthening of Paris Principles compliant NHRIs, including the importance of the accreditation process and the implementation of SCA recommendations, in relevant bilateral and multilateral dialogues, especially where no NHRIs exists or the NHRIs does not fully comply with the Paris Principles
- Secure structural financial support for ENNHRI's core function of supporting establishment and strengthening of NHRIs in compliance with the Paris Principles, including through technical support for state authorities on NHRIs draft laws and amendments.

Enhanced promotion and support for NHRIs' role in advancing human rights, rule of law and democracy on the ground, including through concrete support for NHRIs under threat

As reflected in the outcomes of ENNHRI 2020 Annual Conference, NHRIs and regional actors agree on the value add of NHRIs' joint rule of law reporting and on the need of strengthening their cooperation in this area – both individually, and collectively through ENNHRI. There is increasing commitment by regional actors to strengthen cooperation with NHRIs as part of their efforts to advance and protect rule of law, human rights and democracy in Europe. This is visible in the recently adopted Council of Europe's Committee of Ministers Recommendation on developing and strengthening NHRIs, which recommends Member States, among others, to explore ways of developing a stronger role for and meaningful participation of NHRIs and ENNHRI in the Council of Europe for the enhanced promotion and protection of human rights, the rule of law and democracy.

At EU level, the role and contribution of NHRIs has been particularly valued within the annual rule of law review cycle and the new Strategy to strengthen the application of the EU Charter of Fundamental Rights as regards EU Member States. The [2020-2024 Action Plan on Human Rights and Democracy](#) lays the basis for a strengthened cooperation between EU actors and NHRIs within EU external action, including within the enlargement process and the Eastern Partnership framework, and commits the EU to support regional NHRI networks to facilitate peer exchange.

NHRIs are committed to continue and deepen common approaches to rule of law reporting, including by regularly engaging in joint reporting through ENNHRI. ENNHRI, as a network connecting all NHRIs across the EU and the Council of Europe region, will seek to continue coordinating the regular reporting exercises and further promote NHRIs' involvement in relevant policy processes. To that effect, depending on available capacity, it will explore opportunities to foster other regional cooperation initiatives, further support NHRIs' capacity building, and provide them with tailored guidance on how to engage with regional actors. ENNHRI will also seek to expand its guidance for EU actors on NHRIs, building on the [guide](#) and trainings developed to date for EU Delegations and Brussels-based EU officials.

As for other HRDs, visible NHRIs' engagement on rule of law issues, including through joint reporting, may expose NHRIs to threats. ENNHRI is investing increasing resources in providing support and protection to NHRIs under threat, in line with its [Guidelines on ENNHRI support to NHRIs under threat](#). Indeed, as also illustrated in this report, worrying

developments in certain countries over the past years have shown that NHRIs across Europe are vulnerable to serious threats to their independence and effectiveness. These may include reduction in formal independence, reduction in mandate, budget cuts or the removal of office holders, as well as harassment or attacks due to their work. In such situations, ENNHRI provides timely and tailored support in close cooperation with the concerned NHRI, coordinating with key stakeholders and ENNHRI members as appropriate.

Against this background, NHRIs' engagement in joint rule of law reporting calls for increased recognition and support from the regional actors – from more structured involvement in relevant policy processes, to support and protection when NHRIs come under threat and strengthened financial support to the network coordinated by ENNHRI.

Key recommendations

- Enhance the sustainable inclusion of NHRIs and ENNHRI in relevant policy and monitoring processes, to further enable them to meaningfully contribute to progress monitoring and reporting, by means of establishing a transparent, structured and formalised upstream cooperation with NHRIs and ENNHRI, building on ENNHRI's role as a/the central point of contact for NHRIs
- Build capacity and provide training, with the involvement of ENNHRI, for relevant officials on NHRIs and on how to strengthen cooperation with them, building on ENNHRI's [guide](#) and trainings developed to date for EU officials
- Devote attention to the situation of NHRIs within the coordinated and comprehensive approach to the protection of and support to HRDs under threat, including through the use of political dialogue and public statements and support by high-level officials
- Provide financial support to ENNHRI to further promote a strategic and sustainable engagement of NHRIs in relevant policy and monitoring processes, including through the regular coordination of quality and timely rule of law reporting, capacity- and institution building, mediation, dialogue and reconciliation measures between NHRIs, solidarity and support to NHRIs under threat as well as guidance and training for relevant officials.

Increased attention to the role of NHRIs in bridging regional actors' efforts to make progress on human rights, rule of law and democracy with national realities

NHRIs have a key role to play to raise awareness, mobilise support and maximise impacts of regional actors' efforts to advance and protect rule of law, human rights and democracy, building on their monitoring role, their cooperation with state and non-state actors and as interlocutors between the state and the general public, and individual rights-holders.

NHRIs are committed to explore how to best use their promotion and protection roles to engage with national actors on findings and recommendations by regional actors, including inter-governmental and other supranational institutions and specialised monitoring bodies. This may include reporting on follow-up by state authorities, the use of regular channels of dialogue and cooperation, including targeted recommendations, the developments of 'national networks' of support actors as well as, when provided for by their mandate, strategic litigation.

On its part, ENNHRI intends to continue gathering information through the regular joint rule of law reporting exercise on the impact of regional efforts at national level and on NHRIs' follow-up initiatives in that respect. ENNHRI will also continue to foster mutual learning and exchanges between NHRIs as a means to support their efforts, also in situations where NHRIs experiences difficulties in terms of their cooperation with authorities or witness the authorities' failure to timely and effectively implement their recommendations – as some NHRIs flagged in this report.

All this implies targeted engagement and investment of resources on the part of NHRIs as well as of ENNHRI, which regional actors should actively facilitate and support.

Key recommendations

- Integrate the timely and effective implementation of NHRIs' recommendations as an indicator to measure progress towards key benchmarks and objectives set by regional actors in relation to rule of law, human rights and democracy
- Give visibility to NHRIs' recommendations and the level of their implementation in progress monitoring and reporting
- Facilitate and support NHRIs' efforts to engage with national actors, by mobilizing country offices and delegations, ensuring more transparency on national follow-up by regional actors and involve NHRIs as appropriate, through consultation and/or participation to bilateral and multilateral dialogues
- Offer dedicated financial support to ENNHRI and NHRIs for initiatives aimed at raising awareness and increasing impacts of regional efforts to advance human rights, democracy and rule of law at national level, including through peer learning and information exchange.

Strengthened coherence and cooperation among regional actors

Enhancing coherence of policy initiatives by different regional actors on rule of law, democracy and human rights and strengthening their cooperation in this area is key to achieve positive impacts on the ground.

On the one hand, strengthening policy coherence and alignment of different initiatives, including as regards the recognition of and cooperation with NHRIs is particularly relevant for the legitimacy and efficacy of regional actors' efforts, considering the multi-layered and partly overlapping nature of the regional framework for the protection of rule of law, human rights and democracy in Europe. Enhanced coherence of regional actors' approach towards and engagement with NHRIs would also benefit global endeavours such as the Sustainable Development Goals (SDGs), having regard in particular to Goal 16 (peace, justice and strong institutions).

On the other hand, increased synergies among regional actors can potentiate the impact of their efforts in key areas of common concern – one being that of the protection of HRDs, also in the context of increased attacks and challenges experienced during the

COVID-19 pandemic. This in turn would have a positive impact on the mutual engagement between regional actors and NHRIs, which are key actors of multilateral systems.

Key recommendations

- Strengthening policy coherence and alignment between initiatives by different regional actors, including as regards the recognition of and cooperation with NHRIs, in the framework of efforts to advance rule of law, democracy and human rights
- Intensify cooperation among regional actors to address common concerns, including NHRIs and HRDs as well as the impact of COVID-19 on rule of law and human rights protection.

ENNHRI will continue to support and facilitate collective reflections by its member NHRIs on opportunities and modalities for a coherent and sustainable strategic engagement in this area, building on the regional multi-layered framework for rule of law and human rights protection.

This is also reflected in the comprehensive and cross-sectorial nature of ENNHRI's work. Indeed, the information collected from across the network for rule of law reporting will inform ENNHRI's ongoing work on the [implementation of the action plan on human rights defenders](#). It will also be considered within ENNHRI's thematic priorities, including its current [work on NHRI monitoring of the human rights of migrants at borders](#), which rests on the importance of human rights-based cooperation on both sides at the borders to ensure human rights compliance and accountability for violations. Finally, the information collected on the impacts of COVID-19 will inform [ENNHRI's ongoing initiatives to support NHRIs in this area](#).

Country reports

Albania

People's Advocate of Albania

International accreditation status and SCA recommendations

The Albanian NHRI – the People's Advocate (PA) – was reaccredited with A status in December 2020. While recognizing that the NHRI interprets its mandate broadly, the SCA encouraged the NHRI to advocate for a broader mandate that includes the ability to address human rights violations resulting from the acts and omissions of private entities and an explicit mandate to encourage ratification or accession to regional and international human rights instruments. The SCA also called on the NHRI to continue to advocate for adequate funding, including to ensure fulltime staff in its regional offices.

Impact of 2020 rule of law reporting

Follow-up by State authorities

To the PA's best knowledge, state authorities did not engage in any specific follow-up initiative to address the issues raised in the 2020 E NHRI rule of law report.

Impact on the Institution's work

The report was a useful tool in getting synthesised information on the work of other NHRIs and was used to learn from best practices and gather new perspectives on how to improve our everyday work in pandemic times.

Follow-up initiatives by the Institution

The several issues reported on in last year's ENNHRI rule of law report are still of relevance. 2020 has been a difficult year, where planning and adjustments were needed in all layers of society, the PA included. The institution's work was impacted by shortages of staff due to COVID-19, technical issues due to combined office and online working, restriction measures, and practical difficulties to comply with administrative requirements. Despite these challenges, in all its initiatives and follow-up activities the PA has continued to work towards ensuring the highest standards of human rights protection and creating the right

conditions for their real enjoyment. For this purpose, the PA kept as reference and orientation the statements, calls and advice of the highest international authorities for the protection of human rights. Meanwhile the Institution thoroughly reflected on the necessity to maintain the right balance between two high interests: respect for the rights of citizens on the one hand and protection of public health on the other.

Independence and effectiveness of the NHRI

Changes in the regulatory framework applicable to the Institution

The national regulatory framework applicable to the Institution remains the same. The People's Advocate Institution operates according to the Constitution and the Law "On the People's Advocate", as amended. The latter has been amended in 2014 (law no.155, dated 27.11.2014) and among other changes, there has also been an amendment in Articles 2 and 29 of the law clearly defining the People's Advocate institution as a promoter of the highest standards of human rights and freedoms in the country. The People's Advocate is vested with a dual mandate: to protect and promote human rights. The direct instance to which the People's Advocate reports is the Parliament and the core object of its mandate are all the human rights and freedoms enshrined in the Constitution, laws, and international legal instruments on human rights and freedoms ratified by the Republic of Albania.

References

- Chart Of The Status Of National Institutions // Accredited By The Global Alliance Of National Human Rights Institutions, Accreditation status as of 20 January 2021 <https://nhri.ohchr.org/EN/Documents/Status%20Accreditation%20Chart%20as%20of%2020%2001%202021.pdf>
- The law "On the People's Advocate" No.8454, dated 04.02.1999, supplemented by the law no. 8600, dated 10.04.2000, amended by the law no. 9398, dated 12.05.2005, added to and as amended by the law 155/2014, dated 27.11.2014, "ON THE PEOPLE'S ADVOCATE" <https://www.avokatipopullit.gov.al/en/article/legislation>

Enabling space

This is an issue that requires careful and realistic consideration, as it concerns two aspects:

- Considering the necessary and appropriate space on the basis of which the institution should function in the legal regulatory aspect, an adequate framework exists and is appropriate. With regard to the issues related to budgeting and staffing, the budget and human resources have been progressively increased since 2013, but given the importance for the Institution to become even more present and proactive, the financial and human resources provided by the government should have been more extensive. The budgets allocated throughout the years do not serve the function of the Ombudsman/PA as a national institution for the protection and promotion of human rights, contrary to the recommendations included in all reports of international organisations. Reports of the European Commission, the report of the Sub-Committee on Accreditation, the recommendations given in the framework of the Universal Periodic Review (UPR), the recommendations of ECRI, on their own and assessed together have repeated and continue to repeat the fact that the institution of the People's Advocate has limited human and financial capacities to fully exercise its constitutional mandate and that greater support is required from the state budget in this regard. Nevertheless, the PA has continuously managed to secure supplementary budget for implementing its mandate.

- Considering the effective exercise of the mandate by the People's Advocate, there are still issues and problems related to the observance of this legal regulatory basis with binding effects on public bodies. In general, the People's Advocate is notified and consulted on the draft laws that are related to human rights, but in many cases this consultation is missing. The timeframe for such consultations has been usually very short. Further, during the past year the ability of the governmental institutions to respond to the PA's requests has been slower and it has impacted the Institution's work in relation to the investigation of individual complaints. There are still quite a few cases where the PA's requests within an administrative procedure sent to public bodies are not answered or are answered partially, incorrectly or late. The institution's recommendations are welcomed in principle, but in several cases, they are not taken into consideration despite the severe implications that several laws may have on the human rights and rule of law in particular. This is not specific to the PA's recommendations as public bodies do not respond to quite an important number of recommendations, or they respond beyond the legal deadlines set for this purpose in law no. 8454 dated 4.02.1999 "On the Lawyer of the People", as amended. In order to address this issue, the Albanian Parliament has set up a special inter-institutional mechanism to monitor the implementation of

recommendations by independent institutions in the country. However, despite some progress made, the problem still persists.

Developments relevant for the independent and effective fulfilment of the NHRIs' mandate

As mentioned above, the changes that occurred during the period of the COVID-19 pandemic affected the operations of the People's Advocate, like all other state institutions. Direct contact with the citizen and public bodies became more difficult, at a time when not all the population in the country enjoys access and/or informed access to the Internet.

More information on the impact of the pandemic on the PA's functioning can be found in the COVID-19 section of this report.

Human rights defenders and civil society space

The People's Advocate Institution has put efforts in identifying laws, measures or practices that could negatively impact on civic space and/or reduce human rights defenders' activities, while recommending necessary measures and solution.

The COVID-19 pandemic and measures taken to address it are having a serious impact on civil society space. After the declaration of the state of the worldwide pandemic on March 11, 2020, by the World Health Organization, Albania put to a halt social and economic activities. These measures concerned the closure of schools, prohibition of public and non-public activities, prohibition of mass gatherings in closed or open places, restriction or prohibition of movement by public transport, restriction of movement within the country, termination of court proceedings, etc. The PA noticed that the Albanian state authorities, in their efforts to handle the pandemic, ought to be more attentive to regulate, improve, and build permanent administrative and legal instruments, and give proper information to public. The Institutions has in particular found that the government did not take all necessary measures to cope with the challenges that this situation brings to freedom of association, freedom of assembly, freedom of expression or access to information, and many other aspects that are intertwined in the conglomerate of a healthy society. On the contrary, some of the actions taken by the authorities, such as the demolition of the national theatre, prompted critical reactions. This led to the organisation of several protests which were considered to be against the law in force. In some cases, participants were arbitrarily detained.

The PA also noticed that people working in civil society organisations were not included in the assistance packages that the Albanian Government provided for small business and

employees in the sectors of economy that were temporarily closed or effected by the complete lockdown during March to June 2020. Both issues were addressed by PA with specific recommendations.

The importance of protecting the civil society space and supporting the civil society sector was among the issues the PA raised attention to within its numerous interventions in the context of the COVID-19 emergency (see dedicated section below). In particular, the PA's actions included: addressing continuous public appeals on pressing issues (e.g. special care for the civil society sector); enhancing the PA's role as promoter of the highest standards of human rights and freedoms in the country (his appearances in the media increased significantly); publicly addressing human rights issues in national and international events (e.g. ODIHR Webinar on "The role of HRDs in promoting and protecting human rights" or at a Civil Society round table on "right to protest during pandemic", both in November 2020); translating and publishing on the PA's website international institutions' statements (e.g. of the Council of Europe experts 'Appealing on countries to guarantee freedom of expression and information for independent media during the COVID-19 pandemic').

References

- <https://www.avokatipopullit.gov.al/media/manager/website/media/Recommendation%20on%20taking%20the%20necessary%20measures%20to%20respect%20the%20constitutional%20freedom%20of%20assembly%20even%20during%20the%20state%20of%20emergency.pdf>.
- <https://www.avokatipopullit.gov.al/sq/categories-and-detail/media>
- <https://www.avokatipopullit.gov.al/sq/articles-layout-1/home/news/this-article-is-available-only-in-albanian-421/>
- <https://www.avokatipopullit.gov.al/sq/articles-layout-1/home/news/this-article-is-available-only-in-albanian-409>

Checks and balances

Impact of COVID-19 on checks and balances

Regarding the functioning of the rule of law and the checks and balances system in Albania during 2020, several issues persisted from previous years, and other problems deteriorated due to the pandemic.

The prolonged political crisis and the absence of the real parliamentary opposition remains an obstacle to the effective functioning of the checks and balances system. The absence of the Constitutional Court and the suspension of the work of some courts of appeal as well as of the High Court directly impact the state of rule of law.

Despite the fact that the work of the Parliament and the Parliamentary Committees had to switch to online meetings that were aired live through media channels, the parliamentary activity still fails to be supported by effective public consultation.

There was a general lack of transparency in the decision-making process in particular during the state of emergency supplemented by the lack of parliamentary substantial revision of the measures introduced by the normative acts that were approved by the Albanian Council of Ministers.

Although the electoral reform was accelerated after reaching an agreement with the extra-parliamentary opposition, the country failed to address all the OSCE-ODIHR recommendations issued in the two latest reports. After the consensual changes, the majority changed the Constitution through a non-consensual process. This process was questioned by the Venice Commission opinion, who referred the issue to the constitutional jurisdiction in Albania, which was however not functional until December 2020.

Trust in state authorities

The general perception of citizens of state authorities, as indicated by several polls conducted by different agencies, is that of a moderate to low trust on the public administration. However, the public opinion remains polarised with respect the performance of the public administration.

The PA believes that the state authorities does not sufficiently foster trust among citizens. The factors that directly impact the relationship between citizens and state authorities, namely the transparency and accountability of state authorities with regard to means of reactions used by law enforcement agencies, warranty and security, are not nurtured. This was particularly visible during the pandemic. State authorities should communicate in a timely and effective manner regarding fundamental rights restrictions and relevant

measures. Decisions related to the pandemic – including those taken under accelerated or emergency procedures – need to be taken as transparently as possible, while temporary measures should be publicized, explained, and regularly reviewed. The state should be cooperating with civil society and the private sector, including all communities and stakeholders in efforts to find solutions to the challenges posed by the pandemic. The reaction of law enforcement authorities during the exercise of their authority should be focused on strengthening the citizens' trust towards state institutions while guaranteeing equal protection for all society. That means adapting appropriate policies to meet the needs of the entire population, with a special attention to groups that are disproportionately impacted such as elderly, poor people, Roma, people with disabilities, woman and children, etc.

Judicial oversight

The non-execution of final court decisions issued by courts in the Republic of Albania, or the European Court of Human Rights, in a reasonable time, remains a serious issue and negatively affects the creation, strengthening and development of a credible and respectful judicial system for all.

Role of NHRI in the system of checks and balances

A proactive stance has been taken by the People's Advocate to address the many issues raised with respect to the system of checks and balances and rule of law through its legal means. Among others the PA has addressed:

- the guarantee of the right to vote and the right to be elected, as well as the stand related to the implementation of the law on decriminalization regarding the integrity of the figures running for local and general elections in the framework of the latest changes of Electoral Code.
- the delayed publication of the normative acts which imposed restrictions, and recommended that in addition to publishing acts, citizens should be given the opportunity to contact the institutions that provide services, whether by telephone or electronically, especially in this period when they should stay at home. The authorities (i.e., Ministry of Health and Social Protection) took measures to reflect on the recommendations, however the same problems persisted.
- the non-issuance of bylaws necessary for the implementation of the law "On the protection of national minorities in the Republic of Albania", which made it impossible to implement the law in concrete elements.
- the PA issued a recommendation on the irregular deportation procedure of a Turkish Citizen on January 1, 2020.

- the PA expressed opinions on three issues for which the Venice Commission has been called to express an opinion in Albania.

References

- [https://www.venice.coe.int/webforms/documents/?pdf=CDL-AD\(2020\)010-e](https://www.venice.coe.int/webforms/documents/?pdf=CDL-AD(2020)010-e)
- [https://www.venice.coe.int/webforms/documents/?pdf=CDL-AD\(2020\)013-e](https://www.venice.coe.int/webforms/documents/?pdf=CDL-AD(2020)013-e)
- [https://www.venice.coe.int/webforms/documents/?pdf=CDL-AD\(2020\)036-e](https://www.venice.coe.int/webforms/documents/?pdf=CDL-AD(2020)036-e)
- <https://idmalbania.org/trust-in-governance/>
- <https://www.al.undp.org/content/albania/en/home/presscenter/pressreleases/2019/presentation-of-trust-in-governance-2019-opinion-poll-findings.html>

Functioning of the justice system

Albania is in its 4th year of the implementation of a substantial reform of the Justice System. Such reform has been supported by substantial assistance and oversight from the European Union. Despite substantial efforts the pace of the reforms has not been the one initially intended in the proposed framework and in the timelines provided for in text of the legislation itself. This reform was composed of several pillars, one of them being the vetting of all judges and prosecutors in Albania. In total 834 judges and prosecutors were planned to be vetted for a period of 5 years. A number of judges and prosecutors have been removed from their office, causing substantial vacancies in the level of the highest court of the judiciary system. This has resulted into a complete suspension of the work of some courts in the country and in severe delays in some courts at the level of the courts of appeal.

The Constitutional Court was not functional for almost three years. The Constitutional Court is composed of 9 members. In April 2016 the mandate of two members expired. Starting from June 2018 the Constitutional Court did not have the possibility to make decisions in plenary sessions, thus, to exercise its function of constitutional review of the laws in Albania. As of July 2018, the court was composed of one member only with expired mandate. In November 2019, three new members were nominated according to new procedures provided for in the legislation of the justice reform. The presence of the

minimal quorum necessary for the Constitutional Court to begin exercising a significant part of its functions, was verified only in late December 2020, when the sixth judge was appointed in office. Yet, there are still three judges to be appointed.

The High Court of Albania was also not able to perform any of its functions since December 2018. In 2013 the number of members of the High Court was increased from 17 to 19, although these two members were never elected. Since then, the number of judges appointed began to decrease for various reasons until the beginning of the implementation of the justice reform, when their number dropped to 15. In September 2017 the constitutional mandate for five members of the high court ended, and as of that date the High Court did not have a quorum to convene in joint colleges as the number of members fell to 10. Furthermore, on 31st July 2018 the number of members of the High Court fell below five, thus this Court did not have the possibility to make decisions, although it continued to function only on certain issues and decision-making in the deliberation room. Meanwhile, from December 2018 until March 2020, the number of members of the High Court fell below three thus completely paralyzing the work of the Court. In mid-March of 2020, following the appointment of three new judges, the minimum legal conditions were created for the Supreme Court to begin exercising its judicial functions partially. Yet, still today, the Court continues to have only three members, which makes it possible only to consider a very limited number of cases.

The appeal courts are also facing significant shortages. Furthermore, the judicial system faced new difficulties caused by the COVID-19 pandemic, in addition to those explained above. Of course, the suspension of the activity and judicial services in all courts of the country, as in the general and special jurisdiction, with the exception of cases of an urgent nature, for a long period of three months resulted in delays in court proceedings, postponement of the trial of new cases, as well as problems in full respect of procedural rights during the court proceedings.

Attaching great importance to the exclusion from the system of individuals who do not meet all of the three constitutional criteria (asset assessment, background assessment and proficiency assessment), other important aspects of the reform, such as new entries into the system, the career system, improving the quality of work in the administration of justice, transparency, increasing independence and professionalism, have not been given the necessary importance. Despite the efforts, only little progress has been made in these very important intended outcomes of the justice reform.

The complaints submitted by the citizens to the People's Advocate institution focused mainly on:

- delayed court proceedings, in particular overdue deadlines for consideration of cases by the Courts of Appeal, the Administrative Court of Appeal and the High Court
- delays in the issuance of a reasoned decision/failure to notify the parties within the deadlines specified in the codes of procedure;
- failure to consider new cases by the courts of first instance for a period of several months;
- numerous requests for expedited trial by appellate courts, for justified reasons such as illness and economic hardship;
- request for benefit of secondary legal aid from the courts, etc.

The People's Advocate has presented these issues addressed by the citizens, to the relevant judicial bodies, as well as to the Albanian Parliament with the annual report 2019, being discussed and adopted in June 2020. We will continue to include findings on these matters in the annual report for year 2020.

In conclusion, it is the obligation of the responsible constitutional institutions to fill in the vacancies in the respective courts, starting from the Constitutional Court to the courts of first instance, in order to guarantee the right to a fair legal process for citizens who have lost faith and hope in the adjudication of their cases within a reasonable time.

Free legal aid

The PA has paid special attention to the monitoring and implementation of law no. 111/2017 "On free legal aid guaranteed by state" based on one hand on the delayed duration of the establishment of the relevant structures as well as the issuance of bylaws, and on the other hand, the need of state to guarantee this service to citizens. It is worth mentioning that primary legal aid has been provided and is continuously being provided by the staff of the People's Advocate institution.

For this reason, the People's Advocate recommendations addressed to the Minister of Justice, focused on the most important issues, such as the approval of the organogram of the Directorate of Free Legal Aid provided in implementation of the order no. 59, dated 25.03.2019 of the Prime Minister "On the approval of the structure and staff of the Directorate of Free Legal Aid"; approval of bylaws in implementation of the law; setting up free primary legal aid centres, ensuring a fair geographical distribution (there were seven opened, but only one with state budget funds); conducting information campaigns for the community; authorization of non-profit organisations; the increase of legal clinics at higher education institutions based on relevant agreements nationwide (ten were opened), as well as extensive consultation on the future of free legal aid priorities and improvements, that

representatives of state institutions, civil society and interest groups are part of. These recommendations were accepted and implemented during 2020.

Notwithstanding, the PA notes that there have been cases when court decisions on the benefit of secondary legal aid and exemption from payment of court fees and expenses have not been implemented by local bar association. Also, the minimum criteria set by law, make it possible for only a small category of groups with insufficient income and wealth to benefit from free secondary legal aid.

The People's Advocate institution, in cooperation and with financial support of a UNICEF project, conducted four inspections – either pursuant to the new legal framework for the administration of criminal justice, or pursuant to the recommendations addressed of the People's Advocate from one year ago – in the main institutions that deal with juveniles in conflict with the law and in conditions of deprivation of liberty. In the framework of the problems identified when conducting inspections, the PA recommended to the Ministry of Justice and the Ministry of Interior to guarantee a juvenile-friendly justice, be it for a victim or a witness, application of rehabilitation programs and / or mediators for alternative sentences or the application of alternative sentences provided for in the juvenile criminal justice code, as well as the application of alternative measures to avoid punishment for juveniles in conflict with the law. The PA also recommended to improve the conditions and services in the premises of institutions of deprivation of liberty or detention where juveniles in conflict with the law are treated as victims or / witnesses, especially during the pandemic.

References

- Recommendation no. 201900588/4 to guarantee access to justice through the legal aid system pursuant to law no. 111/2017.
- <https://www.avokatipopullit.gov.al/media/manager/website/media/Rekomandohet%20marrja%20e%20masave%20p%C3%ABr%20garantimin%20e%20aksesit%20n%C3%AB%20drejt%C3%ABsi%20p%C3%ABrmes%20sistemit%20t%C3%AB%20ndihm%C3%ABs%20juridike%20n%C3%AB%20zbatim%20t%C3%AB%20ligjit.pdf>
- http://gjykataelarte.gov.al/web/Njoftim_per_rifillimin_e_veprimtarise_gjyqesore_te_Gjykates_se_Larte_6612_1.php
- http://www.gjk.gov.al/web/Functionality_of_the_Constitutional_Court_and_resumption_of_its_full_activity_1930_2.php

- Law no. 84/2016 on the transitional re-evaluation of judges and prosecutors in the republic of Albania:
<https://www.avokatipopullit.gov.al/media/manager/website/reports/LAW%20%20No.842016%20ON%20%20THE%20TRANSITIONAL%20RE-EVALUATION%20OF%20JUDGES%20AND%20PROSECUTORS%20IN%20THE%20REPUBLIC%20OF%20ALBANIA.pdf>

Media pluralism and freedom of expression

The Institution has been raising attention, through opinions, to issues affecting the exercise of freedom of expression and to hate speech. Among others, the People's Advocate has published a Legal Opinion addressed to the Committee on Legal Affairs, Public Administration and Human Rights in the Albanian Parliament, where it highlighted a number of issues related to law no. 91/2019 "On some changes and additions to the law 97/2013 on audio-visual media in the Republic of Albania". This law no. 91/2019 aims at regulating the activity of online portals through a legal framework, in order to achieve a balance between access to online content services, consumer protection and competition, while guaranteeing human rights, respecting copyright, achieving a professional, free and independent journalism, as well as respecting and guaranteeing the right to privacy, and not allowing broadcasts that incite intolerance, hate speech and violence in society. As a NHRI in the Republic of Albania, the People's Advocate considers that there should be a well-structured balance in the relationship between the fundamental rights and freedoms of individuals on the one hand, and media freedom on the other. Despite the changes made to the original draft, a number of problems still remain.

The most recent development in this regard is the Opinion no 980 / 2020 presented to the authorities by The Venice Commission on May 28th. The Venice Commission, has among others assessed that the Audiovisual Media Authority (AMA) with the approval of the "anti-defamation package" receives great administrative powers for online media and that the independence of the AMA body according to them remains a concern. The Venice Commission stressed that "The main principle is that an institution that oversees the media should be independent and impartial. This should be reflected especially in the way their members are appointed. All members of the AMA have a clear political affiliation, with members nominated by the ruling party / coalition who have the majority in this body".

There is still insufficient transparency and lack of consultation in the redrafting process of this law. Due to the elections to be held on April 25, 2021 the process has been essentially suspended.

References

- May 28th, 2020 The Venice Commission – Calls on government to review "anti-defamation package": [https://www.venice.coe.int/webforms/documents/?pdf=CDL-AD\(2020\)013-e](https://www.venice.coe.int/webforms/documents/?pdf=CDL-AD(2020)013-e)
- PA opinion on the Law: <https://www.avokatipopullit.gov.al/sq/articles-layout-1/media/news/this-article-is-available-only-in-albanian-248/>

Corruption

The People's Advocate has continuously followed the problems and concerns raised regarding corruption and its perception. In 2020 there was only little progress made in the fight against this harmful phenomenon of our state and society that is still in transition. Corruption is contributing to an ongoing crisis of democracy. Referring to recent international reports on the perception of corruption and its index, Albania has made insignificant progress, since it has increased by only one point from the previous year. This lack of improvements clearly underlines a lack of rule of law and legal certainty. The existence of these circumstances and causes also affects the effectiveness of institutions in the fight against corruption. A number of mechanisms have been set up currently in Albania, but there is much room for improvement and focus of the work in identifying and documenting high state corruption. The effectiveness of these mechanisms is also influenced by the strong political influence on the judiciary and lack of independence of the judiciary to pursue, investigate and prosecute corruption cases, particularly when these structures are already under the strong influence and pressure of the transitional re-evaluation process of judges and prosecutors.

The PA has also stated publicly the concerns regarding transparency in public procurement procedures, for the purchase of protective equipment, medical equipment and other health equipment, etc., regarding the pandemic situation. This issue is being pursued by special investigative structures, but there is still no concrete result regarding these proceedings. On the other hand, due to the situation and the restrictions imposed, there are still some

problems in exercising and guaranteeing a number of rights, such as that of gathering, education, property, etc., as some procedures are provided in electronic platforms regardless of the functionality and the possibility of access to these necessary tools to exercise the rights.

The construction sector is particularly affected by lack of transparency and corruption. There is a lack of information on construction permits and revival of the construction industry and there have also been public concerns about the involvement of certain private entities in money laundering and intervention or influence in local government structures in order to approve building permit applications. There is currently an electronic system for issuing construction permits, but there is no transparency on the various elements that can be identified by this system in order to be a service accessible to the public. In this context, the PA believes that a concrete and specific role can be played by structures such as the Bank of Albania, HIDCACI, Directorate of Money Laundering, State Police and Special Prosecution anti-Corruption and Organized Crime.

Cases of conflict of interest are often public and indisputable, but there is no evidence and follow-up of these cases by HIDCACI as there are no concrete developments regarding the system of whistleblowers of corruption cases, which must function in accordance with the Law "On signaling and protection of Whistleblowers".

This Law, considered as one of the most important instruments in the fight against corruption and protection of public funds, entered into force on 1 October 2016 for the public sector and on July 1st, 2017 for the private sector. But despite the declarations as one of the most important normative acts of anti-corruption there has not been any result, neither in the public administration nor in the private sector. On the one hand, self-declarations of lack of conflict of interest are very formal and a very strong obstacle in the fight against corruption, but also a strong criterion for benefiting from public funds on grounds of family relations in tendering procedures of public services, reconstruction, health and education.

The rapid spread of the COVID-19 virus and its consequences have eventually affected almost every aspect of society. In these conditions, due to lack of transparency and accountability, a favourable ground has been created for the increase of corruption, whose dangers and consequences threaten and harm in particular the most marginalized strata of the population.

References

- Law 60/2016 published in the Official Gazette no. 115 dated 23.06.2016, amended by Law no. 150/2020.

Impact of measures taken in response to COVID-19 on the national rule of law environment

Most significant impacts of measures taken in response to the COVID-19 outbreak on the rule of law and human rights protection

The line between the need not to disproportionately interfere with human rights and the urgency of measures or policies that state authorities may be obliged to adopt while facing emergencies, is quite narrow and delicate. The emergency caused by the global COVID-19 pandemic proved to be a major challenge for democratic societies. This is a real indicator in testing the ability of a government to respect human rights, even in such conditions. The Albanian democracy is still fragile, consequently striking the right balance in the management of natural or health emergencies and ensuring proportionality of restrictions of basic freedoms of citizens, has been a difficult challenge.

The imposition of restrictions on the exercise of certain rights during the period of pandemic aimed to preserve the life and health of citizens, their awareness and obligation not to engage in activities that pose a risk to the spread of the disease. These rules also included the right of the state authorities to identify citizens who could potentially be carriers of the disease and undertake the necessary health checks on them.

However, human rights cannot be disregarded even in a pandemic situation, and as a result all the restrictions or actions of the state authorities in all cases must be made in respect of human rights.

Main areas of concern identified by the People's Advocate

In general, the PA found that the government did not take all necessary measures to cope with the challenges that this situation brings to education, gender equality, the right to protection from discrimination, protection from domestic violence and the right to a peaceful family life, the right to healthy food and the right to mental health care,

the right to care for vulnerable people, the right to employment, freedom of association, freedom of assembly, freedom of expression or access to information, and many other aspects that are intertwined in the conglomerate of a healthy society. But more particularly, it identified three main areas of concern.

Children's rights

During 2020, based on the review and treatment of cases with initiative, online monitoring and field inspections, we have found the following violations of children's rights:

- Violation of children's **right to education**: the closure of educational institutions during the first period of the pandemic (quarantine) brought inequality in children's access to the online education process. Specifically, children of families living in difficult socio-economic conditions lacked communication technology equipment and access to internet line. The lack of a standardised experience on the *online* teaching process affected the (conjunctive) learning process of the children depending on the school and their residence. In this process, children with disabilities did not have proper access to the teaching process with appropriate and effective services, therefore being the most affected ones. Also, these children have experienced trauma while returning to the educational institutions to catch the rhythm of the gaps created during the *online* teaching process. During the beginning of the 2020-2021 academic year, with the reopening of educational institutions, it was found that many children were newly isolated for long periods of time, due to the COVID-19 protocol, creating inequality in their access to the teaching process.
- Lack of protection of children from **online violence**, as a result of surfing the Internet for a long and continuous time, without security filters due to the education process on the online platform.
- Lack of protection of children from **domestic violence**, as a result of restrictive measures and isolation of families at home, children who had experienced various forms of violence had difficulty obtaining specialised services, due to lack of physical contact with psychologists and field professionals at school. During this period the structures responsible for children protection were focused on ongoing cases. At the beginning of the pandemic, children protection services and the support of relevant services were reduced, due to the lack of cooperation and coordination of the responsible identification structures operating in the local government units, which could identify in time the issues in question.
- Violation of the **right to life and normal development** of the child. The COVID-19 pandemic significantly affected children of families living in poverty, making it

- impossible to guarantee daily food, due to insufficient of economic assistance, job loss, closure of the daily services and damage caused by the earthquake of November 26, 2019. During this period, the local government units have distributed food aid and clothing to ensure the minimum standard of living for these families.
- Violation of the **right to life and health of minors in conflict with the law and deprived of liberty**. The movement restrictions significantly reduced access to education for this category spending most of the time self-isolated. Juveniles in conflict with the law experienced an extended period of time without face-to-face contact with their families, lawyers, support services, extension of court proceedings. These problems have consequently affected the mental health of this category.
 - Lack of protection of **children placed in residential social care institutions**. During the isolation and quarantine period, children placed in social care institutions had disconnection physical contact with their relatives, extending in time their institutionalisation.

The People's Advocate Institution drafted and published a monitoring report on violations of children's rights during COVID-19. This report consists of the evaluation and review of legal and sub-legal acts adopted after the announcement of the pandemic situation in the Republic of Albania, in terms of children's rights, in identifying problems during this period that continue to have short-term, medium-term and long-term impacts on the children's rights to education, health, survival and development as well as adequate living standards. An essential part of this report is also addressing the recommendations to provide support to all responsible state institutions in the exercise of their functional duties to successfully cope with the pandemic situation in order to protect and guarantee the lives of children in accordance with their profile and needs.

Older persons' rights

Older persons were one of the categories who were barred from leaving their house during the pandemic outbreaks. Although the authorities took over the supply of food aid to the elderly, the PA monitoring has shown that this has not always been sufficient, and that this vulnerable category faced particular difficulties.

Freedom of movement

The way of obtaining authorization to leave someone's home during lockdown was also problematic. The means of communication made available by the state authorities, i.e. telephone numbers, were in most cases unavailable, resulting in citizens not being able to obtain the authorisation to move in time. This has often put citizens in difficulty, as on the

one hand they could not move without authorization, and on the other hand it was not possible to obtain the required authorization in time.

The PA also pointed out an important development that affected the legal framework of Albanian Citizens rights: the temporary suspension of the application of certain articles of the European Convention on Human Rights. With the verbal note of the Permanent Mission of the Republic of Albania to the Council of Europe, dated March 31, 2020, the Albanian State, in accordance with Article 15/3 of the ECHR, has fully informed the Secretary General of the Council of Europe of the derogation from certain rights provided by the articles of the Covenant, due to the state of the epidemic. These are the right to respect for private and family life (Article 8 of the ECHR), freedom of assembly and association (Article 11 of the ECHR), protection of property (Article 1 of the ECHR Additional Protocol), the right to education (Article 2 of the ECHR Additional Protocol) and freedom of movement (Article 2 of the ECHR Protocol No. 4). As of June 25th 2020, with another verbal note of the Permanent Mission of the Republic of Albania to the Council of Europe, the Albanian Government has withdrawn its derogations under the remaining Articles of the Convention and of the Protocols thereto, and the provisions of the Convention are being fully executed again.

Actions taken by the People's Advocate

In response to the many issues identified by the PA's monitoring, the institution addressed several recommendations/opinions to the state authorities, to address the following issues:

Timely disclosure of normative acts

The PA found that there was delayed or even lack of publication (both on the official website of the relevant state institution and in the Official Journal) of the normative acts (legal or sub-legal), that imposed COVID-19 restrictions. This consequently led to the lack of access for citizens to complete and accurate information about the measures taken and the restrictions made by the responsible authorities in the country and makes their legal power arguable. The PA therefore assessed that the level of transparency should be increased, and it recommended that in addition to publishing acts, citizens should be given the opportunity to contact the institutions that provide services, whether by telephone or electronically, especially in this period when they should stay at home. The PA reminded the state authorities that they are responsible for disseminating information in a simple and understandable language and that information should be available to national minorities as well as people with disabilities. It is also very important that the information is understandable to children, as UNICEF has advised in recent publications.

On the above issue, on March 31, a Recommendation was sent to the Ministry of Health and Social Protection, to take immediate measures to publish on the official website the bylaws issued for measures taken in accordance with the law no. 15/2016 “On the prevention and control of infections and infectious diseases” and normative acts of the Council of Ministers, in the framework of taking special administrative measures during the duration of the pandemic.

Transparency and information of citizens on central government normative acts and other acts during the pandemic situation

In order to fully and accurately inform citizens about the measures taken by state institutions pursuant to law no. 15/2016 “On the prevention and fight of infections and infectious diseases” as amended, or even through other acts normative issued by them, on April 30 a Recommendation was sent to the Inter-Ministerial Committee of Civil Emergencies, the Ministry of Health and Social Protection, the Ministry of Interior and the Ministry of Justice, to publish in conformity with the law all central government normative acts and other acts during the pandemic situation.

Free of movement restrictions

After the imposition of measures in the context of pandemic, a concern was created to Albanian citizens who had to move with vehicles for work needs, or health emergencies, because of the high number of applications most applicants not only did not receive the required authorization, but also did not receive any response from the responsible body. Also, the two telephone numbers available to the public to get information turned out to be busy all the time. To address this issue, on March 31, the PA sent a recommendation to the General Directorate of State Police, to take the necessary measures to decentralize the competence to issue authorizations for the movement of vehicles, or to increase the staff in the Traffic Police Directorate that was responsible for this service.

After the imposition of the measures due to the pandemic, a concern was created to the Albanian citizens who entered through the land border crossing points, especially to those returning from Greece and Northern Macedonia to Albania. They were subjected to medical examinations for COVID-19, and remained at the border after being advised to stay self-isolated in quarantine for 14 days, because there were no means of transport (neither public nor private) for them to return back home. To address this issue, on March 31, the PA sent a Recommendation to the General Directorate of State Police, to take the necessary measures to allow or provide transport service at all border crossings, especially with Greece and Northern Macedonia.

The Albanian state at first facilitated the repatriation of around 2000 citizens from where they had remained trapped (at the end of March 2020), a decision welcomed the PA. However a week later, through a vague act, it was decided not to allow Albanian citizens to enter the territory of their state, even though they had reached the land borders (with the Greek and the Montenegro state) by means of their personal expenses. As the Albanian citizens might be left out without means of subsistence as a result of the measures taken by other states against the situation created by COVID-19 (no work, no food, no home), the PA insisted that this situation be resolved as soon as possible and in no case may they be deprived of their right to shelter in their country.

The Albanian government, after several days, allowed these citizens to enter the Albanian territory, provided that they would stay in quarantine (in hotels designated by the state, but at the citizens' own expenses). This situation caused new set of problems: insufficient financial means, lack of access to necessary services (medical visits, purchase of medicines, etc., as the hotels were guarded by armed forces, which did not allow them to leave the quarantine). To address this issue, on April 5, the PA sent a Recommendation to the Inter-Ministerial Committee of Civil Emergencies and the General Directorate of State Police and to the attention of the Parliament and the President of the Republic of Albania.

Changes in the Criminal Code

One of the measures taken by the government in the context of the pandemic was the amendments to the Criminal Code to enhance criminal sanctions for persons violating quarantine rules. The People's Advocate did not agree with some of the amendments and therefore submitted to the Committee of Laws in the Assembly (April 14th) the relevant opposition to the amendments and changes in the "Criminal Code of the Republic of Albania".

Recommendation for the protection of children / students of pre-university education during the online learning process

During the exercise of the constitutional function in the period of the COVID-19 pandemic, the institution of the People's Advocate has ascertained the following essential problems:

- first, the lack of communication technology equipment and internet connection supply;
- secondly, surfing the Internet for a long and continuous time, without security filters.

The PA, on April 17th and May 26th, 2020, recommended to the bodies responsible for the education system to take a series of measures to strengthen the system of monitoring and

evaluation of respect for children's rights and placing children's rights at the heart of the education system.

Recommendation for taking immediate measures to guarantee the right of citizens to test for COVID-19

Bearing in mind the need to ensure the greatest standard of health protection, the PA institution has recommended to health authorities several measures regarding policies of testing population:

- on June 19th, 2020 it recommended that the Albanian state should immediately take the necessary measures to ensure that no Albanian citizen who wants to take the COVID-19 test is denied the right to take it. The state authorities should find alternative ways and solutions to accomplish this. Population testing cannot be a luxury, but a right to be carried out in the pandemic situation we are going through.
- on July 22nd, 2020 it recommended taking immediate measures to create opportunities for testing of students and students studying abroad for COVID-19, even against the payment of a cost-oriented fee as a right of theirs and an obligation of the state to realize it. We have stated that students should be able to be tested, even by paying a fee which covers the costs of this service for students, against the supporting documentation related to schooling.

Maximizing the right to review specific issues on initiative, the People's Advocate also issued some recommendations addressing concrete measures that should be taken mainly by local authorities. These include the assistance that local authorities should provide (food aid, disinfectants, etc.) and preparations necessary for the prevention of COVID-19 infection, increased financial support, or even the provision of protection barriers / masks for the most marginalized, vulnerable individuals or groups without established support in their administrative territories.

Other issues

In addition to these recommendations on precise issues, the People's Advocate undertook many activities related to the COVID-19 context in 2020, such as:

Addressing continuous public appeals and information on pressing issues like:

- special care for the civil society sector;
- the strengthening of social solidarity, in addition to social distancing;
- the risk of intensifying violence against women in the conditions of isolation imposed by COVID-19;

- measures to ensure normal living, within the conditions of self-isolation, for the Roma and Egyptian community;
- more social inclusion and equality for the Roma community on their international day.

Publicly discussing the concrete role of the PA in addressing human rights issues and during the state of emergency, in several national and international events, such as:

- European Network of Ombudsmen conference, on October 26th 2020;
- ODIHR Thematic Webinar on “The role of human rights defenders in promoting and protecting human rights” on November 6th 2020;
- OSCE Human Rights and Minority Academy in Voskopojë, on October 27th 2020
- Civil Society round table on “right to protest during pandemic”, on November 5th 2020

Translating and publishing on the official website of the institution, a series of statements of international institutions, to raise awareness of state institutions and the recognition of compliance with international standards, among which:

- Statement by the Commissioner for Human Rights in the Council of Europe, Dunja Mijatović: “We must respect human rights and stand united against the coronavirus pandemic”.
- Statement of UN Experts: “States should not abuse with the emergency measures against COVID-19 to suppress human rights”.
- Principles of the Council of Europe “On the treatment of persons in countries deprived of their liberty”.
- Statement by the United Nations Special Rapporteur on the Rights of Persons with Disabilities, Ms. Catalina Devandas: “We must respect the rights of people with disabilities as an integral part of human rights”.
- Committee of Experts on Media and Reform at the Council of Europe: Appealing on countries to guarantee freedom of expression and information for independent media during the COVID-19 pandemic

Enhancing the PA's role as a promoter of the highest standards of human rights and freedoms in the country, by being present and active in the national media, on different topics regarding the situation created by the state of emergency. The number of public statements of the People's Advocate in the media increased significantly, with about ten public appearances per month, compared to an average of about three public appearances in previous months.

All these activities brought as a result a significant increase of visibility of the PA's institutional activity, as well as increased engagement of citizens towards our activity. A special focus was given to the promotion, prevention of violations and protection the rights of children. The PA, through the Commissioner of the Children's section has carried out various promotional activities playing a proactive role in terms of promoting children's rights in order to inform and raise awareness of state administration institutions at central and local level, in the exercise of their functional duties, in accordance with the law. The development of promotional activities was made possible through the publication on the official website of People's Advocate and the children commissioner such as by informing/ consulting children in a accessible language; advocating and sharing best practices of international organisations; and formulating concrete recommendations to properly address the problems identified during the pandemic.

Long term implications

During the global pandemic human rights have often been challenged and questioned. In many cases, the debate has been fierce, as the extraordinary measures taken by governments to prevent the spread of the disease severely restricted human and civil rights raising questions about the actual necessity and proportionality of certain measures. While state authorities may be obliged to impose severe restrictions on a range of rights to protect public health, it is crucial to remain very vigilant for the present and the future to come, because a life without rights is a life as endangered as that under the threat of an epidemic.

References

Link to the derogation:

- <https://www.coe.int/en/web/conventions/full-list-/conventions/treaty/005/declarations>
- https://www.avokatipopullit.gov.al/media/manager/website/media/Mendim%20p%C3%A8r%20projektligjin_8D2xJ0M.pdf

Most important challenges due to COVID-19 for the NHRI's functioning

The changes that occurred during the period of the COVID-19 pandemic affected the operations of the People's Advocate, like all other state institutions. Direct contact with the citizen and public bodies became more difficult, at a time when not all the population in the country enjoys access and/or informed access to the Internet.

The situation demanded a revision of the People's Advocate's approach – including a significantly increased handling of cases on initiative, an increased presence to visual and print media with opinions especially on elements of restriction of rights in the conditions of the state of natural disaster, and an increased number of recommendations to central and local governments for concrete and appropriate measures – precisely for the non-deterioration of the standard of respect for fundamental rights and freedoms under these conditions.

Taking into account the aggravated situation created in Albania due to COVID-19, the international guidelines and the observance of the Albanian "Legal Acts for COVID-19", during 2020 the PA switched mainly to online inspections, in order to avoid the risk of infection and to prevent further spread of the pandemic.

There have been numerous institutional interventions following on the PA's recommendations sent to public bodies, which aimed at protecting the most needy, vulnerable, or at risk, creating new improved standards for the promotion, protection and prevention of rights from violations, such as and the systemic intervention that public bodies must undertake. Further the Institution increased significantly its presence in media in order to address the aspects of the pandemic and its repercussions with respect to human rights.

During the lockdown, the PA ensured teleworking on full working hours, and created "on the call groups" 24/7. In necessity of work at office, the staff members were required to respect the rules of personal hygiene and social distancing. According to a graph that was approved in the beginning of each month, a group of employees (typically composed of 5 employees, one per each section/unit) secured every day presence at the office on a rotation basis in order to ensure the continuity of the institution's activity. Daily reports of work were presented in accordance with the chain of hierarchy by all staff. Virtual conference calls were held periodically within each Section, Cabinet, Ombudsman and Commissioners, Ombudsman and several working groups, etc. The Citizen's Reception Office was closed and the communication with citizens was made possible through other means like e-mail, telephone, post and the application for smart phones. The announcement published on the website of the institution "On the continuity of work in the

institution of The People's Advocate Institution during the measures within Covid-19" gave information on all the ways of the contact with the institution. Inspections were suspended, and reporting was agreed upon request. As a result, in order to properly fulfil the Institution's mission, the PA followed-up administrative investigations in written form (through official letters and e-mails), and also via direct phone contacts.

The number of complaints received decreased, but at the same time the number of cases for which an administrative investigation has started on the initiative of our institution has increased. This is a result of the monitoring work of the PA staff of the different media to identify cases of violation of fundamental rights of the citizens that are made public and propose these cases for follow-up to the People's Advocate on a daily basis. As a result of this work, there are a number of issues that are under investigation by the Institution, mainly related to the situation caused by the global pandemic. The staff of the Reception Office, as well as the assistant-commissioners, and in some specific cases even the members of the cabinet, offered legal assistance in the form of legal counselling on different issues and questions of citizens.

After lockdown, the staff resumed gradually office working on rotation bases. The good practices assumed during lockdown (e.g., media monitoring, etc.) were continued.

In the framework of exercising its mandate in the capacity of the National Mechanism for the Prevention of Torture (NPM), the PA has exercised its duty by continuously monitoring online institutions of deprivation of liberty, police stations, centres for the treatment of irregular migrants in Albania, centres of anti-trafficking, psychiatric hospitals, Residential Social Care Institutions for elderly and people with disabilities, as well as border detention points. During these online inspections, the NPM's teams communicated in turns with the directors of the institutions and their responsible staff for security, legal, health and psycho-social issues, as well as with people accommodated to the respective institutions (e.g., groups of pre-detainees/detainees, etc.).

A number of inspections were carried out to verify the measures taken pursuant to Normative Act No. 3, dated on 15.3.2020 "On taking special administrative measures during the period of infection caused by COVID-19", as amended; Order No. 156, dated on 10.3.2020 of the Minister of Health and Social Protection "On taking special measures to prevent the spread of infection caused by COVID-19", as amended; Order No. 3614/1 dated 26.05.2020 of the Secretary General in the Ministry of Interior for drafting the plan of protective measures against COVID-19 according to the requirements provided in the Regulation of the Department of Public Administration "On taking organizational measures to exercise the activity of state administration institutions during the epidemic caused by

COVID-19”, as well as a many orders approved by the General Director of the State Police, for this purpose.

The NPM also shared the important regulations/guidelines/proposals/suggestions from international institutions, such as the JTS Councils for governments, NPMs of CoE member states and ENNHRI, on its social media. Throughout this period, NPM have been very active in the media with opinions and suggestions on the activity of the penitentiary system, managing the problems of foreign asylum seekers and the problems faced by Albanian emigrants who wanted to enter Albania during the pandemic period.

References

- <https://www.avokatipopullit.gov.al/sq/categories/mechanisms-against-torture/dentention/article>

Andorra

At present, Andorra does not have a National Human Rights Institution. The *Raonador del Ciutadà* acts as an Ombuds-type institution and performs broader human rights functions, such as on the rights of persons with disabilities, fight against racism and discrimination, and children rights. However, the institution is not accredited and is not a member of ENNHRI.

ENNHRI has been in touch with the institution to gather more information about its work and intentions to apply for accreditation and/or ENNHRI membership.

Armenia

Office of the Human Rights Defender of Armenia

International accreditation status and SCA recommendations

The NHRI was reaccredited with A status in the March 2019 SCA session. The SCA noted that, despite the NHRI's report on the breadth and transparency of the selection and appointment process, the practice is not enshrined in the law, regulation or in another binding administrative guideline. The SCA welcomed the increase of funding to the NHRI and encouraged the NHRI to keep advocating for the provision of adequate funding for carrying out its extended mandate. Moreover, the SCA highlighted that the law is silent on whether or not the Defender can be re-elected, which leaves open the possibility of an unlimited term – in the SCA's view, it would be preferable to limit the term of office to the possibility for one re-election.

Independence and effectiveness of the NHRI

Enabling space

According to Article 29 of the Constitutional Law on the Human Rights Defender (Constitutional Law), the Human Rights Defender (Defender) has a mandate to submit a written opinion on draft regulatory legal acts regarding human rights prior to their adoption. Moreover, in all the cases where the Defender finds that human rights issues are not regulated or fully regulated by a legal act, it may submit to the body adopting the legal act a relevant recommendation, and the body is obliged to consider it and inform the Defender on the results thereof.

The Defender and its staff members actively participate in the activities of state and local self-government bodies. In particular, the Defender has the right to be present at the sittings of the Government of Armenia as well as sittings of the state and local self-government bodies and deliver a speech, where issues regarding the human rights are being considered. The Defender largely uses his right to be present at the Government and Ministerial level meetings to deliver their recommendations to the Government. The Defender is also entitled to be present also at the sittings of the National Assembly, intervening where issues regarding human rights and freedoms are being considered.

The Defender has permanent representatives in the Constitutional Court and the Parliament. They are actively engaged and cooperate with the mentioned institutions. They

cannot replace the Defender; however, these new solutions help to keep strong institutional ties those institutions. A vivid example of this cooperation is active participation of the Defender's representatives in preparing amicus briefs to the Constitutional Court and Participation in Parliamentary Committee discussions. The Defender's representatives conduct regular activities that are accomplished by comprehensive reports containing targeted recommendations on the issues recorded during monitoring. The named recommendations encompass not only suggestions to make legislative amendments or close legal gaps, but also present examples of good practices to tackle existing practical issues. The state or local self-government body having received the relevant recommendation is obliged to consider it and inform the Human Rights Defender on the results within the deadline stipulated under the law. The Constitutional Law on the Defender further prescribes that the relevant body, which has received the Defender's recommendation is obliged to inform the Defender in writing on the measures undertaken within the shortest possible time but no later than within 30 days after receiving it (Articles 29 and 26 of the Constitutional Law). The Defender also conducts advisory functions providing in-depth legal analysis on specific topics to different competent bodies bearing in mind current human rights issues and current affairs in Armenia.

The Defender's Office analysed the draft package of amendments to the Law of the Republic of Armenia on Mass Media and to the Code of the Administrative Offences, that envisaged to expand the ground for restrictions of the right to freedom of expression in the field of media. The Defender organised a special discussion with media specialists on these draft laws as well. In addition, the justification of the draft laws was incomplete. It failed to illustrate the necessity and proportionality of the solutions proposed by the draft laws in the light of international experience and standards, it failed to address practical issues and to explain the reason why the proposed model was chosen and how it would solve the existing problems. The draft laws were not properly discussed with experts, and they were not sent to the Defender for an opinion. Furthermore, the fines proposed in the Code on Administrative Offences were disproportionate; they did not envisage a case-by-case assessment; and the fixed amounts of fines may lead to disproportionate interference with the activities of a journalist. The participants of the discussion on the draft laws envisaging a ban on citing anonymous sources (held at the Defender's Office on February 11, 2021) unanimously concluded that the disputed regulations of the draft laws should be withdrawn due to their inadmissibility. The results of the discussion and the HRDO's relevant studies were summarized and presented to the National Assembly with relevant recommendations.

References

- Constitutional Law on the Human Rights Defender, https://ombuds.am/en_us/site/AboutConstitution/79
- Open letter of the President of the ENNHRI addressed to the President of the Armenian National Assembly (22 March 2021), <https://ombuds.am/images/files/446ccd626f8534e036f7102b18d76735.pdf>
- Open letter of the Secretary General of the Association for the Prevention of Torture addressed to the President of the Armenian National Assembly, <https://ombuds.am/images/files/d71e28018654d836d431adecd738ddd6.pdf>
- Press release of Freedom House "Armenia: Authorities Must Protect Democratic Institutions and Civil Society", <https://freedomhouse.org/article/armenia-authorities-must-protect-democratic-institutions-and-civil-society>

Developments relevant for the independent and effective fulfilment of the NHRIs' mandate

In 2021, the Defender raised concerns over legislative amendments that brought the autonomy and independence of the Defender's Office and its organisational integrity under threat. The amendments envisaged transferring the Armenian Ombudsman's staff back to civil service regime. Another issue concerned amendments to the Constitutional Law on the Defender (approved on March 2021), that is aimed at abolishing the budgetary guarantee for the institutional independence of the Armenian NHRI. In particular, the current law has a constitutional guarantee against a regressive provision of funds to the Defender (Article 8(5) of the Constitutional Law) but the amendments envisage to remove it. Advisory opinions concerning the mentioned amendments have been already requested from OSCE ODIHR and the Venice Commission.

In April 2020, the Government withdrew the legislative amendments abolishing the Defender's financial independence from the National Assembly of Armenia. The Defender stated that the amendments were unconstitutional in their substance and contained grave procedural breaches.

The international organisations clearly underlined that the amendments would have had a negative impact on the Defender's reputation, work efficiency, as well as could result in a

special review of the Armenian NHRI's "A" status as the current regulation is considered as an international best practice.

References

- Open letter of the Chair of the ENNHRI addressed to the President of the Armenian National Assembly (22 March 2021), <https://ombuds.am/images/files/446ccd626f8534e036f7102b18d76735.pdf>
- Open letter of the Secretary General of the Association for the Prevention of Torture addressed to the President of the Armenian National Assembly, <https://ombuds.am/images/files/d71e28018654d836d431adecd738ddd6.pdf>
- Open Letter of support from the ENOC Chair in the context of a proposed amendment to the constitutional law on the Human Rights Defender, <https://ombuds.am/images/files/5872de7ee976d2ad42cf4dff02b7577f.pdf>
- Press release of Freedom House "Armenia: Authorities Must Protect Democratic Institutions and Civil Society", <https://freedomhouse.org/article/armenia-authorities-must-protect-democratic-institutions-and-civil-society>
- "The Government withdrew the legislative amendments abolishing the Defender's financial independence from the National Assembly of Armenia", <https://www.facebook.com/Armenianombudsman/posts/1669707569883367>
- "The Human Rights Defender discussed with the media specialists the draft laws envisaging a ban on citing of anonymous sources: They cannot be adopted in their current form", https://ombuds.am/en_us/site/ViewNews/1527

Human rights defenders and civil society space

The task of the Defender as a national human rights institution is to contribute to the improvement of the human rights system and strengthening of procedural and institutional guarantees. It also includes the role of civil society, and guaranteeing the protected work of human rights organisations, as well as human rights defenders.

Under Article 33.1 of the Constitutional Law, the Defender establishes adjunct boards, where NGOs are represented. For instance, it established the Advisory Board for the

Prevention of Torture (adjunct to the Defender) composed of independent experts as well as experienced representatives of NGOs in the field of prevention of torture and ill-treatment. The Advisory Board on Military Personnel Rights Issues adjunct to the Defender and an Expert council on the Protection of Rights of Persons with Disabilities have been created as well.

Non-governmental organisations have an important role in terms of human rights and democracy in the country, and the state, through its relevant bodies, must guarantee their free activity in the country and ensure their protected work. It is one of the state's positive obligations. Police, as a law enforcement body, also has an important role in this regard.

Recently, the HRDO's monitoring of mass media and social networks revealed targeted threats, insults, hate speech and calls for violence against a number of human rights non-governmental organisations and its members. In this connection, the Defender applied to the Police requesting information on measures that it undertakes with regard to the recorded case and other similar issues, highlighting their role in preventing, properly recording and identify such cases.

The issues of guaranteeing the unhindered activity of civil society representatives and human rights defenders are under the Human Rights Defender's consistent scrutiny. The Defender has regularly expressed concern over calls for violence and about the inadmissibility of threats against human rights defenders due to their role. In this matter, the obligation of the state to take adequate steps has been emphasized many times. The Human Rights Defender released a statement and dedicated a section of its Annual report to these issues (see references). It informs on cases of targeting human rights NGOs and their members, the growing volume of insults directed at them.

References

- "The Human Rights Defender's statement on the inadmissibility of the targeting of the human rights NGOs", https://www.ombuds.am/en_us/site/ViewNews/1467 (in English)
- "The positive obligation of the state to guarantee the activities of civil society organisations and human rights defenders", the 2020 Annual Report of the Human Rights Defender, pp. 662-666, <https://ombuds.am/images/files/883f55af65e3c33553139031c7ac0ce6.pdf> (in Armenian).

Checks and balances

By virtue of the constitutional guarantees as well as the provisions of the Constitutional Law, the Defender may apply to the Constitutional Court. The Defender also contributes to the development of the legislation by acting as a third party in the cases of the Constitutional Court providing amicus curia briefs on human-rights-and-freedom-based cases. In addition, based on the decision of the Defender, his respective staff members are appointed as Defender's representatives at the Parliament and the Constitutional Court of Armenia. For example, the Constitutional Court recognized unconstitutional legislative regulations allowing treatment of children and incapable persons in psychiatric hospitals without considering their opinions based on the application of the Defender.

The Constitutional Court also set a deadline in 2020 (1) for repealing provisions recognized as unconstitutional, enabling the National Assembly to bring several legal regulations into conformity with the requirements of the Constitutional Court decision. The issues recorded during the Defender's monitoring visits to psychiatric hospitals, the results of discussions of individual complaints addressed to the Defender, as well as the international best practice and legislative problems were at the core of the application addressed to the Constitutional Court.

The issue brought under the Constitutional Court's attention was that the consent of the legal representative was considered as a sufficient condition for providing psychiatric assistance to children and incapable persons, including for their placement in a psychiatric hospital.

With regard to the access to public information, the importance of the right to access official documents is highlighted in the 2020 Annual Report of the Human Rights Defender. In 2020, certain steps were taken to ensure the conformity of Armenian legislation with international standards.

However, the complaints addressed to the Defender revealed the issue of delays in replying to journalistic inquiries by state bodies or failure to provide any reply. The issue of access to information for persons with disabilities was recorded as well.

References

- “The Constitutional Court recognized unconstitutional legislative regulations allowing treatment of children and incapable persons in psychiatric hospitals without considering their opinions based on the application of the Human Rights Defender”
https://www.ombuds.am/en_us/site/ViewNews/1055
- 2020 Annual Report of the Human Rights Defender, pp. 411-414
<https://ombuds.am/images/files/883f55af65e3c33553139031c7ac0ce6.pdf> (in Armenian)
- (1) Constitutional Court, 30 January, 2020
<https://www.concourt.am/armenian/decisions/common/2020/pdf/sdv-1504.pdf>,
<https://www.concourt.am/english/decisions/common/index2020.htm> (In Armenian)

Functioning of the justice system

Analyses of the judicial practice and administration of justice carried out, as well as investigation of complaints within the capacity of the Human Rights Defender show that serious reforms are needed in the system of judiciary. Issues related to external and internal independence of the courts, low level of public trust in judges and court decisions, lack of mechanisms for the guarantee of a fair trial and other constitutional rights, etc. All the reforms in this field, however, must be carried out in a strict compliance with the provisions enshrined in the Constitution and the laws of the Republic of Armenia.

In addition, the 2020 Annual Report of the Human Rights Defender provides that one of the main issues in the judicial system is undue delays of court hearings. The COVID-19 outbreak was the primary reason for the delays of court proceedings in the past year, and for delays in carrying out investigative or other procedural actions. The issue of the length of court proceedings is particularly problematic for cases where detention is the preventive measure against the defendant. The examination of the complaints at the Defender’s Office also revealed that one of the reasons for these delays was the issue of translating requests for legal assistance.

Relevant positive solutions in this regard are provided under the Draft of Criminal Procedure Code. The Draft prescribes a maximum time limit for carrying out criminal prosecutions (Article 194 of the Draft Code). The detailed analysis of these issues, specific

positive developments and the Defender's targeted recommendations can be found in the 2020 Annual Report.

With regard to the independence of the courts, it was highlighted that the state and its bodies bear the duty to guarantee the high value of the judicial independence.

The 2020 Annual Report also contains information on the connection of public trust in the judiciary and the ongoing criminal proceedings concerning issues of public interest or public figures. It was provided that the proper awareness-raising in that regard is very important for ensuring public trust in the judiciary and law-enforcement authorities.

References

- 2020 Annual Report of the Human Rights Defender, pp. 662-666, 452-461, 642-643 <https://ombuds.am/images/files/883f55af65e3c33553139031c7ac0ce6.pdf> (in Armenian)

Media pluralism and freedom of expression

The Defender's monitoring revealed that a number of Deputies of the Armenian National Assembly had prepared a draft package of amendments to the Law of the Republic of Armenia on Mass Media and to the Code of the Administrative Offences. According to the draft, it was envisaged to expand the grounds for the restriction of the right to freedom of expression in the field of media. The envisaged amendment would foresee a prohibition to refer to sources that are anonymous or which do not include the data provided by the Law on Mass Media. Given that the proposed amendment was related to the constitutional right to freedom of expression, the draft laws have been studied by the Defender's Office (HRDO) in the context of the relevant international legal standards and ensuring their practical implementation. In addition, the Defender organised a special discussion with media specialists on the draft laws. As a result of the discussion, as well as the studies conducted by the HRDO, it was concluded that if the draft laws are adopted in their current version, the issue of combating false or inaccurate information will not be solved. On the contrary, the draft laws contain non-systemic solutions that may pose additional problems to the media sector, and in general, to the protection of freedom of speech in a systemic way.

In addition, the justification of the draft laws was incomplete. It failed to illustrate the necessity and proportionality of the solutions proposed by the draft laws in the light of international experience and standards, it failed to address practical issues and to explain the reason why the proposed model was chosen and how it would solve the existing problems. The draft laws were not properly discussed with experts, and they were not sent to the Defender for an opinion. Furthermore, the fines proposed in the Code on Administrative Offences were disproportionate; they did not envisage a case-by-case assessment; and the fixed amounts of fines may lead to disproportionate interference with the activities of a journalist. The participants of the discussion on the draft laws envisaging a ban on citing anonymous sources (held at the Defender's Office on February 11, 2021) unanimously concluded that the disputed regulations of the draft laws should be withdrawn due to their inadmissibility. The results of the discussion and the HRDO's relevant studies were summarized and presented to the National Assembly with relevant recommendations.

As mentioned in the checks and balances section, some complaints addressed to the Human Rights Defender revealed the issue of delays in replying to journalistic inquiries by state bodies or failure to provide any reply.

Corruption

In Armenia, the institutional framework of fight against corruption is based on a decentralized model.

The law "On Commission for Prevention of Corruption" was adopted on 9 June, 2017. In November 2019 the Commission for Prevention of Corruption (CPC) has been formed by the National Assembly of Armenia. On 25 March 2020, the Republic of Armenia Law "On the Commission for the Prevention of Corruption" was amended which was aimed at the expansion of the scope of functions of the Commission for Prevention of Corruption, as well as strengthening the toolkit of the Commission. The enhanced powers of the Commission for the Prevention of Corruption include the analysis of political parties' financial resources, their sources, expenditures, as well as annual property reports, and the analysis of declarations submitted by party governing bodies.

The Anti-Corruption Strategy adopted on 3 October, 2019 envisaged the establishment of the Anti-Corruption Committee, which will be an investigative body having a mandate to conduct operative-intelligence activities.

The drafts laws regarding the establishment of specialized anti-corruption courts are elaborated and adopted by the Armenian Parliament on April 14, 2021. According to the draft, a specialized court shall be established to adjudicate both corruption crime-related cases, as well as asset recovery cases.

References

- Amendments to the Republic of Armenia Law "On the Commission for the Prevention of Corruption" from 25 March, 2020
<https://www.arlis.am/DocumentView.aspx?docid=141497> (in Armenian)

Impact of measures taken in response to COVID-19 on the national rule of law environment

Most significant impacts of measures taken in response to the COVID-19 outbreak on the rule of law and human rights protection

Since the first COVID-19 case has been reported in Armenia, the HRDO has been operating in a 24/7 regime. The HRDO's working directions include:

- operatively and rapidly responding to the emergency calls received through the hot line;
- functioning of a specialized working group on domestic violence prevention issues;
- examination of complaints related to COVID-19 and restrictions due to the state of emergency;
- analysing and providing opinions to legal initiative and amendments related to the COVID-19;
- public awareness raising in the context of the COVID-19 and state of emergency (detailed information on all of the mentioned points was presented in 2020 ENNHRI State of the Rule of Law Report in Europe).

In 2020, the Human Rights Defender received 2952 complaints concerning the COVID-19 pandemic. The addressed issues concerned

- persons deprived of liberty in penitentiary institutions, addressed by themselves or their relatives and lawyers,
- increase of domestic violence cases,

- isolation and self-isolation,
- administrative offence record for not wearing a mask and apprehension to the Police for such offences,
- entering and leaving Armenia,
- support programs adopted by the Government to neutralize the economic and social impact of COVID-19, including difficulties of using the system and issues with entering data by the beneficiaries,
- failure to make payments for the use of communal services (electricity, water, gas, communications and telecommunications due to financial condition) and restoring interrupted supplies,
- food aid to socially vulnerable families,
- receiving salaries and granting vacation,
- failure to perform credit obligations within the short time limits set by credit organisations,
- delays in providing pensions to pensioners due to the contradiction between the address of a person's registration and the actual residence address,
- carrying out testing on COVID-19,
- the right to education,
- family reunions, etc.

In particular, since the first days of the State of Emergency, domestic violence issues have been the subject of acute discussion at the Defender's Office. Nowadays the prevention of domestic violence requires more professional approaches, through proper and coordinated preventive activities.

The issue of the prohibition of the freedom of assembly during the State of Emergency was also addressed by the Human Rights Defender. In July 2020, an online discussion on "The freedom of assembly in the condition of the State of Emergency declared due to the COVID-19 pandemic" was organized within collaboration of the Human Rights Defender and a number of NGOs. The participants of the discussion summarized the recommendations in this regard and submitted them to competent authorities.

In addition, the HRDO has received verbal and written complaints about the support programs (actions) adopted by the Government to neutralize the impact of novel coronavirus (COVID-19) in Armenia, as well as regularly carried out monitoring of mass media and social media in this regard. The results of both the monitoring and the discussion of the complaints were regularly summarized and presented to the Government in order to improve the programs and solve the issues raised for the citizens.

The Human Rights Defender has published a guide on frequently asked questions on the new Coronavirus and human rights in the state of emergency. The guide provides information on various issues starting from means of protection from the new Coronavirus to the legal regime of the state of emergency and restrictions in the penitentiary institutions. The guide has been translated into Yazidi, Kurdish, Assyrian, Russian, English and Hindi to be accessible for the national minorities in Armenia. It has also been printed in Braille and has already been sent to persons with visual impairments. The audio version is also available.

Furthermore, the Defender has published an ad hoc public report "On the mandatory requirement to wear a mask in the studio during the novel coronavirus (COVID-19) pandemic".

References

- "Frequently asked questions about the new coronavirus and human rights in the state of emergency"
<https://www.ombuds.am/images/files/432082d18098a7a17bd88873277492da.pdf>
- Ad hoc report "On the mandatory requirement to wear a mask in the studio during the novel coronavirus (COVID-19) pandemic"
<https://ombuds.am/images/files/29c5d404fc8b3961bde79575f0c92d72.pdf> (available in Armenian)
- "It is evident that the administrative fine for not wearing a mask or failure to wear it properly and depriving a person of liberty are acquiring a punitive nature: The Human Rights Defender of Armenia"
https://www.ombuds.am/en_us/site/ViewNews/1301
- "The results of the Human Rights Defender's monitoring with regard to Action 8: From the types of economic activities to the lack of awareness-raising"
https://ombuds.am/en_us/site/ViewNews/1238
- "Complaints about inconsistent approach to tuition reimbursement and students loan: the observation of the Human Rights Defender on the 14th action"
https://ombuds.am/en_us/site/ViewNews/1241
- "The Human Rights Defender received 794 complaints with regard to the actions addressing the economic impact of COVID-19"
https://ombuds.am/en_us/site/ViewNews/1256

- “The Azerbaijani authorities have committed crimes against humanity during the COVID-19 global pandemic with large-scale armed attacks against Artsakh and Armenia” https://www.ombuds.am/en_us/site/ViewNews/1574

Most important challenges due to COVID-19 for the NHRI’s functioning

The most important challenge for the functioning of the Human Rights Defender’s Office during the COVID-19 has been ensuring the safety of the staff during their interactions with citizens, their visits to different institutions, including in the capacity of the National Preventive Mechanism (NPM), as well as regional visits (e.g. border settlements).

While the NPM activities were not suspended, they were affected. They were carried out with even greater vigilance and responsibility, with the use of professional approaches to the fullest extent possible. More details on the Armenian NPM’s activities can be found in the 2020 Annual Report on the Activities of the Human Rights Defender in 2020 as National Prevention Mechanism (available in Armenian).

Within the framework of the cooperation between the United Nations Development Fund in Armenia, through the European Union Human Rights Budget Support Technical Assistance Programme, support was provided to the HRDO in the emergency procurement of personal protective equipment for the staff to facilitate the safe and uninterrupted work of the institution, the interaction with citizens, and for the safe visits to closed institution in the capacity of the National Preventive Mechanism.

References

- 2020 Annual Report on the Activities of the Human Rights Defender in 2020 as National Prevention Mechanism
<https://ombuds.am/images/files/de9d93e7fe42e0fb57562fdea702609e.pdf>
(Armenian).

Austria

Austrian Ombudsman Board (AOB)

International accreditation status and SCA recommendations

The Austrian NHRI was [reaccredited](#) with B status in May 2011. The SCA underlined the importance of a clear, transparent and participatory selection process to ensure the pluralism and independence of an NHRI. Also, the SCA encouraged the NHRI to seek a broader human rights mandate and to continue its engagement with civil society organisations at the national and regional levels.

In January 2021, an [event](#) was organised by the Austrian NHRI in close cooperation with the EU's Fundamental Rights Agency (FRA). Since then, the Austrian NHRI has applied for reaccreditation by the SCA, seeking A-status accreditation.

Impact of 2020 rule of law reporting

On 12 January 2021 the AOB, in close cooperation with the EU Fundamental Rights Agency (FRA) hosted an exchange to shine a light on human rights protection in Austria in times of Covid-19 and to discuss how to strengthen the independence of National Human Rights Institutions (NHRIs). This event brought together national and international representatives of NHRIs and the core human rights institutions in Austria. It helped raise the awareness of how important strong NHRIs are, especially in light of the current situation regarding the Covid-19 pandemic. The independence of the AOB is enshrined in the constitution and the developments since 2012 were discussed. The Chairperson of the Human Rights Advisory Council, the advisory body of the AOB, that consists of civil society representatives and experts from the main Federal ministries, concluded that in her view the AOB operated independently and fulfilled its broad human rights mandate. In addition, ENNHRI's Secretary General highlighted the positive steps that Austria has undertaken.

Independence and effectiveness of the NHRI

Changes in the regulatory framework applicable to the Institution

A part of the constitutional framework regulating the AOB's role as NPM pursuant to OPCAT has changed to the better. In early 2021, the Austrian Parliament amended by constitutional law the Austrian Ombudsman Act to clarify that the establishment of the AOB's commissions and all related acts of the Ombudsman Board, in particular the

appointment and dismissal of the members of its NPM commissions, are attributed to the legislative branch of government. The AOB views this change as a further strengthening and an acknowledgement of the independence of the AOB and its commissions in the role as NPM.

References

- Bundesgesetz, mit dem das Volksanwaltschaftsgesetz 1982 geändert wird, BGBl. I Nr. 56/2021, available online at <https://www.ris.bka.gv.at/eli/bgbl/i/2021/56>

Enabling space

Yes, the AOB possesses a range of powers to independently and effectively fulfil its functions. The AOB may comment on any proposed draft legislation or ordinance (Article 1 (2) item 4 Austrian Ombudsman Act). For these purposes, all drafts must be forwarded to the AOB in a timely fashion (Article 7 (1) Austrian Ombudsman Act). The AOB has exercised this right numerous times; recent examples include comments on the human rights impact and proportionality of several proposals for COVID-19 measures. Additionally, the AOB can recommend legislative reforms (Article 7 (2) Austrian Ombudsman Board). The AOB is endowed with broad investigative powers to pursue its mandate. Thus, all governmental bodies are obligated to support the Ombudsman Board in the performance of its duties, grant it access to files and provide the necessary information upon request. The rules governing confidentiality of official records do not apply to the AOB (Article 148b Federal Constitution). Usually, there is no need to issue formal recommendations as the governmental body concerned complies with a solution mediated by the AOB between the parties. However, in case the AOB issues a formal recommendation, the body concerned must within eight weeks either comply with these recommendations and notify the Ombudsman Board thereof or give reasons in writing why the recommendation has not been complied with (Article 148c Federal Constitution in conjunction with Article 6 Austrian Ombudsman Act).

Additionally, the AOB has the right to apply to the Constitutional Court for a review of the lawfulness of administrative ordinances (Article 139 (1) items 5 & 6 Federal Constitution). The AOB reports annually to the Federal National Council and seven of the Länder Parliaments. This further ensures the AOB's independence, transparency, and

accountability. When discussing the annual reports, members of the AOB have the right to take the floor in a special Committee. Likewise, members of AOB may take the floor in the budget Committee and in the plenary whenever parliament discusses the AOB's budget. The annual report for 2020, usually split in two volumes dealing with ex post investigative work and preventive human rights monitoring respectively, contains an unprecedented third volume detailed the cross-cutting issues related to COVID-19 and the attending governmental measures. Additionally, since 2012, Article 148a (1) Federal Constitution explicitly enshrines a broad human rights mandate of the AOB. Additionally, the AOB and its Commissions act as National Preventive Mechanism pursuant to OPCAT and Independent Authority pursuant to CRPD (see also answer to question 2 above on the effects of this legislation on the AOB's role as the Austrian NHRI). Moreover, the AOB houses the Commission pursuant to the Pensions for Victims of Children's Homes Act (HOG) tasked with the investigation of abuse cases for the award of a so-called home victim's pension.

These mandates complement and inform the AOB's traditional Ombudsman mandate. Crucially, based on the findings of the AOB's NPM commissions, the AOB may issue formal recommendations with the same legal consequences as discussed above.

Since 2012, a Human Rights Advisory Council provides a forum for representatives of civil society and government to exchange views. This body also advises the AOB on human rights issues.

References

- Federal Constitution, available online at <https://www.ris.bka.gv.at/GeltendeFassung/Bundesnormen/10000138/B-VG%2c%20Fassung%20vom%2018.05.2021.pdf> (German) and https://www.ris.bka.gv.at/Dokumente/Erv/ERV_1930_1/ERV_1930_1.html (bilingual); Austrian OMBUDSMAN Act, available online at <https://www.ris.bka.gv.at/GeltendeFassung.wxe?Abfrage=Bundesnormen&Gesetzesnummer=10000732>

Impact of measures taken in response to COVID-19 on the national rule of law environment

Most significant impacts of measures taken in response to the COVID-19 outbreak on the rule of law and human rights protection

Since the beginning of the pandemic, a multitude of emergency measures impacting nearly all areas of life have been adopted, both on the federal and the regional level. All these acts and regulations have had an immediate impact on fundamental rights, such as the right to private and family life, freedom of movement, freedom of assembly, freedom to carry on a business, freedom of religion, the right to education etc., because the right to life and right to health have been prioritized. At the beginning of the pandemic, laws and regulations were adopted at very short notice without transparent and extended discussions of the new measures by the Parliament and the different stakeholders concerned before their adoption. It remains the case nowadays to a lesser extent. All emergency measures have always been limited in time and, since a ruling by the Austrian Constitutional Court, the introduction of new lockdowns has to be approved by the main committee of the Austrian National Assembly.

Presently, there is no lack of access to the courts in Austria. Remote trials and trials in person under special COVID-19 rules are currently held, to remedy the backlog caused by the impossibility to hold trials in person in the first months of the pandemic. The Austrian Constitutional Court has been able to work without any obstacles and has reviewed many COVID-19-related regulations, including the main one (“COVID-19-Maßnahmenverordnung”) which was deemed unlawful. It consequently had to be adapted according to the Court’s ruling.

Residents of care homes and of homes for people with disabilities have been at first disproportionately affected by the pandemic in comparison with the rest of the population, as they were not allowed to leave the premises and to receive visitors. Due to the intervention of the Austrian Ombudsman Board (AOB) at the Federal Ministry for Social Affairs, Health, Care and Consumer Protection, residents of the above-mentioned facilities are now subject to the same rules as the rest of the population.

As the COVID-19 pandemic is still ongoing, all its long-term implications are not yet known. The AOB would like to underline that restrictions of all kinds of fundamental and human rights should remain an exception and that the population should not get used to these restrictions in the long-term.

The relevant government bodies immediately inform the AOB about the instituted emergency measures on a regular basis. As part of its preventive human rights mandate, the AOB checks the proportionality of the human rights limitations contained in these emergency measures. Additionally, the AOB received a large number of individual complaints related to COVID-19 measures. In cases where it determined that the relevant authorities engaged in maladministration or human rights violations, the AOB took the appropriate steps by reporting its findings and, where necessary, intervening. Although access to institutions (e.g., hospitals) was difficult, the AOB still received individual complaints and could therefore monitor the immediate effects of the instituted measures on individuals. These experiences from the ex-post control also proved valuable for the preventive work of the AOB.

The AOB regularly interacts with its Human Rights Advisory Council, which consists of human rights experts from civil society and government, to assess the impact and proportionality of COVID-19 related governmental measures. Thus, the AOB asked the Council to assess the proportionality of severe health restrictions instituted in detention facilities, and of police action in dispersing peaceful public demonstrations whose participants violate COVID-19 safety standards (e.g., distancing and mask requirements). As far as health restrictions permit, members of the AOB meet and consult with office holders on the federal and regional levels to discuss the ongoing challenges that the COVID-19 pandemic poses to good administration and human rights. In February 2021 for instance, members of the AOB met with the Federal President and the President of the National Council.

For the first time in 2020 the AOB will issue a 3rd part to its Annual Report, specifically dealing with COVID-19 (Part 1 being about the ex-post control of the public administration, and Part 2 about the preventive human rights mandate). This report will be published shortly.

Most important challenges due to COVID-19 for the NHRI's functioning

The COVID-19 crisis has made preventive human rights monitoring more difficult. Although the monitoring rights of the AOB's commissions, which fulfil the function of OPCAT NPM, have never been in question, in the first lockdown they only temporarily suspended their visits to institutions which fall under the OPCAT mandate for a couple of weeks.

However, the AOB conducted a survey in May 2020 with numerous nursing home managers to better assess the situation in the homes. Additionally, through nationwide telephone interviews, the commissions surveyed the main problems in these facilities

during and after the lockdown. In the course of this activity, the commissions earned a certain amount of trust, which paid off in the further course of the pandemic through greater responsiveness on the part of the institutions under review. The commissions found that the shortage of nursing staff created and exacerbated many problems. After four weeks, the commissions' inspection visits could again take place to the usual extent because the government put in place a clear framework for visits by the commissions and by other visiting institutions and representative bodies. These safety protocols created clarity and security for everyone concerned and removed psychological barriers that may have existed in approaching residents directly. Thus, the commissions were able to conduct 431 visits to institutions in 2021, which is only slightly below the mean number of the preceding years. Additionally the AOB also maintained its other monitoring activities throughout the pandemic. Thus, it held nine consultation days in correctional centers during which its members met with 226 inmates in person.

The AOB recently presented these and other findings related to crosscutting issues of the COVID-19 pandemic in a specially dedicated third volume of its 2020 annual report. The report will soon be available in English as well for an international audience.

References

- Austrian Ombudsman Board, Annual Report 2020: COVID-19, available online at <https://volksanwaltschaft.gv.at/downloads/60q2/PB%2044%20Covid-19%202020.pdf>

Azerbaijan

Office of the Human Rights Commissioner of Azerbaijan

International accreditation status and SCA recommendations

In May 2018, the Azerbaijani NHRI was downgraded from A to B status. The SCA was of the view that the NHRI had insufficiently addressed credible allegations of human rights violations having been committed by government authorities. It also encouraged the NHRI to advocate for amendments in its enabling law to ensure that the selection and appointment process of the Ombudsperson.

Impact of 2020 rule of law reporting

Follow-up initiatives by the Institution

In 2021, the Office of the Human Rights Commissioner of Azerbaijan (HRCA) held broad discussions on the basis of recommendations given to various public authorities in the Parliament. The recommendations were put forward to develop the domestic legislation framework and human rights protection mechanisms. The recommendations provided to the Parliament have been indicated in the 2020 Annual Report of the Ombudsman as well.

Independence and effectiveness of the NHRI

Changes in the regulatory framework applicable to the Institution

In 2020, within the premises of the HRCA a separate Department for the Protection of the Right to Information was established. This is meant to strengthen the mandate granted to the Ombudsman under the Constitutional Law for the supervision over the implementation of the provisions of the Law on Access to Information, the related oversight mechanisms and enable the Institution to effectively deal with the complaints on the violation of the right to information, as well as to discuss amendments to the national legislative framework.

Under this mandate, the HRCA operatively investigates the complaints, takes necessary measures to eliminate existing impediments, replied to the incoming requests for information and in some cases, provides complainants with legal advice.

The HRCA is currently drafting recommendations to the Parliament for amendments and additions to the provisions of the Constitutional Law in order to expand the powers of the

Ombudsman. In particular, the HRCA is suggesting the integration within the mandate of new national preventive mechanisms on anti-discrimination and the strengthening of the institutional structure and financial resources to enable the Institution to fully fulfil its mandate under Article 33.2 of the CRPD.

The members of the national preventive mechanism (NPM) Group of the Ombudsman have been renewed.

Measures for the advancement of the overall work of the Secretariat and Office of the HRCA also continue to be pursued, for instance creating a new department (for Protection of the Right to Access to Information), creating and improving the existed social media networks (Facebook, Twitter, Youtube, Instagram), creating the unified call centre for all kind of applications and complaints, etc.

Enabling space

The Constitutional Law of Ombudsman, details very well the powers and functions of the Ombudsman, including its participation in the legislative process. Under the Constitutional Law, the Ombudsman is independent and obey only the Constitution and the laws of Azerbaijan, enjoys immunities, and no governmental or municipal body or official may interfere with its activity. Therefore, the HRCA independently and without any hindrance follows up on the implementation of its recommendations by state authorities, during the monitoring in places of deprivation of liberty, social-care and health institutions, military units and other facilities. In case the recommendations are not taken into account, the Ombudsman points this out into its Annual Reports. Most of the time this allows the issues to be duly considered and lead to responsible officials being punished as provided by the law.

The Ombudsman has the power to make proposals to the Parliament, and to central and local executive authorities concerning the advancement of the legislation, human rights protection mechanisms, as well as the eradication of the human rights violations. Currently, the HRCA is working on a set of recommendations for the expansion of its mandate, which will soon be presented to the Parliament. The Ombudsman may also submit motions to the President and Parliament, concerning the granting of pardon, amnesty, citizenship and asylum. For example, on 18 March 2021, the country President has signed an Order "On pardoning a number of convicts" and on the motion of the Ombudsman 72 convicts were granted pardon.

The HRCA is currently working on improving its institutional capacity and mandate, and drafting subsequent recommendations to the Parliament for amendments and additions to the provisions of the Constitutional Law. In particular, the HRCA is suggesting the strengthening of the institutional structure and financial resources to enable the Institution to fully fulfil its mandate under Article 33.2 of the CRPD.

As part of the engagement of the HRCA with state authorities, the Ombudsman institution also actively collaborates with the State Committee for Family, Women and Children's Affairs within the CoE/EU funded Twinning online Project " Models of Disability in Eastern Partnership: best practices and lessons learnt", which covered learnt challenges and lessons, Istanbul Convention, prevention of domestic violence, promotion of gender equality and etc. The Project is still ongoing.

Within the framework of the Partnership for Good Governance (EU-CoE regional programme for the Eastern Partnership countries) II Project for Good Governance, the HRCA and other state authorities have improved their knowledge on how to further protect the rights of the victims of abuse and support them in compliance with international standards and rules.

Within the framework of its cooperation with civil society and state authorities, the HRCA discusses human rights issues related to businesses and violations emerging as a result of business activities with its Working Group on Business and Human Rights, which consists of experts of civil society and relevant state agencies. This group was established at the initiative of the HRCA to coordinate the activity between state authorities, raising awareness in the field of human rights in the context of business and human rights. The issues discussed include corporate responsibility, occupational diseases, social security, and protection of employees in state and private entities, environmental challenges due to business activities.

State authorities are encouraged to hold awareness raising events on the rights of the child during the annual Human Rights and Child Month-long campaigns. In 2020, between 20 October and 20 November, video discussions were held with civil society and state authorities.

References

- <https://ombudsman.az/en/view/news/2440/72-convicts-were-pardoned-at-the-motion-of-the-ombudsman>

Developments relevant for the independent and effective fulfilment of the NHRIs' mandate

In 2021, due to the Covid-19 pandemic, all public awareness events organised by the HRCA, including those held through its Regional Centers, were held online. This significantly affected the number and level of effectiveness of such initiatives compared to in-person meetings. Indeed, the HRCA staff faced a heavy workload over the past year for the purpose of handling complaints remotely, as the Institution had to suspend the provision of legal advice in person during reception hours as it was normally the case before the pandemic outbreak.

Human rights defenders and civil society space

Everyone has the right to legally seek, obtain, impart, produce and disseminate any information irrespective of status, be it natural or legal person or field of occupation. The HRCA has been taking some actions to promote the right to access to information for all.

The HRCA closely collaborates with members of civil society and human rights defenders, NGOs and local communities. In 2021, the new Ombudsman of Azerbaijan has established a separate Department for the Cooperation with international organizations and civil society institutions within the Office. The institution investigates any complaint received from human rights defenders, NGO members.

Regional Centers of the Ombudsman regularly hold awareness raising events for local communities and NGOs representatives. In 2020, the HRCA held online conferences with participation of civil society organizations within the month-long campaign "Child Rights Month" running between 20 October-20 November on the initiative of the Ombudsman.

In 2021, the HRCA is continuing its work to raise awareness on good governance and human rights. In this context, the HRCA held an online meeting with civil society organizations (CSOs) and NGO representatives to learn about challenges they are facing and discuss future joint projects. During the meeting, the matters related to the advancement of the national regulatory framework for human rights protection, exercising public control, the adoption of anti-corruption measures. Furthermore, it should be noted that the HRCA is currently drafting the recommendations for amendments and additions to the provisions of the Constitutional Law. Given the close cooperation of our Ombudsman Institution with NGOs, the Ombudsman encouraged civil society institutions to participate in this process.

Checks and balances

The Government of Azerbaijan always attaches great importance to dialogue with citizens. The official website of the head of state has been updated, and every citizen has the opportunity to address the President via this official website. This right has now also been extended to aliens have direct access to the head of state through the official website, and can express their views on the issues that concern them.

The State Agency for Public Service and Social Innovations under the President of the Republic of Azerbaijan (ASAN) Service and responsible state authorities run a project for the citizens who fled from the Nagorno Karabakh and seven adjacent districts that were destroyed by armed conflict. So, the Government of Azerbaijan starts a demining process even if this process is very difficult without any minefield map, as well as re-construction works in those areas. During the project, the competent authorities, conduct a survey with the citizens how they would like to have the layout of their new houses to be re-constructed, including other social protection issues after the re-settlement process. This process builds confidence and stable trust between citizens and the state.

The work of the Ombudsman is complementary to that of the courts. It has a power to identify violations based on its investigations of individual applications, and to report systematic problems related to maladministration. The new Ombudsman has received 27.500 complaints in 2020. Over the years, the HRCA has identified and investigated many issues and has introduced recommendations to the Parliament, the majority of which have been considered.

The HRCA continues to collaborate with all branches of government, including the judicial power, e.g. the Constitutional Court.

In 2021, the HRCA submitted two requests to the Constitutional Court for checking the compliance of Articles of the Civil and Criminal Codes with the Constitution.

The HRCA has been empowered with a special function on "Supervision over the Law on Access to Information" to react to complaints dealing with the violation of the **right to information**, including the right to know (e.g. access to personal data), by public authorities. In 2020, the HRCA set up a Department for Protection of the Right to Information, comprising two Units, Right to Information Unit and Analyses and Monitoring Unit. Besides the investigation, the HRCA raises awareness about the responsibility of public authorities to respect the right to information and to provide it to the requestors, unless otherwise provided by law.

References

- <https://www.facebook.com/ombudsman.az/posts/277084017163995>
- <https://www.facebook.com/ombudsman.az/posts/277084017163995>

Functioning of the justice system

Within its mandate under Article 1.9 of the Constitutional Law, during its human rights monitoring and investigation of complaints on the violation of the right to judicial protection, the HRCA found that the courts create **artificial and bureaucratic barriers hindering access to justice** by the citizens. Identified issues include: delays in obtaining copy of the judgments, failure to return supporting documents to the application when refusing the latter, delays in or failure to deliver summons to the relevant parties as required by the civil and procedural legislation, failure to take necessary actions for the participation of all relevant parties to the trial proceedings, violation of the code of ethical conduct by the judge during proceedings, rejection of evidence and failure to fulfil petitions, pressure on the parties during proceedings, unreasonable restrictions to the right to appeal, failure to direct the judgements to the execution and to respond to for requests leave to appeal. All these shortcomings affecting the justice system have been signalled in the HRCA 2020 Annual Report (an English version of the Report will be soon available).

Within its mandate, the HRCA may examine complaints on violations of human rights relating to failures to respect the right to good administration, including red tape, loss of or delayed delivery of documents in courts as well as delays in the execution of court judgments (Const. Law, Art. 1.9). The Institution however cannot interfere with the activity of judges (Art. 1.6).

As mentioned above, the HRCA currently works on the expansion of its mandate, which also consider similar aspects.

The HRCA highlights that ensuring **legal needs of low-income individuals** will lead to the best and most effective access to justice. As not all across the country are able to afford legal services, therefore, the Ombudsman considers that it would be appropriate to allocate additional resources for the establishment of state-financed lawyer consultation centres across the country, along with all necessary measures for stimulating the activity of

lawyers in districts. This would promote more effective protection of human rights and prevention of law violations and maladministration.

Under its mandate, in 2020, the HRCA recommended increasing the number of **lawyers** across the country and amount of payment for lawyering services at state expense, supporting their activity and simplifying their selection procedures. Through its investigations, the HRCA found out that some lawyers violate the responsibility for clients (i.e. by demonstrating indifference to their clients). The Ombudsman therefore recommends training the lawyers in order to increase the quality of client-lawyer relationship and legal assistance services. To that effect, the HRCA submitted targeted recommendations to relevant bodies to take appropriate supportive measures, including increasing the number of legal consultation offices across the country, further develop and improve the legal aid system, etc.

As a result of investigations by the HRCA related to the problems like **non-execution of judgments**, especially on alimonies, salary arrears, property issues, in many cases the execution of court decisions was executed, and the violated rights were restored. The investigations conducted by the HRCA has revealed that the number of problems with alimonies (child support) increased and that most of the time the relevant judgments are not executed. Given that single parents and foster children are in need of such financial support, the HRCA intervened to ensure that appropriate measures be taken for the execution of court decisions. The Ombudsman's investigations and interventions resulted in part or full payment of alimonies in some cases.

Media pluralism and freedom of expression

In 2020, the HRCA investigated the case of a **detained journalist**, Polad Aslanov, in order to protect his rights and ensure dignified conditions of detention.

The HRCA's new mandate supervising the application of the Law on Access to Information, also covers issues faced by journalists, such as **failures to disclose information**. The new Ombudsman is very open to the public, including journalists. The Institution has created social media channels on platforms such as Youtube, Facebook, Instagram and Twitter and publishes news and statements via those channels on a regular basis. Furthermore, in order to better deal with the issues of media and journalists, a new Department for the Protection of the Right to Information was created and the HRCA is currently working on a new communication strategy. The relevant Department deals with the complaints on the violation of the right to information received by citizens and media outlets against public authorities. The relevant complaints were mainly about failures to execute requests for

information, refusals to disclose information on the pretext of confidentiality, or treating the knowledge as state secret, financial secret and etcetera.

Corruption

The Government updated the State National Action Plan (NAP) on Promotion of the Open Government (2020-2022), which also considers anti-corruption activities. This new NAP will be carried out in accordance with the requirements of the International Open Government Partnership (OGP) initiative. A broad public and civil participation have been engaged in the preparation of the Plan, including through public discussions, hearings and round tables involving all relevant stakeholders, such as civil society organizations, mass media and citizens themselves.

The HRCA is also engaged in the implementation of this Plan, and continues its work to contribute combating corruption through awareness-raising initiatives among public authorities, CSOs and citizens, and by investigating relevant complaints, which are in certain cases further referred to the competent body for further investigation. In 2020, the Ombudsman has created a unified hotline for effective investigation of the incoming requests and information as required in the noted-above NAP.

As indicated above, the HRCA deals with the complaints related to corruption issues. For example, one of the cases brought to the attention of the HRCA in 2020 concerned alleged pressure by the head of the secondary school in Sumgayit city on the complainant for his resigning and for his claims about the head's corrupt activities. After the intervention of the Ombudsman and her request to the Ministry of Education, the case was investigated, and the principal was dismissed for misconduct.

Impact of measures taken in response to COVID-19 on the national rule of law environment

Most significant impacts of measures taken in response to the COVID-19 outbreak on the rule of law and human rights protection

As part of the emergency measures taken in response to COVID-19 outbreak, as an alternative to in-person **court proceedings**, court proceedings on civil cases and commercial disputes have been held online through the "Electronic Court" information system (2) (3), following the rules of social distancing and according to "the Decision No. 06 of the Plenum of the Supreme Court on measures necessary implemented in the courts to

prevent the outbreak of the COVID-19 in the Republic of Azerbaijan” of 19 March, 2020, and in conformity with the Code of Civil Procedure

The COVID-19 outbreak seriously affected the **employment sector** in the country. Due to the lockdown and special quarantine regime, many people working in the private sector lost their jobs. Regular measures are taken to address these challenges and to reduce the negative effects of the pandemic on employment and businesses, and on the economy more broadly, in the country. According to the decision of the Government, those who have registered as unemployed in the Database of the State Employment Service and low-income families are provided one-time subsistence allowance. To date, tens of thousands of people benefited from this support.

Another problem concerns the enjoyment of the right to education, in particular due to the practice of distance/remote learning during the COVID-19 outbreak. Difficulties were observed during online learning processes in state-owned child-care institutions, as well as in remote areas, where internet does not work properly. The problems were mainly related to technical issues, and to the lack of adequate number of computers for children in the above-mentioned child facilities.

In spite of the COVID-19 crisis, the HRCA in 2020 and 2021, held online meetings with public authorities and civil society organizations to expand multilateral cooperation.

The HRCA promptly investigates complaints and conducts investigations. The HRCA sent motions to the relevant state authority for pardoning within her mandate, according to which 72 detainees were pardoned. Given that **older persons** and **persons with disabilities** (PWDs) belong to high-risk group during pandemic, the Ombudsman requested the competent authorities to secure appropriate care and adopt measures to fulfil their basic needs, including home-based medical services. In addition, the HRCA has recommended taking social protection measures for older persons, including via the adoption of a public programme for their social protection.

The HRCA created a special Unit for the Protection of the Rights of PWDs. The Ombudsman recommended the Ministry of Justice to consider the impact of the COVID-19 pandemic on this vulnerable group and conditionally release the persons with special needs from detention facilities.

The HRCA also underlined the situation of **persons in detention**, as one of the groups most at risk to any kind of contagious diseases. The Commissioner has been engaging in educational activity to raise awareness on how inmates can be protected from infection.

References

- <http://supremecourt.gov.az/post/view/1173> (Supreme Court of Azerbaijan)
- Ibid. para. 1.3
- https://courts.gov.az/az/shakiappeal/displaynews/VTNDASLARIN-NZRIN_484 (Sheki Court of Appeal)

Most important challenges due to COVID-19 for the NHRI's functioning

Due to the COVID-19 crisis, excessive workload was caused by the countless online applications and requests received through social media channels (Facebook, Twitter, Youtube and Instagram) of the HRCA, which were created in order to facilitate access of the applicants to the Ombudsman, leading to fatigue among the staff.

In 2021, despite the temporary suspension of the possibility of submitting individual complaints to the HRCA in-person, the latter has continued its human rights monitoring and preventive visits to various institutions. The Institution's Office did not face any challenges during this period.

The Office also receives written applications by detained persons or their family members online and via ordinary mail, as well as via a 24H hotline. All incoming applications and correspondences are dealt with expeditiously and action is immediately taken if that is deemed necessary.

Persons in detention (1) are one of the groups most at risk to any kind of contagious diseases; therefore, along with the preventive monitoring, the Commissioner has been engaging in educational activity to raise awareness on how inmates can be protected from infection. Since the beginning of the state of emergency due to the COVID-19 pandemic, the Commissioner released messages addressed to the population and carried out monitoring. Amid the activities taken in response to the pandemic, she put forward her specific recommendations and suggestions in order to ensure the rights of PWDs (2) migrants (3) children (4) and the rights of population groups in detention settings and other places, where persons cannot leave on their own will, during this special quarantine regime.

In 2021, Regional Centers and the main Office of the HRCA conducted visits to places of temporary detention at police stations across the country.

References

- (1) <https://ombudsman.az/en/view/news/2376/visits-under-the-npm-mandate-of-the-ombudsman-were-made-to-temporary-detention-places-in-the-regions>
- (2) <https://ombudsman.az/en/view/news/2337/ombudsman-sabina-aliyeva-continues-her-visits-in-the-frames-of-the-npm-mandate>
- Message of the Commissioner for Human Rights (Ombudsman) of the Republic of Azerbaijan to the state and local self-governing institutions, officials, and other offices, enterprises, organizations and business entities regarding the protection of the rights of persons with disabilities due to the coronavirus (COVID-19) infection outbreak: <http://ombudsman.gov.az/az/view/news/1758/azerbaycan-respublikasinin-insan-huquqlari-uzre-muvekkilinin-ombudsmanin-koronavirus-covid-19-infeksiyasinin-yayilmasi-ile-elaqedar-elilliyi-olan-shexslerin-huquqlarinin-mudafiesi-ile-bagli-dovlet-ve->
- (3) Information on the measures carried out by the Commissioner for Human Rights (Ombudsman) of the Republic of Azerbaijan for effective protection of the rights of migrants due to the outbreak of coronavirus (COVID-19) infection
- (4) Information on the activities carried out by the Commissioner for Human Rights (Ombudsman) of the Republic of Azerbaijan in the field of child rights protection during the ongoing outbreak of COVID-19 infection in the country.

Belarus

At present, Belarus does not have an NHRI in place.

In 2014, an international workshop was organised on the establishment of an NHRI in Belarus, at the initiative of the Council of Europe, and co-organised with UNICEF, OHCHR and the Belarusian Ministry of Foreign Affairs. The workshop conclusions of the Ministry of Foreign Affairs indicated ‘some doubts [...] concerning the effectiveness of functioning of the NHRIs, in particular, possible duplication of the leverages available at governmental disposal for the promotion and protection of human rights and lack of the efficient tools to respond to most daunting problems within a society.’. At the same time, it was indicated that: ‘The outcomes of the workshop will be taken into account for the elaboration of the common ground position by all governmental bodies on the advisability of establishment of a NHRI in Belarus’.

ENNHRI stands ready to support the Belarusian government or any other relevant stakeholder on how to proceed with the establishment of an NHRI in compliance with the Paris Principles in the country.

References

- Belarusian Diplomatic Service, Press Release ‘On the International Workshop “National Human Rights Institutions: Establishment and Functioning”, http://mfa.gov.by/en/press/news_mfa/e6eba56137949587.html

Belgium

Interfederal Centre for Equal Opportunities and Opposition to Racism (UNIA)

International accreditation status and SCA recommendations

Unia was [accredited](#) with B-status in May 2018. During its accreditation, the SCA noted that the mandate provided to Unia is limited and does not cover the full range of human rights. Unia is an inter-federal institution, and covers federal and regional fields of competence in Belgium. Unia has a strong mandate to combat racism and discrimination, including as part of its function as the National Monitoring Mechanism under the UN Convention on the Rights of Persons with Disabilities. As inter-federal equality body, [Unia promotes human rights in Belgium](#) in a broad way and submits parallel reports to UN treaty bodies and [informs civil society](#).

Myria and the Interfederal Combat Poverty Service (also ENNHRI members) are not accredited, due to their restricted human rights mandate. However, the three institutions (Unia, Myria and the Combat Poverty Service) work collaboratively to promote and protect human rights in Belgium. Myria and Unia are both legal successors of the former Centre for equal opportunities and opposition to racism (which had been accredited with B-status between 1999 and 2014). They have agreed on a protocol for co-reporting on the UN human rights instruments. This protocol was submitted in the accreditation process, that led to the recognition of Unia as a NHRI with a B-status.

A [bill](#) to create a new institution, the [Federal Institute for the Protection and Promotion of Human Rights](#), was approved in April 2019. In July 2020, the members of the Governing Board were appointed by a vote in the Federal Parliament, and they held their first meeting in September 2020. The Secretariat of the Institute was staffed in February 2021 and is expected to be further consolidated in Spring 2021. The Federal Institute has a human rights mandate limited to federal matters that are not covered by pre-existing bodies active in the field of human rights, which is a limitation in view of the UN Paris Principles. It has been setting up cooperation with other ENNHRI members in Belgium, including the B-status accredited institution Unia. The institution joined ENNHRI in 2021 as an associate member and [declared](#) to take active steps towards achieving A-status accreditation.

Impact of 2020 rule of law reporting

Follow-up by State authorities

A senator attended the meeting organized in Brussels by the German Presidency on the 29th of October 2020 in the frame of the 2020 Rule of law report. The federal advisory committee on European issues of the Belgian senate has engaged in a national dialogue on rule of law with Commissioner Reynders (16 December 2020).

References

- https://www.senate.be/www/?MIval=/index_senate&MENUID=55000&LANG=fr

Independence and effectiveness of the NHRI

Changes in the regulatory framework applicable to the Institution

There have been no changes in the regulatory framework applicable to Unia in the past year.

Enabling space

Unia is regularly invited to take part in different parliamentary assemblies and is sometimes consulted by the ministerial cabinets regarding the law-making process. Unia's recommendations are generally taken into account, although not always in a timely and systematic manner.

In the frame of the COVID-19 pandemic, Unia was invited to weekly meetings (initiated by the governments) designed at assessing and solving the negative impact of the regulations on the most vulnerable groups in society. The NHRI's recommendations were mostly taken into account, even if many challenges remain.

Unia's limited mandate is an obstacle. However, through its competences as equality body and CRPD's independent mechanism, Unia can still deal with a wide range of issues. Unia's limited resources prevent it from dealing with issues related to checks and balances in a more systematic and comprehensive manner.

Developments relevant for the independent and effective fulfilment of the NHRIs' mandate

Unia restructured its lobbying work in order to ensure a higher impact of its recommendations. For example, Unia integrates more systematically UN Treaty Bodies' recommendations in its lobbying strategy at national level.

Flanders announced its intention to withdraw from Unia in 2023 to create its own anti-discrimination institution. This withdrawal might have an impact on the efficiency of the fight against discrimination in Belgium.

In 2019, a law established a Federal Institute for the Protection and Promotion of Human Rights. The competence of this Institute is currently limited to federal and residual matters in relation to other already existing sectoral bodies. In the meantime, the effectiveness and equal enjoyment of human rights are ensured through a range of public bodies that have either a partial mandate, a partial geographical competence or a relative independence. These institutions meet every month on their own accord and autonomously within the Human Rights Platform of which Unia is member. In particular, the Human Rights Platform is composed on a voluntary basis of Unia; Myria; Combat Poverty, Insecurity and Social Exclusion Service; Federal Institute of Human Rights; Federal Ombudsman; Data Protection Authority; Institute for the Equality of Women and Men; Ombudsman of the German-speaking Community; Regional Ombudsman of Wallonia and Federation of Wallonia-Brussels; Flemish Office of the Children's Rights Commissioner; Delegate-General for Children's Rights; National Commission on the Rights of the Child; Committee R; Committee P; High Council of Justice; Central Prison Supervisory Council. The methods of concertation between the new Institute and the Belgian sectoral human rights organizations still needs to be clarified.

Human rights defenders and civil society space

Negative attitudes towards civil society and attacks on their work: An MP recently attacked "Police Watch", an emanation of the Ligue des droits humains, whose aim is to collect testimonies of victims of police violence/abuses and give access to information and studies on the topic via a website. The website fills a gap as Belgium does not have reliable and comprehensive data on this phenomenon. Following what is reported in press releases, the MP considered that Police Watch encourages negative attitudes toward the police and announced that he would ask the Ministry of interior to start an enquiry on the website and to suspend anticipatively its public funding. The Ligue des droits humains issued a statement on this issue. These developments are not related to COVID-19 context,

although more police abuses seem to be reported since the beginning of the COVID-19 restrictions.

References

- <https://www.lalibre.be/belgique/politique-belge/coronavirus-pieter-de-crem-ecrit-aux-bourgmestres-et-gouverneurs-pour-leur-rappeler-les-regles-en-vigueur-5ee7630c7b50a66a59772430>
- General interdiction: <https://www.police.be/5334/actualites/ordonnance-de-police-mesures-covid-19-interdiction-des-manifestations-rassemblant-du>
- Demonstration of January 24th, 2021:
https://www.rtf.be/info/regions/bruxelles/detail_manifestation-contre-la-justice-de-classe-a-bruxelles-le-comite-p-decompte-11-plaintes-et-la-police-de-bruxelles-ixelles-a-ouvert-une-enquete?id=10685797 and
<https://plus.lesoir.be/356290/article/2021-02-20/manifestation-contre-la-justice-de-classe-bruxelles-un-syndicat-de-police>.
- Negative attitudes towards civil society and attacks on their work:
- About the lack of data on police violence and abuses in Belgium, see p. 29 of the comparative study made by the Hungarian Helsinki Committee in 2017:
https://www.helsinki.hu/wp-content/uploads/HHC_investigation_ill-treatment_comp_EN.pdf
- Website of Police Watch: <https://policewatch.be/>
- Press releases: <https://www.dhnet.be/actu/faits/philippe-pivin-flingue-l-observatoire-des-violences-policiers-de-la-ligue-des-droits-humains-c-est-anti-policier-603911f29978e2610ae1720d> and <https://www.bruzz.be/politiek/federaal-parlementsld-pivin-eist-duidelijkheid-rond-police-watch-2021-02-28>
- Statement of Ligue des droits humains: <https://www.liguedh.be/la-lutte-contre-les-violences-policiers-un-combat-legitime-qui-derange/>

Checks and balances

Executive powers were clearly reinforced since the beginning of the Covid-19 outbreak. While the government was granted special powers by the Parliament until June 2020, the legal basis for their decisions taken after this date is more doubtful. In the absence of a law

that would give a dedicated legal basis to their measures, the government decided to base its decisions mainly on article 182 of the law of 15 May 2007 relating to civil protection, obviously not intended for situations like the pandemic. This has been heavily criticised by civil society actors, yet has not been condemned by the Council of State, which has not considered itself competent to assess the constitutionality check in that case. More details are exposed in the COVID section of the present report.

Unia participates in the legislative and policy processes. For example, the two heads of the Institution, Patrick Charlier and Els Keytsman, presented the report on COVID-19 and human rights in front of the different parliaments and advocated for Unia's recommendations.

Unia can litigate and intervene before courts. However, rule of law being only indirectly linked to its mandate, litigation and third-party interventions are circumscribed to cases regarding discrimination and violations of CRPD.

As an NHRI, Unia reports to regional and international actors, as it did last year when contributing to 2020 ENNHRI Rule of law Report, and through the latter to the European Commission Report.

References

- On the meaning of "Special powers" in Belgium:
<http://www.vocabulairepolitique.be/pouvoirs-speciaux/> and
https://www.dekamer.be/kvocr/pdf_sections/news/0000012118/MAG_Edition_Speciale_06-2020_FR_BAT.pdf
- Law of 15 May 2007 relating to civil protection:
https://www.ejustice.just.fgov.be/cgi_loi/change_lg_2.pl?language=fr&nm=2007000663&la=F
- Opinion of 25 University teachers in constitutional law:
<https://plus.lesoir.be/335482/article/2020-11-02/carte-blanche-sortez-le-parlement-de-la-quarantaine>
- Opinion of the Ligue des droits humains : <https://www.liguedh.be/la-deuxieme-vague-de-la-covid-19-une-menace-pour-nos-droits-et-libertes/>

- List of laws adopted during the second wave of the pandemic:
http://www.droitbelge.be/news_detail.asp?id=1037
- Opinion of the lawyer's bar associations (representing about 20.000 lawyers):
<https://avocats.be/sites/default/files/10.02.2021%20-%20Carte%20blanche%20-%20L%27Etat%20de%20droit%20bientot%20sous%20respirateur.pdf>

Functioning of the justice system

An important step has been recently taken to improve the access to legal aid, by raising the income limit to be able to benefit from the aid. However, for people whose incomes are just above the limit for the legal aid, the litigation fees increased following the adoption of several laws and regulations (for example, the initial litigation fee for an appeal is 400€). There is also a 21% VAT tax applied on lawyer's and bailiff's costs.

The coalition of NGOs Plateforme Justice pour Tous (i.e., 'Justice for all', to which Unia is an observer member), produced an alternative report for the 2020 session of the Committee on economic social and cultural rights on access to justice in Belgium (1).

The *Conseil Supérieur de la Justice* is the independent public organism in charge of the external control on the functioning of the judiciary. It published several reports and recommendations on i.e., access to justice, quality and efficiency of the justice system, etc. (2)

Unia addresses the problem of access to justice through reports to the UN Treaty Bodies as well as, more concretely, by offering legal advice and supporting victims of discrimination or racism in justice, and by attending the Plateforme Justice pour Tous as an observer member. Otherwise, however, Unia's mandate does not specifically cover this topic, which makes it difficult to further address the problems.

References

- https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolNo=INT%2fCESCR%2fCSS%2fBEL%2f41232&Lang=en
- <https://csj.be/fr/>

Impact of measures taken in response to COVID-19 on the national rule of law environment

Most significant impacts of measures taken in response to the COVID-19 outbreak on the rule of law and human rights protection

In the COVID-19 context, most regulations linked to the pandemic are taken by the governments and not by the parliaments anymore. The timeframe and publicity of the law-making process are completely different: governmental decisions (*arrêtés ministériels*) can be adopted in a very short time and without publicity. For this reason, Unia has no possibility to share its opinion on these regulations or to suggest improvements prior to their adoption.

Emergency measures at federal level are taken on a questionable legal basis. Executive powers were clearly reinforced since the beginning of the COVID-19 outbreak.

At federal level, we can distinguish two periods. The first started in March 2020, when the Parliament voted a law giving "special powers" to the government and ended in June 2020. The second started in July 2020 until now.

During the first period, executive powers adopted decisions (*arrêtés de pouvoirs spéciaux*) based on the "special powers" law voted by the Parliament for 3 months. These decisions were then confirmed in December by the Parliament.

However, the legal basis for the decisions taken in the second period is more doubtful. In the absence of a law that would give a dedicated legal base to their measures, the government decided to base its decisions mainly on article 182 of the law of 15 May 2007, relating to civil protection. The law provides that "[t]he Minister [having the Interior in his or her attributions] or his or her delegate may, in the event of dangerous circumstances, in order to ensure the protection of the population, oblige the population to move away from places or regions particularly exposed, threatened or disaster-stricken, and assign a place of temporary residence to the persons concerned by this measure; he or she may, for the same reason, prohibit any movement or movement of the population." and is obviously not intended for situations like the pandemic. The Council of State has so far not condemned the use of this provision by the government (the Council of State indeed did not consider itself competent to perform this constitutionality check).

The use of this legal basis is, in contrast, heavily criticised by civil society actors (lawyers, constitutional law professors, Ligue des droits humains, etc.).

Access to the courts became limited and complicated. Each court made its own rules, with almost no coordination, which caused issues regarding access to information, especially for persons not represented by a lawyer.

The curfew (from 10pm or 12pm depending on the region) imposed on the whole Belgian territory can be questioned in terms of proportionality. The curfew was lifted on May 8th 2021, after 7 months.

Generally speaking, places of detention are particularly impacted by the COVID-19 outbreak and the measures taken in response. Diverse organisations addressed the situation of specific groups particularly impacted. Amnesty International Belgium published a report exposing the disproportionate impact of the situation on nursing homes residents. The 2020 Ligue des droits humains annual report addresses the situation in the prisons. Myria (Federal migration centre) addresses in a report COVID's impact on migrants detained in closed centres and conducted three visits in such centres in May 2020. Finally, Unia published a report (on the general impact of Covid on the rights of persons with disabilities (based on a consultation with the latter), including those accommodated in specialised structures.

The COVID-19 outbreak worsened already existing inequalities, impacting disproportionately the most vulnerable groups in society (people in poverty, undocumented migrants, women, older people, younger people, prostitutes, detainees, persons with disabilities, etc.). There is a risk that the measures taken (1) will not be able to correct this trend. There is also a tendency to rely heavily on the executive power during the emergency situation. This can be justified under some conditions, including a strict limitation in time and sufficient parliamentary oversight. The legal base currently mobilized by the executive power for adopting decisions might not guarantee sufficient safeguards in this respect.

Unia issued press releases for the most pressing issues and published two reports on human rights and COVID (with recommendations targeted at both short term and long-term impact of the crisis). Unia also takes into account its findings when contributing to national action plans (for example, the National Action Plan against racism). Finally, those issues are addressed in Unia's reports to UN Treaty bodies and other international bodies.

Unia's report on COVID-19 and human rights (published in November 2020) tackle discrimination issues through a broader human rights approach. A dedicated report addresses the specific situation of persons with a disability and Covid-19's impact on their human rights.

COVID-19 regulations have negatively impacted civic space through the limitation of freedom of assembly. At national level, demonstrations were limited to 20 persons until the 30th of June, and to 50 after that date. The current (as of March 1st, 2021) limitation is 100 persons. However, some localities decided to be more restrictive, sometimes completely forbidding any demonstration.

Some of the demonstrations that took place were heavily repressed. For example, a demonstration against police violence on the 24th of January, attended by about 100 persons, lasted one hour before leading to 245 arrests (among which 86 children). Dozens of complaints and testimonies of police violence/abuses appeared in the press and on social networks in the following days and were later confirmed by one of the police unions. More police abuses seem to be reported since the beginning of the COVID-19 restrictions.

Unia can receive complaints and whether process them or redirect them to the competent institutions when necessary. Unia's report on COVID and human rights published in November 2020 was (among other sources) based on the analysis of the complaints received.

Unia published an opinion on human rights and COVID in August 2020, promoting human rights in general and the notion of proportionality more specifically.

References

- Measures taken: <https://www.luttepauvrete.be/wp-content/uploads/sites/2/2021/01/210129-apercu-covid-19-FR.pdf>
- Access to courts during the pandemic (first wave): <https://www.lecho.be/dossiers/coronavirus/la-justice-sort-deconfitte-du-confinement/10224386.html>
- Places of detention: Amnesty International's report on nursing homes: <https://www.amnesty.be/infos/actualites/article/belgique-face-covid-maisons-repos-angle-mort-54199>
- Annual report 2020 of Ligue des droits humains: https://www.liguedh.be/wp-content/uploads/2021/02/EDH_2020%E2%80%94web.pdf
- Myria's report on closed centres for migrants and COVID's impact: <https://www.myria.be/fr/publications/visites-de-myria-dans-les-centres-fermes>
- Unia's report on COVID-19 impact on persons with disabilities: https://www.unia.be/files/Documenten/Publicaties_docs/Resultats_consultation_impact_COVID_sur_les_personnes_handicapees_et_leurs_proches.pdf (pages 33 and 34 about accomodation centre for persons with disabilities)
- Unia, "COVID-19 : les droits humains mis à l'épreuve", 2020, <https://www.unia.be/fr/publications-et-statistiques/publications/covid-19-les-droits-humains-a-lepreuve-2020>.
- Unia, "COVID et droits humains : impact sur les personnes handicapées et leurs proches", 2020, <https://www.unia.be/fr/publications-et-statistiques/publications/limpact-de-la-crise-du-coronavirus-sur-les-personnes-en-situation-de-handic>.

Combat Poverty, Insecurity and Social Exclusion Service

As mentioned above, the Combat Poverty Service is a non-accredited institution. It is an inter-federal institution, and covers federal and regional fields of competence in Belgium. It approaches poverty and its eradication on the basis of different human rights and submits parallel reports to UN treaty bodies. The Service works together with Unia and Myria (also ENNHRI members) to promote and protect human rights in Belgium. It is also a member of the Human Rights Platform, where different human rights institutions meet every month. The Combat Poverty Service has made contacts with the new Federal Institute for the Protection and Promotion of Human Rights. The possibilities of cooperation will be further discussed and specified in 2021.

Independence and effectiveness of the NHRI

Changes in the regulatory framework applicable to the Institution

There have been no changes in the regulatory framework applicable to the Combat Poverty Service in the past year.

Enabling space

The Combat Poverty Service publishes biennial reports, the most recent one being the biennial Report 'Sustainability and Poverty', published in December 2019. There is a formal follow-up procedure: these reports are given to the Interministerial Conference "Integration in Society". Unfortunately, the Interministerial Conference has not taken place the last few years. But the biennial Report 'Sustainability and Poverty' has been transmitted to various governments, who in turn have transmitted the report to their parliaments and advisory bodies. The report has been discussed in the parliament of the German-speaking Community, and the three regional socio-economical councils have released an advice on this report.

In addition, the Combat Poverty Service is regularly asked to give advice. In 2020 questions were mostly related to COVID-19. The Service made recommendations for the Task force about vulnerable groups on the federal level, and organized and supported a stakeholder discussion of the Flemish Taskforce 'vulnerable families'.

References

- (1) Combat Poverty Service, Biennial Report 2018-2019 'Sustainability and Poverty', <https://www.combatpoverty.be/wp-content/uploads/sites/3/2020/05/200430-Summary-Sustainability-and-poverty.pdf> (Summary). Full text available in French and Dutch.

Human rights defenders and civil society space

Because of COVID-19 restrictions, it was difficult for people in poverty to gather in their associations and to discuss policy directions. This problem was identified in the stakeholders discussion of the Flemish Taskforce 'vulnerable families'.

Checks and balances

The choice of the theme of sustainability for the 2018-2019 biennial Report was also driven by the desire of people in poverty and their organizations to participate in the climate debate. The analyses and recommendations - made in consultation with people in poverty and many other stakeholders - find their way through presentations to policymakers and advisory bodies and the debates.

Functioning of the justice system

In 2020 a federal law raised the income limit to benefit from legal aid. This law is in line with recommendations made by the Combat Poverty Service (1), and shows a positive development. Nonetheless, the Combat Poverty Service keeps pointing out the difficult access to justice for people with a low income and asks an evaluation of recent measures.

This issue and the recommendations were also addressed in the parallel report of the Combat Poverty Service for the 2020 session of the Committee on economic social and cultural rights (2). The coalition of NGO's 'Plateforme Justice pour Tous' – the Combat Poverty Service follows this NGO as an observer – also addresses this issue in its alternative report for the 2020 session of the Committee on economic social and cultural rights (3).

References

- (1) Combat Poverty Service, Recommendation access to justice, <https://www.luttepauvrete.be/wp-content/uploads/sites/2/2020/06/Avis-propositions-de-loi-aide-juridique-de-deuxi%C3%A8me-ligne-Service-de-lutte-contre-la-pauvrete%C3%A9.pdf>
- (2) Combat Poverty Service, Parallel report of the Combat Poverty Service for the 2020 session of the Committee on economic social and cultural rights, <https://www.luttepauvrete.be/wp-content/uploads/sites/2/2020/06/CESCR-rapport-parall%C3%A8le-Service-de-lutte-contre-la-pauvrete%C3%A9-FR-2020.pdf>
- (3) https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=INT%2fCESCR%2fCSS%2fBEL%2f41232&Lang=en Combat Poverty Service, Biennial Report 2018–2019 ‘Sustainability and Poverty’, <https://www.combatpoverty.be/wp-content/uploads/sites/3/2020/05/200430-Summary-Sustainability-and-poverty.pdf> (Summary). Full text available in French and Dutch.

Impact of measures taken in response to COVID-19 on the national rule of law environment

Most significant impacts of measures taken in response to the COVID-19 outbreak on the rule of law and human rights protection

When the COVID-19 pandemic started, the Combat Poverty Service had just published its biennial Report ‘Sustainability and poverty’. It concluded that existing inequalities would be enhanced by climate change and climate policy. Unfortunately, this is also one of the conclusions during the COVID-19 pandemic: the most vulnerable groups in society are more heavily impacted by the coronavirus and related health protection measures. The Combat Poverty Service repeated its message from the Biennial Report in the context of climate policy – to leave no one behind – through several press releases: an appeal to governments and field organizations not to leave vulnerable groups behind in their COVID-19 policy, to support people in precarious situations in making use of certain measures (Hello Belgium Rail Pass) and their right to vaccination. Within the context of the SDGs, regular links could also be made with human rights.

From the start of the COVID-19 pandemic, the various levels of government within the country have taken measures. In April 2020 the Combat Poverty Service started to make an overview of all COVID-19 related measures taken by all governments in order to support people in situations of poverty or insecurity. Regularly, it has been publishing updated versions of this overview. This overview is seen as an important instrument by many governments and administrations, as it can inspire these governments and also has shown which groups have been less included in governmental policies (e.g. tenants).

An important concern was the participation of the stakeholders in COVID-19 policy, and the question of how proposals by these stakeholders and by human rights institutions could find their way into policy. In this context, the Combat Poverty Service is a member of the consultation group of the [Task Force \(inter\)fédérale 'groupes vulnérables'](#), where it made different proposals on the basis of concerns in the field. The input of the different stakeholders is also meant to inspire the recovery plans.

At the request of the Flemish minister of wellbeing, public health and the fight against poverty, the Combat Poverty Service organizes the stakeholder consultation of the taskforce 'vulnerable families'. Through weekly meetings in this group, proposals were collected. These proposals were bundled and transmitted to the ministerial departments, who provided political feedback to the group. In the report of July 2020 there are special parts with recommendations for the Flemish recovery plan about digitalization (2.2.), education (6.6.), employment (11.9.) and housing (12.8.).

On July 20th the Combat Poverty Service was invited – together with other organizations and institutions like Unia and Myria – by the Prime Minister, the members of the governmental core group and the competent ministers, in order to contribute to “the relaunch, recovery of the social protection and the sustainable reconstruction of our economy”.

Another one of the themes during the COVID-19 pandemic concerns communication to groups in precarious situations. In this light, the Combat Poverty Service has made several recommendations in order to pay attention to accessible communication and to the existence of the digital divide. On the basis of these recommendations, the Combat Poverty Service has become a member of the communication and societal dialogue cell of the Taskforce Vaccination in the heart of the “Corona Commissionerate”.

References

- Combat Poverty Service, recommandations, press releases and overview of measures taken: available on <https://www.luttepauvrete.be/themes/covid-19/>
- Combat Poverty Service, Input of the stakeholderconsultation of the Flemish Taskforce 'vulnerable families', 6 July 2020, <https://www.luttepauvrete.be/wp-content/uploads/sites/2/2020/07/200706-Nota-Input-Stakeholdersoverleg-TF-Kwetsbare-gezinnen-06-juli-2020-publicatie.pdf>
- Myria's report on closed centres for migrants and COVID's impact: <https://www.myria.be/fr/publications/visites-de-myria-dans-les-centres-fermes>
- Unia, "COVID-19 : les droits humains mis à l'épreuve", 2020, <https://www.unia.be/fr/publications-et-statistiques/publications/covid-19-les-droits-humains-a-lepreuve-2020>

Bosnia and Herzegovina

Human Rights Ombudsmen of Bosnia and Herzegovina

Accreditation status and SCA recommendations

The NHRI was reaccredited with A status in November 2017. At that occasion, the SCA called for broader consultation and participation in the selection and appointment process of the decision-making body of the NHRI. At the same time, the SCA acknowledged the NHRI's efforts in involving civil society in practice. Also, the SCA recommended clearer grounds for the leadership's dismissals, a more independent funding, further recognition by the legislature and closer relationships with national and international actors.

Independence and effectiveness of the national human rights institution

Changes in the regulatory framework applicable to the IHROBiH

Since the 2020 reporting there have been no changes to the legislative framework for the functioning of the IHROBiH, nor other changes that would have a considerable impact on the IHROBiH's independence. The COVID-19 pandemic definitely affected the effectiveness of the IHROBiH's work and made it impossible for the IHROBiH to function in its full capacity, especially when it comes to field work and cooperation with local communities.

Enabling space

The COVID-19 pandemic affected the intensity and scope of cooperation of the IHROBiH with public bodies and institutions in Bosnia and Herzegovina (BiH). Due to limited opportunities to travel and hold meetings, cooperation was mainly limited to cooperation with legislative and executive authorities at all levels of government through regular attendance at sessions where issues within the IHROBiH's competence were discussed, as well as through consultations and exchange of experiences, e.g. attendance at Parliamentary Assembly sessions (House of Peoples, House of Representatives, Joint Commission for Human Rights, Constitutional and Legal Commission), Council of Ministers sessions, entity parliament sessions, cooperation with competent ministries at all levels of government, cooperation with local self-governance units, etc.

In addition, the ombudspersons held a series of bilateral meetings in 2020 with public officials and officers at all levels of government in order to further improve this cooperation.

Human rights defenders and civil society space

Freedom of assembly

Protecting the freedom of peaceful assembly is crucial to creating a tolerant and pluralistic society in which groups with different beliefs, practices and policies can live together. Freedom of assembly is guaranteed by the Constitution of BiH, entity constitutions and bylaws, namely the laws on public assembly at the level of the cantons, at the level of the Brčko District of BiH and at the level of the Republika Srpska. The FBiH Ministry of Interior is also working on the draft Law on Public Assembly of the Federation of BiH, which has been analysed and commented by the OSCE ODIHR. Their analysis identifies areas of concern, focusing on the provisions that require improvement rather than on the positive aspects of the draft Law. The recommendations invoke international standards and good practices regarding public gatherings.

The Assembly of the Brčko District of BiH adopted a new Law on Peaceful Assembly in July 2020. The Law refers to gatherings that are not organized for business purposes and replaces the former Law on Public Assembly of the Brčko District of BiH, prescribing norms for holding public events.

In 2020, the ombudspersons of BiH prepared a Special Report on Freedom of Peaceful Assembly in BiH, verifying *inter alia* the degree of harmonisation of domestic legislation with international standards. It also dealt with respect of rules by the organisers of public gatherings on the one hand and the police and security agencies on the other hand when organising and holding public gatherings. The Report was based on the analysis of relevant domestic and international regulations, as well as on information gathered through questionnaires sent to civil society organisations and ministries of interior.

Based on the analysis of existing laws, the report found a disparity in the legal solutions in force within different jurisdictions in Bosnia and Herzegovina, for instance regarding the chosen definition for public gatherings, registration of public gatherings, deadlines for obtaining prior authorizations, recognition of spontaneous gatherings, envisaged bans on gatherings, use of legal remedies and non-compliance with international standards in the field of freedom of assembly. Although this is a basic human right guaranteed by the Constitution of BiH and the constitutions of the entities and cantons, the exercise of this right depends on legal solutions and practices that differ in individual entities and cantons where a restrictive approach is evident. When defining public gatherings, most laws in Bosnia and Herzegovina refer to a suitable and accessible place, and to citizens as participants and organisers of public gatherings. In the introductory provisions, all laws

contain terminology governing the right to freedom of peaceful assembly, yet according to international standards this area needs to be regulated as little as possible. The IHROBiH consequently provided a set of recommendations to improve the regulatory framework on freedom of assembly in the country:

1) to the National Assembly of the Republika Srpska, the Parliament of the Federation of Bosnia and Herzegovina, the Assembly of the Brčko District of Bosnia and Herzegovina, and the cantonal assemblies in the Federation of Bosnia and Herzegovina:

- The definition of assembly should be harmonised with the definition prescribed by international standards, according to which a public gathering is defined as the intentional and temporary presence of two or more individuals in a public place for a common expressive purpose.
- The existing application and de facto approval systems do not represent an adequate application of the principle of presumption in favour of holding assemblies.
- Everything which is not explicitly forbidden should be considered allowed and persons wishing to exercise this freedom should not be asked for special permits.
- The presumption in favour of exercising this freedom should be clearly stipulated by law and recognised as such in practice.
- The content of the application and application deadlines are excessively bureaucratic in all laws, and in a certain part encroach on the domain of personal data protection, and may have a deterrent effect since the organisers are required to submit documentation such as security plan, decisions on appointment of managers, lists of security guards with all personal data, to undertake sanitary, fire and other protection measures, and failure to provide all necessary data may result in a ban on the requested gatherings.
- It is necessary to simplify the application procedures by introducing good practices and recommendations of international bodies, which include prescribing the application form and introducing e-mail communication and appointing a police officer who will be in charge of coordination and further communication with organizers and third parties.
- In accordance with international standards, deadlines should be as short as possible, but granting police officers enough time to take measures to secure the rally.
- The space for holding a peaceful gathering is especially important, given that the purpose of the gathering is often related to a specific location, i.e. the gathering is held and the message is sent within sight of the target audience. The principle of

"sight and sound" is not adequately reflected in the laws in Bosnia and Herzegovina because no importance is attached to the location that the organisers had in mind when organising the public gathering, the space appropriate for public gatherings is prescribed by decisions of the city/municipality or its mayor.

- There is a noticeable practice (which should be avoided) in some parts of Bosnia and Herzegovina that it is necessary to obtain the consent of local communities, or public institutions or private companies to hold a meeting at a particular location. Every public space, as well as every private space, to which the public has access, is adequate for holding public gatherings, and the practice of determining the space that is suitable and accessible for public gatherings by decisions of the city / mayor's office, i.e. the mayor should have been reconsidered.
- The envisaged sanctions against participants, organisers, leaders and security guards are strict and disproportionate to the nature of the mistake. Such legal provisions could discourage people from participating in rallies and thus curtail their right.
- The sanctions policy needs to be aligned with the goal and purpose of the right to freedom of public assembly, while taking into account the principle of individual responsibility in case of violation of the law or endangering the property or safety of others.

2) to the Ministry of Interior of the Republika Srpska, Ministry of Interior of the Federation of Bosnia and Herzegovina, Police of the Brčko District of Bosnia and Herzegovina, cantonal ministries of interior:

- Ensure the application of the standards of peaceful assembly presented in this Report.
- Take measures with the view to providing systemic and permanent training of police officers on the right to freedom of assembly and the role of the police in exercising this right and prohibiting all forms of torture.
- Ensure that the use of instruments of coercion is in line with standards.
- While assessing each and every individual situation based on the specific circumstances, all types of restrictions that concerns the duration of public gathering or the time of the day when the gathering is held need to be abolished. At the same time, persons who are prohibited from making public appearances cannot automatically be denied the right to organise or participate in public gatherings.

3) to prosecutor's offices:

- To take into account the views expressed in this Report in cases relating to freedom of assembly.

4) to organisers of public gatherings, individuals and non-governmental organisations:

- When organising gatherings, take into account the prescribed procedures and the need to protect the rights and interests of third parties.

Cooperation with civil society

During 2020, the Institution of Human Rights Ombudsman of Bosnia and Herzegovina continuously, in the manner and to the extent permitted by epidemiological circumstances, improved its cooperation with international organizations and institutions operating in the country, the region and beyond. The IHROBiH adjusted its ongoing activities to the pandemic context in order to achieve the set goals, and held meetings or worked on joint projects with different civil society stakeholders (Save the Children, MFS EMMAUS), with institutions, (OSCE Mission to BiH, Council of Europe), and with regional networks (GANHRI, ENNHRI).

Following the adopted programmes of activities from the 2016-2021 IHROBiH Strategy, there was a continuous process of improving cooperation with representatives of NGOs and the civil sector in Bosnia and Herzegovina in 2020.

Checks and balances

Right to information

Most complaints addressed to the IHROBiH regard issues with access to information. As in previous years, the number of such complaints increased, amounting to almost a third of total complaints in 2020. This reflects more frequent violations of the right to access information by public authorities in BiH, and better information of citizens on mechanisms to protect their right to access information. The IHROBiH is the body monitoring the implementation of the Freedom of Information Act in Bosnia and Herzegovina. During 2020, 231 complaints were received concerning this area, and recommendations were issued in 82 cases. The largest number of complaints referred to the area of others - 185, while 22 complaints referred to the failure to make the decision within the statutory deadline, 20 to the denial of access to information and four to the right to review in two levels.

Given the importance of these issues in the country, the IHROBiH put together a Special Report on Experiences in the Implementation of the Freedom of Information Act in Bosnia and Herzegovina in December 2019, providing a number of recommendations. However, the Ministry of Justice of Bosnia and Herzegovina has not yet taken concrete actions to adopt a new Freedom of Information Act, addressing the concerns raised, and the current Freedom of Information Act of the Republika Srpska has not been amended.

The Special Report also provided comments on the first draft of the Freedom of Information Act in Bosnia and Herzegovina. The Report refers to the Taiex-IPA Expert Report on "Improving the right to access information in Bosnia and Herzegovina" and to the comments of the SIGMA (Support for Improvement in Governance and Management, a joint EU/OECD initiative). The IHROBiH recommendations to the Ministry of Justice included:

- need to adopt a new Freedom of Information Act in BiH which would be fully harmonised with international standards
- development of guidelines for the application of the law
- establishment of cooperation with representatives of civil society and the media to properly inform the public about the right to freedom of access to information.
- unconditional application of international standards in the area in question, e.g. introducing the principles of proactive disclosure of information of public importance and transparency in work, professional and continuous training of information officers, etc.

Police

Protection of the constitutionally guaranteed rights of every citizen, personal security, maintenance of public peace and order, prevention and fight against crime is one of the most important tasks of a democratic state, and the police are the most important instrument available to the state for this purpose. In 2020, 145 complaints to the IHROBiH concerned the work of the police, and nine recommendations were issued. The complaints received referred to the unprofessional treatment of citizens by police officers, i.e. to exceeding police powers during official interventions, and unavailability of internal controls on complaints filed by citizens against police officers, impossibility to appeal decisions, etc. The ombudspersons note that the ministries of interior at all levels of government pointed to the necessity of improving the work of the police and ensuring the real impartiality of internal controls via e.g. ensuring two-instance review in procedures conducted on citizens' complaints against actions of police officers.

Inspection

Inspection is a special administrative mechanism through which authorities supervise the implementation of regulations, eliminate possible violations and sanction the responsible persons. Without inspection, it is impossible to talk about good governance, the rule of law and the protection of individual rights. Therefore, it is extremely important that the actions of inspection bodies be efficient, timely and in accordance with applicable legislation. In the reporting period, the Ombudsmen received 84 complaints related to failure of inspection bodies to act on citizens' reports, untimely inspection, failure to take legal actions prescribed by inspection bodies, failure to submit a citizen's complaint to the competent authority in case of incompetence and failure to implement measures. The IHROBiH also received complaints about a lack of information on the inspection's outcome, their inability to receive inspection reports and impossibility to use legal remedies when citizens were dissatisfied with the inspection body's actions.

In the past few years, the IHROBiH has registered an increasing number of complaints targeting inspection bodies. The ombudspersons therefore drafted a Special Report on the Role of Inspection Bodies in the Protection of Human Rights in BiH, taking into account the structural complexity of inspection bodies, and especially the subject-material and territorial division of jurisdiction between inspection bodies. The report was based on the current domestic legislation and public documents and on a questionnaire which was sent to inspection bodies operating throughout the territory of BiH.

References

- Special Report on Experiences in the Implementation of the Law on Freedom of Access to Information:
https://www.ombudsmen.gov.ba/documents/obmudsmen_doc2021031911221204eng.pdf

Functioning of the justice system

Based on the cases received by the IHROBiH and direct contacts with parties, the general distrust of citizens for judicial institutions is still noticeable. The parties generally expressed their dissatisfaction with the inefficiency of the judicial system, inefficient work of the prosecutor's offices, distrust in the work of the High Judicial and Prosecutorial Council

(HJPC), inadequate treatment of the HJPC when it comes to disciplinary responsibility of judges, length of appointment of judges, etc.

The largest number of complaints referred to the length of proceedings (most often before cantonal courts), appeals against the work of acting judges for failure to make decisions on the submissions of parties, difficulties in obtaining information on the status of cases and appeals against court decisions. There was also an increase in the number of requests for monitoring by the IHROBiH, i.e. monitoring of court proceedings, because the complainants believed that the presence of a representative of the IHROBiH would ensure a timely and impartial procedure. When it comes to the work of the prosecution, the complaints mostly concerned the length of investigative proceedings, failure to make prosecutorial decisions, failure to file an indictment after the proceedings, as well as failure to inform the parties about the course of the proceedings.

After analysing 368 complaints received by the IHROBiH related to the field of judiciary, it can be concluded that citizens turn to the IHROBiH for violation of the following rights:

- inappropriate length of court proceedings (57)
- inefficient enforcement of court decisions (39)
- complaints about judges violation of the provisions of procedural law (8)
- complaints relating to other violations of rights related to the conduct of courts (violation of the principle of impartiality, failure to make judicial decisions in the manner prescribed by law and within the statutory deadline, inconsistency of case law) (256)

Media pluralism and freedom of expression

The Institution of the Human Rights Ombudsman of Bosnia and Herzegovina pays special attention to information and cooperation with the media, while nurturing a partnership with representatives of the media, all in the best interests of the citizens of Bosnia and Herzegovina.

Among the focuses on the long-standing cooperation between the Ombudsman Institution and the OSCE Mission to BiH is a special emphasis on monitoring media freedom and ensuring the enjoyment of freedom of expression during the pandemic.

Corruption

Given that at the level of Bosnia and Herzegovina acting on corruption cases primarily falls within the competence of the Agency for Prevention of Corruption and Coordination of the Fight against Corruption, the IHROBiH did not deal with these issues to a significant extent, nor did it receive complaints concerning this topic.

Other relevant developments or issues having an impact on the national rule of law environment

Prevention of torture

Bosnia and Herzegovina has not yet fulfilled its obligation to establish an independent body with a mandate to visit all places of detention. Amendments to the Law on the Human Rights Ombudsman of BiH, which would establish a mechanism defined by the provisions of the Optional Protocol (OPCAT) within the IHROBiH, have been tabled for almost four years. However, the proposal was rejected by Parliamentary Assembly of BiH in February 2020. Bosnia and Herzegovina is the only country that is not a member of the Network of National Preventive Mechanisms of Southeast European Countries, although its representatives are regularly invited to attend meetings. The IHROBiH has prepared to take over this mandate after the envisaged amendments to the Law on the Ombudsman are adopted.

In the meantime, the IHROBiH monitors the state of human rights related to the prevention of torture through the actions of three departments: the Department for Monitoring the Exercise of the Rights of Persons Deprived of Liberty, the Department for Monitoring the Exercise of the Rights of Persons with Disabilities in the case of institutions for the accommodation of persons with intellectual and mental disabilities, and the Department for Monitoring the Exercise of Children's Rights, in the case of children placed in institutions. In previous annual reports, the ombudspersons indicated a significant improvement in the conditions of accommodation of convicted / detained persons.

Impact of measures taken in response to COVID-19 on the national rule of law environment

Most important impacts of measures taken in response to the COVID-19 outbreak on the rule of law and human rights protection

The COVID-19 pandemic in Bosnia and Herzegovina brought a number of challenges, both for citizens and for the authorities, who were obliged to respond in a timely and efficient manner. Citizens showed strong interest in developments regarding infection rates, self-isolation measures and issues related to crossing the border. The ombudspersons reacted as quickly as possible to support and protect them on these questions.

Right to information

As early as the beginning of April 2020, the ombudspersons recommended to all levels of government to take the necessary measures in accordance with their powers to publish all decisions of crisis staffs in all media and on the institutions' websites, in a simple and understandable manner. The recommendation was made on the basis of the Freedom of Information Act, regarding the monitoring of the implementation of obligations under Article 10 of the European Convention on Human Rights.

Right to privacy

The Agency for Personal Data Protection issued a decision in March 2020 prohibiting the competent governmental authorities, including the entity and cantonal civil protection headquarters, as well as other bodies operating in an emergency situation related to the pandemic, from publishing personal data on persons tested positive for COVID-19, as well as persons who have been prescribed isolation and self-isolation measures.

Economic and social rights

During the pandemic, the ombudspersons pointed out to the competent public authorities the need for increased supervision and effective measures for vulnerable groups of citizens. Older and exhausted people, people with disabilities, are often unable to function independently and are forced to use various forms of support such as food, medicine, various forms of assistance, making it necessary to ensure additional efforts to enable all the above categories to continue providing services. Protective equipment should be provided to those providing assistance and support.

The pandemic also had a huge impact on the economic sphere, labour market and capital and has greatly affected the quality of life of Bosnia and Herzegovina. Reduced economic activity caused unemployment to increase by 23,364 people (i.e. by 5.8%) since the beginning of the pandemic. In addition, the situation in the field of social protection was extremely difficult in 2020, as a significant number of workers in the private sector were laid off, smaller companies ceased to operate, and service facilities were restricted.

The provision of health services and healthcare in BiH during the pandemic posed a particular challenge. In addition to the fact that the competent authorities issue measures and recommendations aimed at preventing the spread of the virus, the quality of healthcare as well as the availability of services are contingent on the measures implemented by the competent health institutions. The already problematic situation was aggravated as, irrespective of the COVID-19 pandemic, the IHROBiH considered complaints regarding access to healthcare in 2020.

Vulnerable groups

Taking into account the orders issued so far by the crisis staffs, following the instructions and recommendations of public health experts, it was pointed out that there is a need for increased supervision and more effective measures in relation to risky and vulnerable groups of citizens (elderly, disabled, children, single parents). The ombudspersons underlined the need to take, along restrictive measures to suppress the spread of COVID-19, protective measures for these groups, e.g. organizing work processes with the view to protecting people with disabilities, enabling children to maintain contact with the non-custodial parent, increased supervision of people over the age of 65, in terms of their needs for food and medicine and the like. The ombudspersons recommended that employers enable work from home in all situations where this was possible for persons with disabilities, parents of children and adults with disabilities, or persons caring for them, single parents, and if this was not possible, to organise work from home in some cases. It was recommended to provide the most appropriate conditions that would ensure health protection and prevention. Finally, it was recommended that people with disabilities, especially deaf people, be given unhindered access to information in sign language

Persons deprived of liberty

The pandemic had specific impacts on persons deprived of their liberty, e.g. in connection to police detention facilities, penitentiaries, immigration detention centres, psychiatric hospitals and social care homes, as well as in the newly established premises for quarantine. Within its mandate, the IHROBiH, with the aim of protecting human rights, monitored the implementation of measures adopted by the competent authorities at all levels of government in Bosnia and Herzegovina, including institutions for the implementation of criminal sanctions, in connection with the treatment of persons deprived of liberty during the coronavirus pandemic (COVID-19).

In order to prevent human rights violations, the ombudspersons issued several recommendations to crisis staff and other competent bodies and issued statements

underlining the need to ensure the rights of particularly vulnerable categories such as children, people with disabilities, the elderly and others. Particular attention was paid to the issue of treatment of persons deprived of their liberty placed in institutions. A special statement was made regarding the persons who are placed in the institutions for the implementation of criminal sanctions and an act of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) was forwarded to all ministries of justice in order to take measures within their competences and inform the management of all penitentiary institutions in Bosnia and Herzegovina.

The IHROBiH sent an act to all penitentiary institutions in Bosnia and Herzegovina whereby it requested information on the measures they had taken to protect persons deprived of their liberty from coronavirus infection.

Media

The ombudspersons acted on a complaint of the Association 'BH Journalists' Sarajevo to consider decisions of the Crisis Staff regarding the presence of journalists and media at press conferences. It was pointed out that it was an indisputable fact that it was necessary to take measures to protect the health of both the population and media workers, but organising conferences without journalists, as well as excluding the possibility of their direct dialogue with public officials during the conference, could lead to censorship and incomplete information. Furthermore, it was underlined that practices varied in between different crisis staffs, from the presence of several journalists, sending questions by e-mail, to complete bans. The ombudspersons of Bosnia and Herzegovina considered this case in the context of promoting good governance and the rule of law, freedom of expression, as well as proactive transparency, and a recommendation was sent to these bodies inviting them to review their practice regarding the presence of journalists and media workers at press conferences, and ensure as much media involvement as possible.

Most important challenges due to COVID-19 for the NHRI's functioning

Monitoring persons deprived of liberty

The IHROBiH Department for Monitoring the Exercise of the Rights of Persons Deprived of Liberty has adapted its work to the pandemic. Visits to penitentiary institutions were limited, i.e. reduced to a minimum in order to prevent the spread of the epidemic. The cooperation of the IHROBiH with the institutions for the implementation of criminal

sanctions when handling complaints in 2020, despite the extraordinary circumstances caused by the COVID-19 pandemic, was good.

Children's rights

During the coronavirus pandemic, the ombudspersons faced a number of challenges in their daily work and in fulfilling their task to protect the rights of the child: work from home, limited work with clients, inability to have direct contact with children (visits to educational institutions and/or NGOs), inability to supervise (monitor) in institutions where minors in conflict with the law or institutions where children with disabilities were placed), etc. If we add that the ombudspersons did not visit local communities where the IHROBiH offices are not located and did not hold meetings with representatives of competent bodies in order to advocate compliance and compliance with previously made recommendations, this year proved to be extremely difficult to achieve all goals and plans of the IHROBiH. It is especially challenging to protect the rights of the child in emergency situations and in situations where restrictive measures are taken that greatly affect children (just a few examples: organising distance learning, postponing all excursions, excursions, cessation of extracurricular activities, etc.). Vulnerable groups of children, such as poor children, children in rural areas, in institutions or with developmental difficulties, have become more at risk of becoming even more vulnerable and more disadvantaged.

Bulgaria

Ombudsman of the Republic of Bulgaria

International accreditation status and SCA recommendations

ENNHRI has two members in Bulgaria: the Bulgarian Ombudsman (Bulgarian NHRI) and the Bulgarian Commission for Protection Against Discrimination.

The Bulgarian NHRI was last [re-accredited](#) with A status in March 2019. The SCA noted that the law on the NHRI could be strengthened by explicitly requiring the advertisement of vacancies and describing how broad consultation or participation of civil society is to be achieved. It encouraged the NHRI to advocate for sufficient funding in view of its expanded mandate as National Preventive Mechanism (under the UN CAT) and National Monitoring Mechanism (under the UN CRPD). The SCA also encouraged public authorities to follow-up to recommendations from the NHRI in a timely manner.

The Bulgarian Commission for Protection Against Discrimination was [accredited](#) with B-status in October 2011. The SCA noted that the Commission's mandate was limited to preventing and protecting against discrimination, and to promoting equality of opportunity, thus falling short of fully satisfying the broad human rights mandate required under the UN Paris Principles. The SCA also encourage the Commission to amend its legislation in order to provide a clear, transparent and participatory selection and appointment process of its decision-making body.

Impact of 2020 rule of law reporting

Follow-up by State authorities

The 2020 ENNHRI Rule of law Report was not specifically discussed among the general public or public authorities. The limited impact could be explained by the persistence of other issues of concern for both civil society and public authorities: the COVID-19 pandemic, the summer 2020 mass protests and other *force majeure* cases.

Impact on the Institution's work

In general, the 2020 ENNHRI Rule of law Report had effects on the work of the Ombudsman of Bulgaria' institution: it has served the strategic planning of the institution at two levels: first, it has informed the strategic priorities of the candidate for the election of the Ombudsman in both the Standing Parliamentary Committee on Human Rights and the

political groups of the National Assembly; second, it served as a background for the development of the strategic program 2020 – 2025 of the institution.

References

- Public hearing of the candidate for the election of the Ombudsman of the Republic of Bulgaria - <https://www.ombudsman.bg/news/5344?page=10#middleWrapper>

Independence and effectiveness of NHRIs

Changes in the regulatory framework applicable to the Institution

No changes of the legal framework concerning the work of the ombudsman institution have been discussed or adopted. The Ombudsman's legally assigned mandate includes, without any limitation, all violations of the rights of citizens, that is, economic, social, cultural, political and civil rights plus the rights that are set in the EU Charter of Fundamental Rights as related to EU membership.

Enabling space

No significant changes impacted the enabling environment since March 2019, when the Ombudsman of Bulgaria was accredited A Status under the Paris Principles. The Ombudsman's institution as a public defender does not receive any instructions from Parliament, the Government or any other authority or institution, and its work is public. The Ombudsman's immunity is equal to that of members of parliament as a guarantee of his/her independence.

In 2020 the institution got an increase in its budget with up to 10% as regards staff development and remuneration.

The Ombudsman was involved in the processes of public discussion of all issues that relate to human rights and fundamental freedoms protection – all in total more than 150 recommendations have been sent to respective parliamentary committees, ministries and state agencies, and a greater part of the Ombudsman concerns and proposals were taken into account.

Developments relevant for the independent and effective fulfilment of the NHRIs' mandate

On 13 March 2020, the parliament declared a state of emergency for a period of one month, authorising the government to adopt all necessary measures to address the COVID-19 pandemic. The parliament passed special legislation and adopted amendments to existing laws as well. The Ombudsman raised several issues related to the need for a better protection of fundamental rights in the state of emergency.

The situation also greatly impacted the Ombudsman's functioning, however it managed to carry on its activities to support at best the citizens: in 2020 the institution has examined 13 794 complaints of citizens for violations of their rights, and carried out inspections in 49 sites (more detailed information in Covid-19 section below).

References

- Summary of the 2020 Annual Report of the Ombudsman of Bulgaria – to be published by March 31st 2021

Human rights defenders and civil society space

In view of the mass anti-government protests in the country in the summer of 2020, the ombudsman received complaints and signals from citizens and NGOs about serious violations of the rights of protesters detained by the police in Sofia on 10 July and 2 September 2020. There are indications that, with respect to detainees, there was a failure to respect a fundamental guarantee of protection – ensuring access to a lawyer, including in cases when lawyers engaged by relatives of the detainees appeared at the police and demanded to see their clients. It is noted that the conditions at the detention premises were unsatisfactory and they were overcrowded.

There are also claims that the police authorities detained people who had not disturbed the public order. The media published a series of images of violence and unauthorised use of force against protesters and reporters. In addition, media content showed police officers carrying brass knuckles and wearing stickers on their uniforms in English reading “*One hit. One kill. My decision. No remorse.*” The Ombudsman took a public stance on the issue emphasising the need to examine if there is proportionality in the use of physical force and

auxiliary means by the law-enforcement authorities as a fundamental principle set out in international acts, the Bulgarian law and the case-law of the European Court of Human Rights in Strasbourg. In line with this principle, any force used must correspond strictly to the attaining a legitimate aim.

References

- Summary of the 2020 Annual Report of the Ombudsman of Bulgaria acting as National Preventive Mechanism - <https://www.ombudsman.bg/national-prevention/>
- Official statement of the Ombudsman on the issue of proportionality of police used forces - <https://www.ombudsman.bg/news/5388?page=6#middleWrapper> ; <https://www.ombudsman.bg/news/5369?page=8#middleWrapper>

Checks and balances

The Ombudsman of the Republic of Bulgaria plays a role in the system of checks and balances as set up by the Constitution. According to Article 150 (3) of the Constitution, in particular, the Ombudsman enjoys the power to address referrals to the Constitutional Court asking that laws be declared anti-constitutional on the grounds they are breaching human rights and freedoms. The Ombudsman of the Republic of Bulgaria has no mandate to examine the work of the Parliament, the President, the Constitutional court, the Supreme Judicial Council and the National Audit Office.

In 2020, following consultations and discussions with the Consultative Constitutional Council with the Ombudsman, the Public Advocate submitted one request to the Constitutional Court to assess the constitutionality of legislative provisions which the Advocate deemed violating the citizens' rights and freedoms. The Constitutional court decision is still pending.

A specific observation as regards a possible limitation of rights holders' participation in 2020 was related to the use of expedited legislative processes while preparing a draft for a new Constitution (August – September 2020). The ombudsman stood in defense of the existing constitutional regulations that fully guarantee human rights and democratic freedoms.

A shortcoming in the legislative process during the declared state of emergency was the lack of consultation with civil society stakeholders on the issues, related to the adoption of epidemic measures, in particular to protection of the most vulnerable members of the society.

Therefore, the Ombudsman made use of its right, on the basis of the complaints received, to address the members of the National Assembly on issues related to specific legislative amendments needed in order to protect the fundamental rights of citizens. The most important interventions included:

- The rights of people with disabilities to have access to public parks during the lockdown;
- The right of equal access to financial compensation for COVID-19 related closed businesses;
- The right of parents and relatives that take care for a child to equal access to social services and financial assistance during the lockdown, etc.

Finally, the Ombudsman institution has emphasised in its 2020 Annual report the persistent problems related to the proper implementation of citizens' electoral rights. The public advocate has issued an opinion on legislative proposals that are needed in order not to deprive Bulgarian citizens with COVID-19 and those under quarantine from their right to vote on the ground of lack of proper regulation.

According to the Annual report of the Ombudsman, around 40% of all complaints filed are related to the functions of state authorities at central level, and some more 20% of complaints are related to bad administration at local level.

All in total the Ombudsman received 800 requests from citizens to use its right for addressing the national Assembly with pending issues for legislative amendments, which represents 6% of all complaints filed with the institution.

The Ombudsman is also invested with the responsibility to conduct assessments of domestic compliance with and reporting on international human rights obligations – in 2020 the institution submitted parallel or shadow reports to EU and UN monitoring bodies on several issues and one alternative report within the third cycle of UPR process. The Ombudsman is also monitoring the implementation of recommendations originating from international human rights monitoring bodies and devotes a special part within its Annual report on the findings and the recommendations thereof. In 2020 the Annual report of the

Ombudsman stressed again the need for **the establishment of an inter-institutional coordination council**, including representatives of all national institutions which should be directly engaged in the process of coordinating and monitoring the implementation of the measures to execute the sentencing judgments of the European Court of Human Rights.

References

- 2020 Annual Report of the Ombudsman of Bulgaria (in Bulgarian)
[https://www.ombudsman.bg/pictures/ANNUAL%20REPORT%202020\(1\).pdf](https://www.ombudsman.bg/pictures/ANNUAL%20REPORT%202020(1).pdf)

Functioning of justice systems

While the Ombudsman's powers do not include the monitoring of justice administration by the courts, the prosecutor's offices and the investigation services, the Ombudsman of the Republic of Bulgaria has some instruments which can contribute to improve respect for fair trial standards. Indeed, the Ombudsman is free to approach the Supreme Court of Cassation and/or the Supreme Administrative Court to seek interpretative decisions or interpretative rulings.

In 2020, one referral was made to the Supreme Court of Cassation for interpretative judgments and the Supreme Administrative Court initiated two interpretative cases upon the Ombudsman's requests.

A major persisting problem is the need for improved access to justice through the effective implementation of information and communication technology (ICT). In 2020, the suspension of court sittings for a period of two months during the lockdown situation exposed the consequences of the under-development of the e-justice system. The Ombudsman addressed a recommendation to the President of the Supreme Judicial Council. The Ombudsman expressed the position that the human right to access to justice could be damaged in the future unless measure are taken to ensure a real functioning of the e-justice system. While the first package of laws, introducing the e-justice system in Bulgaria was initiated back in 2012, and was adopted and came into force in 2016, at present only magistrates have use of the electronic facilities, while ordinary citizens cannot take advantage of such tools. The negative impact of such delay in introducing all the

functionalities of the e-justice became evident in the context of the present COVID-19 crisis, when courts had to halt their work for three weeks.

In many cases, citizens turn to the Ombudsman during pending judicial proceedings or after their completion (in 2020 those represented 1% of all complaints filed for Ombudsman examination). Although it is inadmissible for the Ombudsman to review such complaints, they demonstrate the existence of numerous and repeated allegations of violations and concerns from citizens as regards the administration of justice, as equally shown by the cases on this matter referred to the European Court of Human Rights.

As regards Bulgaria's progress in 2020 to execute the judgments being monitored by the Council of Europe Committee of Ministers, the following main conclusions can be drawn:

The total number of judgments subject to execution being monitored by the Committee of Ministers declined significantly. The statistics show that, as of 31 December 2020, the total number of ECHR judgments at the stage of execution stood at 165, which is a decrease by 2% in comparison to the data as of 31 December 2019. Despite such positive development, Bulgaria continues to be on the list of the top ten states with the greatest number of judgments in an enhanced supervision procedure by the Committee of Ministers. Moreover, during the last year alone, 4 Interim Resolutions were adopted by the Committee of Ministers on leading cases on which there are still problems in adopting general measures that will remedy the situation.

References

- Public statement of the Ombudsman on legislative amendments that will temporarily limit the right of access to justice - <https://www.ombudsman.bg/news/5410?page=4#middleWrapper>
- 2020 Annual Report of the Ombudsman of Bulgaria (in Bulgarian) [https://www.ombudsman.bg/pictures/ANNUAL%20REPORT%202020\(1\).pdf](https://www.ombudsman.bg/pictures/ANNUAL%20REPORT%202020(1).pdf)

Media pluralism and freedom of expression

The Ombudsman is constantly advocating for the protection of the fundamental right to freedom of expression.

The latest statement of the Ombudsman on the issue of media pluralism is dated September 2020 and concerned the limited access of journalists to the premises of the National Assembly. In the fall 2020, the National Assembly moved its plenary sittings in a renewed building, where the access for journalists to meet MPs was reduced. On the basis of complaints sent by the Media Freedom Rapid Response, the European Center for Press and Media Freedom, the European Federation of Journalists and the Free Press Institute, the Ombudsman addressed the President of the National on the spot Assembly a recommendation to organise a meeting with journalists in order to remedy to the situation. The Ombudsman recalled the standards set in Article 11 of the Charter of Fundamental Rights of the EU.

Other statements by the Ombudsman concerned the issue of hate speech and included specific recommendations to public authorities to set in place more effective instruments for monitoring and reporting hate speech offences.

The Ombudsman institution is closely monitoring the execution by Bulgarian authorities of the European Court of Human Rights final judgment related to violations of Article 10 of the ECHR under the *Bozhkov v. Bulgaria* case. In this respect, the disproportionate interference with the freedom of expression of journalists, as a result of their convictions to administrative penalty in criminal proceedings between 2003 and 2008 for defamation of public servants, remains an issue of concern. In its 2019 Annual Report, the Ombudsman has underlined the need for completing the work on the draft amendments to the Criminal Code prepared by the special inter-ministerial working group. Such amendments aim to introduce an exemption from criminal liability and the imposition of an administrative sanction where defamation concerns a public authority or official and to remove or reduce the lower thresholds of fines.

References

- Public statement of Ombudsman on access of journalists to National Assembly premises - <https://www.ombudsman.bg/news/5396?page=6#middleWrapper>
- *Bozhkov v. Bulgaria* case - <https://hudoc.exec.coe.int/eng#%7B%22EXECIdentifier%22:%5B%22004-1909%22%5D%7D>
- Speeches of the Ombudsman <https://www.ombudsman.bg/news/5211?page=10#middleWrapper>
- Statement of the Ombudsman <https://www.ombudsman.bg/news/5287?page=4#middleWrapper>

Corruption

In 2020 the Ombudsman institution received 30 complaints (out of a total of 13 244 complaints and signals received) that were related to suspected corruption practices. After a careful examination, none of those turned to be effectively related to criminal actions or irregularities. In all cases citizens suspected corruption either because of a protracted administrative procedure, or because of the lack of knowledge on the relevant procedure.

Nevertheless, in 2020 the Ombudsman institution registered 982 complaints in relation to the right to good governance and good administration – a decrease by 13 % in comparison to 2019.

In 295 cases, the Ombudsman gave recommendations and proposals to administrative authorities and the majority of them were taken into account. In 120 cases, a solution was found through mediation between citizens and the administration.

The **protection of whistle blowers** is still not implemented in Bulgarian law. The Ombudsman has invited state authorities to consider with special attention the need for addressing this gap. A special focus should be put on prohibition of retaliation and support measures including comprehensive and independent information and advice, which is easily accessible to the public and free of charge, on procedures and remedies available, on protection against retaliation, and on the rights of the person concerned. In a statement the Ombudsman has underlined **the need for timely and effective transposition** of the

Directive (EU) 2019/1937 of the European Parliament and of the Council of 23 October 2019 on the protection of persons who report breaches of Union law. Such a recommendation will be brought to the attention of the newly elected National Assembly after the general elections of April 2021.

References

- Speeches of the Ombudsman
<https://www.ombudsman.bg/news/5223?page=9#middleWrapper>
- Statement of the Ombudsman
<https://www.ombudsman.bg/news/5259?page=6#middleWrapper>

Impact of measures taken in response to COVID-19 on the national rule of law environment

On 13 March 2020, the parliament declared a state of emergency for a period of one month, authorising the government to adopt all necessary measures to address the COVID-19 pandemic. The parliament passed special legislation and adopted amendments to existing laws as well. All measures adopted by the government were time-limited and meant to be in force until the state of emergency is revoked. The Ombudsman has raised several issues related to the need for a better protection of fundamental rights in the state of emergency.

In particular, the Ombudsman issued an **opinion against** a possible request of the government for **derogation of the European Convention on Human Rights** according to Article 15 thereof.

In 2020 the institution has examined 13 794 complaints of citizens for violations of their rights. The ombudsman of Bulgaria has also the mandate to inspect and examine public premises, documents, equipment and assets – in 2020, despite the difficult epidemic situation and the state of emergency⁴, the **Ombudsman as the NPM** carried out inspections in 49 sites (see section below).

Access to courts has been initially suspended for three weeks (between 13 of March until 4th of April) upon decision of the Supreme Judicial Council, thus depriving citizens of their

right of access to justice, before an amendment of the special legislation reduced the scope of such limitation to some civil law proceedings only. Cases such as those on undertaking victim protection measures and child protection measures are not affected by the suspension. The Ombudsman nonetheless sent to the parliament an opinion on the need for statutory extensions and suspensions of time limits, related to judiciary procedural regulations during the state of emergency.

The Ombudsman issued an opinion and addressed public authorities on a variety of other issues, related to citizen's rights, including on the impact of measures on working parents responsible for childcare, the delivery of services to disabled people, the right to privacy, personal life and free movement, public sales and entries in possession scheduled by public and private enforcement agents, enforcement measures on movable property and real estate owned by individuals, etc.

Most important challenges due to COVID-19 for the NHRI's functioning

With the establishment of the state of emergency and the need for distance working, the Ombudsman of the Republic of Bulgaria organised free of charge access to the mobile contacts of all experts working in the institution, thus providing for a total of 35 hot-lines for citizen's concerns. This resulted in an increase by 25% of complaints received and services delivered to citizens during the emergency period as compared to the same period one year earlier.

The most important challenge remains the reduced on-the-spot monitoring capacity of the Ombudsman acting as National Preventive Mechanism (NPM).

2020 posed a substantial challenge to the efforts of the Ombudsman's team to exercise effectively and fully its powers as NPM. The global COVID-19 pandemic forced the Bulgarian government authorities to declare a **state of emergency** on 13 March 2020 in the entire country for one month; on 3 April, it was extended until 13 May 2020. An **emergency epidemic situation** was declared from 14 May till 14 June which was then extended repeatedly until the very end of 2020.

In 2020, despite the difficult epidemic situation and the state of emergency, the Ombudsman as the NPM carried out inspections in **49** sites. The main goal of the inspections was related to, first, assessing the anti-epidemic measures taken in closed institutions and monitoring the implementation of recommendations issued during previous visits.

The main activities of the Ombudsman acting as the NPM are focused on the places accommodating persons deprived of liberty, detainees or persons placed there as a result of an act or with the consent of a government authority and these persons may not leave these places of their own accord. The annual monitoring group of the NPM includes the places to serve the punishment of deprivation of liberty with the Ministry of Justice, detention centres at the Ministry of the Interior structures, special homes for temporary accommodation of foreigners with the Migration Directorate and registration and reception centres of the State Agency for Refugees at the Council of Ministers, residential social care for children and adults, state psychiatric hospitals. For some of the said groups of persons affected, the monitoring performed by the Ombudsman is the only form of independent control of the observance of their rights.

In 2020, a total of **3,848** persons received protection from the NPM. Throughout the period of state of emergency and emergency epidemic situation, the Ombudsman ensured immediate public access to the cell phones of the NPM experts to provide effective protection of the rights of all citizens residing in closed institutions. As a result of the inspections carried out in 2020, a total of 39 recommendations were issued to specific institutions.

The Ombudsman has always expressed concern for the respect for the rights of people at closed institutions but the protection of these people's rights proved to be a serious challenge during the COVID-19 outbreak. The pandemic seriously affects vulnerable persons given the nature of the restrictions imposed on them and the difficulties to ensure adequate protection and anti-epidemic measures at institutions and facilities. It is important to note that international human rights standards allow for restrictions of almost all human rights if certain statutory conditions are in place and the interference in these fundamental rights is carried out within the margins of discretion recognised to the State.

Only the prohibition of torture is absolute in nature – it may not be derogated or restricted in any way.

Against this background, the Ombudsman drew attention to the necessary measures to guarantee the rights of persons placed in closed institutions in the conditions of a pandemic situation. **The Ombudsman's official opinion in this regard, including a demand that key international and European law protection standards be applied, was sent as early as the state of emergency was declared to all competent institutions, including the Minister of Justice, the Minister of the Interior, the Minister of Labour and Social Policy, the Director of the State Agency for Refugees.** NPM representatives

were later instructed to check the implementation of the recommendations issued during their inspections.

The state of emergency and the emergency epidemic situation resulted in significant changes in the organisation of the work of the Ombudsman acting as the NPM.

References

- Summary of the 2020 Annual Report of the Ombudsman of Bulgaria acting as National Preventive Mechanism - <https://www.ombudsman.bg/national-prevention/>

Croatia

Ombudswoman of the Republic of Croatia

International accreditation status and SCA recommendations

The Croatian NHRI was re-accredited with A status in March 2019. The SCA acknowledged an increase in funding but encouraged the Institution to keep advocating for the provision of adequate resources corresponding to its extended mandate. Also, the SCA recommended broad consultation and participation of civil society in the selection process, as well as a clear limit to the Ombudsman's term of office. Finally, the SCA welcomed the opening of three regional offices and the efforts undertaken to ensure their accessibility for the most vulnerable groups.

Impact of 2020 rule of law reporting

Follow-up by State authorities

A new draft proposal of the National Plan for Protection and Promotion of Human Rights and Suppression of Discrimination 2021–2027 has a chapter on Rule of Law and Equal Access to Justice and builds on the results of the EC Rule of Law Report. The Office of the Ombudswoman has been a member of the working group responsible for its drafting.

References

- <https://www.ombudsman.hr/hr/ennhri-izvjesce-o-vladavini-prava/>
- <https://www.ombudsman.hr/hr/download/izvjesce-pucke-pravobraniteljice-za-2020-godinu/?wpdmdl=10845&refresh=6045e7e1eb3b01615194081>

Impact on the Institution's work

The rule of Law has become a significant part of our work and we have been recognized by stakeholders for our work on the issue. For example, civil society organisations' priorities for the Republic of Croatia Presidency of the Council of the European Union included Rule of law issues. The conference "Just Europe – Strengthening the Rule of Law and Human Rights in Europe" was planned for March 2020. The Ombudswoman, her Deputy and staff were

involved. While, due to COVID-19 the in-person conference was cancelled, the event took place in online form, through recorded interventions. The Deputy Ombudswoman took part in it.

The Office of the Ombudswoman used the 2020 ENNHRI Rule of Law Report for raising awareness on rule of law through its webpage and meetings with relevant stakeholders. Additionally, the European Commission Rule of Law Report was used as a source of information for our Annual Report for 2020.

Additionally, we continue closely monitoring issues in relation to rule of law and have included them as a part of our 2020 Annual Report.

Follow-up initiatives by the Institution

Despite difficulties caused by COVID-19 and powerful earthquake, the Ombudswoman has shared the Rule of Law Report and its findings with members of our Human Rights Council, advisory body to the Ombudswoman as well as with staff of our Office. It was also part of our meetings with civil society organizations. Just recently, we took part in the discussion “Talks on democracy” organized by the Swedish embassy, which also addressed the issue of rule of law and human rights.

References

- Annual Report 2020 (in Croatian) <https://www.ombudsman.hr/hr/download/izvjesce-pucke-pravobraniteljice-za-2020-godinu/?wpdmdl=10845&refresh=60460b43c37e71615203139>
- <https://crosol.hr/eupresidency/en/just-europe/>

Independence and effectiveness of NHRIs

Changes in the regulatory framework applicable to the Institution

In 2019 a new responsibility was added to the Ombudsman’s mandate with the entry into force of the Law on the Protection of Reporters of Irregularities (Whistle-blowers) on 1 July 2019. The Ombudswoman was granted the mandate of the competent body for external reporting of irregularities (i.e., protection of whistle-blowers) and the institution has been

assigned the task of monitoring the implementation of the Law on Protection of Reporters of Irregularities, including monitoring reports on the internal reporting of irregularities.

As a consequence, in 2020 new Rules of Procedure of the Ombudsman were adopted by the Croatian Parliament, which introduced a new Department within the institution responsible for protection of whistle-blowers. As the Rule of Law Report recognized the need for strengthening of the institution within this mandate, during 2020 one staff member was employed for this mandate.

References

- <https://www.ombudsman.hr/hr/download/izvjesce-pucke-pravobraniteljice-za-2020-godinu/?wpdmdl=10845&refresh=60460b43c37e71615203139>

Enabling space

The Ombudswoman has observed a worrying trend as regards the Institution's enabling environment. Since 2017, responsible state authorities are acting less and less on the recommendations stemming from the Ombudswoman's annual reports. Hence, in 2019 responsible bodies have acted or were acting on only 20% of the recommendations, which is lower even when compared to the Report from 2015 (29%), which was not accepted by the Croatian Parliament. It is of particular concern that the Government did not comment on as many as 60% of recommendations. A decreasing percentage of the fulfilment of recommendations can be explained by the fact that the Croatian Parliament has not yet discussed 2018 and 2019 Annual Reports (in May 2021, the Annual Reports from 2018, 2019 and 2020 were discussed in the Croatian Parliament).

As in the previous Report, the Ministry of the Interior continues to deny the Ombudswoman direct access to data on the treatment of irregular migrants in their information system. The Ombudsman is, in the performance of the National Preventive Mechanism mandate, authorized under Articles 4, 19 and 20 of the OPCAT and Article 3 and 5 of the Law on NPM to visit places where there are or could be detained persons unannounced and freely access information about their treatment. This practice was reported to the Croatian Parliament on several occasions, and in the 2019 and 2020 Annual Reports the Ombudswoman issued a recommendation to the Ministry of Interior to ensure unannounced and free access to data on irregular migrants to the staff of the Office of the

Ombudsman and the NPM in line with provisions of the OPCAT, Law on National Preventive Mechanism and the Ombudsman Act.

References

- <https://www.ombudsman.hr/hr/download/izvjesce-pucke-pravobraniteljice-za-2020-godinu/?wpdmdl=10845&refresh=60460b43c37e71615203139>

Developments relevant for the independent and effective fulfilment of the NHRIs' mandate

Apart from COVID-19, the earthquake in Zagreb on March 22nd has proved to be a significant challenge to our work in 2020. Namely, our headquarters Office has been severely damaged and for the sake of safety of all employees, it can no longer be used. Consequently, our work was first organized through regional offices in Split, Rijeka and Osijek and by virtual means, in order to ensure continued availability to all persons in need of support. In the meantime, temporary new premises have been provided to the Office, but they do not meet our needs, consequently providing a challenge for the fulfilment of all mandates. In the context of inadequate premises, we have informed the Croatian Parliament and the Government of the issue, including through a recommendation in our 2020 Annual Report.

In reference to the Ministry of the Interior's denial of direct access to data on the treatment of irregular migrants in their information system, we have also informed the Croatian Parliament, including through a recommendation in our Annual Report. We have also informed representatives of DG Home and had several meetings with the representatives of the Ministry, including with the Minister himself.

Finally, both of these challenges have been communicated through our alternative report within the third cycle of UPR process.

Human rights defenders and civil society space

The National Plan for the Creation of Enabling Environment for Civil Society was still not adopted in 2020, although the last strategic document expired in 2015.

As a number of measures have been taken to prevent the epidemic, including measures to restrict movement and assembly, CSOs were unable to carry out part of their activities such as trainings, conferences, direct work with target groups and the like. Therefore, in April 2020 two CSO initiatives asked the Government to adopt measures to support their work. Consequently, the government announced the so-called “COVID-19 call”, which would enable CSOs to adapt their work to new circumstances. However, the call was only published in December 2020 and the support will be provided to associations that were among the first to submit their projects. This has put at a disadvantage CSOs operating in rural areas or islands, where post offices do not work every day or do not exist at all, and where the Internet connection is not always stable.

During 2020, the NGO Human Rights House conducted a survey on access to funding for CSOs that showed a worrying level of distrust of CSOs towards domestic donors, i.e., institutions that allocate funds from the state budget and European Structural Funds. The research results correspond with the trend of distrust in policy making cycles and general distrust in the state, which is a longer-term issue. At the same time, CSOs point to a number of administrative obstacles that increase their workload; lack of recognition of social problems by domestic donors, which are subsequently not included in funding programs nor in new programs. This is due to the fact that key strategic documents are missing, which would define priorities in individual areas – such as National Plan for Promotion and Protection of Human Rights and Suppression of Discrimination.

Also, some CSOs indicate difficult access to information and statistics available to the competent authorities, especially in the context of migration, as well as the inability to access shelters and detention centres during an epidemic.

During 2020 the Office of the Ombudswoman opened a case based on which we monitored the situation in relation to civic space and human rights defenders in the context of COVID-19. Additionally, in our communication in the context of COVID-19, we have highlighted the importance of support to CSOs.

Finally, as in previous years, in preparation of the 2020 Annual Report the Ombudswoman has sent out a letter inviting CSOs to contribute to it, by sending their data and key challenges to their work.

References

- <https://www.ombudsman.hr/hr/download/izvjesce-pucke-pravobraniteljice-za-2020-godinu/?wpdmdl=10845&refresh=60460b43c37e71615203139>
- <https://www.kucaljudskihprava.hr/publikacije/>

Checks and balances

In the context of COVID-19, there was a debate over the authority of the Civil Protection Headquarters to make decisions which were restricting human rights and freedoms. Critics from several instances raised the issue whether the Croatian Parliament should have declared a state of emergency and “activate” Article 17 of the Constitution according to which all decisions concerning restrictions of human rights and freedoms shall be brought by a two-thirds majority of all the MPs. Hence, the Constitutional Court received a number of submissions on these issues.

The Constitutional Court decided that the decision on whether certain measures to combat the epidemic will be made in application of Article 16 or Article 17 of the Constitution is in the exclusive domain of the Croatian Parliament and therefore according to the Constitutional Court the fact that the disputed laws (and measures) were not enacted on the basis of Article 17 of the Constitution does not make those laws unconstitutional. In relation to the authority of the Civil Protection Headquarters to adopt measures/decisions restricting certain human rights and freedoms, the Constitutional Court decided that they have a legal entitlement to adopt measures according to the Article 47 of the Law on Protection of Population from Infectious Diseases and Article 10 of the Law on the Amendments of the Law on Protection of Population from Infectious Diseases relating to the adoption of safety measures for the protection of population from infectious diseases. The Constitutional Court also pointed out that this does not mean that the decisions of the Headquarters are not subject to the control of the executive, legislative and judicial authorities, stating that there are no obstacles for the Croatian Parliament to request a report from the Government on the implementation of measures and work of the Headquarters if it deems necessary.

However, representatives of the CSOs point to a lack of dialogue regarding the adoption of epidemic-related measures, in particular to protection of the most vulnerable members of our society.

In the context of legislative processes, provisional data from the E-Counselling platform that supports involvement of citizens and CSOs in public policy and law-making processes, show that in 760 consultations that took place in 2020, as many as 1,974 NGOs took part and 21,779 comments were received, of which 35% were not answered. It is a significant increase compared to 2019, when 22% of comments were not answered. As stated in the EC Rule of Law Report 2020, this gives the impression that consultation is only a formal act, and not a continuous dialogue between stakeholders in policy making, which does not contribute to building of trust in the work of the state administration. Furthermore, during 2020, impact assessment, including on human rights was conducted for a total of 146 laws in the first reading and in a fast-track procedure, and as in previous years, in the vast majority the expert bodies did not determine the direct effects of the laws on human rights. Therefore, it is necessary to educate civil servants about human rights and strengthen their capacity to monitor the effects of legislative initiatives on the realization of human rights.

In the context of COVID-19 and trust, the research conducted by the Faculty of Political Sciences states that there is a high level of trust of the public, which in the first months of epidemics assessed the measures as timely, appropriate and successful, hence encouraging citizens to respect them, even though they were restrictive and suspended their freedoms and changed their life habits almost overnight. But the later public perception shows that the public believes that the measures were motivated rather by political, than expert arguments, leading to a drop in confidence in the work of Headquarters, thus reflecting on the necessity of adhering to prevention measures.

The complaints received by the Office of the Ombudswoman show similar challenges in relation to trust. For example, decisions of the Civil Protection Headquarters on limiting the number of participants in public gatherings in the open air or indoors were changed more than 20 times. Frequent changes and unclear measures and recommendations, among other things, have led to growth of dissatisfaction and fear, and the already damaged trust in institutions, especially the Headquarters. Therefore, in early September, and then again in November, protests were held, for measures relating to the restriction of social gatherings, the maintenance of physical distance, and obligation to wear masks. On this occasion, we received several complaints from citizens who expressed concerns about holding of such protests during the epidemic and based on them we initiated procedures.

Furthermore, aside from a lack of clarity on the justification for some of the restrictions, there were also publicly questioned inconsistencies in the implementation of the measures, which resulted in lowering the level trust among citizens.

During 2020, the Ombudswoman continued to work on complaints received from the citizens, to take part in legislative procedures and to cooperate with internal and external stakeholders.

As reported in the 2020 ENNHRI Rule of Law Report, and reiterated above, the Ministry of the Interior continues to deny us direct access to data on the treatment of irregular migrants in their information system. The Ombudsman is, in the performance of the NPM mandate, authorized under Articles 4, 19 and 20 of the OPCAT and Article 3 and 5 of the Law on NPM to visit places where there are or could be detained persons unannounced and freely access information about their treatment. This practice was reported to the Croatian Parliament on several occasions, and in 2019 and 2020 Annual Report Ombudswoman issued a recommendation to the Ministry of Interior to ensure unannounced and free access to data on irregular migrants to the staff of the Office of the Ombudsman and the National preventive in line with provisions of the OPCAT, Law on National Preventive Mechanism and the Ombudsman Act.

References

- <https://www.ombudsman.hr/hr/download/izvjesce-pucke-pravobraniteljice-za-2020-godinu/?wpdmdl=10845&refresh=60460b43c37e71615203139>

Functioning of justice systems

During 2020, the number of complaints received by the Ombudswoman regarding judiciary increased by 5,94% in comparison to 2019 (we received 206 complaints). Of these, 94 related to the work of courts, which is an increase of 11.9%. The majority of complaints, 42 of them, related to the delays of the procedures, 34 to the abuse of position, 15 to the outcome of the procedure, and three to the performance of court administration.

Complaints related to the work and conduct of judges, as well as the manner in which court proceedings are conducted and decisions made, still show distrust of citizens in their regularity and legality, as well as fear of corruption. At the same time, the Ministry of Justice

and Administration (MJA) noted a 21.7% decrease in the number of complaints relating to the work of courts compared to 2019.

In 2020, the Ombudswoman noted a decrease in the number of cases relating to the work of the State Attorney's Office by the 13.88%. They mostly referred to long proceedings, dropping of criminal charges and similar. At the same time, MJA noted 34% increase in the number of complaints related to the work of State Attorney's compared to 2019.

Due to the epidemic, the MJA issued recommendations relating to the work of courts, on the basis of which they were obliged to act only in emergency cases in the first quarter of the year, and from May 13 in all other cases, in accordance with epidemiological measures. In November 2020, the President of the Supreme Court issued an Instruction according to which the work of the courts was organized according to the envisaged models.

In the context of free legal aid (FLA), the complaints received during 2020 mostly related to the long duration in the appeal procedure against FLA decisions. Despite the recommendation to the MJA in the 2018 Report, these procedures continue to be extremely lengthy. Thus, in June 2020, we received a complaint in which the complainant stated that in August 2017 he filed an appeal against the decision rejecting his request for FLA, and after three years he still did not have a response.

Despite difficult circumstances due to the epidemic, providers of FLA have ensured its availability to citizens by phone or e-mail, with the expected reduction in personal appointments. Official data show that citizens submitted fewer requests for secondary legal aid due to the reduced work of courts and other state bodies. There is still a lack of lawyers interested in providing secondary legal aid in some units of local and regional self-government, particularly in the counties of Šibenik-Knin and Zadar.

The difficult financial position of primary legal aid providers (NGOs and legal clinics) still remains a challenge. Funds for FLA projects were paid out to providers only in July, which makes it difficult for them to function for most of the year. In addition, the annual budgets for projects are insufficient, as evidenced by the report of the association PGP Sisak – during 2020 they worked on more than 2,000 cases of FLA of which only 7% were financed from the state budget.

During 2020, the Ombudswoman continued to work on complaints received from the citizens, take part in legislative procedures and cooperate with internal and external stakeholders.

References

- <https://www.ombudsman.hr/hr/download/izvjesce-pucke-pravobraniteljice-za-2020-godinu/?wpdmdl=10845&refresh=60460b43c37e71615203139>

Media pluralism and freedom of expression

Media and journalists were the main sources of information about the virus, prevention, and restrictions in force, who often at the risk of their own health, reported from the field. As employers often did not procure protective equipment fast enough, the Union of Journalists (UoJ) bought masks and gloves from union funds for its members, and at the beginning of the crisis, in cooperation with the Croatian Journalist Association (CJA) and Civil Protection Headquarters issued movement permits for journalists.

Due to epidemic and economic crisis, according to the UoJ, 28.7% of external media associates were left without any contractual engagement in the first days of the crisis, so in cooperation with the CJA they called for measures which would apply to the entire media sector. To help journalists who lost their jobs, Ministry of Culture and Media ensured state aid which helped media workers similarly to entrepreneurs, i.e., with three monthly payments of four thousand kunas (around 527 EUR) each. However, the epidemic has shown that the media sector needs a long-term assistance strategy, and journalists need better labour protection.

At the beginning of 2020, an amendment to the Criminal Code came into force, which now regulates the criminal offense of coercion against a person who performs activities of public interest or in the public service. It was this provision that was applied for example to the perpetrators of an attack on a journalist who was investigating a violation of gathering measures in a church in Split. Unfortunately, this was not an isolated case of attacks on journalists in 2020. According to the CJA, there were five physical attacks, two deaths and serious bodily injuries and five other threats. In addition to physical attacks, there were also verbal ones, often committed by public figures and (former) politicians, and as in previous year, journalists were exposed to numerous lawsuits. According to a survey conducted by the CJA in 2020, there were 905 active lawsuits against journalists and the media, with a total value of almost HRK 68 million.

The legislative procedure on the draft Law on Electronic Media was sent into legislative started in 2020. During public consultations, the Ombudswoman pointed to the inadequate regulation of the responsibility of editors / publishers for content generated on video sharing platforms, the lack of definition of such platforms, and that the draft is not fully in line with other laws, such as the Anti-Discrimination Act, as the umbrella anti-discrimination law. It is commendable that the draft Law addresses earlier legal gaps relating to the difficulty of establishing responsibility for comments below articles on portals, but there is still a lack of a definition of social media and taking of responsibility for the comments generated there. Therefore, users could remain insufficiently protected from unacceptable content, and could only depend on self-regulatory acts of international Internet companies. An additional problem could be posed by the fake profiles of commentators, and the CJA believes that the legislator should provide for the portal's responsibility for readers' comments in case it fails to register / identify them. Also, it is of concern that the draft Law does not follow current technological trends in media sector, for example it does not define the "video sharing platform service" or the responsibility of persons for user content generated on those platforms.

During 2020, the Ombudswoman continued to work on complaints by the citizens, take part in legislative procedures and cooperate with internal and external stakeholders.

References

- <https://www.ombudsman.hr/hr/download/izvjesce-pucke-pravobraniteljice-za-2020-godinu/?wpdmdl=10845&refresh=60460b43c37e71615203139>

Corruption

In line with the Law on the Protection of Reporters of Irregularities (Whistle-Blowers), for a year and a half, the Ombudswoman has been acting as the responsible body for external reporting of irregularities. In the context of external reporting, the Ombudswoman acted upon 45 complaints during 2020, out of which 13 were submitted in 2019.

During 2020, employers with at least 50 employees were required to set up a system of internal reporting of irregularities. Persons in charge of internal reporting sent us 26 notifications on received complaints. What can be seen from them is that both the persons

filing the complaints and persons responsible for internal reporting do not have sufficient understanding of the Law. Namely, these cases often related to the violations of employment rights, and not of an irregularity that poses a threat to the public interest.

At the same time, a relatively small number of conducted internal reporting procedures indicates that the applicants are not sufficiently familiar with the Law or that they do not trust this procedure. Hence, a continuous and systematic education of persons responsible for internal reporting systems is necessary in order to strengthen their role in the procedure, so that they are able to provide adequate protection for those reporting irregularities. For this reason, the Ombudswoman organized online consultations with persons responsible for internal reporting systems in November 2020.

In the context of public disclosure, during 2020, an anonymous doctor publicly published a letter stating that the respiratory centre for the treatment of COVID-19 patients lacked medicines and food for patients, who also were inadequately cared for. This was followed by letters and testimonies of other doctors in the media, which confirmed an extremely difficult situation in this hospital. The Ombudswoman initiated an investigation and asked the Ministry of Health to inform them of the established facts or, if the allegations will be indeed confirmed, what they did to ensure adequate quality of treatment, nutrition, hygiene standards and preserving the dignity of patients. Additionally, the Ombudswoman pointed out that an effective investigation must necessarily include adequate protection of the complainant, and its aim must not be to reveal their identity. Also, it is important if the identity of the person who disclosed the information is revealed, not to suffer negative consequences in their private and professional life.

During 2020, the Ombudswoman continued to work on complaints received from the citizens, take part in legislative/policy development procedures and cooperate with internal and external stakeholders.

References

- <https://www.ombudsman.hr/hr/download/izvjesce-pucke-pravobraniteljice-za-2020-godinu/?wpdmdl=10845&refresh=60460b43c37e71615203139>

Impact of measures taken in response to COVID-19 on the national rule of law environment

Most significant impacts of measures taken in response to the COVID-19 outbreak on the rule of law and human rights protection

As stated previously, there was a debate over the authority of the Civil Protection Headquarters to make decisions which were restricting human rights and freedoms and whether the Croatian Parliament should have declared a state of emergency and “activate” the Article 17 of the Constitution. As already noted in the Chapter on judiciary, the Constitutional Court decided on both of these questions.

Even though, the Constitutional Court stated that the Civil Protection Headquarters have a mandate to make these decisions, it pointed out that this does not mean that the decisions of the Headquarters would not be subject to the control of the executive, legislative and judicial authorities, and that there would be no obstacles for the Croatian Parliament to request a report from the Government on the implementation of measures and work of the Headquarters if it deems necessary.

Additional discussion related to the protection of privacy and data collection. Namely, the government proposed amendments to the Electronic Communications Act, to be able to monitor citizens’ movements. The Ombudswoman warned that the proposal lacked explicitly defined and clear criteria, which would ensure that the measure is implemented only on precisely defined categories of citizens, for example, those who have been officially ordered self-isolation by the competent authorities, and who would need to be properly informed about it, the beginning and the duration of the measure, with an explicit prohibition on retroactivity. Moreover, the monitoring mechanism was not envisaged, nor was there a time limit within which the collected data would be stored. Finally, after public discussion the amendments were not adopted.

It is important for us as an NHRI to continue monitoring the situation. However, the situation in Croatia become has more challenging due to two devastating earthquakes – the one in March 2020 which hit Zagreb and the one in December 2020 which hit Sisak-Moslavina county.

During 2020, the Ombudswoman organized a series of online discussions *#Kavazaljudskaprava*, which gathered citizens, experts and representatives of relevant institutions and CSOs, hence providing the opportunity to discuss human rights issues in an open, constructive and inclusive way rights. By the end of the year, we had held four such

meetings, in relation to the impact of coronavirus on the most vulnerable groups, youth and challenges they face, environmental protection and climate change, and on the occasion of International Human Rights Day, we hosted the Commissioner for Human Rights of Council of Europe Dunja Mijatović.

References

- <https://www.ombudsman.hr/hr/download/izvjesce-pucke-pravobraniteljice-za-2020-godinu/?wpdmdl=10845&refresh=60460b43c37e71615203139>

Most important challenges due to COVID-19 for the NHRI's functioning

In our work, the main challenge related to the destruction of our office space by the earthquake, which meant we had to switch to tele-working. Additionally, due to COVID-19 NPM visits to places of detention were temporarily suspended. However, during the year, in cooperation with the Croatian Institute of Public Health, based on their guidance we managed to conduct 26 NPM visits. We continued monitoring the situation by collecting data from authorities regarding preventive measures for protection of persons deprived of liberty; of irregular crossings of migrants and migrants in reception/detention centres as well as of older persons in long term care.

References

- <https://www.ombudsman.hr/hr/download/izvjesce-pucke-pravobraniteljice-za-2020-godinu/?wpdmdl=10845&refresh=60460b43c37e71615203139>

Cyprus

Commissioner for Administration (Ombudsman)

International accreditation status and SCA recommendations

The Cypriot NHRI was first [accredited](#) with B status in November 2015. In its review, the SCA be made certain recommendations and observations on the appointment of the Ombudsman, the allocation of resources to the NHRI and the management of its budget.

The NHRI indicated that it has taken concrete steps to follow-up on the recommendations of the SCA and has applied for re-accreditation. The Cypriot NHRI will be [reviewed](#) by the SCA in June 2021.

It has to be noted that according to relevant legislation (the Law on the Commissioner for Administration), the Commissioner is appointed by the President, based on the recommendation of the Council of Ministers and with the prior consent of the majority of the House of Representatives.

Given that Cyprus Republic is a Presidential Republic and not a Parliamentary Republic, the appointment of the Commissioner still depends on prior consent and approval by the majority of the House of Representatives. The Commissioner is the only independent Incumbent in Cyprus, whose appointment takes place after the prior consent and approval of the Parliament, which may reject the recommended candidate. Because of the fact that the government (ruling party) never has the majority in the Parliament, the approval of the candidate by the Parliament needs the synergies of most political parties and the final decision for the appointment is upon the House of Representatives prior consent and approval.

Impact of 2020 rule of law reporting

Follow-up by State authorities

The main follow up actions taken by the state authorities during the year 2020 for the purpose of fostering a rule of law culture, were related to the additional initiatives and measures taken by the Government to combat corruption in Cyprus.

In relation to addressing corruption in Cyprus, we would like to recall that:

- A "National Anti-Corruption Strategy" has been approved by the Council of Ministers in November 2017

- A draft bill which provides for the establishment of an “Independent Body against Corruption” and the protection of whistle-blowers, was discussed before the Committee for Legal Affairs of the House of Representatives. The Institution was actively engaged in these discussions, by participating in Committee’s meetings and submitting a relevant memorandum to the Committee. The discussions have been concluded recently and the bill will be forwarded to plenary session to vote.

Furthermore, we also would like to note that, recently, (on 29/1/2021), the President of the Republic and the Minister of Justice, announced new measures to combat corruption, which are based on the principals/pillars of “rule of law, transparency and accountability” (1). The new measures announced include: a reform of the judicial system and the penal code; the enhancement of the internal control mechanisms in the Ministries; as well as the promotion of bills that allow for the confiscation of illegal proceedings, prohibit entities from taking part in public procurements if they have been prosecuted for illegal acts, and a bill that provides for transparency in the financial assets of government officials (2).

References

- (1) <https://www.pio.gov.cy/%CE%B1%CE%BD%CE%B1%CE%BA%CE%BF%CE%B9%CE%BD%CF%89%CE%B8%CE%AD%CE%BD%CF%84%CE%B1-%CE%AC%CF%81%CE%B8%CF%81%CE%BF.html?id=18152#flat>
- (2) <https://www.pio.gov.cy/en/press-releases-article.html?id=18161#flat>
- <https://www.kucaljudskihprava.hr/publikacije/>

Impact on the Institution’s work

The 2020 ENNHRI Report on Rule of Law was important to the Institution’s work, mainly because:

- It has stressed the important and interlinked relationship that the implementation of the Rule of Law has on the protection of human rights of citizens and, thus, the emphasis and the priority that our Institution, as a NHRI, has to give in the promotion and protection of the Rule of Law in Cyprus;

- It has provided an important benchmark to compare and assess our work on the respect of Rule of Law in Cyprus, with the work of other NHRIs in Europe. For example, it was helpful to see the work that other NHRIs did on the measures to protect the public from the COVID-19 pandemic, and the emphasis given, as our Institution did, on the impact that these measures had on the human rights of the most vulnerable groups of people (such as asylum seekers, migrants, detainees, long term patients, and persons with disabilities);
- It provided to us with an insight to the (similar) challenges that other European NHRIs face in their work (albeit in varying degrees), in relation to the implementation of the Rule of Law in their respective countries, including challenges on the issues of safeguarding their independence and effectiveness.

Follow-up initiatives by the Institution

Recently the Institution carried out a number of actions in relation to the strengthening of the Rule of Law in Cyprus, including:

- Presentations/Trainings by Officers of our NHRI to Police Officers, in cooperation with the Police Academy, on the crucial role of the Police in implementing the Rule of Law, especially the Laws that protect human rights;
- Drafting and submitting Reports or making public announcements, on the protection of rights of citizens, especially those who are more vulnerable (1);
- Working together with a local NGO on LGBTQI Rights, and other civil society partners, in a Project that aims to promote the political representation and participation in decision making of the LGBTQI+ community (2). In this framework, we participate in a Working Group that will prepare an Action Plan on the promotion of LGBTQI Rights, including the strengthening of the relevant institutional and legal framework;
- We continued to be engaged, and express our views, in the discussions that were held for the drafting of a bill which provides for the establishment of an “Independent Body against Corruption” and the protection of whistle-blowers. (see also above). The discussions were held before the Committee for Legal Affairs of the House of Representatives.

We have equally launched a number of awareness raising campaigns, including:

- Information campaign on COVID-19 & Human Rights (2020–ongoing) (3):

With the spread of COVID-19 virus in Cyprus and the restrictions imposed by the State to prevent its spread, our Office, as a human rights defender, has been put on alert in order to intervene and help any possible violation. In view of the above, our Office has been conducting since last March an awareness campaign in relation to the COVID-19 and the protection of human rights.

To this end, a special page was created on the website of our Office which includes links to all the necessary information about the COVID-19 pandemic, as well as our reports/interventions regarding the virus and its impact on human rights in general.

- On the occasion of the 30th anniversary of the introduction of the institution in the Republic of Cyprus, our Office has launched a series of information and awareness-raising campaigns, on the basis of the Commissioner's responsibilities.

Specifically:

- Information and Awareness-Raising Campaign "Break the Silence" (2021) (4):

The Campaign was launched in March 8, 2021. The same date, an Own Initiative Report was published regarding the prevention and treatment of harassment and sexual harassment in workplace and a press conference took place, during which the report as well as the results of a survey regarding sexual harassment in Cyprus were presented. Additionally, the audio-visual material (video and audio) prepared for the campaign, was sent to all radio and television stations and was broadcasted for a long period time and the prepared posters were sent to all public sector departments who placed them at their offices. It is noted that the topic of the campaign was chosen due to the constant revelations about cases of sexual harassment that come to light.

- Information and Awareness-Raising Campaign "Equal Participation of Persons with Disabilities in Elections" (2021) (5)

The Campaign was launched in May 15, 2021. The trigger for the campaign was the assurance of the right of all persons with disabilities to legal capacity, including their right to vote. An Own Initiative Report was published regarding the right of all persons with disabilities to legal capacity, their civil rights and their equal participation in elections. An information leaflet about Equal Participation of Persons with Disabilities in Elections was also prepared and published, containing information about the rights of persons with disabilities according to CRPD Convention, before and during election procedures, for ensuring the equal exercise of their civil rights. The Report and the leaflet were sent to the

involved public authorities, to the representative organizations of persons with disabilities and to the political parties. The information leaflet has been prepared and in audio format as well. It is noted that in May 30, 2021, the Parliamentary Elections will take place and Local Authorities' elections will also take place in December 2021.

References

- (1)
http://www.ombudsman.gov.cy/ombudsman/ombudsman.nsf/index_new/index_new?openform
- (2) <https://www.voiceitproject.eu/>
- (3)
http://www.ombudsman.gov.cy/ombudsman/ombudsman.nsf/annualreport_table/annualreport_table?openform
- (4)
<http://www.ombudsman.gov.cy/ombudsman/ombudsman.nsf/All/AF7CE4A0ED353EC4C225867100418F7C?OpenDocument>
- (5)
<http://www.ombudsman.gov.cy/Ombudsman/ombudsman.nsf/All/AE1D5634069B1F9EC22586D80034DBA1?OpenDocument>)
- <https://www.kucaljudskihprava.hr/publikacije/>

Independence and effectiveness of the NHRI

Changes in the regulatory framework applicable to the Institution

There were no significant changes in the national framework applicable to the Institution over the past year.

As regards the independence of the Commissioner, under her mandate to act as an NHRI, it has to be noted that the Commissioner for Administration and the Protection of Human Rights (Ombudsman) was established in 1991 by virtue of Law no. 3(I)/1991 (the Law on the Commissioner for Administration as amended, (1991-2014)), as an independent Incumbent,

responsible to deal with individual complaints concerning maladministration, misbehaviour and the protection and the promotion of human rights.

According to the legislation (article 3), the Commissioner is appointed by the President, based on the recommendation of the Council of Ministers and with the prior consent of the majority of the House of Representatives, a citizen of the Republic (...), with a high level of education and experience and with the highest integrity, as Commissioner.

Given that Cyprus Republic is a Presidential Republic and not Parliamentary Republic, with strict discretion of powers, the appointment of the Commissioner still depends on prior consent and approval by the majority of the House of Representatives. The Commissioner is the only independent Incumbent in Cyprus, whose appointment takes place after the prior consent and approval by the Parliament, which may reject the recommended candidate. For this reason, intense discussions and consultations are taking place between the parliamentary parties, and the civil society can convey its views in relation to the proposed person. Because of the fact that the government (ruling party) never has the majority in the Parliament, the approval of the candidate by the Parliament needs the synergies of the most political parties. In this way, the final decision of the appointment is upon the House of Representatives prior consent and approval.

Furthermore, as NPM (National Preventive Mechanism) the Institution succeeded the amendment of the relevant Law in order to conduct visits in places where people are deprived of liberty, without prior notice to the competent authorities, in order to comply with the usual practice taking place already.

It is also worth mentioning that another three new posts have already been approved in order to further reinforce the capacity of the Institution.

Following our contribution to ENNHRI 2020 Rule of Law Report, we would like to note the following:

- In 2019 the Commissioner succeeded the approval by the Council of Ministers and the Parliament of the exclusion of the Ombudsman Office staff to take the governmental exams. The Institution now organises specialised exams by the Advisory Committee set up by the Commissioner. Those who succeed in the examination are brought before the Public Service Commission and their recruitment is in accordance with the Commissioner's recommendation, based on a relevant assessment of their specific knowledge and experience. Although during six months the above decision was mistakenly revoked, the Council of Ministers, by a

new decision dated February 17, 2021, reverted back to its original decision and confirmed the exclusion of the Ombudsman Office staff to take the general governmental exams. It is to be noted that in the Annual Budget for 2021, an amount of 18,000 EUR is included for the preparation of specialized exams for the recruitment of new staff during the current year.

- The final selection for the recruitment of the staff of the Office is taking place among candidates who have the academic qualifications based on the employment plan and are eligible to apply for the post, without any limitations. 10% of the vacant post are offered to persons with disabilities, when they are candidates, by relevant Law in force.
- In 2020, the Institution's staff was increased by the recruitment of four new staff members and six more vacant positions are about to be filled in 2021-2022.
- In relation to the threat posed to the Commissioner's "independence" which we reported on in the 2020 ENNHRI Rule of Law Report, following a letter of the President of the International Ombudsman Institute and by reference to the Venice Principles, the Attorney General in his legal opinion stressed that the matter was raised unnecessarily and deemed no further legal examination.
- Concerns over the above-mentioned matter are also included in the European Commission's 2020 Rule of Law Report – country report on Cyprus, where is noted, among others, that "...However, it (the Ombudsman) has faced challenges in view of an attempt by the Auditor General to investigate the way it exercises its powers, which the Commissioner considered an interference with its independence. This position was supported by the International Ombudsman Institute (IOI) and subsequently, the Attorney General stopped the procedure...".

References

- <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52020SC0312&from=EN>

Enabling space

We consider that we have a good cooperation with most state authorities, in the framework of which we receive their comments and views on subjects or cases that we investigate, and, if we require it, we are given access to relevant documents and/or administrative files.

We consider that the level of compliance with recommendations/suggestions that our Institutions makes, is satisfactory, albeit there is room for improvement. Our Institution, as a rule, follows up on all cases for which interventions are made, to oversee the implementation of our suggestions and recommendations. This is done in the framework of written correspondence or consultations with the implicated public authorities, and in some cases, in discussions held by competent parliamentary committees. Please also note that the Reports that our Institutions submits, are later discussed at the Council of Ministers, and implicated authorities are asked to inform the Council about the actions they have taken, in view of our suggestions and recommendations.

One aspect of our cooperation with state authorities that we feel needs to be improved, is the timeliness of their responses to our requests.

Human rights defenders and civil society space

Our Institution cooperates closely with the civil society active in the promotion of human rights. In this framework, we regularly investigate human rights issues/violations that civil society organizations bring to our attention, both in relation to individual cases, and also on issues of a more systemic nature. These investigations often lead to the drafting and submission of Reports.

Recent examples of such reports are:

- Report on 12/1/2021 regarding the arrangements made in public schools for long distance learning especially for pupils with disabilities – following a complaint submitted by an NGO active on the rights of persons with autism (1);
- Report on 18/12/2020 regarding the Status of Foreign Domestic Workers in Cyprus - submitted jointly with a University Assistant Professor active on the issue (2);
- Report on 22/12/2020 regarding the living conditions of the Roma community in Cyprus - the investigation was done in cooperation with an NGO active in the protection of Roma Rights in Cyprus (3).

- Report on 3/3/2021, after a complaint by the NGO Cyprus Refugee Council, regarding the excessive detention of a third-country national under repatriation at a Police Detention Center until his return to his country of origin.

It is noted that recently, a number of NGOs have been de-registered by the Competent Authority since they did not submit any financial statements, or other required by legislation for them to continue their operations legally and meet the criteria established by the laws in force to function properly.

The Commissioner observes that the Competent Authority informed these NGOs in good time of the impending amendment of the legislation and gave them a very long time to comply, but several NGOs did not respond. The latest notices about the upcoming deregistration procedure for NGOs failing to comply with the requirements were announced in August and October 2020 and their de-registration took place in December 2020. Among the concerned NGOs there is the well-known NGO KISA. Having failed to submit any financial statements and the names of the members of its Board since 2015, the Competent Authority concluded that KISA did not meet the criteria by law in force to function properly. For this reason, the NGO has been de-registered, and it has questioned the relevant decision before the Administrative Court. Due to the ongoing proceedings before the Court, our Institute is not in a position to comment on the relevant de-registration decision.

References

- (1) [http://www.ombudsman.gov.cy/ombudsman/ombudsman.nsf/All/B7434AEFDD11330AC225865C003890F0/\\$file/54.2021_12012021.pdf?OpenElement](http://www.ombudsman.gov.cy/ombudsman/ombudsman.nsf/All/B7434AEFDD11330AC225865C003890F0/$file/54.2021_12012021.pdf?OpenElement)
- (2) [http://www.ombudsman.gov.cy/ombudsman/ombudsman.nsf/All/2358C433C1A0F629C2258646002B79DA/\\$file/Domestic%20workers%20.pdf?OpenElement](http://www.ombudsman.gov.cy/ombudsman/ombudsman.nsf/All/2358C433C1A0F629C2258646002B79DA/$file/Domestic%20workers%20.pdf?OpenElement)
- (3) [http://www.ombudsman.gov.cy/ombudsman/ombudsman.nsf/All/D1478ED6BB7BC395C22586460047D9B1/\\$file/%CE%91%CE%A5%CE%A4%203-2%CE%BF%20%CE%A0%CF%81%CE%BF%CF%83%CF%87%CE%B5%CC%81%CE%B4%CE%B9%CE%BF-18-12-2020%20%CE%A1%CE%9F%CE%9C%CE%91%CE%B1%CE%B1.pdf?OpenElement](http://www.ombudsman.gov.cy/ombudsman/ombudsman.nsf/All/D1478ED6BB7BC395C22586460047D9B1/$file/%CE%91%CE%A5%CE%A4%203-2%CE%BF%20%CE%A0%CF%81%CE%BF%CF%83%CF%87%CE%B5%CC%81%CE%B4%CE%B9%CE%BF-18-12-2020%20%CE%A1%CE%9F%CE%9C%CE%91%CE%B1%CE%B1.pdf?OpenElement)

Checks and balances

The level of trust amongst citizens towards the public administration is low. There is a general perception that the public administration does not function efficiently, and that maladministration is widespread. The fact that our Institution handles around 2.500 complaints every year, is a further indication of the dissatisfaction that of the Public has towards the public service.

Functioning of justice system

Our Institution has no mandate to take cases before courts or intervene in the operation of the courts. Nonetheless, it is worth noting how some problematic aspects related to the functioning of the justice system in Cyprus have been highlighted in a number of international reports. Particular reference is made to the delays observed in the completion of court proceedings and the backlog of cases pending before courts.

References

- <https://rm.coe.int/fourth-evaluation-round-corruption-prevention-in-respect-of-members-of/16808d267b>
- https://www.cyprusbarassociation.org/files/publications/Functional_Review_of_Courts_System_of_Cyprus_IPA_Ireland_-_Final_Report.pdf

Corruption

As stated above, additional initiatives and measures were taken by the Government to combat corruption in Cyprus. In particular, our Institution was actively engaged in the discussions held in the Parliament, for the establishment, by Law, of an Independent Body with responsibility and competences to combat corruption.

Other relevant developments or issues having an impact on the national rule of law environment

Over the last 2 years, Cyprus has witnessed a rapid increase in the number of people who come and apply for international protection, making it the EU country with the highest number of first-time applicants relative to the population (1)(2)(3). That has consequently

led to long delays in the examination of asylum applications (as well as appeals filed to Courts on rejection decisions), overcrowding in the 2 Reception Centres that operate in Cyprus, and to major challenges in providing the necessary material reception conditions to the thousands of asylum seekers who live in the community (outside the Reception Centres).

Addressing this situation and intervening towards the protection of the fundamental human rights of this particularly vulnerable group of people, was indeed a pressing challenge for the Institution. In the framework of our competences, in the past years, we did a number of interventions towards implicated state authorities (e.g., the Asylum Service, the migration authorities and the Welfare Services), with specific recommendations and suggestions on enhancing the protection, in practice, of the human rights of asylum seekers, as well as people who eventually are granted international protection status. In these Interventions we cited relevant human rights laws, and especially the provisions of the Cyprus Refugee Law of 2000 (which has been amended to align with the recast Directive 2013/32/EU on asylum procedures and the Directive 2013/33/EU on reception conditions).

Our Reports/Interventions covered, among others: the living conditions of asylum seekers in the reception centres; the level of specialized support provided to those who belong to vulnerable groups; detention of asylum seekers; difficulties in accessing asylum procedures and delays in the examination of applications; access to welfare benefits and difficulties in finding housing etc.

Following our Reports/Interventions, the State implemented the majority of our recommendations. For instance:

- The payments of asylum seekers via coupons was replaced via direct deposit of cash in their bank accounts since it has now been made easier for asylum seekers to open bank accounts. In addition, the financial support provided for asylum seekers (in, allowances, rent coverage etc.) has been increased and supplementing support in cases of families of employed asylum seekers has been approved.
- The employment sectors accessible to asylum seekers have been expanded.
- Further EU funding has been requested in order to improve the services provided to asylum seekers.
- A national plan for the housing of asylum seekers is being promoted by the competent authorities.

- An additional reception centre is planned to be created/constructed.
- Interviews of asylum seekers staying in the Reception and Accommodation Center in Kokkinotrimithia that had been interrupted due to the pandemic, were resumed via video conferencing.
- Our suggestions for improving the living conditions in the Reception and Accommodation Center in Kokkinotrimithia were implemented and procedures for the replacement of a number of tents with prefabricated houses have been accelerated.
- Unaccompanied minors who were staying in the Reception and Accommodation Center in Kokkinotrimithia were transferred to juvenile shelters.

Furthermore, the Asylum Service and the Civil Registry and Migration Department were strengthened with the recruitment of additional staff and 10 Judges were hired for the Administrative Court of International Protection. In this way, the examination of asylum applications has been accelerated and, at the same time, the examination of presumably unfounded applications is expected to be completed within 10 days so that, when the applicant appeals to the Administrative Court of International Protection, the decision is normally issued within 25 days.

References

- (1) <https://www.nytimes.com/2020/01/28/world/europe/cyprus-migrant-crisis.html>
- (2) <https://cyprus-mail.com/2020/12/18/cyprus-top-in-asylum-applicants-relative-to-population-in-eu/>
- (3) <https://in-cyprus.philenews.com/over-7000-asylum-seekers-entered-cyprus-in-2020-despite-covid-restrictions/>
- (4) Impact of measures taken in response to COVID-19 on the national rule of law environment

Impact of measures taken in response to COVID-19 on the national rule of law environment

Most significant impacts of measures taken in response to the COVID-19 outbreak on the rule of law and human rights protection

The Government took several measures to contain the pandemic, which affected the rights of citizens (e.g., restrictions in movement both inland and internationally, prohibition of social gatherings, closure of businesses and schools, mandatory wearing of face mask). In view of a 2nd wave of the pandemic, the most restrictive measures have recently been reintroduced.

We have received many complaints regarding the measures taken to combat the pandemic (between March 2020 and December 2020, we received 370 such complaints). Generally, the Institution's approach to these complaints is to assess as to whether the measures taken are: legally based, time-limited, proportionate and non-discriminatory. Furthermore, we give special emphasis to the protection of rights of people in situations of vulnerability.

Since what reported in the contribution on Cyprus to the 2020 ENNHRI Rule of Law Report, the Institution made the following additional Interventions:

- 1) Intervention, on 8/5/2020, regarding the protection of women's maternity rights, during the COVID-19 pandemic.
- 2) Intervention/Report, on 21/5/2020, regarding decision of the Ministry of Education to adopt different criteria for children with disabilities, for their return to school on 1/5/2020, after the easing of the COVID-19 measures.
- 3) Own Initiative Intervention of Commissioner for Administration and the Protection of Human Rights (Ombudsman), within the framework of her jurisdiction as National Preventive Mechanism (NPM), regarding measures in aged care facilities to deal with the spread of the COVID-19 pandemic and the post-COVID-19 era
- 4) Intervention/Report, on 24/8/2020, regarding the decision of the Ministry of Education that all pupils wear protective masks (including children ages 6-11).
- 5) Report, on 15/9/2021 regarding the measures taken for protection from COVID-19 at a Psychiatric Hospital (both for staff and the patients).

6) Report on 20/11/2021 regarding the granting of special permits to enter Cyprus, to people who are in long term relations with Cypriot citizens or permanent residents of Cyprus.

7) A new follow-up Report, on 9/12/2021, regarding the living conditions of Asylum Applicants in a Reception Center, including the measures or lack of measures taken to protect them from COVID-19.

8) Report, on 12/1/2021, regarding the COVID-19 measures taken for online education specifically for children with disabilities (autism) in elementary education.

More information on our Interventions, including a short summary in English, is included in a Publication that the Commissioner prepared in December 2020, titled "COVID-19 and Human Rights"(1).

The Institution is concerned that the COVID-19 pandemic will have negative implications on many people, even after the measures taken to address it are eased or lifted. We are mainly concerned on the long-term effects/implications that the pandemic will have on the people who belong to the most vulnerable groups of the society (e.g., unskilled workers, the elderly, minorities, migrants, persons with disabilities, Roma, detained persons), and, in particular, how it will affect their ability to enjoy equal access to basic social rights (such as employment, welfare support, healthcare (including timely vaccination against COVID-19) and education).

References

- [http://www.ombudsman.gov.cy/Ombudsman/ombudsman.nsf/All/039ECAB1E67D4984C225863F00347A1F/\\$file/COVID19%20AND%20HUMAN%20RIGHTS.pdf?OpenElement](http://www.ombudsman.gov.cy/Ombudsman/ombudsman.nsf/All/039ECAB1E67D4984C225863F00347A1F/$file/COVID19%20AND%20HUMAN%20RIGHTS.pdf?OpenElement)

Most important challenges due to COVID-19 for the NHRI's functioning

The most significant changes affecting the Institution's operations are related to the nationwide emergency measures implemented to respond to the COVID-19 Pandemic.

Regarding the impacts that the measures initially adopted to counter the pandemic (March-April 2020) had on the functioning of our NHRI, we refer to our contribution to the 2020 ENNHRI Rule of Law Report.

In relation to the most recent measures taken to address the second wave of the pandemic (that started in Autumn 2020), we would like to note the following:

- In November and December 2020 new emergency measures were implemented to contain the pandemic, which also affected the operation of public authorities. These measures included: the operation of departments/authorities (in rotation) with emergency personnel, the introduction of arrangements for staff to work remotely (from home) where possible, the provision – in view of the closure of schools – for staff with children under the age of 15 years to take a special leave and stay at home or work remotely if possible, the provision for staff with underlying health conditions to take special leave for public health reasons. Despite the above-mentioned measures, the functionality, operation and productivity of our Institute were not affected;
- In order to comply with these measures, our Institution had to implement organizational arrangements which affected our human resources capacity in dealing with our extensive mandate. Despite the above-mentioned measures, the functionality, operation and productivity of our Institute were not affected significantly. On the contrary, the productivity of our Institute was increased since as a NHRI we remained vigilant over any human rights concern or violation which may arise.
- In view of the lockdown measures, we restricted visits from the public to our premises, and urged the public to use alternative methods to submit a complaint (eg. using either electronic submission, by fax, via our website or by post).

We were able to carry out visits and inspections to different institutions/detention centers/sites, including in the framework of our competence as a National Preventive Mechanism. In fact, our institution not only has continued to carry out, but has increased the visits and inspections as NPM during the pandemic. During the reporting period, we carried out visits and inspections to the following places:

- Nicosia Central Prisons (9 visits)
- Paphos Police Station
- Aradippou Police Station
- Athalassa Psychiatric Hospital (2 visit)

- Temporary Holding Facility at Larnaca Airport
- Temporary Reception and Accommodation Center in Kokkinotrimithia “Pournara Camp” (2 visits)

The recent reinforcement in 2020 of our NHRI with the recruitment of four new Officers (which was mentioned above), was a positive development in our capacity to effectively fulfil our mandate, including in these challenging circumstances. Additionally, with the approval of three more posts (officers) by the State, a total of six more positions are about to be filled in 2021-2022.

Czech Republic

Public Defender of Rights

International accreditation status and SCA recommendations

The Public Defender of Rights of the Czech Republic is a non-accredited associate member of ENNHRI. The Defender can handle complaints, write legislative recommendations and conduct independent inquiries. Moreover, the Public Defender of Rights has received the mandate of Equality Body, National Monitoring Mechanism (NMM) under the UN CRPD, the National Preventive Mechanism (NPM) under the UN CAT, and monitor of forced returns (under the EU Return Directive).

ENNHRI has supported the steps taken by the Public Defender of Rights to strengthen its mandate in compliance with the UN Paris Principles and stands ready to assist the institution in applying for international accreditation.

A roundtable on NHRI accreditation took place in 2020 proving that there are many stakeholders who are prepared to support the establishment of the NHRI. The Government's Representative for Human Rights promised to present a legislative proposal concerning the NHRI in a reasonable future.

Impact of 2020 rule of law reporting

The Public Defender of Rights is not aware of follow-up actions or initiatives by state authorities, nor has taken any specific follow-up initiative based on the 2020 ENNHRI Rule of Law Report.

Independence and effectiveness of NHRIs

Changes in the regulatory framework applicable to the Institution

The regulatory framework applicable to the Public Defender of Rights has not changed since the last report.

Enabling space

The Public Defender of Rights' Annual Reports

The Annual Report 2019 has not yet been discussed by the Chamber of Deputies. Therefore, the legislative recommendations addressed to the Chamber of Deputies by the Defender have not been heard so far.

The Annual Report 2018 has been discussed in the Chamber of Deputies and the Chamber of Deputies asked the Government to express its opinion on the recommendations stated in it. However, the Government has not responded yet.

Developments relevant for the independent and effective fulfilment of the NHRIs' mandate

The Public Defender of Rights took part in the round table concerning the NHRI in the Czech Republic organised by the Government's Representative for Human Rights. In the discussions, the importance of the NHRI in the national context was acknowledged and concrete steps and options leading to the establishment of an NHRI in compliance with the Paris Principles in the Czech Republic were discussed. All stakeholders taking part in the meeting agreed on the importance of the NHRI's work in the national political environment.

Human rights defenders and civil society space

The Public Defender of Rights has good relations and cooperation with NGOs and the CRPD Department cooperates with the civil society on a regular basis, especially through the Advisory Body. The Public Defender of Rights does not however do general monitoring when it comes to the protection of HRDs and observation of their rights, unless it is a case that falls under its legal mandate.

Checks and balances

Limitations of participation of rightsholders

Participation rights in environmental matters

Public participation rights in environmental matters are set out especially in the Construction Code, and in the Act on the Protection of the Nature and the Countryside. However, there is a draft of the new Construction Code currently being discussed in the Chamber of Deputies which attempts to significantly restrict the above-mentioned participation rights. The Public Defender of Rights took part in the stakeholders' consultation prior the presentation of the draft legislation to the Chamber of Deputies and criticized this deficiency several times.

Moreover, the Constitutional Court of the Czech Republic announced a decision in the case Pl. ÚS 22/17 concerning public participation rights in environmental matters on 2nd February 2021. The constitutional complaint was filed by a group of Senators in 2017 seeking the abolishment of several provisions of the Construction Code and of the Act on the Protection of the Nature and the Countryside. According to their view, legal provisions in question undermined the public participation rights in environmental matters by excluding environmental associations from the participation in many important types of proceedings according to the Construction Code. The Public Defender of Rights intervened in the proceedings in support of the applicants.

The Constitutional Court decided that the provisions in question are not unconstitutional, and therefore remain in force. It argued that the participation rights of environmental associations have been narrowed, but not entirely erased from the Construction Code. It concluded that the restriction of participation rights was legitimate, rational, and not contrary to the international obligations of the Czech Republic (namely the Aarhus Convention). It is also important to mention that seven judges of the Plenary (consisting of 15 judges) presented their dissenting opinions in the case. The Public Defender of Rights considers the Constitutional Court's decision as a "step back" in relation to participation rights in environmental matters.

References

- <https://www.ochrance.cz/aktualne/tiskove-zpravy-2021/ani-po-nalezu-ustavniho-soudu-nejsou-spolky-ucastniky-rizeni-podle-stavebniho-zakona/>
- https://www.usoud.cz/fileadmin/user_upload/Tiskova_mluvci/Publikovane_nalezky/2021/Pl_US_22_17_na_web_vcetne_disentu.pdf

Functioning of justice systems

The only problematic issue the Public Defender of Rights is aware of in this regard are delays in court proceedings. This problem is of a long-term nature and it is mainly a result of the long-term overload of the courts.

More specifically, there are also long-term problems with delays in court proceedings in relation to the work of expert witnesses. The causes of delays are mainly twofold: either

there are not enough experts in the field who could prepare the expert opinion, or the experts have delays with submitting their expert opinions. In both cases, it has a negative influence on the length of the court proceedings.

The expert witnesses' agenda has newly been entrusted to the Ministry of Justice. The Public Defender of Rights cannot predict the further developments in this field and how this change will influence it, but it will further monitor this issue.

Impact of measures taken in response to COVID-19 on the national rule of law environment

Most significant impacts of measures taken in response to the COVID-19 outbreak on the rule of law and human rights protection

During 2020, we have registered several COVID-19 governmental measures which gave rise to doubts regarding their legality or proportionality, such as:

- General prohibition of visits in facilities of social services (i.e., homes for the elderly, children's houses), prohibition of leaving such facility;
- Prohibition of presence of fathers at childbirths, or prohibition of parental presence at hospitals with their ill or operated children;
- Prohibition of prison visits, then replaced by limitation to only one person (this meant that minor children could not visit their imprisoned parents as they could not be accompanied by an adult);
- Prohibition of access to the country for foreigners, even for purposes of reunion with their family or closest relatives;
- Strict requirements for persons who had to cross state borders on an everyday (or very frequent) basis due to their work, family relations etc. (the prescribed frequency of the regular testing of such persons on COVID-19 was considered particularly problematic);
- Access to education for pupils with disability in the light of the online learning;
- Closing of services for endangered families and children.

The Public Defender of Rights was dealing with all the above-mentioned issues. Most of the problematic measures have been fully or partially repealed (and sometimes replaced by less strict measures).

There have also been issues with involuntary hospitalisation and access to information during the pandemic as the following examples show.

The Public Defender of Rights has registered issues in judicial decision-making in cases of involuntary hospitalisation. Under normal circumstances, judges deciding these cases tend to personally visit the people in facilities. In some cases, this has not happened during the pandemic, and some judges issued decisions without personally seeing the person. Thus, the Public Defender of Rights intervened and discussed the issue with the Ministry of Justice and representatives of the judiciary.

The CRPD team has dealt with the issue of lacking access of people with audial disability to information about COVID-19. Since the beginning of the pandemic, the media outlets offered only limited possibilities of spreading information to people with audial impairment. This also turned out to be problematic in relation to passing information about testing and beginning of vaccination. The Public Defender of Rights has intervened in this regard and the television outlets are about to include the sign language.

It is already possible to estimate certain long-term consequences resulting from the COVID-19 pandemic. The Public Defender of Rights has registered growth and strengthening of domestic violence and general increase of social-pathologic phenomena in families. Families dealing with this type of violence may suffer its consequences for a rather long time.

Another issue is the low accessibility of supportive social services as it may be expected that in these exact areas the state funding might be limited, and the cuts may appear soon. In a larger scale, as a direct result of long-lasting isolation, we might experience general breakdown of personal or family ties, something we are already witnessing concerning imprisoned persons who have not had many possibilities of maintaining contact with their close persons.

Furthermore, the CRPD team has expressed concerns regarding the future employment situation of people with disabilities. The active policy of employment and general support of employment of people with disabilities may face cuts and may not be a priority for many stakeholders in upcoming times. Another of the concerns is the influence of long-distance education of children with disabilities: this type of education may be difficult for many of them, the support of such pupils is not emphasized, and hence, in the future, they may fall behind.

Also, the COVID-19 pandemic has highlighted and deepened the issues that were already present in the Czech society but neglected. The pandemic may increase the number of people falling into poverty, facing executions, losing their housing without any governmental support, or facing removal of children from families. Another challenge will be to maintain the quality and accessibility of the health care system which has been under serious pressure and is significantly underfunded.

The Public Defender of Rights has been vocal regarding the isolation of people in social service facilities and the legality of such measures. The Public Defender of Rights has insisted that visiting and leaving these facilities must be allowed under safe conditions which would combine exercising fundamental rights with complying with hygienic standards. Regarding prisons, the Public Defender of Rights demanded that prisoners may receive more than only one person for a visit, and that the prisons would implement more measures to compensate for the lack of visits (i.e., more phone calls, Skype calls).

Furthermore, the Public Defender of Rights expressed our concern regarding the approach of the education system towards children with disability and the support of their needs especially, during distance learning. Also, the Public Defender of Rights has investigated the issue of barrier-free access to places where testing or vaccination take place. In these mentioned areas, the Public Defender of Rights has initiated a dialogue with relevant stakeholders, organised closed meetings, raised practical recommendations and solutions, and released statements for media.

References

- <https://www.ochrance.cz/aktualne/tiskove-zpravy-2020/ombudsman-resi-omezeni-preshranicniho-pohybu-v-dusledku-epidemie/>
- <https://www.ochrance.cz/aktualne/tiskove-zpravy-2020/navstevy-v-zarizenich-pro-seniory-v-dobe-epidemie/>
- <https://www.ochrance.cz/aktualne/tiskove-zpravy-2020/lide-v-zarizenich-byli-v-dobe-pandemie-covid-19-nekdy-uplne-odriznuti-od-okoli/>
- <https://www.ochrance.cz/aktualne/tiskove-zpravy-2020/ve-veznicich-jsou-v-omezenem-rozsahu-opet-povoleny-navstevy/>
- <https://www.ochrance.cz/aktualne/tiskove-zpravy-2020/ani-v-soucasne-situaci-nemuze-nemocnice-pritomnost-rodicu-u-ditete-zcela-vyloucit/>
- <https://www.ochrance.cz/aktualne/situace-ve-veznicich-v-dobe-epidemie/>

Most important challenges due to COVID-19 for the NHRI's functioning

Most significantly, the pandemic has affected the NPM and its possibility to conduct regular visits of facilities where persons are deprived of liberty. During Spring 2020, the monitoring activity was stopped as such and no visits occurred.

Gradually, the monitoring visits were restarted, however, under strict conditions. They were not conducted unexpectedly; the facility was usually informed one day in advance in order to prepare the hygienic conditions. To reduce the risk of contagion, the NPM team has used protective suits and it has undertaken antigen and PCR testing regularly.

The pandemic has also influenced the selection of topics of the visits. It became more crucial than ever to focus on the contact with the outside world or conditions of further deprivation of liberty connected to COVID-19 (e.g., locking up patients in quarantine).

The pandemic has also affected on-site investigations. In Spring, on-site investigations were not possible to perform; during the second wave starting in Autumn, on-site investigations have been generally allowed but the Public Defender of Rights has performed them carefully and with full respect to organisational difficulties the public authorities the Defender has decided to visit have had to face. During the visits, all necessary safety measures are implemented.

As to the general functioning of the office, we have been facing the same difficulties as any other institution. The Public Defender of Rights has had to adapt to the home office regime (including finding suitable IT solutions), has also had to reduce the official office hours, and there is also an increased morbidity of the employees. Fortunately, these challenges have not paralyzed the functioning of the office and the Public Defender of Rights continues to perform our duties more or less as before.

References

- https://twitter.com/apt_geneva/status/1361411056321638404?s=04&fbclid=IwAR1DT1xpa2Dh-KUGx-VXMGRSdXPeIWDnIWYR4i-JLgDMUJH3L3A7eR-l2sQ

Denmark

Danish Institute for Human Rights

International accreditation status and SCA recommendations

The Danish NHRI was [re-accredited](#) with A status in October 2018. The SCA noted that the NHRI had taken steps to amend its bylaws to ensure a broad, transparent and uniform selection process. It encouraged the NHRI to continue to interpret its protection mandate in a broad manner and to conduct a range of actions, including monitoring, enquiring, investigating, and reporting. The SCA also encouraged the NHRI to provide greater precision in its bylaws or in another binding administrative guideline on the scope of the grounds of dismissal of members of the board of directors, to ensure security of tenure.

Impact of 2020 rule of law reporting

Follow-up by State authorities

The Danish Institute for Human Rights is not aware of any follow-up action by State authorities after the 2020 ENNHRI Rule of Law Report.

Impact on the Institution's work

The 2020 ENNHRI Rule of Law Report has helped give a fruitful overview of the rule of law situation in Europe, which the Danish Institute for Human Rights has benefitted from in several parts of our work, especially while doing desk research.

Follow-up initiatives by the Institution

While the Danish Institute for Human Rights has used the 2020 ENNHRI Rule of Law Report, as described above, it has not given us reason to initiate specific follow-up measures.

Independence and effectiveness of NHRIs

Changes in the regulatory framework applicable to the Institution

There have been no changes in the regulatory framework after the 2020 ENNHRI Rule of Law Report.

Enabling space

The Danish Institute for Human Rights works with legislative processes in Denmark and Greenland in various ways. Primarily by responding to public consultations on draft bills, including giving recommendations for alterations of the text etc. We also do research and analyses in various fields of human rights and equal treatment giving recommendations to, primarily, public authorities in order to enhance the protection and promotion of human rights.

It is our impression that, in general, state actors take recommendations from the Danish Institute for Human Rights into thorough consideration.

Developments relevant for the independent and effective fulfilment of the NHRIs' mandate

In May 2021 in a press interview (cf references), the Minister of Justice criticised the Executive Director of the Danish Institute for Human Rights, Ms. Louise Holck, for being inappropriately political. The reason was that Ms. Holck in April 2021 in a press interview (cf references), representing the Institute, voiced concern over a common direction of Danish legislation amendments in recent years restricting personal freedoms, even if these restrictions may not amount to human rights violations. Examples included initiatives increasing surveillance in public areas and the prohibition of demonstrations in certain areas. Ms. Holck expressed that the human rights discourse in Denmark should not be reduced to a question of minimum protection, that is where the one thing that matters is how limited a protection Denmark can provide without being held in violation of human rights by the European Court of Human Rights. The Minister of Justice expressed that, seeing that the Institute did not voice a risk of human rights violations as such, such a concern is a political assessment which Ms. Holck should reserve for her personal expressions, e.g. when voting.

Established by law and in accordance with the Paris Principles, the Danish Institute for Human Rights is an independent institution shall, among other tasks, give advice to government, parliament and other public authorities on human rights in order to protect and promote human rights. Among the duties of the Institute is to give advice on the developments in the human rights situation in Denmark. The Institute thus not only voices concern when a political initiative could be in direct violation of human rights, but also comments on and give recommendations in situations, where e.g. the level of protection or personal freedom is reduced, rather than increased.

References

- Daily newspaper, Politiken, "Justitsministeren anklager direktør for Institut for Menneskerettighederne for at agere politisk" ("The Minister of Justice accuses Executive Director of the Danish Institute for Human Rights for acting politically"), 16 may 2021, <https://politiken.dk/indland/art8201096/Justitsministeren-anklager-direkt%C3%B8r-for-Institut-for-Menneskerettighederne-for-at-agere-politisk> (may be behind pay wall)
- Daily newspaper Politiken, "Hård kritik: Regeringens kamp for tryghed truer vores frihed" ("Harsh criticism: The Government's fight for safety threatens our freedom"), 18 April 2021, <https://politiken.dk/nyheder/art8170239/H%C3%A5rd-kritik-Regeringens-kamp-for-tryghed-truer-vores-frihed> (may be behind paywall)

Human rights defenders and civil society space

1. The Danish Parliament has adopted an act aiming at safeguarding democracy by hindering natural or legal persons in impeding or attempting to undermine democracy and fundamental human rights and freedoms through donations. The act includes a public list of banned natural or legal persons, in particular foreign state authorities or state-controlled organisations or companies. A receiver of a donation from a natural or legal person on this list will be fined the equivalent of 30% of the donation.

The Danish Institute for Human Rights found the wording of what constitutes "undermining the democracy" to be (too) vague and open for interpretation. The Institute noted, among other things, the risk of the law being arbitrary and giving rise to legal uncertainty and recommended specifying on which grounds a natural or legal person can be included on the list of banned persons.

2. In a bill, the Danish Government suggests giving the police powers to forbid individuals to be present in a specific public place, i.e., a square, a part of a street etc. As a "safety-creating ban" the measure should keep an area safe from a group of persons which is likely to make residents or other persons in the area unsafe. The Danish Institute for Human Rights has found that there is a risk of arbitrariness in the enforcement of such a measure, seeing that the police is given a wide margin of appreciation and is not obligated to give a warning before a ban is issued.

3. The National Agency for Education and Quality (*Styrelsen for Undervisning og Kvalitet* (STUK)) has in the past years reinforced its supervision of independent private schools (*friskoler*) in Denmark. This has led to a withdrawing of government subsidies from several schools based on Islamic values and consequently the closure of seven schools. The Danish Parliamentary Ombudsman has by letter on 20 September 2020 raised the question as to whether STUK has breached the schools' right to be heard before the decision to withdraw and reimburse government subsidies and withdraw the status of the schools as a private school (*friskole*).

The Danish Institute for Human Rights cooperates with civil society organisations in order to promote human rights and to contribute to an inclusion of the views of civil society in different processes, e.g., in the preparation of international reporting and scrutiny under the UN Universal Periodic Review (UPR) or UN treaty bodies.

References

- Act no. 414 of 13 March 2021 on the prohibition of receiving donations from certain physical persons and legal entities (Lov om forbud mod modtagelse af donationer fra visse fysiske og juridiske personer) (in Danish): <https://www.retsinformation.dk/eli/lta/2021/414>
- The Danish Institute for Human Rights, public consultation response to draft bill on prohibition of receiving donations from certain physical persons and legal entities, 20 March 2020 (in Danish), <https://menneskeret.dk/hoerings svar/forbud-modtagelse-donationer-visse-fysiske-juridiske-personer>
- Bill L189 2020-21 on introducing the possibility of police ordering persons to stay away from public places (Forslag til lov om ændring af straffeloven, lov om politiets virksomhed, retsplejeloven og udlændingeloven (Forbud mod deltagelse i nattelivet, tryghedsskabende opholdsforbud, udvidet adgang til beslaglæggelse af værdigenstande og udvisning af udlændinge dømt for vanvidskørsel m.v.)), introduced to parliament 10 March 2021 (in Danish), <https://www.retsinformation.dk/eli/ft/202012L00189>

- The Danish Institute for Human Rights, public consultation response to draft bill introducing the possibility of police ordering persons to stay away from public places (forslag til lov om ændring af straffeloven, lov om politiets virksomhed og retsplejeloven (Tryghedsskabende opholdsforbud, forbud mod deltagelse i nattelivet og udvidet adgang til beslaglæggelse af værdigenstande)), 11 February 2021, <https://menneskeret.dk/hoeringssvar/tryghedsskabende-opholdsforbud-forbud-deltagelse-nattelivet-udvidet-adgang>
- Article in the Danish daily newspaper "Information": Several islamic schools have had their government subsidies withdrawn – the Danish Ombudsman goes into the matter ("Flere muslimske friskoler har fået frataget statstilskud – nu går Ombudsmanden ind i sagen"), 12 October 2020 (in Danish): <https://www.information.dk/indland/2020/10/flere-muslimske-friskoler-faaet-frataget-statstilskud-gaar-ombudsmanden-sagen>

Checks and balances

Laws affecting the system of checks and balances

1. Expedited legislative processes take place in the Danish Parliament a few times a year, whereby the parliament with $\frac{3}{4}$ of the votes can decide to make an exemption to the common rule in parliament that 30 days must pass between the presentation of a bill and the final vote on the same bill. For instance, two central acts changed the former epidemics act during March 2020. The first act basically shifted the powers of the act from the then regional Epidemic Commissions to the Minister of Health and introduced a range of new powers for the minister, including the possibility of forbidding events, assemblies etc., restricting public transport and regulating measures of contact tracing etc. This act was introduced and adopted the same day, meaning that three readings and committee work all took place on the 12 March 2020. The second act introduced extra measures and was introduced, considered and adopted between 26 and 31 March 2020.

2. As mentioned in the 2020 ENNHRI Rule of Law Report, examples of expedited legislative processes include some of the measures taken in response to the COVID-19-crisis, creating a legal basis for various increased executive powers, including restrictions on freedom of assembly, personal freedom, respect for personal and private life etc. In February 2021, a new permanent act on the handling of epidemic diseases was adopted by parliament,

whereby the temporary acts adopted through 2020 were repealed. The new act was considered under normal legislative procedure.

3. Among the features of the new epidemics act is that some measures initiated by the executive branch in the handling of an epidemic can be vetoed by a parliamentary committee, a procedure untraditional and uncommon in Danish legal tradition. However, the procedure aims at ensuring the democratic foundation of the introduction of certain restrictions for the general public during an epidemic including, inter alia, assemblies, access to schools, day care, libraries, shops and businesses, the visiting of care homes and hospitals, public transport, etc.

4. In November 2020, the Danish government decided to cull all mink in mink farms in Denmark, amounting to 12 to 15 million animals, due to threat of mink being the centre of new coronavirus mutations. The decision was carried through during November and December but caused outrage and the resigning of the cabinet minister responsible, when it turned out that it was doubtful if the decision, at the time it was taken, had sufficient legal basis.

Trust in state authorities

In general, the level of trust among citizens and between citizens and the authorities is very high in Denmark. Whereas the level of trust in the government's handling of COVID-19 was also generally high during 2020, the mink crisis during November and December, described above, resulted in widespread criticism.

NHRI engagement as part of the system of checks and balances

The Danish Institute for Human Rights participates in legislative and policy processes as described above. The Institute has been highly engaged in the process leading to the new Act on epidemics (described above). The institute has amongst other things participated in meetings with the minister of health and a number of members of parliament to discuss the balance of handling an epidemic while at the same time respecting human rights and the rule of law.

References

- Act on epidemics (Lov om epidemier m.v. (epidemiloven)), act no. 285 of 27 February 2021, in Danish, <https://www.retsinformation.dk/eli/lta/2021/285>
- Examples of expedited procedures: Act no. 208 of 17 March 2020, link to Danish Parliament's time schedule for the bill (L133/2019-20), <https://www.ft.dk/samling/20191/lovforslag/l133/index.htm>. Act no. 359 of 4 April 2020, link to Danish Parliament's time schedule (L158/2019-20), <https://www.ft.dk/samling/20191/lovforslag/l158/index.htm>
- COVID-19: All mink in Denmark must be culled, press release, Ministry of Food, Agriculture and Fisheries in Denmark, 5 November 2020, <https://en.fvm.dk/news/news/nyhed/covid-19-all-mink-in-denmark-must-be-culled/>
- Government's report to Danish parliament on the mink case, 18 November 2020, in Danish, <https://www.ft.dk/samling/20201/almdel/mof/bilag/130/index.htm>
- Excerpt of international news articles on the mink culling:
- BBC, 10 November 2020, <https://www.bbc.com/news/world-europe-54893287>
- Reuters, 17 November 2020, <https://www.reuters.com/article/health-coronavirus-denmark-mink/danish-government-finds-backing-for-mink-cull-law-idINL8N2I31O3>
- The Washington Post, 18 November 2020, <https://www.washingtonpost.com/world/2020/11/18/denmark-mink-cull-coronavirus-minister/>
- Our World in Data, Trust, <https://ourworldindata.org/trust> (last visited 5 March 2021)
- BBC, 19 October 2020, <http://www.bbc.com/travel/story/20201018-samfundssind-the-single-word-that-connects-denmark>

Functioning of justice systems

The Danish government is during 2020–22 conducting an analysis of the system of access to legal aid in Denmark. The Danish Institute for Human Rights was invited to participate in the working group which also consists of representatives from different parts of government, the judiciary, academia, and the Danish Consumer Council and with a reference group with, inter alia, the Danish Bar and Law Society. The working group shall

go through present legislation for legal aid and its linkages to private insurance and give recommendations for possible changes.

The Institute is intervening in cases before national courts and/or international courts, namely the European Court of Human Rights, when we assess that the case includes matters of principle concerning human rights or equal treatment and that the Institute can add value to the case in light of our resources available to make the intervention.

References

- The Ministry of Justice, in Danish, <https://www.justitsministeriet.dk/ministeriet/raad-naevn-og-udvalg/udvalg-om-retshjaelp-og-fri-proces/> (last visited 5 March 2020).

Impact of measures taken in response to COVID-19 on the national rule of law environment

Most significant impacts of measures taken in response to the COVID-19 outbreak on the rule of law and human rights protection

Please see the 2020 ENNHRI Rule of Law Report and the information provided above under the part on checks and balances.

As described above, The Danish Institute for Human Rights has given advice to the government and members of parliament – both in public consultation responses and in meetings – on human rights and rule of law protection during 2020, including during the considerations on a new epidemics act which was adopted in February 2020 and entered into force 1 March 2021.

Most important challenges due to COVID-19 for the NHRI's functioning

The Danish Institute for Human Rights is assisting the Danish Parliamentary Ombudsman in its duties as National Preventive Mechanism. During 2020 and 2021 many, if not most, of the inspections have been carried out by tele-conference, including interviews with persons deprived of their liberty and staff.

Estonia

Chancellor of Justice

International accreditation status and SCA recommendations

The Estonian NHRI was [accredited](#) with A-status in December 2020. The SCA welcomed the legislative changes from 2019 that allowed the Chancellor of Justice to act as the NHRI in Estonia. The SCA encouraged the NHRI to advocate for the formalization and application of clear, transparent and participatory process for the selection and appointment of the Chancellor of Justice. It also called on the NHRI to advocate for amendments to its enabling law to provide for limits to the term of office of the Chancellor of Justice.

Impact of 2020 rule of law reporting

Follow-up by State authorities

There has not been any direct follow-up action that could be traced back to the 2020 ENNHRI Rule of Law Report.

Impact on the Institution's work

The 2020 ENNHRI Rule of Law Report has not directly impacted the Chancellor's work.

Follow-up initiatives by the Institution

As part of the Chancellor's 2018/2019 Annual Report, the issues raised by the Chancellor in the 2020 ENNHRI Rule of Law Report had been, as usual, already presented to the Parliament, and the contributions disseminated widely.

Independence and effectiveness of NHRIs

Changes in the regulatory framework applicable to the Institution

The national regulatory framework has not changed since the 2020 ENNHRI Rule of Law Report.

Enabling space

The Chancellor of Justice is able to carry out the institutional mandate, as also explained and illustrated in the recent SCA report.

References

- <https://nhri.ohchr.org/EN/AboutUs/GANHRIAccreditation/Documents/SCA%20Report%20December%202020%20-%2024012021%20-%20En.pdf>.

Developments relevant for the independent and effective fulfilment of the NHRIs' mandate

COVID-19 related issues have increased the workload of the Chancellor of Justice but have not hindered the effective fulfilment of the institutional mandate. There was a foreseeable adjustment period – e.g., figuring out how to safely carry on with NPM inspection visits, how to continue in-person meetings with people who need to file an application etc.

The Chancellor wrote in the section "Chancellor's year in review" of the Annual Report 2019/2020:

"(...) For years, the complaint was heard that those at the head of the state often strive for goals with a view to the long-term gain of the nation, yet do not bother to explain clearly why something is done that does not seem either convenient or right at the time but will still be useful later. Now the situation is different: rational decisions are too often swept aside by perceptions of what voters might like at the moment. (...) The Chancellor's Office does not let itself be disturbed by this irrational confusion and will do its best to contribute to preserving the rule of law. This will be done within the limits of the Chancellor's mandate and powers, just as the Chancellors of Justice of the Republic of Estonia have done their work since 1993. Competently, swiftly, and as clearly as possible. If possible, by pre-empting problems and not picking up the pieces trying to be wise after the event."

The central task of the Chancellor of Justice – constitutional review – is supported by the Chancellor's roles as ombudsman, the Ombudsman for Children, national preventive mechanism against cruel treatment, supervisor of surveillance agencies, human rights institution, and promoter of the rights of people with disabilities. The Office of the Chancellor has not expanded but thanks to their professionalism and commitment, the staff was able to withstand the pressure and cope with new, unexpected duties while working remotely.

References

- <https://www.oiguskantsler.ee/annual-report-2020/chancellor-year-in-review>

Human rights defenders and civil society space

All public meetings were prohibited during the emergency situation. The Chancellor was asked repeatedly whether the prohibition on holding (political) rallies due to the emergency situation was indeed constitutional.

The freedom of assembly stipulated in § 47 of the Constitution may be restricted to prevent the spread of an infectious disease. The prohibition on public meetings was imposed with a view to protecting the life and health of people, by preventing physical assembly and movement. Even in the event of compliance with the 2 + 2 rule (up to two people can move together keeping a 2-meter distance, excluding families or if the rule cannot be reasonably ensured), the state has the right to prevent gatherings of crowds.

The Chancellor noted in her reply concerning the restriction of (political) rallies that during the emergency situation declared because of the epidemic, everyone's right under § 45 of the Constitution to freely disseminate ideas, opinions, beliefs and other information by word, print, picture or other means was not and could not be restricted. Freedom of expression is a basic principle of a democratic society. However, restriction of freedom of assembly does not necessarily excessively inhibit freedom of opinion and freedom of expression. It is possible to express one's views otherwise than through physical assembly. Not every form of expression of one's views in a public space (for example, distributing leaflets or carrying posters) can be considered a public meeting.

The general day-to-day human rights work of the Chancellor is, inter alia, geared towards making sure that the civic space is indeed defended, even though there are not any specific initiatives in that regard. The Chancellor reacts to restrictions and uses its mandate also to prevent disproportionate restrictions.

References

- <https://www.oiguskantsler.ee/annual-report-2020/rule-of-law-in-an-emergency-situation#p9>
- <https://www.oiguskantsler.ee/annual-report-2020/rule-of-law-in-an-emergency-situation>

Checks and balances

The Estonian National Electoral Committee (NEC) analysed legal, technical and budgetary aspects in view of a referendum planned for October 2021 and local elections. A memorandum to this effect was sent to the Minister of Finance and several Riigikogu (Estonian Parliament) committees. The NEC also analysed all the proposals made by the committee set up by the Minister of Economic Affairs and Communications to remedy the alleged shortcomings in the organisation of online voting in elections in Estonia.

References

- <https://www.oiguskantsler.ee/annual-report-2020/the-rule-of-law#p5>

Functioning of justice systems

The following are examples from the Annual Report 2019/2020:

The Chancellor receives many complaints about the justice system. The reason of the complaints is mostly discontent and disagreement with court judgments. Under the Constitution, courts are independent, and the Chancellor does not intervene in the substantive work of administration of justice. The Chancellor initiates disciplinary proceedings if a judge behaves disreputably or fails to fulfil their duties of office. Every year there are also cases where the Chancellor examines the work of judges more specifically in order to decide whether to initiate disciplinary proceedings against a judge. During the reporting period, there were 15 such cases.

The Chancellor also analysed conformity with the Constitution of the provisions of the current statutes of the courts' information system and whether there exists a conflict between the Courts Act and the procedural codes. The Chancellor found no conflict between the Courts Act and the procedural codes. However, a conflict with the Courts Act and the Constitution exists in the case of those provisions of the statutes of the courts' information system which entitle the Ministry of Justice to request judges to amend information in the system and lay down supervisory competence of the Ministry over the judges in using the information system. To ensure compliance with the requirements, the Chancellor made a [proposal](#) to the Minister of Justice to amend the statutes of the information system of the courts.

The Chancellor also had the opportunity to deal with a complaint concerning court fees and access to justice. In particular, a petitioner asked the Chancellor to verify whether the requirement to pay a security guarantee of 3000 EUR for an appeal in cassation filed with the Supreme Court was constitutional. The Chancellor found that the amount in question, whose payment was imposed in connection with a claim amounting to 300 000 EUR, was not to be regarded as per se disproportionate. However, the Chancellor pointed out that, if paying that sum proves to be burdensome in the case at hand, the party should have the possibility to request legal aid to pay the security guarantee.

References

- <https://www.oiguskantsler.ee/annual-report-2020/the-rule-of-law>

Media pluralism and freedom of expression

The Chancellor has drawn attention to media and privacy in its Annual Report. It has done so also during the state of emergency.

The Chancellor was contacted in connection with publication of health data in the media. Unless an individual agrees to disclosure of their data, disclosure of their health data in the media is [normally prohibited](#). An exception is laid down in § 4 of the [Personal Data Protection Act](#), when certain criteria are fulfilled. The media channel must be convinced that three main criteria are fulfilled simultaneously: public interest exists for disclosure of the data of the particular person; principles of journalism ethics are observed in disclosure;

and disclosure of personal data does not cause excessive damage to the rights of the data subject.

The [Estonian Code of Journalism Ethics](#) lays down that data and opinions about the health (both mental and physical health) of specific individuals shall not be disclosed. As an exception, the Code sets out cases when disclosing data is allowed; if a person consents to disclosure of their data or if disclosure of their data is required by the public interest. To disclose such data, it is not merely sufficient that the public is in principle interested in a particular topic (e.g., spread of the coronavirus). Disclosure of personal data must contribute to the debate on an important public issue, not merely to satisfy people's natural curiosity or serve the economic interests of a media publication.

The [Chancellor of Justice was persistently against](#) the disclosure of data of infected persons. The Health Board was asked for information about infected persons, which was due to a natural and understandable fear of the virus. For example, people enquired who was infected and where that person lived. Stigmatising infected people does not in any way help to combat the coronavirus since it would encourage people to hide their symptoms. Disclosure of such sensitive health data is unequivocally prohibited.

References

- <https://www.oiguskantsler.ee/annual-report-2020/protection-of-privacy#p1>
- <https://www.oiguskantsler.ee/annual-report-2020/rule-of-law-in-an-emergency-situation#p3>

Corruption

To highlight one example from anti-corruption activities:

In September 2019, the Chancellor made a [proposal](#) to the Riigikogu to bring the [Local Government Organisation Act](#) into conformity with the Constitution insofar as it did not allow a contractual employee of an administrative agency of the same rural municipality, town or city to be a municipal council member. The Riigikogu did not support this proposal so the [Chancellor submitted an application to the Supreme Court](#). In April 2020, the Supreme Court satisfied the [Chancellor's application](#) and declared invalid a part of the sentence containing the words "or working in an administrative agency of the same rural

municipality, town or city on the basis of an employment contract” in § 18(1) clause 6 of the Local Government Organisation Act. The court postponed the entry into force of the judgment by six months, to enable the Riigikogu to review the restrictions on the municipal council members as a whole. The court emphasised that “regulation should take into account the principle of equal treatment of local authority employees. A conflict between the interests of the mandate and of the place of employment as well as public and private interests may arise not only for employees of a local government administrative agency but also for employees of an agency administered by a local authority’s administrative agency”. The principle of equal treatment requires, inter alia, that the Riigikogu should give a clear and reasoned answer to the question whether a conflict of interest of contractual employees of a rural municipality, town or city administrative agency elected to a municipal council is more severe than a conflict of interest of heads and deputies of an agency administered by a local authority’s administrative agency elected to a municipal council. To regulate the issue, on 11 June 2020 the Riigikogu Constitutional Committee initiated a Draft Act ([212 SE](#)) amending the Local Government Organisation Act.

References

- <https://www.oiguskantsler.ee/annual-report-2020/the-rule-of-law#p3>

Impact of measures taken in response to COVID-19 on the national rule of law environment

Most significant impacts of measures taken in response to the COVID-19 outbreak on the rule of law and human rights protection

The Annual Report of the Chancellor includes a full summary in English on the impacts and measures taken in response to the COVID-19 pandemic.

Although there is currently no state of emergency, some of these issues are still relevant since there are pandemic-related restrictions in place (from schools being closed to limitations in health care). Also electing the Board of the Riigikogu and organising municipal council sessions were affected by the pandemic.

During the emergency situation, the Estonian National Electoral Committee (NEC) had to offer flexible solutions to members of the Riigikogu for the regular election of the Board of

the Riigikogu. To accommodate the necessary precautions, six voting places were set up in the Riigikogu, enabling members of parliament to make their choice in compliance with all the requirements of social distancing. The Chancellor had supported this solution being of the opinion that those members of the Riigikogu who feel sick or are considered as posing a risk of infection should still be entitled to participate in the elections of the Board.

During the emergency situation, many municipal councils held their sessions over the internet. The lack of familiarity with digital technologies sometimes caused problems, and one such complaint was also heard in July by the NEC. The NEC had to decide whether a member of Peipsiääre Rural Municipal Council could be deemed to have been absent from three consecutive municipal council sessions or not, and whether the alleged absence was sufficiently proved in order to suspend the mandate of the particular municipal council member. The Committee reached the conclusion that the member had actually not participated in the work of the municipal council during three consecutive months and dismissed the complaint.

The COVID-19 outbreak is still ongoing, which makes it hard to make a reliable assessment of the long-term implications on education, health (especially mental health) etc. However, some of these themes will be addressed in our Annual Report 2020/2021 that will be published in September 2021.

References

- <https://www.oiguskantsler.ee/annual-report-2020/rule-of-law-in-an-emergency-situation>

Most important challenges due to COVID-19 for the NHRI's functioning

Despite the increased workload, the Chancellor of Justice has been able to carry out its mandate. The Office has been using online meetings (for example the advisory bodies of the Chancellor have been meeting via Internet) and telework. Inspection visits have been carried out with extra safety measures – such as testing and rigorous use of personal protective equipment.

Finland

Finnish NHRI (Human Rights Centre and its Delegation and Parliamentary Ombudsman)

International accreditation status and SCA recommendations

The Human Rights Centre (HRC) and its Human Rights Delegation form the Finnish NHRI, together with the Parliamentary Ombudsman. All three institutions have their own statutory tasks and mandates. The HRC's legal mandate is to monitor and promote fundamental and human rights and to engage international and European human rights cooperation. The Parliamentary Ombudsman has a mandate based on the Finnish constitution to supervise the legality of actions by all public authorities and those performing public tasks. It includes fundamental and human rights compliance. The Ombudsman is one of the key institutions for checks and balances in Finland as a supreme guardian of legality together with the Chancellor of Justice.

In October 2019, the Finnish NHRI was [re-accredited](#) with A status. While the SCA understands that the government bill establishing three components as the NHRI (the Human Rights Centre, Parliamentary Ombudsman and Human Rights Delegation) is a source of law in Finland, it encourages the FNHRI to continue to advocate for legislative amendments to further clarify this. The SCA encouraged the NHRI to continue to advocate for the funding necessary to ensure that it can effectively carry out its mandates. The SCA considers it preferable for the Human Rights Centre to also have the ability to table its reports in Parliament for discussion, as is the case for the reports of the Parliamentary Ombudsman. The HRC submits its annual report to the parliamentary committees, but not to the plenary for discussion. The HRC's annual report has been discussed in the Constitutional Law Committee.

Impact of 2020 rule of law reporting

Follow-up by State authorities

Since the reports of ENNHRI and the European Commission were published in May and September 2020 respectively, discussions on the rule of law principle in Finland have focused mostly on the EU level and on questions related to the EU rule of law mechanism and the recovery package.

The follow up actions taken by the state authorities are not directly related to the European Commission's report as most observations of the report are included in the Government's program, such as enacting an openness register in relation to lobbying and taking measures in order to counter targeting and harassment. The progress of the program is tracked openly at the Government's website.

References

- Progress of the Government's program: <https://valtioneuvosto.fi/marinin-hallitus/hallitusohjelma-seuranta/toimintasuunnitelma>

Impact on the Institution's work

The Parliamentary Ombudsman is consulted directly by the European Commission for its report and therefore the contribution to ENNHRI's report by the HRC does not include the Parliamentary Ombudsman.

The HRC has been working on the rule of law issues already before ENNHRI's first joint rule of law reporting in 2020. The European Commission rule of law report, with its focus on prevention, is a useful new tool and has helped us develop our work. The focus of the HRC is on the functioning of the rule of law principle and institutions, on the checks and balances and legislative processes and on monitoring and reporting on fundamental and human rights. The monitoring of the rule of law has broadened the HRC's focus, and new contacts have been made in Finland as a result for example with the justice system and constitutional lawyers.

In the HRC's Action Plan 2021, the focus on the rule of law has strengthened. Activities include monitoring, research, promotional and educational activities and awareness raising. The HRC continues to work with and support ENNHRI's rule of law reporting, capacity building and cooperation activities. In addition, the HRC engages directly with European rule of law and human rights institutions and mechanisms.

Follow-up initiatives by the Institution

The HRC and its Human Rights Delegation held a workshop on the rule of law and the impact of COVID-19 on fundamental and human rights in September 2020 and a report with recommendations addressed to the government was published in January 2021. It was

widely distributed to the Government ministers and authorities and political decision makers and communicated through social media channels.

References

- The impact of the coronavirus pandemic on the implementation of fundamental rights and human rights – recommendations of the Human Rights Delegation <https://www.humanrightscentre.fi/?x170869=1015738>

Independence and effectiveness of NHRIs

Changes in the regulatory framework applicable to the Institution

The amendment of the Act on the division of labour between the two supreme guardians of legality, i.e., the Parliamentary Ombudsman and the Chancellor of Justice, was already included in the first Rule of Law report. The Government bill has now been finalized after an open consultation at the end of 2020. It is scheduled to be given to the Parliament during spring 2021. The new Act touches also upon the HRC as the tasks given to the Parliamentary Ombudsman based on international conventions are reflected in the new Act on the division of labour. The Finnish NHRI was given a joint task based on CRPD 33.2, when UN CRPD was ratified in Finland in 2016.

The Act on the division of labour between the two supreme guardians of legality is important both in practice and in principle as they are the pillars of the independent human rights structure in Finland. Following this major reform, it would be time to assess the other independent human rights structures and the system as a whole. The HRC has been advocating for such an assessment to be carried out by the Ministry of Justice to complement the study done by the Ministry in 2015. The assessment should include at least all the special ombudsmen and the Finnish NHRI and aim at streamlining the competencies, simplifying the structures and strengthening the actors and fundamental and human rights in Finland.

The HRC notes with concern the current plans of the Government to set up new human rights actors with overlapping mandates with the already existing human rights institutions.

The new Ombudsman for the rights of older persons will be set up as an independent function but in connection with the Non-Discrimination Ombudsman, which already has a

mandate on age discrimination. In 2019 the Finnish NHRI was given significant additional resources by the Parliament to strengthen the protection and promotion of the rights of older persons. It is regrettable that despite consultations and statements by the HRC, the tasks given by law to the new Ombudsman are identical with the statutory tasks of the HRC. It would be preferable to strengthen the Non-Discrimination Ombudsman's activities and resources as regards age discrimination rather than duplicate the tasks of the HRC.

A new position of a Rapporteur on violence against women is proposed to be legislated as an additional task for the Non-Discrimination Ombudsman. This proposed draft law has drawn strong criticism from a broad range of actors in a recent consultation on the draft law. The draft was generally considered poorly justified and not in line with the Istanbul Convention's strong grounding on gender equality. The more logical place for such a new task would be within the Office of the Equality Ombudsman dealing with gender equality or the HRC (the Finnish NHRI) mandated to monitor and report on human rights.

The HRC has pointed out repeatedly that existing independent human rights actors that already have relevant mandates to protect and promote human rights should be strengthened rather than new ones being created.

References

- Statement of the HRC on the division of labour of the Supreme guardians of legality (in Finnish) <https://www.ihmisoikeuskeskus.fi/?x5822114=10048067>
- The impact of the coronavirus pandemic on the implementation of fundamental rights and human rights – recommendations of the Human Rights Delegation <https://www.humanrightscentre.fi/?x170869=1015738>
- Statement of the HRC on the ombudsman for elderly (in Finnish) <https://www.ihmisoikeuskeskus.fi/?x5822114=10037341>
- Statement of the HRC on the rapporteur on violence against women (in Finnish) <https://www.ihmisoikeuskeskus.fi/?x5822114=10255437>

Enabling space

The Finnish NHRI is able to work independently and effectively. It is completely independent from the government or any other state actors.

The environment is generally enabling in Finland, but the fragmented and complicated human rights structures are not conducive to effective work as limited resources are spread thin and coordination requires time and resources. Lack of coordination may lead to unnecessary duplication and weakened impact. The fundamental and human rights protection system that guarantees the rights of all people gets lost in the maze of thematic and group-based mandates.

Developments relevant for the independent and effective fulfilment of the NHRIs' mandate

The overall environment in which the institution operates has not changed. The parliamentary context provides good access to political decision-making and legislative processes and ensures total independence from the government.

But like in many other European countries, attacks on rule of law principles, fundamental and human rights and those who defend these norms and values have increased also in Finland. Another disturbing factor making the environment less favourable is the increasing spreading of disinformation, which has become more visible during the pandemic. It is of growing concern also in Finland that human rights and rule of law principles are questioned by some segments of the society and that the role of democratic institutions is undermined by some political actors. If the trend continues and gains more strength in the future, it could lead to a deterioration of the rule of law and human rights situation also in Finland.

The HRC has increased its human rights and rule of law monitoring capacity in general in order to provide reliable and comprehensive information on how human rights are realized in Finland. The goal is to have a monitoring system in place in 2021.

Targeted advocacy, strategic cooperation with civil society and other human rights actors, direct engagement with key state authorities and politicians as well as effective communication activities are other means and ways to increase its impact. The HRC is constantly striving to develop its own work and is looking for synergies and cooperation in particular with the Parliamentary Ombudsman.

Human rights defenders and civil society space

Some of the challenges have been described above in the previous response relating to the environment where the institution operates and later in the response to the questions on media. These are common challenges to actors defending human rights, gender

equality, violence against women, minorities, LGBTI etc. In our assessment, what started as attacks on specific human rights issues has spread more generally to all human rights and rule of law issues. Anti-gender movement is clearly gaining ground also in Finland.

The HRC cooperates with and supports civil society organisations defending fundamental and human rights. The Human Rights Delegation, the pluralistic and cooperative body that is part of the Finnish NHRI includes also NGOs and human rights defenders.

Checks and balances

Constitutional review

The Constitution of Finland guarantees the rule of law and human rights, also according to the Venice Commission. The strength of the Finnish Constitution's checks and balances is its pluralism. The Finnish system relies primarily on the ex-ante constitutionality review by the Parliament's Constitutional Law Committee. The system is generally considered to function well. There is little support for the establishment of a constitutional court in Finland.

The Finnish courts do not have the right to generally and in abstract assess if a law conflicts with the Constitution. However, section 106 of the Constitution stipulates that courts should refrain from applying the provision of the law in a concrete case if it is *evidently* in conflict with the Constitution. The ex-post monitoring of the constitutionality by the courts has been limited to relatively few cases in the last decade. Some of the cases have been significant and have been a reason for legislative amendments. There is support by the majority of constitutional lawyers and practitioners for the lowering of the threshold for the courts by removing the "evidently" criteria in section 106, although there are also views to the opposite. One of the arguments in favour of removing the "evident" criteria is that courts in Finland already must give priority to the EU law and international human rights treaties and that the threshold should be the same for the Constitution. The HRC has done research on this question and has published a study in JunM 2021.

Trust in state authorities

Generally, the Finnish public administration is transparent and open, and the principle of legality is respected. The level of trust in state authorities is fairly high, although issues such as (alleged) political appointments to high level positions are met with criticism. There are low threshold complaints mechanisms in place, such as the Parliamentary Ombudsman, which are important channels for citizens to get their concerns addressed. The

recommendations made by the Parliamentary Ombudsman based on complaints received are generally complied with by the public authorities.

NHRI's engagement as part of the system of checks and balances

The Parliamentary Ombudsman is one of the key institutions for the checks and balances in Finland. Their information is submitted directly to the European Commission for their report.

The independent monitoring and reporting on fundamental and human rights by the HRC as well as its other activities, such as human rights education, training and awareness raising have an increasing role in the system of checks and balances in general, but in particular in prevention with its strong focus on promotion.

The HRC has received some more staff and funds in the last few years, but as described earlier, monitoring of human rights suffers from lack of sufficient resources.

References

- Venice Commission's statement: [https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD\(2008\)010-e](https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2008)010-e)
- A project funded by the HRC and the Ministry of Justice at the University of Helsinki supports the development of education for democratic citizenship and human rights education in teacher training: <https://www.helsinki.fi/en/projects/human-rights-democracy-values-and-dialogue-in-education/background>
- The Constitution of Finland: <https://www.finlex.fi/fi/laki/kaannokset/1999/en19990731>
- See the tasks of the Non-Discrimination Ombudsman: <https://syrijinta.fi/en/tackling-discrimination-and-promoting-equality1>
- See a review of the Non-discrimination Act (in Finnish): <http://urn.fi/URN:ISBN:978-952-287-959-2>
- Publication of HRC on the primacy of the Constitution (Section 106 of the Constitution) (in Finnish) <https://www.ihmisoikeuskeskus.fi/uutiset/julkaisutiedote-selvitys-perustusla/>

Functioning of justice systems

The HRC is promoting access to justice by conducting surveys and research, by its educational activities and with its focus on the rights of older persons and persons with disabilities. Generally, the justice system functions well, but access to the courts can be hindered by the high costs and court fees especially in civil cases.

Media pluralism and freedom of expression

According to World Press Freedom Index 2020, the legal, institutional and structural basis for free media and free journalism in Finland remained intact throughout the year 2019. There is not yet data available for the year 2020, but overall, the situation has remained relatively similar.

Nonetheless, hate speech, different type of harassment and targeting of journalists have recently been a threat against media freedom in Finland. Moreover, the economic situation of media has worsened mainly because of COVID-19 and its impact on economy in Finland: commercial media organisations have seen a decline of at least a third and possibly up to 50 % in advertising, with print and local newspapers and local radio suffering the most. Over half of all newspapers have laid off employees, and a handful of local papers have also suspended publication altogether during the crisis. (Media for Democracy Monitor 2020)

The findings of a recent study (Hiltunen 2021) suggest that the hybridization of the media environment has intensified the external interference and pressure journalists encounter in their work in Finland. Several interviewees reported experiences of coordinated interference by groups and networks fitting this description and promoting, for example, anti-vaccination, anti-immigration or pro-Russia views. This interference included verbal abuse, verbal threats, orchestrated public defamation and discrediting, and various forms of harassment. These groups utilized social media and other online platforms to publicly fan collective aggression toward journalists. Political populism was often explicitly identified as the main catalyst for polarization, creating divisions and explicitly inciting mistrust against journalism as an institution. Polarization was manifested by an increasingly aggressive public discourse and hostile attitudes toward journalism and journalists. The Union of Journalists in Finland (UFJ) has stated that there is an urgent need to pay more attention to the growing external interference and pressure journalists are facing in Finland. On the positive side, the UFJ has noticed that inappropriate conduct and criticism towards journalists by leading politicians has diminished during the term of this government.

According to different studies, especially female journalists experience gender-based hate speech and harassment. The Finnish government has recently proposed that gender should be aggravating factor for the punishment. The government proposal to amend the Criminal Code of Finland was circulated for comments in the fall 2020, and e.g., the UFJ supported the proposal in its statement.

The Council for Mass Media (CMM) in Finland is a self-regulating committee established by publishers and journalists in the field of mass communication for the purpose of interpreting good professional practice and defending the freedom of speech and publication. The CMM's mandate is considered quite strong because it includes all forms of media and the council's decisions are usually published without exception. However, the CMM has also faced some external interference and pressure as its independence and impartiality has been questioned, and journalists, in turn, are threatened with a complaint to the council. In 2020, 15 % of all complaints received by the council was concerned with news on COVID-19. The number of the complaints increased by a third in 2020.

Finnish legislation does not set additional transparency requirements for media companies. Most media companies operating in Finland are by choice open about their ownership, but according to the study commissioned by the Ministry of Transport and Communications (2020), as much as a quarter of media websites surveyed did not provide information on their ownership. In addition, only four out of 134 media websites had clearly and openly expressed their editorial ethics and corrective practices.

Regarding media pluralism and ownership, few companies dominate each media sector in Finland: in the TV broadcast sector, the four largest companies hold 92 percent of the audience and 97 percent of revenues; the four largest companies in the radio market hold 80 percent and 92 percent; and the four largest companies in the newspaper market hold 59 percent (audience) and 64 percent (revenue). (Media Pluralism Monitor 2020)

The HRC considers monitoring and reporting of the media environment to be very important in protecting the right to information and the functioning of democracy. For the time being, the situation of media is relatively good and stable in Finland so there has not been any urgent need for actions to promote a free and pluralist media environment.

References

- Reporters without borders: Finland: <https://rsf.org/en/finland>
- Media for Democracy Monitor 2020: <http://euromediagroup.org/mdm/policybrief01.pdf>
- Hiltunen, Ilmari (2021) External Interference in a Hybrid Media environment. Manuscript in process.
- Inquiry to the Union of Journalists in Finland (UFJ) 24 February 2021.
- Inquiry to the Council for Mass Media in Finland (CMM) 25 February 2021.
- Project to add gender among the motives that constitute grounds for increasing the punishment as specified in the Criminal Code <https://valtioneuvosto.fi/hanke?tunnus=OM024:00/2019>
- Statement of UFJ on amending the Criminal Code: https://api.hankeikkuna.fi/asiakirjat/54a5998d-2eb6-4a91-9f22-a429e66254a8/9b062d3a-7f69-45c2-81f1-6c4e28838e80/LAUSUNTO_20201005115738.PDF
- Media and Communication Policy Monitoring report 2019: <https://julkaisut.valtioneuvosto.fi/handle/10024/162144>
- Media Pluralism Monitor 2020: <https://cmpf.eui.eu/mpm2020-results/>

Corruption

The HRC does not work on corruption as such. The Parliamentary Ombudsman has a mandate to supervise the legality of actions of all public authorities.

Impact of measures taken in response to COVID-19 on the national rule of law environment

Most significant impacts of measures taken in response to the COVID-19 outbreak on the rule of law and human rights protection

The Finnish rule of law mechanisms have coped well during the state of emergency and the pandemic in general. However, the stringent mechanisms for checks and balances that

exist in Finland have been criticized at times due to their strict interpretation of constitutional rights and permissible restrictions. This has deemed to be an obstacle to effective legislative responses to the pandemic by some politicians.

There have been recurring problems with the quality of draft laws submitted to the Parliament by the Government.

The principle of legality has sometimes been overlooked during the pandemic. Rules on competences have not always been followed. Political decisions have been used on matters that according to the law are under the authorities' decision-making powers. Many measures had to be taken quickly in the spring 2020, but in the rush, they were not always based on law and procedural rights were often forgotten. It was not always clear whether the measures were recommendations or binding regulations. Based on such recommendations, for example the housing units for older persons and persons with disabilities put in place categorical visiting bans without proper legal basis thus violating the rights of the residents.

The numbers of complaints made both to the Ombudsman and the Chancellor of Justice and their own initiatives have risen sharply. It is of concern that no on-site inspections have been carried to any closed institution by the Ombudsman for almost a year. However, alternative methods have been developed and some inspections have been carried out remotely.

The crisis preparedness and capacity of fundamental and human rights actors needs to be strengthened. Guidelines issued by intergovernmental organisations and their monitoring bodies could be better utilized in this regard.

The HRC is monitoring the impacts of the pandemic, also long term, and the HRD has issued a report with recommendations to the Government in January 2021.

Recommendations made by the HRC and its Human Rights Delegation in a recent report:

- The coronavirus pandemic has highlighted problems with the legislation and law drafting, access to information and competence questions, which will need special attention in future.
- The crisis preparedness of the supreme guardians of legality, other overseers of legality, as well as fundamental and human rights actors, must be further strengthened and developed.

- The Finnish NHRI needs to be strengthened so that it has the means to carry out its statutory tasks, especially monitoring human rights, also in a state of emergency.

In addition to the rule of law, we focused our monitoring and reporting on the impact of the pandemic and the measures taken on the rights of elderly persons and persons with disabilities, the rights of children and young people and on violence against women and domestic violence. Our findings confirmed that people who were already in a vulnerable position have found themselves in an even more difficult situation due to the COVID-19.

More detailed information on the impact on fundamental and human rights of vulnerable people and is included in the report.

Finally, we also recommended that a comprehensive human rights assessment on the impact of the pandemic should be initiated by the Government. It should focus in particular on the situation of vulnerable groups.

References

- The impact of the coronavirus pandemic on the implementation of fundamental rights and human rights – recommendations of the Human Rights Delegation <https://www.humanrightscentre.fi/?x170869=1015738>
- Statistics on complaints concerning the state of emergency received by the Parliamentary Ombudsman (in Finnish): <https://www.oikeusasiamies.fi/fi/poikkeusoloihin-liittyvien-kanteluiden-tilastotiedot>
- Press release: Koronakantelut työllistävät oikeuskansleria (Complaints related to coronavirus employ the Chancellor of Justice): <https://www.okv.fi/fi/tiedotteet-ja-puheenvuorot/545/koronakantelut-tyollistavat-oikeuskansleria/>
- CPT's statement of principles relating to the coronavirus pandemic: <https://www.coe.int/en/web/cpt/-/covid-19-council-of-europe-anti-torture-committee-issues-statement-of-principles-relating-to-the-treatment-of-persons-deprived-of-their-liberty->
- See the summary of the guidelines of human rights bodies from the HRC's COVID-19 theme site: <https://www.humanrightscentre.fi/covid-19/>

Most important challenges due to COVID-19 for the NHRI's functioning

The HRC has been able to fulfil its mandate and perform its work despite the pandemic. Remote working has been the most concrete impact of the pandemic to the HRC. Obviously, it has not been as easy to reach out to people and to receive visitors as in normal times.

The Parliamentary Ombudsman, which is also the Finnish National Preventive Mechanism under the UN OPCAT, has not been able to carry out inspections, but has developed alternative methods for remote inspections and is preparing for on-site inspections to start in June as the situation has improved in Finland.

Other relevant developments or issues having an impact on the national rule of law environment

Awareness, information and education about human rights

Promoting human rights education is an important part of creating better awareness and access to rights. It is also one of the main tasks of the HRC.

According to section 22 of the Constitution, public authorities must ensure the implementation of fundamental rights and human rights, but many authorities have insufficient resources for this task. Especially at the municipal level, which is responsible for the implementation of many key rights and services, it is difficult to carry out statutory tasks.

Knowledge and expertise in fundamental and human rights is needed especially in exceptional circumstances such as the coronavirus pandemic. Gaps in knowledge and awareness of rights in Finland has been identified by the HRC. More needs to be done on human rights education at every level of education.

The implementation of rights is not monitored systematically enough, not by the authorities or by the independent human rights actors. The annual reports of the Parliamentary Ombudsman and the Chancellor of Justice provide the Parliament with their observations on the status of implementation of fundamental and human rights. Others, such as special ombudsmen, research institutes and authorities also produce reports with information on issues they are mandated to deal with. However, information on human rights is scattered to many different sources and is not comprehensive. There is no systemic follow up. The HRC is tasked by law with monitoring and reporting but it has not been

given the resources to do it comprehensively yet, although monitoring and follow-up have been increased.

The following recommendations were included in the report by the HRC and its Human Rights Delegation in January 2021:

- Training in fundamental and human rights must be increased, especially for authorities, also at the local level.
- Teaching fundamental and human rights at all levels of education must be strengthened. Teacher training must include fundamental and human rights education as a mandatory subject.
- Human rights monitoring in Finland must be further developed and necessary human resources given. The Government's third National Action Plan on Fundamental and Human Rights will be finalised in June 2021. Its aim is to improve the monitoring of fundamental and human rights and to develop an indicator framework for the use of the government. Monitoring by independent human rights bodies needs to be strengthened as well.
- The HRC collects information on fundamental and human rights and publishes up-to-date reports on the implementation of rights. But it does not have the resources to do it comprehensively. The HRC's systematic and independent monitoring work must be further strengthened.
- The structure and competences of fundamental and human rights actors must be clarified, and existing actors strengthened. The competences must be clear and easy to understand for those in need of protection. When new actors or functions are set up, they must be placed so that the overall system does not weaken and fragment further, and without creating duplicate activities.
- The basic tasks of the Non-Discrimination Ombudsman, promoting equality and tackling discrimination, must be strengthened.

References

- The impact of the coronavirus pandemic on the implementation of fundamental rights and human rights – recommendations of the Human Rights Delegation <https://www.humanrightscentre.fi/?x170869=1015738>

France

French National Consultative Commission on Human Rights (CNCDH)

International accreditation status and SCA recommendations

The French NHRI was re-accredited with A status in March 2019. The SCA noted that the extension of the NHRI's mandate was not supported by the provision of a sufficient level of funding. Also, the SCA underlined the need for a clear limit to the members' term of mandate and an explicit broad protection mandate in the law. In this regard, the SCA welcomed the CNCDH's efforts in carrying out its protection mandate in practice. Finally, the SCA encouraged the NHRI to continue strengthening its cooperation with other national bodies.

Human rights defenders and civil society space

Two new bills currently being debated in France raise serious concerns in view of their potential impact on civil society space.

A draft legislation known as the "**Global Security law**" (1), adopted in November 2020 by the National Assembly, was the object of a heated debate and criticized as providing a worrying basis for a securitarian State. The CNCDH drew attention (2) to some of the measures' severe impacts on fundamental rights and democratic values, in particular as regards the ban on disseminating images allowing the identification of law enforcement officers, which could lead to infringements of freedom of information (art. 24), and rules allowing for a widespread use of drones which opens up unprecedented surveillance prospects, especially during demonstrations (art. 22).

French civil society massively mobilised against the draft law, gathering in protests all over the country in late 2020 and early 2021. Protests eventually prompted the authorities to review some of the most controversial articles. In the meantime, the Council of State however banned the use of drones during demonstrations in Paris, as the practice has no satisfactory legal basis for now (3). The law n° 2021-646 *pour une sécurité globale préservant les libertés* (global security preserving freedoms) was promulgated on 25 May 2020, without the controversial article 24 censored by the Constitutional Council (4).

Another draft bill "to strengthen respect for Republican principles", also known as the **anti-separatism law** (5), was announced by President Macron in October 2020 and has now been approved by the National Assembly and Senate, waiting for final approval in June

2021. The draft law was first presented in December 2020 to respond to threats of fundamentalism, and has since been heavily criticized by various civil society actors (CSOs, academics, lawyers) as affecting essential components of civic space and seriously endangering freedom of assembly. The CNCDH published an opinion in this sense (6) while the Council of State has, on its side, noted in December that parts of the draft law raised sensitive questions of constitutional conformity (7).

The two legislative initiatives mentioned above are, in addition to their controversial content and impacts, following a fast-track procedure.

Apart from those problematic bills, other concerning trends impacting on civic space and human rights defenders were observed over the past year. The French authorities have for instance **targeted several CSOs allegedly opposing the 'Republican order' or linked to radical Islamism**. Civil society actors notably expressed concern at the dissolution (by decree) of the Collective Against Islamophobia in France (8), which was a member of the European Network Against Racism. This has led to some support from civil society and anti-discrimination associations. Muslim organisations have been in general regularly the target of attacks by extreme right and other mainstream political forces.

References

- (1) https://www.assemblee-nationale.fr/dyn/15/dossiers/securite_globale1
- (2) CNCDH, Avis sur la proposition de loi relative à la sécurité globale - 26.11.2020 <https://www.cncdh.fr/fr/actualite/avis-sur-la-proposition-de-loi-relative-la-securite-globale>
- (3) <https://www.laquadrature.net/wp-content/uploads/sites/8/2020/12/4461551PR1.pdf>
- (4) <https://www.legifrance.gouv.fr/jorf/id/JORFTEXT000043530276/>
- (5) <https://www.dalloz-actualite.fr/flash/projet-de-loi-confortant-respect-des-principes-de-republique>
- (6) CNCDH, Avis sur le projet de loi confortant le respect des Principes de la République – 04.02.2021 <https://www.cncdh.fr/fr/actualite/avis-sur-le-projet-de-loi-confortant-le-respect-des-principes-de-la-republique>

- (7) <https://www.conseil-etat.fr/ressources/avis-aux-pouvoirs-publics/derniers-avis-publies/avis-sur-un-projet-de-loi-confortant-le-respect-par-tous-des-principes-de-la-republique>
- (8) <https://www.ldh-france.org/dissolution-politique-du-ccif/>

Checks and balances

The draft “**Global Security law**” referred to in the previous section provided dangerously extended powers to police forces. In addition to the problematic measures mentioned above, the draft text transfers some judicial police powers to municipal police officers, on subjects as sensitive as the use of narcotics. Moreover, the vague manner in which some of its provisions are written (e.g. on drones use) amplify the risks (1).

The CNCDH expressed concern over the fact that the measures provided for in this draft legislation will further deteriorate the relationship between the police and French citizens. Yet for years France has already been part of the bottom third of European Union states with regard to the **lack of confidence expressed by the population in its police** (2). The CNCDH issued over 20 recommendations to the authorities to address these matters, through structural reforms of the police system.

Another issue raised by many actors, including the CNCDH, relates to the **lack of sufficient consultation in the legislative processes**. This is partly due to the COVID-19 crisis and the state of emergency (more detailed in the dedicated section below), however it cannot entirely be linked to or justified by this special context.

As mentioned above, the two very controversial draft laws are being passed via a fast-track procedure. While these texts touch upon major fundamental freedoms and rights, they could not be debated according to high criteria of transparency and democracy required by the respect of the rule of law, which represents a very worrying trend in a country governed by the rule of law.

In the same vein, the CNCDH expressed concern over the current reform of juvenile criminal justice (adoption of a criminal code for minors), without any meaningful prior debate with the relevant actors (3). Instead, the government decided to pass the legislation by executive order through an accelerated procedure.

References

- (1) CNCDH, Avis sur la proposition de loi relative à la sécurité globale (A - 2020 - 16)
- (2) CNCDH, Avis sur les rapports entre police et population : Rétablir la confiance entre la police et la population <https://www.cncdh.fr/fr/publications/avis-sur-les-rapports-entre-police-et-population-retablir-la-confiance-entre-la-police>
- (3) <https://www.cncdh.fr/fr/publications/justice-penale-des-mineurs-la-cncdh-sinquiete-dune-reforme-sans-debat-prealable>

Functioning of justice systems

The **reform of juvenile criminal justice** mentioned above is also problematic as to its content. Indeed, while the CNCDH agrees with the updating of the legal basis for juvenile justice, the institution expressed serious concerns as to how the reform addresses the issue (1). The CNCDH has stressed, in particular, that the priority for the justice system must be that of protecting any child, including children who are criminal offenders, and has called for the reform to be integrally reviewed in that sense, including by: prioritising education over repression; setting up a specialised jurisdiction and justice system to deal with minors; introducing mandatory diminution of liability between 16 and 18 years, and a minimum age for criminal liability; as well as providing all necessary resources, human and financial, to support this transition.

Another area of concern regards the **security measures for those convicted of acts of terrorism**, which the CNCDH exposed as yet another demonstration of the state's current security-focused drift (2). Several parliamentarians recently made legislative proposals to create a specific security regime for those specific convicts. The CNCDH strongly denounced this text and the logic behind it, feeding on the French population's fear of terrorism to override respect for constitutional values and human rights.

The French justice system was moreover heavily **impacted in general by the current COVID-19 crisis**, as further developed in the dedicated section below.

References

- (1) <https://www.cncdh.fr/fr/publications/les-droits-fondamentaux-et-linteret-superieur-de-lenfant-les-grands-oublies-de-la>
- (2) https://www.cncdh.fr/sites/default/files/200623_cp_ppl_terro.pdf

Media pluralism and freedom of expression

The terrorist assassination of history professor Samuel Paty in October 2020 (following his lesson on freedom of expression, using the Charlie Hebdo's subversive cartoons of Muslim prophet Mahomet) had very important repercussions in a French society strongly attached to freedom of expression. This terrorist act was firmly condemned by French authorities. However, some civil society actors pointed out **France's own poor record regarding freedom of expression** (1), for instance stressing the numerous convictions for "contempt of public officials", a vaguely defined criminal offence. The European Court of Human Rights also ruled in June 2020 that France's criminal conviction of activists campaigning to boycott Israeli products violated their freedom of expression (2).

Several journalists raised their voices (3) after some were **denied access to sensitive sites by the police**, for instance while they were attempting to cover the eviction of refugees and migrants from an encampment. The French Council of State validated the police decision for a case that occurred in December 2020 (4). The CNCDH addressed that issue in February 2021 report (5), recommending inter alia that 'external observation by citizens or journalists not be hindered during camp evacuation operation' (cf para 19 of the report).

References

- (1) Amnesty <https://www.amnesty.org/en/latest/news/2020/11/france-is-not-the-free-speech-champion-it-says-it-is/>
- (2) <https://www.reuters.com/article/us-france-israel-court-idUSKBN2311CQ>
- (3) https://www.lemonde.fr/idees/article/2021/01/26/il-est-urgent-de-garantir-la-liberte-citoyenne-d-informer-et-etre-informe_6067689_3232.html

- (4) https://www.coe.int/fr/web/media-freedom/detail-alert?p_p_id=sojdashboard_WAR_coesoportlet&p_p_lifecycle=2&p_p_cacheability=cacheLevelPage&p_p_col_id=column-4&p_p_col_pos=2&p_p_col_count=3&_sojdashboard_WAR_coesoportlet_alertPK=90282251&_sojdashboard_WAR_coesoportlet_cmd=get_pdf_one
- (5) CNCDH, Opinion on the situation of exiled persons in Calais and Grande-Synthe “ – 11.02.2021 Para n°21 recommendation n°5 https://www.cncdh.fr/sites/default/files/a_-_2021_-_3_-_en_-_situation_of_exiled_persons_in_calais_and_grande-synthe_febr_2021.pdf

Corruption

France was ranked 23 out of 180 countries in Transparency International 2020 Corruption Index, which is the same as in 2019. A few elements can however be evoked.

Transparency International highlighted France's adoption of a **new provision for returning stolen assets and proceeds of crime**, recognising “a step forward with room for improvement” (1). The new provisions create a restitution mechanism, by which illicitly acquired assets (with proceeds of corruption or embezzled public funds) that were confiscated by the French justice system, will be returned “as close as possible to the population of the foreign State concerned” to finance “cooperation and development actions”.

In September 2020, the French National Assembly adopted an opinion on the **transposition the EU Whistleblowers Directive** (2), that will have to be effective by the end of 2021. The CNCDH issued several recommendations to the legislator in this context, in order to ensure a strengthened protection for whistleblowers in France (3).

References

- (1) <https://www.transparency.org/en/press/france-adopts-new-provision-for-returning-stolen-assets-and-proceeds-of-crime-a-step-forward-with-room-for-improvement>
- (2) <https://www.legifrance.gouv.fr/jorf/id/JORFTEXT000042393830>
- (3) https://www.cncdh.fr/sites/default/files/avis_2020_-_11_-_avis_transposition_directive_lanceurs_dalerte.pdf

Impact of measures taken in response to COVID-19 on the national rule of law environment

Most significant impacts of measures taken in response to the COVID-19 outbreak on the rule of law and human rights protection

Both the health crisis caused by COVID-19 pandemic and the French governmental response to it had massive and diverse impacts on human rights and the rule of law in the past year.

The CNCDH issued a Report specifically on **state of emergency and rule of law** (1), stressing three main areas of concerns, needing to be closely assessed: the need and proportionality of the state of health emergency; the modification of the traditional balance of powers; and the weakened oversight system. Indeed the past year has seen a totally modified division of powers, which is a major component of the rule of law. Through the state of emergency, the executive has considerably extended powers, with a decreased parliamentary oversight and democratic consultation. A high number of regulations, often undermining basic rights and liberties, have been adopted through fast-track processes, at the initiatives of different ministries. The CNCDH expressed concern over the extent of these new powers, even more so after a law passed in March 2020, allowing the Government, as long as the State of Emergency will be in place (i.e at least until 1st June 2021), to legislate by order on very wide areas, likely to touch upon rights and freedoms.

The CNCDH also alerted on the worrying **impact of the current situation of the functioning of the justice system** (2). Most pressing concerns in that regard relate firstly to the breach of the continuity of public service, due to: access to a judge restricted to

cases deemed "essential"; non-respect of the rights of the defendant; problems related to protection of minors at risk ('assistance éducative'); extension of pre-trial detention; and poor enforcement of sentences. Secondly, concerns pertain to the risk of normalising the state of health emergency into the common procedural law.

The CNCDH monitored the adoption and application of COVID-19 related measures and their impacts on specific groups of the French population. To this purpose, the institution set up in March 2020 an Observatory of the state of health emergency and lockdown. The Observatory raises concern about threats to fundamental rights and freedoms, and provides recommendations to address problematic measures or practices. The Observatory issued documents focused on **specific groups or issues particularly affected by the crisis** (3): child protection, housing, people in poverty, access to healthcare, workers' protection, continuity of access to healthcare, right to education.

The CNCDH also issued various statements and opinions during the past year, alerting or advising on security-focused and liberty-threatening drifts (4).

References

- (1) https://www.cncdh.fr/sites/default/files/avis_2020_-_2_-_200424_avis_etat_durgence_sanitaire_et_etat_de_droit.pdf
- (2) https://www.cncdh.fr/sites/default/files/avis_2020_-_4_-_200424_avis_urgence_fonctionnement_justice.pdf
- (3) Communiqué de presse de lancement
- Lettre parue le 6 avril 2020 #1
- Lettre #2, parue le 15 avril 2020 - la protection de l'enfance
- Lettre #3, parue le 21 avril 2020 - le logement
- Lettre #4, parue le 24 avril 2020 - les personnes en situation de pauvreté
- Lettre #5, parue le 6 mai 2020 - l'accès aux soins
- Lettre #6, parue le 6 mai 2020 - protection des travailleurs
- Lettre #7, parue le 14 mai 2020 - continuité pour l'accès aux soins
- Lettre #8, parue le 4 juin - le droit à l'éducation

- (4) CNCDH opinions related to COVID-19 impacts:
 - Avis "Etat d'urgence sanitaire et Etat de droit", 28 avril 2020
 - Avis sur le suivi numérique des personnes, 28 avril 2020
 - Avis "Une autre urgence : rétablir le fonctionnement normal de la justice au plus vite", 28 avril 2020
 - Avis "Etat d'urgence sanitaire : le droit à l'éducation à l'aune de la Covid-19", 26 mai 2020
 - Avis "Prorogation de l'état d'urgence sanitaire et Libertés", 26 mai 2020
 - Déclaration relative au projet de loi organisant la sortie de l'état d'urgence sanitaire, 23 juin 2020
 - Déclaration sur l'état d'urgence sanitaire, novembre 2020
 - Déclaration sur les droits fondamentaux des travailleurs pendant l'état d'urgence sanitaire (D - 2021 - 1)

Georgia

Public Defender (Ombudsman) of Georgia

International accreditation status and SCA recommendations

The Georgian NHRI was [reaccredited](#) with A status in October 2018. The SCA encouraged the NHRI to continue to advocate for amendments for a more transparent and broader selection and appoint process of the Public Defender. It also raised the need for the NHRI to be provided with sufficient funding to carry out its multiple mandates effectively.

Impact of 2020 rule of law reporting

Follow-up by State authorities

The Public Defender of Georgia notes with concern that there has been no significant progress made by the authorities to address problematic issues reported in the 2020 ENNHRI rule of law report. Unfortunately, as provided below, important challenges remain in place in terms of efficiency of justice system and rule of law in general.

Impact on the Institution's work

For the work of the Public Defender's Office (PDO) of Georgia the issues addressed in the 2020 ENNHRI rule of law report have been a priority for years. Voicing the issues in the ENNHRI reports represents another important opportunity to bring them to the attention of regional and international actors working on advancing the rule of law and democracy across the region.

Follow-up initiatives by the Institution

The PDO has been following up the developments with regards to the issues addressed in the 2020 report by different types of activities that fall within its mandate. In particular, with regards to the issue addressed in the media pluralism section, namely the attempt to change the critical editorial policy of Adjara TV in June 2020, the Public Defender submitted an amicus curiae brief to the Batumi City Court regarding the rules of conduct in the internet/social networks approved by the Director of Adjara TV in April 2020, separate provisions of which allow for disproportionate restrictions on freedom of expression of persons employed by the Broadcaster. Later in August 2020, the Public Defender of Georgia completed the examination of cases of alleged violation of the rights of four more employees of Adjara TV and found that they had been dismissed or moved to another

position in violation of the requirements of the Labour Code of Georgia and the internal labour regulations of Adjara TV. The Public Defender of Georgia recommended the Director of the Adjara Broadcaster to annul the orders on the dismissal and change of positions of the employees and to ensure the restoration of their labour rights. However, the PDO's recommendation was not fulfilled by the Adjara Broadcaster. In addition, in October 2020, the Public Defender of Georgia addressed the Prosecutor General of Georgia with a proposal to launch an investigation into the alleged persecution of the employees of the Public Broadcaster Adjara Television and Radio.

It is also noteworthy that on September 30, 2020, the Parliament adopted new amendments to the procedure for selecting judges of the Supreme Court. The Public Defender submitted a written proposal to the Parliament on the amendments pointing out three main gaps in the draft law:

- 1) the introduction of an insufficient standard of reasoning;
- 2) maintenance of secret ballot;
- 3) the restriction of appeals against the decision of the High Council of Justice.

The last two remarks were not taken into consideration by the Parliament. On September 22, 2020, the Parliament of Georgia sent the draft law to the Venice Commission for its revision, however on September 30, it passed the law without waiting for the conclusion of the Venice Commission.

References

- Proposal on Launch of Investigation into Alleged Offence against Employees of Adjara TV - Available at: <https://bit.ly/37zFekC>
- Public Defender Finds Violation of Rights of Four More Former and Current Employees of Adjara TV - Available at: <https://bit.ly/3kb71wG>

Independence and effectiveness of the NHRI

Enabling space

In 2020, the Public Defender of Georgia published a special report in which she raised attention to the fact that the management model of semi-open establishments was based

on informal hierarchy of prisoners, where the so-called "prison watchers" provide fictitious orders, aiming to silence prisoners and prevent them from talking about problems they are facing within the institutions.

The publication of this report was followed by public attacks on the Public Defender and illegal actions by the Minister of Justice and the Penitentiary Service. In particular, the Minister of Justice tried to discredit the Public Defender and the entire institution by circulating videos of a confidential meeting between authorised representatives of the Public Defender and prisoners in the cell at the sitting of the Parliamentary Human Rights and Civil Integration Committee. This incident was shortly followed by the illegal public disclosure of the details of the Public Defender's meeting with inmates by the Special Penitentiary Service/Ministry of Justice. As a result of which, it has become not only difficult but also dangerous for the representatives of the Public Defender's Office to carry out visits and monitoring at the penitentiary establishments. Recently, a group of prisoners managed by the administration of the establishments and the so-called "prison watchers" have been systematically targeting representatives of the Public Defender's Office with verbal attacks, threats and aggressions. This has been hampering PDO's communication with prisoners and monitoring of the prison area.

Given the fact that representatives of the Public Defender, during their visits to prisons, face real threats from "informal governors" supported by prison administrations, the Public Defender is considering the possibility of conducting preventive monitoring visits only under additional security measures, which would naturally impede the protection of prisoners' rights effectively. Naturally, the Office will continue to hold individual meetings with prisoners.

This is the result of the influence of the so-called criminal subculture - the management model of semi-open establishments based on informal hierarchy of prisoners, where the so-called "prison watchers" provide fictitious order, aiming at silencing prisoners and preventing them from talking about their problems. Consequently the number of complaints received from semi-open penitentiary facilities decreases year by year.

The Public Defender's Office encountered repeated obstacles in terms of monitoring the licensed boarding school of Ninotsminda, where minors are virtually isolated from the society and where previous monitoring exposed cases of punishment and violence against children. Representatives of the Public Defender paid multiple visits to the school however, despite the temporary measure taken by the UN Committee on the Rights of the Child, they were still not allowed to conduct monitoring.

References

- Public Defender's Special Statement on Situation in Penitentiary Establishments. Available at: <https://bit.ly/3p0M1cJ>
- Public Defender Refused Again to Monitor Ninotsminda Children's Boarding School - <https://bit.ly/2SHFg5K>
- Public Defender Welcomes the Call of the UN Committee on the Rights of the Child to the State to Ensure Inspection of the Situation of Children's Rights at Ninotsminda Boarding School - <https://bit.ly/3cValte>
- Public Defender's Statement on Ninotsminda Children's Boarding School - <https://bit.ly/3xDIrv6>

Human rights defenders and civil society space

The monitoring carried out by the Public Defender revealed worrying trends of attacks on human rights defenders. As noted in ENNHRI 2020 Rule of Law report, the unacceptable practice of high officials' statements aimed at discrediting representatives of organisations working on issues that are critical for democratic development, is of particular concern. Several of such episodes were registered over the past year, too.

The Public Defender considers that the measures taken at the national level to ensure the protection of human rights defenders remain insufficient. Unfortunately, law enforcement agencies do not take adequate precautionary measures to prevent attacks on organisations defending the rights of LGBT+ persons. The situation is complicated by the fact that the legislation does not define the concept of human rights defenders, which creates a number of problems in terms of fully identifying offences committed against them, maintaining the relevant statistics and, as a result, addressing the challenges identified in this field.

Initiatives taken by the Public Defender's Office

On October 8, 2020, the Public Defender's Office of Georgia organised an online meeting on the theme: "Human Rights Defenders and the Challenges Faced by Them". Public Defender Nino Lomjaria, Deputy Prosecutor General, Deputy Minister of Internal Affairs, Chairman of the Board of the Tbilisi Human Rights House, as well as representatives of state agencies and non-governmental organisations, took part in the event.

First Deputy Public Defender presented a "Guide to Working on Issues relating to Human Rights Defenders", which explains the concept of a human rights defender. In particular, the Public Defender of Georgia, in accordance with established international practices and standards, defines a human rights defender as any person, regardless of professional or other status, who acts independently or together with others, through peaceful means, to protect, realize and promote human rights at national or international level and recognizes the universality of human rights for everyone. The guide also outlines the efforts of the Public Defender's Office to strengthen the protection of human rights defenders and the effectiveness of their activities.

During this reporting period PDO also issued a statement on International Human Rights Defender's Day and disseminated infographics containing relevant provisions of the UN Declaration on Human Rights Defenders.

It is important to note that recently, with support of one of the active CSOs operating in the country, the PDO submitted amicus curiae brief to the Supreme Court of Georgia and provided the Court with comprehensive information and analysis on the challenges and general situation with regards to the human rights defenders in Georgia.

References

- Public Defender's Statement on International Human Rights Defender's Day - <https://bit.ly/3unj52r>
- Online Meeting on Human Rights Defenders and Challenges Faced by Them. Available at: <https://bit.ly/304CGGR>
- Public Defender's Statement in connection with International Human Rights Day. Available at: <https://bit.ly/3k5mDBR>

Checks and balances

Several claims were submitted before the Constitutional Court of Georgia from NGOs and citizens related to the pandemic. The court rejected to examine one of the claims on its merits concerning the ban on freedom of movement during curfew, since the argued norm was no longer in force. In another constitutional claim the claimants argued that the Parliament of Georgia violated the legal principles of delegation by delegating power to

the government on the basis of the disputed norms, which fail to meet the formal legality. Based on the delegated authority, the executive power is given the opportunity to impose quarantine-like restrictions on persons in Georgia through de facto quarantine measures. However, the court did not uphold this claim and deemed the delegation was in conformity with the constitution. In the same claim the Constitutional Court partly upheld the motions set by the claimants in regard with the content of the restriction of labour rights and declared the relevant normative content of the Law on Public Health unconstitutional, while it rejected the claims regarding the other disputed norms, including the free movement of persons.

It should be also noted that during the state of emergency declared due to the global pandemic, normative restrictions were imposed on access to public information, namely that the issuance of public information was suspended. The Public Defender noted with concern that no special rule was developed for proactive publication of public information by public institutions, which could have somewhat balanced the restrictive measures.

Another major challenge in 2020 was to hold parliamentary elections in a fair and equal environment. The Public Defender of Georgia considers that violent incidents, as well as the use of administrative resources, control of the will of voters, pressure and attacks on observers and media representatives on the election day, and the processes of counting the votes and summarizing the results were problematic during the 31 October elections. Unfortunately, most of the complaints filed by stakeholders to the election administrations and courts relating to substantial irregularities and imbalances in the summary protocols have not been considered or granted, which deepened public distrust and protest.

The shortcomings identified during the October elections created a political crisis in the country. The situation was further aggravated by the severe epidemiological situation and the economic crisis created by the pandemic. Consequently, it is important to conduct negotiations with all election entities and agree on a political solution in order to carry out important reforms and strengthen independent and democratic institutions.

NHRI's role in checks and balances

On May 21, 2020, the Public Defender of Georgia submitted opinions to the Parliament of Georgia relating to the draft amendments to the Law of Georgia on Public Health and the Criminal Procedure Code of Georgia in the context of COVID-19 pandemic. Having observed that while introducing certain restrictions for the protection of human life and health during the pandemic, certain constitutional standards were not reflected in the draft amendments in question, the Public Defender submitted recommendations to the

Parliament of Georgia relating to the criteria and standards that should have been considered in order to make sure that the restrictions were constitutional and legitimate. In a written opinion, the Public Defender also emphasized the importance of judicial control. The PDO further noted that it is important that the procedure of decision-making relating to isolation and quarantine measures be clear, that the remedies of placed persons be strengthened and that an effective appeal mechanism be introduced. At the same time, the Public Defender highlighted that given that the draft amendments granted special powers to the Government, it was important for the legislator to provide appropriate guarantees for the administration of effective justice in case of interference with human rights by the executive government (by introducing shortened hearing terms). It is noteworthy that the Parliament of Georgia has taken into account some of the opinions of the Public Defender relating to the amendments to the Law on Public Health. The PDO is actively engaged in the Committee of Ministers' supervision of the execution of European Court of Human Rights (ECtHR) judgments by means of Rule 9.2 communications. In 2020, the PDO submitted 4 communications in the following cases: Merabishvili v. Georgia; Tsintsabadze group v. Georgia; N.TS. and others v. Georgia and Amiridze v. Georgia.

The PDO has not encountered any obstacles in terms of participation in legislative and policy processes, litigation and/or interventions before courts, cooperation with regional actors, etc.

References

- Public Defender's Statement in connection with International Human Rights Day. Available at: <https://bit.ly/3k5mDBR>
- Public Defender's Opinions relating to Draft Law on Public Health. Available at: <https://bit.ly/3azd0s1>
- Public Defender Responds to Draft Amendments Pending Second Reading. Available at: <https://bit.ly/3u7eyB8>

Functioning of the justice system

As in previous years, in 2020 the Public Defender's Office identified a number of systemic or individual violations of human rights, which proves that there are still a number of problems in the administration of justice and in terms of respecting the right to a fair trial.

In addition, during the reporting period there were specific facts of violation of certain rights, cases of protracted justice, serious delays in sending complaints to higher instances, shortcomings in the review process of administrative violations, etc.

Cases were identified pointing to several problems including the impartiality of the court, disregard for the principles of equality of arms and adversarial proceedings, lack of objective evidence, etc.

With the aim to eliminate systemic shortcomings the Public Defender's Office responded to the indicated facts within its mandate, appealed to the courts and provided amicus curiae briefs both to the Common and the Constitutional Courts, also issued recommendations in its special reports.

In 2020, the PDO in collaboration with the NGO Initiative for the Rehabilitation of Vulnerable Groups published a special report on the protection of procedural rights of juvenile defendants, witnesses and victims in criminal justice. Monitoring of hearings revealed a number of important problematic issues.

Unfortunately, the legal framework for the appointment of judges to the Supreme Court in Georgia remains problematic, as it fails to guarantee the selection of qualified judges and, on the other hand, conflicts with human rights, including the right to hold the public office. On July 30, 2020, the Constitutional Court of Georgia rejected the constitutional claims of the Public Defender of Georgia, which concerned the rule on the selection of Supreme Court judicial candidates by the High Council of Justice for the submission to the Parliament of Georgia. The PDO considers it extremely alarming that the Constitutional Court did not consider the claims constitutional and did not repeal the norm that allows incompetent and dishonest judges to be nominated as judicial candidates of the Supreme Court to the Parliament of Georgia against the constitutional requirements. In November 2020, the Public Defender of Georgia requested the OSCE Office for Democratic Institutions and Human Rights (ODIHR) to monitor the selection of candidates for 10 judicial vacancies in the Supreme Court of Georgia. Given the importance of the issue, the OSCE/ODIHR expressed its readiness to monitor the selection of judges and to assess the process in accordance with international standards. In addition, the Public Defender of Georgia submitted a third-party intervention before the Grand Chamber of the ECtHR in the case *Gudmundur Andri Ástráðsson v. Iceland*. The case concerns the applicant's allegation that the new Icelandic Court of Appeal which upheld his conviction was not established by law, having regard to irregularities in the appointment of one of the judges sitting on the bench. It should be noted that the Court shared the position of the Public Defender of Georgia and stated that the case is important not only for the parties, but also

for all member states of the Council of Europe. In addition, in 2020, four amicus curiae briefs were submitted by the Department of Criminal Justice of the PDO. Three of them were sent to Common Courts of Georgia. The amicus curiae brief was submitted to the Constitutional Court of Georgia on the lawsuit of Nikanor Melia v. Parliament of Georgia.

References

- Public Defender's Statement on the Decision of the Constitutional Court of Georgia of 30 July 2020. Available at: <https://bit.ly/3k4I5Xz>
- OSCE/ODIHR to Monitor Selection of Supreme Court judges at Public Defender's Request. Available: <https://bit.ly/3bnCmbh>
- Special Report of the Public Defender of Georgia Protection of procedural rights of juvenile defendants, witnesses and victims in criminal justice. Available at: <https://bit.ly/2ZJbTzC>

Media pluralism and freedom of expression

During the reporting year, the Public Defender actively monitored media freedom in the country and the assessments made by authoritative international organisations in this regard. Media environment in the country remains pluralistic, though quite polarized. The country's position in the Press Freedom Index was also maintained unchanged, according to which Georgia ranks 60th among 180 countries. During 2020, Reporters Without Borders repeatedly raised attention to the deteriorating environment for journalists and episodes affecting freedom and independence of media in Georgia, including the dismissal of journalists from the public broadcaster Adjara TV, as well as allegations of attacks to media during the election campaign. The NGO also highlighted the gradual increase in the powers of the National Communications Commission to oversight and censorship, and negatively assessed Mediacritic.ge, a platform launched in December 2019. Human Rights Watch also focused on attempts to restrict media freedom in the wake of developments during the reporting period. The Public Defender's Office became aware of a number of possible criminal acts against journalists and media outlets, including illegal interference and assault on members of the media, threats, robberies, and violations of the secrecy of telephone conversations. During the reporting year, information was spread about the threats made by the government against Avtandil Tsereteli, the father of the founder of TV

Pirveli, a TV company critical towards the government, and the demand to change the editorial policy of the broadcaster. The claim is still under investigation, although the specific persons in the case does not have status of victim or accused. Moreover, the incidents involving obstructing journalists' professional activities covering current events from the demonstration venues, their arrest and inflicting injuries to them also remain problematic. A persisting challenge is also the absence of proper data on alleged offences committed against journalists because of their professional activity; this makes it difficult to obtain comprehensive information about such facts and to assess the quality of response to them.

NHRI's actions

As previously noted in the follow-up initiatives by the Institution, the PDO submitted an amicus curiae brief before the Batumi City Court, regarding the case of restriction of freedom of the expression of journalists of the Adjara TV. Adjara Public Broadcaster's Rules of Conduct on the Internet/Social Networks for the Employee of the Public Broadcaster's Adjara TV and Radio, from the basis for disproportionate restrictions on the freedom of expression of the Broadcaster's employees. The Public Defender noted in the amicus curiae brief that it is of an utmost importance to fully assess the legitimacy of the interference, taking into account the principles established by the case law of the Constitutional Court of Georgia and the ECtHR.

The Public Defender of Georgia also addressed Irene Khan, newly elected UN Special Rapporteur on the Promotion and Protection of the Right to Freedom of Opinion and Expression, and the OSCE Representative on Freedom of the Media, in relation to the events affecting Adjara TV. The Public Defender of Georgia provided information about the violations revealed as a result of the examination of the events developed in the Adjara TV, which threatens media pluralism in the country and negatively affects freedom of expression. The Public Defender presumes that the ongoing events in the Adjara Public Broadcaster are aimed at changing the editorial policy of the TV station.

References

- Reporters Without Borders on Georgia – Pluralist but not yet independent. Available at: <https://bit.ly/3k5184g>
- Several Journalists Sacked Due to Political Pressure on Public Channel Adjara TV. Available at: <https://bit.ly/2OjSIKd>
- Human Rights Watch World Report 2021 – Georgia. Available at: <https://bit.ly/3jD2dQA>
- Public Defender Addresses UN Special Rapporteur and OSCE Representative regarding Recent Developments in Adjara TV. Available at: <https://bit.ly/2M5aPD7>

Impact of measures taken in response to COVID-19 on the national rule of law environment

Most significant impacts of measures taken in response to the COVID-19 outbreak on the rule of law and human rights protection

It is important that a person who disagrees with a decision to apply a quarantine measure towards him or her be able to appeal that decision and obtain a legal review in a timely manner. The Public Defender considers that a decision on the legality and / or proportionality of the quarantine measure restricting liberty of a person should be made within 72 hours after receiving the complaint / claim. Unfortunately, the Public Defender's proposal in this regard was not taken into consideration by the Parliament. In order for individuals to be able to effectively exercise their right to appeal while in quarantine, it is important to remotely ensure their participation in court hearings during administrative proceedings. Monitoring conducted by the National Preventive Mechanism revealed that quarantined persons do not have information about the right to appeal and the existing procedures. During the state of emergency in the country and after its lifting, detailed criteria on self-isolation were not established at the normative level (as clarification: self-isolation implies staying at home and completely avoid external contact, while quarantine is a mandatory placement of people in special quarantine spaces). However, if the criteria were met it could lead a person to self-isolation. As a result, the possibility of self-isolation was problematic in practice, despite meeting the appropriate conditions. As an example of a good practice set in place by state authorities, it should be noted that from June 2, 2020, the relevant resolution of the Government of Georgia defined additional criteria that a

person must meet in order to be transferred to self-isolation. It should also be positively assessed that the Ministry of Internal Affairs of Georgia has taken into account the recommendation of the Public Defender and has developed a short guide for the employees of the Ministry who have relations with the persons transferred / placed in the quarantine space. At the same time, it should be noted that the Ministry did not take into account the PDO's recommendation regarding the mandatory use of cameras during the enforcement of quarantine measures.

On May 22, 2020, the Parliament of Georgia adopted the amendments to the Law of Georgia on Public Health in an accelerated manner. As a result of the adopted amendments, the Government of Georgia was granted with the right to impose new regulations and restrict fundamental human rights without declaring a state of emergency.

Public Defender notes that the purpose of use of certain restrictions related to the pandemic were not foreseeable. The public has not been informed as to why a specific restriction was required for a specific period of time and what would be the expected result of their introduction.

As noted above the issue of introduction and removal of restrictions was regulated by a government's sub-legal act, hence it allowed the government to make changes easily and frequently. It has been particularly problematic that there was a reasonable suspicion that certain restrictions might be based on political expediency and be used as grounds for restricting e.g., the right to peaceful assembly.

During the pandemic, the remote administration of criminal justice and electronic court hearings became the subject of Public Defender's particular attention. From May 18 to June 22, the Public Defender's representatives attended 279 remote hearings in 21 district and city courts and as a result published the special report. Monitoring, in which special methodologies and questionnaires were used, revealed a number of substantial problems. In particular technical problems relating to sight and hearing hindered the normal course of the hearings and in some cases led to postponement. The PDO also noted in the report that remote hearings have become a significant challenge in terms of realizing the right to a fair trial since for the vast majority of defendants it was not possible to have confidential communication with the lawyer. In addition, during questioning, the court often failed to verify the credibility of witnesses. It was even problematic to see or hear witnesses due to technical deficiencies. There were possible facts of influence on witnesses and insufficient safeguards also were in place in order to prevent influence on witnesses. During remote hearings, it was impossible to examine material evidence. The video-recordings examined during several trials were not at all perceptible to the trial participants. The quality of

translation was also poor in some cases. The report includes recommendations to the Parliament of Georgia on the need for special regulation of the rules of questioning of witnesses during remote hearings. The High Council of Justice has also been recommended to ensure technically the confidential communication between the lawyer and the accused during remote hearings. The recommendations are addressed to the Minister of Justice of Georgia as well, highlighting the need to improve the technical infrastructure of penitentiary establishments in order to facilitate defendants' connection to remote hearings. In addition, the PDO published various statements/opinions in the context of pandemic (please see in the references). It should be also noted that the Public Defender's Office of Georgia continues to provide Stateless Persons, Asylum Seekers and Persons with International Protection status with legal counseling services.

References

- Public Defender Publishes Monitoring Report on Remote Hearings of Criminal Cases. Available at: <https://bit.ly/3dunmv8>
- Statement on Issues relating to Violence against Women and Domestic Violence. Available at: <https://bit.ly/3kv5ema>
- Statement on Measures to be Taken to Provide Certain Medical Services and Shelter for Homeless Persons. Available at: <https://bit.ly/2ZYIMsi>
- Opinion on Situation at Checkpoints. Available at: <https://bit.ly/2PjZekS>
- Statement to Authorities relating to Protection of Right to Life. Available at: <https://bit.ly/37RSIrS>
- Frequently asked questions on fines for violating the isolation and/or quarantine rules during the state of emergency. Available at: <https://bit.ly/3dUZt00>
- Statement on Anti-Crisis Economic Plan and Needs of Persons with Disabilities. Available at: <https://bit.ly/3r7nx3A>

Most important challenges due to COVID-19 for the NHRI's functioning

Despite the pandemic, the Special Prevention Group, throughout the year, in compliance with all security measures, actively continued emergency monitoring of closed facilities. In 2020, 141 visits were conducted to 109 detention facilities. The purpose of the visits was to assess the measures taken to prevent the spread of the new coronavirus (COVID-19) in places of restriction and deprivation of liberty and the impact of these measures on the rights of persons present there, their necessity and proportionality. The Public Defender also examined the human rights situation in quarantine facilities. Research and monitoring have revealed shortcomings at both the legislative and practical levels.

Prior to the monitoring visits, the Special Prevention Group adapted the working methodology to the existing challenges. The rules for conducting a safe monitoring visit in a pandemic were defined and members were instructed accordingly. Individual protection devices were purchased, and members were explained the rules for their use.

References

- Public Defender's Report on Monitoring Carried out in Penitentiary Establishment No. 3. Available at: <https://bit.ly/3avutl4>
- Monitoring Report on Center for Mental Health and Prevention of Addiction. Available at: <https://bit.ly/3pCeea9>
- Monitoring of Places of Restriction of Freedom relating to Quarantine Measures against Novel Coronavirus (COVID-19). Available at: <https://bit.ly/2NFW222>
- Public Defender's Report on Ad Hoc Monitoring at Establishment No 17. Available at: <https://bit.ly/3azwJYE>
- Public Defender's Report on Ad Hoc Monitoring at Temporary Accommodation Center. Available at: <https://bit.ly/3kltp6o>

Germany

German Institute for Human Rights

International accreditation status and SCA recommendations

In November 2015, the German NHRI was re-accredited with A status. Among its recommendations, the SCA flagged out that government representatives and members of parliament should not be voting members of the Board of Trustees. The SCA also highlighted the need for the NHRI to receive additional funding corresponding to its additional mandates and encouraged the GIHR to advocate for appropriate amendments to its enabling law that would clarify and strengthen its protection mandate as encompassing monitoring, inquiring, and investigating human rights violations.

Impact of 2020 rule of law reporting

Follow-up by State authorities

Some measures were taken in relation to certain concerns raised in ENNHRI 2020 Rule of Law Report.

First, as regards the enabling environment for civil society, the country chapter on Germany of the ENNHRI 2020 Rule of Law Report raised concerns regarding a 2019 ruling of the Federal Financial Court concerning the criteria for civil society organisations to benefit from tax privileges for non-profit associations with a public benefit purpose. While this issue still awaits resolution, the 2020 Annual Tax Law (*Jahressteuergesetz*) amended some grounds for tax privileges for non-profit associations, including support for people who have been discriminated against on grounds of their gender identity or sexual orientation. However, this is still a far cry from the changes that civil society organisations have advocated for. Among other things, (work for) "human rights" has not been accepted as a ground for tax privilege (see also below, section on human rights defenders and civil society space).

Secondly, as regards independent police complaint bodies and checks and balances, the 2020 ENNHRI rule of law report pointed out the lack of independent police complaints bodies at the Länder level. In 2020, Bremen, Berlin, Brandenburg and Hesse tabled or adopted acts to establish police ombudspersons who shall process complaints by citizens or police officers. However, none of these bodies has the power to investigate independently and to bring cases to court.

Impact on the Institution's work

Protection and promotion of human rights and the rule of law is one of the three core aims in the Institute's strategic planning for 2019–2023. The Institute has engaged with authorities on rule of law issues on several occasions. For example, it approached the Foreign Office in support of the Polish Ombudsman and jointly organised a conference with the Polish NHRI on protecting the rule of law and the importance of an independent judiciary. It used a conference on the 70th anniversary of the ECHR, jointly organised with the German Foreign Office and Ministry of Justice and Consumer Protection, to gather political and public support for a strong system of human rights protection through the European Court of Human Rights, as the Court is an important guardian of the rule of law. The Institute also promoted the Commission's characterisation of NHRIs as an integral part of a state under the rule of law.

The Institute did not take any specific follow-up initiatives based on the ENNHRI 2020 Rule of Law Report. This is due in part to the topics covered by the Commission's rule report which do not specifically fall in the ambit of the Institute's mandate (e.g., corruption) or are covered by the Institute from a different perspective (e.g., justice system where our focus currently lies on providing training to judges and prosecutors and fostering inter-institutional dialogue to improve prosecution of rightwing, racist and antisemitic crimes).

Independence and effectiveness of the NHRI

Changes in the regulatory framework applicable to the Institution

The Institute's regulatory framework has not changed since the previous report.

Enabling space

Generally speaking, the Institute has very good working relationships with state authorities. Its expertise is highly regarded, and authorities are well aware that its status as NHRI is different from civil society organisations.

However, when Parliament holds a hearing on a draft law, the GIHR is not entitled to participate ex officio, but needs to be invited by a parliamentary party.

Moreover, sufficient financial resources play an important part in securing an enabling environment for an NHRI. While there has been a comparatively small increase in institutional funding for the GIHR in 2019, it should be noted that the requirement of the Institute's broad mandate is not adequately reflected by the current level of funding. In particular, the Institute needs more financial resources for research and monitoring.

Developments relevant for the independent and effective fulfilment of the NHRIs' mandate

As any other organisation the Institute's work has been affected by the ongoing Covid-19 pandemic. Fortunately, the Institute was able to provide the necessary infrastructure for remote work and much of the Institute's work, which consists of research and reporting, can well be done remotely (see below, in the section concerning impacts of COVID-19 pandemic and measures taken to address it).

Human rights defenders and civil society space

As described in ENNHRI 2020 Rule of Law Report, a judgment by the Federal Tax Court of January 2019 has narrowed civil society space through a restrictive interpretation of the statutory criteria for civil society organisations (CSOs) to benefit from tax privileges (as non-profit associations benefitting to the public). Consequently, the ability of a number of organizations to function and proceed with their work in order to actively participate in democratic discourse and social welfare has been affected or at least jeopardized. While the Federal Ministry of Finance had suspended the implementation of the abovementioned judgment and promised a draft to amend the applicable law, it now seems that discussions within the ministry, within the government and among the federal and Länder ministries are currently stuck, and no further development is expected this year (due to federal elections on 26 September). In the meantime, the CSO affected by the judgement has recently lodged its appeal to the Federal Constitutional Court. (1) Generally speaking, it is recommended that the law providing tax privileges to certain CSOs be revised and modernised so as to reflect a contemporary understanding of what "activities of benefit to the public" means and how an enabling space for CSOs can be secured in today's world.

Freedom of assembly has been curtailed for the purpose of preventing the spread of COVID-19. It should however be noted that these measures were not targeted against human rights defenders, neither de jure nor de facto. During the first wave in the spring of 2020, the first measures enacted by the states of the federation (Länder) were framed as absolute prohibitions. However, the Federal Constitutional Court decided in an urgent procedure that the applicable norms had to be understood in a way that required the competent authority to examine whether the assembly could be carried out under precautionary hygiene measures, so as to do justice to the high value of freedom of association in a democratic society (2).

In 2020 the Institute has advised the Foreign Office in the development of a protection programme for human rights defenders. The programme has been launched in 2020 under

the name of Elisabeth-Selbert-Initiative and is expected to be further developed in 2021. (3)

References

- (1) <https://www.attac.de/presse/detailansicht/news/gemeinnuetzigkeit-bundesfinanzhof-haelt-an-umstrittenem-urteil-fest-1/>
- (2) https://www.bundesverfassungsgericht.de/SharedDocs/Entscheidungen/DE/2020/04/rk20200415_1bvr082820.html
- (3) <http://ennhri.org/news-and-blog/germany-launches-protection-programme-for-human-rights-defenders-at-risk/>; <https://www.ifa.de/en/fundings/elisabeth-selbert-initiative>; <https://www.ifa.de/foerderungen/elisabeth-selbert-initiative>

Checks and balances

Access to legislative and policy processes/participation of rightsholders

There has been a tendency, equally noted by CSOs, to provide very short timeframes for stakeholder consultations. While ministries, federal and Länder level alike, regularly request written comments from CSOs and the Institute on draft legislative proposals, the timeframe for submitting responses varies greatly from a day or two to several weeks. Providing only very little time for submitting responses might obviously discourage CSO from providing input at all (and, at times, has caused CSOs and the Institute to refrain from submitting input) and it creates the impression that stakeholder consultations are a mere formality and not taken seriously. (1)

Fairness of the electoral process

Following two judgements by the Federal Constitutional Court, so-called overhang seats (*Überhangmandate*) have been declared unconstitutional and have to be compensated for with additional seats. These resulted from the specific electoral system that combines proportional representation with elements of a majority voting system as well as from the increased number of political parties and decreased number of votes received by the two main parties. As a result, the total number of seats has grown so much that, after the next federal elections, it may exceed 1,000. (2) While all parties agree that an electoral law reform is necessary, the compromise achieved between the parties of the ruling coalition

government is expected to heavily favour the currently largest party. Furthermore, many legal experts do not expect that the new law will effectively reduce the number of seats so as to maintain a functioning parliament and hence argue that many parts of the law are unconstitutional. Although opposition parties have lodged a complaint with the Federal Constitutional Court, a decision is not expected to be rendered very shortly so that the next parliamentary elections will take place according to the new law.

Implementation of judgements of supranational courts

With its PSPP ruling in May 2020, the Federal Constitutional Court (FCC) caused concerns among critics that EU-sceptic governments could use the ruling to undermine the respect for and domestic implementation of judgements by the Court of Justice of the EU (CJEU). The judgements and its possible effects have been widely discussed in Germany, including at a conference jointly organised by the Institute and the Polish Ombudsman. One main argument by the proponents of the judgment (and from within the Court as well) against the allegation that the judgement would be used by EU-sceptic governments was that the CJEU should actually have exercised more control and oversight, not less.

Public trust in institutions

Trust of citizens in state authorities, including the public administration and courts has changed under the influence of the COVID-19 pandemic. While trust in government and parliament was at a medium height in 2019, trust has increased during the pandemic; in recent weeks, however, the level of trust has sunk due to a perceived lack of foresight with a long-term perspective, direction and decisiveness on the part of decision-makers and a perceived lack of effectivity of the measures taken.

Despite a generally high trust in the police, concerns have increased as to right-wing extremist tendencies and institutional blindness towards racism and antisemitism within the police and security forces. This was caused by the repeated detection of such statements and actions within the forces (e.g., in chat groups, through hoarding of weapons or Nazi devotional objects). Moreover, in 2020 the issue of structural racism within the police was widely debated in the wake of the death of George Floyd and worldwide protest against police brutality. Resulting calls (3) for an independent study into racial profiling practices and structural racism among security forces led to division among the Government. The Ministry of Interior consistently refused such a study and has only conceded so far as to include this aspect into a broader three-year study on everyday life of police officer. (4) Experts and opposition parties have denounced this study as being of little use to actually contribute to solving the problem. (5)

The NHRI in the system of checks and balances

The Institute regularly engages with political actors in relevant legislative and policy processes. In 2020 these included e.g., engagement to introduce children's rights into the constitution; engagement to delete the word "race" from the constitutional provision on discrimination and replace it with "racist discrimination"; introduction of a law on human rights due diligence for business enterprises. The broad support for the Institute's proposal on racist discrimination, particularly from organizations of victims of racist discrimination, is a strong proof of the need for an NHRI that has the resources to work on an issue for a long time to bring about.

In 2020, the Federal Constitutional Court requested the Institute to submit an amicus curiae in a constitutional complaint concerning the prioritization ("triage") of severely ill Corona patients.

In its 2019/2020 report to Parliament on the human rights situation in Germany, the Institute brought to the attention of the legislature the practical impact of earlier legislative changes with respect to the deportation of rejected asylum seekers with severe illnesses. The findings of the report, viz. that severely ill persons were deported in violation of Germany's international human rights obligations, were taken up in legislative debates, also by members of the governing coalition parties; so far, however, no legislative action has been taken to remedy the situation.

The main obstacle affecting the NHRI's engagement as part of the system of checks and balances is the lack of resources, which limits the extent of activities and range of issues that the Institute can work on.

References

- (1) A recent example was stakeholder consultation on the 2nd Cybersecurity Law where CSOs were given only two days to draft and submit their comments <https://gi.de/meldung/offener-brief-ausreichende-fristen-fuer-verbaendebeteiligung>

- (2) <https://www.dw.com/en/germany-seeks-electoral-reform-to-avoid-xxl-bundestag/a-54694043>
- (3) https://www.institut-fuer-menschenrechte.de/fileadmin/Redaktion/Publikationen/Stellungnahmen/Stellungnahme_Racial_Profiling_Bund_Laender_muessen_polizeil_Praxis_ueberpruefen.pdf
- (4) <https://www.dw.com/en/germany-commissions-study-to-address-racism-in-police-force/a-55867763>
- (5) <https://www.br.de/nachrichten/deutschland-welt/opposition-kritisiert-seehofers-geplante-polizei-studie,Sla9MtY>

Functioning of the justice system

The current legal framework and its implementation currently affects access to justice by certain vulnerable groups.

Access to justice is hindered for persons with disabilities due to the existing law on guardianship, which is based on the concept of substituted decision-making. Presently, a legislative proposal is pending before the Federal Parliament, which would bring about a change to assisted decision-making. However, some elements of the draft are still not in line with the CRPD, as forced treatment and forced restraints, e.g., would still be permissible under certain circumstances. It is not yet clear whether the draft law will be adopted before the end of the legislative period in September 2021. The GIHR, as Germany's CRPD Monitoring Body, has published a position paper on the matter (1).

Access to justice for women victims of gender-specific violence, including domestic violence, depends on the availability of counselling services and, for victims of sexual violence, of easily accessible rape crisis or sexual violence referral centres providing medical and forensic examination as well as trauma support and counselling (Article 25 Istanbul Convention). The funding of counselling services for gender-specific violence is precarious, as funding is not permanent but depends on actual demand, thus rendering it difficult to cover running costs and to keep staff. With respect to referral centres, a study of the GIHR has shown the need for stepping up the cooperation between medical, forensic and counselling services and to develop structures that ensure access for women in rural areas (2).

Access to justice for victims of racist violence depends on the identification by the justice system of the racist motivation of the perpetrator. So far, there is no evidence whether the pertinent legal changes (Sect. 46 of the Penal Code) and the concomitant internal rules for the investigating authorities are effectively applied in practice. Within a project funded by the Federal Ministry of justice and consumer protection, the GIHR is supporting pilot states (Länder) to strengthen the justice system in dealing effectively with combatting racist violence and in dealing with racist discrimination by the justice system. The project reveals the difficulty stemming from the fact that institutions cannot describe the needs they have in this regard as long as they do not have a human rights based understanding of racism. Therefore, the Institute is continuously calling for training of the actors within the justice system on racism and racist discrimination (see, e.g., on the Federal Cabinet's Plan for Combating Right-wing extremism and Racism. (3))

References

- (1) https://www.institut-fuer-menschenrechte.de/fileadmin/Redaktion/Publikationen/Stellungnahmen/Stellungnahme_Referentenentwurf_BMJV_Entwurf_Gesetzes_Reform_Vormundschafts_Betreuungsrecht.pdf
- (2) https://www.institut-fuer-menschenrechte.de/fileadmin/Redaktion/Publikationen/Analyse_Studie/Analyse_Akutversorgung_nach_sexualisierter_Gewalt.pdf
- (3) https://www.institut-fuer-menschenrechte.de/fileadmin/Redaktion/Publikationen/Stellungnahmen/Stellungnahme_zu_geplantem_Massnahmenpaket_Kabinettsausschuss_Bekaempfung_Rechtsextremismus_Rassismus.pdf

Media pluralism and freedom of expression

The Institute has not carried out any systematic monitoring in this regard. In the context of demonstrations against the Corona protection measures, journalists' organizations have reported attacks against, and harassment of, journalists by demonstrators.

Impact of measures taken in response to COVID-19 on the national rule of law environment

Most significant impacts of measures taken in response to the COVID-19 outbreak on the rule of law and human rights protection

Overall, parliamentary oversight of the measures taken was limited, due to the fact that the pertinent federal law gives the federal and state governments the power to act by decree (*Verordnung*). Although general debates are heard in the parliaments, the parliaments of the Länder have not used constitutionally available means of turning their general oversight into a specific oversight, e.g., by making the decrees (or the duration of specific measures) depending on parliamentary consent. The federal parliament consented to the prolongation of the "epidemic situation of national extent" (*epidemische Lage von nationaler Tragweite*), which triggers the (time-limited) power of the Federal Minister of Health and Ministers of the Länder to act by decree. However, on these occasions, parliament did not use its powers to review, in detail, the measures taken. One notable exception from this general lack of parliamentary inclusion in the law-making process was the amendment of the Infection Protection Act to adopt a nationwide "emergency break". The amendment was adopted in response to a perceived unresponsiveness of state governments in face of a third wave of infections.

While parliaments have not taken measures to weigh and to protect human rights, courts have done so. However, the less clarity there is about a strategy behind the measures taken (because there is no in-depth parliamentary debate, and the debates of the circle of the prime ministers of the Länder and the chancellor are behind closed doors), the more difficult it is for courts to carry out a proper assessment of the proportionality of a single measure against which the individual case is directed. Thus, the primary role of parliaments in protecting human rights is further weakened.

The Institute dealt with these implications through statements, press releases, and in its annual report to parliament on the situation of human rights in Germany, which was taken up in parliamentary debates.

Most important challenges due to COVID-19 for the NHRI's functioning

The Institute overall managed to cope well with the challenges brought by the COVID-19 pandemic. It has converted many of its public events to online formats, which has often and successfully attracted a larger audience than events that would have taken place in person in Berlin. However, activities such as outreach to members of parliament and political parties, or other activities that require a trustful and confidential environment became difficult or impossible to carry out. While the overall fulfilment of the Institute's mandate remained effective, some projects and activities had to be postponed or even cancelled.

Great Britain

Equality and Human Rights Commission

International accreditation status and SCA recommendations

The SCA reaccredited the Equality and Human Rights Commission (EHRC) with A status in November 2015. The SCA recommended amendments in the NHRI legislation to ensure an independent and objective dismissal process for Commissioners, as well as ensuring the NHRI receives sufficient funding and operates independently from the State. Finally, the SCA recommended the establishment of an explicit process providing for the circulation, discussion and consideration by the legislature of the NHRI's reports.

Impact of 2020 rule of law reporting

Enabling space

As outlined in the Equality Act 2006, the EHRC is empowered to engage with public authorities, as well as UK and devolved governments as part of its statutory responsibilities. This includes advising and making recommendations to central and devolved governments as to the drafting, amending or repeal of relevant laws, carrying out inquiries, reviews and investigations into suspected violations of human rights and equality laws, monitoring the governments' progress against international obligations and establishing an evidence base for subsequent state action. The EHRC's formal relationship with the UK Government is through its sponsoring ministry, the UK Government Equalities Office. The Minister for Women and Equalities oversees this relationship from the government side.

Developments relevant for the independent and effective fulfilment of the NHRIs' mandate

The EHRC has identified several recent **regressive developments** in the UK equality and human rights legal framework (1). The exclusion of the EU Charter of Fundamental Rights from domestic law as a result of Brexit represents in the EHRC's view a significant reduction in human rights protection. The Coronavirus Act, an emergency legislation which was subjected to limited scrutiny, includes provisions that weaken human rights protection, and the EHRC believes that the equality and human rights impact of measures was not closely scrutinised. Lately, the UK Government rejected several EHRC recommendations to strengthen equality and human rights legislation, including introducing the socio-economic duty in England and incorporating international treaty rights into domestic law. In early

2021, the Scottish Government announced that depending on the outcome of the 2021 Scottish Election it intended to incorporate four UN treaties into Scots Law, as part of a new Human Rights Bill (2). In May 2021, EHRC updated its Human Rights Tracker to include updated assessments of government action and progress, as well as summaries of the actions that the UK and Welsh Governments have taken since 2016 in relation to 12 additional human rights topics.

References

- (1) <https://humanrightstracker.com/en/progress-assessment/equality-and-human-rights-legal-framework-uk-government-assessment/>
- (2) <https://www.gov.scot/news/new-human-rights-bill/>

Checks and balances

The UK Government has made a policy change to allow prisoners on temporary licence to vote, following the ECtHR ruling that the UK's **blanket ban on prisoner voting** was disproportionate and indiscriminate, in violation of the right to free elections. The EHRC is however concerned (1) about whether this policy change meets the UK's obligations under the ICCPR. The Welsh National Assembly's Equality, Local Government and Community Committee has recommended the introduction of legislation that gives Welsh prisoners serving custodial sentences of less than four years the right to vote in devolved Welsh elections. The Welsh Government has accepted this recommendation.

Through its 'Human rights Tracker' (2), the EHRC provided an assessment of the UK governments' recent progress on certain issues, including on **political and civic participation, including political representation**. The EHRC identified no real progress, as women, ethnic minorities and disabled people remain under-represented in politics and diversity data is inadequate, although the number of women MPs in the UK Parliament has continued to rise. Candidates sharing certain protected characteristics are disproportionately subject to abuse and intimidation, and long-term funding is needed to ensure disabled peoples' equal participation. While there has been progress in increasing the proportion of women and ethnic minority public appointees, disabled people have not seen comparative progress. The annual Queen's Speech included the proposed Electoral Integrity Bill, which establishes the legal requirement for photographic voter ID for participation in elections by 2023. However, research commissioned by the Cabinet Office

suggests that 2.1 million people may be unable to vote as a result of the measures (4). Different groups may be affected disproportionately, as people with disabilities and people aged over 85 are less likely to possess ID with a recognisable photo. Ethnic minority people are already significantly less likely to vote in UK general elections and less likely to be registered to vote than White people (5). The measures could reduce these numbers further, with ethnic minority people less likely to hold a full driving licence (a primary form of photographic identification in Britain) (6). The Gypsy, Roma and Traveller community may be particularly affected as they already face challenges to presenting or registering for identity documents, particularly when they have no fixed address (7). Pilot voter ID schemes in 2018 and 2019 were carried out in different locations across England, with only limited demographic analysis. This demonstrates the importance of more robust research to ensure that the lack of data cannot be interpreted as evidence of no adverse impacts from the policy. EHRC will be monitoring progress on this legislation.

References

- (1) <https://www.equalityhumanrights.com/en/publication-download/civil-and-political-rights-great-britain-submission-un>
- (2) <https://humanrightstracker.com/en/overarching-progress/>
- (3) <https://www.ethnicity-facts-figures.service.gov.uk/culture-and-community/transport/driving-licences/latest#by-ethnicity-over-time>
- (4) https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/984918/Photographic_ID_research_-_headline_findings_report.pdf
- (5) <https://www.equalityhumanrights.com/sites/default/files/is-britain-fairer-accessible.pdf>
- (6) <https://www.ethnicity-facts-figures.service.gov.uk/culture-and-community/transport/driving-licences/latest>
- (7) <https://www.electoralcommission.org.uk/who-we-are-and-what-we-do/our-views-and-research/our-research/voter-identification-pilots/may-2019-voter-identification-pilot-schemes/6-background-our-evaluation/accessibility-and-equality-feedback-local-and-national-organisations>

Functioning of the justice system

The EHRC expressed concerns (1) that changes to the civil legal aid regime in England and Wales have **restricted access to justice**, including for people seeking redress for human rights breaches, with a disproportionately negative impact on people sharing certain protected characteristics. The UK Government's proposals to reform and modernise courts and tribunals in England and Wales may provide opportunities to improve access to justice. However, there has been a lack of comprehensive evidence and impact assessments to underpin decision-making and ensure that the reforms do not disproportionately disadvantage groups with protected characteristics, or undermine access to justice. The UK's procedure for identifying and determining statelessness suffers from a number of problems, including long delays and the use of administrative detention without a defined time limit. Individuals applying to be recognised as stateless have neither a right to free legal assistance nor a right to appeal decisions at an immigration tribunal.

The EHRC underlined the persisting inadequacy of the **justice system responses to violence against women and girls** (2). The number of police referrals, charges, prosecutions and convictions for rape has declined sharply. The UK has still not ratified the Istanbul Convention and needs to put in place changes to law, policy and practice to enable ratification.

Many CSOs alerted on the **need for a more inclusive justice system**, in light of difficulties faced by a large numbers of persons with cognitive impairments, mental health conditions and neuro-diverse conditions pass through the system. The EHRC launched an inquiry (2) to understand the experiences of disabled defendants and accused people in the criminal justice system. The inquiry focused on the pre-trial phase, where important decisions are made about adjustments, and made recommendations to UK Governments. It found that the justice system is not designed around the needs and abilities of disabled people, and reforms in England and Wales risk further reducing participation. In response to the inquiry, the Ministry of Justice committed to an 'overarching evaluation of the impact of the court reform programme...including how it has impacted vulnerable people' (4).

Through its 'Human rights Tracker' (5), the EHRC provided an assessment of the UK governments' recent progress on certain issues, including on:

- **Access to justice/ fair trial** – limited progress: there have been recent changes to improve access to legal aid, including the removal of the mandatory telephone gateway to access civil legal advice. But significant concerns remain about the impact of the Legal Aid, Sentencing and Punishment of Offenders Act (LASPO) 2012

on access to justice in England and Wales. Ongoing court modernisation may negatively affect participation for certain groups with protected characteristics. The coronavirus pandemic has placed significant strain on the court system and legal advice sector. Court closures and the rapid growth in online hearings have added to the challenges around case backlogs, accessible justice and the availability of legal advice. There are concerns that court closures under the reform programme particularly disadvantage disabled people, women with the protected characteristic of pregnancy and maternity, and carers.

- **Criminal justice** – limited progress: According to the latest available data, England and Wales has the highest imprisonment rate in Western Europe. However, there have been some positive policy developments, such as the Female Offender Strategy, reforms to probation and the availability of liaison and diversion services. However, overcrowding, poor conditions, use of force, solitary confinement, violence and self-harm in prisons are still commonplace. Imprisonment rates are high and ethnic minority people are over-represented. Concerns have been expressed regarding the inadequacy of mental health services and protections for prisoners (including pregnant women), as well as failures to identify and meet the needs of particular groups such as women, ethnic minority people and trans people. While provisions were set out in law to temporarily release prisoners to reduce prison populations due to the COVID-19 pandemic, by July 2020, only 266 prisoners (and no children) were temporarily released.
- **Youth justice** – no progress: the number of children in custody has continued to decrease in recent years, though the reduction in numbers has slowed since 2016. However, the overall decrease in the custodial population was largely driven by a reduction in the number of White children in custody, with Black children representing 28% of the custodial population by 2020, an increase of 7% since 2016. For those in the youth justice system the use of force, solitary confinement, violence and self-harm are commonplace. The minimum age of criminal responsibility remains inconsistent with international standards. Children from ethnic minorities are over-represented in custody, the use of pain-inducing restraint continues, and the use of remand has increased. The impact of COVID-19 has further hindered progress, with diminished family contact, limited educational opportunities, less independent scrutiny and increased concerns regarding the mental health of young people in custody. Despite legislation to release people from custody during the pandemic, by March 2021, no children had been released under the scheme. The framework for opening up prisons made almost no reference to the specific needs of young people.

As highlighted in the 2017 Lammy Review and the UK Government's own statistics, ethnic minorities are disproportionately targeted for arrest, with black people over 3 times as likely to be arrested as White people. This trend is similar to the judiciary, with conviction rates in magistrates' courts higher for certain ethnic minorities, particularly ethnic minority women, with ethnic minorities more likely to receive prison sentences, in particular for drug offences. As highlighted by EHRC's submission to the Commission on Race and Ethnic Disparities, many of the recommendations of the Lammy Review have not been implemented, with inadequate progress made against ensuring the police service, judiciary, prison and probation service is representative of the community they serve and an imperfect evidence base upon which all analysis and responses to the disproportionate numbers of ethnic minorities entering the criminal justice system can be based (6).

References

- (1) <https://www.equalityhumanrights.com/en/publication-download/civil-and-political-rights-great-britain-submission-un>
- (2) <https://www.equalityhumanrights.com/en/publication-download/civil-and-political-rights-great-britain-submission-un>
- (3) <https://www.equalityhumanrights.com/en/publication-download/civil-and-political-rights-great-britain-submission-un>
- (4) https://www.equalityhumanrights.com/sites/default/files/83264_lc_response_to_ehrc_inclusive_justice.pdf
- (5) <https://humanrightstracker.com/en/overarching-progress/>
- (6) <https://www.equalityhumanrights.com/sites/default/files/consultation-response-commission-on-race-and-ethnic-disparities-call-for-evidence-30-november-2020.docx>

Media pluralism and freedom of expression

The EHRC expressed concerns (1) over UK **counter-terrorism law and policy** and their potential to violate the UK's obligations under ICCPR, for instance regarding the Prevent duty. This duty obliges certain public bodies to report concerns about people who may be

at risk of being drawn into terrorism, which the EHRC underlines as discriminatory and risks undermining freedom of speech, among others.

The Commission also drew attention (2) on the risks posed by **new digital technologies**, data use and data sharing to the rights to privacy and **freedom of expression**, particularly given the scale and pace of technological change. For instance, the UK Government's proposals to improve online safety risk infringing individuals' freedom of expression.

Through its 'Human rights Tracker' (3), the EHRC provided an assessment of the UK governments' recent progress on certain issues, including on **hate crime and hate speech**. They identified limited progress, as the number of hate crimes has decreased over the last decade and there have been improvements in police recording practices, although hate crime remains under-reported. There are increasing disparities between the number of recorded hate crimes and cases sent for prosecution, and many victims report dissatisfaction with police handling of cases. The legal framework remains complex and affords differential protection to different groups – though a consultation has been launched to explore this. There has been some progress on actions to prevent hate crime and improve support for victims, but many reforms remain unimplemented.

In May 2021, the ECtHR (3) delivered its judgement on a case brought against the UK by a number of civil society organisations in relation to the country's surveillance powers following the 2013 Edward Snowden revelations. As well as a number of violations of Article 8 of the ECHR (the Right to Privacy) in terms of the state's methods for bulk interception of online communications data, the judges also found the bulk interception regime breached the right to freedom of expression (Article 10) and contained insufficient protections for confidential journalistic material. The EHRC contributed evidence to ENNHRI's intervention.

References

- (1) https://www.equalityhumanrights.com/sites/default/files/executive_summary_civil_and_political_rights_in_great_britain.pdf
- (2) <https://www.equalityhumanrights.com/en/publication-download/civil-and-political-rights-great-britain-submission-un>
- (3) [https://hudoc.echr.coe.int/eng#{%22documentcollectionid2%22:\[%22GRANDCHAMBER%22,%22CHAMBER%22\],%22itemid%22:\[%22001-210077%22\]}](https://hudoc.echr.coe.int/eng#{%22documentcollectionid2%22:[%22GRANDCHAMBER%22,%22CHAMBER%22],%22itemid%22:[%22001-210077%22]})

Impact of measures taken in response to COVID-19 on the national rule of law environment

Most significant impacts of measures taken in response to the COVID-19 outbreak on the rule of law and human rights protection

The EHRC developed a report on 'How coronavirus has affected equality and human rights' (1), exposing the impact of coronavirus across key areas of life, especially on already disadvantaged people. The main findings are the following:

- The **economic impact** of the pandemic entrenched existing inequalities and widened others. The immediate impact on the labour market has been one of greater **underemployment** rather than unemployment, although unemployment is expected to rise as government support schemes are reduced or end. The loss of earnings from underemployment is contributing to a drop in living standards.
- **Poverty** is expected to rise despite unprecedented government support to protect jobs and incomes. The groups most likely to be affected by the expected rise in poverty include **young people, ethnic minorities, and disabled people**, who are already closest to the poverty line. The withdrawal of government support schemes is likely to trigger further increases in hardship.
- **Young people** have experienced significant interruption to their education, which threatens previous gains in attainment levels. Differences in support for **remote learning** during the pandemic threaten to **widen inequalities** for those who already perform less well than their peers, particularly boys, Black pupils, some Gypsy, Roma and Traveller pupils, pupils who need support in education, and those who are socio-economically disadvantaged.
- **Older people, ethnic minorities** and some **disabled people**, particularly those in care homes, have been disproportionately impacted by the pandemic. The increased demand for **social care** has threatened the financial resilience of the sector, potentially impacting its users and workers. This has led to an increased reliance on unpaid carers, who are more likely to be women.
- There has been a rise in reported **domestic abuse** and we have concerns about the ability of survivors to access justice.
- COVID-19 control measures in the **criminal justice** system potentially undermine the effective participation of some disabled defendants / accused and victims.

The report, in particular, identified concerning developments in three areas:

Racial inequality

The EHRC alerted on the disproportionate impact of coronavirus on different ethnic minorities, being both more likely to die from the virus and more likely to experience financial hardship as a result of the pandemic. Certain ethnic minority groups are at greater risk of unemployment and/or are already closest to the poverty line and are more likely to be affected by the rise in poverty.

EHRC is currently conducting an inquiry into racial inequality in health and social care workplaces, examining particularly the experiences of front-line, ethnic minority workers in lower-paid roles, during the COVID-19 pandemic.

Social care

The coronavirus pandemic has devastated the care sector. Not only has it disproportionately affected older people, some ethnic minority groups and disabled people living in care homes, but morale among care sector staff is low as workers face an increased risk from the virus, lack of recognition and staff shortages. The financial repercussions from the pandemic are likely to exacerbate inequalities in the sector for some time to come. In the UK at least 40% of COVID-19 deaths to date have been amongst care home residents. However, the impact stretches beyond mortality, as lockdown measures have left care home residents isolated from their family and friends, with significant effects on their mental health.

Young people and children

The EHRC highlighted the heavy and long-term consequences of the crisis on young people. Having experienced a significant interruption to their education, being at high risk of job losses and with reduced career options stalling their prospects, young people are in danger of becoming a “lost generation” as a result of the pandemic.

Given the economic consequences of the pandemic, there is an additional risk that increasing levels of poverty for certain groups may further affect educational attainment and long-term prospects. Without action, this could result in potentially severe and long-lasting damage for young people.

In the EHRC latest report (2) to the UN Committee on the Rights of the Child (UN CRC), the Commission expressed significant concerns about how the pandemic is exacerbating existing inequalities, and having a devastating impact on children’s rights, well-being and futures. Key concerns include more children being pushed into poverty, widening

educational inequalities and worsening mental health. More families now risk being pushed into poverty as a result of the pandemic, and the groups who already faced poverty are likely to see their income reduced further. Families with children are among those who have been hit the hardest.

School closures and inequalities in home-learning environments also risk exacerbating growing attainment gaps for certain groups, including disabled pupils, some ethnic minorities, and those who are socio-economically disadvantaged. EHRC submission contains an extensive set of recommendations for the UK and Welsh governments to enhance and protect children's rights.

References

- (1) <https://www.equalityhumanrights.com/en/publication-download/how-coronavirus-has-affected-equality-and-human-rights>
- (2) <https://www.equalityhumanrights.com/en/publication-download/civil-and-political-rights-great-britain-submission-un>

Most important challenges due to COVID-19 for the NHRI's functioning

Like a large number of organisations in the UK, the EHRC has been required to reconfigure its working arrangements to ensure staff members and Commissioners can work safely from home. This has required significant undertaking to ensure all digital communication, file sharing and project planning tools were fit for purpose, easily accessible and ensured high levels of digital security and privacy. As the COVID-19 pandemic modified not only how the EHRC worked, but also the topics of the organisation's work this also shifted EHRC's priorities. However, due to the EHRC's mandate and flexibility the focus on the work remained within the organisation's overall commitments to upholding equality and human rights laws and protections.

Greece

Greek National Commission for Human Rights (GNCHR)

International accreditation status and SCA recommendations

The Greek NHRI was reaccredited with A-status in March 2017. During the latest accreditation session, the SCA recommended more clarity regarding the selection and appointment process of the Commission's members. The SCA also encouraged the NHRI to continue to advocate for an adequate level of funding to fully carry out its mandate.

Impact of 2020 rule of law reporting

Impact on the Institution's work

The GNCHR, as the Greek National Human Rights Institution (NHRI), not only has a strong voice and role in promoting respect for the rule of law, but furthermore is itself part of the rule of law framework. Therefore, monitoring and reporting on issues pertaining to human rights promotion and protection is not a novelty for the GNCHR. Nonetheless, the 2020 ENNHRI rule of law report impacted the GNCHR's work in a way that it urged the GNCHR to promote the development of a Strategic planning regarding the implementation of rule of law in the Country. Such a strategic planning, seen as a "road map" to support the implementation of human rights, rule of law and democracy, allowed the GNCHR to draft a concrete plan of action, which is regularly monitored and adjusted to achieve specific objectives. Taking into account, the national environment in which the GNCHR operates, international human rights standards and the Paris Principles requirements, the GNCHR seeks through this strategic planning to direct energy and resources towards achievable goals with respect to human rights and rule of law, while at the same time assessing the progress made. Finally, 2020 was marked by the Covid-19 pandemic, which *de facto* lead to deviation from the planned program of work and the GNCHR initial strategic planning.

References

- GNCHR Report on the need for protection of human rights with regard to the measures taken in response to the coronavirus (COVID-19) pandemic and recommendations to the State. Description of the issues discussed in the Plenary Meetings during the lockdown Meetings of 8th, 22nd, 29th of April and of 6th May 2020: https://nchr.gr/images/English_Site/COVID19/GNCHR_HR_COVID-19ENG.pdf.
- GNCHR Statement on the ban of all public open-air gatherings, November 2020 [in Greek]: https://www.nchr.gr/images/pdf/apofaseis/politika_dikaiomata/Dilosi_EEDA_Dimosies_Synathroiseis.pdf.
- GNCHR Reference Report on the Refugee and Migrant Issue (Part B), September 2020: https://www.nchr.gr/images/English_Site/PROSFYGES/Reference_Report_Refugees.pdf.

Follow-up initiatives by the Institution

Despite the COVID-19 outbreak, in 2020, the GNCHR intensified its efforts and work. In particular, the GNCHR played a decisive role in the follow-up to the annual rule of law report, by issuing and submitting among others approximately 30 reports, statements, press releases and other contributions, by conducting more than 20 Plenary meetings and other hearings on various human rights issues, as well as by raising awareness and triggering a genuine discussion at national level, including through open seminars, trainings and discussion in Parliament.

References

- GNCHR Oral Statement on the implementation of the Convention on the Elimination of All forms of Discrimination against Women (CEDAW), November 2020: https://www.nchr.gr/images/pdf/apofaseis/isothta_fullwn/GNCHR_Oral_Statement_CEDAW_site2.pdf.

- GNCHR's Observations on Draft Law of Ministry for Migration and Asylum "Improvement of migration legislation, amendments of provisions of Laws 4636/2019, 4375/2016, 4251/2014 and other provisions", September 2020:
https://www.nchr.gr/images/English_Site/PROSFYGES/Summary_GNCHR%20Observations%20to%20Draft%20Law%20on%20Improvement%20of%20migration%20legislation.pdf
- GNCHR Statement on the fire in Moria and the day after, September 2020:
https://www.nchr.gr/images/English_Site/NEWS/GNCHR%20Statement%20on%20Moria.pdf.
- GNCHR Statement on the reported practices of push backs, July 2020:
https://www.nchr.gr/images/English_Site/PROSFYGES/GNCHR-Statement-on-the-reported-practices-of-push-backs.pdf.
- GNCHR Statement: Reviewing asylum and immigration policies and safeguarding human rights at the EU borders, March 2020:
https://www.nchr.gr/images/English_Site/PROSFYGES/GNCHR_STATEMENT_Borders.pdf

Independence and effectiveness of NHRIs

Changes in the regulatory framework applicable to the Institution

Following the SCA recommendation to the GNCHR, during its reaccreditation with A-status in March 2017, the GNCHR took the initiative to draft and propose to the Greek Legislator a new legal framework for its operation. This is aimed at offsetting the negative changes brought by recent legislative measures which affected the regulatory framework of the Institution by downgrading its scientific staff (Article 38 of Greek Law no. 4465/2017) and unilaterally altering its composition and violating its independence (Article 11 of Greek law no. 4606/2019). As a result, a draft law on "National Accessibility Authority, National Commission for Human Rights and National Bioethics and Technoethics Committee" was put up for deliberation in the Opengov.gr platform from December 31st, 2020 to January 14th, 2021 and was introduced to Parliament on February 5, 2021. The said draft law, aiming at addressing effectively issues such as the recognition of legal personality of the GNCHR, the guarantee of its functional independence and administrative and financial autonomy in accordance with the Paris Principles, was finally voted by Parliament on 23 February 2021 and published in the Official Journal as Law no. 4780/2021 (OJ 30/A/28.2.2021). It is

important at this point to highlight the participatory procedure followed by the GNCHR, since the said legislation is the result of constant and persistent efforts and successive consultations of its Plenary and public dialogue contributing to the decision-making process. However, there are still pending issues which constitute a setback in relation to the common goal and the will to ensure the independence of the National Institutional and therefore its reaccreditation with A-status. These include the explicit assimilation of the GNCHR staff's status to the status of the staff performing similar tasks in other independent institutions of the State. The GNCHR continues to advocate, with a strong and passionate voice, for the full compliance of its legislative framework with the Paris Principles.

References

- GANHRI, Report and Recommendations of the Session of the Sub-Committee on Accreditation (SCA), 9–13 May 2016, p. 34 et seq.:
- <https://nhri.ohchr.org/EN/AboutUs/GANHRIAccreditation/Documents/SCA%20FINAL%20REPORT%20-%20MAY%202016-English.pdf>.
- GANHRI, Report and Recommendations of the Session of the Sub-Committee on Accreditation (SCA), 13–17 March 2017, p. 23 et seq.:
- <https://nhri.ohchr.org/EN/AboutUs/GANHRIAccreditation/Documents/SCA%20Final%20Report%20-%20March%202017-%20English.pdf>.
- Announcement of the resignation of the President of the Greek National Commission for Human Rights, George Stavropoulos, 4 April 2019;
- http://www.nchr.gr/images/English_Site/NEWS/Announcement%20of%20the%20GNCHR%20Presidents%20Resignation.pdf
- Law no. 4780/2021 on “National Accessibility Authority, National Commission for Human Rights and National Bioethics and Technoethics Committee” (OJ 30/A/28.2.2021): <https://www.hellenicparliament.gr/UserFiles/18a4e643-1429-4e6b-a317-d7c6a29adabf/11578912.pdf>.

Enabling space

According to Article 12(b) of Law no. 4780/2021, the GNCHR, in order to fulfill its mandate, “submits recommendations and proposals, carries out studies, submits reports and gives an

opinion on the taking of legislative, administrative and other measures which contribute to the improvement of the protection of human rights". In order to do so, the GNCHR must be informed without delay and in the most effective possible way of legislative initiatives dealing with human rights issues. To this end, it is necessary on the one hand for the Ministries' representatives participating in its composition to inform the GNCHR and on the other hand, for the other Ministries to send the final draft laws after the end of the consultation and before its submission to the Parliament. Nonetheless, in the vast majority of cases, the GNCHR deplores the failure by the authorities to share draft legislation with the NHRI, highlighting the fact that such a failure constitutes, in addition to disrespect to its composition, a major institutional setback which needs to be fully addressed. This is a procedural impediment, which the GNCHR overcomes by closely monitoring regulatory changes with impact on human rights and commenting on relevant legislation, regardless of whether it has received the draft law in advance. One of the most recent examples is the new Greek Law no. 4735/2020 of the Ministry of Interior, which was passed on October 2020 and contains among others, provisions for the amendment of the Greek Citizenship Code. Despite the fact that the competent Ministry expressed the need for transparency, speed and efficiency, it never consulted with the GNCHR, in order to address together several human rights issues and serious obstacles and restrictions on the acquisition of Greek citizenship arising from the system of naturalisation the Law introduced.

The GNCHR has, since its establishment more than 20 years ago, struggled to maintain a fruitful and constructive cooperation with the competent national Authorities, even though strongly advocating for the benefits for the Greek State from cultivating a climate of dialogue. Especially, as far as the Parliament is concerned, the GNCHR has made continuous efforts to evolve an effective working relationship with Parliamentarians in order to better promote and protect human rights. Respectively, the GNCHR expects from Parliamentarians to produce an appropriate legislative framework for the operation of the Greek NHRI in accordance with the Paris Principles.

References

- Letter to Minister on Interior, Mr P. Theodorikakos, on Draft law of the Ministry of Interior regarding the "Amendment of the Code of Greek Citizenship etc.", October 8th, 2020.
- The Abuja guidelines on the relationship between Parliaments, Parliamentarians and Commonwealth National Human Rights Institutions (NHRIs), 23–26 March 2004.

GNCHR's pluralistic composition

Greece has attributed the role of NHRI to a pluralistic Institution, a choice which has also been confirmed most recently by Article 13(1) of Law no. 4780/2021 on "National Accessibility Authority, National Commission for Human Rights and National Bioethics and Technoethics Committee" regarding the composition of the GNCHR. The pluralistic composition of the GNCHR, reflecting the representation of various social forces and fields involved in the protection and promotion of human rights, such as NGOs, Universities and qualified experts, third level trade unions, professional organisations, Parliament, Government departments, allows the GNCHR not only to maintain and stay focused on its strategic planning, but also to adjust to new challenges by modifying/adapting it with guarantees of wide acceptance.

Human rights defenders and civil society space

The GNCHR monitors very closely the situation regarding civil society space and the protection of human rights defenders. In this regard, the GNCHR maintains a very close relation with NGOs and CSOs. Not only prominent NGOs and CSOs form part of the GNCHR Plenary, but the GNCHR also maintains within its premises the Racist Violence Recording Network (RVRN), which was established in 2011 by the GNCHR and the Greek Office of UNHCR, the UN Refugee Agency. Today, RVRN consists of 47 non-governmental organisations and civil society actors, who acknowledge and jointly pursue combating racist violence, as well as all racially motivated acts on the grounds of race, colour, religion, descent, national or ethnic origin, sexual orientation, gender identity, sex characteristics and disability.

GNCHR is deeply concerned about the tensions manifested in 2019 against human rights defenders, particularly affecting organisations and activists working with refugees and migrants and with the LGBTQI+ community. The increasing incidence of attacks, according to the 2019 RVRN Annual Report which was published in June 2020, highlight a worrying trend which points to an increasingly hostile environment for humanitarian organisations, and civil society organisations in general, active in the promotion and protection of human rights. The growing racist rhetoric in the public sphere often aims to discredit the work and services offered by these organisations, while the lack of special protection for human rights defenders – which RVRN has already pointed out in its previous annual reports – deteriorates the conditions in which organisations are called upon to operate. The RVRN annual report for 2020 is not published to date (February 2021), nonetheless, according to the already existing recordings it is safe to say that this trend is confirmed for 2020. Attacks

on human rights defenders remain alarming, highlighting the lack of special protection for human rights defenders on the one hand, and making the implementation of a legal provision for special protection of human rights defenders even more urgent on the other hand.

Finally, regarding NGOs active in Greece in the field of asylum, migration and social inclusion, there is an obligation, since 2016, to be registered in a special “Register of Greek and Foreign NGOs”, operating under the Ministry for Migration and Asylum. However, by virtue of Laws no. 4636/2029 and 4686/2020, the requirements for registration and verification of these NGOs became stricter, involving also the registration of their members and employees (physical members) for anti-laundering purposes. According to an Opinion by the Expert Council on NGO Law which reviewed the legislation in place, the above requirements “give rise to problems of compliance with the rights in Articles 8 and 11 of the ECHR”, because of a lack of legitimacy, proportionality and legal certainty. These provisions will have a significant chilling effect on the work of the civil society, which “may produce a worrying humanitarian situation, given the significant needs of this very vulnerable population and already existing gaps in the significant needs of government and others, and the continued violence and judicial harassment such NGOs face, including criminalisation of t aspects of their work”.

The GNCHR intervenes whenever it considers that there is a shrinking danger for the civil society space. In particular, the GNCHR’s efforts in this area focus on the following priorities:

Monitoring of the execution of ECtHR case law aiming at empowering and protecting human rights defenders

In December 2020, RVRN submitted to the Committee of Ministers of the Council of Europe a Communication, pursuant to Rule 9.2 of the Rules of the CoE Committee of Ministers for the supervision of the execution of judgments and the terms of friendly settlements, relating to the case of Sakir v. Greece (Application No. 48475/09). In the aforementioned Communication, RVRN expressed, among others, its deep concern regarding the breach by the authorities of their obligation under the European Convention on Human Rights (ECHR) to conduct an effective investigation into violent assaults inter alia against members of migrant related CSOs. Most importantly, RVRN stressed the delays in the investigation process of the aforementioned cases, highlighting that these delays and shortcomings foster a climate of impunity for perpetrators on the one hand and limitation of the rights and freedoms of human rights defenders and CSOs on the other hand.

Legal recognition and protection of human rights defenders

To this end, RVRN addresses every year specific recommendations to the competent public authorities, such as the Ministry of Citizen Protection, the Ministry of Justice and the Prosecution and Judicial Authorities or the Ministry of Migration and Asylum, aiming among others, at combating racist crime and racially motivated police violence, protecting human rights defenders and ensuring the safety of humanitarian workers and members of civil society. In particular, RVRN strongly recommends, in every given opportunity, the adoption of a legislative provision for the protection of human rights defenders.

In order to tackle this very important issue, the GNCHR has already approved in principle the adoption of a bill on "Recognition and Protection of Human Rights Defenders", brought before the GNCHR Plenary by the Greek Transgender Support Association (SYD), which is a GNCHR member. The bill aims at ensuring that human rights defenders are free from attacks, reprisals and unreasonable restrictions, in order to work in a safe and supportive environment. In one of the following meetings of the GNCHR Plenary there will be discussion on the bill's articles and adoption of a final legislative text, which will be submitted to the competent public authorities.

Capacity strengthening and promotion and support of human rights defenders' work

Furthermore, in this regard, the GNCHR, on its own or through the work of RVRN, supports the work of human rights defenders, for example through sharing best practices and holding training workshops, presenting awards. For instance, in 2018, the GNCHR nominated the RVRN for the OHCHR Human Rights Prize 2018, in order not only to give public recognition to the achievements of all these devoted NGOs and persons working against racist violence in Greece, but also to send a clear message of support for the tireless efforts of the human rights defenders working in the field of promotion and protection of human rights in general.

In addition, and taking into account that NHRIs not only constitute a protection mechanism for human rights defenders, but also are themselves recognised as human rights defenders, the GNCHR, in establishing and strengthening capacity in this area, organises programs to sensitize the general public and particular target groups (state institutions, lawyers, etc.) on the importance of respecting the work of human rights defenders. In this regard, the GNCHR organises annual (open) seminars on "Education in Human Rights", on a wide range of human rights thematics. At the same time, the GNCHR considers the establishment of a focal point for human rights defenders within the NHRI.

Finally, with regard to NGOs active in Greece in the field of asylum, migration and social inclusion and the stricter requirements for their registration, the GNCHR closely monitors all developments in the field contributing to the promotion and protection of other human rights defenders. In fact, the GNCHR has alarmed the State on the escalating situation in the islands, where the RVRN recorded specific racist and xenophobic attacks against newcomers, refugees and migrants, international organisations' employees, NGOs, CSOs as well as journalists.

References

- RVRN Annual Report 2019: <http://rvrn.org/wp-content/uploads/2020/06/ETHSIA-EKTHESH-2019-english.pdf>.
- Communication from the Racist Violence Recording Network, pursuant to Rule 9.2 of the Rules of the Committee of Ministers of the Council of Europe for the supervision of the execution of judgments and the terms of friendly settlements, relating to the case of Sakir v. Greece (Application No. 48475/09), 18.12.2020: [http://hudoc.exec.coe.int/eng?i=DH-DD\(2020\)1178E](http://hudoc.exec.coe.int/eng?i=DH-DD(2020)1178E).
- Expert Council on NGO Law of the Conference of INGOs, Opinion on the compatibility with European standards of recent and planned amendments to the Greek legislation on NGO registration, 2.7.2020, CONF/EXP(2020)4: <https://rm.coe.int/expert-council-conf-exp-2020-4-opinion-ngo-registration-greece/16809ee91d>.
- ENNHRI, National Human Rights Institutions and Human Rights Defenders. Enabling human rights and democratic space in Europe, 2018. <http://ennhri.org/wp-content/uploads/2019/09/Publication-NHRIs-and-Human-Rights-Defenders-Enabling-Human-Rights-and-Democratic-Space-in-Europe.pdf>.
- GNCHR, Annual (Open) Seminar Season on "Education in Human Rights", Third Cycle, February – June 2021: <https://www.nchr.gr/ekpaidefsi.html>.
- GNCHR, Statement: Reviewing asylum and immigration policies and safeguarding human rights at the EU borders, 5.3.2020: https://nchr.gr/images/English_Site/PROSFYGES/GNCHR_STATEMENT_Borders.pdf.
- RVRN Press Release: Serious concern over attacks against refugees and humanitarian workers, 5.3.2020: <http://rvrn.org/2020/03/racist-violence-recording-network-serious-concern-over-attacks-against-refugees-and-humanitarian-workers/>

Checks and balances

The GNCHR welcomes the fact that the Greek Parliament did not suspend its operation and succeeded in adapting to the new realities resulting from the COVID-19 outbreak, by changing the way Parliamentarians vote, conduct committee hearings and plenary sessions and by adapting globally to keep working through the pandemic.

That said, there are issues to be reported concerning the exercise by the GNCHR of its role in the system of checks and balances, in particular when legislation is enacted. More specifically, over-regulation and bad regulation constitute two phenomena inextricably linked to the Greek reality, exacerbated in times of crisis, such as the financial crisis and the pandemic. Between 2001-2015, 1.478 laws were passed, and 3.452 presidential decrees were issued. During the same period (2002-2015) the laws known as “multi-bills” amount to approximately 90, while in total legislation of this period grants about 17.000 authorisations to the executive for the issuance of regulatory administrative acts of all kinds. Despite the fact that Greek Law no. 4048/2012 sets an obligation for all ministries to apply the principles of Better Regulation to all legislative developments, major challenges, still persist with its implementation. Regulatory impact assessment (RIA) is obligatory for all primary laws; however, the quality is poor due to the short time period in which new drafts are developed. Public consultations are required for all primary laws. In practice, consultation usually takes place through exchanges with selected groups. The GNCHR deplored on many occasions the frequent use of an expedited legislative process, by which many laws, even important legislative reforms, have been adopted. This process takes place even when no emergency requirement is actually met, as a result restricting significantly the discussion in Parliament. Furthermore, the GNCHR has repeatedly and publicly criticized the fact that it does not receive the Greek draft laws in advance, and thus it normally does not have sufficient time to comment upon the provisions in detail. This impacts the effective fulfilment of its mandate. The GNCHR normally takes note of the legislation once uploaded to the official public consultation platform (opengov.gr).

The GNCHR, as the Greek NHRI and the independent advisory body to the State on matters pertaining to human rights promotion and protection, considers it of crucial importance to develop and maintain an effective relationship with the Parliament. In particular, the GNCHR’s efforts in this area focus on the following priorities, in accordance with Paris Principles and the Abuja guidelines on the relationship between Parliaments and NHRIs:

With regard to the close working relationship between the GNCHR and the Parliament:

Discussion of the GNCHR's reports before appropriate parliamentary committees

The GNCHR is (and must be) invited to appear regularly before the appropriate parliamentary committees to discuss the annual report and its other reports on human rights protection and promotion.

Periodic meetings with Parliamentarians

The GNCHR considers it very important to hold periodic meetings to raise awareness amongst Parliamentarians of both human rights and the GNCHR's work. In addition, the GNCHR must provide Parliamentarians with regular expert, independent advice on national, regional and international human rights issues, instruments and mechanisms. Parliamentarians must be aware of the human rights implications of all proposed legislation and constitutional amendments as well as existing laws. To this end, Parliamentarians must be informed of the research into human rights issues being undertaken by the GNCHR.

Training for Parliamentarians

The GNCHR reiterates its willingness and availability to organise seminars and conferences, as well as provide on-going training for Parliamentarians on human rights principles, given the fact that it is of high importance for Parliamentarians to have a sound knowledge of international human rights and international human rights instruments as well as the GNCHR's work.

Encouraging the ratification of international Human Rights standards

Recognizing its responsibility as an NHRI and responding to the mission assigned to it by the national legislature – a mission which consists, inter alia, in the constant monitoring of the development of matters pertaining to human rights protection, the promotion of relevant research, the sensitization of the public opinion (Article 11(a), Law no. 4780/2021) and the organisation of a Documentation Centre on human rights (Article 12(k) of Law no. 4780/2021) – the GNCHR collected and cited in a single list the international and European legally binding texts, which are designed to protect human rights, always with a view to ensuring the broadest possible framework for human rights protection.

References

- Letter to Minister on Interior, Mr P. Theodorikakos, on Draft law of the Ministry of Interior regarding the "Amendment of the Code of Greek Citizenship etc.", October 8th, 2020.
- GNCHR, List of International and European Conventions: https://www.nchr.gr/images/English_Site/List%20of%20Conventions%204.2019.pdf.

Functioning of justice systems

The GNCHR has on several occasions submitted to the Greek authorities and subsequently published a series of observations to draft laws potentially restricting access to justice, highlighting that a well-functioning judiciary with an efficient court system is central to effective access to justice. Unfortunately, economic and social factors, specifically the financial crisis, constituted the key factors triggering and/or intensifying barriers to effective access to justice. In particular, substantial delays in the proceedings in the Greek judiciary adversely affect the right to judicial protection. In general, procedures are not concluded within a reasonable time. There seems to exist a general problem of unreasonable delay within the trial of a case running through every stage and kind of a trial, from the delays in fixing a hearing date in the courts of first instance to the average time until the issuance of an irrevocable judgment. At the same time, judicial reforms are moving rather slowly. A number of new legal instruments were adopted in recent years, in a bid to speed up access to justice. Chief among these were Article 9 of Law no. 4048/2012, Law no. 4446/2016 and more recently Law no. 4745/2020 aiming at accelerating the proceedings of pending cases under Law no. 3869/2010, in accordance with the reasonable time requirement under Article 6(1) ECHR. The GNCHR recalls the concerns that it had repeatedly expressed in the past regarding the risk that the measures aimed at simplifying judicial procedures might create more problems than those they would solve. The efforts to accelerate penal proceedings, for instance, are necessary, as Greece has been frequently found in breach of the ECHR by the ECtHR in this respect. However, some measures create doubts as to their effectiveness and coherence.

With regard to the non-execution of case law of the European Court of Human Rights (ECtHR), in almost 90% of the ECtHR judgments delivered concerning Greece, the Court has given judgment against the State, finding at least one violation of the Convention,

while over half of the findings of a violation concerned Article 6 (right to a fair hearing), relating either to the length of the proceedings (in the great majority of cases) or to the fairness of the proceedings. In particular, according to the Explanatory report to the draft law proposal (initiated by members of the Parliament) on “Harmonization of national provisions with the ECtHR case law and introduction of a special remedy for the detention conditions in penitentiary establishments”, from 2017 to 2019, 307 judgments were delivered by the ECtHR concerning Greece, of which 93 have given judgment against the State. According to said report, at the date of its publication (July 2020), 735 appeals were pending before the ECtHR against Greece, with a total of 186 ECtHR judgments under ongoing supervision concerning our country. This number is very large in relation to the size of our Country and its population. Moreover, according to the same Explanatory report, the compensations paid by Greece from 2016 to 2018 amount approximately to 11.500.000 euros. Furthermore, this year, the ECtHR condemned Greece in the leading case Stavropoulos and others, for breach of Article 9 of the Convention (freedom of thought, conscience and religion), because of the disclosure of religious beliefs in frequently used public documents, exposing the complainants to the risk of discriminatory situations in dealings with administrative authorities.

It is to be noted that a Special Permanent Parliamentary Committee on monitoring the ECtHR judgments has been established since 2014. Nonetheless, and despite the GNCHR’s efforts in the past to establish a cooperation with the aforementioned Committee, it seems that this Committee started in fact operating in 2018. The GNCHR deplors, nonetheless, the total absence of any cooperation until today. In fact, during its most recent session, in July 2020, the above-mentioned Draft law proposal on “Harmonization of national provisions with the ECtHR case law and introduction of a special remedy for the detention conditions in penitentiary establishments” was discussed, without any consultation with the Greek NHRI. The aforementioned draft law proposal has not yet received any further elaboration/discussion by the Parliament.

The GNCHR’s efforts in this area focus on the following priorities, in accordance with Paris Principles and the Nairobi Declaration aiming at the contribution of NHRIs to the strengthening of the administration of Justice:

Strengthening of the legal system and judiciary

The GNCHR traditionally considers of high priority its effective contribution to the reforming and strengthening of the judicial institutions, in order to guarantee equal access to justice for all. To this end, the GNCHR has advocated with a strong and steady voice for strengthening of laws to improve the judicial or criminal law system and has, to this end,

monitored and reported on issues concerning the functioning of justice systems as well as the principle of fair trial in great detail. By way of example, the GNCHR has contributed by means of submitting to the Greek authorities and subsequently publishing a series of observations to draft laws potentially restricting access to justice. Indicatively, we could refer to: a) the GNCHR Observations on the Draft Law of the Ministry of Justice, Transparency and Human Rights on «Providing Legal Assistance to Individuals» (July 2016) and b) the GNCHR Observations on the Draft Law of the Ministry of Justice, Transparency and Human Rights «Fees and charges of remedies and procedural acts and court fees» (July 2016). For instance, the GNCHR believes that the overload of cases before courts leading to significant delays could be tackled through the decriminalization of less important crimes and administrative infringements. Indeed, the overloading of penal courts cannot be addressed without a daring and extensive revision of substantive penal law.

Furthermore, the GNCHR strongly believes that any legislative reform to strengthen the judiciary (e.g., procedures related to the level and appointment of prosecutors and judges and qualifying lawyers; the independence of the judiciary and its capacity to adjudicate cases fairly and competently) must be brought into line with the international human rights instruments that the State has ratified or acceded to. Taking into account that the GNCHR, as the Greek NHRI, is the best placed Institution to monitor the compliance of the Greek justice system with international human rights standards and ensure that the administration of justice provides effective remedies particularly to minorities and to the most vulnerable groups in society, the GNCHR believes it is necessary to enhance its role and participation in the administration of justice, with a view to developing a strong national system for human rights protection. To this end, the GNCHR confirms its readiness to assist the Ministry of Justice to develop and implement a comprehensive national strategy to strengthen the administration of justice in full compliance with both international and national human rights obligations.

Compliance of the judiciary with international human rights standards

The GNCHR has increased its interaction with judges and prosecutors, in order to raise awareness and knowledge by the judiciary of international human rights norms, standards and practices and related jurisprudence. To this end, in addition to the annual open seminars covering a wide range of human rights, addressed to the general public, the GNCHR also undertook a more specialised cycle of seminars to judicial officers entitled “Education in Human Rights”.

In addition, the GNCHR assists in the human rights education not only of judges, but also of other legal professionals, such as lawyers, prosecutors and other judicial authorities and

law enforcement officers, by engaging with judicial educational bodies and professional legal training bodies (e.g., ensuring curricula reflect international human rights law), as well as by providing itself training and seminars on human rights.

As far as the non-execution of ECtHR judgments is concerned, the GNCHR's efforts focus on the following priorities:

Close cooperation with the ECtHR in general

The GNCHR maintains a particularly rich and important cooperation with the ECtHR. This cooperation is multilateral and consists of (a) the translation in the Greek language of the ECtHR Newsletters by the GNCHR. In cooperation with the ECtHR, the Newsletters at hand are available on the official website of the Court, (b) referrals to the GNCHR reports, positions, and recommendations by the ECtHR, (c) the participation of the GNCHR in the wider debate with regard to both the reform of the ECtHR and the EU accession to the ECHR and the Strasbourg system.

The GNCHR also provides instructions and practical information to the general public on how they can lodge an application before the ECtHR.

Monitoring of the execution of ECtHR judgments

The GNCHR monitors and reports on the execution and implementation of the ECtHR's judgments through the following actions: (a) the collection of all ECtHR judgments against Greece, (b) emphasis on the list of simple and enhanced surveillance decisions, (c) intervention in the Committee of Ministers regarding the decisions of enhanced supervision through the implementation, where necessary, of the provision no. 9 of the Rules of Procedure of the Committee of Ministers.

In order to assist the work of the State in this regard, the GNCHR has submitted recommendations and proposals, either by focusing exclusively on the issue of the execution or by drafting reports on problems that emerge through the ECtHR decisions, or by commenting on legislative proposal drafts which adopt measures affiliated with the execution of ECtHR judgments. The GNCHR placed special emphasis, through specific recommendations to the Greek State, on the immediate compliance of the Greek Government with the milestone judgment of the ECtHR, *Chowdury and others against Greece* (known as the "Manolada case") and, above all, with the State's obligations arising from the international and European commitments, concerning both the efficient reaction and the prevention of trafficking in human beings and/or forced labour. Hence, the GNCHR

harked back to its previous and established repeated recommendations which remain relevant due to the prevailing situation in Greece, which reveals that the facts of this case are not "isolated incidents". At the same time, in December 2020, RVRN submitted to the Committee of Ministers of the Council of Europe a Communication, pursuant to Rule 9.2 of the Rules of the CoE Committee of Ministers for the supervision of the execution of judgments and the terms of friendly settlements, relating to the case of Sakir v. Greece.

Cooperation with the Special Permanent Parliamentary Committee on monitoring the decisions of the ECtHR

The GNCHR reiterates its willingness and readiness to establish and maintain steady working relationship with the Special Permanent Parliamentary Committee on monitoring the judgments of the ECtHR, as its interlocutor by definition, as a bridge between the international/regional and domestic systems of human rights protection. The GNCHR recalls that it has become increasingly involved in independent reporting to the Council of Europe monitoring bodies as well as to the UN monitoring bodies and is willing to play a decisive role in monitoring the ECtHR judgments and contribute to the domestication of the international/regional human rights standards in general.

Sensitization of the public opinion on the execution of the ECtHR judgments

The GNCHR has developed a user-friendly webpage on the ECtHR case-law for the facilitation of the more effective monitoring of the execution of the ECtHR judgments. Furthermore, the GNCHR participated with speakers (the GNCHR and RVRN scientific staff) at a Webinar Series organised by the Council of Europe, ENNHRI and the European Implementation Network on the Effective Implementation of Judgments of the European Court of Human Rights (October 2020), presenting its experience regarding the use of Rule 9.2 by Human Rights Institutions.

References

- GNCHR Observations [in Greek] on the Draft Law of the Ministry of Justice, Transparency and Human Rights on «Providing Legal Assistance to Individuals», July 2016: <https://www.nchr.gr/en/decisions-positions/73-fair-trial/359-gnchr-observations-in-greek-on-the-draft-law-of-the-ministry-of-justice-transparency-and-human-rights-on-providing-legal-assistance-to-individuals.html>.
- GNCHR Observations on the Draft Law of the Ministry of Justice, Transparency and Human Rights «Fees and charges of remedies and procedural acts and court fees», July 2016: <https://www.nchr.gr/en/decisions-positions/73-fair-trial/360-gnchr-observations-on-the-draft-law-of-the-ministry-of-justice-transparency-and-human-rights-fees-and-charges-of-remedies-and-procedural-acts-and-court-fees.html>.
- GNCHR Comments on the Bill of the Ministry of Justice titled “Acceleration of proceedings in administrative courts and other provisions”, October 2010: <https://www.nchr.gr/en/decisions-positions/73-fair-trial/361-comments-on-the-bill-of-the-ministry-of-justice-titled-acceleration-of-proceedings-in-administrative-courts-and-other-provisions.html>.
- GNCHR Observations on the compliance of the Public Administration with domestic judicial decisions, September 2009: <https://www.nchr.gr/en/decisions-positions/73-fair-trial/362-the-compliance-of-the-public-administration-with-domestic-judicial-decisions.html>.
- GNCHR, Monitoring of the execution of ECtHR judgments. Introductory report and methodology (Summary in English), December 2019: https://www.nchr.gr/images/newPDF/Execution_of_ECHR_Decisions.pdf.
- Draft law proposal on “Harmonization of national provisions with the ECtHR case law and introduction of a special remedy for the detention conditions in penitentiary establishments”, 20 July 2020: <https://www.hellenicparliament.gr/UserFiles/c8827c35-4399-4fbb-8ea6-aebdc768f4f7/11332797.pdf>.
- Explanatory report to the draft law proposal on “Harmonization of national provisions with the ECtHR case law and introduction of a special remedy for the detention conditions in penitentiary establishments”, 20 July 2020: <https://www.hellenicparliament.gr/UserFiles/c8827c35-4399-4fbb-8ea6-aebdc768f4f7/11332795.pdf>.

- GNCHR Communication on the assessment of the level of compliance of the Greek Government with GNCHR's recommendations on ECtHR judgment *Chowdury and Others v. Greece (Manolada-case)*. Communication under Rule 9(2) on the execution of the judgment in *Chowdury v. Greece (21884/15)*, June 2020: [http://hudoc.exec.coe.int/eng?i=DH-DD\(2020\)522E](http://hudoc.exec.coe.int/eng?i=DH-DD(2020)522E).
- GNCHR Communication to the CoE Committee of Ministers under Rule 9(2) on the ECtHR judgment *Chowdury and Others v. Greece (Manolada-case)*. Recommendations for the full compliance of the Greek State, December 2018: [http://hudoc.exec.coe.int/eng?i=DH-DD\(2018\)1074E](http://hudoc.exec.coe.int/eng?i=DH-DD(2018)1074E).
- Communication from the Racist Violence Recording Network, pursuant to Rule 9.2 of the Rules of the Committee of Ministers of the Council of Europe for the supervision of the execution of judgments and the terms of friendly settlements, relating to the case of *Sakir v. Greece (Application No. 48475/09)*, 18 December 2020: [http://hudoc.exec.coe.int/eng?i=DH-DD\(2020\)1178E](http://hudoc.exec.coe.int/eng?i=DH-DD(2020)1178E).

Media pluralism and freedom of expression

The GNCHR expresses its deep concerns over the challenges affecting media pluralism in Greece, which seem to be increasingly worrying, according to an EU-wide research on media plurality, conducted for the Greek section of the ECMPF. The report found that standards for the protection of the journalistic profession, as provided for by laws and practices that are in place in order to protect the media sector, are insufficient in Greece. As far as market plurality is concerned, according to the same research, transparency in media ownership is almost non-existent, while commercial and owner influence over editorial content is visible. When it comes to political independence, there is practically no editorial autonomy, as a result of the direct relations existing between the government and the board members of the state-owned media ERT, with the government being able to appoint and dismiss board members at will. At the same time, regarding social inclusiveness in the media sector, Greece ranks very low within the EU. Access of minorities to the media is very limited (high risk) and so is access of local communities and local media to the mainstream sources of information. Greek media are also inadequate in meeting the needs of disabled people (medium risk), while the presence of women in broadcasting media is also rather weak.

The GNCHR has been following quite closely issues such as the freedom of speech, the freedom of expression and the promotion and protection of a pluralist media environment. With regard to mainstreaming human rights, inter alia via the media, the GNCHR as the Greek NHRI, develops initiatives on the sensitization of public opinion and the mass media on matters of respect for human rights, in accordance with its founding law. Moreover, it is to be noted with emphasis that the National Radio and Television Council (ESR) is a Member of the GNCHR. That being said, the GNCHR seeks to bring human rights issues and concerns to the attention of the broader public and provide a forum for discussion and debate through the media. For instance, national information campaigns on human rights or press conferences and other relevant events attracting publicity aim at increasing public awareness and creating a national culture in which tolerance, equality, mutual respect and human rights thrive.

The GNCHR, fulfilling its mission to promote research on human rights issues, has signed Cooperation Protocols with ten universities and departments, so that it can consolidate and strengthen their cooperation in both research and education fields. In that context, the GNCHR has signed a bilateral Cooperation Protocol with the Communication, Media and Culture Department of Panteion University. The GNCHR aims, among others, at putting together and proposing to the Greek national authorities an effective strategy for strengthening, on the one hand, the role of the media in promoting human rights and contributing, on the other hand, to ensuring a more independent and pluralist media sector.

Finally, the GNCHR, in its Recommendations on the Constitutional Review (2019), recommended the revision of Article 15 of the Greek Constitution, aiming at strengthening the guarantees of pluralism in radio and television. In particular, the GNCHR proposed the extension of the guarantees of transparency and pluralism, in accordance with Article 14(9) of the Constitution, to radio and television, as enshrined in Article 15 of the Constitution, in combination with the strengthening of the National Radio and Television Council (ESR) as the independent administrative authority, in order to ensure the objectivity, equality and quality of all types of broadcasts. The aim is to prevent the gathering of media by the same person or entity.

References

- GNCHR Recommendations on the Constitutional Review, February 2019 [in Greek]: https://www.nchr.gr/images/pdf/apofaseis/EEDA_Syntagmatiki%20Anatheorisi.pdf

Corruption

Over the last 15 years, the fight against corruption has been progressively recognised as an important issue in Greece. Corruption is broadly considered as “the problem which drove Greece into the current financial crisis”. The perception of corruption remains at high levels, according to the indexes published by Transparency International. In the latest Corruption Perception Index (2020), reflecting public perception of corruption around the world, published annually by TI, Greece is ranked 59th out of 180 countries with a score of 50 out of 100. After a historically low ranking in 2008/2009, the position of Greece is thus marked by a positive upward trend in recent years in TI’s CPI. With a score of 50, Greece is a significant improver on the CPI, jumping 14 points since 2012 and achieving high on the CPI, partly as a result of the bold reforms undertaken by the Country after 2012 to counter-balance severe austerity measures. Furthermore, in accordance with the Eurobarometer survey 2019 on the perception of corruption which covers specifically the 27 European Union Member States, Greece sometimes remains characterised by the highest levels of perceived corruption. For instance, 95 % of those questioned consider that corruption is widespread in the country and 57% consider that it affects them personally in daily life. 91% consider that there is corruption in national public institutions. According to the GRECO Report of the 4th Evaluation prevention round on Corruption prevention in respect of members of parliament, judges and prosecutors (2015) and the Second Compliance Report on Corruption prevention in respect of members of parliament, judges and prosecutors (2020), politicians at national and regional/local level are perceived by a large proportion of the population as particularly affected by certain forms of corruption. To a lower extent, this concerns also the judicial institutions. Controversies have been triggered by incidents of legislative and institutional manipulation exempting from their liability the authors of illegal acts: this was facilitated by the complexity of legislation, insufficient transparency of the legislative process, a lack of appropriate controls and other factors.

The GNCHR stresses with satisfaction that, since the outbreak of the economic crisis in 2010, successive Greek governments have upgraded the institutional armoury that the Greek state has at its disposal in order to fight corruption. Yet, the new anti-corruption mechanisms have not been fully operational. Despite progress in anti-corruption, not only petty corruption concerning the public services, but also grand or political corruption still mark the case of Greece out as an outlier in international comparisons. The regulatory framework of anti-corruption has proven to be incomplete; there is a gap in policy implementation and successive governments have put anti-corruption to political uses. Yet, it is possible for Greece to implement further measures to fight political corruption,

particularly today when trust towards political institutions is needed in order to fight the COVID-19 pandemic.

On a positive note, according to the Enhanced Surveillance Report on Greece by the European Commission, released in November 2020, the National Authority for Transparency is now fully operational, which is expected to improve coordination and a number of important steps have been taken regarding the fight against corruption in the political field. Good progress is being made on several work streams. The Authority oversees the implementation of the National Anticorruption Plan, which shows encouraging results. For instance, it has supported the Ministry of Health in the drafting of a dedicated anticorruption strategy. At the same time, the legislation on political party financing will benefit from a codification project in 2021, which should contribute to making the legal framework more coherent and clearer.

The fight against corruption and the promotion of confidence in institutions is among the GNCHR's priorities and part of its core mission. In particular, the GNCHR plays an important role in promoting and evaluating the fight against corruption in its role as NHRI and more specifically in light of its human rights monitoring and constant human rights impact assessment. The GNCHR's efforts in this area focus on the following priorities:

Transparency of the legislative process

As already mentioned, the GNCHR deplored on many occasions the frequent use of an expedited legislative process, by which many laws, even important legislative reforms, have been adopted. This process takes place even when no emergency requirement is actually met, as a result significantly restricting discussion in Parliament. Furthermore, the GNCHR has repeatedly and publicly criticized the fact that it does not receive the Greek draft laws in advance, and thus it normally does not have sufficient time to comment on the provisions in detail. This has an impact on the effective fulfilment of its mandate. The GNCHR normally takes note of the legislation once uploaded to the official public consultation platform (opengov.gr). To this end, the GNCHR constantly recommends, in line with the GRECO Recommendations (2019), to ensure that legislative drafts including those carrying amendments are processed with an adequate level of transparency and consultation including appropriate timelines allowing for the latter to be effective.

Transposition of EU Directive on whistle blowers' protection

The GNCHR deplors that the protection of whistle blowers in Greece is still pending and invites the competent State Authorities to consider with special attention the need for addressing the gap. Following the adoption of the EU Directive on the protection of persons who report breaches of Union Law in 2019, the EU member States have until the 17th of December 2021 to transpose its provisions into their national legal and institutional systems. On a positive note, the Greek government has established a special legal drafting committee for the preparation of a draft law for the integration into the national legal order of Directive 2019/1937/EE "on the protection of persons reporting violations of Union Law". The GNCHR underlines the need for timely and effective transposition of the Directive.

References

- GNCHR Recommendations on the Constitutional Review, February 2019 [in Greek]: https://www.nchr.gr/images/pdf/apofaseis/EEDA_Syntagmatiki%20Anatheorisi.pdf
- Letter to Minister on Interior, Mr P. Theodorikakos, on Draft law of the Ministry of Interior regarding the "Amendment of the Code of Greek Citizenship etc.", October 8th, 2020.

Impact of measures taken in response to COVID-19 on the national rule of law environment

Most significant impacts of measures taken in response to the COVID-19 outbreak on the rule of law and human rights protection

The GNCHR monitors closely the Greek Government's series of measures in response to the COVID-19 pandemic, given that they affect directly the enjoyment of human rights in Greece. In particular, the Greek government adopted the first measures in response to the outbreak of COVID-19 in March and April 2020 and continues until today to adopt specific measures in this regard. The measures adopted take the form of Acts of Legislative Content whose implementation is then specified through Joint Ministerial Decisions and Circulars. In other words, the coronavirus pandemic has given birth to consecutive Acts of Legislative Content (submitted to the Parliament for approval), ministerial decisions and circulars

restricting various constitutional rights and establishing an atypical “emergency law”, which affects directly the enjoyment of a large number of fundamental rights in varied fields, among which economic and social rights. This way of “fast-track” legislating by the executive, which was also criticized throughout the financial crisis, seems to considerably reduce the role of the Parliament, by bypassing parliamentary deliberation. And Parliament is not the only Institution bypassed in this case, since the Courts have repeatedly accepted that the “extraordinary circumstances of an urgent and unforeseeable need” (of Article 44(1) of the Greek Constitution) is a political matter, not subject to judicial review.

On a positive note, the Greek government has also taken further measures in order to mitigate the effects of the COVID-19 pandemic on the Greek economy and labour market. Such an example is Law no. 4690/2020 introducing new measures for businesses to tackle the COVID-19 pandemic.

Impact of restrictive measures aiming at combating the spread of the pandemic on the rights of vulnerable groups

The GNCHR has on many occasions stressed that restrictive measures aiming at combating the spread of the pandemic should not undermine respect for human rights and rule of law, nor discriminate, but take into account the special needs of the particularly vulnerable groups. Given that the State has taken emergency measures to deal with the pandemic, imposing restrictions on citizens' rights (such as the right to free movement, personal liberty, access to public health of non-infected citizens, etc.), the GNCHR focused, in its “Report on the need for protection of human rights with regard to the measures taken in response to the coronavirus (COVID-19) pandemic and recommendations to the State”, issued on June 2020, mainly on the impact of those measures on the rights of vulnerable groups. More specifically, with regard to the situation in the refugee camps, the GNCHR stressed that structural problems remain. Overcrowding and a complete lack of sanitation and medical services, combined with limited access to healthcare and basic services, exacerbate the risk of COVID-19 infections. Infection prevention is impossible as social distancing measures cannot be implemented. The protective measures, according to the competent Minister, are stricter than those provided for the general population. With regard to the situation in prisons, the GNCHR raised also its serious concerns mainly due to the overcrowding under the current circumstances. We have called for measures such as decongestion of the prisons, release of certain detainees and quarantine measures for infected prisoners. The GNCHR, due to the hunger strike of a prisoner in protest over the non-decongestion of prisons during the pandemic, has issued 3 consecutive public statements calling upon the State to respect the human rights standards and the rule of

law and to take immediate measures to protect the right to life of the prisoner, to ensure his/her access to higher education, to decongest the prisons and to respond to COVID-19 with a plan of action. Indeed, following further reactions of many CSOs, the authorities have withdrawn their decision to transfer the prisoner to another prison, where it would be impossible to exercise her/his right to education.

Proportionality of restrictive measures aiming at combating the spread of the pandemic

Moreover, the GNCHR pointed out that restrictive measures must have a legal basis, be proportionate and time limited. The GNCHR also underlined that, taking into account the uncertain context of the pandemic, decisions should be continually re-evaluated with a rebalancing of the rights, as what is proportional to the beginning of the pandemic may become disproportionate later and thus the measure should be mitigated or abolished. This being clarified, following the Decision No. 1029/8/18 of the Chief of the Hellenic Police, which prohibited all public open-air gatherings from November 15, 2020 to November 18, 2020 (covering the 47th anniversary since the students' uprising at the Athens Polytechnic on November 17, 1973, a milestone for democracy in our Country), the GNCHR pointed out that the aforementioned Decision of the Chief of the Hellenic Police, which imposes the restriction of the freedom of assembly in the whole Territory of the Country, raises the issue of suspension of the above fundamental right, as enshrined in Article 11 of the Greek Constitution, as well as in Articles 11 of the ECHR, 12 of the EU Charter of Fundamental Rights and 21 of the International Covenant on Civil and Political Rights. Furthermore, recalling the requirements which need to be met by the Police Authorities in order to justify the ban on public assemblies, as they emerge from the ECtHR case-law, the GNCHR concluded that the legality and constitutionality of the above-mentioned disposition prohibiting all public open-air gatherings are subject to judicial review.

Access to Justice during the pandemic outbreak

At the same time, in response to the COVID-19 outbreak, all courts' hearing procedures were temporary suspended, until the 10th of April 2020 – with some exceptions regarding the examination of requests for granting or annulling provisional orders, all criminal hearings about pre-trial detention, all proceedings about emergency cases and the issue and publication of court decisions. In this regard, the GNCHR has examined the issue of the reoperation of the courts, the exceptions provided with regard to the presence of the parties concerned in specific cases and the digitalisation of proceedings in the field of Justice, which is expected to be launched soon. Pertaining to the institutional role of justice in safeguarding respect for the rule of law, the GNCHR emphasized the need for effective

measures to facilitate and ensure the safe operation of the courts in the context of de-escalating the restrictions imposed due to the pandemic and called upon the competent authorities to ensure the immediate reoperation of the judicial system and the protection of the right to a fair trial, of human value and dignity.

De facto COVID-19 Human Rights Observatory

Fulfilling its monitoring and advisory missions in the field of human rights, the GNCHR has been particularly active since the outbreak of the COVID-19 pandemic, operating in fact as a de facto COVID-19 Human Rights Observatory. Bringing together experts from different human rights fields, with a wide range of backgrounds: its members, the GNCHR monitors the situation in the field, adopts specific recommendations focusing mainly on the most vulnerable groups and alerts national authorities at the highest level of risks of human rights violations in the context of the COVID-19 outbreak. In this regard, the GNCHR, taking into account that the need for restrictive measures may be obvious at the beginning of a crisis, emphasized that it remains vigilant in this context as long as the measures are in place, assessing at the same time whether there is no longer a necessity for these measures. Moreover, the GNCHR reassured that the necessity, nature and extent of the restrictions applied to the rights and freedoms protected, will be systematically evaluated to determine whether they are justified in response to COVID-19. An important part of the evaluation is the possibility, within a reasonably short timeframe, to appeal to the administrative authorities against the restrictive measures as well as to establish a relative control mechanism for objections and complaints in case of incorrect and discriminatory implementation of these measures.

References

- GNCHR Report on the need for protection of human rights with regard to the measures taken in response to the coronavirus (COVID-19) pandemic and recommendations to the State. Description of the issues discussed in the Plenary Meetings during the lockdown Meetings of 8th, 22nd, 29th of April and of 6th May 2020: https://nchr.gr/images/English_Site/COVID19/GNCHR_HR_COVID-19ENG.pdf.
- GNCHR Statement on the ban of all public open-air gatherings, November 2017 [in Greek]: https://www.nchr.gr/images/pdf/apofaseis/politika_dikaiomata/Dilosi_EEDA_Dimosies_Synathroiseis.pdf.
- GNCHR Statement on the case of the transfer of prisoner V. Dimakis, April 2020: https://www.nchr.gr/images/pdf/apofaseis/sunthikes_krathseis/Dilosi_EEDA_gia_VDimaki.pdf.
- GNCHR New Statement on the case of the prisoner-student V. Dimakis, May 2020: https://www.nchr.gr/images/images2020/PDF/Dilosi%20EEDA%20gia%20V.Dimaki_2.pdf.
- GNCHR Urgent Statement on the case of the prisoner-student V. Dimakis, May 2020: https://www.nchr.gr/images/images2020/PDF/Katepeigousa%20Dilosi%20EEDA%20gia%20V.Dimaki_25.5.2020.pdf.

Most important challenges due to COVID-19 for the NHRI's functioning

Naturally, the GNCHR has faced significant challenges due to COVID-19 restrictions and, especially, due to the lockdown and the total restriction of movement throughout the Country. Meanwhile, the severe restriction of movement has had an impact on the GNCHR's power to carry out investigations and, therefore, on the effective fulfilment of its monitoring functions. In particular, the COVID-19 pandemic has affected field research, which is one of the most important human rights monitoring techniques of NHRIs, while hearings of persons before the GNCHR have been delayed or relocated and finally conducted via teleconference. In addition, due to COVID-19, the GNCHR has temporarily suspended its planned visits to migrant and refugee reception and accommodation centres to a later date. At the same time, the GNCHR had to postpone part of its seminars of the Second Cycle of the GNCHR Seminars on Human Rights, scheduled to be conducted from March to May 2020 by physical presence. Moreover, despite the fact that Plenary meetings

of the GNCHR by physical presence had to be cancelled, the online Plenary meetings have doubled throughout the pandemic. In fact, it is important to emphasize that the GNCHR has held online plenary meetings on a weekly basis during the pandemic, with the participation of governmental and non-governmental stakeholders involved in the decision-making process, in order to deal with the new challenges in the best possible way, to assess the impact of the restrictive policy measures regarding human rights and democratic values, to provide the Greek government with appropriate advice on the protection of the core human rights and at the same time in order to inform the public about their rights and the risks of violations due to the pandemics.

That said, the GNCHR deals with the challenge quite effectively. The GNCHR heavily relies on the information available from its own members, the press, civil society and the government and remains in close contact with them. Moreover, its personnel works from home and Plenary meetings take place online very frequently. As far as monitoring of human rights violations at European borders is concerned, the GNCHR has overcome difficulties in obtaining first-hand information on the situation by conducting hearings with state authorities and grassroot organisations with a strong presence on the ground, including in geographically remote areas. Monitoring of the situation, in general, by collecting data from relevant authorities regarding preventive measures for protection of vulnerable groups, such as persons deprived of liberty or refugees and irregular migrants continues.

Furthermore, the postponed planned seminars of the Second Cycle of Human Rights Education were rescheduled and included in the Third Cycle of the GNCHR Seminars, which will be conducted by teleconference from February to June 2021. Finally, it is worth mentioning that for the first time in the 20 years of operation of the GNCHR, the Hellenic Republic, in the presence of the President of the Hellenic Republic, Katerina Sakellariopoulou, paid tribute to the contribution of the GNCHR to the respect and promotion of human rights in this country, by assisting a special Plenary meeting (by teleconference) in celebration of the International Human Rights Day, on Thursday, 10 December 2020.

References

- GNCHR, Annual (Open) Seminar Season on "Education in Human Rights", Third Cycle, February – June 2021: <https://www.nchr.gr/ekpaidefsi.html>.
- GNCHR, Press Release: The President of the Hellenic Republic Katerina Sakellariopoulou at the GNCHR Plenary on the International Human Rights Day 2020, December 2020: https://www.nchr.gr/images/pdf/nea_epikairothta/deltia_tupou/DT_PtD_stin_Olomeleia_EEDA_08_12_2020_en.pdf.
- GNCHR Report on the need for protection of human rights with regard to the measures taken in response to the coronavirus (COVID-19) pandemic and recommendations to the State. Description of the issues discussed in the Plenary Meetings during the lockdown Meetings of 8th, 22nd, 29th of April and of 6th May 2020: https://nchr.gr/images/English_Site/COVID19/GNCHR_HR_COVID-19ENG.pdf.

Other relevant developments or issues having an impact on the national rule of law environment

Racist violence and lack of proper investigation

Furthermore, the GNCHR is deeply concerned by the delays in the investigation process regarding specific racist attacks. In particular, in several cases, NGOs and CSOs participating in RVRN have witnessed unacceptable delays in the investigation process, which hinder the victims' right to an effective remedy. The most prominent of these cases is the one with racist attacks at Sappho Square (Mytilene, Lesvos 22-23 April 2018), where around 150 local residents started attacking the approximately 180 refugees with bottles, sticks, stones, pieces of marble, firecrackers, flares etc. Approximately 30 refugees were taken to the hospital, many with head injuries. The total number of injured persons was much higher. The case file regarding the racist violence against the refugees was transmitted by the Police to the Prosecutor in November 2018 and identifies 26 persons as potential perpetrators of the attacks. The Public Prosecutor pressed charges in February 2019, invoking also Article 81A ("racist motive") and requested that a "main investigation" be carried out. The case has since been pending before the Office of the Investigating Judge. The defendants have not been called to provide their statements to date. The delays in the investigation of the aforementioned case have fostered a climate of impunity on the island

of Lesbos, while many of the defendants in this case have already been identified as suspects of attacks against members of migrant related CSOs.

In addition, in 2020, there have been many attacks mainly by local groups, both on newly arrived refugees and migrants as well as humanitarian workers in the Aegean islands and at the land border in Evros. Among other things, there were physical attacks on employees of refugee agencies, including arson in places intended for the accommodation of refugees and involving cars that belong to organisations, incidents of obstruction of movement or prevention of disembarkation of newcomers with a parallel expression of racist statements. However, up to now it seems that in many cases both the police and the prosecutor's office have not initiated the necessary procedures to investigate the racist motive for these attacks.

Establishment and operation of an Independent mechanism for recording and monitoring informal push backs

The GNCHR has on many occasions stressed the need to establish an official independent mechanism for recording and monitoring informal push back complaints, due to the most serious human rights violations involved. In this regard, the GNCHR reiterates its willingness to contribute to this direction, given its experience from the establishment and operation of the RVRN in terms of setting up a framework for recording life-threatening incidents through practices with consistent methodological features. To this end, the GNCHR is already discussing with different human rights stakeholders the possibility of setting up such a Network.

References

- Law no. 4780/2021 on "National Accessibility Authority, National Commission for Human Rights and National Bioethics and Technoethics Committee" (OJ 30/A/28.2.2021): <https://www.hellenicparliament.gr/UserFiles/18a4e643-1429-4e6b-a317-d7c6a29adabf/11578912.pdf>.
- RVRN Annual Report 2019: <http://rvrn.org/wp-content/uploads/2020/06/ETHSIA-EKTHESH-2019-english.pdf>.

- Communication from the Racist Violence Recording Network, pursuant to Rule 9.2 of the Rules of the Committee of Ministers of the Council of Europe for the supervision of the execution of judgments and the terms of friendly settlements, relating to the case of Sakir v. Greece (Application No. 48475/09), 18.12.2020:
[http://hudoc.exec.coe.int/eng?i=DH-DD\(2020\)1178E](http://hudoc.exec.coe.int/eng?i=DH-DD(2020)1178E).
- GNCHR Statement on the reported practices of push backs, July 2020:
https://www.nchr.gr/images/English_Site/PROSFYGES/GNCHR-Statement-on-the-reported-practices-of-push-backs.pdf.

Hungary

Commissioner for Fundamental Rights

International accreditation status and SCA recommendations

The Hungarian NHRI was [accredited](#) with A status in October 2014. In October 2019, the SCA decided to [defer](#) its decision on the accreditation of the NHRI. The SCA will review the Hungarian NHRI in [June 2021](#).

Impact of 2020 rule of law reporting

Impact on the Institution's work

The 2020 ENNHRI Rule of law Report impacted the work of the Commissioner for Fundamental Rights (CFR) in many ways. The fact that its findings were channeled into the rule of law mechanisms of the European Union, and of other relevant regional and international entities, granted the Report a greater importance and provided **further publicity and weight to the input of NHRIs**.

The 2020 Report also gives an excellent overview of the **trends and challenges** in the European scene and shares good examples to learn from in the field of the promotion and protection of human rights, including on the functioning of and the different approaches taken by NHRIs of different countries. Recognizing common issues can lead to a **concerted strategic approach** between partner organizations and, eventually, to more efficient solutions to problems in European rule of law mechanisms such as timely and inclusive coordination between partners, and the common understanding of the notion of rule of law. **Civil society organizations can also rely on the findings of the Report in their advocacy and awareness raising activities, e.g.**, in their participation in different human rights fora such as the Human Rights Council or its Universal Periodic Review.

The Report provides a good combination of general and specific information on the human rights situation on the ground. The common reporting structure **enabled the CFR to get to a more comprehensive and informed assessment of the situation in each country**. It also stimulated the CFR to work in a more concerted manner on rule of law-related matters through the **enhanced cooperation between its different departments**.

Follow-up initiatives by the Institution

The COVID-19 pandemic prevented the CFR from implementing several of the planned follow-up activities. However, it broadly shared the Report with its partners, for instance through its newsletters.

Other follow-up initiatives based on the 2020 Report included **preventive awareness raising activities on human rights violations**, with several statements and general comments published in the relevant fields of concern, such as: combating hate speech and hate crimes against members of nationality groups and disadvantaged communities; addressing the challenges posed by the Covid-19 crisis and its economic and social implications disproportionately affecting the most vulnerable groups of the society, including the Roma.

One of the focus points of the 2020 Report was the situation of **media pluralism** in Hungary. As a follow-up to that, the OCFR launched in 2020 a follow-up investigation to its inquiry of 2018 (1) on the implementation of national cultural autonomy in the field of public media services. The MTVA (Hungarian Media Services and Support Trust Fund) stated in 2018 that digital audio broadcasting (DAB), which was then under development in Hungary, would answer all complaints raised by the nationality communities regarding the fact that the technical conditions for the availability of nationality radio programs were inadequate. The Office thoroughly studied the situation in its inquiry reviewing the impact of the shutdown of digital terrestrial radio broadcasting in Hungary on the accessibility of national radio programs. Although the drafting of the relevant general comment is still under way, the Office has maintained its concerns about the current outdated technical conditions (AM transmission) and the termination of the technically promising DAB-transmission for public service radio broadcasts for the nationalities living in Hungary.

References

- (1) 2018 investigation:
http://nemzetisegjogok.hu/documents/2657648/3055496/3_2018+sz.+%C3%A1ll%C3%A1sfoglal%C3%A1s+a+nemzetis%C3%A9gi+kultur%C3%A1lis+autonomia+%C3%A9rv%C3%A9nyes%C3%BCl%C3%A9s%C3%A9r%C5%91l+a+k%C3%B6zszolg%C3%A1lati+m%C3%A9diaszolg%C3%A1ltat%C3%A1s+ter%C3%BClet%C3%A9n.pdf/9cf87f06-cd96-8b54-21e2-7aa764e3618d?version=1.0

Independence and effectiveness of the NHRI

Changes in the regulatory framework applicable to the Institution

The Hungarian Ombudsman institution has recently become **exceptionally powerful in Europe thanks to the integration of the advantages of the ombudsman-type legal protection and the legal protection by a public authority** by extending the competences assigned to the CFR. The rules pertaining to the CFR, in particular his/her special legal status (institution set up by the Fundamental Law, mandate with sole responsibility to the National Assembly, full independence from the executive branch of power, immunity, strict professional requirements towards the person fulfilling the position) and his/her wide-ranging investigative powers are suitable for guaranteeing the effective identification of fundamental rights-related improprieties. The Ombudsman's competences have been strengthened in two areas of particular importance: in connection with police complaints, and with regard to the enforcement of the principle of equal treatment.

As of 27 February 2020, the CFR performs the tasks and responsibilities of the **former Independent Police Complaints Board**. The investigative powers of the CFR have been increased significantly in this field: the CFR may now proceed directly in cases concerning police complaints (i.e., prior to potential investigations carried out by police organs). In these cases, the police organs may deviate from the conclusions drawn by the CFR only if they provide adequate justification for the derogation in their decisions. If an action is brought before the court to seek the judicial review of a police decision, the CFR may participate and represent his/her position in the proceeding, even if it is different from that of the police organ making the decision.

On 1 January 2021, the **Equal Treatment Authority** (ETA) was merged into the Office. The CFR took over all the responsibilities and functions of the ETA, including its authority competences. The fact that an inquiry has been conducted under the CFR Act does not preclude that, after its conclusion, the CFR institute a proceeding, upon complaint or ex officio, in the same case under the provisions of the Equal Treatment Act. Thereby, it has become possible that if the violation of the principle of equal treatment is exposed by the CFR in an ombudsman-type procedure, he/she may not only make a non-binding recommendation to remedy the impropriety exposed, but he/she may also make an administrative decision in a separate procedure, in which he/she may order the termination of the injurious situation, forbid the continuation of the violation, or even impose a fine. In order to ensure the professional performance of tasks, the former staff members of the ETA have been taken over by the CFR.

Under the Act on Bodies with Special Legal Status and the Status of Their Employees all **employees were re-classified**, and at the initiative of the Commissioner for Fundamental Rights, **a significant raise of their salaries** took place enabling a better working environment.

Enabling space

In accordance with Act CXI of 2011 on the Commissioner for Fundamental Rights, the Commissioner shall give an **opinion on the draft legislation** affecting his/her tasks and competences, and on directly affecting the quality of life of future generations. The CFR may make proposals to develop or amend legislation affecting fundamental rights, or regarding the State's consent to be bound by an international treaty. However, ministries often send the bills for review to the CFR with **short deadlines**. The Ombudsman has stressed this problem in its annual report submitted to the Parliament, as well as in the plenary session of the Parliament discussing this report.

On the other hand, authorities usually respond to the CFR's inquiries within deadline, providing in depth answers.

The CFR is involved in several **government-established working groups** on human rights-related matters, such as children's rights, rights of persons with disabilities, or digital security. The working group on children's rights expressly requested the CFR's active participation.

Pursuant to the provisions of the Act on the Commissioner for Fundamental Rights, if the CFR finds an impropriety with regard to fundamental rights, it can **make a recommendation to the supervisory body of the authority under investigation to remedy such situation**, while informing the authority concerned. The addressee then decides whether to accept the recommendations. The acceptance rate of the CFR's recommendations is 85 to 90%.

Developments relevant for the independent and effective fulfilment of the NHRIs' mandate

In 2020, the Office of the Commissioner for Fundamental Rights (OCFR) moved to a **new** building that effectively meets the requirements for an environment enabling to perform effectively the increased quantity of the CFR tasks. Despite the move, the Office has been able to process citizens' complaints without interruption.

The long-awaited **salary raise** of civil servants employed by the Office, in addition to those of other public bodies, was accomplished by Act CVII of 2019 on Bodies with Special Legal Status and the Status of their Employees, leading to an average of 30% salary increase.

From 2020 onward, the Central State Budget allocates a considerably **larger budget to the CFR**: a 22 and 33% increase compared to the previous financial year for 2020 and 2021 respectively. This considerable growth is the result of the above-mentioned improved salary system and the merging of the Independent Police Complaints Board with the CFR. However, this increase does not yet include the effects of the **merger with the Equal Treatment Authority** (outlined in detail later in the report), which will take effect in 2021.

The global **COVID-19 pandemic** and subsequent economic and social crisis posed unprecedented challenges to governments, administrations and societies, including national human rights institutions. The Office of the Commissioner for Fundamental Rights had to adapt also its operation to the special circumstances. On-site inspections as well as offline programs and events have mostly been replaced by online meetings and inquiries requiring desk research. Still, the CFR has conducted numerous on-site inspections during the pandemic to inspect the preventive measures taken against the virus.

As already highlighted above, as of 27 February 2020, the CFR also performs the tasks and responsibilities of the **former Independent Police Complaints Board**. The investigative powers of the CFR have been increased significantly in this field: the CFR may now proceed directly in cases concerning police complaints (i.e., prior to potential investigations carried out by police organs). In these cases, police organs may deviate from the conclusions drawn by the CFR only if they provide an adequate justification. If an action is brought before the court to seek the judicial review of a police decision, the CFR may represent its position in the proceeding.

On 1 January 2021, the **Equal Treatment Authority** (ETA) was merged with the CFR. The Office took over all the responsibilities and functions of the ETA. An inquiry under the CFR Act does not preclude that the CFR then initiates a proceeding, upon complaint or ex officio, in the same case under the provisions of the Equal Treatment Act. Thereby, it has become possible that if the violation of the principle of equal treatment is exposed by the CFR in an ombudsman-type procedure, the Commissioner makes not only a non-binding recommendation to remedy the impropriety exposed, but also issues an administrative decision in a separate procedure to order the termination of the injurious situation, forbid the continuation of the violation, or impose a fine.

In accordance with Act CXI of 2011 on the Commissioner for Fundamental Rights, the Commissioner shall give an **opinion on the draft legislation** affecting his/her tasks and competences, on long-term development and spatial planning plans and concepts, and on plans and concepts otherwise directly affecting the quality of life of future generations, and may make proposals for the amendment or making of legislation affecting fundamental rights and/or the expression of consent to be bound by an international treaty. Ministries often send the bills for review to the CFR with **short deadlines**. The Ombudsman has expressed this problem in the annual report submitted to the Parliament and has also voiced his concern in the plenary session of the Parliament discussing the report. For instance, as a tool to further compliance with the Aarhus Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters, the Office has also addressed a **letter to the Minister of Justice drawing attention to the importance of public consultation in environmental issues**.

After the outbreak of the COVID-19 pandemic, the CFR decided to focus also on **comprehensive studies** to be concluded with publishing general comments and he also issued several statements.

Human rights defenders and civil society space

Restrictions imposed on the right of assembly due to the state of danger declared because of COVID-19 also affect the exercise of the rights of nationalities. The prohibition of group gatherings prevents the holding of regular annual cultural events of the nationality communities, impacting their right to maintain their cultural identity. Similarly, the social distancing rules prevent the holding of the regular annual public hearings of the nationality self-governments.

In summer 2014, civil society organisations turned to the Commissioner in a letter objecting the audit initiated by the Government Control Office (GCO) regarding the **distribution of the NGO Fund of the European Economic Area (EEA) / Norway Grants**, which had been performed through calls for applications. The operation of the “Norwegian Financial Mechanism” rests on international treaties. The international agreement for the 2004–2009 funding period designated the GCO as the organ in charge of the control of the projects funded by the Norwegian Financial Mechanism. However, the new agreement for the 2009–2014 funding period made no mention of the GCO and designated the Directorate General for Audit of European Funds (EUTAF) as Audit Authority with respect to the funding allocated on the basis of relevant international treaties. In this funding period, grants were handed out in the following way: funding awarded from the NGO Fund of the

EEA/Norway Grants was transferred directly by the Brussels-based Financing Mechanism Office to the civil society organisations performing operator's tasks in Hungary. These civil society organisations – a civil consortium headed by Ökotárs Foundation – then re-distributed the grants of the NGO Fund of the EEA/Norway Grants to the beneficiary civil society organisations.

The Commissioner called on the Prime Minister's Office to exchange with the Norwegian Government that signed the agreement in order to clarify its provisions, therefore clearly defining the powers of control of the GCO in connection with the NGO Fund of the EEA/Norway Grants. At the end of 2020, the Norwegian and Hungarian Governments concluded an agreement according to which funding was made available to civil society and establishing a fund operator independent of the Hungarian authorities. On 19 January 2021, the Commissioner for Fundamental Rights received the Ambassador of Norway to Hungary. They reinforced their intention to cooperate in the future, with special regard to enhancing the execution of the agreement.

The Ombudsman and his Deputies are in a unique position to be able to act as a bridge between civil society, legislators, regulatory authorities, business organisations and academia by bringing the various stakeholders to the negotiation table on sensitive matters. Currently, the OCFR is in the process of **setting up an additional consultative body for NGOs** to support the implementation of the other mandates of the CFR. In addressing individual complaints, the CFR strives to seek cooperation with NGOs and civil society organisations locally involved.

The OCFR is an active member of international human rights networks such as EQUINET, ENNHRI, GANHRI, OPRE-platform, CAHROM and the regional V4 cooperation of the ombudspersons of the Visegrad Countries.

The CFR is actively involved in the governmental **Human Rights Working Group** operating in Hungary, which monitors the enforcement of human rights in the country. The WG considers the implementation of recommendations made with regard to Hungary at the UPR Working Group of the Human Rights Council. Furthermore, it reviews the tasks related to the enforcement of human rights arising from conventions and agreements accepted in the framework of the United Nations, the Council of Europe, the Organisation for Security and Co-operation in Europe, the membership in the European Union and other international commitments and monitors the performance of these tasks. The Human Rights Working Group created in 2012 the **Round Table on Human Rights**, a platform for civil society organisations, working with thematic working groups (e.g. on other civil and political rights, on the rights of LGBT people, on Roma issues, the freedom of expression,

the rights of persons with disabilities, the rights of children, the elderly, the homeless). The Office of the Commissioner for Fundamental Rights plays an active role in the dialogue between the members.

In order to support the performance of the **OPCAT National Preventive Mechanism**, the CFR established a **Civil Consultative Body** (CCB) in 2014, involving the experts of civil society organisations which have experience in inspecting places of detention and enforcing the rights of detainees. The CCB meets at least twice a year, receiving a lot of useful information and proposals for locations to visit. The last CCB meeting took place in December 2020.

The CFR also met regularly with the heads of civil society organisations, including the Hungarian Red Cross, the Hungarian Civil Liberties Union, and the Hungarian Helsinki Committee.

The Ombudsman and his Deputies annually grant the **“Justitia Regnorum Fundamentum” award** to individuals or groups for outstanding accomplishments and professional activities in the field of protecting human rights.

Checks and balances

The CFR examined some issues relevant to checks and balances which have arisen in the context of the handling of the COVID-19 pandemic. In response to a petition it received, the Commissioner inquired into the ways in which the restrictive measures introduced due to the COVID-19 pandemic might affect the **functioning of the municipal councils of local governments**. The CFR examined whether the restrictive measures make it impossible for the members of municipal councils to take part in the decision-making procedures of municipal councils. The CFR came to the conclusion that it clearly follows from the regulation pertaining to special legal order that the latter allows measures that are absolutely necessary to and suitable for averting the situation for which the special legal order has been introduced. Consequently, the legislator must pay special attention to the requirement of necessity and proportionality, and to the prohibition of abuse of rights. Therefore, measures that are not reasonably related to the aim, not suitable to its attainment, or not absolutely necessary may not be taken.

In the framework of the **state of danger declared because of the COVID-19 pandemic**, several restrictions are applicable to the Election law: no interim election (including nationality self-government elections) shall be scheduled until after the end of the emergency, and the elections already scheduled shall not be held. Any unscheduled or not-

held election shall be scheduled within fifteen days after the end of the emergency. This also applies to national and local referendums, including the ones initiated by the members of communities of nationalities living in Hungary.

The CFR also contributes to ensuring transparency of decision-making by providing individuals with the possibility to submit **public interest disclosures** – to be examined – through a **protected electronic system**. The Commissioner forwards these disclosures to the administrative organs concerned, which investigate the given issues and provide information, again through the same system. This protected electronic system protects whistleblowers as they may remain anonymous to the organs investigating their public interest disclosures. In 2020, almost 80% of the whistleblowers indeed requested that their personal data be accessible only to the Commissioner for Fundamental Rights. The number of public interest disclosures in 2020 corresponds to the average of the past five years.

The Commissioner has additional powers in the field of public interest disclosures. Following the investigation of such disclosure by the competent organ, the whistleblower may submit a petition requesting the CFR to remedy a perceived impropriety in that investigation. The Commissioner shall then conduct an inquiry on the basis of which it may **make a recommendation to the organ concerned or its supervisory authority to remedy a possible impropriety**.

The Commissioner for Fundamental Rights has a **Client Service Office** to provide assistance to whistleblowers. The Client Service Office offers support via telephone, as well as more practical assistance (for example, arranging personal appointments with clients, receiving and issuing documents, providing professional information, etc.). In addition to this, clients can present their case during pre-arranged appointments (or, in exceptional cases, even without making an appointment in advance), while minutes are taken. Based on the cases exposed by the whistleblowers, the professional staff members of the Office working in specialized fields carry out an inquiry. Ever since the outbreak of the coronavirus pandemic, there has been a possibility for whistleblowers to be heard by way of phone calls in order to reduce personal contacts, as well as to make it easier for them to submit their complaints.

In 2020, the CFR initiated the interpretation of the Fundamental Law by the **Constitutional Court** in two cases (1).

The Fundamental Law sets out that everyone **whose liberty has been restricted “without a well-founded reason or unlawfully” shall have the right to compensation**. However, from a previous inquiry of the CFR, it became clear that the legislation concerning custody

for petty offences, and the legislation related to aliens policing, do not provide for any compensation for the cases when the restriction of liberty has been lawful, albeit without a well-founded reason. As the legislator failed to amend the relevant legal provisions to remedy this incoherency, the CFR turned to the Constitutional Court.

Article III of the Fundamental Law sets out the **prohibition of torture, inhuman or degrading treatment or punishment**. This prohibition is among other issues of special importance concerning the “right to hope”, meaning that a person sentenced to life imprisonment should have the hope to be released. A legislation not providing for a reasonable hope to be released is suspected to violate the prohibition of torture. A previous inquiry of the CFR revealed a gap in the Hungarian criminal law: the former Criminal Code (still applicable to some detainees) does not provide for a maximum period of time upon the expiration of which the detainee’s release on parole has to be considered. Contrary to the new Criminal Code, the earlier Criminal Code specifies the minimum period of time after which the release on parole can be considered; however, there are no guarantees in the legislation that this deliberation will actually be made at any time. Despite the CFR’s recommendation, the legislator failed to amend the relevant piece of legislation in order to ensure the right to the deliberation of release on parole for those who are still subject to the earlier Criminal Code. Therefore, the Commissioner requested the interpretation of Article III of the Fundamental Law with regard to the jurisprudence of the European Court of Human Rights, with a special emphasis on the right to hope.

The OCFR is active in the field of public health and groundwater protection as well. The right to a healthy environment is an important priority of the OCFR and **safeguarding the quantity and quality of groundwater** plays an essential part in this. The OCFR opposed an amendment of the **Water Management Act** that seriously endangered groundwater resources by allowing the drilling of groundwater wells for irrigation purposes without proper authorization. The Office’s consultations with the Minister for Agriculture convinced the legislator to modify the proposed act, which amended version included many of the changes suggested by the OCFR.

By giving his/her **opinion on draft legislation**, the Commissioner Fundamental Rights can, in theory, influence the law-making process. However, the ministries often send the bills for review to the CFR with **short deadlines**. The Ombudsman has already pointed out this problem in the annual report (2) submitted to the Parliament and has also voiced his concern in the plenary session of the Parliament discussing the report. Due to discussions between the CFR and several ministries, there seems to be an improvement in this regard.

More generally, the Commissioner has drawn attention to the importance of public consultations and participation in the law-making process. For instance, as recalled above, as a tool to further compliance with the Aarhus Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters, the Office has addressed a **letter to the Minister of Justice drawing attention to the importance of public consultation in environmental issues.**

Functioning of the justice system

The Commissioner for Fundamental Rights (CFR) raised his voice regarding a **bill relating to administrative courts**, which aimed to modify the specific rules of administrative judicial proceedings. The CFR raised concerns in relation to the regulations of the draft legislation that do not enable legal appeal against such court decisions. The law on administrative courts has not entered into force yet, neither has the act in relation to which the CFR raised his concerns.

The role and structure of the National Judicial Council (NJC) has been under debate since 2019 because of the two sharply contrasting views on the constitutional operation of the NJC which resulted in an uncertainty in interpretation that jeopardized legal certainty. The CFR proposed in March 2019 that the Constitutional Court interpret constitutional provisions on the role and structure of the NJC of the Fundamental Law of Hungary [Paragraphs (5) and (6) of Article 25] to resolve such constitutional law issue. The case is still pending before the Constitutional Court. (3)

References

- Two cases mentioned:
 - <http://public.mkab.hu/dev/dontesek.nsf/0/B3A624F43C1F0989C125865B004BEE5E?OpenDocument>
 - <http://public.mkab.hu/dev/dontesek.nsf/0/D11855993D6C5A0FC125865B004BEE71?OpenDocument>
- (2) CFR Annual report:
<http://www.ajbh.hu/documents/14315/3445212/Report+on+the+Activities+of+the+Commissioner+for+Fundamental+Rights+and+his+Deputies+2019/04ed103e-6c17-deab-623a-00b67db41adb?version=1.0>

- (3) CFR Application submitted to the Constitutional Court:
<http://public.mkab.hu/dev/dontesek.nsf/0/E40059CA0811C088C12583C200614E99?OpenDocument>

Media pluralism and freedom of expression

The conditions of media diversity are laid down **Act CLXXXV of 2010 on Media Services and Mass Media**. It stipulates that the protection of the diversity of media services extends to the prevention of the development of a monopoly of ownership, as well as to the unjustified limitation of market competition; that the act should be interpreted in consideration of the protection of diversity. The law also requires that these criteria be taken into account with a view to ensuring the right of Hungarian citizens to information, and the evolution of democratic publicity.

The **rules of the calls for tenders** for the frequencies used by the electronic media providers in an open and transparent manner are aimed at preventing the development of market monopoly. The requirements for the prevention of unlawful mergers also serve this purpose.

In its decision 16/2020. (VII. 8.) AB, the **Constitutional Court** established that “The Constitutional Court also calls attention to the fact that the obligation set forth in paragraph (2), Article IX of the Fundamental Law of Hungary does not mean that any and all changes affecting the diversity of the press are absolutely prohibited. The Hungarian State will only have a protection obligation against the actions of civil actors committed in the scope of free activities and affecting the diversity of the press if the ‘conditions of free information required for the development of a democratic public opinion’ could not be ensured any more in the changed circumstances”. In this case, the very opposite happened as the Government considered that a merger, which was the result of the acquisition of privately-owned media companies by a foundation, was of public interest. The Constitutional Court did not deem the diversity of the press jeopardized on the basis of the arguments put forth in the motion, and therefore it did not find that the State had breached its obligation to protect media diversity.

The CFR is a member of the **Digital Freedom Committee** set up by the Ministry of Justice, which reflects Hungary’s commitment to join efforts to make the operation of transnational technological companies transparent. Indeed, the need for regulation has emerged only in

the past few years due to the quick rise of social networks. Concerns identified in the field of **public service nationality media broadcasting and programmes** are addressed in the ongoing investigation (a follow-up to the comprehensive nationality media investigation in 2018) reviewing the impact of the shutdown of digital terrestrial radio broadcasting (DAB) in Hungary on the accessibility of national radio programmes. Furthermore, in order to facilitate the professional dialogue between the stakeholders involved, the Deputy Commissioner for Fundamental Rights/Ombudsman for The Rights of National Minorities is engaged in continuous consultation with the representatives of the nationalities, the member of the public media's public service body delegated by the nationality self-governments as well as with the managers in charge of nationality broadcasts. This case is also described under the question related to the follow-up initiatives based on the 2020 report.

Media regulation falls outside the Commissioner's competence. In Hungary, it belongs to the **National Media and Telecommunications Authority** (NMHH), which is an autonomous regulatory body reporting to the National Assembly on an annual basis. It publishes recommendations to assist in the practical application of the regulations. The Media Council - which is a part of the NMHH - exercises supervisory powers concerning compliance with child protection standards.

However, the CFR has some insight into the digital child protection: The CFR's inquiry into the situation of the practical implementation of **media education** in Hungary pointed out that there is significant variation between children's knowledge concerning media education, media literacy and online awareness regarding their local, individual and school opportunities. Due to the exponential multiplication of information, there has never been a greater need to provide children and youth with education and training that will enable them to orientate themselves safely in a world of diverse media platforms and cyberspace. The CFR study highlighted the main consequences of this dissatisfactory media education on the children and explored possible existing regulations on media-use in public education institutions. There is a lack of qualified media professionals in schools, and media-literacy is not part of the national curriculum. As a first step, the CFR has asked the Minister of Human Capacities to conduct a comprehensive research on the effectiveness of media literacy education and to propose specialised teacher training including the topic of online abuse.

The CFR is a member of the **Child Protection Working Group** operating within the National Cyber Security Coordination Council. The CFR also has a good relationship with

the **Internet Roundtable for Child Protection**, which is an advisory body established by the National Media and Telecommunications Authority (NMHH).

Other initiatives of the CFR in the area of media are described above in the section relating to follow-up activities to last year's rule of law report.

References

- Act on media services: <https://net.jogtar.hu/jogszabaly?docid=a1000185.tv>
- Constitutional Court decision I6/2020. (VII. 8.) AB:
[http://public.mkab.hu/dev/dontesek.nsf/0/12bda2b452503d2dc12583a5006153a1/\\$FILE/16_2020%20AB%20hat%C3%A1rozat.pdf](http://public.mkab.hu/dev/dontesek.nsf/0/12bda2b452503d2dc12583a5006153a1/$FILE/16_2020%20AB%20hat%C3%A1rozat.pdf)
- CFR report on media education and the respective press release:
http://www.ajbh.hu/documents/10180/2500969/Jelent%C3%A9s+a+m%C3%A9dia%C3%A9rt%C3%A9s-oktat%C3%A1s+helyzet%C3%A9r%C5%91l+497_2016/41838d72-616e-45bf-8b51-e744c4fa1b59?version=1.0&inheritRedirect=true
- <http://www.ajbh.hu/en/web/ajbh-en/press-releases/-/content/ujPUErMfB9lw/the-intention-is-palpable-the-results-not-so-much-the-ombudsman-s-inquiry-into-the-state-of-media-education-in-schools>

Corruption

In connection with **whistle blowers'** reports, rules are defined in Act CXI of 2011 on the Commissioner for Fundamental Rights (CFR) and in Act CLXV of 2013 on Complaints and Public Interest Disclosures. The CFR has set up a protected electronic system to safely record and transfer public interest disclosures. The electronic system works as an external channel and is available for reporting corruption cases as well, though this regards very few cases. The investigation of these cases is the competence of the National Protective Service (NPS), a state authority performing internal crime prevention and detection duties. The whistleblower may request that his/her report be treated anonymously. In this case he/she would not suffer any disadvantages because of his/her disclosure. In cases where the whistleblower disclosed untrue information of crucial importance in bad faith, the personal data shall be disclosed to the body or person entitled to carry out the proceedings. After the inquiry of the whistleblowers report, the whistleblower may request the CFR to inquire into the practice of the acting body. The CFR shall inquire *ex officio* as well. Any action

taken as a result of a whistleblower report which may cause disadvantages to the whistleblower shall be unlawful, even if it was otherwise lawful. Any whistleblower is entitled to receive legal aid (defined in Act LXXX of 2003 on Legal Aid), provided by the State.

According to Act II of 2012 on regulatory offences, offence procedures and the system for registering regulatory offences, "Any person who causes disadvantage to the whistleblower commits an offence. The police shall have jurisdiction in the procedure."

The CFR stated (1) that the relevant legal regulations are not clear concerning the **support measures to whistleblowers**, either in the Act on Complaints and Public Interest Disclosures, or in the Act on Legal Aid. Furthermore, it is not clearly defined which authority shall establish that the whistleblower is at risk. Guarantees that a person can benefit from a protection are not regulated under national law, and psychological support to whistleblowers is not and should be provided by the Government. The lack of such measures may prevent to become whistleblowers from fear of being stigmatised and exposed to reprisals. Hopefully, as a result of the 2019 EU Whistleblower Protection Directive, these questions will be settled by the Ministry of Justice, responsible for its implementation.

References

- CFR Report:
https://www.ajbh.hu/documents/10180/2602747/Jelent%C3%A9s+egy+k%C3%B6z%C3%A9rdek%C5%B1+bejelent%C5%91+vesz%C3%A9lyeztetetts%C3%A9g%C3%A9r%C5%91+1873_2017/da2510cb-5353-cab8-b063-eef3dd38e03b?version=1.0

Other relevant developments or issues having an impact on the national rule of law environment

As illustrated above, during the state of danger declared due to the **COVID-19 pandemic**, the CFR has been continuously monitoring the situation and informing the public about his considerations and actions, as well as launching inquiries concerning specific topics. Besides its other activities carried out in 2020, the CFR has conducted numerous **on-site inspections** in Hungary during the first and second waves. Unlike the current international practice of holding events online, the Commissioner has paid personal visits all over

Hungary, to children's homes for instance, in order to inspect the measures taken for the prevention of the COVID-19 pandemic.

In a **state of emergency**, the Government may adopt decrees by means of which it may suspend the application of certain acts, derogate from the provisions of acts and take other extraordinary measures. A new bill was drafted which allows the Government to make these extensions under the control of the Parliament. Under Section 2 of this new law (Act XII of 2020 on the containment of coronavirus), during this period the Government may, in order to guarantee that life, health, persons, property and the rights of the citizens are protected, and to guarantee the stability of the national economy, by means of a decree, suspend the application of certain Acts, derogate from the provisions of Acts and take other extraordinary measures. Also added as a restriction, the Government may exercise its power only for the purpose of preventing, controlling and eliminating the human epidemic, and preventing and averting its harmful effects, to the extent necessary and proportionate to the objective pursued. According to Section 4, the Government shall also regularly provide information on the measures taken to eliminate the state of danger until the measures are in effect at the sessions of the Parliament or, in the absence thereof, to the Speaker of the Parliament and the leaders of the parliamentary groups. The Parliament, on the basis of Article 53(3) of the Fundamental Law, authorises the Government to extend the applicability of the government decrees adopted in the state of danger until the end of the period of state of danger, but this authorisation is not unlimited. The Parliament may withdraw the general authorisation before the end of the period of state of danger.

Impact of measures taken in response to COVID-19 on the national rule of law environment

Most significant impacts of measures taken in response to the COVID-19 outbreak on the rule of law and human rights protection

The Government declared a **state of danger on 11 March 2020, a week after the announcement of first Covid-19 cases in Hungary**. According to the Fundamental Law of Hungary, in a state of emergency, the government may adopt decrees by means of which it may suspend the application of certain acts, derogate from the provisions of acts and take other extraordinary measures. It is the Government that may end the state of emergency as well. These decrees shall remain in force for fifteen days, unless the Government, on the basis of authorisation by the Parliament, extends those decrees. Under a special legal order, such as the state of danger, the exercise of fundamental rights – with the exception of the universal right to human life and dignity, the prohibition of torture,

inhuman or degrading treatment, and the guarantees concerning fair trial – may be suspended or restricted and may be exempt from the test of necessity and proportionality. However, even under a special legal order, the application of the Fundamental Law may not be suspended, and the operation of the Constitutional Court may not be restricted. The goal of a special legal order is to maintain the efficiency of the state in the transitional period, to establish such a security and protection system which ensures the performance of the tasks that come up during states of emergency, and the aversion of dangers for which the normal state structure is not suitable

The CFR examined the introduced measures and published a joint statement with its Deputies. It focused on its on-site presence and paid special attention to the most vulnerable groups of society. Regarding the concerns raised, based on the consistent practice and standards of the CFR's past 25 years, our investigations did not reveal any cases in which intervention would have been necessary.

COVID wave 1 – The period of the state of danger declared on 11 March 2020 and terminated on 18 June 2020: Using his general rights protection and other specific mandates, such as the one within the framework of the OPCAT National Preventive Mechanism, the Ombudsman visited 6 children's homes or special homes, 7 social care homes or residential care homes, 2 reformatories, as well as places of detention, and 5 institutions of the national prison service organisation.

COVID wave 2 – The special legal order restored, and the state of danger repeatedly declared from 4 November 2020: In the recent period, the CFR has resumed his on-site visits in Hungary. The Commissioner visited as many as 32 police units, among others, he inspected 10 border crossing points, as well as 14 county police headquarters and city police departments.

A **new bill** (Act XII of 2020 on the containment of coronavirus) was drafted, allowing the Government to make these extensions under the control of the Parliament. During this period, the Government may, in order to guarantee that life, health, persons, property and rights of the citizens are protected, and to guarantee the stability of the national economy, by means of a decree, suspend the application of certain Acts, derogate from the provisions of Acts and take other extraordinary measures. Also added as a restriction, the Government may exercise these powers only for the purpose of preventing, controlling and eliminating the human epidemic, and preventing and averting its harmful effects, to the extent necessary and proportionate to the objective pursued. According to Section 4, the Government shall also regularly provide information on the measures taken to eliminate the state of danger until the measures are in effect, at the sessions of the Parliament or, in

the absence thereof, to the Speaker of the Parliament and the leaders of the parliamentary groups. The Parliament, based on the Fundamental Law, authorises the Government to extend the applicability of the government decrees adopted in the state of danger until the end of the period of state of danger but this authorisation is not unlimited. The Parliament may withdraw the general authorisation before the end of the period of state of danger.

In a **joint statement**, the Ombudsman and his Deputies pointed out that the complex economic and social consequences of the grave epidemic situation, as well as the related state measures make the lives of the citizens difficult and limited in many different ways. Current challenges and losses have been unprecedented in the past few decades. The statement stressed the unequal resilience of different groups in society regarding the prevention, treatment and resolution of the health risks involved by the pandemic. Unique challenges rose as consequences of the epidemic, such as: lack of the technological background necessary for digital education, isolation, narrowed job and earning opportunities, financial difficulties, obstacles to access the basic services. These challenges are particularly hard on the most vulnerable members of society, such as: persons who were already in an extremely dire financial situation, the elderly, the Roma, the ill, persons with disabilities, the homeless, children. The Ombudsman and his Deputies strongly urged everyone **not to leave the most deprived people and communities without support**.

The social welfare and health care system are facing enormous challenges. In addition to the actions of state and municipal institutions entitled and obliged to act in times of emergency, civil initiatives (of individuals and groups, donations from church communities, involvement of local Roma minority self-governments) can only achieve their goals with appropriate financial background, professional organisation and adequate information. That is why the Ombudsman and his Deputies encouraged the setting up of **a special task force to coordinate the volunteering and donation activities** as a good practice of dealing with the emergency. They recommended that relevant policymakers consider setting up of such a task force to provide extraordinary protection and support to vulnerable groups, notably disadvantaged children and their families, for which they offered their professional experience. The Ombudsman and his Deputies also emphasised that the impact of the challenges caused by the emergency situation was being continuously assessed even in the changing circumstances, with special focus on the challenges faced by members of the endangered social groups.

The Deputy Commissioner for the Rights of National Minorities also published a statement (1) in which she drew attention to the particular vulnerability and special needs of the Roma population in the current situation. The CFR issued a statement in which he pointed out that state authorities need to monitor cases of child abuse even during the COVID-19 situation. It was questionable whether the final school-leaving exams – that were to begin on 3 May 2020 – could be responsibly organised. Parents and teachers submitted concerns regarding the exams to the Commissioner as well.

References

- Statement: <http://www.ajbh.hu/kozlemenyek/-/content/qzyKPkTyQAvM/az-alapveto-jogok-biztosanak-es-helyetteseinek-kozlemen-1>

Most important challenges due to COVID-19 for the NHRI's functioning

During the state of danger declared due to the COVID-19 pandemic (detailed above), the Commissioner for Fundamental Rights (CFR) has been continuously monitoring the situation and informing the public about his considerations and actions, as well as launching inquiries concerning specific topics. Besides its other activities carried out in 2020, the CFR has conducted numerous on-site inspections in Hungary during the first and second waves of the pandemic. Unlike the current international practice of holding events online, the Commissioner has paid personal visits all over Hungary in order to inspect the measures taken for the prevention of the COVID-19 pandemic.

Being responsible for performing the tasks of the **OPCAT National Preventive Mechanism (NPM)**, the CFR pursued its activities during the COVID-19 pandemic in line with the relevant international principles. The NPM conducted visits to a wide range of places of detention, including penitentiary institutions, police detention facilities, a guarded shelter, a guarded refugee reception centre and social care homes. Between May 2020 and February 2021, the NPM visited 31 places of detention. In line with the 'do no harm' principle, the visiting group wore protective equipment during the visits.

The CFR has received a number of **complaints in relation to the pandemic**. At the beginning, complainants evidently lacked information on the topic. The CFR inspected or is inspecting the cases and, even in the cases where the CFR had no competence to launch

an inquiry, it provided the complainants with the legal background (i.e., the new rules) as well as about the authorities that they could turn to.

References

- You can find further information about the visits on the website of the OCFR via this link: http://www.ajbh.hu/en/web/ajbh-en/main_page

Iceland

At present, Iceland does not have a National Human Rights Institution. In 2019, the Icelandic government opened a public consultation on the establishment of an NHRI. The results of the consultation, alongside a bill drafted by the Ministry of Interior in 2016, are to serve as basis for next steps in the establishment of an NHRI. The government has affirmed at several occasions its intention to establish an NHRI. In 2021, the Icelandic government has decided to appoint a ministerial Working Group to explore the current scenario and possible avenues towards the establishment of an NHRI in Iceland.

ENNHRI has provided the members of the Working Group with information on the role of NHRIs and the Paris Principles. ENNHRI stands ready to support the Icelandic government with advice in the further process of establishing an NHRI in compliance with the Paris Principles.

References

- Link to the public consultation: [https://samradsgatt.island.is/oll-mal/\\$Cases/Details/?id=1335](https://samradsgatt.island.is/oll-mal/$Cases/Details/?id=1335)

Ireland

Irish Human Rights and Equality Commission (IHREC)

International accreditation status and SCA recommendations

The Irish NHRI was [accredited](#) with A status in November 2015. In its recommendations, the SCA encouraged the NHRI to advocate for adequate funding while safeguarding its financial independence. The Irish NHRI will be reviewed by the SCA in [June 2021](#).

Independence and effectiveness of the NHRI

Changes in the regulatory framework applicable to the Institution

The Commission has been designated as Ireland's Independent National Rapporteur on the Trafficking of Human Beings. To bring this change into effect, a Statutory Instrument has been signed by the Minister for Justice confirming the Commission in this new additional role.

Developments relevant for the independent and effective fulfilment of the NHRIs' mandate

There has been no significant development affecting the IHREC's independent functioning. The Commission accounts directly to the Oireachtas (Irish Parliament) for its statutory functions and the provisions contained within the Irish Human Rights and Equality Act 2014 ensure its structural and financial independence.

The Government has committed to ratifying OPCAT before the end of 2021, and is currently drafting the General Scheme of the Inspection of Places of Detention Bill. The Commission will be assigned the National Preventative Mechanism coordinator role under OPCAT, pending ratification. The Commission has emphasised the importance of appropriate funding, staffing and data access for the effective function of this co-ordinating body.

The Commission has been designated as Ireland's Independent National Rapporteur on the Trafficking of Human Beings. As National Rapporteur, the Commission will prepare and publish monitoring reports and thematic reports evaluating Ireland's overall performance against the State's international obligations such as the EU's Anti-Trafficking Directive, the Council of Europe's Convention on Action against Trafficking (2005) and the Palermo Protocol to the UN Convention against Organised Crime (2000). The Commission has been

allocated additional resources for 2021 to service the requirements of this Rapporteur function, including additional staff and operational resources.

References

- IHREC, Submission to the United Nations Human Rights Committee on the List of Issues for the Fifth Periodic Examination of Ireland (August 2020)
- IHREC, Commission Takes on New Role as Ireland's National Rapporteur on the Trafficking of Human Beings (press release, 22 October 2020)
- IHREC, Submission to the Third Universal Periodic Review Cycle for Ireland (March 2021)

Human rights defenders and civil society space

In the 2020 ENNHRI Rule of law Report, the Commission outlined its concerns that the definition of the terms 'political purposes' and 'third party' in the relevant legislation are overly broad and include a range of Irish civil society organisations (CSOs), and therefore put constraints on the advocacy functions of CSOs. They may be required to comply with the strict requirements of the legislation, which impacts on their ability to carry out their work and seek funding.

As the recently published General Scheme of the Electoral Reform Bill does not address these issues, the Commission continues to have concerns about undue restrictions on civil society activity in Ireland.

The Commission has engaged with the Oireachtas (Irish Parliament) and international monitoring mechanisms in support of civil society. In a February 2021 submission to the Committee on Housing, Local Government and Heritage on the General Scheme of the Electoral Reform Bill, the Commission repeated its view that the work of civil society organisations in Ireland, and their sources of funding, should continue to be clearly regulated and subject to high standards of scrutiny, transparency and accountability. However, such regulatory measures should avoid placing undue restrictions on wider civil society activity engaging in legitimate advocacy aiming to influence political decision making and policy making, including with regard to human rights and equality issues. The

Commission recommended consideration of whether further reforms of the Electoral Acts are required in order to avoid placing undue restrictions on civil society.

In August 2020, the Commission recommended that the Human Rights Committee asks the State to ensure that the planned review of the Electoral Acts considers whether the provisions are proportionate and do not unduly restrict the right to freedom of association and the ability of civil society organisations to freely carry out their activities.

In its submission to the United Nations Committee on the Elimination of Discrimination Against Women in August 2020, the Commission highlighted the repeated calls for funding to be restored to pre-austerity levels for civil society organisations and community-based groups working to promote women's rights, including to ensure their ongoing sustainability. It recommended that the State adopt measures to ensure that the resources allocated for organisations working in the field of human rights and equality, including women's rights, are protected in future situations of economic recession and budgetary cuts.

The Commission has hosted a number of Civil Society Forums, to create a space for it to discuss human rights and equality issues with civil society in a structured way. It hosted a Forum on combatting racism and promoting intercultural understanding in May 2019, on the housing and accommodation crisis in October 2019 and on COVID-19 in October 2020.

References

- IHREC, Submission to the Committee on Housing, Local Government and Heritage on the General Scheme of the Electoral Reform Bill (January 2021)
- IHREC, Submission to the United Nations Human Rights Committee on the List of Issues for the Fifth Periodic Examination of Ireland (August 2020)
- IHREC, Submission to the United Nations Committee on the Elimination of Discrimination Against Women on the follow-up procedure to Ireland's combined sixth and seventh periodic report (August 2020)

Checks and balances

The Commission has identified concerns over the system of checks and balances in particular in connection with the state's handling of the COVID-19 pandemic.

In particular, a new research published in February 2021 by the Commission has found that the Government has persistently blurred the boundary between legal requirements and public health guidance in its COVID-19 response, generating widespread confusion about the extent of people's legal obligations. While the report considers the public health threat is sufficient to provide a justification for some restrictions, it finds that: parliamentary oversight of Ireland's emergency legislation has been lacking; shifting relations between the National Public Health Emergency Team (NPHE) and Government makes it difficult to ascertain where, if at all, human rights and equality concerns are being addressed; there has been limited or no consultation with those groups most likely to be affected in respect of the public health framework; and the Government's making and presentation of Regulations raises serious rule of law concerns. In particular, the Regulations have applied retroactively, are frequently not published for several days after they are made, are misleadingly described in official communications, and are inadequately distinguished from public health advice.

The report makes a number of core recommendations, including the establishment of a parliamentary Committee on Equality, Human Rights and Diversity to scrutinise emergency legislation and ministerial regulations; the use of sunset clauses for all emergency powers; an expert sub-group within NPHE on human rights, equality and ethical concerns; and a published human rights and equality analysis of each emergency regulation within 48 hours of their being made.

The Commission has also raised its concerns about the very limited participation of persons with disabilities and Disabled Persons Organisations in the development and oversight of the COVID-19 response. The COVID-19 emergency has highlighted in sharp relief that if a standard of equal dignity and equal participation is not met in 'normal' times, it can rapidly become a casualty in times of crisis. The Commission has recommended that an explicit human rights and equality-based approach be taken to build a transition out of COVID-19 that is fully inclusive of people with disabilities.

As part of the system of checks and balances, the Commission engages in analysis of key draft legislation with a view to submitting observations to government and parliament. For example, it is now analysing of a bill that would introduce changes to modernise the process for the appointment of judges (see below under the section on justice system).

As part of its oversight of the State's activities, the Commission also:

- made a submission to the Special Committee on COVID-19 Response regarding the adequacy of the State's legislative framework to respond to the COVID-19 pandemic and

potential future national emergencies in September 2020, calling for an effective mechanism to provide close parliamentary oversight of the implementation of emergency legislation and more detailed, disaggregated data on the implementation of emergency powers;

- engages with regional actors and international monitoring mechanisms, including through submissions on the European Semester 2020 and the National Reform Programme, the implementation of the Revised European Social Charter and the implementation of the International Covenant on Civil and Political Rights in 2020.

- called for disaggregated data to be provided by the government. Concerns have been repeatedly raised by treaty monitoring bodies, including the Committee on the Elimination of Racial Discrimination, the Committee on the Elimination of Discrimination against Women, the Committee on the Rights of the Child, and the Committee on Economic, Social and Cultural Rights that Ireland does not have sufficient disaggregated data to allow an adequate and regular assessment of the extent to which it is meeting its obligations under international law. For example, the recent report published by the Commission on Ireland's use of emergency powers during the Covid-19 pandemic highlights that An Garda Síochána (Irish police force) does not maintain disaggregated data tracking how enforcement powers are exercised against particular groups

- exercised its amicus curiae powers in the Supreme Court case, *Ali Charaf Damache v the Minister for Justice and Equality* on the procedures for the revocation of citizenship, as highlighted below (see the section on other challenges to rule of law and human rights protection).

References

- IHREC, Submission to the Oireachtas Joint Committee on Justice, COVID-19 and Civil Liberties (May 2021)
- IHREC, State COVID Planning Must Not Discriminate Against People with Disabilities (press release, 14 January 2021)
- IHREC, The Impact of COVID-19 on People with Disabilities: Submission by the Irish Human Rights and Equality Commission to the Oireachtas Special Committee on COVID-19 Response (June 2020).

- IHREC, Supreme Court Rules that Procedure to Revoke Irish Citizenship is Unconstitutional (press release, 14 October 2020).
- IHREC, Supreme Court Rules that Sections of Law Revoking Citizenship Are Unconstitutional and Need Revision Through Oireachtas (press release, 10 February 2021)
- Conor Casey, Oran Doyle, David Kenny and Donna Lyons, Ireland's Emergency Powers During the Covid-19 Pandemic (IHREC, 2021).
- IHREC, Submission to the Special Committee on COVID-19 Response Regarding the Adequacy of the State's Legislative Framework to Respond to COVID-19 Pandemic and Potential Future National Emergencies (September 2020).
- IHREC, Submission to the Department of the Taoiseach on the European Semester 2020 and the National Reform Programme (March 2020).
- IHREC, Comments on Ireland's 17th National Report on the Implementation of the European Social Charter (June 2020).
- IHREC, Submission to the United Nations Human Rights Committee on the List of Issues for the Fifth Periodic Examination of Ireland (August 2020).
- IHREC, Commission's Call for Additional Data from An Garda Síochána on COVID Policing Restated in Policing Authority Report (May 2020).

Functioning of the justice system

Some measures are currently underway in Ireland to modernise the process for the appointment of judges. Proposed legislation envisages the establishment of a nine-member Judicial Appointments Commission, made up of both lay and legal members. The proposed Commission would develop upgraded procedures and requirements for office selection, including selection procedures, interviews, judicial skills and attributed having regard to several criteria - including such matters as diversity.

IHREC is currently conducting an analysis of the draft legislation with a view to submitting observations to government and parliament.

The Commission has repeatedly highlighted the State's failure to ensure independent, thorough and effective investigations, in line with international standards, into allegations of human rights abuses in respect of Magdalene Laundries, Mother and Baby Homes,

reformatory and industrial schools, and the practice of Symphysiotomy. The Mother and Baby Homes Commission of Investigation's Final Report was published by the Government in January 2020. Concerns had been raised regarding the narrowness of the investigation's remit in terms of the institutions, types of abuses, and persons under investigation.

The report, and the actions stemming from it, further illustrate the ongoing need for a systemic change in how the State approaches and treats survivors seeking justice and redress for human rights abuses, to ensure full accountability and avoid inflicting further and ongoing trauma. The Retention of Records Bill 2019, referenced in the 2020 ENNHRI Rule of law Report, lapsed due to the dissolution of the Parliament in January 2020. Due to the concerns raised, the Government has recently indicated that it will delay and re-examine the planned legislation. With regard to the O'Keeffe v Ireland case, the Commission continues to call on the State to overhaul its ex gratia scheme to ensure effective remedy to those who are being denied justice by State inaction.

In its 2020 submission to the Human Rights Committee, the Commission raised a number of issues relating to fair trial rights and equal access before the law in Ireland, including the following: chronic delays in the Courts system; repeated delays in progressing the planned legislation to reform the system of criminal legal aid; and the continued operation of the Special Criminal Court despite repeated calls for its abolition. The Commission noted that the move towards remote hearings during the pandemic has given rise to concerns on the right to a fair trial, including the ability to fully participate in proceedings, access to legal assistance, access to information, and access to translation and interpretation services. The Commission also raised its concerns about the civil legal aid system, as set out in the 2020 ENNHRI Rule of law Report. The Department of Justice has recently committed to reviewing the civil legal aid scheme and bringing forward proposals for reform in 2021.

As an update to its previous comments on wardship, the Commission has been granted liberty by the High Court to exercise its *amicus curiae* function in a case that raises important questions about the human rights and equality of persons with disabilities and wards of court. This case challenges the constitutionality and compatibility with the European Convention of Human Rights of the wardship jurisdiction of the High Court and the Marriage of Lunatics Act 1811.

As highlighted above, the Commission, in its capacity as an "A" Status National Human Rights Institution, engages with United Nations Treaty Monitoring mechanisms on Ireland's adherence to its international Human Rights obligations, including in the area of access to justice.

The legal work of the Commission includes amicus curiae interventions, legal assistance to individuals, own name proceedings and equality reviews.

In addition to the case set out above, recent examples of amicus curiae interventions by the Commission include:

- In the Matter of JJ (Supreme Court): admission into wardship of an 11-year-old boy for medical treatment reasons.
- Christina Faulkner and Bridget McDonagh v. Ireland (European Court of Human Rights): access to housing and legal aid for members of the Traveller community.

Recent examples of the Commission's Legal Assistance cases include:

- Robert Cunningham v. The Irish Prison Service: this High Court case examined whether the Irish Prison Service must provide reasonable accommodation under the EEA to prison officers with disabilities.
- An Asylum Seeker v. A Statutory Agency: the Commission provided legal representation to a woman who is an asylum seeker. The Workplace Relations Commission found the statutory agency in refusing her a driving licence had discriminated against the woman, on race grounds. The WRC decision was subsequently appealed to the Circuit Court. The Circuit Court overturned the decision of the WRC. The Commission is providing legal representation to the woman in proceedings before the High Court, appealing the Circuit Court decision.

References

- IHREC, Taoiseach's Mother and Baby Homes Apology Must Mark Start of Human Rights Compliant Redress and Restitution Process (press release, 12 January 2021)
- IHREC, Submission to the United Nations Committee on the Elimination of Discrimination Against Women on the follow-up procedure to Ireland's combined sixth and seventh periodic report (August 2020)
- IHREC, Submission to the United Nations Human Rights Committee on the List of Issues for the Fifth Periodic Examination of Ireland (August 2020)
- Department of Justice, Action Plan 2021
- IHREC, Human Rights and Equality Commission Granted Leave to Appear as Amicus Curiae in Disability Rights Case (press release, 18 November 2020).
- IHREC, Annual Report 2019
- IHREC, Submission to the Minister for Justice on the General Scheme of the Judicial Appointments Commission Bill (April 2021)
- IHREC, High Court Decision Against Asylum Seeker Builds Pressure on Government for Driver Licence Solution (press release, 28 March 2021)
- IHREC, Supreme Court Ruling 'Very Significant' For the Rights of Parents and their Children under the Constitution (press release, 22 January 2021)

Media pluralism and freedom of expression

The Commission has highlighted, including in its recent submission to the Committee on the Elimination of Racial Discrimination, that a strong link can be observed between editorial decisions and the emergence of online and real-world hate speech and incidents. It has recommended that the State encourage the media to update their codes of professional ethics and press codes and provide appropriate training for editors and journalists, to reflect the challenges of the modern media environment where the circulation of prejudicial and discriminatory content and hate speech are concerned.

The Commission recently submitted observations to the Joint Committee on Media, Tourism, Arts, Culture, Sport and the Gaeltacht on the General Scheme of the Online Safety and Media Regulation Bill, which will transpose the revised Audiovisual Media Services

Directive into Irish law. The Bill also provides for the establishment of a multi-person Media Commission, including an Online Safety Commissioner, with appropriate compliance and sanction powers. The Commission expressed concern that the current approach in the draft law to defining harmful online content is vague and open-ended, and lacks legal certainty. The Commission recommended the definition of harmful content be revised to include online hate speech and content inciting violence or hatred against groups protected under Article 21 of the Charter of Fundamental Rights of the European Union. The Commission also recommended terms that relate to hate speech, including racism, sexism and ableism be defined in new law. The Commission also noted its concern that the bill had no detail on the role or functions of the Online Safety Commissioner. Considering the significant and far reaching powers being proposed for a new Media Commission, and the Online Safety Commissioner, in regulating speech in broadcasting and online in Ireland, the Commission recommended that the bill be strengthened through stronger and more consistent reference to human rights and equality standards.

References

- IHREC, Submission to the Joint Committee on Media, Tourism, Arts, Culture, Sport and the Gaeltacht on the General Scheme of the Online Safety and Media Regulation Bill (March 2021)
- IHREC, Submission to the United Nations Committee on the Elimination of Racial Discrimination on Ireland's Combined 5th to 9th Report (October 2019).
- Department of Tourism, Culture, Arts, Gaeltacht, Sport and Media, Online Safety and Media Regulation Bill (January 2020)

Other relevant developments or issues having an impact on the national rule of law environment

In February 2021, the Minister for Children, Equality, Disability, Integration and Youth published a 'White Paper to End Direct Provision and to Establish a new International Protection Support Service' (1). It sets out a new Government policy to replace Direct Provision by 2024 and establish a new system for accommodation and supports for applicants for International Protection, grounded in the principles of human rights, respect for diversity and respect for privacy and family.

The Commission exercised its amicus curiae powers in the Supreme Court case, *Ali Charaf Damache v the Minister for Justice and Equality*. The case examined the lawfulness of the existing procedure under the Irish Nationality and Citizenship Act 1956, which provides for a power to revoke Irish citizenship from people who acquire Irish nationality. The Court held that the relevant legislative provisions do not meet the high standards of natural justice required due to the absence of necessary procedural safeguards and are therefore unconstitutional. It has ordered that these provisions are replaced by the Minister with the approval of the Oireachtas.

References

- <https://www.gov.ie/pdf/124757/?page=0>

Impact of measures taken in response to COVID-19 on the national rule of law environment

Most significant impacts of measures taken in response to the COVID-19 outbreak on the rule of law and human rights protection

As highlighted above, the Commission has a number of significant concerns regarding the impact of the COVID-19 pandemic and related measures on human rights and equality in Ireland, including that:

- The Government has persistently blurred the boundary between legal requirements and public health guidance in its COVID-19 response;
- Parliamentary oversight of Ireland's emergency legislation and the use of appropriate sunset clauses has been lacking;
- There is a lack of human rights and equality expertise in the decision-making structures put in place to tackle the pandemic, and in the systems that implement and scrutinise these decisions;
- The introduction of restrictions by the Minister for Health through regulations makes it difficult to maintain effective democratic oversight;

- There is a lack of published disaggregated data to confirm indications that the Garda enforcement of emergency COVID powers has disproportionately affected young people, ethnic and racial minorities, Travellers and Roma;
- There has been limited or no consultation with those groups most likely to be affected in respect of the public health framework;
- The significant gaps and vulnerabilities in existing policy and services have resulted in a disproportionate impact of COVID-19 on people with disabilities and Travellers;
- The procedural safeguards for detention on mental health grounds have been relaxed;
- There have been a number of COVID-19 clusters in Direct Provision, and concerns are being raised by residents and civil society organisations about the inability of those in shared accommodation to effectively self-isolate.

The lessons learned thus far during this crisis regarding how we can enhance protections of human rights, equality and the rule of law when adopting and implementing emergency powers must be brought to bear on how we continue to address the pandemic, as well as on how we meet the challenges of any potential future national emergency. Such lessons include:

- The need to establish a parliamentary committee on diversity, human rights and equality to provide oversight of rights concerns in the law-making process;
- A series of specific oversight measures, such as rigorous sunseting and parliamentary validation of all core emergency regulations;
- New structures to ensure rights are robustly considered in the making of these regulations.

COVID-19 has both exposed and exacerbated existing inequality in Ireland. Over the course of the pandemic, this inequality is evidenced in the sharp divergence in the experience of different groups in our society and, at times, a divergence in rights. Such groups include people with disabilities, older people, people living in congregated settings and overcrowded accommodation, including Direct Provision, Travellers and Roma, and people in precarious employment. In response to this magnification of our most fundamental societal challenges, an explicit human rights and equality-based approach must be taken to the transition from COVID-19. Such an inclusive recovery programme requires long-term lessons to be learned regarding institutional models of care and congregated settings, the delivery of State functions through private, non-State actors, the strengthening of data

collection systems and addressing delays in legislative reform and policy implementation processes. In particular, positive measures must be taken across a range of areas to ensure that all groups of people with disabilities transition out of the emergency phase on an equal basis with each other and the rest of the population.

The Commission has taken various measures to address the issues exposed above, and more generally to promote and protect rule of law and human rights in the crisis context. It notably:

- Published research evaluating Ireland's use of pandemic related emergency powers in February 2021;
- Made submissions in June and September 2020 to the Oireachtas Special Committee on COVID-19 Response regarding the adequacy of the State's legislative framework to respond to the pandemic and potential future national emergencies and on the impact of COVID-19 on people with disabilities;
- Made a submission to the Joint Committee on Justice in May 2021 regarding whether the appropriate balance between the fundamental rights of members of Irish society and the State's duty to protect public health was struck during the COVID-19 pandemic;
- Highlighted the impact of COVID-19 on the protection of civil and political rights and children's rights in Ireland in its 2020 submissions to the Human Rights Committee and the Committee on the Rights of the Child;
- Highlighted the disproportionate impact of COVID-19 on Travellers and people living in social housing in its 2020 submission to the European Committee of Social Rights;
- Held a Civil Society Forum on COVID-19 and human rights and equality in October 2020, including discussions on emergency legislation and regulations and the impact on people in congregated settings.

References

- IHREC, Submission to the Oireachtas Joint Committee on Justice, COVID-19 and Civil Liberties (May 2021)
- IHREC, Submission to the Special Committee on COVID-19 Response Regarding the Adequacy of the State's Legislative Framework to Respond to COVID-19 Pandemic and Potential Future National Emergencies (September 2020).
- IHREC, State COVID Planning Must Not Discriminate Against People with Disabilities (press release, 14 January 2021)
- IHREC, The Impact of COVID-19 on People with Disabilities: Submission by the Irish Human Rights and Equality Commission to the Oireachtas Special Committee on COVID-19 Response (June 2020)
- IHREC, Emergency Legislation Around COVID Must be the Exception Not the Norm (press release, 9 September 2020)
- IHREC, Statement from the Irish Human Rights and Equality Commission In Respect of Direct Provision (press release, 19 August 2020)
- Conor Casey, Oran Doyle, David Kenny and Donna Lyons, Ireland's Emergency Powers During the Covid-19 Pandemic (IHREC, 2021)

Italy

International accreditation status and SCA recommendations

Despite several initiatives over many years, a National Human Rights Institution has not yet been established in Italy. Other state bodies, such as the National Authority (*Garante nazionale*) for the rights of persons deprived of liberty, carry out important human rights work in the country. However, they do not have a broad human rights mandate and do not fulfil other criteria under the UN Paris Principles to be considered an NHRI.

In November 2019, at the occasion of the Universal Periodic Review (UPR) of Italy, delegations from over 40 countries [included](#) in their recommendations the establishment of an NHRI in Italy, in compliance with the UN Paris Principles. As a result, the Italian government reaffirmed its commitment to establish an NHRI.

Multiple actors, including ENNHRI, have been calling for the establishment of an Italian NHRI in compliance with the UN Paris Principles. In January 2019, ENNHRI [addressed](#) the Italian Chamber of Deputies to underline the importance of establishing an NHRI in Italy and how it would differ from other existing national mechanisms. This message was reiterated later that year during a [roundtable](#) in Italy, organized by ENNHRI with Amnesty International, which brought together representatives from Italian civil society, European NHRIs and regional organisations.

In October 2020, the Committee on Constitutional Affairs of the Italian Chamber of Deputies adopted a unified text version based on three draft proposals for the establishment of an Italian NHRI. The [unified proposal](#) will serve as a basis for the discussions on the establishment of an Italian Commission on human rights and anti-discrimination.

In January 2021, ENNHRI intervened in a conference organised by the EU's Fundamental Rights Agency and a group of leading academics on the establishment of an Italian NHRI. ENNHRI highlighted that an Italian NHRI, in compliance with the UN Paris Principles, will contribute to greater promotion and protection of human rights in Italy.

ENNHRI is closely monitoring developments in the country and stands ready to provide its expertise on the establishment and accreditation of NHRIs to relevant stakeholders in Italy, including the legislature, government, academics and civil society organisations.

Kosovo*

*Ombudsperson Institution of Kosovo**

Accreditation status and SCA recommendations

Due to the specific international standing of Kosovo*, the Ombudsperson Institution is unable to seek accreditation before GANHRI's Sub-Committee on Accreditation, organized under auspices of UN OHCHR. The Institution is a non-accredited, associate member of ENNHRI. It has worked for the promotion and protection of a wide range of human rights issues in Kosovo*.

Impact of 2020 rule of law reporting

Follow-up by State authorities

The most important initiative for the rule of law at national level is the ongoing Functional Review of the Rule of Law Sector, which is designed to provide a thorough analysis in the area of rule of law and a sound basis of reform and modernization of various aspects of the judiciary. Two phases of this process have been completed, and the third phase consists in putting in place a comprehensive "sector strategy" aiming at strengthening the independence, impartiality, integrity, accountability as well as the overall capacity of the judiciary and prosecution.

The three phases of the Functional Review process have stimulated a detailed and substantial debate not only among the stakeholders involved in the process (Kosovo* Judicial Council, Kosovo* Prosecutorial Council, State Prosecutor, Ministry of Internal Affairs, Anti-Corruption Agency, professions free, etc.), but also at the level of legislative bodies. The working group involved in drafting the Sector Strategy for Rule of Law has met several times with the deputies of the Committee on Legislation of the Assembly of Kosovo* to discuss the measures and recommendations of the Strategy and to raise awareness regarding the proposals of the Functional Review process.

In addition, dozens of workshops and meetings were held with stakeholders, international strategic partners, and civil society organizations to present and discuss the recommendations of the Functional Review of the Rule of Law Sector, whose key goal is to improve the functioning of the rule of law. The design of the above-mentioned strategy is completed and the strategy is now in the process of public consultation, after which it will be adopted.

Follow-up initiatives by the Institution

The Ombudsperson Institution of the Republic of Kosovo* (OIK) acknowledged the importance of the ENNHRI 2020 Rule of Law Report, on 30 June 2020, by publishing it in the institution's website, with the purpose of promoting it to the general public, responsible authorities, civil society organizations and media, but also raising awareness on the challenges with regard to the rule of law in the country.

Information with regard to the ENNHRI Rule of Law Report is included in the OIK 2020 Annual Report as well, which was published in March 2021.

In addition, on 10 December 2021, the OIK has organized a virtual regional conference to mark the International Human Rights Day with the topic on " Human rights in the pandemic period and the role of National Human Rights Institutions", which gathered the highest public authorities in Kosovo*, ENNHRI, national human rights institutions from the Western Balkans, international organizations and NGOs. One of the panellists of the conference was also ENNHRI Secretary General, who addressed the conference with the role of NHRIs during the pandemic. During her speech, the Rule of Law Report was mentioned as well, as it contained information on the activities of NHRIs during Covid-19 crisis.

References

- OIK website article "ENNHRI published the report on state of rule of law in Europe", <https://www.oik-rks.org/en/2020/06/29/>
- OIK Annual Report 2020, <https://oik-rks.org/en/2021/04/14/annual-report-2020/>
- OIK organized a regional conference on the challenges of the pandemic and its impacts on human rights, <https://www.oik-rks.org/en/2020/12/10/the-oi-organized-a-regional-conference-on-the-challenges-of-the-pandemic-and-its-impact-on-human-rights>

Independence and effectiveness of the NHRI

Changes in the regulatory framework applicable to the Institution

There were no developments that would affect the regulatory framework of the Ombudsperson Institution of Kosovo* during 2020.

Enabling space

The Ombudsperson Institution of Kosovo* has been provided with the necessary space to carry out its constitutional and legal mandate independently. However, the implementation of recommendations addressed to the central and local level authorities remains unsatisfactory.

Nonetheless, the OIK is trying to improve this situation, and the European integration process was of great help. The issue of implementation of the OIK's recommendations was included in the Financial Agreement between Kosovo* and the European Union on the Public Administration Reform, through two indicators. The first indicator intends to increase responses to the letters and recommendations addressed by the Ombudsperson within a 30 days' deadline, and the second one intends to increase the implementation rate of the recommendations addressed to the central government institutions. These indicators serve as the basis for the financial support to the Government with regard to the public administration reform. If they are not met, funds will be subtracted, as indicated in the signed contract.

The presence of this indicator in the above-mentioned contract and the conditionality of receiving (or not) funds, has proved very successful with regard to the implementation rate of the Ombudsperson's recommendations. The OIK already witnessed a huge impact on this issue, and recommends this same approach in all the accession countries.

Developments relevant for the independent and effective fulfilment of the NHRIs' mandate

No changes have been identified that would affect the fulfilment of the institution's mandate, with the exception of restrictions that all governments applied as a precautionary measure to prevent the spread of the pandemic. This has been challenging also for the OIK as these restrictions affected the normal progress of work. The effects are visible both through the number of complaints received, as well as through the number of recommendations addressed to the authorities, and the delays with which those were implemented.

References

- Constitutional Court JUDGMENT in Case No. KO219/19, Applicant The Ombudsperson Constitutional review of Law No. 06/L-111 on Salaries in Public Sector, https://gjk-ks.org/wp-content/uploads/2020/07/gjk_ko_219_19_agj_ang.pdf

Human rights defenders and civil society space

The lockdown, in Kosovo* as in any other country, significantly reduced the space for civil society activism. In spite of this, many civil society organizations were very vocal on different human rights issues during the pandemic period.

The OIK also continued to cooperate with the civil society, as part of its mandate under both the Paris Principles and the Law on the Ombudsperson, during the reporting period. In addition to addressing issues of common interest, the Ombudsperson Institution was an attentive interlocutor for civil society to raise issues of systematic human rights violations.

In this regard, the OIK, on 1 February 2021 published the Report with recommendations Ex officio 365/2018 against the Ministry of Economy and Environment, questioning the lawfulness of the procedures concerning the hydropower plants in the country as well as access to documents related to hydropower plants. The report also alerts on the restriction of access to public documents on the issue for civil society actors. The OIK is investigating 7 civil society complaints of this nature. One of the cases addressed is delays in responding to the access to public documents requests with reasons for working with essential staff, and working remotely. Of the 62 complaints received in 2020 regarding the restriction of the right of access to public documents, 39 complaints were filed by the media and civil society. The lack of capacity for pandemic reasons and staff working remotely made it difficult to access public documents.

The OIK undertook several projects in cooperation with civil society actors in 2020, such as:

- a Joint Declaration with NGOs in Kosovo*, agreeing to be “committed and dedicated in undertaking joint actions, with particular emphasis on development of effective cooperation in respect of human rights and fundamental freedoms for all”. Since then, different initiatives were implemented jointly with CSOs as a very strong partner to the OIK, as the only NHRI in the country, including signing of memoranda

- of understanding (MoUs) with organizations in the field of children' rights, prevention of torture etc.
- a Joint Statement on the protection of health and life of juveniles deprived of liberty, with the UNICEF Office in Kosovo* and the Coalition of NGOs for Child Protection, issued on 22 May 2020. The Declaration (addressed to the President, Speaker of the Parliament, Parliamentary Committee on Legislation, Mandates, Immunities, Rules of Procedure of the Assembly and Oversight of the Anti-Corruption Agency, Judicial Council, Prosecutorial Council and Ministry of Justice) called on these institutions to make decisions which will enable the replacement or review of institutional educational measures, replacement of detention, early release, parole, or even pardon of sentences.
 - A Virtual regional conference to mark International Human Rights Day with the theme "Human rights in the pandemic period and the role of National Human Rights Institutions", in which two panellists from Civil Society Organizations addressed the audience with their perspective on this issue.

OIK has a very good cooperation with different international organisations based in Kosovo*. Among them the OSCE, which supports the OIK with different projects for capacity building and promotion of the mandate. In 2020, they supported the OIK with promotional videos against hate speech, hate crimes and for raising public awareness against discrimination. The purpose of the videos was to raise general awareness about the grounds of discrimination, hate crimes, hate speech, as well as to encourage victims to report cases of discrimination and hate crime to the competent institutions. They were broadcasted on several television channels as well as social networks, in December 2020.

References

- Report with recommendations Ex officio 365/2018 against Ministry of Economy and Environment regarding the issue of lawfulness of the procedures concerning the hydropower plants in the country as well as access to documents related to hydropower plants, <https://www.oik-rks.org/en/2021/02/03/report-with-recommendations-ex-officio-3652018-against-ministry-of-economy-and-environment-regarding-the-issue-of-lawfulness-of-the-procedures-concerning-the-hydropower-plants-in-the-country-as-we>

- Joint Declaration of the Ombudsperson and non-governmental organizations of the Republic of Kosovo*, <https://www.oik-rks.org/en/2017/12/10/joint-declaration-of-the-ombudsperson-and-non-governmental-organizations-of-the-republic-of-kosovo/>
- Joint Statement of the Ombudsperson, UNICEF and KOMF (Coalition of NGOs for the Protection of Children) - Call for Action "To give juveniles a chance", 2020, available at: <https://www.oik-rks.org/en/2020/05/22/joint-statement-of-ombudsman-unicef-and-komf/>

Checks and balances

The outbreak of the COVID-19 pandemic and related counter measures affected in several ways the national system of checks and balances, more details are provided in the COVID-19 section below. Regarding more general issues:

Separation of powers

The OIK recently questioned the constitutionality of two laws.

The Law on Public Officials, which provides to the Government of the Republic of Kosovo* power to establish a legal basis for employment of public officials in institutions of the Republic of Kosovo*, including public officials in independent institutions (e.g. OIK) as well as in other public sector entities, regardless of the specificities of the constitutional status of these entities. The Ombudsperson considered that the Law on Public Officials did not take into account the fact that organisational, functional and activity issues in various public sector entities are regulated separately, in accordance with the Constitution of the Republic of Kosovo* and with their organic laws. The Ombudsperson, among other things, considered that the law violates the separation of powers, as it provided to the Government power over legislative, judiciary and independent institutions.

The Law on Salaries in the Public Sector, which defines the system of salaries and bonuses for public officials, who are paid from the state budget, and the rules for determining the salaries of employees of public enterprises in Kosovo*. The Law authorizes the Government of the Republic of Kosovo* and the Assembly of the Republic of Kosovo* to issue bylaws for the implementation of this law. The Ombudsperson considered that this law and Annex 1 of this Law failed to carry the constitutional spirit in the sense of separation of powers,

equality before the law, nor the guarantee of property rights. Furthermore, the Ombudsperson considered that this law was not in compliance with the principles of the rule of law, due to shortcomings in terms of its clarity, accuracy and predictability.

The Ombudsperson has raised, in the Constitutional Court, the issue of compliance with the Constitution of the Republic of Kosovo* of the above-mentioned laws (Law no. 06/L-114 on Public Officials and Law no. 06/L-111 on Salaries in the Public Sector), and requested interim measures on both laws, in order to avoid irreparable damages due to the implementation of these laws, in particular of the Law on Salaries.

On 30 June 2020, the Constitutional Court issued:

- the Judgment KO 203/19 regarding the assessment of the constitutionality of Law no. 06/L-114 on Public Officials. The Court decided that: the referral was admissible for review on merits; that the articles, challenged by the Ombudsperson are not in compliance with the Constitution; and that the challenged law does not apply in relation to the Kosovo* Judicial Council, Kosovo* Prosecutorial Council, the Constitutional Court, the Ombudsperson Institution, Auditor-General of Kosovo*, Central Election Commission, the Central Bank of Kosovo* and the Independent Media Commission, as it violates their functional and organisational independence guaranteed by the Constitution.
- the Judgment KO 219/19 regarding the assessment of the constitutionality of Law no. 06/L-111 on Salaries in the Public Sector. The Court decided that: the referral was admissible for review of merits; the challenged Law, in its entirety, is not in compliance with the Constitution and therefore declared it invalid.

While these laws had nothing to do with the COVID-19 pandemic, it is worth noting that the Constitutional Court has fulfilled the obligations and deadlines regarding the resolution of the issues raised by the Ombudsperson despite the fact that it has been working in aggravated circumstances due to the pandemic.

Access to information

During 2020, 62 complaints to the OIK were related to access to public documents. Of those, 39 were received from the civil society and the media, while others were individual complaints.

In most cases the responses of the institutions to accept applications are timely and within the legal deadlines. However, the decision-making time for granting or rejecting access

exceeds the time limits provided by law, despite the importance of providing information in a timely manner. It has also been noted that delays are often due to a lack of human resources. In cases where public institutions rejected access or granted limited access, they often fail to provide a justification based on law. Furthermore, the state institutions, holders, compilers or recipients of information, in most cases have not classified the documents in timely manner, or not at all, as provided by Law no. 03/L-178 on Classification of Information and Security Clearances. Failure to comply with this law opens the way to arbitrariness in deciding whether to grant or reject access to public documents. The Ombudsperson has reported this issue in previous years.

Since the declaration of the pandemic emergency, an excuse for delays in responding to access applications has also been used to suggest that institutions are working with reduced staff and remote work.

Another obstruction in the realization of the right of access to public documents derives from the non-appointment of the Commissioner of the Agency for Information and Privacy. In July 2019 entered into force the Law no. 06/L-081 on Access to Public Documents, by which the information seeker can file a complaint to the Information Commissioner within fifteen days, in case the public institution remained silent, has not responded, or has rejected the application for access to public documents. The appointment of the Commissioner by the Assembly of the Republic of Kosovo* has failed three times (the first time, none of the candidates managed to qualify; the second time, the selection failed due to the dissolution of the Assembly of the Republic of Kosovo*; the third time, none of the candidates managed to get the required votes). The failure to appoint the Information Commissioner has also hindered the issuance of bylaws for the internal organization of the Agency, which (according to the Law on Personal Data Protection) must have been issued 6 months after the entry into force of this Law (25 February 2019).

Judiciary

The Government of the Republic of Kosovo* issued decisions on the state of emergency in public health, which limited the work of public institutions.

Electoral process

The Ombudsperson has monitored the process of the Early General Elections held on 14 February 2021. The OIK monitored this process in the field in almost all municipalities of the Republic of Kosovo*. In general the process was orderly, except for some technical problems which did not have an effect on the right to vote, or to be elected.

NHRI as component of checks and balances

The Ombudsperson Institution of the Republic of Kosovo* has a strong constitutional and legal mandate in monitoring how the mechanisms of checks and balances work and if principles of rule of law, democracy and human rights are respected in the country.

1. Participation in legislative and policy processes

The OIK's mandate has in its duties to observe policies and laws adopted by national authorities, in order to ensure that they are in compliance with international human rights standards and good governance principles. The OIK then makes recommendations, such as:

The OIK Annual Report 2019 had emphasized that the laws published in the Official Gazette do not mention when provisions have been abrogated by the Constitutional Court. However, it has recently been noticed that in the reporting period, the Official Gazette has started to publish notices of the Judgments of the Constitutional Court regarding the relevant laws, as recommended.

In order to protect the rights of children, the Ombudsperson Institution, on 12 August 2020 published a Report with Recommendations regarding the prevention of child marriages and recommended the Assembly of Kosovo* to amend and supplement Article 16, paragraphs 2 and 3, of Law no. 2004/32 on Family, respectively removing paragraphs 2 and 3 of Article 16. However, because of the health and political crisis, the Assembly of Kosovo* has not taken any action in order to implement the recommendation in question.

2. Intervention before the courts

The Ombudsperson Institution may appear in the capacity of the Court's friend (*amicus curiae*) in judicial proceedings dealing with human rights, equality issues and protection from discrimination, however it does not intervene on cases and other legal procedures, except those related to administration of justice (delays of judicial procedures and failure to execute judicial decisions). The Ombudsperson may nevertheless provide general recommendations on the functioning of the judicial system, and can raise issues with the Constitutional Court of Kosovo*.

The OIK has appeared in the capacity of court friend (*amicus curiae*) in 4 cases during the reporting period, in court proceedings related to human rights, equality issues and protection from discrimination. It also received several complaints against prosecutors and

from the cases investigated in four complaints have ended with Reports with recommendations to the Basic Prosecution (BP) in Pristina.

References

- Decision no.01 / 07, dated 15.3.2020 and Decision no.01 / 11, dated 15.3.2020, of the Government of the Republic of Kosovo*. <https://kryeministri-ks.net/wp-content/uploads/2020/03/Vendimi-nr.01-11.pdf>
- Kosovo* Judicial Council, Decision KJC.no. 52/2020, dated 12 March 2020, https://www.gjyqesori-rks.org/wp-content/uploads/decisions/13755_Vendimi_Nr_52_2020_Kufizohen_perkohesisht_vepri_mtarit_gjyqesore.pdf
- Kosovo* Judicial Council, Decision KJC.No. 83/2020, May 2020, source: https://www.gjyqesori-rks.org/wp-content/uploads/decisions/57454_Vendimi_KGJK_Nr_83_2020_Shtohet_aktiviteti_punes_se_Keshillit_Gjyqesor_te_Kosoves_dhe_te_gjitha_Gjykatat_vendit..pdf
- Kosovo* Prosecutorial Council, "Decision - Activities to be reduced essentially within the Kosovo* Prosecutorial Council and the State Prosecutor", March 2020, source: <https://prokuroria-rks.org/kpk/lajm/4638>
- Kosovo* Prosecutorial Council, Decision KPC.nr.462 / 2020, May 2020, source: <https://prokuroria-rks.org/assets/cms/uploads/files/Dokumente%20Publikime/KPK/Vendime/Vendim%20Nr.462.2020%20-%20Shtohen%20aktivitetet%20e%20pun%C3%ABs%20n%C3%AB%20sistem%20prokurorial.pdf>

Functioning of the justice system

When it comes to judicial system, the Ombudsperson Institution has a limited mandate. It may only make general recommendations on the functioning of the judicial system, without interfering in legal cases and legal proceedings being conducted before the courts, except in cases related to allegations on the administration of justice, namely delays in court proceedings, and in the execution of judicial decisions.

The national justice system has suffered from the backlog of cases for a significant period of time, causing excessive length of proceeding, both in the processing of cases and the enforcement of court decisions. This chronic problem in the domestic courts is the issue stressed by the highest number of case received by the Ombudsperson. The current circumstances created by the pandemic have only deepened the problem.

A huge number of monitoring of court proceedings is also an indicator that there is still a perception of citizens about the lack of objectivity of judges in deciding their cases. In this relations, the OIK has published two Reports with recommendations and a Letter with Recommendation addressed to the courts.

The outbreak of COVID-19 virus imposed the need to take state protective measures aimed at protecting public health. The Government of the Republic of Kosovo* issued decisions on the state of emergency in public health, thereby limiting the work of public institutions, including on the functioning of the judiciary. As a result, the activity in courts and the prosecution was reduced to only reviewing cases where the public was not present, in urgent cases and with reduced staff.

This new situation in the judiciary contributed to further deterioration of the efficiency of ruling on court cases within legal time limits and this led to further increasing the court's backlog at the national level. This in turn contributed to citizens' dissatisfaction with human rights and freedoms, for the judicial protection of their rights.

It should be noted that citizens mainly complain about delays in proceedings for ruling on cases by the courts as well as delays in the enforcement of final court decisions. In accordance with the legal competencies that the Ombudsperson has in relation to the judiciary (Law no.05 / L-019 on Ombudsperson, Article 16, paragraphs 8 and 9) the Ombudsperson has published two reports with recommendations and a Letter of Recommendation for the judiciary and in 4 cases has appeared as a friend of the court (*amicus curiae*) in trials related to human rights, equality related issues and anti-discrimination.

As already evoked in 2020 ENNHRI Rule of law report, the OIK found that the Law no. 06 / L-111 on Salaries in the Public Sector law failed to convey the constitutional spirit in terms of separation of powers, equality before the law, and the guarantee of property rights. The OIK also found it incompatible with the principles of the rule of law, due to deficiencies in terms of its clarity, accuracy and predictability. On 30 June 2020, the Constitutional Court issued the Judgment KO 219/19 declaring the Law unconstitutional in its entirety. It was the

Ombudsperson Institution that challenged the law in question in the Constitutional Court, considering it not in compliance with the Constitution of the Republic of Kosovo*.

In the Judgment, among others, the Constitutional Court ruled that “the Court noted some serious conceptual and practical problems to the detriment of the Judiciary and Independent Institutions. This is due to the fact that, if this provision were declared constitutional, it would mean that whenever the Judiciary and other Independent Institutions need to create a new position within their organizational chart, or change the internal organizational structure depending on the need that may arise in the future – they should address the Government to ask for permission and approval to create a new position and to seek permission and approval to change the internal organizational structure. The contested Law in the final decision-making chain, left to the Government the decision to “approve” any proposal of the Judiciary. The Court found that this legal regulation, without any doubt, in a flagrant way goes contrary to the notion of “institutional, functional and organizational” independence of the Judiciary and Independent Institutions.

The Ombudsperson Institution may appear in the capacity of *amicus curiae* in judicial proceedings dealing with human rights, equality issues and protection from discrimination. In this regard, the Ombudsperson during the reporting year has investigated cases of non-execution of final court decisions which for years were not executed by the courts, therefore these delays negatively affected the realization of guaranteed rights and citizens' trust in the judicial system.

On 22 May 2020, the Ombudsperson together with the UNICEF Office in Kosovo* and the Coalition of NGOs for Child Protection issued a Joint Statement on the protection of health and life of juveniles deprived of liberty. The Declaration (addressed to the President, Speaker of the Parliament, Parliamentary Committee on Legislation, Mandates, Immunities, Rules of Procedure of the Assembly and Oversight of the Anti-Corruption Agency, Judicial Council, Prosecutorial Council and Ministry of Justice) called on these institutions to make decisions which will enable the replacement or review of institutional educational measures, replacement of detention, early release, parole, or even pardon of sentences.

In spite of some cases which have been properly dealt with by the police and the justice system, the OIK has noted a general impunity regarding the growing cases of threats, physical assaults, breaches of security and prevention of free exercising of the journalist profession during 2020 (see below).

Media pluralism and freedom of expression

During the reporting period, there were no complaints filed within the Ombudsperson Institution with regard to the regarding the free and pluralist media environment. The complaints filed within the Ombudsperson institution by the media and journalists were mostly with regard to the access to public documents (see checks and balances section above).

However, the OIK welcomes and follows on any request in this field.

On May 3, 2020, on the occasion of World Press Freedom Day, the Ombudsperson published a statement (link in references) focused on the importance of the media and the global pandemic situation. The Ombudsperson stressed that in the existing circumstances, with multiple challenges in almost all segments of life, reliable journalism, which is built on professional and ethical standards, is vital for the processes in the country. Considering the many obstacles in journalism, respect for media freedom and media pluralism are vital to guarantee other rights and freedoms. Independence and professionalism in journalism ensure transparency and accountability on issues of general interest and at the same time sensitize the citizens for activism and participation in social, economic, cultural and political processes.

The nature of their work makes journalists subject to threats or assaults, which makes it challenging for the media to function effectively in disseminating information. Verbal or physical assaults on journalists, threats through social networks or in any other form, violate the constitutional rights to freedom of the media and freedom of expression and alert to the fragility of the functioning of democracy and the rule of law in the country. The authorities have a constitutional obligation to safeguard the necessary safety and security of journalists, in fulfilling their role. At the same time, they are obliged not to interfere in the work of the media and are obliged to provide transparency and grant access to official information and documents, as essential components of the exercising of freedom of the media, respectively freedom of expression and information.

In this context, the Ombudsperson shares his concern regarding the growing cases of threats, physical assaults, breaches of security and prevention of free exercising of the profession during 2020. In spite of some cases which have been properly dealt with by the police and the justice system, the OIK draws attention to the general impunity around those cases. This contributes to an insecure environment for the work of the media and indirectly paves the way for the self-censorship of journalists and the media. Also, the

persistent difficulties of journalists to access official information and documents are a constant concern over the years.

In this context, on 25 February 2021, the Ombudsperson reacted and condemned the physical attack on journalist Visar Duriqi, which he qualified as an attack on freedom of expression as a fundamental right in a democratic society, and called on law enforcement mechanisms to treat these cases with priority and seriousness, emphasizing the obligation of the state to ensure the life, health and physical integrity of citizens and demanded that all measures be taken to prevent such cases in the future.

References

- Ombudsperson's statement on the World Press Freedom Day, <https://www.oik-rks.org/en/2020/05/03/ombudspersons-statement-on-event-of-the-world-press-freedom-day/>
- Reaction of the Ombudsperson related to the physical assaults against citizens, <https://www.oik-rks.org/en/2021/02/26/reaction-of-ombudsperson-related-to-physical-assaults-against-citizens/>

Corruption

The Ombudsperson Institution was not alerted of any such practice.

In compliance with the obligations arising from Law no. 06 / L-085 on the Protection of Whistleblowers, the OIK has appointed the responsible person from the Institution for issues related to whistleblowing, who reports directly to the Anti-Corruption Agency.

In order to determine the procedure for receiving and handling whistleblowing cases and implementing the above-mentioned law, the responsible authority (Ministry of Justice) has finalized the draft regulation which is expected to be voted in the Government of the Republic of Kosovo*, in order to begin its implementation.

Impact of measures taken in response to COVID-19 on the national rule of law environment

Most significant impacts of measures taken in response to the COVID-19 outbreak on the rule of law and human rights protection

The COVID-19 outbreak and the authorities' counter measures impacted many aspects related to rule of law and human rights protection, such as:

Accountability of state authorities in the context of the COVID-19 pandemic

1. Assembly of the Republic of Kosovo*

In 2020, the Assembly of the Republic of Kosovo* has only adopted 17 laws. This small number is a result of the irregular functioning of the Assembly and the Government, due to political circumstances and those caused by the COVID-19 pandemic.

One of the most special events that occurred in the legislative process during the reporting year is the adoption of the Law no. 07/L-006 on Preventing and Combating COVID-19 Pandemics in the Territory of the Republic of Kosovo*. This law was adopted by the Assembly of the Republic of Kosovo* on 14 August 2020. This law aims to create the legal basis for the state institutions of the Republic of Kosovo*, to combat and prevent the COVID-19 pandemics, and was issued as a result of the assessments of the Constitutional Court when deciding on the referrals filed by the President against the Government's decision on restrictive measures, respectively against the restriction of freedom of movement and freedom of gathering.

On 4 December 2020, the Assembly of the Republic of Kosovo* adopted the Law no. 07/L-016 on Economic Recovery – COVID-19. This law aims to supplement and amend some laws, in order to recover the economy of the Republic of Kosovo* after the negative effects caused by the COVID-19 pandemic.

2. Government of the Republic of Kosovo*

The work of the executive during the reporting year is undoubtedly largely characterized by the COVID-19 pandemic and its impact on the work of the executive.

The COVID-19 pandemic posed an unprecedented human rights challenge worldwide. The circumstances created by the COVID-19 virus and the danger it poses to the life and health of citizens require balancing between the right to life, which cannot be restricted in any

circumstances, and other rights for which the Constitution and International human rights instruments allow restrictions in certain circumstances. The Ombudsperson considers that the COVID-19 pandemic falls within the definition of threat to the health and life of citizens, and the state is obliged to take measures to protect their life and health, which, among other things and in general, was also the position of the Ombudsperson expressed in two opinions, which he has referred to the Constitutional Court regarding the Government's decisions related to the restriction of the freedom of movement and freedom of gathering.

On March 13, 2020, the first two cases of COVID-19 in Kosovo* were confirmed, and as a result, the Government of the Republic of Kosovo* began to take the first measures to prevent the spread of this virus and issued: on March 30, 2020, Decision no. 01/19, approving the Fiscal Emergency Package; on April 3, 2020 Decision no. 31/2020, approving the Operational Plan of the Emergency Package; on April 17, 2020 Decision no. 06/25 supplementing the Fiscal Emergency Package.

The media reported that applying for the benefit of some measures of this Package has been a complicated procedure. They also reported delays in the implementation of payments of these measures. Salary delays also affected some workers from the Fiscal Emergency Package due to the fact that their data were erroneously uploaded to the system during the application for benefiting from this package etc. Individual complaints on the matter have been submitted to the Ombudsperson, which are under investigation.

On April 15, 2020, with the decision of the government, strict measures of restriction of movement entered into force. The Ombudsperson has closely followed the issuance of decisions by the government, in order to impose restrictive measures to protect public health from the COVID-19 pandemic.

The Ombudsperson, from March 15 to December 31, has received 64 complaints related to the pandemic, of which 39 have been opened for investigation. While 9 other cases were initiated ex. officio related to the pandemic situation, as follows:

- Based on the urgent request of the Constitutional Court to submit comments regarding the imposition of an interim measure, following the request of the President of the Republic of Kosovo* for the Court to provide an: "Assessment of the issue of compliance of the Decision of the Government of the Republic of Kosovo* no.01 / 15, dated. 23/03/2020, with the Constitution of the Republic of Kosovo* regarding the restriction of fundamental rights and freedoms protected by the Constitution." Regarding the case, the Ombudsperson has sent an Opinion to the Constitutional Court regarding case no. KO 54/20

- Case related with the decisions of the Ministry of Health for the restriction of the freedom of movement during the pandemic (Decision no. 2381IV / 2020, no. 229 / IV / 2020, no. 2141IV / 2020, no. 2391IV / 2020). The Ombudsperson has sent an Opinion regarding the case no. KO 61/20, according to the notification of the Constitutional Court for the registration of the request for submission of comments with ref. no.: KK 82/20, dated 20 April 2020.
- Case related to the restriction of the right to privacy of citizens affected by COVID-19, from the publication of their data by the media and journalists.
- Case related to the provision of health services during the COVID-19 pandemic.
- Case related to Decision no. 31/20120, dated 3.4.2020, of the Ministry of Finance on the approval of the Operational Plan for the Fiscal Emergency Package.
- Case related to the licensing of private laboratories for PCR and serological testing by the Ministry of Health.
- Case of A. G., who lost his life on May 3, 2020 while being quarantined at the Student Center, at the time of the COVID-19 pandemic.
- Case regarding the violation of the rights to access to health care services of persons affected by HIV / AIDS and Tuberculosis (TB) in Kosovo* during the pandemic.
- The Ombudsperson has recommended to the Ministry of Health and National Institute for Public Health of Kosovo* to act in accordance with the provisions of Article 5, paragraph 1, of the Constitution and Law no. 02 / L-37 on the Use of Languages, so that citizens and the public, in a timely and immediate manner, e.g. through their official websites, inform them in both official languages of the Republic of Kosovo* about the public health emergency situation caused by the COVID-19 pandemic.
- The Ombudsperson has also issued an Opinion regarding the requests for the release of prisoners of certain categories during the COVID-19 pandemic. Through this Opinion, the Ombudsperson, among others, reminded all competent bodies of the Republic of Kosovo*, the absolute nature of the prohibition of torture and inhuman and degrading treatment, which is envisaged by The Constitution of the Republic of Kosovo*, with the relevant country legislation, as well as with international human rights standards. The Opinion recommended the authorities to apply the CPT standards in order for the persons deprived of their liberty to be guaranteed the level of health care available to other community. Competent authorities, if necessary, to provide medical care to prisoners outside prisons and detention centres. It also urged competent authorities to impose alternative sanctions on remand detention in order to prevent an increase in the number of

prisoners and not to risk the principle of maintaining social distance, which is one of the measures proclaimed by the WHO in the fight against COVID -19.

Judiciary

The Government of the Republic of Kosovo* issued decisions on the state of emergency in public health, which limited or in some cases even stopped the work of public institutions. These decisions also had negative impacts on the functioning of the judiciary and reduced the work of the courts and the prosecution to only reviewing cases where the public is excluded, in urgent cases and with reduced staff.

This caused further deterioration in the efficiency of courts' decisions within legal deadlines and increased the number of unresolved cases at the national level. This affects citizens' dissatisfaction with human rights and freedoms, for the judicial protection of their rights.

Electoral process

The Ombudsperson noted that at the polling stations where the monitoring was conducted, Covid-19 protection measures were not fully implemented, as the masks were not used by all voters, and the necessary distancing was not maintained. According to the Ombudsperson, this could endanger public health, which could have major repercussions on the citizens of the Republic of Kosovo*. Finally, the Ombudsperson highly appreciates the organization of the General Elections by the Central Election Commission (CEC).

Trust between state authorities and citizens

The work of the executive/ state administration for 2020 was clearly characterized by the COVID-19 pandemic to a large extent and the impact on its work.

The circumstances created by the COVID-19 virus and the threat caused to the life and health of citizens have contributed to taking measures to restrict human rights, especially the right of movement and freedom of assembly, in order to protect the life and health of citizens.

Restrictive measures taken by the executive have not been welcomed by citizens and businesses and certain executive's decisions have been sent to the Constitutional Court to assess their constitutionality, and the Court has found human rights violations. In that regard the Ombudsperson has provided his opinions to the Constitutional Court.

The state administration has operated with limited human capacities, focusing only on emergency work thus preventing citizens from fulfilling their claims and complaints. In many cases, the Ombudsperson has been notified by the state authorities that they are not able to respond to the latter in a timely manner and this has not been welcomed by the citizens.

Civil society space

The lockdown, in Kosovo* as in any other country, significantly reduced the space for civil society activism. In spite of this, many civil society organizations were very vocal on different human rights issues during the pandemic period.

Long term implications of the pandemic

1. Children's rights

With regards to child rights, the long term implications of COVID-19 have been most visible in three domains: education, access to social and health services and mental health. With the transition from school to online learning, consequences on education have been twofold as affecting both access to and quality of education. Disruptions of the learning process can potentially result in a larger share of students becoming illiterate and dropping out of school. In particular, Ashkali, Egyptian and Roma children have had difficulties accessing technological and internet equipment. An appropriate curricula is being developed to address the needs of children with disabilities. Furthermore, the rise of domestic violence as well as the psychosocial stress caused by home confinement, isolation and the pandemic overall have continuously affected the mental health of children. The Ombudsperson specifically has requested that institutions include specific measures to support children in difficult economic situations when approving support packages, accompanied by sustainable funding to alleviate the health, social and economic crisis caused by COVID-19.

2. Impact in the economy and jobs

While restrictive measures may have had a positive impact on slowing the spread of the virus, and on preventing the escalation of the health crisis in the country, the effect and consequences of closing the economy will have severe impacts. People losing jobs will deepen poverty and inequality.

3. Judicial system

The Kosovar judicial system had a long-term problem of the backlog of cases, which will be even worsened by the pandemic, because of the cases that may be brought that are related to the pandemic (losing jobs, Government recovery packages, non-provision of adequate health care).

Actions taken by the OIK

The OIK has undertaken a lot of activities aiming to fulfil its constitutional and legal mandate, from which (in addition to organization of a regional conference and various meetings with the highest representatives of the institutions in the country, international and civil society organizations) the most important ones are:

1. Reports with recommendations:

1. On 27 January 2021, the Ombudsperson, has published the Ex. Office Report with Recommendations No. 698/2020, which assesses the access to health care services for persons affected by the Human Immunodeficiency Virus (HIV) and Tuberculosis (TB), during the COVID-19 pandemic period in Kosovo*, with a human rights-based and non-discriminatory approach, in relation to universal health coverage, as an objective of the 2030 Agenda for Sustainable Development, as well as to draw authorities' attention to the importance of adequate treatment of persons with HIV / AIDS and TB, given the detrimental consequences that their ongoing failure to get treatment might cause.

2. On 3 February 2021, the Ombudsperson, published Ex-Officio Report with Recommendations no. 365/2018, concerning the issue of lawfulness of procedures with regard to hydropower plants in the country and access to documents related to hydropower plants.

3. On 12 March 2021, the Ombudsperson published the Ex officio Report no. 434/2020, which deals with the assessment of the realization of health rights during the period of the COVID-19 pandemic in Kosovo*. The report deals with access to health care and treatment, mainly in secondary and tertiary level institutions, focusing in particular on restrictions on the provision of health services (specialist visits and selective operations), for persons who were not infected with COVID-19. The report covers the period from March to September 2020. Based on the collected facts and analysis of relevant laws which define the right to provide health services in Kosovo*, it was concluded that during the health emergency in the Republic of Kosovo* there were violations of fundamental human rights and freedoms. Relevant authorities have failed to meet constitutional and legal obligations to citizens who have potentially needed health services. Among other things, the report finds that the

actions of the health authorities to discontinue selective operations and specialist ambulances had no legal basis, and also left no alternative as to where these persons could be treated and the state had not assumed its responsibilities.

2. Statements:

1. Statement of the Ombudsperson related to the measures for the prevention of the Covid-19 pandemic during the election campaign for the 2021 General Elections

2. Statement of the Ombudsperson on the Universal Children's Day (mentioning COVID-19 impacts)

3. Ombudsperson's statement on the occasion of International Day for the Elimination of Violence against Women (mentioning COVID-19 impacts)

The Ombudsperson also went on with its usual activities addressing non-COVID-19 related issues, e.g. Reports with recommendations on equal access to interurban transport of blind persons and on danger posed to citizens by stray dogs, Legal opinion on the legal identity of unregistered persons, Statements at the occasion of the Pride Week, or following a physical attack against a journalist.

References

- Report with recommendation, H.K versus Ministry of Infrastructure, <https://www.oik-rks.org/en/2020/08/05/recommendation-report-complaint-no-8992018-halil-kurmehaj-versus-ministry-of-infrastructure/>
- Ombudsperson's legal opinion in the capacity of friend of the court (Amicus Curiae) for the Court of Appeals, Basic Court in Prishtina, Basic Court in Pejë, Basic Court in Mitrovicë – Ex-officio No.148/2020, <https://www.oik-rks.org/en/2020/08/11/ombudspersons-legal-opinion-in-the-capacity-of-friend-of-the-court-amicus-curiae-for-the-court-of-appeals-basic-court-in-prishtina-basic-court-in-peje-basic-court-in-mitrovice-ex-officio-no-14/>
- Ex officio Report no. 434/2020, which deals with the assessment of the realization of health rights during the period of the COVID-19: <https://www.oik-rks.org/2021/03/12/raport-me-rekomandime-ex-officio-rasti-nr-4342020-ne-lidhje-me-kufizimet-e-ofrimit-te-sherbimeve-shendetesore-gjate-pandemise-covid-19-ne-kosove/>

- Ex-Officio Report with Recommendation no. 517/2019, regarding the danger posed to citizens by stray dogs, <https://www.oik-rks.org/2020/11/02/raport-me-rekomandime-ex-officio-rasti-nr-517-2019-ne-lidhje-me-rrezikun-qe-i-kanoset-qytetareve-te-republikes-se-kosoves/> <https://www.oik-rks.org/en/2021/01/27/report-with-recommendation-ex-officio-case-no-6982020-on-the-access-to-health-care-services-for-people-affected-by-the-human-immunodeficiency-virus-hiv-and-tuberculosis-tb-during-the-covid-19/> <https://www.oik-rks.org/en/2021/02/03/report-with-recommendations-ex-officio-3652018-against-ministry-of-economy-and-environment-regarding-the-issue-of-lawfulness-of-the-procedures-concerning-the-hydropower-plants-in-the-country-as-we/>
- Ombudsperson's statement on the occasion of the Pride Week, <https://www.oik-rks.org/en/2020/10/12/ombudspersons-statement-on-the-occasion-of-world-pride-week/> <https://www.oik-rks.org/en/2020/11/20/statement-of-the-ombudsperson-naim-qelaj-on-the-universal-childrens-day/> <https://www.oik-rks.org/en/2020/11/25/ombudspersons-statement-on-the-occasion-of-international-day-for-the-elimination-of-violence-against-women/>

Most important challenges due to COVID-19 for the NHRI's functioning

The OIK, despite the challenges which arose in early 2020 due to the Covid-19 pandemic, has taken various initiatives in accordance with the constitutional and legal mandate in terms of promoting and protecting human rights and fundamental freedoms. As the health emergency presented a challenge for the OIK in terms of carrying out promotional activities, the institution, through the existing capacities with the maximum of efforts, adapted the realization of activities to the measures against the pandemic.

In the first two months of 2020, the planned promotional activities were carried out in the field, while from March of the same year, many were converted into virtual activities and carried out through various platforms due to restriction measures. In addition, the institution was present in several TV media programs and awareness raising video clips.

Challenges of the institution in general

The decisions of the Government of the Republic of Kosovo* with regard to Covid – 19, required all the institution the OIK to limit services to the citizens, closing complaints' admission offices, in the Headquarters and regional offices, which has made it difficult for citizens to file complaints according to previous practice.

Nonetheless, the institution has advised the citizens to address their complaints through mail, telephone calls and Post office. However, this has led to a decrease in the number of complaints of approximately 35 percent compared to last year. According to the past practice, the citizens of the country prefer to come to our offices to file complaints. But the reason for the decrease in complaints may have been the lack of technology tools for their submission, as well as the emergency functioning of the state administration.

Work as National Preventive Mechanism (NPM)

Kosovo* NPM is authorized to conduct unannounced visits to all places of deprivation of liberty, including here psychiatric institutions and social care homes. In 2020, when the first COVID-19 cases were contracted, the NPM suspended its visits to all places of deprivation of liberty based on "Do no harm" principle. During this period of visit suspension, the NPM made available 4 cell phone numbers through which the persons deprived of their liberty were able to contact NPM staff members at all times. Also, regular contacts were maintained with the competent authorities.

During the total lockdown the NPM published a legal opinion regarding the treatment of persons deprived of their liberty in the times of pandemics, and a report with recommendations on NPM visits to a number of police stations. This legal opinion was based on CPT Statement of Principles and SPT Guidelines for Governments of treatment of persons deprived of their liberty during COVID-19.

When some of the restrictive measures were eased by prison authorities, the NPM resumed its visits, which in most cases were Ad Hoc visits and therefore avoiding full assessment visits due to COVID-19. In total, it has carried out 56 visits to all places of deprivation of liberty. The authorities never obstructed the NPM in conducting its duties, which illustrates the general very good the cooperation between the NPM and the authorities.

The main focus of the NPM Ad Hoc visits during the COVID-19 was on treatment of persons deprived of their liberty, possible overcrowding, provision of health care, and restriction of contacts with the outside world. It received no complaints regarding treatment by authorities, no overcrowding was noticed, and the health care, despite complaints received, was found to be adequate during that period.

Restriction of contacts with the outside world was compensated by enabling contacts through Skype and other means of electronic communications. The NPM received complaints regarding temporary suspension of sentences and complaints against decisions of Panel of Release on Parole, which could however not be acted on as the NPM has no mandate to review decisions issued by the above-mentioned bodies.

References

- Ombudsperson, NPM, Legal Opinion on treatment of prisoners during COVID-19 measures. Please see: <https://www.oik-rks.org/en/2020/04/23/ombudspersons-opinion-related-to-requests-for-release-of-certain-categories-of-prisoners-at-the-time-of-global-corona-virus-covid-19-pandemic/>.
- National Preventive Mechanism, Report with recommendations on visits to Police Stations. Please see: <https://www.oik-rks.org/en/2020/09/16/report-of-the-ombudspersons-national-preventive-mechanism-against-torture-on-the-visits-to-police-stations/>

Latvia

Ombudsman's Office of the Republic of Latvia

International accreditation status and SCA recommendations

The Latvian NHRI was reaccredited with A status in December 2020. In its review, the SCA encouraged the Latvian NHRI to advocate for the formalization and application of a broader and more transparent process for the selection and appointment of the Ombudsman. The SCA also called on the NHRI to advocate for appropriate amendments to its legislation to ensure an independent and objective dismissal process of the position of Ombudsman, an explicit limitation to the possibility of consecutive re-appointments of the Ombudsman's term of office, and stronger protection from criminal and civil liability for actions taken by the Ombudsman in their official capacity in good faith. The SCA also recommended the Ombudsman to continue efforts to address all human rights issues affecting the society, including economic, social and cultural rights, and that accredited NHRIs should take reasonable steps to enhance their effectiveness and independence in line with the Paris Principles and the recommendations of the SCA.

Independence and effectiveness of NHRIs

Changes in the regulatory framework applicable to the Institution

The Ombudsman has taken action on the recommendations of the SCA. Since 7 January 2021, amendments to the Ombudsman Law provide that the Ombudsman's appointment shall be approved in the office by the Saeima pursuant to the proposal of not less than ten members of the Saeima (previously five members) and that the same person can be Ombudsman for maximum two terms (of five years each).

Developments relevant for the independent and effective fulfilment of the NHRIs' mandate

The ability of the Ombudsman's Office of the Republic of Latvia to fulfil its mandate independently and effectively was reaffirmed by the re-accreditation of A status in December 2020 by the SCA.

Checks and balances

Trust in state authorities

On 9 December 2020 the Ombudsman organised its Annual Conference which focused on "Why is it difficult to trust the opinion and decisions of the government in a crisis situation?". The topic was discussed from three perspectives – from a scientific perspective, from a business and law perspective, in particular stressing the challenges of disinformation and how government decisions affect businesses, and from a human rights perspective, namely what is the role of constitutional and human rights in a crisis situation. The COVID-19 crisis has indicated the tension between individuals' right to freedom, including freedom of speech and the obligation of the state to take care of safety and health of the society. Disinformation that can be observed in the society can hinder citizens' trust in the work of the Government. The Ombudsman stresses that although government decisions must be taken fast, they need to be thoughtful and proportionate.

NHRI as part of the system of checks and balances

During 2020 Ombudsman submitted four applications to the Constitutional Court on the following topics where it has found problematic issues: minimum disability pension; minimal amount of the state old-age pension; the amount of the state fee for the partner of the estate-leaver for registering the ownership rights in the Land Register; increase of the state financing for increasing the remuneration of health care workers. The Ombudsman sent a letter to the Cabinet of Ministers on two aspects: to provide society-based services on the whole territory of the state, including for persons benefiting from state financed support; and recommended to discontinue the institutionalisation of people with disabilities starting from 1 January 2024.

Impact of measures taken in response to COVID-19 on the national rule of law environment

Most significant impacts of measures taken in response to the COVID-19 outbreak on the rule of law and human rights protection

The Ombudsman has continued to play its role of monitoring the government's measures and their impact on human rights, expressing opinions and making recommendations to EU and national policy makers in particular as regards the need to respect and promote economic and social rights, the right to healthcare and the importance of engaging in transparent communication with the public.

The Ombudsman monitored the government's decisions taken in the framework of the containment of the COVID-19 pandemic to ensure that restrictions were adequate, and that the society was being informed timely and accurately.

Special attention was paid to people in institutions, as people living in institutions are at higher morbidity risk. The Ombudsman stressed the importance of timely health care for people residing in closed-type institutions. The Ombudsman sent a letter about COVID-19 control measures to the Cabinet of Ministers, the Ministry of Welfare, to social care and social rehabilitation centres, and to institutions for children care.

On 13 October 2020 the Ombudsman together with the NGO "Latvian Movement for Independent Living" organized a press briefing on the reality of the deinstitutionalisation process and of the conditions of people in state social care institutions that does not meet the conditions that have been promised and hoped for.

As mentioned in the part on checks and balances, in December the Ombudsman organised its Annual Conference which focused on "Why is it difficult to trust the opinion and decisions of the government in a crisis situation?". The topic was discussed from three perspectives – from a scientific perspective, from a business and law perspective, in particular stressing the challenges of disinformation and how government decisions affect businesses, and from a human rights perspective, namely what is the role of constitutional and human rights in a crisis situation.

References

- The EU must put economic and social rights at the heart of its economic response to COVID-19 (15 May 2020) <https://www.tiesibsargs.lv/news/en/the-eu-must-put-economic-and-social-rights-at-the-heart-of-its-economic-response-to-covid-19>
- Unemployed people receiving disability pension do not qualify for state support for the unemployed (16 June 2020) in Latvian: <https://www.tiesibsargs.lv/news/lv/bezdarbniekiem-invaliditates-pensiju-sanemejiem-valsts-atbalsts-bezdarbnieka-palidzibas-pabalsts-iet-secen>
- Explaining Equinet suggestions to overcome COVID-19 crisis (01 July 2020) in Latvian: <https://www.tiesibsargs.lv/news/lv/eiropas-lidztiesibas-iestazu-sadarbibas-tikla-ieteikumiem-covid-19-krizes-parvaresana>
- Access to health care services or 'patient sorting' during COVID-19 pandemic (17 November 2020) in Latvian: <https://www.tiesibsargs.lv/news/lv/pacientu-skirosana-covid-19-pandemijas-laika>
- Ombudsman addresses the Government regarding communication with the society during COVID-19 crisis (01 December 2020) in Latvian: <https://www.tiesibsargs.lv/news/lv/tiesibsargs-vers-valdibas-uzmanibu-uz->

Liechtenstein

Liechtenstein Human Rights Association

International accreditation status and SCA recommendations

The Liechtenstein Human Rights Association is a non-accredited, associate member of ENNHRI since September 2019.

It was founded in December 2016 by 26 non-governmental organisations through the Liechtenstein Human Rights Association Act. It serves as an Ombuds body with a broad mandate to protect and promote human rights in Liechtenstein. The institution also acts as the Ombuds Office for Children and Young People.

ENNHRI will be supporting the Institution to seek accreditation by reference to the UN Paris Principles.

Impact of 2020 rule of law reporting

Follow-up by State authorities

The Liechtenstein Human Rights Association (LHRA) is not aware of any follow-up action of state authorities with regard to the issues reported in the 2020 ENNHRI rule of law report

Independence and effectiveness of the NHRI

Changes in the regulatory framework applicable to the Institution

There have not been any changes in the regulatory framework applicable to the LHRA on the past year.

Enabling space

The LHRA considers that state authorities sufficiently ensure an enabling space for the association to independently and effectively carry out its work.

Human rights defenders and civil society space

The LHRA Office has received a few individual complaints regarding the impact of Covid-19 measures on individual freedoms. Our internal assessment concluded that the principles of proportionality, transparency, non-permanency and non-discrimination of the state

measures were respected. Besides, all measures were based on a satisfactory legal foundation (Epidemics Law).

Therefore, the LHRA did not initiate a legal assessment of the measures. However, the association recommended a society-wide evaluation of Covid-19 protection measures in 2021, including human rights impacts, and offered to co-finance the evaluation.

Checks and balances

While the LHRA did not yet have the opportunity and capacity to follow-up on these issues, it considers the level of trust amongst citizens and between citizens and the public administration as very high.

The LHRA is regularly included in legislative consultation processes, and has not encountered particular obstacles in that respect. The data situation is good in general but not too specific, as the case numbers are often too small to allow generalization and ensure anonymization.

Functioning of the justice system

The LHRA has not found evidence of any laws, measures or practices that restrict access to justice and/or effective judicial protection in Liechtenstein.

Media pluralism and freedom of expression

The LHRA has not observed practices that could restrict a free and pluralist media environment, however it has not yet had the opportunity to examine this issue in detail.

The Association launched in 2020 a campaign named "respect please" to promote pluralism and stand up against hate speech in the very popular section of our national newspapers: "readers' letters"(letters to the editor).

Corruption

The LHRA found no evidence of laws, measures or practices relating to corruption, however it has not yet had the opportunity for an in-depth analysis of this issue.

Impact of measures taken in response to COVID-19 on the national rule of law environment

Most significant impacts of measures taken in response to the COVID-19 outbreak on the rule of law and human rights protection

The LHRA's general assessment of the measures taken in response to the Covid-19 pandemic is positive. The regular legislative process could be maintained throughout the pandemic as the parliament was able to follow and control the government thanks to duly and extraordinarily scheduled meetings almost every month since the beginning of the pandemic outbreak.

In its current publication, the independent research centre "Liechtenstein Institute" reviewed the legal basis for the government's Corona protection measures. It found challenges but no shortcomings in these measures. (Schiess, Patricia (2021): The Protection of Health and Public Health. The measures to combat coronavirus under Liechtenstein law. In: Jusletter 15 February 2021.)

After the first Covid-19 wave, the LHRA launched and published a survey of organisations working with vulnerable groups to assess the impact of the state measures on vulnerable groups and provided recommendations to address the issues identified.

The LHRA also advocated for:

transparent and easily accessible official information about the pandemic and protective measures (translations of government information in migration languages, in plain language, and in sign language). funding for quarantine measures for care migrants.

Most important challenges due to COVID-19 for the NHRI's functioning

The LHRA was able to continue its monitoring mission even without physical visits to government agencies or institutions. Individual consultations were possible at any time (partly by telephone). Few projects had to be postponed.

Lithuania

Seimas Ombudsmen's Office

International accreditation status and SCA recommendations

The Lithuanian NHRI was accredited with A status in March 2017. The SCA acknowledged the cooperation of the NHRI with other Ombuds institutions in Lithuania, and encouraged the NHRI to continue, develop and formalise similar working relations with national bodies.

Impact of 2020 rule of law reporting

Follow-up by State authorities

There has not been any direct follow-up action that could be traced back to the 2020 ENNHRI Rule of Law Report.

Follow-up initiatives by the Institution

As part of the Seimas Ombudsmen's work, the issues raised by the Seimas Ombudsmen in the 2020 ENNHRI Rule of Law Report have been presented to its stakeholders.

Independence and effectiveness of NHRIs

Changes in the regulatory framework applicable to the Institution

Since 23 March 2017, when the Seimas Ombudsmen's Office has become an accredited NHRI (Status "A"), the Seimas of the Republic of Lithuania adopted the Law (entered into force on 1 January 2018) amending Articles 3, 19 and 19 of the Law on the Seimas Ombudsmen no. VIII-950 and adding Article 19. which defined new areas of competence of the Seimas Ombudsmen in the exercise of the functions attributable to the National Human Rights Institution:

- to carry out human rights monitoring in Lithuania and to prepare reports on the human rights situation;
- to perform dissemination of information on human rights and public education on human rights;
- to present assessment of the human rights situation in Lithuania to international organizations and to provide them with information in accordance with the obligations established in the international treaties of the Republic of Lithuania;
- to make proposals to state and municipal institutions and bodies on human rights issues;

- to seek harmonization of national legislation with the international obligations of the Republic of Lithuania in the field of human rights;
- initiate investigations into fundamental human rights issues.

This national regulatory framework has not changed since the 2020 ENNHRI Rule of Law Report.

Enabling space

The Seimas Ombudsmen's Office is in capacity to carry out its mandates and is happy to acknowledge that its recommendations are taken into account in 95% of cases.

Human rights defenders and civil society space

The Seimas Ombudsmen's Office observes the situation regarding the civil society and maintains a close relation with NGOs and CSOs, which includes both bilateral and multilateral meetings as well as consultations and joint initiatives.

As concerns freedom of assembly, it should be noted, that for example when rating total protection of the LGBT+ rights in Lithuania, the freedom of assembly and expression was given the best rating (even 83 %) by the international organisation "ILGA-Europe".

The general day-to-day human rights work of the Seimas Ombudsmen is, inter alia, geared towards making sure that the civic space is indeed defended. Moreover, the Seimas Ombudsmen react to restrictions and also use their mandate to prevent disproportionate restrictions.

Checks and balances

In accordance with the Article 19(8) of the Law on the Seimas Ombudsmen, the Seimas Ombudsmen can recommend to the Seimas, state or municipal institutions and agencies to amend the laws or other statutory acts which restrict human rights and freedoms and acting as a national human rights institution - to bring national legislation in line with the international obligations of the Republic of Lithuania in the area of human rights (Article 192 (2)(5)). Below are a number of examples of legal assessment carried out by the Seimas Ombudsmen and related amendments proposed in recent years.

The Seimas Ombudsmen's Office analysed the proposed amendments to the Law on Intelligence of the Republic of Lithuania. The Seimas Ombudsman stated that the provisions of the Law on Intelligence in force during the investigation regarding guarantees of protection of personal rights are not sufficient, and that such regulation, when the person's right of appeal is not guaranteed, is inappropriate and raises doubts as to whether

the mechanism of control of the activities of the SSD established in the legal system of the country complies with the essential principles of extrajudicial control and ensures the protection of the values enshrined in Article 8 of the European Convention for the Protection of Human Rights and Fundamental Freedoms. In this context, the Seimas Ombudsman recommended that the Prime Minister initiate the amendment/supplement to the Law of the Republic of Lithuania on Intelligence, setting maximum time limits for the application of intelligence methods, conditions for the destruction of information collected by the SSD and the possibility for individuals to effectively defend their rights in court. The Seimas Ombudsman also recommended to the Director of the SSD that control of activities of the SSD officials should also include the control over compliance with the standards of protection of human rights and freedoms in the activities of this Department. Amendments to the Law of the Republic of Lithuania on Intelligence are currently being prepared taking into account the recommendations of the Seimas Ombudsman.

The Seimas Ombudsmen's Office also carried out, within its remit, legal assessment of the provisions of the Law of the Republic of Lithuania on Mediation relating to the application of compulsory mediation in family disputes from the point of view of ensuring human rights and freedoms and, in this regard, submitted its position by Letter No 1/3D-290 of 3 February 2020 to the Government of the Republic of Lithuania, the Seimas Committee on Human Rights and the association "Vilnius Women's House".

Moreover, the Seimas Ombudsmen's Office performed legal assessment of the Draft Law No 20-15061, Amending Law No XI-1425 of the Republic of Lithuania on Protection against Domestic Violence, the Draft Law No 20-15062, Amending Articles 489, 589 of the Code of Administrative Offences of the Republic of Lithuania and Supplementing the Code with Article 4891, and the Draft Law No 20-15064, Amending Article 23 of the Law No I-1234 on the Protection of the Rights of the Child, and Draft Law No 20-15061, Amending Law No XI-1425 of the Republic of Lithuania on Protection against Domestic Violence in respect of ensuring human rights and freedoms and, by Letter on the Draft Law, Amending Law No XI-1425 of the Republic of Lithuania on Protection against Domestic Violence of 23 November 2020, presented its position on these draft legal acts to the Seimas Committees on Human Rights, Social Affairs and Labour and Legal Affairs, the Government and the Ministry of Social Security and Labour.

Finally, it should be noted that since amendments of human rights related legal regulation are forward-looking and apply to everyone they resolve problems not only of a complainant but of a certain group of the society.

References

- Statement No 4D-2017/1-813 of the Seimas Ombudsman of 20 August 2019
- Letter No 1/3D-968 of the Seimas Ombudsman of the Republic of Lithuania of 14 April 2020 on the ensuring of human rights during the quarantine
- The investigation into physical abuse by law enforcement officers see Report No NŽTI-2019/1-1 of 21 February 2020. Report No NTI-2019/1-1 of the Seimas Ombudsmen's Office of 21 February 2020 on fundamental human rights issues arising from the use of physical violence by law enforcement officers in their activities, link: [fundamental human rights issues – LRSKJ \(lrski.lt\)](#).

Functioning of justice systems

The Seimas Ombudsman, taking into account the international obligations of the Republic of Lithuania to ensure the right of all persons to apply to the courts on environmental matters in accordance with Articles 1, 3 and 9 of the Convention on Access to Information, Public Participation in Decision-making and Access to Justice in the Environmental Matters, initiated an investigation into the fundamental human rights issues in the field of access to justice in Lithuania. The investigation is aimed at determining whether the provisions of the existing national legal acts providing for the right of persons to apply to the courts are sufficient to ensure the implementation of Lithuania's international obligations in the field of environmental protection, how the right of the public access to justice in Lithuania is realised and what possible major problems arise in this field.

Media pluralism and freedom of expression

As early as 30 November 2018, the Seimas Ombudsmen's Office submitted their position to the Seimas on the matter of the freedom of expression while ensuring the independence of the public broadcaster. Without assessing the specific proposals of the Seimas Temporary Investigation Commission, the Seimas Ombudsman spoke about the need to protect freedom of speech and expression guaranteed by the Constitution and the European Convention for the Protection of Human Rights and Fundamental Freedoms (hereinafter – the ECHR) in ensuring the independence of the national broadcaster. In his opinion, the Seimas Ombudsman noted that Article 10 of the ECHR, which enshrines the right to freedom of expression, includes, inter alia, the freedom of the press, radio and television, since there is no democratic society without a free and abundant press. The Seimas

Ombudsman also pointed out that in the case of the European Court of Human Rights (hereinafter also the ECHR) *Manole et al. vs Moldova* stressed the importance of the independence of public service broadcaster's supervisory authorities established by law from political and economic impact.

In its Ruling of 23 October 2002, the Constitutional Court of the Republic of Lithuania stated that constitutional freedom of unhindered searching for, receiving and disseminating information and ideas is one of the foundations of an open, just, harmonious civil society and a democratic state. This freedom is an important prerequisite for the exercise of the various rights and freedoms of a person enshrined in the Constitution, as a person can fully exercise many of his constitutional rights and freedoms only with the freedom to search, receive and disseminate information unhindered. The Constitutional Court also noted that the values enshrined in the Constitution form a harmonious system and are well-balanced. According to the Constitution, it is not possible to establish a balance between constitutional values of legal regulation which, by establishing guarantees for the exercise of freedom of information by law, would create conditions for violating other constitutional values.

The Seimas Ombudsmen's Office has drawn attention to media and privacy as well as freedom of information in its latest Annual Report. It has done so also during the state of emergency.

The Seimas Ombudsmen's Office prepared and, on 27 June 2019, submitted to the Ministry of Justice the Comments on the ratification of the Protocol amending the Convention for the Protection of Individuals with regard to Automated Processing of Personal Data and, during the quarantine announced in spring 2020, drew the attention of the competent authorities to the strict observance of the principles of respect for human rights, the Law of the Republic of Lithuania on the Rights of Patients and Compensation of the Damage to Their Health and other legal acts when providing information on potentially infected persons. The Seimas Ombudsman reminded that personal health information is confidential (disclosure of such information in the media is normally prohibited) and may be provided only with the written consent of the person, and urged to respect the patients' right to privacy by providing residents with only generalised information about persons who may have been infected with the COVID-19 disease (coronavirus infection), thus violating the person's rights and not disclosing the information about his personal life.

In performing the functions of the National Human Rights Institution, the Seimas Ombudsmen's Office together with the Head of Centre for Human Rights also discussed

the demarcation line between freedom of expression and incitement of hatred in one of a radio broadcasts of the “News Radio” station.

References

- Letter No 1/3D-968 of the Seimas Ombudsman of the Republic of Lithuania of 14 April 2020 on the ensuring of human rights during the quarantine
- Letter No 1/3D-3220 of the Seimas Ombudsman of 3 December 2018 on freedom of expression, ensuring the independence of the public broadcaster

Corruption

The Seimas Ombudsman recently investigated a complaint (No. 4D-2020/1-595) regarding the activities of commissions formed by the Ministry of Health. In this context, the Seimas Ombudsman identified systemic problems: imperfection of legal acts prepared in the Ministry, incorrect application of legal acts, lack of information, incompetence of civil servants, unjustified transfer of functions (providing information, conclusions, control, decision-making, etc.) to the State Health Insurance Fund, although according to the legal acts, it only technically serves the commissions formed; lack of control function, lack of personal responsibility, potential non-transparency in decisions on reimbursement of drug purchase costs, Compulsory Health Insurance Fund’s budget planning (for reimbursement of costs for treatment of rare diseases), distribution of expenditure by the Compulsory Health Insurance Fund, etc.

During the investigation, the Seimas Ombudsman referred the matter to the Special Investigation Service, which carried out an anti-corruption assessment of the legislation regulating the reimbursement of the costs of treatment of very rare diseases and submitted the conclusion of the anti-corruption assessment.

The Ministry informed that following the recommendations of the Special Investigation Service and the Seimas Ombudsmen, a working group had been formed to review and adjust the legal regulation.

The State Audit Office, which was also approached, said that the legislative process did not involve enough civil society groups that are subject to legal regulation and for this reason, their opinion on the planned legal regulation, problem solving methods and expectations is

unknown; moreover, the legislative process lacks openness and transparency (Report No. VA-2018-P-40-6-2 of 16 March 2018). The Government prepared and published the Public Consultation Methodology and the Guidelines for the Application of the Public Consultation Methodology. Amendments to other legal acts are currently being prepared; they have been submitted to the public (via Draft Legislation platform) for comments and approval.

Impact of measures taken in response to COVID-19 on the national rule of law environment

Most significant impacts of measures taken in response to the COVID-19 outbreak on the rule of law and human rights protection

It should be mentioned that due to COVID-19 outbreak, planned strategic objectives and tasks of the Seimas Ombudsmen's Office had to be substantially adjusted or changed. As a result of the changing situation, the Seimas Ombudsmen also had to address complaints reflecting the realities and topics arising from the situation due to certain restrictions of human rights. For example, in one of the letters in response to the received complaint the Seimas Ombudsman emphasized that during the COVID-19 pandemic it was particularly important to ensure that the convicted are provided with the opportunity to maintain contact with their family members. In other cases, when it was found that certain human rights were violated in the context of the pandemic, own-initiative investigations were launched, etc.

In this context, it also should be noted that the Seimas Ombudsmen's Office not only examined complaints and conducted investigations related to the declared pandemic, but also carried out extensive analytical work focused on preventing possible unjustified and disproportionate restrictions on human rights.

In particular, the Seimas Ombudsmen's Office carried out a comprehensive the investigation presented on 12 November 2020, which was carried out after the Government reinstated the quarantine regime and imposed more intense restrictions on human rights and freedoms on the territory of the Republic of Lithuania. This investigation report included an assessment of the compliance of emergency management measures in the field of human rights and freedoms introduced in March 2020. The report stressed, *inter alia*, that the main concerns were the forced isolation of persons returning from abroad in the premises provided by municipal administrations.

Aspects related to the declared pandemic are also reflected in the report "On the fundamental human rights issues arising in the field of ensuring assistance for victims of

domestic violence” of 31 December 2020, which addressed, inter alia, the issue of the need for and availability of services for victims of domestic violence in the context of combating COVID-19 disease.

Another investigation to be mentioned concerned activities of the officials of Vilnius City Administration in performing the assigned functions related to the implementation of legal acts regulating the carriage of passengers on local routes in the territory of the municipality, supervision and control of activities of companies providing public passenger transport services. The investigation found that the banning of the sale of paper tickets as a result of the COVID-19 pandemic resulted in the infringement of passenger rights, because the Director of Vilnius City Administration, abusing his competence, acting ultra vires, instructed the Company in writing not to sell paper tickets in vehicles.

References

- <https://www.lrski.lt/naujienos/seimo-kontrolierius-per-koronaviruso-pandemija-ypac-svarbu-uztikrinti-alternatyvius-budus-nuteistiesiems-palaikyti-rysius-su-seimos-nariais/>
- <https://www.lrski.lt/naujienos/surengtas-virtualus-seminaras-socialines-globos-istaigu-darbuotojams-apie-zmogaus-teisiu-uztikrinima-covid-19-pandemijos-metu/>
- Report on human rights compliance of legal acts of the Republic of Lithuania regulating emergency management and certain emergency management measures: <https://www.lrski.lt/ataskaitos-del-esminiu-zmogaus-teisiu-problemu/>
- <https://www.lrski.lt/ataskaitos-del-esminiu-zmogaus-teisiu-problemu/>
- On the investigation into activities of the officials of Vilnius City Administration: <https://www.lrski.lt/naujienos/sprendimas-neprekiuoti-viesojo-transporto-popieriniais-bilietais-vilniaus-mieste-priimtas-virsijant-igaliojimus-juo-pazeista-keleiviu-teise-laisvai-pasirinkti/>

Most important challenges due to COVID-19 for the NHRI’s functioning

After the outbreak of coronavirus infection (COVID-19 disease) reached the level of the global pandemic, taking into account the unfavourable epidemic situation of the spread of coronavirus infection (COVID-19 disease) in Lithuania, the WHO call on states to take urgent, targeted and rigorous measures to stop the spread of this disease, the

Government's decisions to introduce quarantine on the territory of the Republic of Lithuania and to avoid creating an additional risk of the spread of this disease in places of detention, visits by the Seimas Ombudsmen such places have reduced compared with previous years. Moreover, additional functions of prevention of torture in places of imprisonment were carried out remotely: the information and consultation workshop was organised for employees of social care institutions, the employees of these institutions were additionally consulted in groups established on the Facebook for that purpose, and recommendations were made in writing on ensuring the human rights of persons in places of imprisonment during the quarantine period in Lithuania.

It should be stressed, however, that in spite of the faced challenges and increased workload, the Seimas Ombudsmen's Office has been able to carry out its mandate.

Luxembourg

Consultative Commission on Human Rights (CCDH)

International accreditation status and SCA recommendations

The Luxembourgish NHRI was reaccredited with A status in November 2015. The SCA encouraged the NHRI to advocate for an independent and sufficient funding that allows for remunerated full-time members in the NHRI's decision-making body. Moreover, the SCA encouraged initiatives to result in the NHRI's annual report being tabled and debated by Parliament. The SCA commended the CCDH for continuing to produce reports and recommendations, despite the fact that consultation of the NHRI on draft legislation was not systematic.

Impact of 2020 rule of law reporting

Impact on the Institution's work

There has been no direct impact on the institution's work. However, learning about the rule of law situation in other countries and obstacles encountered by other NHRIs has been interesting on an internal level.

Follow-up initiatives by the Institution

There have been no follow-up initiatives, due to work overload and a lack of capacity and resources. Since March 2020, most of the Commission's time and resources have been invested in the screening of the COVID-19 legislation and other priority issues.

Independence and effectiveness of NHRIs

Changes in the regulatory framework applicable to the Institution

There have been no changes in the national regulatory framework since the 2020 report.

Enabling space

There has so far been no interference in the CCDH's functioning that could have endangered its independence.

In general, the CCDH deplors that the government very rarely follows on its recommendations. For instance, very few of the Commission's recommendations regarding

COVID-19 laws have been taken into account (10 opinions were issued in 2020, 4 in 2021). There is, for that matter, no obligation for the government to reply or follow on the CCDH's recommendations laid out in the law that established the Commission.

While the CCDH is occasionally consulted on a draft legislation by a parliamentary committee, this remains very rare. Moreover, the CCDH has deplored for years the fact that the government does not systematically make the draft Grand-Ducal regulations available for the Commission to review. In addition, apart from a few exceptions such as the COVID-19 laws, Grand-Ducal legislations and regulations are not systematically consolidated, which affects legal clarity and certainty.

Regarding the cooperation with other human rights bodies, the government occasionally conducts consultations (for example on the elaboration of future action plans or draft legislation) on a bilateral basis or within the framework of the interministerial human rights Committee. However, their inputs and recommendations are then rarely considered.

While the government accepted the CCDH's recommendation to establish an independent mechanism to monitor and analyse the situation of older persons or persons with disabilities living in care facilities, it entrusted this mission to the Commission without giving it the necessary resources to do so.

Developments relevant for the independent and effective fulfilment of the NHRIs' mandate

In order to be able to better fulfil its mandate, the CCDH applied for additional (human) resources, and regularly raised concerning issues in its various opinions and publications.

Human rights defenders and civil society space

As highlighted above, and in the CCDH Report on the COVID-19 consequences on human rights, several journalists' associations (e.g., Association luxembourgeoise des journalistes professionnels and Conseil national de la presse) strongly criticized the government's communication and transparency, notably their limited access to information (no physical presence of journalists during press conferences and limited access to health facilities).

In that context, journalists recalled that "Luxembourg still [is] one of the only European countries to not guarantee a right to access to information for the press" and called the government to introduce this right without delay. The CCDH similarly calls the government

to take this criticism into account and guarantee journalists access to information in all circumstances.

Besides, the CCDH was preoccupied by the reaction of the Minister of Education, Children and Youth to a parliamentary question on the situation in Luxembourgish schools (question n° 3200 of 15 November 2020), where he criticized the journalists' interrogations regarding public administrations' integrity during times of crisis, and regarding the high number of infections in schools. The Minister denied and condemned questions and allegations directed at a government report on the COVID-19 situation in schools and pointed out that questioning the integrity of public administration is dangerous and could lead to protest movements. The press plays a crucial role in the rule of law. Valuing the press' role and ensuring transparency are vital to a democratic society, and to trustworthy public institutions.

While no precise initiative has been recently taken by the CCDH with regard to civic space and human rights defenders, the Commission has met with a representative of the press in order to discuss issues exposed above and potential steps to strengthen the right to access to information.

Moreover, the CCDH has been asked by the government to participate in the development of the project "shelter cities" for human rights defenders. The aim of this project is to set up a procedure for the reception of individual human rights defenders in Luxembourg for a predetermined rest period, via the protectdefenders.eu website.

References

- https://ccdh.public.lu/dam-assets/dossiers_th%C3%A9matiques/bilan_covid19/rapports/Covid-EffetsDroitsHumains-DocReflexion-20210225.pdf
- Réponse du Ministre de l'Education nationale, de l'Enfance et de la Jeunesse à question N°3200 de Madame Martine Hansen et de Monsieur Claude Wiseler concernant Communiqué du Ministère de l'Éducation nationale, de l'Enfance et de la Jeunesse sur l'état de la situation dans les écoles luxembourgeoises au 15.11.2020.
- Richard Graf, Crise sanitaire et droit à l'information: La vérité est la première victime, WOXX, 10 April 2020

Checks and balances

The CCDH addresses recommendations to the government through opinions on draft laws or through its reports on the general state of human rights in Luxembourg. In 2020, it addressed 14 opinions and one report to the government and parliament.

Functioning of justice systems

Apart from cooperating with other national human rights structures (e.g., Centre pour l'égalité de traitement, Ombudsman pour enfants et jeunes), the CCDH did not take any initiatives related to the functioning of the justice system.

Media pluralism and freedom of expression

The CCDH raised issues related to the access to information during the sanitary crisis (see below).

The draft legislation on video surveillance already mentioned in the ENNHRI 2020 Rule of Law Report is still being developed. As a result of the opinion of CCDH and its recommendations issued therein, the Commission had follow-up meetings with the Minister of Internal Security and the General Police Inspectorate in charge of a recently published study on the effectiveness of video surveillance. The draft legislation is still undergoing some changes and some of our recommendations seem to have been taken into account.

Corruption

Related issues are not a current priority in the CCDH's work and therefore have not yet been considered.

Impact of measures taken in response to COVID-19 on the national rule of law environment

Most significant impacts of measures taken in response to the COVID-19 outbreak on the rule of law and human rights protection

Democracy and rule of law have suffered from the impacts of the health crisis. In the face of many unknowns and the urgency put forward to stop the spread of the virus, the democratic process, participatory and transparent, could not always take place in due form.

For instance, the suspension of the right to protest during the first months of the state of crisis and the voting of controversial laws (in the political world as well as for the population) does not correspond to a democratic and pluralistic process. Besides, apart from a few exceptions, laws and regulations are not all systematically consolidated, which makes it difficult for the population to be aware of the applicable rules. This is even more problematic considering that some measures are attached to sanctions.

Considering the permanent evolution of COVID-19 and related scientific research, there must be a thorough and repeated analysis of the merits, proportionality and necessity of measures taken in response to the pandemic.

The CCDH published on 25 February 2021 a report on the health crisis and its consequences on human rights. As the COVID-19 crisis is still ongoing, it is difficult and premature to provide a complete analysis, however the CCDH can already note important impacts of the crisis and measures taken in response on several human rights, notably: rights to life, to health, to information, to education, to asylum, to private and family life, to culture, freedoms of movement, of assembly, of expression, socio-economic rights, children's rights, gender equality, non-discrimination on the basis of gender identity and sexual orientation, as well as the principles of the rule of law.

The government consulted the CCDH on all its draft legislation aimed at responding to the COVID-19 pandemic, however always within extremely short timelines. This considerably limits the possibility for external actors to participate to the public debate and perform a thorough analysis of the news measures.

Moreover, the CCDH noted a general lack of transparency and insufficient access to information throughout the sanitary crisis. For instance, press conferences were not made fully available online after their live broadcast, excluding the question-and-answer sessions with journalists. This was eventually remedied upon the intervention of the CCDH and journalists' associations.

Although the government adopted a laudable inclusive approach in guaranteeing access to COVID-19 testing for residents as well as for cross-border workers, the CCDH deplored its decision to exclude these workers from the national statistics, for fear of other countries' reaction (those imposing restrictions to Luxembourgish citizens). Yet, ignoring such a significant part of the daily population in Luxembourg in the relevant data represents a flagrant lack of transparency.

Other than the answers already given above, the CDDH highlights that the pressure exerted by members of the government on certain institutions, such as the Council of State (Conseil d'Etat), in the legislative process is attaining unprecedented and dangerous levels. Under Luxembourgish law, the Council of State is required to advise laws. If they formally oppose to a law, it cannot be passed unless a period of 6 months passes. Since Luxembourg is amending its legislation related to COVID-19 measures and restrictions on a monthly or even on a two-week basis (most of the restrictions and measures are reviewed, amended and prolonged on a monthly basis, lately more frequently due to the fast changing epidemiological situation) under a considerable amount of pressure (there is often only a couple of days between the publication of the draft and the vote on the law in Parliament), members of government have made public statements hinting at the fact that if the Council of State opposes certain amendments, there will be no rules at all.

Moreover, certain areas (such as education/schools) and the restrictions applicable are currently not regulated by laws, although this should be the case under the Luxembourgish Constitution and international human rights law. The Ministry of Education issues "recommendations" that can have considerable impact on the fundamental rights of the children and other persons affected by the measures. The same goes for the restrictions applicable in institutions for people with a disability or older persons. The CCDH has criticised this approach in its recent report on the impact of COVID-19 on human rights and reminded the government to make sure that rules in place guarantee the rights of the child and the rights of persons with disabilities. Indeed, this current use of recommendations led and is still leading to a wide array of incoherent measures. The human rights of those involved are thus not equally protected and the level of protection afforded depends largely on the institutions (and in case of children, on their teachers and parents).

References

- https://ccdhdh.public.lu/dam-assets/dossiers_th%C3%A9matiques/bilan_covid19/rapports/Covid-EffetsDroitsHumains-DocReflexion-20210225.pdf

Most important challenges due to COVID-19 for the NHRI's functioning

Considering the sanitary crisis and CCDH related work (opinions on COVID-19 laws, report on human rights implications of the crisis), the Commission has not been able to thoroughly address other issues in the past year.

Malta

International accreditation status and SCA recommendations

In the past years, national, regional and international stakeholders have called on Malta to establish a NHRI. This recommendation has [featured](#) prominently during the Universal Periodic Review of Malta.

On July 2019, the [Bill on the Human Rights and Equality Commission](#) was presented to the Maltese Parliament, which would establish an NHRI. ENNHRI, alongside civil society organisations and other actors, has supported the establishment of a Maltese NHRI and advised national actors in their efforts. Prior to the submission of the bill to Parliament, the Council of Europe's Venice Commission published its [Opinion](#) on the draft bill.

The revised Bill is being discussed before the relevant Parliamentary Committees.

Moldova

People's Advocate Office

International accreditation status and SCA recommendations

The Moldovan NHRI was reaccredited with A status in May 2018. The SCA encouraged the NHRI to continue advocating for amendments of its enabling law in order to include a transparent and participatory selection process and to require pluralism and diversity of the institution. Similarly, the SCA encouraged the NHRI to continue advocating for the provision of adequate funding to effectively carry out its mandate, including that as the NPM.

Impact of 2020 rule of law reporting

Follow-up by State authorities

No initiative has been taken by state authorities to address issues reported in the 2020 ENNHRI rule of law report or to foster a rule of law culture at national level.

Follow-up initiatives by the Institution

The state of democracy, human rights and the rule of law in the Republic of Moldova were discussed at an international conference dedicated to 70th anniversary of the European Convention on Human Rights and 25 years since the Republic of Moldova joined the Council of Europe. The conference was organized on 8 December 2020 by the Office of the People's Advocate (OPA) and the Council of Europe (1).

The event brought together high representatives of the CoE as the Director of Human Rights, and of national institutions, as President of the Constitutional Court, Vice-President of the Parliament, Head of the National Delegation to PACE, chair of Parliament Committee for human rights and inter-ethnic relations, and many other high-level officials.

The panel discussions covered a wide range of topics such as the role of the Constitutional Court and the Parliament of the Republic of Moldova in ensuring respect for human rights and fundamental freedoms through the European Convention on Human Rights, the impact of European Court of Human Right judgments and decisions on the respect of human rights etc.

No other specific follow-up actions have been taken by the institution mainly on the grounds of the lack of human resources. In 2020, the OPA staff acted under very specific circumstances due to the state of emergency generated by the COVID-19 pandemic, which implied monitoring on a daily basis of decisions made by state authorities, in order to not admit abusive and disproportionate emergency measures restricting human rights and freedoms.

At the same time, in its activity the Office of the People's Advocate took into account the priorities established in the Strategic Development Program for 2018-2022, that had to be revised and adjusted to unexpected challenges.

References

- (1) <http://ombudsman.md/news/conferinta-internationala-70-de-ani-ai-cedo-25-de-ani-de-la-aderarea-republicii-moldova-la-consiliul-europei-implementarea-standardelor-coe-la-nivel-national/>

Independence and effectiveness of the NHRI

Changes in the regulatory framework applicable to the Institution

On 5 November 2020 the Government approved a draft law which provides for the establishment of a new position: the People's Advocate (Ombudsman) for entrepreneurs' rights (PAER). According to the bill, the new Ombudsman will be appointed by the Parliament and will serve in the Office of the People's Advocate, but autonomously from the People's Advocate (PA) and the People's Advocate for the rights of the child.

The amendments will have a significant impact on the structure and nature of the People's Advocate, as well as on the mandate of the NHRI. It results from the provisions of the draft Law that the PAER, like the PA for child's rights, has only functional autonomy but no other role of an administrative, institutional or financial nature, or even over the human resources of the subdivision he or she heads.

Pursuant to the bill, the People's Advocate for entrepreneurs' rights will be specialized in issues on the protection of entrepreneurs' rights and will ensure observance of the legitimate rights and interests of entrepreneurs by public authorities, organizations and

enterprises, no matter the type of property and legal form of organization, by non-profit organisations and by decision-makers of all levels.

The draft law intervenes beyond the mandate and duties of an NHRI, involves amending the structure of the institution, and its implementation requires additional financial resources, which is not provided by the draft Law.

The decision, impacting the OPA, was made without prior notice and consultation of the opinion of the institution, thus completely disregarding the principle of transparency and participation in the decision-making process (1).

The People's Advocate requested the Prime Minister to withdraw the bill and consult it with all the stakeholders concerned, especially relevant international organisations. The request was ignored and the draft was submitted to the Parliament.

Similar requests were addressed to the Parliament (2) urging Members of Parliament that the bill be suspended, until the presentation of the opinions of the relevant international organisations. Despite this, on 18 November, the bill was examined and approved by the Parliamentary Committee on legal affairs, appointments and immunities, and included in the agenda of plenary sessions. Currently, the bill is pending in the Parliament until the Venice Commission presents its Opinion on it.

In the opinion of the People's Advocate (3), the bill is not in line with international standards for the establishment, organisation and functioning of an NHRI. The mandate of an Ombudsman for entrepreneurs' right is different from that of an NHRI having the mandate on business and human rights, as the latter focuses on monitoring and protecting the population from abuses of the business environment, the unfavourable impact of its activity on human rights, the accountability of the representatives of the public or private business environment in order to not admit human rights violations. Thus, situations in which the PA and the PAER will be opponents in the examination of certain issues are not excluded, as the PA is examining requests from persons who consider that their fundamental rights and freedoms have been violated by economic agents. This position was supported also by the Venice Commission and OSCE Office for Democratic Institutions and Human Rights (ODIHR).

In its Opinion on the draft Law introducing a "People's Advocate for entrepreneurs' rights", issued on 19 March 2021 (4), OSCE ODIHR mentioned that "this Draft Law, if implemented, may significantly change the structure and nature of the People's Advocate, introducing a wholly new and unrelated mandate pertaining to the defense of so-called "entrepreneurs'

rights and legitimate interests. [...] Significant amendments to an NHRI's enabling law may also result in a Special Review by the SCA. [...] The changes in the proposed amendments are significant as they substantially impact the mandate of the NHRI of Moldova and its ability to fulfil its mandate to the fullest extent”.

The Venice Commission, in the Opinion (5) adopted on the same draft Law, noted that “for most Ombudsman institutions – including the Moldovan PA – their real powers lie in the respect and authority they build based on their identity as genuine protectors of human rights and fundamental freedoms. It is therefore very probable that an Ombudsman institution having (also) a more general mandate of protecting entrepreneurs will find it very difficult to maintain its identity as a protector of human rights and fundamental freedoms. Therefore, introducing a PAER within the PA institution could very likely lead to a distorted perception of the institution and its primary and core missions”.

References

- (1) <http://ombudsman.md/news/guvernul-reorganizeaza-oficiul-avocatului-poporului-fara-informarea-si-consultarea-avocatului-poporului-ombudsmanul-califica-acest-act-drept-o-sfidare-flagranta-a-principiilor-transparentei-deciziei/>
- (2) <http://ombudsman.md/news/avocatul-poporului-sustine-ideea-instituirii-functiei-de-ombudsman-pentru-drepturile-antreprenorilor-dar-nu-in-cadrul-oficiului-avocatului-poporului/>
- (3) <http://ombudsman.md/news/mihail-cotorobai-adoptarea-proiectului-de-lege-cu-privire-la-instituirea-functiei-de-avocat-al-poporului-pentru-drepturile-antreprenorilor-constituie-o-amenintare-la-adresa-independentei-si-function/>
- (4) <https://www.osce.org/files/f/documents/5/c/482083.pdf>
- (5) [https://www.venice.coe.int/webforms/documents/?pdf=CDL-AD\(2021\)017-e](https://www.venice.coe.int/webforms/documents/?pdf=CDL-AD(2021)017-e)

Enabling space

According to provisions of article 16 of Law no. 52/2014 on the People's Advocate (Ombudsman), the People's Advocate contributes to the improvement of legislation on human rights and freedoms.

Law on regulatory acts no. 100/2017 provides for the obligation of the state to submit the drafts normative acts for a consultation to the competent public authorities, to the interested institutions, as well as to representatives of the civil society, who prepare and present their advisory opinion on the drafts. Draft regulatory acts falling within the competence of the autonomous public authorities, among which is the Office of the People's Advocate, are subject to consultations with the competent authorities.

Nevertheless, the state often fails to comply with these provisions. The practice of not consulting the draft regulatory acts with the OPA, or not ensuring adequate timeframes for meaningful public consultation, the neglect of law-making principles (see the information provided under Check and balances/Decision making section), continues to exist. A recent example referred to the amendment of Law on the People's Advocate, impacting the mandate of the institution. The decision to amend the Law and to establish a new position of the Ombudsman for entrepreneurs' rights was made without prior notice and consultation of the opinion of the institution (see the information provided under Independence and effectiveness of the NHRI) (1).

In order to prevent the violation of fundamental human rights and freedoms, whether the People's Advocate considers that certain draft normative acts are able to infringe human rights and freedoms, he intervenes ex officio to the competent authorities with proposals and recommendations for the improvement of draft normative acts placed on the web portal for public consultation. Therefore, the advisory opinion with reference to 5 draft normative acts concerning human rights and freedoms were issued by the OPA ex officio (2). Given that the summary of objections and proposals is not always published, it is difficult to trace which of the proposals submitted during the consultation process were accepted. The People's Advocates consider it important that public authorities ensure a transparent process in this regard.

References

- (1) <http://ombudsman.md/en/news/mihail-cotorobai-adoptarea-proiectului-de-lege-cu-privire-la-instituirea-functiei-de-avocat-al-poporului-pentru-drepturile-antreprenorilor-constituie-o-amenintare-la-adresa-independentei-si-function/>
- (2) Report on the observance of human rights and freedoms in the Republic of Moldova in 2020: http://ombudsman.md/wp-content/uploads/2021/06/Raport-2020-FINAL-RED_18-iunie.pdf

Developments relevant for the independent and effective fulfilment of the NHRIs' mandate

Although in the last three years the OAP's budget has constantly increased, in the context of the health crisis caused by the COVID-19 virus, it has been reduced during 2020 by about 15% (compared to the amount allocated at the beginning of the year). The reduction of the institution's budget occurred with the agreement of the Office of the People's Advocate under conditions of financial austerity, after the institution revised its priorities and activities planned at the beginning of the year (1). The financial means reimbursed by the OPA in the state budget were redirected in support of measures to combat the COVID-19 pandemic.

The amount of financial resources allocated to the institution to fulfil its mandate in 2021 is about 32.5% less compared to the resources available at the beginning of 2020.

At the same time, the Office was not distributed allocations for financing actions provided for in the National Human Rights Action Plan for the period 2018-2022 (with a deadline of 2018-2020), the most important national human rights policy document. Particularly, it is about the reconstruction of the institution's premises according to the minimum occupational safety and health requirements, including its adaptation to the needs of people with disabilities and the creation of child-friendly conditions.

In 2020 the budget reduction was made based on the revision of the expenditure compartments that did not essentially affect the fulfilment of the mandate (procurement of material goods and equipment, business trips abroad, switching to online activities, identifying external sources of funding or purchasing services at a lower price than initially estimated). However, the reduction of the budget for 2021, in particular the non-allocation of the resources required for the fulfilment of the mandate, could affect the financial independence of the institution. The amount of financial resources allocated for the OPA for 2021 (which is about 33% less) have been agreed by the OPA following negotiations with the Ministry of Finance as the budget was initially even lower. Even so, the agreed budget is lower than that required by the institution to fulfil its mandate.

The bill amending the Law no 52/2014 on the People's Advocate (Ombudsman) aimed to consolidate the independence of the institution, including financial, according to the Paris Principles and to bring in line the norms with the international recommendations, has not been adopted yet. In October 2018, the Office of the People's Advocate submitted proposals to improve the Law no. 52/2014, taking into account all the recommendations

submitted to the state on this subject, as well as the best practices in the field. There was no reaction from the Ministry of Justice.

References

- (1) <http://ombudsman.md/news/oficiul-avocatului-poporului-va-reduce-cheltuielile-prevazute-pentru-anul-2020-cu-aproximativ-un-milion-de-lei-si-este-dispus-sa-le-restituie-in-bugetul-de-stat-pentru-ca-aceste-mijloace-f/>

Human rights defenders and civil society space

In 2020, the democratic space in the Republic of Moldova was impacted by attacks on civil society, accused of undermining the interests of the state. A member of the ruling party launched on 21 October 2020 a book severely attacking the Constitution of the Republic of Moldova, the Moldovan legal framework, the rule of law, the fundamental rights and freedoms of Moldovan citizens, criticizing the European model of the state modernization. The politician published a book entitled “Moldovan Civil Society: Sponsors. NGO-crazy. Cultural wars.” (1), in which he discredits, on the basis of falsehoods and defamatory accusations, the civil society as a whole, especially the human rights organizations and those working on justice reform, fighting corruption, freedom of the press, pro-European reforms, social and medical reforms. In this case, as usually, the party did not oppose its member, and the chair of the ruling party, then president of the country, even suggested that he supported the author. The Ombudsmen, the NGOs, as well as the international partners were those who have reacted and harshly criticised these attacks.

The harassment and intimidation of the most important and representative NGOs has had a negative impact on the activity of the associative sector, which has an important role in promoting democratic change, through their activity in various areas which are not covered by the state and through their capacity to transform society.

A similar trend persists as well as with respect to independent journalists and media outlets - in this respect, see the information provided below under media pluralism.

In June 2020 the Parliament voted a new law on non-commercial organisations (2), considering most of the amendments submitted by civil society groups and lawmakers. The provisions of the Law are in line with the European standards on freedom of association

and their adoption is meant to facilitate the free exercise of this right in the Republic of Moldova. The new law simplifies the registration procedure for CSOs, eliminates registration fees, removes restrictions for certain categories of people to be a member or part of the governing bodies of CSOs, and introduces a flexible system of internal organisation, including the possibility for founders to individually design their structure and governing bodies. However, the law prohibits NCOs to provide financial support and free services to political parties, including during election campaigns. This provision is problematic in that a number of media outlets are registered as NCOs and rely on paid political advertising during election campaigns.

Each time civil society organisations were smeared or endangered, the OPA was vocal to defend them. In a statement (3), the People's Advocate firmly condemned any attempts to denigrate and intimidate the representatives of the associative sector in the Republic of Moldova. The PA emphasized that civil society representatives too are human rights defenders, who have a positive, important and legitimate role to contribute to the realisation of human rights, at local, national, regional and international level, including by engaging in dialogue with the authorities and supporting their efforts to implement the obligations and commitments of states in this regard.

The People's Advocate stressed its continued commitment to advocate for the promotion and protection of democratic civic space and human rights defenders, building a national system for the protection of human rights defenders and creating a favourable, accessible and inclusive environment in which all their rights are respected.

The People's Advocate reiterated his proposal to adopt a law on human rights defenders, as recommended by the UN Rapporteur on human rights defenders Michel Forst, following his visit in June 2018 to the Republic of Moldova.

References

- (1) <https://agora.md/stiri/78673/Tirdea-sia-lansat-o-carte-in-care-acuza-zeci-de-onguri-de-actiuni-contra-statului-reactiile-unor-organizatii-vizate-astfel-de-atacuri-sunt-specifice-regimurilor-corupte>
- <https://crjm.org/en/alerta-publica-opriti-atacurile-impotriva-societatii-civile-din-republica-moldova-2/>
- (2) <https://cis-legislation.com/document.fwx?rgn=126748>

- (3) <http://ombudsman.md/news/avocatul-poporului-condamna-ferm-atacurile-la-adresa-societatii-civile-din-republicamoldova-si-reafirma-rolul-acesteia-deosebit-de-important-intr-un-stat-democratic-si-de-drept/>
- Report on the observance of human rights and freedoms in the Republic of Moldova in 2020: http://ombudsman.md/wp-content/uploads/2021/06/Raport-2020-FINAL-RED_18-iunie.pdf (1) <http://ombudsman.md/en/news/mihail-cotorobai-adoptarea-proiectului-de-lege-cu-privire-la-instituirea-functiei-de-avocat-al-poporului-pentru-drepturile-antreprenorilor-constituie-o-amenintare-la-adresa-independentei-si-function/>

Checks and balances

In 2020, there were several incidents exposing the shrinking democratic space in Moldova, in terms of: limited access to information; attacks and intimidation on the independent media and the associative sector; non-transparent and non-participatory decision-making process; the adoption in Parliament of a set of legislative acts without complying with the legislative procedure and without the approval of all parliamentary committees and groups; intensification of hate speech cases; presidential election process with many irregularities (e.g. use of administrative resources, involving religious cults in the election campaign, use of undeclared financial and in-kind resources, violation of the restrictions imposed by the National Extraordinary Public Health Commission (1)), although it has been recognized being in line with international standards in electoral law.

Decision-making

There are serious issues in ensuring transparency and participatory decision making. This includes non-publication or late publication of plans, draft policies and bills for consultation and lack of possibility to widely exchange views on proposals advanced by authorities. Moreover, some legislation of crucial importance to the general public (see below) was adopted in the Parliament completely disregarding internal procedures, the principles of transparency, good governance, and restricting the possibility of opposition to get involved in the legislative process. Examples of legislation include: the Law on the transfer of the Security and Intelligence Service to the Parliament's subordination, amendments to the Law on the administrative-territorial organization of the Republic of Moldova, amendments to the Law on the special legal status of Gagauzia, amendments to the Law on the functioning of spoken languages on the territory of the Republic of Moldova, the fiscal and budget

policy, the Law on the state budget and on the social insurance budget for the year 2021 (2).

The People's Advocate expressed concern about the way in which the Parliament voted on 3 December 2020 some important bills with a crucial impact on human rights and freedoms, ignoring the internal procedural rules, the principles of transparency, good governance and with the restriction of the opposition to get involved in the legislative process.

In the reaction made public (3), the People's Advocate described as inadmissible the neglect of democratic norms and law-making principles in adopting laws of a wide public interest, without the participation of the parliamentary opposition. The PA recalled the rules established by the Venice Commission regarding the collaboration of the parliamentary majority with the opposition parties, which involve strengthening a framework of guarantees regarding the interaction between the majority and the opposition. In the absence of such guarantees for the opposition, constitutional democracy can turn into an authoritarian regime. In order to avoid such degeneration, in addition to the rules of the Constitution and legislation, the principles of pluralism, cooperation and effective decision-making that are essential for a constitutional democracy should be respected.

Access to information

Access to information of public interest is limited. Requests to access information are often denied by public authorities and other information providers, invoking the protection of personal data or state secrecy, providing irrelevant information or treating requests for information as claims, which involves a different procedure and deadlines.

The national legislation regarding access to information is flawed, information providers apply the law selectively, and courts interpret and apply it inconsistently.

Furthermore, access to information was considerably reduced by a decision of the Commission for Exceptional Situations (5) issued for the state of emergency period, tripling the term for presentation by public institutions of information of public interest (from 15 to 45 working days).

The Supreme Court of Justice issued a controversial decision (6), stating that the Law on access to information became inapplicable with the entry into force of the Administrative Code, in April 2019. Therefore, all requests for information will be considered as petitions

under the new Administrative Code, bringing the deadline for examination to 30 days (which can be extended up to 90 days), instead of 15 days.

Trust in public authorities/other actors

Data of the opinion poll (7) conducted by the Association of Sociologists and Demographers of Moldova showed a decline in citizens' trust in state and social institutions. This is due to the events of the last five years - bank fraud, corruption, poverty, inefficient governance, which have had a negative influence on the quality of democracy in the Republic of Moldova. According to the results of the survey, most of the respondents trust the Moldovan police (45%), the government (42%), local public authorities (39%), religious organizations (34%) and the media (31%). At the opposite pole is the president institution (22%), non-governmental organizations (19%), the Parliament (12%), political parties (9%). According to data of another opinion poll (8), published in the Report on state of democracy in the Republic of Moldova, only 6.6% of citizens believe that the elections in the Republic of Moldova were free and fair, and the country is led by the will of the people - one of the lowest levels in the last 15 years. At the same time, 43.1% of citizens consider that the state of democracy is poor.

Regarding the role of different society actors in promoting democracy in the Republic of Moldova, citizens place first civil society (38%) and the media (41.7% - public media, 33.6% - private media). On the contrary, courts (44.5% of the interviewed) and the General Prosecutor's Office are considered to have a negative role in promoting democracy.

References

- (1) https://promolex.md/wp-content/uploads/2020/11/RAPORT-nr.-7_MO-Promo-LEX_APr_2020_RomEng.pdf
- <https://promolex.md/19118-misiunea-de-observare-promo-lex-constata-un-numar-ingrijorator-de-incidente/?lang=en7>
- (2) <http://www.parlament.md/SesiuniParlamentare/%c5%9eedin%c5%a3eplenare/tabid/128/SittingId/4007/language/ro-RO/Default.aspx>
- <https://tv8.md/2020/12/03/video-sedinta-parlamentului-din-3-decembrie-lista-proiectelor-aprobate-de-deputatii-psrm-sor/>

- (3) <http://ombudsman.md/en/news/avocatul-poporului-nerespectarea-principiilor-democratiei-parlamentare-reprezentative-poate-conduce-la-degradarea-statului-de-drept-si-la-autoritarism/>
- (4) https://freedomhouse.org/sites/default/files/2020-11/Privacy_and_Freedom_of_Expression_ROM.pdf
- (5) https://gov.md/sites/default/files/dispozitia_cse_nr.1.pdf
- (6) http://media-azi.md/sites/default/files/search_col_civil.pdf
- (7) <http://www.infotag.md/populis-ru/290502/>
- (8) <http://viitorul.org/files/library/Raport%20starea%20democratiei%20web.pdf>

Functioning of the justice system

In 2020, no progress has been made to strengthen the independence and efficiency of the judiciary, or countering threats to the rule of law.

Access to justice is frequently limited for persons living in poverty and those with disabilities, gender-based violence survivors and older persons, a survey (1) carried out within the project [“Strengthening efficiency and access to justice in Moldova”](#), with the support of the UNDP Moldova, has revealed. The main difficulties are the long distances to the courts, long time for case review, and infrastructure in the court houses. Besides, great suspicions have remained regarding the correctness and objectivity of the investigation of cases of resonance involving former or current officials or politicians.

The level of trust of the citizens in justice is very low (11%), according to an opinion poll (2). The courts (44.5% of the interviewed) and the General Prosecutor's Office are considered to have a negative role in promoting democracy.

The issues invoked in the claims addressed to the PA remain similar as those of the previous years: delay in the examination of cases by the courts; disagreement with court decisions or judgments; poor quality of state-guaranteed legal aid; violation of the deadlines to inform the parties of court decisions; misinforming the parties on the actions taken in the criminal investigation procedure; exceeding the reasonable term of the procedure for ensuring the translation of the court act or sentence in the case of foreigners held in custody.

The lack of information regarding the progress and outcomes of the criminal investigation for detainees, victims of torture were due not only to the negligence of those responsible for managing the criminal investigation, but also due to poor quality of state-guaranteed legal aid services, low level of responsibility and lack of positive attitude of the defender towards the victim in the criminal case.

The high volume of claims against courts, and the complexity of cases are among the reasons for non-compliance with the deadlines for examining the cases by the courts, in particular those relating to the application of conditional release and/or the application of the compensatory mechanism for detention in inhumane conditions.

Considering the alarmingly high number of claims regarding the poor quality of state-guaranteed legal aid services, the People's Advocate requested the National Legal Aid Council to present information on the mechanism for monitoring the process of granting and assessing the legal services provided, as well as the impediments that negatively affect their quality. In response to the lack of a reasonable argument brought forward by the National Council, the People's Advocate recommended the initiation of a procedure evaluating the methodology for monitoring the respective services, in order to ensure quality services.

The PA submitted to the Ministry of Internal Affairs the proposal to amend some provisions of Law no. 200/2010 regarding the regime of aliens in the Republic of Moldova, which currently infringe the right to a fair trial and the procedural guarantees provided in art. 1 of Protocol No. 7 of the ECHR. The PA noted that the contested provisions do not provide the foreigner with minimum guarantees against arbitrariness (3).

The Constitutional Court took into account the PA's Opinion (4), and on 13 November 2020 declared unconstitutional some provisions on the expulsion and removal of persons declared undesirable for reasons of national security, but also of the Administrative Code and the Criminal Procedure Code. The Constitutional Court issued an Address to the Parliament to remedy the deficiencies found (5).

On 26 November 2020, the Parliament voted on the draft law approving the Strategy for Ensuring Independence and Integrity in the Justice Sector and the Action Plan for 2021-2024 (6). The strategy aims to improve the justice sector, by creating the premises for an independent, impartial, accountable and efficient justice sector, and to increase the access to justice and quality of the justice act. The adoption of a strategy that sets out the priorities for the coming years for the development and strengthening of the justice sector

was a positive and absolutely necessary step, which was welcomed by the development partners.

In his reports, the Ombudsman reiterated his recommendations for further efforts to reform the justice system, in line with recommendations of international human rights bodies.

References

- (1) https://www.md.undp.org/content/oldova/en/home/presscenter/pressreleases/2020/pnud-_i-suedia-susin-imbuntirea-eficienei-i-accesului-la-justiie.html
- (2) <http://www.infotag.md/populis-ru/290502/>
- (3) Report on the observance of human rights and freedoms in the Republic of Moldova in 2020: http://ombudsman.md/wp-content/uploads/2021/06/Raport-2020-FINAL-RED_18-iunie.pdf
- (4) <http://ombudsman.md/news/propunerile-avocatului-poporului-sustinite-de-curtea-constitutionala/>
- <http://ombudsman.md/wp-content/uploads/2020/11/04-1-12-din-29.10.2020-Curtea-Constitu%C8%9Bional%C4%83-Opinie-asupra-sesiz%C4%83rii-nr.-54a-din-10.04.2020-p-d-regimul-str%C4%83inilor-%C3%AEn-RM-1-1.pdf>
- (5) <https://www.constcourt.md/libview.php?l=ro&idc=7&id=2005&t=/Media/Noutati/Curtea-a-examinat-constitutionalitatea-unor-prevederi-ale-Legii-privind-regimul-strainilor>
- (6) <http://www.justice.gov.md/libview.php?l=ro&idc=4&id=5137>

Media pluralism and freedom of expression

In 2020, against the backdrop of the Global pandemic, there was a deterioration in the situation regarding freedom of expression. The decline began in 2013, with the Republic of Moldova falling in the World Press Freedom Index from 55th rank in 2013 to 91st position in 2020 (1).

In the first half of 2020, several restrictions of freedom of expression were registered, such as the intimidation of people who publicly expressed their views on the epidemiological situation, on hospitals situation, and criticised the authorities' management of the health crisis. Patients who made public disclosures about the precarious conditions in hospitals were criticised, and medical staff persecuted and threatened with dismissal (see the information provided under Corruption section). The then Prime Minister criticised a patient for complaining about treatment conditions (2).

There are instances of harassment, intimidation, charges faced by independent media outlets and journalists, and threats of legal action from public figures and politicians (3). Ownership concentration, high level of polarisation and politisation, and the lack of media independence and of quality journalism are major challenges for Moldova's media. With few exceptions, mass-media outlets are monopolised by certain political groups which use them for fighting political opponents, manipulation and disinformation (4). This was particularly striking during the pandemic crisis, and presidential election campaign.

The legislative framework that regulates the written and online press, particularly the economic-financial field, has not been adjusted to ensure an adequate work environment, due to an unfair competition represented by the press affiliated to political groups. These groups resort to pressure, including through state institutions, to silence the press which they consider undesirable because of the critical discourse against them.

There is a lack of independence and the politisation of the Audiovisual Council as an independent regulatory body. Full transparency regarding ownership of the media and the advertising market is not ensured and the provisions regarding the limitation of the number of owned media institutions are not observed. There are no data on the application of sanctions in such cases. The Audiovisual Council does not insist on compliance with the obligation of audiovisual media service providers to make public the data on funding sources. The institution is still criticised by media experts for not serving the public interest and lack of attitude in obvious cases of politicization of some radio and television institutions.

An attempt to establish censorship was made. The former president of the Audiovisual Council forced presenters/moderators/editors, during the state of emergency, to refrain from voicing their personal opinion or any opinion related to the COVID-19 pandemic, apart from the only "reliable, truthful, impartial and balanced sources" being the competent public authorities from the country and from abroad (5).

However, the disposition was cancelled following harsh criticism coming from the media NGOs (6).

Another serious obstacle for journalists is the high fees for accessing information. The Law on access to information enables information providers to charge for providing information, which shall not exceed the costs incurred to make copies, translation or distribution of information. In reality, journalists claim that sometimes they have to pay excessive amounts for the public information necessary to perform their activity (7).

The People's Advocate requested the Commission for Exceptional Situations (8) to exclude the provisions by which the term for providing the answers to the requests for information of public interest during the state of emergency was tripled. The Ombudsman recalled that, in accordance with the constitutional provisions, the right of the person to have access to any information of public interest cannot be restricted. In its judgment interpreting the provisions of the Constitution, the Constitutional Court emphasises that the right to information is a precondition for the exercise of other rights, namely political, economic and social rights; the right to privacy, the right to take part in public affairs, the right to a fair trial, etc.

The PA stressed that journalists, media institutions, especially public ones, have a key role and responsibility for providing timely, accurate and reliable information, but also for preventing panic and encouraging people's cooperation. Any restrictions on access to official information must be exceptional and proportionate for the purpose of protecting public health.

The recommendation of the People's Advocate was not taken into account. In their reply (9), the authorities stated that the extension of the time-limits for lodging requests does not in itself constitute a restriction on the right of access to information of public interest, but is a proportionate measure, determined by the circumstances of the state of emergency, which in fact ensures effective exercise of this right.

The PA took a stand and condemned the attacks on the media institutions (10), considering them as attacks on democracy. The Ombudsman noted that the attempts to suppress critical voices, especially by high state officials, and intimidating messages instigate to violence against journalists, generate hatred and division among people.

The Ombudsman called on the authorities to observe international standards on protection and safety of journalists, and to stop denigrating the press.

In the Opinion to the Parliamentary Committee (11), the People's Advocate reiterated his call for Members of Parliament to examine and adopt the draft amendment to the package of laws containing the recommendations of media NGOs, in order to improve the situation in the media sector and create an adequate work environment for journalists. The amendments provide inter alia for shortening of deadlines for providing information of public interest to applicants, providing facilities for processing personal data for media institutions, amending provisions on state secrecy, introducing the public register of media etc.

A bill amending the Criminal Code and the Code of Administrative Offences aimed at criminalising hate crimes and bias-motivated crimes, which was voted in 2016 in the first reading, is still pending in Parliament.

References

- (1) <https://rsf.org/en/moldova>
- (2) <https://newsmaker.md/ro/video-live-urile-glamuroase-nu-au-sens-premierul-raspunde-unei-paciente-care-a-povestit-cum-este-tratata-intr-un-spital-din-capitala/>
- (3) <https://newsmaker.md/ro/cu-ce-s-a-incheiat-publicarea-unui-articol-nm-despre-infractiunile-in-interiorul-sistemului-politiei/>
- <https://www.zdg.md/stiri/stiri-sociale/o-jurnalista-a-fost-amendata-dupa-ce-a-scris-pe-facebook-despre-neregulile-semnalate-pe-timp-de-pandemie-de-catre-angajatii-unei-fabrici/>
- <http://www.api.md/news/view/ro-ong-urile-de-media-condamna-actiunile-abuzive-ale-fortelor-de-ordine-indreptate-impotriva-jurnalistilor-2422>
- (4) <https://freedomhouse.org/country/moldova/freedom-world/2021>
- (5) <http://www.audiovizual.md/files/Dispozitie%20CA.semnat.pdf>
- <https://www.eap-csf.md/en/ro-apel-public-privind-dispozitia-emisa-de-presedintele-consiliului-audiovizualului/>
- (6) <https://www.eap-csf.md/en/the-audiovisual-council-has-invalidated-its-decision-in-order-to-calm-the-spirits-i-cancel-the-disposition/>
- (6) <http://www.justice.gov.md/libview.php?l=ro&idc=4&id=5137>

- (7) <https://www.zdg.md/blog/editoriale/cat-ii-costa-pe-jurnalisti-in-timp-si-bani-accesul-la-informatie/>
- (8) <http://ombudsman.md/en/news/avocatul-poporului-libertatea-de-exprimare-inclusiv-fluxul-liber-si-la-timp-de-informatii-este-un-factor-esential-pentru->

Corruption

In the Republic of Moldova, the emergency period generated by the COVID-19 pandemic was a test as regards the applicability of the Law on whistleblowers no. 122 of 12.07.2018. The health crisis has demonstrated the degree of understanding of the concept of whistleblower in society, the willingness of the authorities, of the management of public institutions to implement and comply with the law provisions, and of people to make use of the mechanisms provided by law.

Although there were strong grounds for several disclosures of public interest information about actions that could harm the public interest, in particular public health and safety, they were delayed, and when they were granted, the employees were subjected to unprecedented intimidation and pressure from employers. Medical staff was generally reluctant to disclose information on the lack of protective equipment, disinfectants, tests, necessary medical equipment, unsafe working conditions and others. Heads of medical institutions have threatened and intimidated health professionals who dared to speak openly about irregularities in the health system. The persons in question were threatened with criminal proceedings and dismissal for disclosing "secrets" at work (1).

The Ministry of Health, Labour and Social Protection strongly denied the lack of adequate equipment and facilities, accusing health care professionals of getting infected by the virus because they did not know how to use protective equipment correctly or of being contaminated in other places than at work. Public opinion was assured that medical institutions have everything they needed and that doctors are sufficiently protected.

In May-June 2020, the Office of the People's Advocate and the National Anticorruption Center, in cooperation with UNDP Moldova, launched three video spots (2) and a number of informative materials as part of an information campaign to support whistleblowers especially among health professionals. At the same time, a new module was launched on www.ombudsman.md portal (3), through which whistleblowers may submit an online application for getting protection from the Office of the People's Advocate.

An online training course for the integrity of whistleblowers, available in Romanian and Russian languages, was launched on the OPA web page (4). The platform offers guidance to employees on how to disclose illegal practices and the peculiarities of whistleblowing in private and public sectors, what illegalities may be disclosed, as well as the protection guarantees for those warning about corruption and irregularities in the institutions in which they work.

At the same time, the course offers guidance to employers from public and private institutions, informing about the duties and competences of institutions involved in the enforcement of whistleblowing mechanism. The module is accessible for persons with visual impairments.

In 2020, the PA examined 2 requests for whistleblowers protection received from civil servants who were subject to retaliatory measures following disclosures of illegal practices. In both cases, the People's Advocate found violations of the rights and freedoms of whistleblowers. The PA addressed to each employer and decision-makers some recommendations on measures to be taken for the immediate reinstatement of whistleblowers: immediate cessation of any acts of retaliation, pressure, discrimination manifested by threats of dismissal, in one case dismissal from public service, which are related to or result from the whistleblowing. At the same time, in both cases, the Ombudsman recommended the cancellation of the sanctioning orders of whistleblowers and a compensation for pecuniary and non-pecuniary damage suffered as a result of revenge, as appropriate.

In one case, the People's Advocate intervened in the trial and managed to provide protection to the whistleblower. On 26 June 2020, the court issued a decision annulling the disciplinary sanctioning of the civil servant by dismissal with the obligation of the employer to issue the administrative act regarding the restoration of the injured person in the position held prior to dismissal. The Chisinau Court of Appeal upheld the court's decision. In this case, the People's Advocate will take procedural actions to bring to justice the person responsible for applying retaliatory measures.

In the second case, the People's Advocate also shared his findings with the court. The court is to issue a decision in this regard (5).

References

- (1) <https://en.odfoundation.eu/a/32071,odfs-submission-to-the-european-commission-in-view-of-the-upcoming-eu-moldova-human-rights-dialogue/>
- https://unimedia.info/ro/news/35655d2ba23bc803/video-angajatul-unei-statii-de-urgenta-care-a-prezentat-echipamentul-de-protectie-din-dotare-vine-cu-noi-detalii-ni-s-au-adus-masti-dar-mama-a-fost-telefonata-sa-ma-convinga-sa-sterg-video-ul-altfel-risc-dosar-penal.html?utm_source=rss&utm_medium=rss&utm_campaign=rss
- (2) <https://www.facebook.com/PNUDMoldova/videos/233002551374254/>
- (3) <http://ombudsman.md/avertizari-de-integritate/>
- (4) <http://ombudsman.md/news/oficiului-avocatului-poporului-lanseaza-modulul-de-studiere-on-line-e-learning-prin-cursul-avertizorii-de-integritate/>
- <http://ombudsman.md/courses/>
- (5) Report on the observance of human rights and freedoms in the Republic of Moldova in 2020: http://ombudsman.md/wp-content/uploads/2021/06/Raport-2020-FINAL-RED_18-iunie.pdf

Impact of measures taken in response to COVID-19 on the national rule of law environment

Most significant impacts of measures taken in response to the COVID-19 outbreak on the rule of law and human rights protection

Following the declaration of a state of emergency on the entire territory of the Republic of Moldova, on 17 March 2020, a series of measures were adopted that affected the **justice system**. The special legal measures put in place concerned the legal deadlines (prescription, revocation, appeal, settlement of claims), which were interrupted until the end of the state of emergency. The examination of both civil and criminal and contravention cases was suspended, and the examination of cases that could not be postponed was conducted by teleconference. The examination of the appeals against the provisions of the Commission for Exceptional Situations (CES) was put within the jurisdiction of the Chisinau Court of Appeal, the term of appeal being set 24 hours, without the possibility of rescheduling and with no right to appeal (1).

The People's Advocate had several concerns and he submitted a series of recommendations to the CES for the revision or exclusion of certain restrictions from CSE's decision no. 4 of 24 March 2020, which infringed the guarantees of a fair trial. The PA recalled that according to provisions of the Constitution, the right to free access to justice cannot be restricted.

On 29 April 2020 the People's Advocate addressed to the Ministry of Justice the proposal to amend the Contravention Code, in which he pleaded for the revision of the provisions of art. 76/1 of the Contravention Code. He proposed reducing the minimum amount of fines applied to individuals and establishing alternative sanctions in cases of non-compliance with restrictions imposed during the state of emergency. The Ministry of Justice rejected this initiative (2). Similar proposals and recommendations were addressed to the parliamentary committees (3).

Nevertheless, the Constitutional Court took into account the PA's opinion presented in amicus curiae brief and declared the minimum amount of the fine imposed on individuals for non-compliance with epidemic measures unconstitutional (4).

The Court noted that not only the fixed penalty set by the legislator, but also the relatively small difference between the minimum and maximum limit of the sanction are likely to affect, depending on the harmful act and the multitude of factual ways of committing it, the right to a fair trial, by restricting the jurisdiction of the court to exercise full jurisdictional control over the individualisation and appropriateness of the sanction. The Constitutional Court held that the legislator cannot regulate a sanction in such a way as to deprive the court of the possibility of individualising it effectively and reasonably.

Ensuring confidentiality of discussions between **detainees** and their defenders during online court hearing is also an issue, as detainees are accompanied by prison staff, while their defenders are physically present in the courtroom. Poor internet connection makes the understanding of the process difficult. Judges in charge usually refuse the request of detainees to physically attend the court hearings, on the grounds of compliance with COVID-19 prevention measures.

In the first months of the epidemiological crisis, there were deviations from standards in the field of **freedom of expression**, such as acts of intimidation of journalists following their criticism of the authorities' inadequate response to the health crisis, as well as barriers to access information of public interest. Pressures on journalists occurred while, in the context of the health crisis, the operation of a free and independent press and the free flow of information were essential.

In 2020, there was a dramatic worsening of the situation in which most media outlets operated, generated by the poor management of the pandemic crisis by the authorities, in general, and of the media field, in particular (5).

References

- (1) https://cancelaria.gov.md/sites/default/files/dispozitia_4_din_24.03.2020.pdf
- (2) <http://ombudsman.md/news/ministerul-justitiei-a-respins-propunerea-avocatului-poporului-de-reducere-a-marimii-minime-a-amenzilor-aplicate-persoanelor-fizice-si-stabilirea-de-sanctiuni-alternative-cum-ar-fi-munca-neremunerata/>
- (3) <http://ombudsman.md/wp-content/uploads/2020/05/04-2-8-din-29.04.2020-Comisia-protoc%C8%9Bie-social%C4%83-s%C4%83n%C4%83tate-%C8%99i-familie.pdf>
- <http://ombudsman.md/wp-content/uploads/2020/05/04-2-9-din-29.04.2020-Comisia-drepturile-omului-%C8%99i-rela%C8%9Bii-intere>
- (4) https://www.constcourt.md/public/ccdoc/hotariri/h_18_2020_61a_2020_rou.pdf
- (5) <https://www.mediaforum.md/upload/resolution-fmm-2020pdf-5fca34ecb8d93.pdf>
- <https://www.zdg.md/stiri/stiri-sociale/pe-timp-de-pandemie-libertatea-presei-degradeaza-2/>
- (6) Report on the observance of human rights and freedoms in the Republic of Moldova in 2020: http://ombudsman.md/wp-content/uploads/2021/06/Raport-2020-FINAL-RED_18-iunie.pdf

Most important challenges due to COVID-19 for the NHRI's functioning

The state of emergency declared in response to the COVID-19 pandemic has affected, to a certain extent, the implementation of torture prevention activities planned for 2020.

Right before the state of emergency has been declared, the representatives of the OPA and members of the Council for the Prevention of Torture, guided by the "do no harm" principle, made the decision to temporarily suspend the visits to places of detention, in order to protect employees and the persons detained. This decision was also dictated by the insufficiency of protection equipment of members of NPM. Between 12 March and 1 June 2020, there were no preventive visits to places of detention.

The activity of **monitoring the situation in places of deprivation of liberty** took place remotely, through direct contact with the heads of custody institutions, phone calls, examination of applications, the situation reflected in the media, but also the decisions of relevant authorities, etc. On a daily basis, the Office of the People's Advocates was informed about the situation in the places of detention. Likewise, the OPA submitted approaches to the National Commission for Exceptional Situations and other competent institutions requesting to take the necessary measures to prevent the spread of the pandemic in places of detention, in order to ensure protection of employees and persons in public custody.

At the same time, no actions were registered to obstruct the access of the OPA employees or the members of the Council for the Prevention of Torture, as National Preventive Mechanism, in the monitored institutions.

Although less than in previous years, the OPA carried out 22 preventive visits to places of deprivation of liberty. Another 11 visits were made by members of the Council for the Prevention of Torture. Following the visits made in 2020, 28 visit reports with recommendations and 2 thematic reports (1) on the COVID-19 situation in detention were prepared and submitted to the authorities.

References

- (1) http://ombudsman.md/wp-content/uploads/2020/08/en-rezumat_situa%C8%9Bia-covid19_pe-site.pdf
- http://ombudsman.md/wp-content/uploads/2020/12/Raport_Retinere_2020_OAP_FSM_FINAL-proiect_pe-site.pdf

Monaco

At present, there is no accredited NHRI in Monaco.

The *High Commissioner for the Protection of Rights, Liberties and for Mediation* is an Ombuds-type institution and may also issue guidance on matters relating to the protection of citizens' rights and freedoms, or on anti-discrimination matters, in cases referred to it by the administrative authorities.

ENNHRI has been in touch with the institution to gather more information about its work and intentions to apply for accreditation and/or ENNHRI membership.

References

- Link to relevant webpage of the High Commissioner for the Protection of Rights, Liberties and for Mediation: <https://hautcommissariat.mc/en/the-high-commissioner-at-a-glance>

Montenegro

Protector of Human Rights and Freedoms of Montenegro

Accreditation status and SCA recommendations

The Montenegrin NHRI was first accredited with B status in May 2016. The SCA encouraged the NHRI to advocate for the formalization in its enabling law of an open, transparent and merit-based selection process to ensure pluralism and the selection of skilled staff. Similarly, the SCA encouraged the NHRI to keep advocating for the explicit inclusion of a promotional mandate and the responsibility to encourage the ratification or accession to international instruments. Finally, the SCA recommended the introduction of a legally based power enabling the NHRI to independently determine its staffing structure, as well as the provision of adequate resources to allow the NHRI to independently manage its own budget, in line with its extended mandate.

Impact of 2020 rule of law reporting

Follow-up by State authorities

The Institution has no information on possible initiatives by state authorities. However, the institution of Montenegro Ombudsman is recognized for its open and accessible attitude towards various initiatives that contribute to the promotion of human rights and freedoms. Despite the challenges posed by the COVID 19 pandemic, the institution managed to maintain contacts and cooperation thanks to the network platforms on which international gatherings are organized.

Impact on the Institution's work

Rule of law promotion has been an intrinsic part of the work of the Ombudsman Institution since its inception. The institution has a mission to promote the rule of law through its daily work, working on complaints, with promotional activities, initiatives and good practices from other countries that have proven to be effective. The 2020 ENNHRI rule of law report served as a platform for working and exchanging information with ombuds institutions regionally and internationally. Planned and transparent adoption of legal norms, published and accessible laws along with the prohibition of retroactive validity of regulations, predictability of legal norms and efficiency of the judiciary are some of the key postulates of the rule of law. In exercising the rule of law, one should take into account inclusion, participation, transparency in the adoption of norms and planned adoption, with the

timeliness and efficiency of the judiciary. Following the developments in this area, Ombudsman gave a presentation on "Key Challenges in the Rule of Law" at the opening of the School of Political Studies, organized by the NGO Civic Alliance.

References

- www.ombudsman.co.me

Follow-up initiatives by the Institution

During 2020, the Institution held a large number of meetings (mostly online) with the civil society sector, regional/international ombudsman institutions and international partners. ENNHRI Rule of Law Report- 2020 is being used for raising awareness on rule of law through meetings with civil society sector and relevant stakeholders. The Report is available on the Ombudsman's webpage. Also, the European Commission Rule of Law Report was used as a source of information for the Annual Report of Ombudsman for 2020, which is to be discussed in the Parliament and presented to the general public via live TV broadcast.

An Instagram account has been opened as an additional channel of communication and promotion; the ombudsman's website has been redesigned. The novelties are subsites for each individual area of work of the Ombudsman - public administration and justice; protection from abuse, security and NPM; rights of the child, youth and social protection; protection against discrimination, vulnerable groups and gender equality. The new content and platforms will make the site more accessible for all interested especially to children and people with disabilities.

References

- www.ombudsman.co.me

Independence and effectiveness of the NHRI

Changes in the regulatory framework applicable to the Institution

There have been no major changes to the regulatory framework in which the Institution operates. The Institution of the Protector of Human Rights and Freedoms of Montenegro, in accordance with the Constitution of Montenegro and the Law on the Protector of Human Rights and Freedoms of Montenegro, as an independent state body, takes measures to protect human rights and freedoms when violated by an act, action or inaction of state institutions, state administration bodies, local self-government bodies and local administration, public services and other holders of public authorities. Also, the Protector takes measures to prevent torture and other forms of inhuman or degrading treatment and punishment, as well as measures to protect against discrimination. The Protector also has a broader mission to promote human rights.

The legislative framework for the functioning of the Institution is in line with the acquis and international standards. There are still some legislative gaps to be filled to ensure full compliance with the recommendations of international organizations regarding the strengthening of administrative capacities, the manner of selecting office holders (in order to eliminate the possibility of blocking the process) and strengthening financial independence in accordance with the recommendations of the EU, the Council of Europe and the UN. In accordance with the recommendations of the competent UN committees, the Institution also planned to further strengthen international cooperation and fulfil the recommendations on the implementation by Montenegrin state authorities of the UN Convention on the Rights of Persons with Disabilities and the Convention on the Rights of the Child and the recommendations of ECRI and the CoE Advisory Committee on Minority Rights.

References

- https://www.ombudsman.co.me/lzvjestaji_Zastitnika.html

Enabling space

The Ombudsman has seen positive developments in the exercise of its functions in 2020: largest number of received cases in one year (1031) since the establishment of the

institution; high percentage of completed cases (almost 86%); largest number of recommendations sent to the competent authorities within the cases resolved during one reporting year (357); continued good practice of drafting opinions with reference to relevant domestic and international practice and in particular to the decisions of the European Court of Human Rights.

The Institution plans for 2021 include: further strengthening the visibility of the Institution for citizens and promotion of its competencies, especially at local level and among vulnerable groups; maintain a high level of presence in international gatherings and activities, especially through membership in networks; improve and concretize cooperation with civil society organizations dealing with the protection of human rights and freedoms, especially vulnerable groups. Representatives of the Ombudsman's Institution will continue, as observers, to contribute to working groups for the drafting of laws, bylaws, strategies and other documents with the aim of more effectively combating discrimination.

In addition to cooperating on some complaints, the Ombudsman cooperates with public institutions at several levels. Its representatives take part in numerous gatherings, events and meetings organized by bodies, institutions of the executive, legislative and judicial branches.

Cooperation with state bodies, state administration bodies, local self-government bodies and local administration bodies, public services and other holders of public authority in acting upon the Ombudsman requests has improved, especially as regards authorities' readiness to eliminate certain irregularities that could lead to violation of human rights and freedoms.

By resolving citizens' complaints, the Ombudsman strives to contribute to the improvement of the work of state and local self-government bodies, as well as other holders of public authority, by pointing out problems and making recommendations for action. As noted in several previous annual reports, cooperation with public administration institutions is improving, primarily due to the change of attitude and acceptance of the role of the Ombudsman as a corrective mechanism that contributes to the professionalization of the system as a whole. However, it still happens that some bodies do not react timely or at all upon the Institution's recommendations.

The Report of the European Commission for Montenegro [SWD (2020) 353 final, Brussels, 6.10.2020] assessed that the institution of the Protector has good visibility, reach and productivity and that confidence in its work is increasing. It is also said that the and institutional framework for the functioning of the institution of the Protector has been

regulated. However, in spite of being largely regulated, it is an important challenge to ensure that national human rights legislation is effectively enforced.

References

- https://www.ombudsman.co.me/lzvjestaji_Zastitnika.html

Developments relevant for the independent and effective fulfilment of the NHRIs' mandate

The coronavirus epidemic in Montenegro was first officially declared on March 26, 2020. In the new circumstances, the Institution of Ombudsman had to adjust its work with the recommendations of the competent institutions, but also to remain at the level of international standards. Compared to the previous year (2019), 2020 was marked by an increase in the total number of complaints filed, which resulted in an increase in the scope of work in all segments of the Institution's competences. This impacted especially the process of preparing opinions due to the complexity of complaints filed by citizens and their attorneys as well as the application of standards of the European Court of Human Rights and other international instruments for the protection of human rights.

References

- https://www.ombudsman.co.me/lzvjestaji_Zastitnika.html

Human rights defenders and civil society space

The Ombudsman of Montenegro supports human rights defenders (HRDs) through its work on individual cases, joint activities and human rights education. Raising public awareness on the pressure faced by HRDs and ensuring their protection remains one of the Institution's priorities. Protecting defenders is a challenge on national and international level.

The Ombudsman participated in a two-day online meeting with state bodies, NHRIs and civil society organizations in Montenegro on the findings and recommendations of the ODIHR (link in references below), emphasizing the situation regarding HRDs. ODIHR visited Montenegro in order to examine the situation of human rights defenders in the country, including gaps and challenges in the protection of human rights defenders as well as good practices in this area.

The Ombudsman deputy and advisers participated in working groups that discussed the implementation of the recommendations in four thematic areas, identifying shortcomings and challenges in protecting HRDs, as well as possible ways to cooperate with the ODIHR and other OSCE structures in implementing the recommendations. The main objectives identified are:

- better protect HRDs through effective investigations into attacks and the conduct of criminal proceedings
- create a database on attacks on HRDs in order to increase accountability
- strengthen mechanisms to prevent defamation campaigns, negative publicity or stigmatization of HRDs and their work

Employees in the NGO sector and the media are HRDs and as such must be protected and supported.

The Ombudsman of Montenegro remains a dedicated partner in cooperation with civil society organizations and HRDs through joint initiatives/trainings/ and other forms of cooperation in order to improve the situation in this area.

A strong civil society sector significantly affects the democratic capacity of society as a whole in Montenegro and is needed to lead to the necessary reforms in the process of Euro-Atlantic integration.

The state is obliged to provide a supportive environment for the work of NGOs and HRDs in terms of funding transparency, availability of information and participation in the decision-making process. In practice, decisions on the allocation of funds need to be aligned with funding objectives.

One of the main objectives of the Institution plans for 2021 is to improve and concretize cooperation with civil society organizations dealing with the protection of human rights and freedoms, especially vulnerable groups.

References

- www.ombudsman.co.me
- <https://www.ombudsman.co.me/34475.news.html>
- <https://www.osce.org/odihr/463200>

Checks and balances

The reporting year 2020, compared to the previous year (2019), was marked by an increased number of complaints submitted to the Institution. This increase was an additional challenge but also an indicator of increasing confidence of citizens in the work, efficiency and quality of work of this Institution.

During 2020 there occasionally were delays in the statements of public administration bodies, which was partly influenced by the COVID-19 infection of some employees, teleworking, but also due to the period of transition after parliamentary elections.

The analysis of the submitted complaints continues to show that citizens complain about the slowness, inefficiency and difficulties in exercising their rights before state administration bodies, local self-government, local government and other entities exercising public authority. Citizens complain that they feel unequal before the law.

All this indicates that public administration bodies still do not sufficiently provide effective protection of rights, and that they frequently do not act in accordance with the principles of good administration. The public administration system should be more transparent and accessible to all citizens, it should be better organized and prepared to respect human rights and freedoms and create opportunities for the exercise of these rights. It is necessary for administrative bodies to improve their written communication with citizens, which implies consistent application of the provisions of regulations in the field of administrative procedure, especially regarding delivery, both in the first and second instance proceedings.

As part of the national system of checks and balances, in 2020, the Protector submitted one initiative for amending the law and two opinions on a draft law in order to improve human rights and freedoms, namely:

- Recommendation submitted to the Ministry of Justice on the introduction of a formal legal remedy regarding the protection of the right to a trial within a reasonable time, foreseeing various procedural guarantees to speed up the procedure and to compensate the citizen where appropriate. The Ombudsman notes that the Montenegrin legislative system for protection of the right to a trial within a reasonable time before the Constitutional Court of Montenegro suffers from systemic weaknesses, that hinder the functioning of an otherwise effective system (given that a constitutional complaint is an effective remedy for protection of the right to a trial within a reasonable time).
- Opinion on the Draft Law on Amendments to the Law on Pension and Disability Insurance.
- Opinion on the Draft Law on Internal Affairs in part "Application of police powers towards persons with disabilities".

References

- www.ombudsman.co.me
- https://www.ombudsman.co.me/docs/1619074992_izvjestaj_01042021.pdf

Functioning of the justice system

In 2020, 40 complaints were received by the Ombudsman related to the work of courts. The citizens mostly complained about the legality of court decisions, mostly in civil matters, in which direction the Protector pointed out its incompetence.

In a number of cases, the court with which the complainant was unsatisfied would remedy the violation. The follow-up on complaints against the work of courts suggests that the courts recognize the importance of timely and urgent action, while respecting the procedural and legal guarantees of the parties to the proceedings, in order to ensure protection of the right to trial within a reasonable time.

The year 2020 was marked by an increase in the number of complaints in relation to the work of state prosecutor's offices concerning the investigation and prosecution of criminal acts. Based on its work on the complaints, the Ombudsman issued a opinion stating that the rights of the injured parties in the pre-

trial proceedings who filed a criminal complaint were not adequately protected, and that the injured parties were not informed about the actions taken or on the state of the proceedings upon the filed criminal report.

The Ombudsman noticed a significant increase in complaints concerning the length of proceedings before the Constitutional Court and identified this issue as a systemic shortcoming in the sense that a citizen does not have an effective remedy to protect the right to a trial before the Constitutional Court. The only option available to citizens to protect this right is to apply to the European Court of Human Rights in Strasbourg.

The Ombudsman also noted that the courts' awareness of their obligation to apply EU Directives and other relevant binding international legal instruments is not at a satisfactory level.

References

- https://www.ombudsman.co.me/docs/1603718086_061020202-inicijativa.pdf
- <https://www.ombudsman.co.me/Inicijative.html>

Media pluralism and freedom of expression

In 2020, given the pandemic context, the importance and "sensitivity" of topics and events, including numerous incidents, cooperation of the Protector with the media was very intense. The Ombudsman Institution maintained a high level of transparency regarding the reporting on its activities, publishing 189 pieces of information on its website in 2020.

On the Day of Journalists, the Institution reminded that respect for the principles of free and professional journalism is important for the realization of human rights and freedoms and the overall progress of every society, and condemned unacceptable pressure of any kind on journalists and media editorial policy. Among the issues most discussed in 2020 relating to media and freedom of expression were: the call to meet the election day in order to maintain an atmosphere of tolerance and respect; concerns about obstruction of media representatives on work assignments; protection of the best interests of the child in the pre-election period and other situations that may be inappropriate for their age; hate speech graffiti in Berane settlements; hooligan outburst against some religious and national backgrounds on the occasion of a football match; events in local areas where

there was a disturbance of public order and peace, in relation to which the Protector's institution called to calm tensions and pointed to the need for constructive dialogue.

At the meeting with the Media Syndicate, the Ombudsman concluded that journalists played an important role and made a great contribution to the overall response of the society to the outbreak of the Covid-19, but their labour rights and working conditions were further endangered during the pandemic.

In 2020, more often than in previous years, the Institution pointed out the exposure to online violence and threats to public officials and other public figures (politicians, journalists, analysts, civil society activists, individuals from the judiciary, prosecutors, police, etc.). The influence of the media on socio-political processes was very pronounced in 2020. During the year, the Institution called for respect of the rules of the journalistic profession in order to calm tensions, especially in municipalities where religious and nationally motivated incidents have been reported. Many journalists contacted the Ombudsman, addressing issues such as employment status, protection against discrimination, the attitude of the police (exceeding authority) towards journalists on duty (e.g. in public gatherings), denial of attendance to an event, due to the comments they were exposed to on social networks and portals, statements of public figures about them as well as omissions in the reporting of other media, i.e. violations of the Code, laws and the like.

References

- <https://www.ombudsman.co.me/34547.news.html>
- <https://www.ombudsman.co.me/.news.html>

Impact of measures taken in response to COVID-19 on the national rule of law environment

Most significant impacts of measures taken in response to the COVID-19 outbreak on the rule of law and human rights protection

The past year was characterised by **serious challenges affecting the enjoyment of human rights and freedoms**. Such challenges were closely linked to the current socio-political context, the global pandemic, the economic crisis, a deepening polarization of

society, the increased presence of specific forms of civil disobedience, the need for urgent and effective measures to combat the spread of the epidemic, closing borders, difficult communication, rising tensions in the framework of the elections, intolerance and lack of culture dialogue, violent communication and hate speech on social networks, further vulnerability of vulnerable groups (people with disabilities, LGBTIQ + people, elderly households, women in rural areas, victims of domestic violence, unemployed and others) and lack of adequate substantive basis to regulate special situations.

In general, human rights and freedoms have been at risk due to the current socio-political events and circumstances. Although we cannot speak of mass and systemic violations, there have been **obvious violations deriving from restrictions on rights and freedoms** assessed in the light of international human rights standards and the way in which they are implemented in the national legal order. The crisis also has caused a certain **stagnation of human rights in the economic and social spheres**, and numerous dilemmas in relation to other dimensions of human rights, especially when it comes to the so-called welfare rights.

Similar to most countries in the world, Montenegro has declared an **epidemic urgency** on its territory on two occasions, depending on the evolution of the epidemiological situation. Out of two options for the state to react – formal derogation from human rights obligations in case of extraordinary circumstances that threaten the survival of the nation, or restrictions on certain human rights and freedoms in accordance with international legal standards - Montenegro chose to adopt targeted restrictions. In view of the novelty of the emerging challenges, it is difficult to assess that decision at this stage from the rule of law and human rights perspective. It is necessary to consider the manner and means used for the purpose of the introduced restrictions, and especially the short time limits in which such restrictions were prescribed and placed into legal transactions within the national legal order. When imposing restrictive measures, states are required to strike a balance between protecting health and respecting individual human rights. International human rights treaties allow for the restriction of or derogation to rights for the purpose of protecting public health. There are strict criteria for when, how and to what extent certain rights may be restricted.

Restrictions on human rights adopted by the Montenegrin government included:

- limitation of **social contacts**, including within families (e.g. children and parents not living together) and for people who are in any way dependent on communication with relatives and other close persons (older persons in care homes, sick and immobile persons, guardians and persons supporting or caring for such persons),

the status of persons deprived of their liberty in relation to contact with their families, especially children.

- limitations to **freedom of movement**: ban on leaving the place of residence, partial blockade of borders, ban on movement at certain times
- limitations to **freedom of assembly**: restriction / ban on public gatherings
- **privacy rights**: restriction of human rights in relation to violations of privacy rights, including measures of mandatory testing or vaccination, mandatory wearing of masks and application of the same measures in relation to different categories of citizens (children, persons with respiratory diseases, allergic persons, etc).
- others: ban on commercial activities, primarily provision of services, ban on communication between local communities

During the year, the Ombudsman Institution initiated more frequent and direct contacts with state bodies in order to obtain as much information as possible about the introduced measures, manner of implementation, suggestions on possible corrections of imposed measures in order to protect certain categories, labour relations and other current issues during the measures.

The consequences of the pandemic have already shown exposure to additional risk for several **vulnerable groups** (unemployed, low-income people, older persons, persons with disabilities, women and children, victims of domestic violence, LGBTIQ+ population). Bearing in mind that the state budget was largely limited by the consequences of the pandemic, it is certain that the state authorities will continue to face a great challenge to ensure the realization of primarily economic and social rights.

The conclusion is that the national legal order was unprepared for the pandemic, ie that certain regulations remained vague when it comes to the possibility of introducing restrictions in the exercise of human rights and freedoms. On the other hand, the Ombudsman warned that any different treatment in the same/similar situations leads to legal uncertainty.

At the meeting with the Media Syndicate, the Ombudsman concluded that **journalists** played an important role and made a great contribution to the overall response of the society to the outbreak of the Covid-19, but their labour rights and working conditions were further endangered during the pandemic.

The Golden Advisers of the Ombudsman (Network formed in 2014 with a view to promoting children's right to participation) highlighted the problems faced by students, primarily in the field of exercising the **right to education**.

The Ombudsman's attention was also focused on **persons deprived of their liberty** as well as persons serving prison sentences.

Most important challenges due to COVID-19 for the NHRI's functioning

The year 2020 was very special and different due to the appearance and consequences of the COVID19 virus pandemic, globally and for Montenegro. Through its work on complaint, the Ombudsman Institution noticed that there was no obstruction in the number of unresolved cases, that there was no significant delay in administrative proceedings, or violation of the right to a fair trial within a reasonable time. The parties actively participated in the proceedings with respect to health measures

During the strictest quarantine period, from the end of March to the beginning of May 2020, a team of employees on duty worked from the Institution, led by the Ombudsman. With the easing of measures from May 4, all employees in good health returned to their jobs, in full respect with the recommended precautions (limited presence of several people in the same space, social distance, use equipment and means for disinfection, room ventilation, etc.).

The coronavirus epidemic in Montenegro was first officially declared on March 26, 2020. In the new circumstances, the Institution of Ombudsman had to adjust its work with the recommendations of the competent institutions, but also to remain at the level of international standards. Compared to the previous year (2019), 2020 was marked by an increase in the total number of complaints filed, which resulted in an increase in the scope of work in all segments of the Institution's competences. This impacted especially the process of preparing opinions due to the complexity of complaints filed by citizens and their attorneys as well as the application of standards of the European Court of Human Rights and other international instruments for the protection of human rights.

In the first half of 2020, the Institution suffered from an incomplete deputy staff and from an insufficient number of executors in professional jobs; lack of financial resources for the implementation of all activities from the mandate of the Institution; the establishment of a national network for protection against discrimination was not implemented in 2020, due to the situation caused by Covid-19; the epidemiological situation did not allow the organization of the Protector's Day according to the established methodology. There were

examples of inadequate understanding of the mandate, competencies and obligations of opinion with the recommendations of Ombudsman especially by the professional public (decision makers, lawyers, institutions) and those who directly apply the regulations and decide on the rights and interests based on the law. There were also cases of ignoring the Protector's recommendations, especially in relation to complaints related to the long duration of administrative proceedings (which last for several years), as well as ignoring requests for a statement, which was an obstacle to more prompt action of the Protector in certain cases. A special challenge in 2020 year was the dilemma regarding jurisdiction over the work of courts, which concerns "abuse of procedural powers", especially having in mind the imperative norm of the law which prescribes that the Protector does not perform instance control of court work, nor can change or abolish or annul their acts.

It was not possible to carry out activities involving direct communication with children such as creative-educational programs on the rights of the child and visits to educational/social and child protection institutions. The pandemic further aggravated the situation of children and families living in poverty, and contributed to the increase of socially vulnerable families due to unemployment.

In addition to working on cases, as the main activity, the Ombudsman carries out a number of other activities within his mandate in the field of the protection and promotion of human rights and freedoms.

The Ombudsman organised diverse events in 2020:

- COVID related such as conference on "(Dis) respect for human rights the Covid-19 pandemic" (in cooperation with traditional partners of the NGO Civic Alliance, the EU Delegation to Montenegro and the Council of Europe) and an event on International Children's Day, November 20, in the presence of the President of Montenegro, invited to discuss the exercise of the right to education in a pandemic.
- On other issues such as the Ombudsman's presentation on "Key Challenges in the Rule of Law" at the opening of the School of Political Studies (organized by the Civic Alliance), the co-organisation of the multi-day program to mark Human Rights Day (December 10), and, as part of a project supported by the Council of Europe, the Protector's Institution produced a brochure "No one must touch you" in 2019, which presents the basics of the Council of Europe Convention on the Ombudsman of Children against Sexual Exploitation and Sexual Abuse (Lanzarote Convention) children in connection with this topic.

The Ombudsman also cooperated with the National Coordination Body and exchanged information with the aim of resolving the problems pointed out by the citizens on the influence of the COVID on the functioning of human rights and freedoms. Most often they referred to the area of labour and legal relations, realization of health and social protection, application of health and sanitary measures (self-isolation and quarantine measures, restriction of movement, separation from family, provision of existential needs of people), problems arising from measures of restriction of movement , farms, etc.), protection of vulnerable groups, issues related to education at home; non-response or delay in the answers of state bodies as well as other issues related to proceedings before public authorities, services and other holders of public authority. The epidemiological situation has made it impossible to carry out the Institution's field activities and tours to a large extent. However, following the demands of citizens and our assessments, the Institution decided to organize visits to facilities intended for quarantine accommodation of citizens throughout Montenegro.

Sectors of the Ombudsman Institution monitored the situation of certain categories of the population at special risk. This applied to children, the elderly, people with disabilities, the Roma population, persons deprived of their liberty or restricted in their movements on various grounds, and others.

For that purpose, the Institution tried to get as much information as possible in direct contact with state bodies about the introduced measures, the manner of implementation, suggestions on possible corrections of the imposed measures in order to protect certain categories, employment during the measures. The Institution also shared relevant international standards and recommendations, obtained by exchanging data with foreign partners.

In this regard, a preventive visit to the UICS (Directorate for the execution of criminal sanctions Montenegro) was made, as well as a continuous exchange of information with the administration, in order to get acquainted with the measures and actions taken by this institution in connection with the health care of persons deprived of their liberty, as well as employees. With the easing of measures, visits to prisons, as well as wards and security centres were organized.

In order to strengthen visibility and make the Institution closer to the citizens in the conditions of restrictive measures and limited reception of parties, the Instagram profile of the Institution / ombudsman / was opened, which is getting increased attention and visibility.

References

- www.ombudsman.co.me/Report/

Netherlands

Netherlands Institute for Human Rights

International accreditation status and SCA recommendations

The Dutch NHRI was [re-accredited](#) with A status in December 2020. In its review, the SCA encouraged the NHRI to advocate for the extension of the applicability of the Equal Treatment Act to the Caribbean territories of the Netherlands, to ensure that the NHRI can discharge the full breath of its mandate in these territories. The SCA also called on the NHRI to further to advocate for the formalisation of a clear, transparent and participatory selection and appointment process to avoid situations of conflict of interest. Finally, the NIHR was asked to continue to advocate for adequate funding necessary to allow it to address a broader range of priorities, including, for example, the rights of migrants and of the LGBTI community.

References

- Letter of the NIHR to the Minister for Legal Protection regarding the re-accreditation: Brief aan minister Dekker naar aanleiding van de re-accreditatie | Mensenrechten

Impact of 2020 rule of law reporting

Follow-up by State authorities

To our knowledge, the ENNHRI rule of law report was not used at national level. Representatives from the Dutch NHRI did refer to it in other talks, e.g., vis-à-vis EU institutions.

Impact on the Institution's work

The 2020 ENNHRI rule of law report has reaffirmed the usefulness of having EU rule of law as focus of attention for the Dutch NHRI. This is channelled in particular through the membership of one of the Institute's commissioners of the Meijers committee, a committee of independent experts (lawyers, judges, NGO professionals) giving legal analysis-based advice to Dutch and EU-level politicians and their support staff.

Follow-up initiatives by the Institution

Briefing to NGOs working on the EU rule of law in the EU context, co-organised by Amnesty International and Open Society Justice Initiative.

Human rights defenders and civil society space

As regards freedom of assembly, under the Dutch Public Assemblies Act (*wet openbare manifestaties*) planned assemblies need to be pre-notified to the public authorities. The intention for this is to be a procedural requirement, i.e., merely to allow public authorities to assess security risks and make arrangements in time. Such assessment however has, on occasion, also involved mayors checking the actual substantive contents of the planned assembly with a view to fulfilling the procedural requirement and led to a practice where the content has played a role in decision-making.

In addition to the findings of the NHRI in 2019, during the COVID-19 pandemic demonstrations were allowed to continue. Additional requirements were included in order for the organisers to ensure the implementation of the COVID-19 measures (incl. 1,5-meter distancing of the participants). Several demonstrations were cancelled as mayors deemed that compliance with the COVID-19 measures could not be ensured. Other protests were cut short, or interventions were made to ensure that everyone was able to keep their distance and comply with the measures, for example by not allowing new protestors to come to the place of the protest. Generally speaking, the right to freedom of assembly was ensured during the COVID-19 pandemic, although there have been instances where questions were raised about the necessity and proportionality of the requirements imposed on the organisation of the protests. At least in two instances this has led to litigation.

Furthermore, there have been various protests concerning the COVID-19 measures that have resulted in violence and destruction of property. On several occasions the police had to step in to end the protests.

In addition to the information provided on our website on COVID-19 measures, the Institute has published an informative article on the right to protest.

References

- The NIHR informs the public about COVID-19 measures in light of human rights via its webpage, this also includes an answer to the question whether a demonstration can be cancelled due to COVID-19 (Q18): Coronavirus en mensenrechten | College voor de Rechten van de Mens
- Lawsuit against the mayor of The Hague for the limitations imposed on grounds of COVID-19 measures: Rechtszaak tegen beperking protest op grond van de coronamaatregelen verloren - PILP (pilpnjcm.nl)
- Judgment of the District Court of Amsterdam
<http://deeplink.rechtspraak.nl/uitspraak?id=ECLI:NL:RBAMS:2020:2126>
- Webpage: Van blokkades tot online demonstreren: wat mag wel en niet tijdens een demonstratie? | College voor de Rechten van de Mens (mensenrechten.nl)

Checks and balances

What is known as the 'child benefit scandal' (*'toeslagenaffaire'*), was the reason for the Dutch government to resign at the end of 2020. In the Netherlands parents are entitled to receive day-care allowance under certain conditions, in order to continue working or following an education. The benefits are given without a thorough check of the request, but when a mistake is made, the parents are required to reimburse the allowance to the tax authority. After many years of research by journalists and parliamentarians, it turned out that certain parents were subjected to additional controls of their request for child benefits because of their nationality, their double nationality and/or the day-care they were sending their child(ren) to. If selected for additional monitoring, also (minor) administrative mistakes would result in the requirement to reimburse the entire sum of day-care allowance received – to a maximum of 5 years. Parents had to pay back tens of thousands of euros, which they had already spent on day-care. This resulted in serious financial troubles and emotional harm, sometimes leading to unemployment and loss of their homes. In a report a parliamentary committee concluded that as a result of strict legislation, rigid execution thereof, biased acting, non-transparent decision-making and insufficient legal protection, more than ten thousand parents were unjustifiably targeted as fraudulent. It was the combination of political pressure to deal with frauds and harsh legislation, that resulted in an all-or-nothing approach, which limited the possibility of the tax authority to mitigate consequences for (minor) administrative mistakes made by the parents and led to a very

restrictive review by the Dutch administrative judges. Parents that were marked as fraudulent, were required to provide extensive information about their situation without knowing what would be relevant for their case, and in some cases, on what grounds the decision to reimburse the money was taken. In addition to this, the tax authority and government were not open about the situation even after continued questions were raised in parliament about the day-care allowance issue. Also, when parents were finally provided the documents on the basis of which the reimbursement decisions were taken – almost all information was erased with black ink.

The government is currently in the process of improving the day-care allowance system and reviewing legislation and the practice of the tax authorities. Furthermore, parents that were victimised will be immediately entitled to reimbursement of 30.000 EUR. Although efforts are being made, at the moment the targeted parents are still dealing with problems as a result of the day-care allowance affair. In light of this affair, serious questions have been raised about the lack of parliamentary oversight regarding the tax authority, and executive authorities more generally.

The day care allowance affair has had a serious impact on the trust of citizens in state authorities. Not only citizens but also municipalities have concerns about the government's approach to the matter and its solution to it, which is considered to lead to more problems for the parents.

Besides starting a project to inform Dutch authorities on what the prohibition of discrimination means in practice, including for executive authorities, the central government has pinpointed the Dutch NHRI as the place for victimised parents to request a decision on whether they were discriminated. The tax authority will accept the decision of the Dutch NHRI. The challenge for the NHRI is, however, that its mandate as an equality body in cases concerning social benefits is limited to determining whether there was discrimination on the basis of race/ethnicity, and not on other discrimination grounds. In addition, the Dutch NHRI is requested to develop and carry out trainings for officers working at executive authorities to prevent discrimination in practice.

The Netherlands Institute of Human Rights is furthermore involved in various legislative processes through advising the government, both as regards new law proposals and existing laws and policies. It has issued an annual report in 2018 on access to justice, in which it discussed policy developments and developments in legislation that restricted access to justice. It has also issued a report on self-sustainability (*zelfredzaamheid*) as the government is considering that individuals are able to ensure their rights themselves. These

developments of limiting access to justice and reliance on self-sustainability are considered to have contributed to the day-care allowance affair.

Furthermore, the Dutch NHRI is currently in the process of talking about extra funding from the government to decide on cases relating to day-care allowance reimbursement, and training government professionals.

References

- Pages of parents in black ink: Ouders zwartgelakte dossiers: 'Ik weet nog steeds niet wat ik fout heb gedaan' | NOS
- For more information about this and what the Dutch NHRI does, see *Nooit meer een toeslagenaffaire: pak discriminatie aan* | College voor de Rechten van de Mens ([mensenrechten.nl](https://www.mensenrechten.nl))
- De Tweede Kamer is een falende controleur - NRC
- Gemeenten zeggen vertrouwen in Belastingdienst op | Trouw

Functioning of justice systems

No progress was made on the issues mentioned in ENNHRI 2020 Rule of Law Report, on which concerns persist.

In addition, there are concerns about the respect for fair trial standards and the right to liberty in the Netherlands. The ECtHR has delivered several judgments on these issues concerning the Netherlands in 2020 and 2021. Three cases concerned the lack of motivation of (continuation of) pre-trial detention decisions by judges, which a study of the Dutch NHRI shows is a structural issue (NB various courts are currently in the process of improving their decision-making). The Dutch NHRI had been requested to intervene in the case in order to share information about its study and the systemic nature of the problems. Other violations of Article 6 ECHR related to the right of a suspect to question a witness who has made incriminating statements (*Keskin v. The Netherlands*, app. no. 2205/16). The attorney-general of the Supreme Court has incorporated the ECtHR's judgment on hearing witnesses in his opinion to the Supreme Court, and also criminal courts are starting to improve their motivation of pre-trial detention.

References

- Nederlandse strafrechtspraktijk moet op de schop: betere motivering van voorlopige hechtenis nodig | College voor de Rechten van de Mens (mensenrechten.nl)
- The Conclusion of the Attorney-General, ECLI:NL:PHR:2021:91, Parket bij de Hoge Raad, 19/02460 (rechtspraak.nl)

Impact of measures taken in response to COVID-19 on the national rule of law environment

Most significant impacts of measures taken in response to the COVID-19 outbreak on the rule of law and human rights protection

The Dutch government has enacted the Temporary Act on COVID-19 measures. Although it was an emergency law it took over half a year before the Act was approved by the parliament and senate. This was partially due to the time given for deliberation in parliament and senate, including various amendments and advice from various organisations (including the Dutch NHRI). In the meantime, measures were either put forward as recommendations, or they were imposed on other legal bases (sometimes the validity of those was questioned). The Act entered into force on the 1st of December 2020. It provides the basis for the government to restrict fundamental rights, including the right to freedom of movement and freedom of assembly. On the basis of this law, the government has amongst others restricted the amount of people you are allowed to gather with in public, imposed a requirement to wear a facial mask, closed shops and prohibited the execution of certain professions.

The government recently also imposed a curfew from 9 p.m. to 4:30 a.m. in order to limit social gatherings at night even further, which is not a measure foreseen in the Temporary Act. This curfew is enforced and in case of violations, people can be fined with 95 EUR. Besides (violent) protests against the curfew, the main legal issue was the legal basis for this measure (NB our Institute provided information in relation to questions on necessity and proportionality of the measure and considered that there were sufficient arguments to that effect for imposing the curfew). The curfew was imposed on the basis of a specific law that allows for emergency measures (WBBBG). It has been argued by scholars that this law can only be used when there are extraordinary and urgent circumstances that prevent the

government from getting approval by the Parliament and Senate in time. However, several argued that such circumstances were not in place, as the Parliament was consulted in a debate to see whether the government would get approval for the measure. Furthermore, another – a more democratic means – for enacting the curfew was not chosen. This would have been to amend the Temporary Act COVID-19 measures, as was suggested by the Council of State. In February litigation was pending before the preliminary relief judge (*voorzieningenrechter*) and Court of Appeal. According to the preliminary relief judge the measure did indeed lack a legal basis, and the curfew was lifted. The decision to lift the curfew was suspended the same day by the Court of Appeal. A week later the Court of Appeal decided that the WBBBG formed a valid legal basis for the curfew. Whilst the litigation was pending, the government had issued an emergency law (*Tijdelijke wet beperking vertoeven in de openlucht covid-19*, Temporary Act on restriction to stay in the outdoor COVID-19) which has been approved by the parliament and the senate and is now in force. In any case, therefore, the curfew would have had a legal basis even if the Court of Appeal had decided that the WBBBG would not suffice.

Our Institute is currently in the process of researching long term effects of the COVID-19 outbreak on human rights. In particular it has discussed this impact on youth in various podcasts.

In its annual report 2020 (expected to be published in June 2021), the Institute will discuss the impact of the crisis on human rights in the area of employment. In short, what it notices is that there are problems on the one hand for people getting employment. This concerns those who for the first time access the labour market, students that cannot finish their studies because of the lack of internships or people who face discrimination in the recruitment and selection process for a job. The problems may result in long-term unemployment, which has serious effects on people's enjoyment of fundamental rights and could lead to poverty.

On the other hand, those who have a job may be subject to working and employment conditions that are contrary to human rights standards. For example, the crisis has shown the vulnerability of migrant workers to unsafe working conditions and risks of getting sick from COVID-19, this because they are dependent on their employer or employment agency for their housing and health benefits and are often transported together to work. Another issue with employment conditions is the increasing flexibility of employment contracts, resulting in people losing jobs and not being entitled to the same social benefits as those with permanent contracts. The report will conclude with several recommendations to the

government to better ensure human rights protection in the area of employment, now and in the future.

The NIHR has taken various actions by providing information and advising the government on Acts to be enforced. Measures are explained in the Institute's annual report 2020.

References

- The Institute updated its webpage with information about the curfew in light of human rights (Q23): Coronavirus en mensenrechten | College voor de Rechten van de Mens
- Judgment of the Court of Appeal regarding the legal basis of the curfew (incl. proportionality analysis) Invoeren avondklok was toegestaan (rechtspraak.nl)
- Wees alert op de effecten van de coronamaatregelen op jongeren | College voor de Rechten van de Mens (mensenrechten.nl)

Most important challenges due to COVID-19 for the NHRI's functioning

The Institute's main challenge at the start of the pandemic was to continue deciding on discrimination cases as an equality body. After the first months the Institute continued its hearings and is currently doing its utmost to catching up on delays from last year.

References

- Information about the hearings and COVID-19 measures: Update coronavirus: het oordelenproces van het College en de bereikbaarheid | College voor de Rechten van de Mens (mensenrechten.nl)

North Macedonia

Ombudsman of North Macedonia

Accreditation status and SCA recommendations

The NHRI in North Macedonia was first accredited with B status in 2011. The SCA observed that the law did not provide for a clear, transparent and participatory selection process and that pluralism could be enhanced. Moreover, while acknowledging the NHRI's promotional activities and relationship with international human rights actors, the SCA encouraged the NHRI to advocate for a wider mandate and further engaging with European NHRIs, as well as NGOs and CSOs.

Impact of 2020 rule of law reporting

Impact on the Institution's work

At the end of March 2021 the newest Annual Report of the Ombudsman Office was promoted and submitted to the Macedonian Assembly, including elements affecting the state of rule of law in North Macedonia.

In the course of 2020, the institution was mainly focused in meeting the needs of the citizens and protecting their rights in time of pandemic.

Follow-up initiatives by the Institution

The Ombudsman further encourages sharing the ENNHRI 2020 rule of law report with country' authorities, mainly the Assembly and the Government - if possible in Macedonian language to maximise its consideration and impact on the ground.

Independence and effectiveness of the NHRI

Changes in the regulatory framework applicable to the Institution

The Ombudsman Office acts in accordance with the Constitution of the country and the law of the Ombudsman.

References

- http://ombudsman.mk/MK/nadlezhnost/zakon_za_narodniot_pravobranitel.aspx
- <https://sobranie.mk/the-constitution-of-the-republic-of-macedonia.nspix>

Enabling space

Although the authorities ensure free access of citizen to the Ombudsman office so as free access of the Ombudsman to all institutions under its authority, thus providing sufficient space for the institution to act upon complaints freely without constraints, still the general response of the Government towards the level of implementation of the measures adopted by the Assembly based on the recommendations of the Ombudsman is not satisfactory. The general impression is that the individually submitted complaints are dealt with higher success (70-80% responsiveness by the responsible authorities) while the general recommendations issued by the Institution are far less implemented.

Due to the pandemic, the Annual Report of the Ombudsman Office for 2019 was not discussed during 2020. Although on the agenda of the responsible Assembly commission the Report has not been discussed on a plenary session even in the first months of 2021. Having said that, no further measures have been adopted by the Assembly yet in relation to the Annual Report of 2019.

In March 2021 the newest Annual Report for 2020 was promoted and submitted to the Assembly.

References

- Annual Report 2019: <http://ombudsman.mk/upload/Godisni%20izvestai/GI-2019/GI-2019-Ang.pdf>
- Annual Report 2020: <http://ombudsman.mk/upload/Godisni%20izvestai/GI-2020/GI-2020.pdf>

Developments relevant for the independent and effective fulfilment of the NHRIs' mandate

Already with the new Law on the Ombudsman (2016) the institution has managed to adjust its legislation as per the requirements of the Paris Principles, thus the mandate has been broadened, embracing issues like amicus curiae, trafficking in human beings and illegal migration (National Rapporteur), Civil Control Mechanism, monitoring of the implementation of the UN Convention on persons with disabilities etc. The promotion, as an important pre-condition for fulfilling the Paris Principles finally found its place in the new law and was formally introduced since it was non existing in the earlier version of the law. For implementation of these activities the institution was given an appropriate budget which at the moment allow the institution to fulfil each of the additional competences.

For implementation of these activities, the institution was given an appropriate budget which at the moment allows the institution to fulfil each of the additional competence.

In the course of 2020 the Ombudsman Office of North Macedonia mainly focused on the COVID-19 crisis in the country and its impact on human rights protection. Furthermore, the end of the year was also busy preparing for the end of the mandate of Mr. Ixhet Memeti and its succession by the new Ombudsman. On 25 January, the Macedonian Assembly elected Mr. Naser Ziberi, a Lawyer and a Notary Public.

The situation with the pandemic affected the work of the Ombudsman institution, both in terms of the number of complaints received and in terms of all other activities, both domestically and internationally. In this sense, the implementation of the planned campaigns, promotions, conferences, research was missing. More information is provided in the COVID-19 section below.

References

- http://ombudsman.mk/mk/novosti_i_nastani/241639/poseben_izveshtaj_od_sprovede_noto_istranzhuvanje_za_nachinite_na_realizacija_na_onlajn_nastavata_vo___aspx
- http://ombudsman.mk/mk/novosti_i_nastani/241636/mislenje_na_narodniot_pravobranitel_za_nachinite_za_zashtita_na_pravata_na_decata_do_10_godini_kako___aspx
- http://ombudsman.mk/mk/novosti_i_nastani/241635/mislenje_na_narodniot_pravobranitel_vo_vrska_so_nastavata__vo_uslovi_na_delechinsko_uchenje.aspx

- http://ombudsman.mk/mk/novosti_i_nastani/241629/dostaveno_mislenje_do_nadlezh_nite_institucii_vo_vrska_so_pushtanjeto_vo_upotreba_na_novoizgradeniot_.aspx
- http://ombudsman.mk/mk/novosti_i_nastani/241627/preporaki_na_narodniot_pravobranitel_za_ostvaruvanjeto_na_pravata_na_deteto_vo_uslovi_na_proglasena_.aspx
- http://ombudsman.mk/mk/novosti_i_nastani/241626/preporaka_na_narodniot_pravobranitel_do_vladata_na_republika_severna_makedonija,_za_zashtita_na_.aspx
- http://ombudsman.mk/mk/novosti_i_nastani/241625/preporaki_za_postapuvanje_so_liscata_lisheni_od_sloboda_vo_uslovi_na_pandemija_od_virusot_kovid-19.aspx

Human rights defenders and civil society space

In the course of the last year the Ombudsman Office has not detected any evidence or practice that negatively impacts the civil society space or the human rights defenders.

The Ombudsman Office closely cooperates with civil society organizations. The institution has signed memorandum of understanding (MoU) with some of them for joint action in the field of human rights, in particular in respect to issues related to the NPM field of work, the monitoring of the UN Convention on the persons with disabilities and Civil Control Mechanism.

In May 2020, with the support of USAID, the Ombudsman conducted a campaign to promote its competences and reach out the citizens in time of pandemic with covid-19. The campaign embraced television appearances, video spots and promotional materials (brochures). The results of the campaign proved increased public interest in the institution reflected in the number of complaints submitted in the period immediately after its end.

In occasion of the Human Rights Day, last year the Ombudsman Office and the American Embassy organized an online event with representatives of the civil society to jointly discuss the situation with human rights protection in time of pandemic.

Checks and balances

The Ombudsman Report of 2019 has not been discussed in the Macedonian Assembly during 2020 due to more urgent matters provoked with the pandemic but also early parliamentary elections, therefore no measures in respect to the Ombudsman'

recommendations have been adopted yet by the Assembly and submitted for implementation to the Government.

The Ombudsman Annual Report for 2020 was promoted at the end of March 2021 (its English version of the report will be available in the upcoming months). Most of the complaints submitted in 2020 referred to:

- the judiciary, more precisely to the work of enforcement agents in all segments - blocking accounts, confiscation of funds i.e. exempt from enforcement, order of payment, etc.;
- the area of labour relations, most complaints were submitted regarding the payment of salaries and allowances;
- consumer rights, problems regarding the delivery of electricity / disconnection of households from this system, which, in turn, affected the online learning of children;
- children's rights, problems were also noted, specifically disrespecting the right to personal contact of a parent, guardian or close relative with the child he/she does not live with, the right to alimony, a situation that must be resolved through legal amendments given the fact that this statement has been repeated in the ombudsman's annual reports for years.

References

- Annual Report for 2020: <http://ombudsman.mk/upload/Godisni%20izvestai/GI-2020/GI-2020.pdf>

Functioning of the justice system

The complaints in the field of Judiciary remain the most numerous even in 2020, but the Ombudsman notes a significant decrease in their number in comparison to previous years, especially the number of complaints related to the work of administrative courts, first instance courts and proceedings conducted in the second and third degree.

Most of the complaints refer to the length of the procedure, thus the Ombudsman concluded again that the Administrative Court and the Higher Administrative Court acted with delay, i.e. exceeding the legally prescribed deadlines.

The other complaints about the work of the courts referred to untimely responses received from the courts, lack of information regarding the stage of court proceedings, etc.

Having in mind that the Ombudsman 2019 Annual Report on the level of ensuring respect, promotion and protection of human rights has not been discussed in the Assembly, no measures have been determined yet. Therefore, the recommendations from 2019 remain valid, including the need to complete the reform of the administrative judiciary in order to ensure the application of legal norms in favour of the rule of law and the principle of justice and fairness and respect for human rights.

The Ombudsman highlights the need for a consistent application of the new Law on Administrative Disputes, regarding the determination of the obligations of the public bodies for submission of documents and data, i.e. compliance with the deadlines for submission of the requested data, and sanctions to be imposed in case of non-submission of documents and data.

In order to protect the rights of citizens in administrative proceedings, the Ombudsman intervened in specific cases by requesting that the data be obtained in a timely manner, the cases be handled by the courts, and the parties in the proceedings be timely notified of all measures and activities taken.

References

- <http://ombudsman.mk/upload/Godisni%20izvestai/GI-2019/GI-2019-Ang.pdf>

Media pluralism and freedom of expression

In general, the Institution has not detected any evidence of laws, measures or practices that could restrict a free and pluralistic media environment.

In 2019 the Ombudsman Office signed a MoU with the Macedonian Association of Journalists for the purpose of strengthening the level of protection of journalists' rights, enhancing the quality reporting and encouraging joint actions for better promotion of citizens' rights.

References

- http://ombudsman.mk/mk/aktivnosti/241529/potpishan_memorandum_za_sorabotka_pomegju_narodniot_pravobranitel_i_zdruzhenieto_na_novinari.aspx

Corruption

The Ombudsman institution does not have a mandate in this respect. However, when citizens complain about corruption, the institution provides advice and direct complainants towards the responsible body for the given matter.

Impact of measures taken in response to COVID-19 on the national rule of law environment

Most significant impacts of measures taken in response to the COVID-19 outbreak on the rule of law and human rights protection

The pandemic affected extensively the work of the institution, as it has impacted the life in general, however as a national human rights institution the Ombudsman acted timely in order to enable citizens to access their rights even in time of pandemic. With numerous public statements we urged the executive authorities to pay particular attention to human rights protection of vulnerable groups, children and persons deprived of liberty.

The Ombudsman (also National Preventive Mechanism), immediately after the declaration of the state of emergency, submitted recommendations to the competent institutions for treating persons deprived of liberty in time of pandemic, and during the year visited institutions for deprivation of liberty in order to determine the situation.

Similar recommendations for exercising the rights of vulnerable categories - children and persons with disabilities in conditions of a state of emergency were addressed to all relevant institutions in order to consistently respect the rights of this category of persons.

Indeed 2020, children's rights were the focus of many complaints submitted to the Ombudsman, e.g. regarding a number of weaknesses identified in enabling the child's right to uninterrupted education due to remote learning.

Beyond these focuses, other issues were identified in the Ombudsman Annual Report for 2020 (promoted at the end of March 2021, the English version of the report will be available in the upcoming months), regarding:

- social protection, proving that the citizens in conditions of a pandemic had difficulty exercising their rights. The main problem was the inability to exercise the right to guaranteed minimum assistance based on permanent deviations in health status, i.e. inability to work primarily due to the non-functionality of the commission that untimely resolved citizens' cases;
- prison system - The overcrowding in the penitentiary – an issue of serious concern of the earlier years now is significantly reduced but the accommodation conditions still remain not at the required level and do not meet the international standards that should be applied in terms of respect for human rights. Access to timely and adequate health care remains a problem that significantly affects the health of convicts / detainees. The problem with the lack of medical staff of the prison ambulances, the supply with sufficient medicines and adequate equipping has not been overcome either. No regular educational process has been introduced in accordance with the Strategy for Development of the Education and Learning Process in the Penitentiary difficulties for citizens to exercise their rights to health, pension and disability insurance;
- Other more general issues such as: citizens' dissatisfaction regarding urban planning and construction, taxes, due to unequal treatment in exercising the rights on various grounds; the return of confiscated property-denationalization and the work of the Cadastre are the main weaknesses in the area of property-legal relations.

References

- Annual Report for 2020: <http://ombudsman.mk/upload/Godisni%20izvestai/GI-2020/GI-2020.pdf>
- Special report on the manner of conducting online teaching: http://ombudsman.mk/mk/novosti_i_nastani/241639/poseben_izveshtaj_od_sprovede_noto_istrazhuvanje_za_nachinite_na_realizacija_na_onlajn_nastavata_vo__.aspx
- Ombudsman' opinion on the manner for protection of children under the age of 10 and their care in time of pandemic: http://ombudsman.mk/mk/novosti_i_nastani/241636/mislenje_na_narodniot_pravobranitel_za_nachinite_za_zashtita_na_pravata_na_decata_do_10_godini_kako__.aspx
- Ombudsman recommendation for treatments of persons deprived of liberty in time of pandemic: http://ombudsman.mk/mk/novosti_i_nastani/241625/preporaki_za_postapuvanje_so_lichnata_licheni_od_sloboda_vo_uslovi_na_pandemija_od_virusot_kovid-19.aspx
- Ombudsman recommendation for treatment of vulnerable categories in time of pandemic: http://ombudsman.mk/mk/novosti_i_nastani/241626/preporaka_na_narodniot_pravobranitel_do_vladata_na_republika_severna_makedonija,_za_zashtita_na__.aspx
- Ombudsman recommendation for treatment of children' rights in time of pandemic: http://ombudsman.mk/mk/novosti_i_nastani/241627/preporaki_na_narodniot_pravobranitel_za_ostvaruvanjeto_na_pravata_na_deteto_vo_uslovi_na_proglasena__.aspx

Most important challenges due to COVID-19 for the NHRI's functioning

The COVID – 19 pandemic affected the life of everyone in the country and accordingly the manner of functioning of the institutions in general. The work of the Ombudsman institution was affected both in terms of the number of complaints received and in terms of all other activities, both domestically and internationally. In this sense, the implementation of the planned campaigns, promotions, conferences, research was missing.

For almost a year the institutions are working in shifts: the employees are divided in groups in order to minimize the possibility of spreading widely the virus and avoid gatherings. The physical distancing is present everywhere and the whole working process is online. The

online work imposed new requirements at least from the aspect of technical equipment required for that purpose. As the physical presence of citizens was limited and very restrictive, the institution remained open for receiving complaints on the phone and electronically via email and on the web site.

However, as an institution, the Ombudsman did not have serious obstructions in terms of fulfilling its mandate and activities. In several occasions the institution reacted with public statements and in certain cases with special reports in regard to marginalized groups of citizens and children (cf references).

In May 2020, with the support of USAID, the Ombudsman conducted a public, online campaign to promote its competences and reach out the citizens in time of pandemic with covid-19. The campaign embraced television appearances, video spots and promotional materials (brochures). The results of the campaign proved increased public interest in the institution reflected in the number of complaints submitted in the period immediately after its end.

In occasion of the Human Rights Day, last year the Ombudsman Office and the American Embassy organized an online event with representatives of the civil society for the purpose to jointly discussing the situation with human rights protection in time of pandemic.

Although in the first half of the year, when the pandemic was declared, the National Preventive Mechanism suspended its visits to places of deprivation of liberty as per the instructions of the Subcommittee for the prevention of torture (SPT), in the second half of the year the visits resumed by respecting the protocols for prevention against the virus.

Northern Ireland

Northern Ireland Human Rights Commission

Accreditation status and SCA recommendations

The Northern Ireland NHRI was [reaccredited](#) with A status in May 2016. First, the SCA noted the NHRI's concerns on the limitation of its mandate with regards to its monitoring and investigative functions. Second, the SCA encouraged the NHRI to continue advocating for the formalization of an open, broad and transparent selection and appointment process, the appointment of full-time members with an appropriate term of office, as well as the explicit power to table and promote action on reports directly in the legislature.

The NHRI has been [placed in the agenda](#) for reaccreditation in SCA Session of October 2021.

Impact of 2020 rule of law reporting

Follow-up initiatives by the Institution

The Northern Ireland Human Rights Commission (NIHRC) has, since the previous rule of law report, provided further advice to the Secretary of State for Northern Ireland (NI) in respect of the operation of non-jury trials in NI and the prospect of the continuation of temporary legislation, which has now been extended on six occasions.[1] There have been further incidents of threats against journalists in the previous year, with several instances of threats against investigative journalists working for the BBC and Sunday World newspaper, and investigating organised crime. In February 2021, the NIHRC made a public statement condemning the threats [2] and has also written to the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, Irene Khan. The NIHRC continues to monitor COVID-19 restrictions.

References

- [1] NIHRC, Letter to the Secretary of State for NI in response to the consultation on Non-Jury Trials: Justice and Security (NI) Act 2007
- [2] NIHRC, Human Rights Commission condemns threats to journalists (17 February 2021) available at: <https://www.nihrc.org/news/detail/human-rights-commission-condemns-threats-to-journalists>

Independence and effectiveness of the NHRI

Changes in the regulatory framework applicable to the Institution

There have been no changes to the NIHRC's grounding legislation since the 2020 report. However, as a consequence of the EU (Withdrawal Agreement) Act 2020[1], the UK Government committed to ensuring that particular rights in Northern Ireland (under the Belfast (Good Friday) Agreement 1998)[2] will continue to be upheld following Brexit. In accordance with this, a NIHRC's additional mandate has come into force on 1 January 2021: together with the Equality Commission for Northern Ireland, the NIHRC will act as the 'Dedicated Mechanism' under the Ireland/ Northern Ireland Protocol of the EU and UK Government Withdrawal Agreement to ensure the compliance of the UK Government with their commitments. In particular the new powers include:

- Monitoring how the commitment is implemented;
- Reporting on its implementation to the Secretary of State for Northern Ireland and The Executive Office;
- Advising the Secretary of State and the Executive Committee of the Northern Ireland Assembly of legislative and other measures that must be taken to implement the commitment;
- Advising the Northern Ireland Assembly (or a committee of the Assembly) whether a Bill is compatible with the commitment;
- Promoting understanding and awareness of how important the commitment is;
- Powers to bring, or intervene in, legal proceedings in respect of an alleged breach (or potential future breach) of the commitment; and
- Powers to assist individuals in relevant legal proceedings.

References

- [1] EU (Withdrawal Agreement) Act 2020. Available at: <https://www.legislation.gov.uk/ukpga/2020/1/contents/enacted>
- [2] Belfast (Good Friday) Agreement 1998. Available at: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/136652/agreement.pdf

Enabling space

In respect of the legislative process, the NIHRC receives a copy of every Bill that is introduced to the NI Assembly to enable consideration of whether advice on human rights compliance under our statutory functions, is required. The NIHRC often receives requests for advice on proposed law and policy directly from Ministers, departmental officials and standing Committees of the NI Assembly. Most recently issues that the NIHRC has responded to include: restrictive practices in schools, biometric data retention and the implications of the proposed UK legislation on data extraction. The NI Assembly can also refer a matter to the NIHRC for advice, which most recently occurred in February 2021 in respect of proposed changes to abortion law. The NIHRC engages with all government departments through regular meetings, membership of reference/advisory groups and through formal written advice and responses to public consultations. The NIHRC regularly provides oral and written briefings to Committees, both at the NI Assembly, UK and Irish Parliaments, on a range of issues such as a Bill of Rights for Northern Ireland, citizenship, and the ongoing review of human rights legislation in the UK.

The NIHRC engages with all relevant statutory bodies and civil society organisations working on the promotion and protection of human rights. This is done through a series of regular meetings, collaborative working and specific engagement on issues of joint concern. This includes a relationship with the Equality Commission for NI, the domestic equality authority, with which the NIHRC shares the UNCRPD mandate and operates as the Dedicated Mechanism in respect of the non-diminution of rights post Brexit. The NIHRC also cooperates closely with the other UK NHRIs and the Irish Human Rights and Equality Commission.

Developments relevant for the independent and effective fulfilment of the NHRIs' mandate

Due to the UK COVID-19 restrictions, the NIHRC office remains closed and all staff are working from home. This has meant that all events, visits and meetings have moved online, where possible. Engagement with government departments, the NI Assembly and UK Westminster Parliament continues, albeit virtually. The NIHRC has sought to ensure continuing access for individuals seeking advice on human rights matters.

The NIHRC has continued its negotiations with the UK Government in respect of enhancing its core budget to be able to carry out its statutory functions. Indeed the NIHRC has faced regular budget cuts over the past decade. These negotiations led to an increased budget of £1,689,885 for the year 2021/22. The NIHRC has also received a budget of £838,000 for

its role as part of the Dedicated Mechanism, under the EU (Withdrawal Agreement) Act 2020. However, despite this, the NIHRC has since been informed that it may face further budget cuts in light of the UK government spending review.

The NIHRC will be engaging in the reaccreditation process with the SCA in 2021, with a view to retaining its A status.

Human rights defenders and civil society space

In May and June 2020, there were a series of anti-racism protests in NI in response to the global 'Black Lives Matter' movement.[1] At that time, the existing iteration of the Health Protection (Coronavirus, Restrictions) (NI) Regulations, which are aimed at preventing the spread of COVID-19, prohibited gatherings in public spaces of more than two people with limited exceptions. The regulations also provided the Police Service NI with the powers to restrict freedom of movement and protests for this purpose. The Police Service NI issued a number of fines to 'Black Lives Matter' protestors under these regulations.

However, subsequent protests by the NI Cenotaph Protection Group reportedly took place without fines being issued. The Police Ombudsman NI investigated the use of police powers in relation to large public gatherings during this period, reporting in December 2020. It found that there was no evidence of human rights considerations in the decision making process.[2] In November 2020, the Policing Board NI, in its review of the Police Service NI's response to COVID-19, acknowledged that there was an "apparent inconsistency in approach to the enforcement of all large gatherings of people during April, May and June 2020".[3]

The Policing Board NI recommended that the Police Service NI should report to the Board on any lessons learnt; hold discussions with organisers "to ensure peaceful protests are facilitated and that both sides understand the positive obligations of the police and the key role of the organisers"; create an Independent Advisory Group on protests; and hold a seminar with key stakeholders, including the NIHRC, to assist "with ensuring a consistent approach to all protests".

Civil society raised concerns over both the inconsistency in police approach to the protests, and an excessive use of police powers in some cases.

References

- [1] 'Coronavirus: Anti-racism rallies in Belfast and Londonderry', BBC News, 6 June 2020.
- [2] Police Ombudsman NI, 'An Investigation into Police Policy and Practice of Protests in NI' (22 December 2020) at 9.4. Available at: <https://www.policeombudsman.org/PONI/files/85/858a4b0b-9b99-4921-b947-5fae248ba683.pdf>
- [3] Policing Board NI, 'Report on the Thematic Review of the Policing Response to COVID-19' (PBNI, 2020), at 56

Checks and balances

The NIHRC initiated judicial review proceedings in 2020 against the UK Government in respect of election law in NI, which required the publication of the home address for candidates standing in local elections. The NIHRC argued that this was in breach of Article 8 ECHR, putting victims of domestic violence, or those concerned about their safety, at risk by requiring the publication of their home address. The Secretary of State for NI introduced The Local Elections (NI)(Amendment) Order 2020, which came into force in July 2020, removing the requirement to publish a home address.[1]

The NIHRC continues to advise in respect of the proposed arrangements for dealing with the legacy of the past in NI, including mechanisms for investigating deaths during the conflict. In March 2020, the UK Government announced a new approach to addressing the legacy of the past - indicating a significant roll back on previous commitments. The NIHRC has written to the Secretary of State for NI in respect of its concerns and also engaged with the NI Affairs Committee which initiated an inquiry into legacy proposals.[2]

The NIHRC has also intervened as a third party, in the matter of *Gribben v the United Kingdom*, before the European Court of Human Rights. This case relates to the death of Martin McCaughey in 1990. The family continue to argue, despite a previous ECtHR judgment, that the recent coronial investigation was not Article 2 ECHR compliant. The NIHRC has previously made a joint intervention with the Equality and Human Rights Commission (GB) in earlier litigation. A hearing is awaited.

The Committee of Ministers, in March 2021, reopened their supervision of the *Finucane v UK* case, following a UK Supreme Court judgment that there has not been an Article 2 ECHR compliant investigation into the death.[3] The NIHRC has made Rule 9 submissions to the Committee of Ministers in respect of the supervision of the *McKerr v UK* group of cases and *Finucane v UK*, highlighting the lack of progress in addressing the outstanding investigations. [4]

The NIHRC has also responded to a consultation looking at a review of human rights legislation in the UK. The NIHRC has, together with the other UK NHRIs, provided oral evidence to the Joint Committee on Human Rights in this respect.[5].

The NIHRC has exercised its legal powers to ensure judicial oversight in a number of occasions over the past year, including initiating own motion litigation, intervention before the ECtHR and *amicus curiae* submissions before the domestic courts. The NIHRC :

- initiated judicial review proceedings against the NI Secretary of State, Minister for Health and NI Executive in respect of failures to commission and fund abortion healthcare services in NI. This case was heard in May 2021 and judgment is awaited.
- initiated judicial review proceedings against the Department of Justice NI, challenging rehabilitation of offenders legislation, arguing that the failure to provide a review mechanism to challenge the lifetime disclosure of convictions of sentences over 30 months is in breach of article 8 ECHR. This case was heard in May 2021 and judgment is awaited.
- intervened, by way of written submissions, before the ECtHR in the matter of *Gribben v UK* on the issue of Article 2 compliance of coronial investigations.
- provided written submissions in a mental health matter before the NI High Court, considering the application of Article 5 ECHR in respect of discharge from mental health detention.

References

- [1] NIHRC, Annual Statement 2020. Available at: <https://www.nihrc.org/publication/detail/annual-statement-2020>
- [2] NIHRC, Human Rights Commission secures settlement for Mairia Cahill from the Northern Ireland Office (Jan 2021) Available at: <https://www.nihrc.org/news/detail/human-rights-commission-secures-settlement-for-mairia-cahill-from-the-northern-ireland-office>

- [3] In the Matter of an Application by Geraldine Finucane for Judicial Review (NI) [2019] UKSC 7.
- [4] NIHRC, Submission to the Committee of Ministers in Relation to the Supervision of the Cases Concerning the Actions of the Security Forces in Northern Ireland (May 2020). Available at: <https://nihrc.org/publication/detail/submission-to-the-committee-of-ministers-in-relation-to-the-supervision-of-the-cases-concerning-the-actions-of-the-security-forces-in-northern-ireland>
- [5] NIHRC, Submission to the Independent Review of the Human Rights Act (March 2021). Available at: <https://www.nihrc.org//Publication/detail/submission-independent-human-rihts-act-review-teams-call-for-evidence>

Functioning of the justice system

There have been a number of reviews by the UK government in respect of administrative law and the Human Rights Act. The review of administrative law consultation has reported and a second consultation (following the report of the first review) was launched in March 2021.[1]

In March 2021, the NIHRC has contributed to the consultation to the Independent Review of the Human Rights Act by way of a written submission,[2] The NIHRC also provided a written response to the Joint Committee on Human Rights, and provided oral evidence alongside the other UK NHRIs.[3] The NIHRC recommended that the current approach of the legislation to judicial dialogue, the interpretation of ECtHR jurisprudence and the margin of appreciation should remain. The NIHRC did not recommend any changes to the provisions dealing with remedy, derogation or secondary legislation. We recommended that it should apply to public authorities in overseas territories.

References

- [1] <https://www.gov.uk/government/consultations/judicial-review-reform>
- [2] NIHRC, Submission to the Independent Review of the Human Rights Act (March 2021) Available at: <https://www.nihrc.org/publication/detail/submission-independent-human-rights-act-review-teams-call-for-evidence>
- [3] JCHR, Oral Evidence Session (10 March 2021) <https://committees.parliament.uk/event/3911/formal-meeting-oral-evidence-session/>

Media pluralism and freedom of expression

As reported on last year, the NIHRC continues to highlight concerns about death threats made to journalists in NI, whose work includes investigating organised crime and paramilitarism. Threats, in the form of graffiti, appeared in a number of areas in February 2021 and the Police Service of NI has also warned of threats made to the BBC Panorama team following its investigation into a suspected crime boss. This echoes the murder of journalist Martin O'Hagan in 2001 and Lyra McKee in 2019. The NIHRC has raised its concerns with the Special Rapporteur on the promotion and protection of the right to freedom of opinion an expression, Irene Khan.

The NIHRC has planned further work in this area in the coming year.

Impact of measures taken in response to COVID-19 on the national rule of law environment

Most significant impacts of measures taken in response to the COVID-19 outbreak on the rule of law and human rights protection

On 25 March 2020, the Coronavirus Act 2020 was enacted, introducing new **emergency powers** to help contain and cope with COVID-19. These powers have a time limit of two years and can only be used where necessary to deal with the COVID-19 public health crisis. It is possible that some of the powers set out in the Act may never be applied. In terms of holding the UK Government to account in its use of these powers, the Coronavirus Act is to be reviewed by UK Parliament after six months and the Secretary of State must provide a report on the powers that are used every two months. Supporting legislation was enacted

by the NI Assembly, which provides the detail of how certain aspects of the Coronavirus Act 2020 apply in NI. From 15 May 2020, the NI Executive had been gradually taking steps, including enacting amended versions of the original legislation, to ease the restrictions in place since 28 March 2020. In September 2020, the NI Executive started implementing some localised restrictions for set periods, guided by medical advice. In October 2020, increased restrictions were expanded across the whole of NI for set periods. The tightening and loosening of restrictions is subject to constant review by the NI Executive, guided by the Department of Health and medical advice. This approach is due to continue into 2021.

The NIHRC has engaged with the Department of Health on a number of specific issues arising from the extension of restrictions due to COVID-19. For example, it has provided advice to the Minister for Health in respect of a human rights impact assessment on managed quarantine; and to the Committee for Health in respect of the impact of restrictions to children and young people resulting in a decision not to extend the relevant regulations. Most recently, the NIHRC has been meeting with officials on proposals to introduce vaccination certification or passports.

There have been a number of inquiries at Westminster that have considered the UK Government's response to COVID-19. The House of Commons and House of Lords Joint Committee on Human Rights considered the UK Government's response from a human rights perspective. The House of Commons Women and Equalities Committee considered the UK Government's response from the perspective of protected characteristics and a sub-inquiry focusing on the impact on persons with disabilities. The House of Commons Treasury Committee considered the UK Government's tax measures after COVID-19. The NIHRC provided written evidence to each of these inquiries.[1]

In June 2020, the NIHRC and Equality Commission NI as the UN CRPD Independent Mechanism in NI jointly hosted two roundtables with key stakeholders on issues facing **persons with disabilities** in NI due to COVID-19. The issues raised during these roundtables informed the UN CRPD Independent Mechanism in NI's submission to the UK House of Commons Women and Equalities Committee's sub-inquiry into the unequal impact of COVID-19 on disability and access to services. [2]

The statistical updates provided by the Department of Health indicate around half of COVID-19 related deaths to date involved **care home residents**, either in the care home or in hospitals. Indications are that the high numbers of deaths within care homes may be linked to the slow introduction of testing within such settings, discharging patients to care homes without those individuals being tested for COVID-19, the late arrival of Personal Protective Equipment, the delay in including care home deaths in COVID-19 statistics to

enable an understanding of the issue, and the relative under funding and general neglect of the care home sector. In May 2020, these concerns were highlighted in a joint statement by the NIHRC and Commissioner for Older People NI.[3] The NIHRC also raised these issues with the House of Commons and House of Lords Joint Committee on Human Rights and House of Commons Women and Equalities Committee in response to their inquiries into the UK Government's response to COVID-19.[4]

There have been particular delays across the functioning of the **justice system** as a consequence of COVID-19 and court closures. The NIHRC has raised the particular issue of delay at the Office of the Fair Employment and Industrial Tribunals with the Minister for Economy, highlighting the importance of access to justice in respect of employment matters and the particular vulnerabilities of those applicants in employment and discrimination cases.

Civil society has raised concerns over both the inconsistency in the use of **police powers in protests** that took place in 2020, and an excessive use of police powers in some cases (more information in 'Human rights defenders and civic space' section).

References

- [1] NI Human Rights Commission, 'Response to the Women and Equalities Committee Inquiry into the Government's Response to COVID-19: Human Rights Implications' (NIHRC, 2020); 'Women and Equalities Committee's Inquiry into the Unequal Impact of COVID-19: Disability and Access to Services' (NIHRC, 2020)
- NIHRC, 'Response to the Treasury Committee Inquiry into Tax after Coronavirus' (September 2020)
- [2] UN CRPD Independent Mechanism of NI, 'Submission to Women and Equalities Committee's Inquiry into the Unequal Impact of COVID-19: Disability and Access to Services' (NIHRC and ECNI, 2020).
- NI Human Rights Commission, 'Women and Equalities Committee's Inquiry into the Unequal Impact of COVID-19: Disability and Access to Services' (NIHRC, 2020).
- [3] NI Human Rights Commission, 'Press Release: Joint Statement from Chief Commissioner and Commissioner for Older People on COVID-19', 6 May 2020.

- [4] NI Human Rights Commission, 'Response to Joint Committee on Human Rights Inquiry into the Government's Response to COVID-19: Human Rights Implications' (NIHRC, 2020).
- NI Human Rights Commission, 'Response to the Women and Equalities Committee Inquiry into the Government's Response to COVID-19: Human Rights Implications' (NIHRC, 2020); 'Women and Equalities Committee's Inquiry into the Unequal Impact of COVID-19: Disability and Access to Services' (NIHRC, 2020)

Most important challenges due to COVID-19 for the NHRI's functioning

In line with Government requirements due to the COVID-19 pandemic, and to ensure the safety of staff and the wider public, the NIHRC has had to close its physical offices. The NIHRC is continuing to operate remotely through email, phone and online facilities. The general public is able to continue to contact the NIHRC for human rights advice, via email and phone, and the litigation function is ongoing, albeit impacted by delays in the court process.

The NIHRC is able to continue to advise government and engage with its stakeholders through conference facilities, email and, on the rare occasion, in socially distanced meetings (for example providing oral evidence to NI Assembly Committees).

The NIHRC has managed to maintain its monitoring capacity and to deliver its services without much disruption. The area most affected by the restrictions are the institutions' public events, which have all been cancelled for the foreseeable future. The NIHRC continues to host replacement events through online platforms, where appropriate. The NIHRC also continues to keep the public informed of its activities through its website and social media.

The NIHRC does not operate as the NPM.

Norway

Norwegian National Human Rights Institution

International accreditation status and SCA recommendations

The Norwegian NHRI was accredited with A status in March 2017. The SCA acknowledged that, in practice, the selection and appointment process is conducted in an open and transparent manner. However, it called for the formalisation of a clear, transparent and participatory selection and appointment process for an NHRI's decision-making body in relevant legislation, regulations or binding administrative guidelines, as appropriate. The SCA also welcomed the engagement of the NHRI with other human rights actors while, at the same time, encouraged the NHRI to continue to develop and formalise such working relationships.

Impact of 2020 rule of law reporting

Follow-up by State authorities

The Norwegian NHRI (Norges institusjon for menneskerettigheter – NIM) is not aware of any particular initiatives on the part of the Government on the issues raised in the 2020 ENNHRI rule of law report.

Follow-up initiatives by the Institution

Rule of law is a priority for the NIM. The institution benefited from useful information contained in the 2020 ENNHRI Rule of law report, i.a. regarding issues of concern to different NHRIs, as well as common challenges. The institution has not, however, had any specific follow-up initiatives based on the report.

The main reason for not having taken any specific initiatives based on the report is that other priorities have taken most of NIM's time, including studies on the human rights implications of the measures taken to combat Covid-19.

Independence and effectiveness of the NHRI

Changes in the regulatory framework applicable to the Institution

There were no changes in the regulatory framework applicable to the Norwegian NHRI in 2020.

It should, however, be mentioned that when the NHRI was established, it was decided that the institution should be evaluated after four years of operation. The NIM has been in operation since 2016. This evaluation has now been carried out by an independent consultant and the report was handed over to the Presidency of Parliament on 18th December 2020. The report will be considered by the NIM and shall be considered by Parliament. It is, however, not yet known when this will take place.

The purpose of the evaluation has been to assess whether the NHRI, with its current organisation and use of resources, is carrying out its tasks in an appropriate and cost-effective manner, and in line with the main purpose of the establishment of the NHRI, which is to strengthen the implementation of human rights in Norway.

References

- Evaluering av NIM (nhri.no) (in Norwegian)

Enabling space

The conditions are good for the Norwegian NHRI to effectively carry out its work. Regarding follow-up to its recommendations, NIM has a constructive dialogue with the authorities also on issues where their opinions diverge.

Human rights are well integrated into the Norwegian legal system and Norwegian courts follow a general principle that domestic law should be interpreted in accordance with international law. The drafting and consultation procedures for new legislation also include a thorough consideration of human rights implications.

Developments relevant for the independent and effective fulfilment of the NHRIs' mandate

Apart from the general challenges due to Covid-19, there were no significant changes in 2020 in the environment in which the Norwegian NHRI operates.

The Norwegian NHRI submits its annual budget proposals to Parliament. The resources allocated to the Norwegian NHRI are sufficient to enable it to carry out its mandate in an efficient way. NIM has, however, proposed to Parliament to allocate increased resources to the NHRI in order to meet increased demands.

Human rights defenders and civil society space

The Norwegian NHRI has not found any evidence of laws, measures or practices that could negatively impact civic space or reduce human rights defenders' activities.

In 2019, the Norwegian NHRI conducted a survey on HRDs in Norway, in cooperation with the Norwegian NGO- Forum on Human Rights. NIM published a report based on the results of our survey. The results indicate that HRDs in Norway are not subjected to the same types of pressures than in many other countries. Nevertheless, it is important to map the situation in Norway and identify possible challenges for Norwegian HRDs in their daily work. Reference is made to the 2020 report for further information about the survey.

As concerns engagement with international mechanisms in support of HRDs, Norway has for several years had the responsibility for submitting draft resolutions on HRDs in the UN General Assembly as well as the Human Rights Council. The NHRI is consulted by the Norwegian MFA in the process of drafting these resolutions and is invited to submit comments and proposals.

Checks and balances

The Norwegian NHRI has not found any examples of laws, processes or practices impacting the system of checks and balances

The Norwegian NHRI does not have sufficient evidence to state whether the authorities do enough to foster a high level of trust. The general impression is, however, that there is a high level of trust in Norway.

Norway is a parliamentary democracy, with free and fair elections, robust institutions, a vibrant press and an active civil society. Norway has topped the UN's Human Development Index for over a decade and consistently ranks high in indicators of democracy, the rule of law and human rights. The Norwegian Constitution includes strong protections for civil and political rights and certain social and economic rights. The Constitution also provides a right to access public documents and requires the Norwegian State to facilitate 'open and enlightened public discourse'.

The drafting and consultation procedures for new legislation include a thorough consideration of human rights implications. The Norwegian NHRI is invited to submit comments and proposals to all relevant legislative initiatives. The drafting of such comments and proposals is a major part of its work.

NIM is in regular contacts with the authorities, in writing as well as through meetings, where we raise concerns and proposals. We also have frequent dialogue with Parliament on various human rights issues. In this connection mention should be made to proposals we have made to Parliament to consider inserting a derogation provision in the Constitution and to adopt a constitutional provision on independence of the prosecution authorities. Furthermore, the NHRI has proposed that a separate limitation provision be inserted in chapter E (on human Rights) of the Constitution. Such a provision should state that limitations of the constitution's rights have to be stipulated by law, respecting the core rights and be proportionate and necessary to safeguard public interests or other human rights. It should also specify which provisions cannot be subject of limitations (link to the letter to the Justice Committee of Parliament below).

According to the Act relating to the Norwegian National Human Rights Institution, the NHRI shall submit annual reports on its activities to Parliament. The report is first considered by the Justice Committee which makes proposals on how to follow up the report and its recommendations to the Parliament in plenary, which makes the final decisions.

NIM has not encountered obstacles to its work to support a strong system of checks and balances in Norway.

References

- <https://www.nhri.no/en/2019/norways-strong-human-rights-record/>
- <https://www.nhri.no/wp-content/uploads/2020/09/Brev-til-justiskomiteen-om-derogasjon.pdf> (In Norwegian)

Functioning of the justice system

The Norwegian NHRI has, on several occasions, made statements on the system of legal aid. In its submission to the UN Human Rights Committee in connection with the Committee's consideration of Norway's 7th periodic report, it stressed that legal aid in civil cases may, under certain circumstances, be a prerequisite for the right to access to court. NIM suggested that the Committee recommend that the "State party should put in place a

statutory framework and administrative practice which ensures legal aid that guarantees the right of effective access to court”.

The system of legal aid is currently under review by the Government. In this connection, the Norwegian NHRI has submitted comments (see references below) to make sure that human rights aspects related to legal aid are adequately addressed. At the same time, the institution questioned whether the needs of vulnerable groups are sufficiently addressed in the process. The NIM has also pointed out that legal aid should have a wider scope of application in certain disputes between former spouses, i.a. property disputes and disputes concerning child custody.

It should be added that the Norwegian NHRI does not have competence to hear individual cases concerning violations of human rights.

As mentioned in the 2020 ENNHRI rule of law report, the NIM expressed concerns over the inadequate funding of the Norwegian courts and how this has led to longer case processing times, that in some cases may have amounted to violations of the right to a judicial decision within a reasonable time, which is recognised in both the Norwegian Constitution and the European Convention on Human Rights (ECHR). In the 2020 ENNHRI report, the NIM also noted that it had provided the Courts Commission (which was appointed by royal decree to investigate the organisation and independence of the Norwegian courts), with a report entitled “The Human Rights Framework for the Independence of the Courts”, which discussed relevant legal requirements set out in the Constitution, the ECHR and the ICCPR, as well as recommendations from international human rights bodies. The NHRI emphasised the need for stability and predictability in the financing of the courts, recommending that funding should be based on objective and predictable criteria so as not to be affected by policy changes or discretionary decisions of other authorities. We also highlighted that the courts should have a sufficient number of judges and qualified support staff to enable them to work effectively. For more details, see the ENNHRI 2020 rule of law report.

References

- <https://www.nhri.no/2020/rettshjelpsutvalgets-utredning-nou-20205/> (In Norwegian)
- NIM brev (nhri.no) (In English)

Media pluralism and freedom of expression

The Norwegian NHRI has not found evidence of laws, measures or practices in Norway that restrict a free and pluralist media environment. However, the institution has in previous years commented on some legislative and policy developments with a view to further strengthening media pluralism in Norway. More detailed information is included in the chapter on Norway of the 2020 ENNHRI Rule of law report.

Corruption

NIM monitoring has not detected any evidence of corruption in Norway.

Impact of measures taken in response to COVID-19 on the national rule of law environment

Most significant impacts of measures taken in response to the COVID-19 outbreak on the rule of law and human rights protection

The Norwegian NHRI has undertaken several activities during Covid-19 (link to NIM Covid-19 related work in references): for instance, NHRI's submission to the Parliamentary Committee on Special Issues Concerning the Corona Crisis, as well as written hearing submissions regarding temporary regulations made pursuant to the Corona Act. One of these submissions concerned measures to strengthen the efficiency of the judicial system and the other concerned the enforcement of penalties in the criminal justice system. The report to the Parliamentary Committee is also issued as a special thematic report (link in references). In this report NIM addresses how human rights have been safeguarded by the authorities' handling of Covid-19. NIM recently issued a report on vaccination and human rights, where it i.a. explain what measures a state can use to ensure that a desired vaccine programme is implemented, see link to the report below.

In the consultations concerning a proposal from the Government to insert a provision on curfew in the Infection Control Act., the Norwegian NHRI, in a letter of 29 January 2021, advised against such a provision. In NIM's view, it seems that a curfew enacted in connection with Covid-19 would not be a necessary measure, and thus not a lawful restriction on human rights. However, the Government has now withdrawn this proposal.

The Norwegian NHRI sent on 13 January 2021 a letter to the Minister of Education and the Minister of Children and Families on involvement of children in designing measures to

combat Covid-19 , and on 26 January 2021 a letter to the Minister of Children and Families, emphasising the rights of the child during Covid-19. (links in references).

NIM has not done any particular study on long term impacts of the pandemic . This is, however, an interesting question that should be addressed.

The Norwegian NHRI had meetings with the Minister of Children and Families and the Minister of Health and Care Services where it addressed human rights implications of the combat against Covid-19. The institution also has a constructive dialogue with the Norwegian Institute of Public Health on these issues.

In Norway, the municipalities have an important role in combatting infectious disease. NIM has recently sent a letter to Oslo Municipality on their human rights obligations in combatting Covid-19 (link below), and is in the process of preparing a similar letter to all other municipalities in Norway.

References

- NIMs Work During Coronavirus (COVID-19) Pandemic - NIM (nhri.no)
- <https://www.nhri.no/2020/ivaretagelsen-av-menneskerettighetene-ved-handteringen-av-utbruddet-av-covid-19/> (The Covid-19 report. Norwegian)
- Vaksinasjon og menneskerettigheter - NIM (nhri.no) (Norwegian)
- NIM brev (nhri.no) (Norwegian)
- <https://www.nhri.no/wp-content/uploads/2021/01/Norges-institusjon-for-menneskerettigheter-Vedrorende-involvering-av-barn-og-unge-under-covid> (Letter to Minister of Education and Minister of Children and Families. Norwegian)
- NIM brev (nhri.no) To the Minister of Children and Families. In Norwegian.
- NIM brev (nhri.no) Letter to the municipality of Oslo. (Norwegian).

Most important challenges due to COVID-19 for the NHRI's functioning

In Norway, the National Preventive Mechanism is part of the mandate of the Parliamentary Ombudsman. The main challenges for the NHRI derive from the fact that meetings, seminars, etc. must be conducted online, and that the staff must work from home.

Poland

Commissioner for Human Rights

International accreditation status and SCA recommendations

The Polish NHRI was [re-accredited](#) with A status in November 2017. The SCA encouraged the NHRI to advocate for amendments to its enabling legislation to require a pluralistic composition in its membership and staff, and for changes that would guarantee, for Deputy Commissioners and staff of the NHRI their protection from legal liability for actions undertaken in good faith in their official capacity. The SCA also underlined the need for the provision of adequate funding to enable the NHRI to effectively carry out its mandate.

Impact of 2020 rule of law reporting

Follow-up by State authorities

No information as regards the application of the 2020 ENNHRI Rule of Law Report by other state authorities is available. This is due to the fact there has not been any positive developments in this area in Poland.

Impact on the Institution's work

The 2020 ENNHRI Rule of Law Report has been used by the CHR in his activities as an important point of reference.

Follow-up initiatives by the Institution

The CHR has undertaken different forms of action:

I. Strategic judicial litigation, proceedings before:

1. CJEU, 2. ECHR (amicus curiae briefs), 3. National courts (the Constitutional Court, the Supreme Court, common courts, administrative courts, specialized courts, e.g., competition court).

II. Presentation of CHR opinions:

1. Rule 9 submissions to Committee of Ministers of CoE, 2. Opinions for UN treaty bodies

III. Opinions on the legislative process directed to:

1. Parliament, 2. Council of Ministers, 3. Ministers, 4. Other public authorities and bodies.

IV. Publishing independent reports

V. Education and awareness raising 1. Series of online interviews and podcasts with lawyers engaged in rule of law protection, 2. Online seminars, 3. Social media events.

Independence and effectiveness of the NHRI

Changes in the regulatory framework applicable to the Institution

In September 2020, a group of deputies to the Sejm applied to the Constitutional Tribunal (K 20/20) to examine the compliance of Art. 3 sec. 6 of the Act of 15 July 1987 on the Commissioner for Human Rights with Art. 2 of the Constitution of the Republic of Poland, i.e., with the principle of a democratic state ruled by law and the resulting principle of citizens' trust in the state and the law it enacts, as well as with the principle of justice and Art. 209 paragraph. 1 of the Constitution, which defines the term of office of the Commissioner for Human Rights (CHR). The case concerns the performance of duties by the Commissioner for Human Rights, after the expiration of the five-year term of office, until the new Commissioner for Human Rights will take office. On 15 April 2021, the Constitutional Tribunal of Poland [delivered a judgement](#) declaring Article 3, paragraph 6 of the Act on the Commissioner for Human Rights of Poland, which provides that the Commissioner will remain in office until the new office-holder is appointed, unconstitutional. The Constitutional Tribunal also decided that the existing transitional provision shall cease to apply three months after 15 April 2021, the date when this decision was published in the Journal of Laws of the Republic of Poland.

References

- Application to the Constitutional Tribunal
<https://ipo.trybunal.gov.pl/ipo/view/sprawa.xhtml?&pokaz=dokumenty&sygnatura=K%2020/20>
- ENNHRI, Equinet, GANHRI, IOI, OSCE ODIHR, UN OHCHR Joint statement in support of the Office of the Polish Commissioner for Human Rights
- http://ennhri.org/wp-content/uploads/2021/05/Joint-Statement-in-Support-of-the-Polish-NHRI_ENG.pdf

Enabling space

The CHR gives opinions on bills important for civil rights and freedoms, regardless of whether the competent authorities ask him for his opinion. However, often the Commissioner's opinions are not taken into account by the government, even if there was a slight overall improvement in 2020.

The president of the Constitutional Tribunal – Mrs Julia Przyłębska started to set deadlines for the CHR's interventions before the Court that are inconsistent (shorter) with the provisions of the law for submitting a position in cases before the Tribunal. One of the examples is case No. K 6/20, concerning electoral law, where the CT president shortened the time for the CHR opinion from statutory 30 days to 22 hours.

It is worth to notice that on 9 September 2020, the term of the current Commissioner for Human Rights ended. However, no successor has yet been elected. The candidate and member of the ruling "Law and Justice" (PiS) party was rejected by the Senate, while a candidate supported by non-governmental organizations was rejected three times during a vote in the Sejm. The Marshall of Sejm set a new deadline for proposing candidates to 19 March 2021.

Human rights defenders and civil society space

The year of the pandemic has significantly influenced the work of human rights defenders and the space for civil society is constantly shrinking in Poland. The biggest changes noticed concern the right to peaceful assembly. This right was gradually limited by introducing a limit on participants in assemblies, and then – temporarily – assemblies were completely banned. Changes to the legal framework for the exercise of this freedom were introduced contrary to the constitution – regulations (*rozporządzenia*, government executive acts) were issued exceeding the statutory law. A complete ban on assemblies was also unconstitutional as limitations are possible only under the constitution, proportional and by virtue of parliamentary legislation only. Spontaneous assemblies were also banned during the pandemic.

In practice the limitations affected the protesters (mainly women) taking part in manifestations of entrepreneurs, protesting against COVID-19 business restrictions, and in particular those protesting against Constitutional Court judgment of 22 October 2020 in case No. K 1/20, declaring the embryo pathological reasons for abortion unconstitutional (assemblies have been organized by Women's Strike). The participation in the manifestations, treated by police as illegal, ended for many with financial fines (reaching up

10.000 PLN) or police actions (like temporary halt, custody in distant police stations, refusal to contact legal attorneys etc.). The irregularities of police actions were reported by the CHR within the NPM report.

In addition, a significant increase in police brutality towards demonstrators was noticed; in particular, there was a widespread use of direct coercive measures against demonstrators (gas, 'kettling', stopping). Journalists who reported about the protests were arrested, a journalist was shot by the police, and three journalists were beaten up by participants of protests. Protesters were detained en masse – their access to a lawyer was impeded and they were taken to police stations located several dozen kilometres from their place of residence (outside Warsaw).

The state of the epidemic and the limitations of fundamental rights and freedoms increased the importance of citizens' access to reliable information about the activities of the authorities. The pandemic act made it impossible to apply the provisions on inactivity of authorities upon request for public information. In practice, this meant depriving citizens of the possibility to challenge the inactivity of an authority in a situation where information is not provided. In Spring 2020, the "Covid" act (art 15zzs para. 10 point 1) deprived citizens of the possibility to effectively pursue the information obligation of public institutions.

The CHR joined the proceedings before the Administrative Court in Warsaw on a complaint of a citizen against the Ministry of State Assets for disclosure of public information. The case concerns information on the costs of election packages prepared in connection with the planned organization of postal elections on May 10, 2020.

The CHR constantly supports and cooperates with non-governmental organizations. In 2020, together with the STABILO Foundation, he dealt with the topic of professional burnout of activists. Two conferences were organized, scientific research conducted by the SWPS University was commissioned, and activists collaborated in working groups.

Due to the pandemic, the Ombudsman could not continue the program of Regional Meetings during which for four years he met local activists throughout Poland to talk about their problems and the human rights situation in the region.

References

- <https://www.rpo.gov.pl/pl/content/Policja-zatrzymania-demonstracje-strajk-kobiet-raport-KMPT>

Checks and balances

The influence of the legislative and executive powers over the judiciary has been growing steadily since the end of 2015. These authorities are trying to influence independent courts. Disciplinary proceedings are initiated against independent judges and prosecutors. A number of proceedings have been conducted in this matter before the CJUE and the ECHR.

Since 2015, there has also been a decline in public consultations of laws. At present, consultation in sensitive issues is practically possible only in the Senate, where the opposition has a majority.

The CHR intervened in March 2020 in the case of early and supplementary elections in nine towns in Poland. He noted, *inter alia*, that quarantined persons will not be able to vote.

Despite the announcement of the pandemic, the authorities did not give up holding the presidential election on the previously set date of May 10, 2020. The CHR pointed to the related dangers for citizens, the election process and the unconstitutionality of changes in the election law during the ongoing campaign. In many countries, citizens residing abroad could only vote by correspondence, because the local pandemic regulations did not allow voting at polling stations.

Trust in state authorities

The trust is eroded by the rule of law problems and more currently by the low quality of "pandemic legislation". Many human rights and liberties (e.g., freedom of assembly, freedom of movement, freedom of religion) have been limited (in some cases completely banned, like freedom of assembly) with a violation of the Constitution. The Constitution provides that in a situation of a natural disaster (like COVID-19 pandemic) a state of a natural disaster may be introduced. The Constitution provides which rights and liberties may be then limited and to what extent. In practice the government decided to rule by executive acts, based on a law on the prevention and counteraction against infectious diseases, which cannot legally limit fundamental rights. Such a conclusion was confirmed by the Supreme Court in citizens' cases resolved on 17th March 2021.

NHRI's role in the system of checks and balances

On 29th April 2020, the CHR requested the court to annul a decision of the Prime Minister ordering the Polish Post Office to implement certain measures to prepare for the presidential elections of the Republic of Poland in 2020 by correspondence in view of the

COVID-19 pandemic. On this basis, the Post asked local authorities to provide it with the lists of voters. The administrative court upheld the complaint.

The Commissioner for Human Rights complained to the Provincial Administrative Court of the decision of the Minister of Digitization to transfer the PESEL register (personal data of voters) to Polish Post Office.

The CHR regularly presents his positions on key issues for citizens before the Constitutional Tribunal, but his position is not taken into account by a politicized tribunal.

Since taking office, the Commissioner for Human Rights has encountered difficulties in cooperation with state authorities. These include the authorities' refusal to react on general statements and to take CHR's comments and recommendations into account and the CHR's inability to obtain information on planned bills. Public trust in institutions remains at a very low level.

The CHR budget has been limited for a couple of last years, limiting its ability to act effectively for the protection of fundamental rights. In addition, by the force of the Law of 8 December 2017 on the Supreme Court, the CHR mandate was broadened by adding a new competence of filing extraordinary complaints to the Supreme Court against all final judgments of common courts dated back up to April 1997. The CHR has received by now around five thousand requests to file such a complaint and the trend is rising since the final date for the oldest cases elapses in April 2021. The CHR did not receive any financial resources for this purpose, as mentioned above, the budget of the CHR was cut.

References

- <https://www.rpo.gov.pl/sprawy-generalne/pdf/2020/4/VII.6060.19.2020/1972686.pdf>
- SC Resolution of 23.01.2020 of the formation of the combined Civil Chamber, Criminal Chamber, and Labour Law and Social Security Chamber, BSA I-4110-1/20.
<https://ipo.trybunal.gov.pl/ipo/view/sprawa.xhtml?&pokaz=dokumenty&sygnatura=U%202/20>
<https://www.rpo.gov.pl/sites/default/files/Wyst%C4%85pienie%20do%20PKW%2C%2025.03.2020.pdf>
<https://www.rpo.gov.pl/sites/default/files/Do%20Prezesa%20Rady%20Ministr%C3%B3w%2C%2024.03.2020.pdf>

Functioning of justice systems

Since 2015, the situation related to the independence of the judiciary and the independence of judges has been deteriorating as a result of changes introduced by the ruling party. The situation has not improved since the last report. Despite the judgments issued by the EU Court of Justice and the European Court of Human Rights, as well as numerous concerns raised by national and international institutions, the legislative and executive authorities have not withdrawn from the changes.

A number of cases concerning the Polish judiciary have been dealt with by the Court of Justice in the European Union, on the initiative of the Polish courts themselves (references for a preliminary ruling) or of the European Commission (infringement proceedings) and also before the ECtHR. The Commissioner for Human Rights presents his position on matters relating to the independence of the judiciary before both tribunals. Additionally, a case within the EU mechanism for the protection of Union values (Art. 7 TEU) is pending against Poland before the Council of the European Union.

The CJEU judgment in the case of *A.K. and others*, concerning the respect for the right to effective judicial protection of Supreme Court judges unduly removed from office based on unlawful rules changing the retirement age, in the light of the competence attributed to the newly created Disciplinary Chamber to hear those cases, has been deprived of a genuine significance in Poland. Likewise, the Supreme Court resolution of 23 January 2020 implementing the *A.K.* (C-585/18) ruling in domestic procedural law. In the judgment on 20th April 2020, the Constitutional Tribunal stated that the Supreme Court resolution was inconsistent with the constitution (U2/20). In the opinion of the CHR this ruling circumvents the decision of CJEU.

The so-called muzzle law had a significant impact on judges, who, fearing reprisals, stopped adopting resolutions on changes imposed to the functioning of the judiciary. During the legislative process to enact the muzzle law, the CHR presented his comments to both the Marshal of the Sejm and the Marshal of the Senate.

There is a noticeable decline in referring questions for a preliminary ruling to the CJEU and ceasing to examine the correctness of appointment of judges.

Both disciplinary and criminal proceedings brought against judges for criticizing changes in the judiciary and judicial activity are pending. Cases for the waiver of immunity are examined by the Disciplinary Chamber of the Supreme Court, although this body should

not take any action as established by the interim ruling issued by the CJEU on 8th April 2020 (C-791/19 R).

However, changes in the judiciary did not contribute to the speed of hearing cases. Courts deal with bureaucracy and the number of incoming cases. During the epidemic, there was a problem with access to court and the openness of proceedings. The CHR noted numerous problems related to this.

The CHR presents its position on these matters before CJEU and the ECtHR. He also deals in key cases in the constitutional tribunal and before national courts.

During the legislative process on the muzzle act, the CHR presented his comments to both the Marshal of the Sejm and the Marshal of the Senate.

The CHR appealed to the Minister of Justice for a proper reform of the judiciary, which would actually improve the situation in the courts. The CHR also drew attention to the problems that arose in the functioning of the judiciary during the pandemic.

The CHR also presented his comments to the authorities conducting disciplinary proceedings against judges.

References

- <https://www.rpo.gov.pl/pl/content/ustawa-kagancowa-do-odrzucenia-adam-bodnar-pisze-do-marsza%C5%82ka-senatu>
- <https://www.rpo.gov.pl/sites/default/files/WG%20do%20MS%20w%20sprawie%20konieczno%C5%9Bci%20elektronizacji%20s%C4%85downictwa%2C%208.06.2020.pdf>

Media pluralism and freedom of expression

The situation of journalists who cover public demonstrations must be noted, as explained in the section above on human rights defenders. This has included attacks, brutality of police, journalists stopped in 'kettles' and they were not allowed to do their reporting job on the spot by police.

For the last few years, the ruling party has pledged to "re-Polishize" the domestic media. One big step in that direction was made in December 2020, with an announcement that Poland's state-controlled oil refiner PKN Orlen was buying the local media group Polska Press from Germany's Verlagsgruppe Passau. This decision reignited a debate about press freedom in the country. The decision, although controversial for many, was accepted by the Office of Competition and Consumer Protection. In its opinion on this decision, the CHR raised concerns that, as a result of it, public authorities will be able to take a dominant position on the regional media market. Just few weeks later another development triggered public discussion. The Polish government announced plans to introduce a new tax on the media levied on income from advertisements. Major private outlets unitedly protested against this measure with an unprecedented 24-hour blackout. The tax will drastically influence the condition of small media companies.

The Ombudsman also reacted on the violent attack to the editorial office of the Fakty magazine. This attack, where the office was raided and severely damaged, was covered by public media which attacked private media (labelling them as foreign entities and personally attacking journalists, such as by claiming publicly that the parents of one journalist had collaborated with the communist regime).

Moreover, the situation in the public media sector has worsened, with an increase of politically motivated dismissals being reported. The case of the Third Program of Polish Radio (Trójka) is particularly worth mentioning. In the song '*Twój ból jest lepszy niż mój*' ('Your Pain is Better than Mine'), the Polish artist Kazik criticised the actions of Jarosław Kaczyński, the head of the ruling PiS party in Poland. His song won the listeners' vote on Poland's Trójka radio station and topped the charts on 15 May 2020. Immediately afterwards, the Trójka management annulled the vote and removed the information from the station's website. In protest, many employees left the station, including the host of the chart show. Internal regulations in public media were introduced in order to limit social media activities of journalists which manifest opposition to the government's line.

NHRI's actions

The CHR has taken many actions in relation to media. Especially worth noticing is the strategic judicial litigation of the CHR, e.g.:

1. Independence of public radio and television – on request of the CHR the Constitutional Court issued a judgment in case K 13/16 declaring unconstitutionality of a reform of public media management and supervisory body nomination process (the CC ruled out provisions allowing the Minister of Treasury to nominate them directly, also criticising similar

competences of the newly established National Media Council (RMN), as bodies circumventing constitutional powers of the National Broadcasting Council (KRRiT)). However, the CC judgment of 2016 has not been implemented yet.

2. The CHR challenged a UOKiK's decision (Polish regulator in the area of consumers' rights and competition) allowing a merge between Orlen (the biggest Polish oil company) and Polska Press (one of the biggest media company owning 20 regional newspapers and over 500 internet portals with a number of 17,4 million users). The merge in the opinion of the CHR goes beyond legal tasks of a public oil company and it will affect negatively pluralistic media market. The decision of the UOKiK has not analysed many factors regarding the media market and therefore shall be nullified by courts and then reconsidered.

References

- Merger case: <https://www.rpo.gov.pl/pl/content/wstrzymanie-wykonania-zakupu-polska-press-przez-pkn-orlen-sad-przyjal-wniosek-rpo>

Corruption

The CHR pays great attention to transparency and access to public information as a prerequisite to ensure effective corruption prevention. The CHR fulfils in practice a role of extra-judicial independent body protecting fundamental rights in this area, mainly helping citizens with their individual cases. Therefore, the CHR critically assesses the complaint directed to the Constitutional Court by the First President of the Supreme Court (case K 1/21). In her complaint the First President challenged basis institutions of the Law of 2001 on access to public information, using citizens' motions for information directed to Supreme Court as an example of misuse of citizens' rights. The CHR joined proceedings before the Constitutional Court demanding a declaration of constitutionality of the challenged legislation.

Other relevant areas

The lack of independent Constitutional Courts limits the capacities of the CHR to challenge legislation violating fundamental rights as guaranteed by the Constitution and international and European law. During the pandemic, actions of the police violated human rights,

however there is no effective accountability system to be applied. Generally speaking, the erosion of rule of law is developing and the fundamental rights protection system is becoming weaker due to system factors and gradual process of annihilation of the system checks and balances.

Impact of measures taken in response to COVID-19 on the national rule of law environment

Most significant impacts of measures taken in response to the COVID-19 outbreak on the rule of law and human rights protection

The CHR has noted numerous irregularities in the functioning of the state and public authorities during the pandemic. The office has received numerous complaints from citizens and has tried to consider each case.

Courts have canceled hearings, and the parties have had problems with submitting their pleadings and entering the premises of courts and offices. The courts have also limited the number of proceedings and unfortunately, only a few had the resources to launch online hearings.

The authorities have taken advantage of the lack of a state of emergency to introduce numerous changes to the law by means of an ordinary act. There was a problem with the organisation of the presidential elections scheduled for May 2020, since until the last moment, citizens did not know if and in what form they would take place.

Access of citizens to public information has been limited. Difficulties in accessing primary care have been reported. The rules related to quarantine remain unclear. There was a huge problem with the availability of education. The schools cannot react to pathological situations and it is not possible to provide psychological help for students.

Amidst the pandemic, the Constitutional Tribunal restricted the right to abortion (case K 1/20). This has led to numerous protests that were, sometimes brutally, suppressed by the police.

When it comes to long-term implications of the pandemic, the limitations introduced during the pandemic may be prolonged and the limitation of fundamental rights by force of executive acts may be prolonged.

The CHR organized online meetings and conferences, gave and conducted interviews. During the winter break, the Commissioner organized meetings for young people on the protection of human rights.

References

- <https://isap.sejm.gov.pl/isap.nsf/DocDetails.xsp?id=WDU20200000374>
- <https://www.rpo.gov.pl/pl/kategoria-tematyczna/koronawirus-i-epidemia-w-polsce>

Most important challenges due to COVID-19 for the NHRI's functioning

During the coronavirus pandemic, the office switched to remote work. The number of complaints directed to the office of CHR was 25% higher when compared to similar period in 2019. It was also necessary to undertake numerous interventions in connection with many ambiguities in the adopted regulations. NPM visits, however limited, were continued. The staffing of the office stayed the same, however the budget of the CHR was cut by the parliament.

Portugal

Portuguese Ombudsman

International accreditation status and SCA recommendations

The Portuguese Ombudsman was last [reaccredited](#) with A status in November 2017. While acknowledging that the selection and appointment process is governed by the Parliament's rules of procedure, the SCA recommended the formalization of the process in relevant legislation. Also, the SCA encouraged the NHRI to advocate for the legal provision for an independent and objective dismissal process of the NHRI's deputies.

Independence and effectiveness of the NHRI

Changes in the regulatory framework applicable to the Institution

The legal framework governing the functioning and guarantees of the Portuguese Ombudsman is traditionally stable and has not undergone any changes in the last year.

Developments relevant for the independent and effective fulfilment of the NHRIs' mandate

There have not been any relevant developments in the past year affecting the functioning of the Portuguese Ombudsman, apart from COVID-19 measures and impacts which are addressed in a dedicated section below.

Human rights defenders and civil society space

There have not been any significant changes with regard to the information provided in the 2020 Rule of Law Report.

Relevantly to known racist attacks to rights groups (e.g., the case of SOS Racismo), the Government recently created a working group on the prevention and combat to racial discrimination (1).

Updated figures of the Rule of Law Index 2020 for Portugal are available [here](#) (page 128). In this regard, Portugal has scored:

- Freedom of expression - 80%
- Freedom of association - 85%

- Civic participation - 77%.

References

- (1) <https://dre.pt/home/-/dre/153341296/details/maximized>
- World Justice Project's 2020 Rule of Law Index:
https://worldjusticeproject.org/sites/default/files/documents/WJP-ROLI-2020-Online_0.pdf

Checks and balances

Guarantees and safeguards, as described in ENNHRI 2020 Rule of Law Report remain in place.

WJP Rule of Law Index figures for Portugal:

- Limits by legislature - 84%
- Limits by Judiciary - 76% Independent
- Auditing - 75%
- Non-governmental checks - 80%
- Lawful transition of power - 91%

Pursuant to Articles 23 of the Portuguese Constitution and 1(1) of the Ombudsman Act, the main function of the Portuguese Ombudsman is to defend and promote the rights, freedoms and guarantees and legitimate interests of citizens, ensuring that public authorities act fairly and in compliance with the law.

The limits to the Ombudsman's mandate are set out in Article 22 of the Ombudsman Act, excluding the political and jurisdictional functions from the Ombudsman competence. On the one hand, the Ombudsman cannot intervene with regard to courts or the Public Prosecution Service in order to scrutinize, monitor or influence the way in which judicial cases are handled. On the other hand, the Ombudsman cannot intervene in matters relating strictly to political choices, falling within the legislator's margin of discretion.

The Ombudsman may act on matters falling within his/her competence on the basis of complaints submitted by any person or group of persons (whether natural or legal persons), as well as on his/her own initiative.

The Portuguese Ombudsman has the following competences:

- To address recommendations to the competent bodies with a view to correcting illegal or unfair acts of public authorities or to improving their services and the administrative procedures followed by those services – i.e., administrative recommendations;
- To point out shortcomings in legislation, to issue recommendations concerning its interpretation, amendment or revocation, or to suggest the drafting of new legislation – i.e., legislative recommendations. Such recommendations or suggestions shall be forwarded to the President of the Parliament, to the Prime Minister and to the Ministers directly involved and, if applicable, to the Presidents of the Regional Legislative Assemblies and to the Presidents of the Governments of the Autonomous Regions – Azores and Madeira;
- To issue opinions upon request of the Parliament on any matter related to its activity;
- To promote the divulgation of the content and meaning of fundamental rights and freedoms, as well as of the purpose of the Ombudsman's institution, the means of action at its disposal and how to appeal to its decisions;
- To intervene in the protection of collective or diffuse interests when public authorities or companies and services of general interest, regardless of their legal status, are involved;
- To request the Constitutional Court to declare the unconstitutionality or illegality of any legal provisions or of legislative omissions;

If the Ombudsman deems it convenient, he/she may participate in the work of parliamentary committees for the purpose of dealing with matters within his/her competence.

To examine matters falling within his/her scope of competence, the Ombudsman has significant powers of investigation.

Where the circumstances so require, the Ombudsman may decide to issue statements or to publish information concerning the conclusions reached in the proceedings or any other matter related to his activity, using, if necessary, the State-owned media and benefiting in any event from the legal regime governing the publication of official statements, according to the applicable laws.

While the Ombudsman's mandate is generally performed without any obstacles, in Portugal there is no focal point in Parliament which would allow for a swift follow-up on the Ombudsman recommendations to Parliament.

References

- Portuguese Constitution; TC > (tribunalconstitucional.pt)
- Ombudsman Act. - Provedor de Justiça - Na defesa dos cidadãos (provedor-jus.pt)

Functioning of the justice system

Please refer to 2020 Rule of Law Report.

The Portuguese Ombudsman does not have a mandate to intervene with regard to courts or the Public Prosecution Service in order to scrutinize, monitor or influence the way judicial cases are handled. The Ombudsman's powers of inspection and monitoring can only be exercised with regard to administrative dimensions of the activity of courts – especially cases of judicial delay – and do not extend to the content or merits of judicial decisions.

Therefore, complaints submitted to the Ombudsman dealing with judicial acts are usually dismissed for lack of competence.

In 2020, the Ombudsman received approximately two hundred of complaints dealing with judicial delays and/or non-enforcement of judicial decisions.

WJP Rule of Law Index 2020 figures for Portugal:

- Accessibility and affordability - 69%
- No improper government influence - 77%
- No unreasonable delay - 43%
- Effective enforcement - 53%

Media pluralism and freedom of expression

Please refer to 2020 Rule of Law Report.

- WJP Rule of Law Index for freedom of expression - 80%.

Corruption

Please refer to 2020 Rule of Law Report.

Portugal is ranked 33 out of 180 countries in Transparency International's 2020 Corruption Perception Index (1).

WJP Rule of Law Index 2020 for Portugal:

- In the executive branch - 66%
- In the judiciary - 88%
- In the police/military - 87%
- In the legislature - 50%

Justice statistics identify 70 crimes of corruption registered with the police in Portugal in 2019, resulting in 57 convictions.

References

- <https://estatisticas.justica.gov.pt/sites/siej/pt-pt/Paginas/Corrupcao.aspx>
- <https://www.transparency.org/en/countries/portugal>

Impact of measures taken in response to COVID-19 on the national rule of law environment

Most significant impacts of measures taken in response to the COVID-19 outbreak on the rule of law and human rights protection

In 2020, the state of emergency was in force from 18 March to the 3rd of May (1). The Government then issued several different restrictive measures on the basis of ordinary legislation (notably the Public Health Act and the Civil Protection Act).

On the 6th of November 2020, the President of the Republic declared again the state of emergency, which has been continuously renewed since.

During the state of emergency, several fundamental rights have been suspended, notably: (i) free movement and fixation in national territory; (ii) private property and economic and social initiative; (iii) worker's rights; (iv) right to travel internationally; (v) freedom of reunion and demonstration; (vi) freedom of religion; (vii) right to resistance; (viii) freedom to teach and learn; (ix) data protection; (x) right to health in its negative dimension and right to freely develop one's personality.

There has been a public debate on the proportionality of some measures imposed by the Government in response to the pandemic. The discussion has been most acute on measures adopted throughout the periods not covered by the state of emergency.

In 2020, a significant number of complaints submitted to the Ombudsman focused on various aspects of Covid-19 regulations touching upon very different rights-related issues (ranging from free movement of citizens to access to basic goods of people in confinement, lack of governmental support to independent workers, reimbursement of travel costs by travel agencies, lay-off schemes, banking services, domestic violence, parental responsibilities, access to education, among others).

There also was a dramatic increase of the number of calls to the hotline for the support of the elderly, who have been particularly affected by the pandemic and by the measures adopted in response.

In this context, throughout the pandemic, several types of COVID-19 issues arrived at the Ombudsman's Office, on for instance the obligatory use of masks, mandatory quarantine, testing and control of temperature, mandatory use of "stay-away Covid" application for mobile phones, right of access to information, and freedom of reunion and demonstration.

In general, the Ombudsman considered that constitutional safeguards were ensured in the majority of cases. However, in some situations, the Ombudsman manifested concerns issuing recommendations and asking for clarifications, for example: (i) on the need to have uniform quarantine regimes throughout the national territory, (ii) on the mandatory quarantine in Azores, in hotel facilities, exclusively for non-residents and at one's expenses; (iii) isolation measures for children placed in foster care; and (iv) suspension of distance learning in January 2021.

In this ambit, the Ombudsman further submitted several recommendations to different public authorities on Covid-19 measures:

- Recommendation on the adoption a specific temporary licence for prisoners;

- Recommendation on the adoption of an exceptional regime for the extension of medical certificates on disabilities/incapacities;
- Recommendation on the adoption of financial support measures for providers of services/independent workers
- Recommendation on breastfeeding and the right to have a companion of the mother's choice during delivery;
- Recommendation on the possibility of visits by family members to Covid-19 dying patients and on their presence in funerals;
- Recommendation on the suspension of tax and social security execution procedures;
- Question to the Government on the exclusion of medical professionals from the scope of application of the special protection regime applicable to chronic patients and immunosuppressed individuals;
- Questions to the Government on the scope of application of the lay-off regime

Furthermore, the Ombudsman decided not to refer the first presidential decree on the state of emergency to the Constitutional Court for lack of constitutional issues. More recently, a pandemic norm on the support regime applicable to rents of shops located in shopping centres was sent to the Constitutional Court (2).

Moreover, since March 2020, the Ombudsman increased its efforts to ensure closer monitoring of the Roma communities, especially in light of the need to protect Roma children and ensure access to education and to basic living conditions. Attention to the needy and homeless people has also been a priority of the Ombudsman action ever since.

At the international level, the Ombudsman has contributed to several questionnaires, surveys and requests from different entities, such as the UN High Commissioner for Human Rights, the European Ombudsman, the Global Alliance of National Human Rights Institutions and the Federación Iberoamericana de Ombudsman.

Lastly, the Ombudsman has initiated an in-depth, systemic and systematized analysis of the impact of the pandemic on rule of law issues, which resulted in the publication of a dedicated study available in the Ombudsman's website. The document is part of a set of three studies ("*Cadernos da Pandemia*") on the impact of the pandemic in Portugal, together with an analysis of the situation of the educational system and of the homeless.

References

- Please refer to 2020 Report.
- Covid legislation has been compiled in a dedicated online section of the official journal - <https://dre.pt/legislacao-covid-19-areas-tematicas#1>
- https://dre.pt/documents/10184/2816226/DPR_14-A_Traducao.pdf/9cd3619b-2bc6-47fb-a8f7-1e651113cb03
- 2020_11_20_Tribunal_Constitucional.pdf (provedor-jus.pt).
- All recommendations available here: Provedor de Justiça - Na defesa dos cidadãos (provedor-jus.pt)
- Study on the impact of the pandemic on rule of law issues: http://www.provedor-jus.pt/site/public/archive/doc/estado_direito_c3_2021.pdf
- “Cadernos da Pandemia”, available at <https://www.provedor-jus.pt/provedoria-de-justica-publica-cadernos-da-pandemia/>
- Analysis of the situation of the educational system: http://www.provedor-jus.pt/site/public/archive/doc/educ_c1_2021.pdf
- Analysis of the situation of the homeless: http://www.provedor-jus.pt/site/public/archive/doc/sem_abrigo_c2_2021.pdf

Most important challenges due to COVID-19 for the NHRI’s functioning

The work performed by the Ombudsman has suffered minor changes since the pandemic started in Portugal.

According to national legislation on the state of emergency, the Ombudsman keeps working in permanent session. In compliance with rules and recommendations and in order to limit social contacts, full time teleworking was progressively introduced for the Ombudsman staff since March 2020. The staff was granted access to computers and phone lines, and regardless of minor IT difficulties, has well adapted to current arrangements. A limited task force – composed of the Ombudsperson, two members of Cabinet, the two Deputy Ombudsmen, department coordinator, a public relations collaborator and two members of accounting and staff departments – keeps on working in the headquarters.

In person services were suspended for a few weeks during the first wave. All other services remained fully functional, with individuals submitting complaints through alternative means, notably the website, email and phone lines, and in presence once public attendance was resumed.

The three hotlines ran by the Ombudsman – for the protection of the elderly, children and persons with disabilities – kept operating as usual.

Visiting activities of the National Preventive Mechanism were suspended for several months but have been resumed since July 2020. Notwithstanding, considering the status of the pandemic some visits have been ensured by videoconferencing.

During the first state of emergency on site visits following the submission of a complaint were also suspended but have also meanwhile been resumed.

Romania

Romanian Institute for Human Rights

International accreditation status and SCA recommendations

The Romanian Institute for Human Rights (RIHR) is a non-accredited associate member of ENNHRI. It had been previously accredited with C status, which is no longer a valid accreditation status. The Romanian Institute has a strong promotional mandate and has been addressing a wide range of human rights in Romania.

In 2020, the Romanian Ombudsman (which is not an ENNHRI member and is not accredited) and the Romanian Institute both applied for accreditation. The request for accreditation of both bodies is being processed by the SCA, in accordance with its Rules of Procedure.

Impact of 2020 rule of law reporting

Follow-up initiatives by the Institution

The Institute (RIHR) informed the leadership of the two human rights committees of the Romanian Parliament about the ENNHRI Report and the Institute's contribution to this document. At the same time, the Human Rights Directorate of the Ministry of Foreign Affairs was informed about the report.

Independence and effectiveness of the NHRI

Changes in the regulatory framework applicable to the Institution

In 2020, a legislative proposal to amend Law no. 9/1991 on the establishment of the Romanian Institute for Human Rights, was discussed in the Romanian Parliament.

The RIHR proposed to amend the Law in order to update the Institute's obsolete regulatory framework, taking into account international bodies' recommendations (in particular from the SCA) notably to strengthen the RIHR autonomy and independence.

The proposed amendments included:

- Regulation of the legal status of the Institute as an independent institution from any other public authority;

- Providing that the activity of the Institute should follow the Paris Principles;
- Systematisation and completion of the attributions included in the mandate of the Institute;
- Plurality and transparency of the process of appointing members of the governing bodies of the Institute;
- Limitation of the mandate of the members of the Institute's management;
- Clarification of the status and remuneration of the staff of the Institute;
- Public debate of the Institute's report;

On June 30, 2020, it was adopted by the Romanian Senate, as decisional Chamber. However, as the document was subject to constitutional review; the Constitutional Court admitted an unconstitutionality objection raised by the Romanian President. In its analysis, the Constitutional Court identified several elements of extrinsic unconstitutionality on the legislative process (the wrong qualification of the legal nature of the Institute determined the adoption of the document as organic law and not as ordinary law, thus reversing the order of referral of the Chambers [1]; at the same time, Parliament did not request the financial statement from the Government, as laid down in art. 15 of Law no. 500/2002 on public finances [2]). As a consequence, considering the nature of the unconstitutionality issue, the Court decided that the law was unconstitutional as a whole.

Moreover, considering the status of the Institute, the objectives for which it was created, its attributions and institutional connections, the Constitutional Court noted that the Institute is a public institution of national interest, and its main role is to be a documentation/consultation and research centre in the field of human rights.[3]

Currently, a legislative proposal on the merger of the Romanian Institute for Human Rights into the National Council for Combating Discrimination is under debate in the Senate. However the two institutions have major differences regarding their legal status, mission, and mandate:

- RIHR has the status of independent body with legal personality; NCCD was established as a state authority with legal personality,
- RIHR's mission is to ensure a better knowledge by public bodies, NGOs and Romanian citizens, of human rights issues; NCCD's mission is to implement the principle of equality between citizens, provided by the Romanian Constitution, in the national and international legislation

- Finally, RIHR has a general mandate to provide research, information, training and education activities in the field of human rights; NCCD exercises a mandate limited to the field of implementing the principles of equality and non-discrimination

The proposition of this merger with the NDDC has caused an unfavourable working climate in the RIHR, as the staff of the Institute was affected by the lack of security and uncertainty regarding the future.

References

- [1] The Court notes that the law does not change the legal nature of the Institute from public institution into autonomous administrative authority, see §51-57 of the Decision of the Constitutional Court, no. 772 of October 22, 2020, <https://senat.ro/legis/PDF/2020/20L266DC.PDF>
- [2] Under the constitutional relations between the Parliament and the Government, it is mandatory to request information when a legislative proposal affects the provisions of the state budget. Thus, given the imperative nature of this obligation, it follows that non-compliance has as a consequence the unconstitutionality of the adopted law. See §59-65 of the Decision of the Constitutional Court, no. 772 of October 22, 2020, <https://senat.ro/legis/PDF/2020/20L266DC.PDF>
- [3] According to §47 of Decision no. 722 of October 22, 2020
- [4] https://www.senat.ro/legis/lista.aspx?nr_cls=L701&an_cls=2020

Enabling space

Several elements have hindered the activity of the Institute, including insufficient resources and an obsolete legislative framework. Indeed, the Law establishing the Institute dates from 1991 and has not been modified since, although in the past two years there were two legislative proposals in this regard, aimed at strengthening the observance of the Paris Principles. In the past 10 years, the Institute carried out its activity with a shortage of the staff, especially with regards to specialists: in 2020, the Institute operated with a staff deficit of 31% (the unoccupied positions being specialised positions).

The Institute nevertheless kept on pursuing to fulfil the mandate provided by Law no. 9/1991, as recognised for example by the Working Group on discrimination against women and girls following in its working visit to Romania, February 24–March 6, 2020:

„(...) We are pleased to note the operation of different independent state-based human rights bodies: the National Council for Combating Discrimination, the Office of the Romanian Ombudsman, and the Romanian Institute for Human Rights, all of which are playing an important role in the promotion and protection of the human rights of women and girls. We call on the Government to ensure adequate resources to these institutions and strengthen their independence. (...)”[1]

References

- [1]
<https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=25687&LangID=E>

Developments relevant for the independent and effective fulfilment of the NHRIs' mandate

The fact that the proposal on the merger by absorption of the Romanian Institute for Human Rights by the National Council for Combating Discrimination is under debate in the Senate has been under parliamentary debate has created a less favourable environment for the Institute's activity, as explained above.

Human rights defenders and civil society space

In 2020, the composition of the Romanian Economic and Social Council changed [1]. Civil society members were appointed following a voting process, but initially one of the elected civil society members was replaced by a decision of the interim Prime Minister. Subsequently, this decision was reversed, under pressure from civil society and the media, and the position went to the person who had been voted for.

The RIHR collaborated with and promoted the work of women's rights organisations and of representatives of civil society with expertise and experience in the field of combating bullying and cyberbullying.

References

- [1] The Economic and Social Council is a consultative body for setting economic and social strategies and policies at national level

Checks and balances

According to Law no. 218/2002 on the organisation and functioning of the Romanian Police [5], the latter is part of the Ministry of Internal Affairs and has responsibilities in defending fundamental rights and freedoms of individuals, private and public property, crime prevention and detection, observance of public law and order, in accordance with the law. The activity carried out by the Romanian Police is a specialised public service and is carried out in the interest of the person, of the community, as well as in the support of the state institutions, exclusively on the basis and for the enforcement of the law. However, some provisions of the Law no. 218/2002 may lead to the limitation of the police officers' liability and, implicitly, to potential abuses on their part: Article 36 (4) and (5) lack predictability, as they allow the application of a custodial measure, without an appropriate temporal circumstance: The verification of the factual situation and the potential taking of legal measures against the person taken to the police headquarters is carried out *immediately*. The police officer has the obligation to allow the person to leave, *immediately*, the police headquarters after the completion of the activities according to par. (4) or the required legal measures. The absence of clear and predictable legal regulations clearly establishing the period within which the police officer is responsible for performing his/her duties reduces the degree of accountability of national authorities.

The decision of the Court is the final step of the judicial procedure. Although the judgment of the Court is usually enforced voluntarily, an enforcement can proceed if necessary - as a phase subsequent to the trial. In order to contest the enforcement, conclusions given by the enforcement officer, or any enforcement act, an appeal can be lodged by interested or injured parties. The appeal can also be lodged when the enforcement officer refuses to carry out a seizure or to fulfil an act of enforcement under the conditions of the law.

Article 719 of the Code of Civil Procedure, in its current formulation, hampers the implementation of judgments of national courts: "Pending the judgement on the appeal against enforcement or another request for enforcement, at the request of the interested party and only for good reasons, the competent court may suspend enforcement. The

suspension may be requested together with the appeal against enforcement by a separate application." Its wording is ambiguous, leaving it to the interpretation of the courts the determination of the actual procedural moment until which the execution of the judgment can be suspended following the filing of an appeal against enforcement. In particular, it does not specify whether the decision on the appeal on enforcement shall be taken following the decision of the Court of First Instance or the final judicial decision.

This confusion was mitigated by the judgment rendered on 8 February 2021 by the High Court of Cassation and Justice of Romania following an appeal in the interest of law submitted by the People's Advocate. The Court established that the suspension of enforcement is "limited in time up to the date a court of first instance rules in the challenge brought against foreclosure." [6]

- GEO no. 26/2020 [7] amends and completes some normative acts regarding elections for the Senate and the Chamber of Deputies, as well as some measures for the efficient organisation and conduct of early parliamentary elections, aspect contrary to the provisions of Article 115 (6) of the Constitution, which provides that emergency ordinances cannot be adopted in the field of constitutional laws, or affect the status of fundamental institutions of the State, the rights, freedoms and duties stipulated in the Constitution, the electoral rights, and cannot establish steps for transferring assets to public property forcibly. It is clear that the legitimacy of the electoral process is harmed, in the context of regulation, by normative acts having legal force inferior to the law, (GEO), as these aspects are, *expressis verbis*, in the competence of the country's legislative authority. Another aspect that implies effects on the legitimacy of the electoral process consists in the fact that GEO no. 26/2020 was adopted in the immediate period of the organisation of elections, affecting the principle of legal certainty, changing the perception of voters from the perspective of legitimate expectations regarding the general framework of elections. The Constitutional Court emphasised in 2012 [8] that an untimely legislative amendment could create additional difficulties for the authorities in charge of its application, in terms of adapting to the newly established procedure and the technical operations it entails. By Decision no. 150/2020, the Constitutional Court held that the Government Emergency Ordinance no. 26/2020 is unconstitutional, in whole. [9]

The legislation in force applicable to the activity of public administration authorities ensures the concrete realisation of the requirements of openness and transparency of public administration activity, consequently improving communication with citizens and increasing their trust in public authorities. Law no. 52/2003 [10] states that the purpose of the regulation is: to increase the degree of responsibility of the public administration towards

the citizen, as a beneficiary of the administrative decision; to actively involve citizens in the process of making administrative decisions and in the process of drafting normative acts; to increase the degree of transparency of the entire public administration.

With a view to implementing these principles, normative acts that appropriately amend the legislation in force have been adopted: the Law no. 10/2020 [11] modifies Government Ordinance no. 71/2002 providing that local public administration authorities must *"ensure the transparency and the access of operators to the information and documents necessary for the development of procedures to award the management delegation contracts, in compliance with the legislation in the field of public procurement and works and services concessions"*.

From a legislative point of view, the requirements of openness and transparency of the public administration activity are therefore ensured, however in practice, it is too slow regarding the digitalisation process that would facilitate communication to citizens. And even more considering how the COVID-19 pandemic showed the importance and need to introduce digitalisation in all areas of social life.

References

- [5] Law no. 218 of 23 April 2002 on the organisation and functioning of the Romanian Police, published in the Official Journal no. 170 of 2 March 2020.
- [6] Please see <https://www.scj.ro/en/1538/5498/Press-releases-appeals-in-the-interest-of-the-law-2021/Press-release-Panel-for-Appeals-in-the-interest-of-the-Law-in-its-session-of-8-February-2021>.
- [7] Emergency Ordinance no. 26 of 4 February 2020 on the amendment and completion of some normative acts in the matter of elections for the Senate and the Chamber of Deputies as well as some measures for the efficient organisation and conduct of early parliamentary elections, published in the Official Journal no. 118 of 14 February 2020.
- [8] Constitutional Court of Romania, Decision no. 51 of 25 January 2012, published in the Official Journal no. 90 of 3 February 2012.
- [9] Constitutional Court of Romania, Decision no.150 of 12 March 2020, published in the Official Journal no.215 of 17 March 2020.
- [10] Law no. 52/2003 on transparency of decision-making in public administration, published in the Official Journal no. 749 of 3 December 2013.

- [11] Law no. 10 of 9 January 2020 amending and supplementing Government Ordinance no. 71/2002, published in the Romanian Official Journal no. 14 of 10 January 2020.

Functioning of the justice system

In 2020, the RIHR organised training for specialists of the Bucharest Bar on the European system for the protection of human rights. The course entitled “Regional Human Rights Instruments and Mechanisms” aimed to provide the conceptual definition of human rights-specific terminology, the detailed content of regional human rights instruments (namely the European Convention on Human Rights and the Charter of Fundamental Rights of the European Union), an analysis of rights categories and their articulation, as well as a detailed illustration of the proceedings before the European Court of Human Rights and the Court of Justice of the European Union, and of the mutual relations and influences between them.

The RIHR dealt with issues related to the efficiency of the justice system in accordance with its mandate as provided for by Law no. 9/1991, which include the possibility to carry out initiatives in particular in the field of research, training, information and human rights education. On this basis, in 2020, RIHR carried out a research concerning the particularities of the organisation and functioning of the European Court of Human Rights, in which led to the publication of the volume “European Court of Human Rights: theoretical landmarks and case-law analysis”.

Given that parliamentary elections took place in December 2020, the new parliamentary majority and the new government are considering disbanding the Special Section [1], considering the reports of the European Commission (EC 2020 Rule of Law Report [2] and EC report on Progress in Romania under the Cooperation and Verification Mechanism [3]). In this sense, on February 18, the Romanian Government approved the draft law proposed by the Ministry of Justice, regarding the disbanding of the Section for the investigation of offences committed by the judiciary [4]. The project is to enter the parliamentary debate.

References

- [1] Section for the Investigation of Offences in the Judiciary
- <https://www.mpublic.ro/ro/content/sec%C8%9Bia-pentru-investigarea-infrac%C8%9Biunilor-din-justi%C8%9Bie>
- [2] <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52020SC0322&from=EN>
- [3] https://ec.europa.eu/info/sites/info/files/progress-report-romania-2019-com-2019-499_en.pdf
- [4] <https://sgg.gov.ro/new/wp-content/uploads/2021/02/LG.pdf>

Media pluralism and freedom of expression

Taking into account the responsibility to provide information according to the RIHR mandate, the Institute guaranteed the access of the media to the results of actions, events, programs, projects organised under its coordination. In this sense, the Institute ensures the publicity of research, education and training actions by disseminating specific information on its website (www.irdo.ro).

The Institute also issues shared opinions on particular human rights issues at the request of the media, thus providing adequate information according to which media representatives can inform citizens in a relevant, responsible and objective manner. The RIHR issue for instance, at the request of the media, an opinion on the promotion and protection the rights of older persons in the context of the challenges of the COVID-29 pandemic. The collaboration between the Institute and the media structures is also highlighted through the press releases sent by RIHR following the organisation/participation in events and actions provided by its mandate.

Corruption

The national legal framework establishes a comprehensive approach to the issues related to corruption, taking into account both legal and financial implications. Three legal initiatives were taken in 2020 on these matters to further strengthen the anti-corruption legal framework:

- Law no 283/2020 [1] addresses financial implications of corruption, harmonising the national legislation with the requirements of Directive (EU) 2017/1371. This Law amends Law no. 78/2000 on the prevention, detection and sanctioning of acts of corruption by introducing new offences which affect - from a material point of view - the budget of the European Union.
- Government Emergency Ordinance no. 111/2020 [2] amends the existing normative framework (especially Law no. 129/2019 for preventing and combating money laundering and terrorist financing, as well as for amending and supplementing some normative acts, published in the Official Journal of Romania, Part I, no. 589 of 18 July 2019) by inserting provisions in the spirit of implementing the principles of interinstitutional cooperation and transparency.
- Law no. 105 of 3 July 2020 [3] complements the regulatory framework for rules on integrity in the exercise of public office and dignity, taking into account the communication challenges posed by the COVID-19 pandemic, and introduces provisions to facilitate electronic communication in this area.

Romania still has to transpose into national law the EU Whistleblowers Protection Directive 2019/1937. One of the obligations imposed by the directive is that public institutions and private companies having 50 or more employees must establish certain mechanisms dedicated to warnings/reports, safety standards, procedures to guarantee anonymity of the data of whistleblowers. The transposition deadline is December 2021. In December 2020, the Ministry of Justice had a meeting with civil society to discuss the drafting of the transposition law [4]. While the transposition of the directive is an important step for the protection of whistleblowers, it is then essential that it is implemented.

At the same time, a bill was submitted to Parliament to make information of public interest transparent and to facilitate citizens' access to information of public interest (the Chamber of Deputies is the decision-making chamber) [5]. The expected changes of the normative act are represented by the new obligation for public authorities and institutions to publish and communicate information of public interest in an open format that can be processed automatically, and the realisation and updating of an electronic public register of registered requests and answers in an anonymous manner.

On another hand, in 2020, there were attempts to reduce access to public information. For example, a draft law restricting access to information limited to normative administrative acts concerning the general public interest has been submitted to Parliament. The draft law has meanwhile been withdrawn by the initiator [6].

References

- [1] Law no. 283 of 8 December 2020, published in Official Journal no. 1199 of 9 December 2020.
- [2] Government Emergency Ordinance no. 111 of 1 July 2020, published in Official Journal no. 620 of 15 July 2020.
- [3] Amending Law no. 176/2010, published in Official Journal no. 588 of 6 July 2020.
- [4] <https://euwhistleblowingmeter.polimeter.org/promise/14109>
- [5] http://cdep.ro/pls/proiecte/upl_pck2015.proiect?cam=2&idp=18851
- [6] https://senat.ro/legis/lista.aspx?nr_cls=b584&an_cls=2020

Impact of measures taken in response to COVID-19 on the national rule of law environment

Most significant impacts of measures taken in response to the COVID-19 outbreak on the rule of law and human rights protection

There were a series of normative acts adopted during the state of emergency/alert, established following the COVID-19 pandemic, which raise concern in terms of their compliance with the principle of separation of powers in the state, a principle enshrined in art. 1 (4) of the Romanian Constitution. The following normative acts have been the object of the constitutionality review exercised by the Constitutional Court:

After the Presidential Decree no. 195/2000 declaring the state of emergency (an administrative act that restricted/limited multiple rights and fundamental freedoms e.g. freedom of movement, right to private and family life, free access to justice, economic freedom) was issued the Court was notified to determine the constitutionality of art. 14 c¹-f) of the Government Emergency Ordinance (GEO) no. 1/1991, as they would allow the President to legislate – in areas for which the Constitution requires the intervention of the primary or delegate legislator – by amending organic laws and by effectively restricting the exercise of human rights.

- The Constitutional Court considered [1] that the provisions of GEO no. 1/1991 "[...] do not entitle the President to adopt norms with the rank of law, so that the Constitutional Court to find a violation of the invoked constitutional norms". Thus,

urgent regulations that the President can adopt have an administrative nature and can only target aspects that are regulated by the law. "The Court noted that the way in which the President exercised his constitutional role, by exceeding the legal framework, is not the result of an unconstitutionality flaw of the normative act of primary regulation, by virtue of and within the limits of which the public authority was empowered to act." "The Constitutional Court holds that in the current legislative framework, the legal regime of the state under siege and state of alert can only be regulated by a law, as a formal act of the Parliament, adopted in accordance with the provisions of art. 73 (3) g) of the Constitution, as organic law."

At the same time, the Constitutional Court also examined the constitutionality of GEO no. 34/2020 amending GEO no. 1/1991 and held that there was a violation of art. 115 (6) of the Constitution, i.e., the requirement that the legislative delegation should not be applied for acts which affect rights and freedoms stipulated in the Constitution.

- The GEO no. 21/2004 on the National Emergency Management System (approved by Law no. 15/2005, with subsequent amendments and completions) allows to adopt measures to restrict the exercise of fundamental rights through administrative acts (regulations, plans, programmes or operational documents approved by decisions, orders or provisions) issued by high administrative bodies. This does not respect the rule by which the measure restricting the exercise of certain rights should be provided by law. The Constitutional Court ruled in [2] that although the legislation providing for the legal regime of crisis situations that require exceptional measures implies a greater degree of generality than the legislation applicable during the normal period (precisely because the peculiarities of the crisis situation are the deviation from normal (exceptionality), and the unpredictability of the serious danger affects both society as a whole and each individual), the generality of the primary rule cannot be mitigated by secondary legislation that complement the existing regulatory framework. In this sense, the Constitutional Court concluded that the actions and measures taken during the state of alert, pursuant to the provisions of Government Emergency Ordinance no. 21/2004, cannot target fundamental rights or freedoms. The Court also found that the delegated legislator cannot, in turn, delegate to another administrative authority/entity measures for which it itself does not have jurisdiction.

According to the provisions of Law no. 55/2020, the Government is empowered to adopt a decision enforcing the state of alert in order to adopt measures to prevent and combat the effects of COVID-19 pandemic. Article 4 (3) of this Law provides that if the state of alert targets at least half of the administrative territorial units of the country, the decision of the

Government is subject to the approval of Parliament, which can then approve, in full or with amendments, the measure adopted by the Government (Article 4 (4)).

The Constitutional Court ruled [3] that the Parliament cumulates the legislative and executive powers which is incompatible with the principle of separation of powers in the state, enshrined in art. 1 (4) of the Constitution; it skews the legal regime of Government decisions, as acts of law enforcement, enshrined by art. 108 of the Constitution; it creates a confusing legal regime of government decisions, likely to raise the issue of exemption from judicial review under the conditions of art. 126 (6) of the Constitution, with the consequence of violating the provisions of art. 21 and 52 of the Constitution, which stipulate the free access to justice and the right of a person aggrieved by a public authority.

- Under GEO no. 11/2020, the Government enforces specific measures to prevent and combat the effects of the Covid-19 pandemic, without explicitly clarifying those measures. The provisions of the ordinance are incomplete, merely establishing adequate measures such as enforcing a quarantine, restrictions on free movement, evacuation measures, without concretely identifying methods of implementation. In general, the effect of these measures restricts rights and freedoms, and the RIHR identified the GEO as an inadequate/incomplete normative act, lacking predictability in regulating the way in which the respective measures will operate. By expressly mentioning the possibility of implementing the measures previously provided by a normative act in the category of orders, there is an interference in the correct application of the principle of separation of powers in the state. The Constitutional Court admitted [4] this argument of unconstitutionality invoked by the People's Advocate (institution whose mandate provides the possibility to notify the Constitutional Court), reiterating that, according to the provisions of article 115 (6) of the Constitution, emergency ordinances cannot be adopted in the field of rights and freedoms stipulated in the Constitution. The Court specified that art. 53 of the Constitution considers law *stricto sensu*, as legal act adopted by Parliament, excluding emergency ordinances, as provided by art. 115 (6) of the Constitution and secondary legislation.

The measures taken during the state of emergency, as a result of the COVID-19 pandemic, have had an impact on certain human rights organisations. Due to traffic restrictions, some organisations could not actually perform field work. However, some of their work took place online to a greater extent than in previous years.

At the request of members of the Romanian Parliament, the RIHR conducted a study on the crisis generated by the COVID-19 pandemic and its impact on human rights [5],

especially regarding vulnerable groups (children and young people, women, older persons, people with disabilities). A key element of the study was the evaluation of measures specific to the state of emergency/alert which restricted certain rights (right to assembly, right to free movement, right to a fair trial, right to privacy, family and private life, the right to education, and the freedom of assembly) in order to protect the right to health of the population. These measures were analysed from the perspective of the standards of necessity, proportionality, objectivity, equality and non-discrimination, the results being read in conjunction with the evaluation of the way in which the competent state authorities exercised, under the given conditions, the executive, legislative, judicial prerogatives. The Institute also stressed that all measures taken should be legal, clear, predictable, in accordance with the principles of legal certainty and separation of powers.

The impact of the state of emergency at national level on the rule of law can be observed through the regulations concerning the field of justice [6]. According to art. 63 (1), the first sentence of Decree no. 240/2020, during the state of emergency, the judicial activity continues in cases of special urgency. The purpose of the measures was to avoid congestion in the courts; in this sense we are talking about a restriction of non-urgent causes. During the state of emergency, all procedural and prescription periods were also suspended by law, which implies a mitigation of the restriction of rights.

Regarding the right to a fair trial, the Superior Council of Magistracy and the management boards of the Courts of Appeal established the types of cases to be tried during the state of emergency. These administrative acts added to the provisions of the decrees establishing or extending the state of emergency and contributed to the emergence of non-unitary jurisprudence and different management of those types of cases.

Decision no. 417/24 March 2020 of the Superior Council of Magistracy (SCM) provides guidelines regarding the cases assigned to the courts for trial, on the merits or in appeals, during the state of emergency. Thus, the cases assigned to the courts were individualised, depending on their object. This SCM Decision remains applicable even in the period of extension of the state of emergency, decided by Decree no. 240/2020. Although the purpose of adopting the SCM Decision was to ensure unity as to whether the trial continues during the state of emergency, the actual effect differed. For instance, the SCM decision (art 1(2)) established that, during the state of emergency, cases that are judged without summoning the parties should be resolved. However, a Decision of the Management Board of the Bucharest Tribunal (no. 8 of 30 March 2020) stipulates the contrary.

Under these circumstances, the courts have acted differently, with different approaches to cases concerning the appeal of enforcement in criminal matters, requests for amendment of the sentence, in general, cases concerning judicial proceedings relating to the enforcement of final judgments in criminal matters; there were also different approaches to the types of cases considered to be urgent by each panel.

The lack of predictability of the manner of managing cases during the state of emergency could lead to violations of the right to a fair trial, given that litigants in identical or similar situations have received different legal treatment, regardless of the quality of the pronounced decisions.

Taking into account the evolution of the state of emergency and the dynamics of the applications whose solution was necessary during the state of emergency, the Superior Council of Magistracy adopted Decision no. 707 of 30 April 2020, which expands the list of cases whose resolution is required during the state of emergency. Consequently, in the jurisdiction of the courts, during the state of emergency, there were included complaints against decisions to reject in accelerated procedure, complaints against decisions to reject applications for access to a new asylum procedure, cases tried without summoning parties, applications for bail refund. Cases referred to tribunals during the state of emergency have been extended to include: public procurement disputes, requests to open insolvency proceedings filed by the debtor, appeals against the decision to dismiss or the decision to suspend the individual employment contract, cases tried without summoning parties, applications for bail refund. In the jurisdiction of the courts of appeal were included cases related to public procurement, cases that are tried without summoning the parties, cases for bail refund.

The RIHR, in its role of promoting a human rights-based approach to the handling of the crisis, drew attention through its Covid-19 report to the fact that the protection of fundamental rights and freedoms should be a strategic governmental priority during the crisis caused by the pandemic. During the state of alert, the critical evaluation of the measures adopted, the identification of the failure to fully protect human rights and the efforts for their restitutio in integrum was necessary, and it still is. At the same time, the Institute stressed the need to reconfigure public priorities, resume dialogue between public authorities and civil society, in a non-fragmented manner, in order to restore the violated rights and provide remedies for irregularities during the state of emergency.

Following Decree no. 195/2020 establishing the state of emergency, respectively the Decree no. 240/2020 of prolonging the state of emergency, there is a real need to complete the national regulatory framework with provisions likely to ensure the gradual relaxation of the

sectoral measures adopted in order to prevent and combat the COVID-19 pandemic. Currently, Law no. 55/2020 on measures to prevent and combat the effects of the COVID-19 pandemic establishes the legal basis for enabling the Government to adopt normative acts in order to establish an intermediate legal regime.

The principles of proportionality, necessity and adequacy of the measures adopted to the circumstances of the COVID-19 pandemic must be observed in both state of emergency and alert. However, the measures taken during the state of alert should be adapted to the circumstances, taking into account any non-compliant restrictions enforced in the state of emergency.

Although the challenges posed by the state of emergency and the state of alert are indisputable, the measures taken during those periods should be legal, clear, predictable, in accordance with the principles of legal certainty and separation of powers.

During the state of alert, measures restricting rights and freedoms shall be more flexible by comparison to the degree of severity imposed during the state of emergency; the state of alert generated by the health emergency determines the maintenance exclusively of those measures aimed at combating the pandemic.

The Institute emphasised that the measures taken by authorities during the state of alert are subject to the assessment of civil society in terms of social acceptability. Thus, relevance, coherence, legality are standards that are recommended to be implemented in order to develop relevant solutions, as little restrictive as possible in terms of fundamental rights and freedoms.

In the preliminary study on the effects of COVID-19 pandemics [7], the RIHR highlighted that the restrictions on the right to peaceful assembly and association should be established so as to ensure that civil society remains active, and it is consulted in the process of developing or reviewing appropriate measures proposed by national authorities.

Acknowledging the particular impact of the COVID-19 pandemic on the economic and psychological dimension of social life, the Institute drew the attention to the need to rebuild the framework for social interaction by replacing social isolation measures (where they are not justified by infection/suspicion of infection with SARS-CoV-2 virus) with social distancing measures.

Restrictions adopted during the state of emergency that applied to public services (especially the field of justice, education or health) need to be reassessed in order to

ensure the principles of openness, transparency and continuity of public services. It is clear that the efficiency of the functioning of public services is directly related to the efficiency of the functioning of information systems. To this end, public authorities must act responsibly, constantly monitoring any risks associated with information technology. [8]

With regard to access to information, during the state of emergency, journalists drew the attention of the authorities to the provision of conclusive data on cases of COVID-19 [9].

According to the report prepared by the Centre for Independent Journalism (CIJ) on freedom of expression during March-July 2020 [10], the presidential decree declaring the state of emergency provided at art. 54 the possibility for the authorities to require content providers "to immediately interrupt, after informing users, the transmission of content in an electronic communications network or its storage, by eliminating it at source, if the content promotes false news about the evolution of COVID-19 and protection and prevention measures." The decision to interrupt an online publication would be made by the Ministry of Internal Affairs (MIA), based on the analysis of the Strategic Communication Group [11], and, according to the MIA, the measures did not refer to well-known media institutions [12].

At the same time, the state of emergency decree doubled the delays for answering to requests made in the exercise of free access to information of public interest, as well as petitions. The report of the Centre for Independent Journalism points out that in some cases the activity of providing information was even suspended. In this regard, it reminds of an MIA order to county prefects regarding the prohibition to publish local information on the number of COVID tests made, the number of people tested positive after the tests, the health of patients and the locations where quarantine centres would open. Both the CJI and APADOR-CH [13] called for the transparency of information on the evolution of COVID-19.

The same report points out that, in many cases, the authorities did not provide certain information, based on the provisions of the GDPR on the anonymisation of information, stating that it did not fall within their responsibilities.

The RIHR reacted to many Covid-19-related issues through opinions issued at the request of citizens and/or public authorities with attributions in the field of human rights, to clarify the normative acts that involve shortcomings in terms of clarity and predictability. Thus, RIHR has issued opinions on:

(1) the special legal protection of older persons in the context of the COVID-19 pandemic. [14];

(2) the assessment of the legal framework adopted during the state of emergency/alert regarding: (a) the impact of final examinations (national assessments and baccalaureate) in COVID-19 context; and (b) the impact of the epidemiological triage measure (including taking the temperature and assessment of candidates' personal history of respiratory symptoms) on the right to education and health of children and young people [15];

(3) clarification of the national legal framework adopted in the medical field during the state of emergency/alert in relation to the conditioning of access to private medical centres by performing tests for the detection of infection with the SARS-CoV-2 virus [16];

(4) on the regulatory framework established to guarantee the rights of revolutionaries (with special regard to the right to housing and related land as well as the right to benefit from compensation) [17];

(5) the analysis of the legal and non-discriminatory character of the requests formulated by the Romanian public administration authorities in the relations with the Romanian citizens living abroad, to present the marriage certificate in order to issue a new passport [18];

(6) the non-discriminatory application of the free movement of capital in the light of the compatibility between national law and the European Union legislation [19].

References

- [1] Constitutional Court of Romania, Decision no. 152 of 6 May 2020, published in the Official Journal no. 387 of 13 May 2020;
- [2] Constitutional Court of Romania, Decision no. 157/2020, published in the Official Journal no 397 of 15 May 2020;
- [3] Constitutional Court of Romania, Decision no. 457 of 25 June 2020, published in the Official Journal no 578 of 1 July 2020;
- [4] Constitutional Court of Romania, Decision no. 458 of 25 June 2020, published in the Official Journal no 581 of 2 July 2020.
- [5] RIHR, Preliminary study on the crisis caused by the COVID-19 pandemic and its impact on human rights, RIHR, 2020, http://irido.ro/pdf/IRDO_Studiu%20preliminar%20privind%20criza%20generata%20de%20pandemia%20COVID%2019.pdf
- [6] Ibidem, pp. 45-51
- [7] http://irido.ro/pdf/IRDO_Studiu%20preliminar%20privind%20criza%20generata%20de%20pandemia%20COVID%2019.pdf
- [8] RIHR, Preliminary study on the crisis caused by the COVID-19 pandemic and its impact on human rights, RIHR, 2020, http://irido.ro/pdf/IRDO_Studiu%20preliminar%20privind%20criza%20generata%20de%20pandemia%20COVID%2019.pdf
- [9] <https://cji.ro/92-de-redactii-si-163-jurnalisti-cer-acces-la-informatii-si-transparenta/>
- [10] https://cji.ro/wp-content/uploads/2020/09/Raport-libertate-de-exprimare_final.pdf
- [11] The Strategic Communication Group was set up at the beginning of the COVID-19 epidemic to provide official information on COVID-19.
- [12] <https://www.mai.gov.ro/precizare-23/>
- [13] <https://apador.org/prin-lipsa-de-transparenta-institutiile-statului-alimenteaza-conspirationismul-si-dezinformarea/>

- [14] RIHR, Opinion on respecting the rights of older persons (Romanian), <http://www.irdo.ro/pdv.php?ideseu=13>
- [15] RIHR, Opinion requested by Parliament on conducting final year exams (Romanian), <http://www.irdo.ro/pdv.php?ideseu=17>
- [16] RIHR, Opinion: Legality of the requirement of patients to take COVID tests in private centres (Romanian), <http://www.irdo.ro/pdv.php?ideseu=19>
- [17] IRDO, Opinion on the rights of revolutionaries (Romanian), <http://www.irdo.ro/pdv.php?ideseu=16>
- [18] IRDO, Opinion on the protection of personal data (Romanian), <http://www.irdo.ro/pdv.php?ideseu=18>
- [19] IRDO, Opinion on the non-discriminatory application of the free movement of capital (Romanian), <http://www.irdo.ro/pdv.php?ideseu=14>

Most important challenges due to COVID-19 for the NHRI's functioning

The Covid-19 crisis has altered the activity of the Institute, however, RIHR managed to adapt to these challenges:

- the advisory activity at RIHR headquarters was suspended during the entire state of emergency/alert. During this period, in order to implement safety measures to prevent infection, public relations were conducted via distance communication (e-mail, telephone, written correspondence). At the same time, the Presidential Decrees establishing and extending the state of emergency doubled the deadlines for answering to petitions,
- training sessions, organised on the basis of an institutional agreement between the Romanian Institute for Human Rights and the Institute for Public Order Studies, on the Prevention of Torture and Inhuman Treatment designed for staff working in Detention and Preventive Arrest Centres at the country level, were interrupted for a certain period following the COVID-19 outbreak.
- the events organised by the Institute have taken place online, for example: the Annual Conference on Human Rights on the Respect for Human Dignity and Equal Opportunities and Treatment in Crisis Periods, organised in partnership with the

National Agency for Equal Opportunities between Women and Men (ANES), Titu Maiorescu University (Faculty of Law) and Dimitrie Cantemir Christian University (Faculty of Foreign Languages and Literatures); the campaign against moral harassment at the workplace launched under the motto 'Moral Harassment is Illegal - Stop dysfunctional work relations!' was carried out between 15 September and 15 October, in partnership with ANES.

Russian Federation

Commissioner for Human Rights of the Russian Federation

Accreditation status and SCA recommendations

The Russian NHRI was last [reaccredited](#) with A status in October 2014. In October 2019, the SCA [decided](#) to defer its review of the Russian NHRI. The SCA will decide on the reaccreditation of the NHRI in [June 2021](#).

Independence and effectiveness of the NHRI

Changes in the regulatory framework applicable to the Institution

Several amendments to Constitutional and regular federal laws positively impacted the framework in which the Russian NHRI operates:

A. Federal Constitutional Law No. 5-FKZ of 9 November, 2020 "On Amendments to the Federal Constitutional Law "On the Constitutional Court of the Russian Federation" provided the High Commissioner (Russian NHRI), the commissioners for human rights in the constituent entities of the Russian Federation, other commissioners for the rights in certain spheres or certain categories of persons (1) with the right to appeal to the Constitutional Court of the Russian Federation with a complaint regarding the violation of the constitutional rights and freedoms of citizens by the law, the normative act of the Russian Federation, the normative act of a constituent entity of the Russian Federation, applied in a specific case (par. 1 of Article 96 of the Federal Constitutional Law No. 1-FKZ as of July 21, 1994 "On the Constitutional Court of the Russian Federation").

The High Commissioner's right to appeal to the Constitutional Court of the Russian Federation to defend the rights of citizens was already previously enshrined in Federal Constitutional Law No. 1-FKZ as of February 26, 1997, "On the Commissioner for Human Rights in the Russian Federation". However, the commissioners for human rights in the constituent entities of the Russian Federation did not possess this right and could only appeal to protect the rights of citizens when concluding an agreement on representation.

B. Federal Constitutional Law No. 6-FKZ of November 9, 2020 "On Amendments to Articles 6 and 11 of the Federal Constitutional Law "On the Commissioner for Human Rights in the Russian Federation", introduced additional requirements for the person holding the position of High Commissioner for Human Rights in the Russian Federation, aimed at

ensuring the integrity and ethics of the person holding the position of the High Commissioner. These new amendments were prepared with the participation of the High Commissioner.

C. Federal Law No. 48-FZ "On Commissioners for Human Rights in the Constituent Entities of the Russian Federation" was adopted on March 18th 2020. Its provisions were further developed, inter alia, in Federal Law No. 510-FZ of December 30, 2020 "On Amendments to Article 16.1 of the Federal Law "On the General Principles of the Organization of Legislative (Representative) and Executive Bodies of State Power in the Constituent Entities of the Russian Federation" in the development of which the High Commissioner was involved. The Law eliminated the conflict between the provisions of this article which regulated the status and activities of the Commissioners for Human Rights in the constituent entities of the Russian Federation and the provisions of Federal Law No. 48-FZ dated March 18, 2020 "On Commissioners for Human Rights in the Constituent Entities of the Russian Federation".

D. Federal Law No. 7-FZ of February 17, 2021, "On Amendments to Article 333.36 of the Second Part of the Tax Code of the Russian Federation", provides for the exemption of human rights commissioners in the constituent entities of the Russian Federation from payment of state fees when they file administrative claims in the courts in defence of human and civil rights and freedoms.

References

- (1) Regional commissioners for human rights are independent from the High Commissioner (Russian NHRI) however they work as a network on human rights matters in the Russian Federation
- Laws referred to (in Russian only):
- <https://rg.ru/2020/11/11/ks-dok.html>
- <http://publication.pravo.gov.ru/Document/View/0001202012300047>
- <http://pravo.gov.ru/proxy/ips/?docbody=&nd=102045861>
- <https://rg.ru/2020/03/20/fz-upolnomochenniy-po-pravam-cheloveka-dok.html>
- <https://rg.ru/2021/02/19/nalogkodeks-dok.html>

Enabling space

Since 2017, the level of cooperation between the High Commissioner and the Parliament reached significantly improved. The Regulations of both Chambers of the Parliament were amended with provisions establishing a procedure of consideration of the High Commissioner's annual reports. Moreover, due to these amendments, parliamentarians are vested with the right to adopt decisions with instructions for the implementation of the recommendations and proposals contained in the High Commissioner's reports.

In 2020 the High Commissioner sent 47 proposals and opinions on different human rights issues to the governmental bodies, some of which were reflected in the adopted laws. These proposals relate to four main areas:

- laws guaranteeing realization of social and economic rights;
- laws guaranteeing realization of civil and political rights;
- laws aimed at maintaining the legality and the rule of law;
- laws aimed at ensuring the effective functioning of the institute of human rights commissioners (included in 'Changes in the regulatory framework applicable to the Institution').

In total, the High Commissioner's proposals were reflected in 17 normative legal acts adopted in 2020, including 13 Federal Laws and 4 by-laws. In total, over a period of 5 years (2016-2020), the proposals of the High Commissioner have been taken into account in 62 adopted regulations, including 45 Federal Laws.

In addition, in 2020, the High Commissioner and the staff of her Office participated in 46 events dedicated to various aspects of improving legislation. Of these, 14 events were held in the State Duma and the Federation Council; 6 events were organised by the High Commissioner herself.

Developments relevant for the independent and effective fulfilment of the NHRIs' mandate

The continuing spread of the COVID-19 pandemic has brought changes to public and political life in Russia - restrictions to free movement of citizens and holding of public events have been in place. In this context, the special COVID-related hotline set up by the High Commissioner for Human Rights in the Russian Federation (hereinafter – the High Commissioner) continued to operate. The results are summarised in the High Commissioner's thematic report "Human Rights Protection during the Spread of COVID-19"

and in a separate chapter of the annual Report on the High Commissioner's activity in 2020 (see a link to the English summary of the special report in the references below).

One of the key events of the year was the constitutional reform of 2020. The amendments to the Constitution of the Russian Federation addressed a wide range of topics of social and political life. In doing so, they all directly or indirectly concern human rights, among which the emphasis is primarily placed on social rights.

The amended Constitution of the Russian Federation strengthens the guarantees of citizens' rights and establishes additional mechanisms to enhance the observance of human rights and freedoms.

During the discussion of the amendments to the Constitution proposed by the President of the Russian Federation, the High Commissioner advocated amendment of sections 5 and 6 of article 75 of the Constitution of the Russian Federation concerning the time limits for indexation of pensions, social benefits and other social payments, which was taken into account in the final version of the amendments.

The Federal Law No. 489-FZ of December 30, 2020 "On Youth Policy in the Russian Federation", drafted to develop the new constitutional provisions, takes into account the High Commissioner's conceptual proposals to expand the areas of youth policy by including support measures for orphans and children deprived of parental care.

References

- High Commissioner Report on 'Human rights protection during the spread of covid-19' (summary in English)
<https://www.theioi.org/downloads/2kanr/SUMMARY%20REPORT%20ON%20HR%20PROTECTION%20DURING%20COVID-19.pdf>

Human rights defenders and civil society space

The High Commissioner monitored developments in bringing the regional legislation on the procedure for holding public events in line with the legal position of the Constitutional Court of the Russian Federation, expressed in the Decision No. 33-P as of November 1, 2019. According to such decision, regional bans on holding public events in certain places

cannot be based on arbitrary spatial and territorial restrictions on the right of citizens to assemble peacefully (for example, near the buildings of the state authorities or other state bodies).

During the monitoring, the High Commissioner found that, in 2020, regulations (independent from COVID-19 context) prohibiting the holding of public events on areas closer than 20 meters to residential buildings and buildings occupied by State and municipal institutions were removed from the legislation of most of the constituent entities of the Russian Federation.¹

A new impetus for the development of regional legislation on public events came from the Constitutional Court's Decision No. 27-P as of June 4, 2020, which found the bans on public events held near educational establishments, medical organizations, churches and military facilities to be unjustified. The introduction of these amendments is also being monitored by the High Commissioner.

According to information received by the High Commissioner, non-constitutional regulations have already been removed from laws in 24 constituent entities, in 36 constituent entities the work on improvement of legislation has not been completed yet and in 14 constituent entities regulations contradicting the Constitution of the Russian Federation do not exist.

The High Commissioner continues to supervise the improvement of regional legislation with regard to the implementation of Constitutional Court Decision No. 27-P as of June 4, 2020 and Constitutional Court Decision No. 33-P as of November 1, 2019.

In view of the unauthorized public events of January 23 and 31 and February 2, 2021, the High Commissioner established a working group to immediately review and take urgent measures to respond to all appeals received by the High Commissioner's hotline related to violations of citizens' rights during administrative proceedings related to participation in these events, non-admission of lawyers to detainees, obstruction of journalists' activities, violation of conditions of administrative detention and other issues. 83 requests for verification of reports from detainees and persons under administrative arrest were submitted to the procuratorial authorities, the Ministry of Internal Affairs and the Federal State Guard.

The facts set out in the communications were confirmed in respect of some citizens, and the violations were eliminated. In particular, a lawyer was allowed to see a citizen under administrative detention, and the time period for accepting parcels for persons held in

short-term detention centers for citizens who had committed administrative offences was shortened.

The High Commissioner held in-person meetings with representatives of the human rights community on the above-mentioned issues, and members of her Office visited internal affairs departments and special detention centers for persons under administrative detention.

In addition, the High Commissioner has repeatedly stressed the importance of introducing amendments to federal and regional legislation on public events. In the Annual Report on the High Commissioner's Activities for 2020, it was proposed to amend Federal Law No. 54-FZ of June 19, 2004 "On Meetings, Rallies, Demonstrations, Marches and Pickets" and regional laws respectively in terms of establishing a clear legal status for participants in "mass single pickets" and the so-called "picket queues".

References

- <http://publication.pravo.gov.ru/Document/View/0001201911070023>
- <http://publication.pravo.gov.ru/Document/View/0001202006080001>
- https://ombudsmanrf.org/news/novosti_upolnomochennogo/view/upolnomochennup_provela_vstrechu_s_pravozashhitnikami
- https://ombudsmanrf.org/news/novosti_upolnomochennogo/view/kommentarij_upopolnomochenno_po_pravam_cheloveka_v_rossijskoj_federacii11022021

(in Russian only, news related to the meeting of the High Commissioner with civil society and her comments on the right to peaceful assembly)

Checks and balances

In 2020 the process of improvement of the legislation of the Russian Federation continued. The majority of 551 adopted federal constitutional and federal laws, to varying degrees, concerned human rights, mechanisms and guarantees of their realization. The legislative process, in which the High Commissioner took part, was carried out in three main areas:

- Amendments to the Constitution of the Russian Federation;

- Human rights guarantees during COVID-19;
- Protection of human rights in different areas of social life.

The High Commissioner's legislative activities included the work within the Governmental Commission on legislative activities, reports during the plenary sessions of the Parliament, interaction with the special committees of the Parliament, proposed amendments sent to the President of the Russian Federation, the Russian Government, Parliament and federal governmental bodies, preparation of the draft laws within the High Commissioner's Office, participation in the working groups on legislative drafting, public debates on draft laws.

The constitutional amendments made in 2020, directly or indirectly, addressed human rights, established additional guarantees of their realisation (e.g. regarding minimum wage, social insurance, rights of children, persons with disabilities and indigenous peoples). The connotational amendments established additional requirements for judges, prosecutors and the High Commissioner (already mentioned above).

The High Commissioner supported legislative initiatives by the Russian government aimed at strengthening guarantees of the rights of citizens and organisations when exercising state control (oversight). The laws formed a new system of coordinates in the relationship between the control (oversight) bodies and supervised persons: recognition, observance and protection of the rights of supervised persons is seen as a principle of state control (oversight) and at the same time as the most important duty of the control (oversight) bodies.

The High Commissioner submitted proposals to the State Duma to amend the draft law No. 955380-7 "On amendments to the Federal Law "On the Police". While supporting the overall outline of the bill, the High Commissioner underlined that, in addition to expanding the powers of the police, the first priority should be to ensure that the rights of citizens under the Constitution of the Russian Federation are unconditionally guaranteed. In this regard, the main task is to refine the wording of the law to make it as precise and specific as possible in order to rule out the possibility of misinterpretation and abuse.

There is no doubt that legislation on human rights and freedoms needs further improvement, both in terms of filling existing gaps and the need to improve its quality.

Further development is the legislation on commissioners for human rights. In light of the constitutional amendments, it seems advisable to revisit the discussion on expanding the available toolkit of these officials. A working group is currently examining this issue in the Federation Council with the participation of representatives of the High Commissioner.

Functioning of the justice system

In 2020, the legislators made important amendments according to which, when determining the reasonable length of criminal proceedings, the period from the date of filing an application or reporting a crime to the day of termination of criminal prosecution or conviction will now be taken into account. Previously, when determining the reasonable length of criminal proceedings, only the period after the initiation of a criminal case was considered. These amendments are an additional guarantee of respect for the rights of the victim of a crime to access justice and to conduct legal proceedings within a reasonable time.

During 2020, the High Commissioner submitted proposals to the Supreme Court of the Russian Federation for the preparation of five reviews and plenums of the Supreme Court, on improving the practice of the courts:

- in applying legislation on preventive measures in the form of detention, house arrest and bail;
- in applying legislation governing specific features of criminal liability for crimes in the field of business and other economic activities;
- in applying rules of civil procedure legislation, regulating the proceedings in the court of appeal, on issues arising in judicial practice when considering cases of administrative offenses related to non-payment of funds for the support of children or disabled parents, etc.

D. Federal Law No. 7-FZ of February 17, 2021, "On Amendments to Article 333.36 of the Second Part of the Tax Code of the Russian Federation", provides for the exemption of human rights commissioners in the constituent entities of the Russian Federation from payment of state fees when they file administrative claims in the courts in defence of human and civil rights and freedoms.

In 2020, the High Commissioner published a thematic report "Observance and protection of the rights of victims in criminal proceedings", which summarizes the results of the High Commissioner's activities in this area and, based on the analysis, formulates recommendations to the Government of the Russian Federation, State bodies of the constituent entities of the Russian Federation, the Prosecutor General's Office of the Russian Federation, the Supreme Court of the Russian Federation. The main findings of the report are the following.

In spite of the measures taken by the State, in practice the constitutional requirement to protect the rights of victims is not always fully and promptly implemented nowadays. There are shortcomings related to the protection of victims' rights, such as delays in the initiation of criminal proceedings and the ineffective investigation of crimes, as well as the compensation of the damage caused by the crime. In 2020, the High Commissioner conducted a large-scale analysis of the problems of protecting the rights of victims of crimes to ensure access to justice and the effective and timely investigation of crimes and provision of compensation for damage caused by the offence.

The majority of cases are related to irregularities at the initial stage of the criminal procedure while filing a criminal complaint. The large-scale nature of the violations at the stage of instituting criminal proceedings illustrates the inadequacy of the legal means of ensuring access to justice for the victims of crimes.

The resolution of the problem of legality in criminal proceedings would be facilitated by the speedy resolution of the dispute over the place of the Public Prosecutor's Office within the system of public authority during the investigation of crimes. The powers of the Prosecutor's Office to monitor compliance with the law at the preliminary investigation stage have been unduly restricted. That is why, it would seem advisable to align the legal practice with the nature of the powers of the Public Prosecutor and to extend the prosecutor's powers in general in this respect.

Protection of victims of domestic violence is a major challenge. The ineffectiveness of legal remedies has led to a trend of citizens' recourse to the European Court of Human Rights, which concluded that the Russian authorities had failed to establish a legislative basis for combating domestic violence and investigating and prosecuting domestic ill-treatment. We believe there should be introduced administrative regulations aimed at preventing future incidents, as well as a system of sanctions for their violation, that could significantly reduce the risk of domestic violence and of recidivism in general.

Furthermore, there should be improved the practice of participation of persons with physical and mental conditions as a party to criminal proceedings. The particularities of proceedings in such criminal cases require the development of recommendations to the preliminary investigation authorities and the amendment to article 5, paragraph 12, of the Code of Criminal Procedure of the Russian Federation that does not currently include the concept of a legal representation for an incapacitated adult who, due to physical and mental conditions, cannot understand the nature and meaning of the proceedings with his/her participation; and (or) independently protect their rights and legitimate interests.

To change the situation regarding the rights of victims, there is also a need for a system of measures involving extension of state statistical observation data.

A victim who reports a crime should be entitled to free legal assistance from the moment of filing a complaint. At the stage of instituting criminal proceedings, it is also advisable to introduce the possibility of keeping the identity of the complainant secret if there is a real threat to his/her life and health and to the life and health of his/her relatives.

Moreover, the improvement of the investigation efficiency of crimes, particularly those related to the protection of the rights of victims, will ensure that all investigations should begin as soon as a crime report has been filed and granting of victim status to the applicant should coincide with the commencement of the criminal proceedings.

The idea to eliminate “the criminal proceedings initiation stage” has been in the focus of professional attention for several years, but there has not yet been conducted sufficient study and public discussion of the concept.

The mechanism for protecting the rights and legitimate interests of the victim if a person who has committed a crime has not been identified during the pre-trial proceedings in a criminal case is not regulated. In these circumstances, criminal proceedings are limited to formalities which in no way protect the rights and legitimate interests of the victim.

The issue of compensation for victims has also received particular attention. Legal mechanisms to encourage accused persons (suspects) to make compensation to victims are far from being perfect. For example, there are no legal means for natural and legal persons (in possession of the property or other assets on behalf of the perpetrator), to be employed as civil co-defendants.

The practice of enforcing civil claims for compensation that have been granted by the courts for the damage caused by the crime also requires special attention, as the convicted person is often unable to work in a penal institution. The consequences of the shortcomings of the legislation governing compensation for damage caused by crime and of adequate law enforcement practices are the low level of effective compensation for victims. The solution to this situation is to establish a State fund to compensate the victim for the harm caused by the crime. The State, in its own turn, could, as a form of recourse, recover damages from perpetrators.

In 2020, the High Commissioner made proposals for legislation in the area of law enforcement. Most of them concerned criminal, criminal procedure and criminal

enforcement legislation. Certain proposals by the High Commissioner were aimed at improving administrative legislation on human and civil rights and freedoms.

The High Commissioner sent proposals to the Russian Ministry of Justice based on the results of the analysis of the draft Code of Administrative Offences of the Russian Federation and the draft Code of Administrative Procedure of the Russian Federation which were made public in 2020. The High Commissioner also believes it is necessary to provide for the right of commissioners for human rights to appeal against rulings and decisions in cases involving administrative offences in the new legislation.

Following a proposal by the High Commissioner, the State Duma is considering a draft law submitted by the Supreme Court on the introduction of the concept of "criminal misconduct" into the Criminal Code and the Code of Criminal Procedure, aimed at the humanisation of criminal legislation and proposing the reclassification of 112 offences as criminal misconducts.

The High Commissioner's unimplemented proposals include a reform of the process of instituting criminal proceedings, the introduction of the concept of "criminal misconduct", the restriction of the time limit for detention after a criminal case has been referred to a court, and the introduction of an independent provision in the Criminal Code on liability for torture and cruel, inhuman and degrading treatment.

The High Commissioner has repeatedly advocated the expansion of the powers of public monitoring commissions to monitor respect for the rights of suspects, accused and convicted persons in court premises and vehicles.

References

- https://ombudsmanrf.org/news/novosti_upolnomochennogo/view/upolnomochennyj_prinjala_uchastie_v_zasedanii_kollegii_fsin_rossii

Media pluralism and freedom of expression

The issue of detention and the imposition of administrative sanctions on journalists and bloggers covering unauthorized public events is of concern. Recently, the audience of new electronic media, YouTube channels, and bloggers has significantly expanded, and they

have begun to play a crucial role in covering a wide range of meetings and events that often remain outside the attention of traditional media. At the same time, their work is not always perceived by representatives of law enforcement agencies as journalistic activity, which does not provide them with the same degree of protection (see below).

This practice requires additional attention, since it affects the exercising of the right of citizens to receive information about public events, and does not contribute to the objective coverage of such events by online media.

According to Article 49 of the Law «On Mass Media» the State guarantees a journalist, in connection with his professional activity, the protection of his or her honour, dignity, health, life and property as a person performing a public duty. However there is no similar rule for bloggers, while, in fact, they perform the same important function as journalists.

In this regard, the High Commissioners proposed to amend the legislation defining the legal status of bloggers when covering public events; to recommend that law enforcement agencies refrain from detaining journalists and bloggers who are present at the venue of an unauthorized public event in order to cover this event, and not to participate in it.

In 2020 the High Commissioner received 21 complaints related to the realization of the journalists' activities. They were devoted to the illegal criminal prosecution, arrests while covering public events, labour rights and inability to conduct their professional activities abroad.

The High Commissioner takes actions to protect the rights of journalists if they believe they have been violated. For example, the High Commissioner appealed to the Prosecutor General's Office of the Russian Federation with requests to evaluate the applicants' arguments and take the necessary measures in the cases of journalists Abdulmumin Gadzhiev, Svetlana Prokopyeva, Anastasia Shevchenko, Ivan Golunov, Elena Milashina and others. At the request of the High Commissioner, the Commissioner for Human Rights in the Republic of Dagestan visited Abdulmumin Gadzhiev in the pre-trial detention center. The Commissioner assisted him in obtaining subscription publications, meeting with lawyers (22 meetings in 4 months), and providing him with hot water. Ivan Golunov was released after the request of the High Commissioner addressed to the President of the Russian federation. Other cases are being monitored by the Commissioner and regional human rights commissioners.

References

- <http://pravo.gov.ru/proxy/ips/?docbody=&nd=102013812>
- https://ombudsmanrf.org/news/v_rossii/view/ombudsmen_dgestana_posetil_sizo1_regiona

Other relevant developments or issues having an impact on the national rule of law environment

Penitentiary conditions

The High Commissioner carried out substantive investigation of the use of physical force, cruel and degrading treatment against suspects, accused and convicted persons.

For example, from January 18, 2021, the Federal Penitentiary Service of Russia (hereinafter referred to as FSIN), in connection with the appeals of the High Commissioner, began work on the observance of human rights in the institutions of the Main Directorate of the Federal Penitentiary Service of Russia (hereinafter Main Directorate of FSIN) in the Irkutsk region. On February 17, 2021, due to numerous shortcomings in the work of the unit identified by the commission of FSIN, the head of the detention facility SIZO-1 was dismissed, and several officers of the Irkutsk Region Main Directorate of FSIN were suspended after an inspection by the commission of FSIN. The deputy head of SIZO-1, the head of the operational department of SIZO-1, the deputy head of the correctional facility IK-6 were temporarily suspended from their official duties.

Regarding ill-treatment of convicts held in the detention facilities SIZO-1 and SIZO-6 of the Irkutsk Region Main Directorate of FSIN, who previously served their sentences in the correctional facility IK-15, a criminal case was opened on February 1, 2021, which is under control of the High Commissioner. The commission of the Federal Penitentiary Service of Russia will work in the Irkutsk region until the investigation of criminal cases is completed and all guilty persons are brought to justice.

In order to prevent and suppress the illegal use of physical force and special means to persons held in penitentiary institutions, the High Commissioner proposed, at the Board of the Federal Penitentiary Service of Russia held on October 7, 2020, to consider the

installation of video surveillance systems located in the penal institutions of the territorial body of FSIN4.

At the initiative of the High Commissioner, Federal Law No. 96-FZ of April 1, 2020 "On Amendments to the Executive Penal Code of the Russian Federation" was adopted, and entered into force in September 2020. The law established the right of a prisoner to be transferred to a correctional facility close to his or his relatives' place of residence, and has had a positive impact on law enforcement practice. As a consequence, already by the end of the year the number of appeals to the High Commissioner for transfer closer to the place of residence decreased (last quarter of 2020 - 129 appeals, last quarter of 2019 - 192 appeals).

In connection with the complaints received against the conditions of detention of citizens in penal institutions (detention centres and correctional institutions), following the initiative of the High Commissioner, Federal Law No. 494-FZ "On Amendments to Certain Legislative Acts of the Russian Federation" was developed and adopted, which provides for the right of prisoners to receive financial compensation for violation of detention conditions. During 2020, 1,450 administrative suits were brought before Russian courts to declare conditions of detention inadequate and to award consequent compensation. During 2020, 74 decisions were issued, totalling 5,192,683,000 Rubles, for partial satisfaction of claims for compensation for breaches of conditions of detention; which have entered into force.

The significance of the adopted law for the protection of human rights was noted by the ECtHR in April 2020, indicating that the newly introduced procedural requirements for access to the compensation scheme are simple and accessible; the new compensation procedure has the necessary procedural guarantees, such as independence and impartiality, the right to legal aid; the courts are sufficiently informed about the criteria to be considered when awarding compensation.

References

- <https://rg.ru/2020/04/03/fz-96-dok.html>; <https://rg.ru/2019/12/31/fz-494-dok.html>
- https://ombudsmanrf.org/pravo/news/ggorjachie_dokumenty/view/prezidium_vs_rf_o_bobshhil_praktiku_po_sporam_s_vjazannym_s_predostavleniem_grazhdanam_mer_soc_podderzhki
- https://ombudsmanrf.org/pravo/news/ggorjachie_dokumenty/view/aktualizirovany_o_tdelnye_postanovlenija_plenuma_verkhovnogo_suda_rf_po_ugolovnym_delam

Impact of measures taken in response to COVID-19 on the national rule of law environment

Most significant impacts of measures taken in response to the COVID-19 outbreak on the rule of law and human rights protection

The High Commissioner produced a special report on 'Human rights protection during the spread of covid-19', covering the period from February to October 2020 (the English summary of the report is available in the references below).

In general, the analysis conducted by the High Commissioner indicates that the measures that restricted human rights were justified, were not of arbitrary or discriminative nature, did not tolerate humiliation of human dignity or torture and were commensurable with the goals of protecting the lives and health of the population, that was being informed about these measures in a timely and consistent manner.

The restrictions on human rights and freedoms were excessive in some regions. In Stavropol and Krasnodar regions there were problems regarding the issuance of electronic passes which blocked all traffic by introducing types of electronic passes. This resulted in a commotion and large gatherings of people in local administrations, in turn creating a greater risk of further infection spread. Details of these events were urgently conveyed to the relevant government bodies by the High Commissioner. Subsequently, these measures got improved.

Likewise, the analysis of regulatory legal acts adopted to combat the spread of the new coronavirus infection conducted by the Ministry of Justice of the Russian Federation indicates that the implemented measures conform to the constitutional goals of protecting life and health, are proportionate to the threat of the spread of the epidemic and have been accompanied by full-scale state support for the most vulnerable sectors of the economy and economic support for broad categories of citizens.

Further to these general findings, some more specific issues were also highlighted by the High Commissioner in the context of the 2021 rule of law reporting.

Measures taken by the authorities to counter the pandemic

Due to the suspension of air traffic during the COVID-19 pandemic, thousands of people wishing to return to their homeland gathered at the state border of the Russian Federation in the areas of automobile checkpoints. The most difficult situation was in the Samara and

Orenburg regions, where citizens of the republics of Uzbekistan, Tajikistan and Kyrgyzstan gathered simultaneously to transit through Kazakhstan to their countries of citizenship. People came from 20 regions of Russia and, as Kazakhstani authorities did not give permission to enter.

The High Commissioner requested the Russian Railway Company and ombudsmen of the above-mentioned countries to assist in transporting people. Due to the measures taken by the authorities, more than 12 thousand foreigners returned to their homeland.

The High Commissioner addressed the President and the Prime Minister of the Russian Federation on the most pressing issues regarding the protection of the rights of citizens in the context of the pandemic. Appropriate measures were taken, solving a number of systemic problems. For example, the problem of lack of personal protective equipment (masks) in the first wave of the COVID-19 spread was solved. In order to rectify the situation, the High Commissioner sent appeals to the Chairman of the Government of the Russian Federation, the Deputy Chairman of the Government of the Russian Federation, the Minister of Health of the Russian Federation. Requests and appeals were understood by the authorities. A decision was made to purchase personal protective equipment in the amount of 40 million units under a foreign trade contract.

Moreover, the following pressing issues were resolved:

- extension of the migration registration documents (Decree of the President of the Russian Federation No. 274 as of April 18, 2020);
- departure of the Russian citizens legally residing in a foreign country to their permanent place of residence (Decree of the Government of the Russian Federation No. 1170-r as of April 29, 2020);
- lift of certain restrictions to enter and exit the Russian Federation territory (Decree of the Government of the Russian Federation No. 1511-r as of June 6, 2020).

Following the request of the High Commissioner, non-profit educational private institutions were included in the list of sectors of the Russian economy most affected by the deterioration of the situation due to the pandemic. Previously, the Resolution of the Government of the Russian Federation No. 685 (as of May 15, 2020 "On Amendments to Resolution of the Government of the Russian Federation No. 409 as of April 2, 2020") provided benefits only to the subjects of small and medium-sized enterprises, which do not include non-profit educational private institutions.

The High Commissioner appealed to the Mayor of Moscow to resolve the problem of blocking social cards (for free travel) of people over 65 years living in Moscow. By the Decree of the Mayor of Moscow No. 13-UM as of March 5, 2021 "On Amendments to the Decree of the Mayor of Moscow No. 68-UM as of June 8, 2020" the restrictions on the movement of citizens of the age category 65+ were removed and their social cards were unblocked.

Penitentiary system

In order to prevent the spread of COVID-19, a set of sanitary and anti-epidemic (preventive) measures were implemented within penitentiary institutions both for the persons held there and the staff. In accordance with Federal Law No. 103-FZ as of July 15, 1995 "On the Detention of Suspects and Accused of Committing Crimes"⁷, a special conditions regime was introduced in the penitentiary institutions.

The set of measures taken made it possible to prevent the mass penetration of COVID-19 into the institutions of FSIN (federal authority for the detention of suspected and convicted persons, the security and maintenance of prisons in Russia), to prevent a sharp increase in the incidence, to create the necessary conditions for isolation, treatment of patients, and to increase the scope of testing. All mentioned efforts ensure the sustainable functioning of penal institutions and safety from infection.

Observatories were established to monitor contact persons. For isolation and outpatient treatment of patients with a new coronavirus infection, 31.5 thousand places are provided in the institutions of the penitentiary system. To provide medical care in inpatient conditions, 609 beds have been deployed in hospitals of medical and sanitary units. Patients with the most severe forms of the disease are sent to medical organizations of the state and municipal health systems according to approved routing schemes.

In the medical and sanitary units of FSIN, a stock of all necessary medicines for the treatment of a new coronavirus infection and its complications was formed. At the same time, the schemes and volumes of medicines strictly comply with the standards approved by the Ministry of Health of the Russian Federation, as well as the recommendations of the World Health Organization.

During a speech at the Board of FSIN held on October 7, 2020 the High Commissioner proposed to discuss issues that could improve the protection of persons in the context of the pandemic in the institutions of the penitentiary system, including increasing the

number of telephone calls, the equipment of additional offices with glass partitions for lawyers who will be able to visit their clients more often, as well as other measures⁸.

Other NHRI's activities

The meeting of the Coordinating Council of Human Rights Commissioners on November 24, 2020 was devoted to the topic "Protection of human rights during the pandemic and the gradual removal of restrictive measures: experience and problems", which resulted in the recommendations of the human rights commissioners being formulated and sent to the state authorities.

On November 25, 2020, the High Commissioner, in cooperation with the Scientific and Educational Center for Human Rights, organized a scientific and practical conference "Protection of human rights in the context of the spread of a new coronavirus infection: theory and practice", which took place in Human Rights House (Moscow).

In connection with the ongoing pandemic of COVID-19, international cooperation activities were held in video conference mode.

In April and November 2020, the third and fourth Annual Meetings of the Eurasian Ombudsman Alliance were held in this format. On November 17, 2020, the IV International Conference "Protection of human rights in Eurasia: exchange of best practices of ombudsmen" was held in Moscow under the auspices of the High Commissioner.

References

- High Commissioner Report on 'Human rights protection during the spread of covid-19' (in English)
<https://www.theioi.org/downloads/2kanr/SUMMARY%20REPORT%20ON%20HR%20PROTECTION%20DURING%20COVID-19.pdf>

San Marino

At present, there is no accredited NHRI in San Marino.

In 2018, the UN Human Rights Committee recommended San Marino to establish an NHRI in conformity with the UN Paris Principles. At that occasion, San Marino informed that it did not envisage the establishment of an Ombudsman or NHRI in the country, due to its small size. It informed the Committee that some functions performed by Ombuds institution have been traditionally conferred upon the Captains Regent of the Republic of San Marino.

ENNHRI stands ready to provide the government of San Marino advice on how to strengthen existing national institutions, such as the Captains Regent in compliance with the Paris Principles.

References

- Information received from San Marino in follow-up of the UN Human Rights Committee concluding observations (11 July 2018):
<http://docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=6QkG1d%2fPPRiCAqhKb7yhsjwnBOt%2fBCL%2fEuWF7i7%2fLgEFnF1nfVayXy5CdMGR%2fXFPL804PUd11MzELVexGA6o1Xp2QyWYz%2bh9TRqPkCu64G1QnODaqqPjifYEng1xWbt%2f8q8F9JpZLhEvttEcYMPQw%3d%3d>

Scotland

Scottish Human Rights Commission (SHRC)

Accreditation status and SCA recommendations

The Scottish NHRI (Scottish Human Rights Commission - SHRC) was last [reaccredited](#) with A status in March 2015. The SCA acknowledged the existence of good practices in the selection and appointment processes of the Chair and members of the NHRI and suggested to formalise such broad and transparent processes in the enabling law. The SCA also recommended to include in the NHRI's enabling law requirements for an independent and objective dismissal process. Finally, the SCA, while expressing appreciation for the NHRI's work, encouraged the NHRI to continue advocating for an appropriate provision of funding and for amendments to its enabling law to include a broader human rights mandate and ensure a free determination of the form and content of all the NHRI's reports.

The Scottish NHRI will be reviewed by the SCA in [June 2021](#).

Independence and effectiveness of the NHRI

Changes in the regulatory framework applicable to the Institution

In March 2021 the United Nations Convention on the Rights of the Child (Incorporation) (Scotland) Bill was passed by the Scottish Parliament. When it passes into law the Bill will incorporate the UNCRC directly into Scots law. The Bill introduced a new power that allows SHRC to bring legal proceedings itself where it is believed a public authority has acted unlawfully under the Act. Previously the SHRC was limited to intervening in legal proceedings but could not bring cases directly. (1)

References

- (1) <https://www.parliament.scot/-/media/files/legislation/bills/current-bills/united-nations-convention-on-the-rights-of-the-child-incorporation-scotland-bill/stage-3/bill-as-passed.pdf>

Enabling space

An internal evaluation of the SHRC's enabling environment is ongoing. In this context, in view of the accreditation session in June 2021, the Commission has called on civil society organisations (CSOs) to make submissions assessing whether the regulatory framework, resources enable the institution to function effectively and independently. (1)

SHRC works constructively with civil society, government, Committees of the Scottish Parliament and public bodies through a variety of working groups, advisory groups, capacity building projects and through making recommendations for changes to law and practice. SHRC also works to facilitate and develop a National Action Plan on Human Rights with a large range of both governmental and non-governmental stakeholders.

SHRC has full autonomy where the budget is concerned and is financially independent of both Parliament and Government. Individual budget lines are not interrogated by either Parliament or Government.

References

- (1) <https://www.scottishhumanrights.com/news/accreditation-as-a-national-human-rights-institution/>

Developments relevant for the independent and effective fulfilment of the NHRIs' mandate

In March 2021, the SHRC welcomed (1) the **Scottish Government's commitment to introduce a new human rights Bill**, incorporating four international human rights treaties fully and directly into Scots law:

- the International Covenant on Economic, Social and Cultural Rights (ICESCR)
- the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW)
- the Convention on the Elimination of All Forms of Racial Discrimination (CERD)
- the Convention on the Rights of Persons with Disabilities (CRPD)

This followed recommendations included in a Report from the National Taskforce on Human Rights Leadership (2), of which the SHRC is a member. The Taskforce Report

mentions the SHRC several times, and notably there is a recommendation that the SHRC 'should be given additional powers including taking test cases and conducting investigations and any further extended powers should be considered'.

On the other hand, the SHRC warned of potential risks to the protection of people's rights in Scotland as a result of the **UK Government's latest review of the Human Rights Act** . The changes being considered could in the Commission's opinion make it harder for people to enforce their rights in Scotland.(3)

References

- (1) <https://www.scottishhumanrights.com/news/a-new-era-for-human-rights-commission-welcomes-scottish-government-commitment-to-ground-breaking-new-human-rights-law-for-scotland/>
- (2) <https://www.gov.scot/binaries/content/documents/govscot/publications/independent-report/2021/03/national-taskforce-human-rights-leadership-report/documents/national-taskforce-human-rights-leadership-report/national-taskforce-human-rights-leadership-report/govscot%3Adocument/national-taskforce-human-rights-leadership-report.pdf?forceDownload=true>
- (3) <https://www.scottishhumanrights.com/news/commission-sounds-alarm-bell-on-risks-to-human-rights-act/>

Human rights defenders and civil society space

SHRC has not carried out specific work in this area; however, we draw attention to calls for the third sector and civil society in Scotland to be appropriately and sustainably resourced, supported and trained.

Over the past year, the SHRC has alerted on impacts of measures taken to counter the COVID-19 outbreak on the right to freedom of assembly (see also the dedicated COVID-19 section below).

The Commission regularly includes civil society actors and organisations in their initiatives and projects. Examples include a project entitled "All Our Rights in Law" in which the Commission worked in partnership with Scotland's main human rights civil society network,

the Human Rights Consortium Scotland, to deliver a public engagement project to support people to inform and feed into the development of proposals for a new human rights legal framework for Scotland, mentioned above. Another example is SHRC's International Treaty Monitoring work; SHRC has hosted a series of roundtables and workshop discussions with NGOs to contribute to its international treaty monitoring reports including recently developing relationships with race equality organisations across Scotland to gather evidence and identify issues to inform its report on the implementation of CERD in Scotland. The Commission is currently facilitating workshops with civil society on the upcoming UPR of the UK.

Overall, the SHRC has developed relationships with a wide and diverse range of NGOs in Scotland. The database of the Commission includes around 450 NGOs working on women's rights, children and young people's rights, disabled people's rights, economic, social and cultural rights, black and ethnic minority people's rights, LGBTQI people's rights and older people's rights. Relationships are also kept with trade unions, faith groups, community development and grassroots NGOs, as well as NGOs working on specific topics and issues including prisons and detention, mental health, climate change and others.

Checks and balances

The SHRC has been undertaking thorough work on a **human rights-based approach to budgeting** (1), i.e. thinking through how people's rights are impacted by the way public money is raised, allocated, and spent. The SHRC has underlined in this respect that budget decisions should reflect human rights standards and the process of formulating, approving, executing, and auditing the budget should reflect human rights principles.

In the COVID-19 context, the Commission further called for **transparency in public finances** and a rights-based approach to economic recovery. The SHRC submitted evidence to inquiries held by the Scottish Parliament's Finance and Constitution Committee, and the Scottish Government's Advisory Group on Economic Recovery emphasising the need for transparency, participation and accountability in fiscal decision making (2).

The SHRC has acted as an intervener in a case relating to the conduct of an **outsourcing company contracted by the state** to provide housing services. The case, *Ali v Serco Group Plc.*, concerns the company's practice to **legally evict vulnerable asylum seekers by changing the locks of their flats**. The SHRC had first intervened in the *Ali v Serco* case in 2019 (3), setting out its analysis and concerns over the protection of human rights where

services are delivered by private contractors, on which the current **legislation lacks clarity**. The SHRC Intervened again to support the permission to appeal in the case, which was eventually refused by the UK Supreme Court (4). The Commission reacted to the decision by stressing that the case would have benefited from further clarification from the Supreme Court and stressed the worrying implications of the Court's judgment for the protection of human rights, particularly when public services are contracted out.. The SHRC believes that, to ensure clarity in practice, the state (including Scottish public bodies) should make human rights obligations explicit in relevant contracting arrangements with third parties, ensuring that contracts are appropriately monitored.

References

- (1) <https://www.scottishhumanrights.com/projects-and-programmes/human-rights-budget-work/>
- (2) <https://www.scottishhumanrights.com/news/commission-calls-for-transparency-in-public-finances-and-a-rights-based-approach-to-economic-recovery/>
- (3) <https://www.scottishhumanrights.com/news/commission-disappointed-with-supreme-court-decision-on-serco-appeal/>
- (4) <https://www.scottishhumanrights.com/news/human-rights-arguments-to-be-heard-by-court-in-serco-lock-change-appeal/>

Functioning of the justice system

The SHRC supported a recent Independent Review of Complaints Handling, Investigations and Misconduct Issues in Relation to Policing, recommending **substantial reform of the way police complaints are handled to improve access to justice, accountability and public confidence** (1). The Commission particularly welcomed several recommendations to address human rights concerns in relation to police complaints (2):

- the Police Scotland Code of Ethics, which sets out the standards expected of all of those who contribute to policing in Scotland and expressly references human rights, should be incorporated into law;

- all deaths and serious injuries in police custody, deaths following police conduct and other serious criminal allegations against the police, should be reported to the independent Procurator Fiscal;
- meaningful victim involvement and constructive engagement with complainers must be supported. To facilitate this the report recommends access to free, non-means tested legal advice, assistance and representation for the immediate family of someone who died in custody, from the earliest point following the death and throughout any subsequent Fatal Accident Inquiry or Public Inquiry;
- the independent Police Investigations and Review Commissioner (“PIRC”) should be given greater powers to improve independence and public confidence.

The SHRC has been alerting on the **use of biometric data for law enforcement** (3). It welcomed the passing of the Scottish Biometrics Commissioner Act by the Scottish Parliament, creating a new Biometrics Commissioner to oversee the acquisition, retention, use and destruction of biometric data by police in Scotland. The Commissioner will also oversee a Code of Practice to guide the use of biometric data such as fingerprints, DNA, and facial and voice recognition. The SHRC had previously raised concerns about the lack of legislative framework in this area, contributed evidence to Parliament on the human rights issues engaged, and contributed to the work of the Independent Advisory Group on biometrics.

The SHRC is a co-chair of the Independent Review into the Response to Deaths in Prison Custody. The Review was instructed by the Cabinet Secretary for Justice to enable the identification of and to make recommendations for areas for improvement to ensure appropriate and transparent arrangements are in place in the immediate aftermath of deaths in custody with Scottish prisons, including deaths of prisoners whilst in NHS care. (4) The Review will report in late summer/early autumn 2021.

References

- (1) <https://www.scottishhumanrights.com/news/commission-commends-human-rights-emphasis-in-angiolini-review/>
- (2) <https://bit.ly/3lnN9Gf>
- (3) <https://www.scottishhumanrights.com/news/commission-welcomes-scottish-biometrics-commissioner-act/>
- (4) <https://www.scottishhumanrights.com/projects-and-programmes/deaths-in-custody-review/>

Impact of measures taken in response to COVID-19 on the national rule of law environment

Most significant impacts of measures taken in response to the COVID-19 outbreak on the rule of law and human rights protection

General human rights impacts

The SHRC has published numerous statements, letters, reports, underlining the general human rights impacts of COVID-19 pandemic and related governmental response. Notably, the Commission flagged the risks drawing from **emergency laws** put in place to counter the crisis (1). The Commission also stresses the need for any legislative measures to be lawful, necessary, proportionate and time limited, in line with human rights laws.

It submitted several recommendations to public bodies in charge of the relevant measures, e.g. In July 2020 a 'Submission to Inquiry into COVID-19 and Human Rights' by the Scottish Parliament Equalities and Human Rights Committee (2) recommended the following:

- The Scottish Government must demonstrate how human rights have systematically informed all of its law policy and decision making in response to the pandemic including where relevant through Human Rights Impact Assessment;
- Human rights must underpin decisions relating to economic recovery in alignment with the National Performance Framework and the Government's ambition to show human rights leadership in securing rights for all;

- The work of the National Taskforce for Human Rights Leadership must take account of the lessons learned from the impacts of this pandemic in taking forward its work. The new human rights framework must be regarded as central in a direct response to the experience of the pandemic and informing plans for recovery;
- The specific rights of women, disabled people, older people, children and black and minority ethnic people must be further protected and implemented alongside economic, social, cultural and environmental rights in responding to the experience of this pandemic.

Persons deprived of liberty

The SHRC identified the human rights impacts on persons deprived of liberty as one of the most important issues to address in the COVID-19 context (3). In 2020 and still in 2021, the Commission addressed several letters to the [Cabinet Secretary for Justice](#) to highlight concerns about the **conditions in prisons** during COVID-19, and stated that some measures qualified as breaches of human rights (4). The SHRC expressed particular concern over people confined to their cell for extended periods of time, with very limited access to shower facilities and time out of cells, including access to outdoor exercise.

The Scottish members of the UK National Preventive Mechanism (of which the SHRC is a member) stressed similar concerns in a letter to the Cabinet Secretary for Justice in April 2020 (5).

The SHRC also underlined issues about **conditions in care homes** during the pandemic. The Commission produced a briefing (6) setting out the human rights framework as it applies to the issues that have arisen in care homes, and detailing the requirements of human rights law to ensure effective investigations are carried out by the state.

Justice and policing

Another area of concern is the challenge the coronavirus pandemic poses to Scotland's **criminal justice system** (7), and the **new police powers**, more likely to impact particular groups, including those living in poverty, disabled people, homeless people, ethnic and religious minorities, LGBTI people, women and children in situations of domestic violence, the elderly and young people, migrants and refugees (8).

The Scottish authorities established an Independent Advisory Group to review Police Scotland's use of new temporary police powers in the current health emergency (IAG), of

which the SHRC is a member. In that framework, the SHRC issued a Human Rights Guide to Examining New Police Powers in Response to COVID-19 (9).

The SHRC produced for the IAG an insight paper on the **right to peaceful assembly** (10), underlining the significant implications of the pandemic on such democratic freedoms. The briefing set out the human rights framework surrounding the right to peaceful assembly as protected by Article 11 ECHR, stressing the conditions that interferences with the right must meet, and discussing particular issues such as the relationship with other ECHR rights (e.g Arts 9 &10) and blanket bans on demonstrations.

Economic, social and cultural rights

COVID-19 has put pressure on all areas of our society, with increased need for health and social care, rising unemployment, and an increasingly uncertain economic future. The pandemic has magnified the prevailing and persistent structural inequalities, providing a stark illustration of the effects of indirect discrimination that have been harmful for people and their human rights, especially their economic and social rights. This has resulted in the most vulnerable in society disproportionately suffering the most severe consequences of the virus. Death rates from COVID-19 are documented as being 2.3 times higher for those living in the most deprived areas of Scotland and poverty is the greatest driver of homelessness in all of its forms.

The SHRC highlighted numerous impacts of the pandemic on economic and social rights; notably the **right to food** (11), the **right to adequate housing** (12) and the **right to social security** (13).

An important area of concern as highlighted by the SHRC is the impact **health and social care**. Beyond concerns over the situation in care homes (detailed above), the Commission published an Impact Monitoring Report on 'COVID-19, Social Care and Human Rights' (14), detailing how legislative, policy and practice decisions taken by public authorities have affected the rights of people who access, or wish to access social care, unpaid carers, and people who work in social care.

The report found that COVID-19 has had a profound impact on the way in which social care support has been delivered in Scotland, leading to significant gaps in the realisation of rights for people who rely on such support, including unpaid carers. The report makes 24 recommendations, some of which call for urgent action to resolve immediate human rights concerns.

The SHRC put an emphasis on the specific **challenges faced by students** at Scottish universities (15). The Commission expressed concern over the restrictions placed on many students, particularly those living in student accommodation, living alone for the first time without family or other supports, and lacking clear information on the restrictions which apply to them. The SHRC consequently published a Report on 'COVID-19: Human Rights Considerations Related to Students' (16) with a set of recommendations.

Economic recovery

The SHRC made several submissions to relevant bodies in order to alert on COVID-19 impacts on public finances and fiscal framework (17) and published a report calling for a human rights based approach to budget setting and spending decisions following the coronavirus pandemic (18), to ensure **social and economic recovery**.

The report includes a series of recommendations to the Scottish Government, Scottish Parliament and oversight bodies are set out to improve practice in all areas. The Commission also stressed the need to acknowledge and address the disproportionate impact of the pandemic on **vulnerable groups**, including disabled people, women and people living in poverty.

References

- (1) <https://www.scottishhumanrights.com/news/commission-flags-human-rights-implications-of-coronavirus-emergency-laws/>
- (2) <https://www.scottishhumanrights.com/news/evidence-submitted-to-scottish-parliament-inquiry-into-covid-19-and-human-rights/>
- (3) <https://www.scottishhumanrights.com/covid-19/prisons-places-of-detention/>
- (4) <https://www.scottishhumanrights.com/news/breaches-of-human-rights-in-prisons-during-the-pandemic/>
- (5) <https://www.scottishhumanrights.com/news/letter-to-cabinet-secretary-for-justice-on-rights-of-people-in-detention-during-covid-19-outbreak/>
- (6) <https://www.scottishhumanrights.com/news/briefing-care-homes-and-human-rights-during-covid-19/>
- (7) https://www.scottishhumanrights.com/media/2015/20_04_covid19-criminal-trials_briefingvfinal.pdf

- (8) <https://www.scottishhumanrights.com/media/2037/evidence-to-justice-committee-062020-shrc-police-scotland-use-of-temporary-powers.pdf>
- (9) <https://www.scottishhumanrights.com/media/2038/iag-shrc-human-rights-vfinalforweb.pdf>
- (10) https://www.scottishhumanrights.com/media/2101/article-11_right-to-freedom-of-assembly-iag.pdf
- (11) <https://www.scottishhumanrights.com/news/the-right-to-food-in-scotland-during-covid-19/>
- (12) <https://www.scottishhumanrights.com/media/2066/shrc-right-to-housing-220720.pdf>
- (13) <https://www.scottishhumanrights.com/media/2065/social-security-briefing-shrc-220720.pdf>
- (14) <https://www.scottishhumanrights.com/media/2102/covid-19-social-care-monitoring-report-vfinal.pdf>
- (15) <https://www.scottishhumanrights.com/news/statement-human-rights-of-students-at-scottish-universities/>
- (16) <https://www.scottishhumanrights.com/media/2127/covid19-student-briefing-vfinal.pdf>
- (17) https://www.scottishhumanrights.com/media/2034/20_05_fincom_covid_publicfinances_humanrights_vfinal.pdf
- (18) <https://www.scottishhumanrights.com/news/new-report-leads-to-call-for-human-rights-to-be-at-the-heart-of-post-covid-budget-decisions-to-ensure-social-and-economic-recovery/>

Most important challenges due to COVID-19 for the NHRI's functioning

COVID-19 presented a number of challenges, most notably the potential to impact on staff through ill health and/or caring responsibilities.

SHRC ordinarily works with Her Majesty's Inspector for Prisons in Scotland (HMIPS) to support a human rights based approach to the inspection of prisons and assists HMIPS to



undertake inspections to ensure that the human rights of prisoners are being respected. Due to COVID-19, HMIPS initially took the decision to suspend routine inspections. Inspections have now resumed; and SHRC is considering the most impactful way to re-engage with prison inspections.

Serbia

Protector of Citizens of the Republic of Serbia

Accreditation status and SCA recommendations

The Serbian NHRI was last [reaccredited](#) with A status in March 2015. The SCA encouraged the NHRI to advocate for the adoption, the formalisation and the implementation of a transparent and participatory selection and appointment process. Moreover, the SCA, while acknowledging the existence of good practices, recommended amendments to the law to ensure pluralism and more independence in the staff selection. Finally, the SCA has consistently encouraged the need for the NHRI to receive an adequate level of funding.

In December 2020, the SCA [decided](#) to defer its accreditation review of the Serbian NHRI to October 2021, seeking further action and information concerning selection and appointment, addressing human rights violations, cooperation with civil society and human rights bodies, and the carrying out of the quasi-judicial mandate.

Impact of 2020 rule of law reporting

Follow-up by State authorities

At the end of 2020, the Government of the Republic of Serbia established a Task Force for the Safety and Protection of Journalists which consists of the representatives of state bodies and media and journalist associations, and representatives of international organizations that provide support for the overall improvement of the media environment. The Task Force is expected to develop an Action Plan and make use of the Platform jointly designed by the Protector of Citizens and media and journalistic associations, which is a database of attacks and pressure on journalists and media workers.

Follow-up initiatives by the Institution

The 2020 Rule of Law Report was widely distributed among the Protector of Citizens' management and staff as well as among its partners and other relevant stakeholders. Also, the 2020 Rule of Law Report was mentioned in the Protector of Citizens' Annual Report for 2020 in the part dedicated to international cooperation. Finally, the Rule of Law Report provides a useful overview of the activities of other ombudsman institutions and NHRIs in promoting the rule of law.

With the aim to promote the freedom of expression and media freedoms, in cooperation with journalists' associations, journalists' unions and independent experts, the Protector of Citizens initiated the development of a unique media platform, more precisely a database that will encompass all types of attacks and pressure on journalists and media workers. Special emphasis will be placed on economic pressures considering their significant impact on journalists' daily lives and professional work. The platform will aim at establishing a more efficient mechanism for the protection of journalists and will also contribute to more effective response of the competent authorities in cases of endangering the safety of journalists.

References

- Official website of the Protector of Citizens:
https://www.ombudsman.org.rs/index.php?option=com_content&view=article&id=280:the-protector-of-citizens-on-media-platform-with-the-coe-and-media-associations-representatives-&catid=44&Itemid=4.
- https://www.ombudsman.org.rs/index.php?option=com_content&view=article&id=329:veljko-mili%C4%87-chairman-rade-%C4%91uri%C4%87-secretary-of-the-working-group-for-the-platform-on-recording-attacks-on-journalists&catid=44&Itemid=4
- https://www.ombudsman.org.rs/index.php?option=com_content&view=article&id=325:agreement-establishing-the-platform-for-recording-the-cases-of-endangering-safety-and-repressions-on-journalists-and-other-media-stakeholders-signed&catid=44&Itemid=4

Independence and effectiveness of the NHRI

Changes in the regulatory framework applicable to the Institution

A change in the national framework applicable to the Protector of Citizens is expected to be adopted in the second quarter of 2021. The Protector of Citizens drafted the new Law on the Protector of Citizens following the consultations with the SIGMA experts (SIGMA is the Support for Improvement in Governance and Management, a joint initiative of OECD/EU). The document was submitted to the Task Force for drafting the new Law on the Protector of Citizens (and of which the Protector of Citizens is a member), established in December 2020 by the Ministry of Public Administration and Local Self-Government. The

draft law stipulates further strengthening of the institution's human and institutional capacities and effectiveness in the promotion and protection of human and minority rights.

Enabling space

Regardless of its personnel changes, i.e. new recruitment, the Protector of Citizens is still located at the same premises, which capacity is not adequate for the number of employees or the efficient organization of work.

The Protector of Citizens records high rate of state compliance with its recommendations resulting from oversight investigations – 97%. This high rate indicates that the authorities understand the importance of improving their effectiveness as well as the importance of cooperation with the Protector of Citizens.

Developments relevant for the independent and effective fulfilment of the NHRIs' mandate

The Protector of Citizens does not report any significant changes that would in any way jeopardize its independence and mandate. Especially encouraging is the fact that, even in a challenging year such as 2020, citizens recognized the Protector of Citizens as an institution they could trust and turn to for the protection and promotion of their rights. Namely, the Protector of Citizens was addressed by 18.190 citizens in 2020, which means that the number of citizens' addresses increased by more than 67% as compared to 2019.

Human rights defenders and civil society space

The Protector of Citizens launched an own initiative investigation in March 2020 into the actions of competent authorities following the media reports that a group of about 200 high school students, self-organized through social media, protested in Leskovac over the announcement that the Pride Parade would be held in that city, as well as that during the protest there were incidents and the gathered high school students chanting homophobic slurs. The Protector of Citizens determined that the competent authorities had taken measures within their mandate and reminded the Ministry of Education, Science and Technological Development of the recommendations made in its regular annual reports that this authority should provide training for staff working in educational institutions in order to raise awareness on LGBTI equality.

Following the attack on the Pride Info Center office building in March 2020, the Protector of Citizens launched an own initiative investigation into the actions of the Ministry of Internal Affairs. The Ministry then informed the Protector of Citizens that it had identified

the attackers and taken measures to prosecute them, first time after a total of 11 attacks on this office.

As part of the "Provide Support" campaign, on International Pride Day on June 27, 2020, the Protector of Citizens painted his logo in rainbow colours to show support for LGBTI rights.

References

- https://www.ombudsman.org.rs/index.php?option=com_content&view=article&id=312:ministry-of-education-to-provide-trainings-for-teachers-on-lgbt-issues&catid=44&Itemid=4.
- <https://www.ombudsman.org.rs/index.php?limitstart=168>
- https://www.ombudsman.org.rs/index.php?option=com_content&view=article&id=178:-press-release-by-the-protector-of-citizens-on-a-hooligan-attack-on-the-pride-info-center-building&catid=49&Itemid=16.
- https://www.ombudsman.org.rs/index.php?option=com_content&view=article&id=317:attacks-on-lgbti-people-to-be-treated-as-crimes-of-racism-and-intolerance-&catid=44&Itemid=4
- https://www.ombudsman.org.rs/index.php?option=com_content&view=category&layout=blog&id=44&Itemid=4&limitstart=56

Checks and balances

The activities of the Protector of Citizens in 2020, during the COVID-19 pandemic, led to a significant increase of public trust in this institution, which is confirmed also in two separate public polls conducted last year. The findings of first poll (conducted immediately following the termination of the state of emergency in May 2020) showed that the citizens trust the Protector of Citizens most for protecting their rights. The findings of the second poll (December 2020) showed that the Protector of Citizens is an institution the citizens would first turn to for protecting their rights. The Protector of Citizens observed that persons with disabilities face various physical, information, communication and other obstacles when it comes to their right to vote, making it difficult or completely impossible for them to equally participate in decision-making and express their political will. In order to address these issues, the Protector of Citizens joined a Group for Consultations on Inclusive Electoral

Process and Rules in order to make concrete proposals for the improvement of the electoral process through the joint work of all stakeholders.

The Protector of Citizens issued a statement calling on certain political actors to refrain from attacking this independent state institution.

The Protector of Citizens issued a recommendation to the Regulatory Authority for Electronic Media (RAEM) in which it was determined that this independent regulatory authority violated the provisions of the Law on Electronic Media and the Law on the Protector of Citizens, for not conducting inspection of the broadcaster “Happy TV” due to its TV show in which the guests of the show, according to the complaints, expressed inappropriate attitudes towards the African-American community in the United States of America.

References

- Poll May 2020 available at: <https://tritacke.org/srp/page/istrazivanja>
- Poll December 2020 available at: <http://www.bgcentar.org.rs/predstavljeno-istrazivanje-ljudska-prava-u-ocima-gradana-i-gradanki-srbije/>

Functioning of the justice system

Although the oversight of courts and public prosecutor's offices falls outside the mandate of the Protector of Citizens, the citizens expressed dissatisfaction with the work of the mentioned authorities in their complaints in 2020, as in previous years. The Protector of Citizens receives a significant number of complains each year pertaining to the work of courts and public prosecutor's offices, as well as the Ministry of Justice which is responsible for conducting oversight of court administration. In these complaints, citizens, including detainees, most often point to violations of the right to a fair trial and a trial within a reasonable time, expressing their views on the existence of irregularities related to the conduct and course of the court proceedings, as well as dissatisfaction with the court decisions.

More specifically, in these complaints the citizens expect the Protector of Citizens to oversee the work of judicial bodies, primarily courts, and their decisions, to initiate appropriate proceedings against judicial office holders in order to determine their

responsibility, and to influence or order changes to be made in court decisions. With regard to the mandate of the Protector of Citizens and its limitations, its role in handling such complaints is to provide general information on the proceedings, available legal remedies and relevant authorities through which the oversight of courts and public prosecutor's offices is ensured.

Despite the Protector of Citizens' recommendations, no changes and amendments of the Law on Free Legal Aid have been made yet to introduce LGBTI people as vulnerable beneficiaries, although they are often exposed to threats, violence, hate speech and hate crime, and other serious human rights violations in various spheres of life.

References

- The law is available in Serbian: <https://www.paragraf.rs/propisi/zakon-o-besplatnoj-pravnoj-pomoci.html>.

Media pluralism and freedom of expression

Physical and verbal attacks on journalists, belittling, humiliating and discrediting media workers continued in 2020. Records of these attacks, kept by various media associations, are not unified. The Independent Association of Journalists of Serbia (NUNS) recorded 189 attacks on journalists in its database, among which 92 cases of pressures (i.e. intimidations, insults, defamation, etc.). According to that association, total number of attacks increased by about 60% compared to 2019. The increase recorded by the Association of Journalists of Serbia (UNS) based on journalists' reports is lower: they pointed at a 20% increase in the number of attacks against journalists (111) compared to the previous year.

According to UNS records, only in July 2020, during the protests in Belgrade, Niš and Novi Sad, 28 journalists, cameramen and photo reporters who reported from these protests, were attacked and their work was obstructed, while 14 of them sustained injuries, 6 of which required emergency medical care. The position and status of journalists and media workers is further jeopardized by their poor economic status.

The Protector of Citizens notes that no progress has been made in the area of freedom of speech and expression in the Republic of Serbia. Insults and public humiliation, especially of female journalists and politicians, occur with undiminished ferocity. Sexist and

discriminatory comments are indicative of a growing intolerance, as well as the impossibility of establishing elementary dialogue in society. Frequent reporting on migrants participating in illegal activities further fuels the potential activities of extremist groups. Although less common, there are still media headlines which emphasize the nationality of crime perpetrators - usually Roma national minority.

The Protector of Citizens issued a recommendation to the Regulatory Authority for Electronic Media (RAEM) in which it was determined that this independent regulatory authority violated the provisions of the Law on Electronic Media and the Law on the Protector of Citizens, for not conducting inspection of the broadcaster "Happy TV" due to its TV show in which the guests of the show, according to the complaints, expressed inappropriate attitudes towards the African-American community in the United States of America.

During the state of emergency declared due to COVID-19 pandemic, the Protector of Citizens responded to the arrest and detention of a journalist, Ms Ana Lalić. In an interview with Ms Lalić and her legal representative, the Protector of Citizens requested the information about the actions of the police during detention.

In his statement from July 2020, the Protector of Citizens announced, that in accordance with his legal powers, he would investigate whether the inspection of bank transactions of journalists and citizens' associations as of January 1, 2019, conducted by the Administration for Prevention of Money Laundering of the Ministry of Finance, had been performed on the basis of applicable regulations and laws. The Protector of Citizens is not aware of the reason why the Administration for Prevention of Money Laundering chose the specific journalists, civil society organizations and citizens' associations for inspection but will continue to monitor the situation closely and act accordingly.

With the aim to promote the freedom of expression and media freedoms, in cooperation with journalists' associations, journalists' unions and independent experts, the Protector of Citizens initiated the development of a unique media platform, more precisely a database that will encompass all types of attacks and pressure on journalists and media workers. Special emphasis will be placed on economic pressures considering their significant impact on journalists' daily lives and professional work. The platform will aim at establishing a more efficient mechanism for the protection of journalists and will also contribute to more effective response of the competent authorities in cases of endangering the safety of journalists.

At the end of 2020, the Government of the Republic of Serbia established a Task Force for the Safety and Protection of Journalists which consists of the representatives of state bodies and media and journalist associations, and representatives of international organizations that provide support for the overall improvement of the media environment. The Task Force is expected to develop an Action Plan and make use of the Platform jointly designed by the Protector of Citizens and media and journalistic associations, which is a database of attacks and pressure on journalists and media workers.

References

- <http://www.bazenuns.rs/srpski/napadi-na-novinare>
- <https://www.uns.org.rs/sr/saopstenja/106343/uns-upozorava-da-raste-broj-napada-na-novinare-.html>

Impact of measures taken in response to COVID-19 on the national rule of law environment

Most significant impacts of measures taken in response to the COVID-19 outbreak on the rule of law and human rights protection

During the state of emergency, the Protector of Citizens issued an opinion to the Ministry of Justice regarding exercising the right to a fair trial and called the Ministry to take measures within its mandate to enable access to alternative means of communication (Skype) between the defendant and defence counsel in a separate room, without the presence of third parties, with supervision only by watching and not listening, with no limits to the duration of communication to 30 minutes, in order to create the necessary conditions for conducting a confidential conversation and preparing the defendant's defence.

The Protector of Citizens observed that the COVID-19 pandemic brought many challenges in all spheres of society and the functioning of the state, and consequently, in the field of human rights promotion and protection. More specifically, human rights challenges showed the importance of strong, functional national human rights institutions with qualified resources that can be a relevant corrective factor in all potential situations of limitations on human rights.

The Protector of Citizens produced several reports related to the issues arising from the current COVID-19 crisis, such as:

- Special report of the Protector of Citizens on the activities during the state of emergency, in which it finds that the COVID-19 pandemic and the related measures have greatly affected the enjoyment of human rights, especially the rights of marginalized groups such as persons with disabilities, children with disabilities, homeless people, victims of domestic violence, national minorities, especially Roma, etc. Therefore, the Protector of Citizens intensified its efforts in reaching out to these groups and protecting their rights.

- Special report of the Protector of Citizens on conditions in Roma settlements during the state of emergency and the implementation of protection measures due to the COVID-19 pandemic

- Thematic report of the National Preventive Mechanism on the application of CPT principles relating to the treatment of persons deprived of liberty during the COVID-19 pandemic

References

- Official website of the Protector of Citizens:
https://www.ombudsman.org.rs/index.php?option=com_content&view=article&id=193:the-protector-of-citizens-issued-an-opinion-to-the-ministry-of-justice&catid=49&Itemid=16
- Special reports available at: <https://www.ombudsman.rs/index.php/izvestaji/posebnii-izvestaji/6658-report-on-protector-of-citizens-activities-during-covid-19>.
<https://www.ombudsman.rs/index.php/izvestaji/posebnii-izvestaji/6656-special-report-of-the-protector-of-citizens-with-recommendations>.
<https://www.ombudsman.rs/attachments/article/6630/Report.pdf>.

Most important challenges due to COVID-19 for the NHRI's functioning

The National Preventive Mechanism could not fully perform its mandate at residential care institutions (although its activity resumed afterwards) given that the then Minister of Labour, Employment, Veteran and Social Affairs did not allow the NPM to visit, referring to the Order on the prohibition of visits and restrictions on movement in homes for the elderly. This ban was imposed even though the minister had been informed about the

commitments of the Republic of Serbia following the adoption of the Law on Ratification of the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, as well as that the NPM would conduct the visit with full observance of all preventive measures.

References

- Official website of the Protector of Citizens
https://www.ombudsman.org.rs/index.php?option=com_content&view=article&id=237:protector-of-citizens-in-its-capacity-as-npm-was-denied-access-to-adh-in-zemun&catid=15&Itemid=18

Slovakia

Slovak National Centre for Human Rights

International accreditation status and SCA recommendations

In March 2014, the Slovak NHRI was re-accredited with B-status. While recognising that the NHRI interprets its mandate broadly, the SCA found that the mandate has a strong emphasis on equality and non-discrimination, thus it encouraged the NHRI to advocate for legislative amendments that would clarify its mandate to promote and protect all human rights. The SCA also recommended further security of tenure of the decision-making body of the NHRI and the need to ensure it can operate with sufficient budget.

Impact of 2020 rule of law reporting

Follow-up by State authorities

There have been no follow-up actions by State authorities after the 2020 ENNHRI Rule of Law report.

Impact on the Institution's work

The Centre has decided to actively monitor the rule of law at national level. In 2021, it will publish a standalone report on the rule of law in Slovakia (due end of March 2021). The Centre has also designed a small rule of law project that focuses on bringing relevant stakeholders together to create a rule of law tracker – a tool that would enable to reflect on the rule of law in Slovakia and allow key stakeholders to make informed decisions about measures that might negatively (or positively) impact the rule of law in Slovakia. The tracker will be also used to report to the EU Mechanism on Rule of Law.

Follow-up initiatives by the Institution

Due to the COVID-19, the Centre has decided to use its resources to promote and protect human rights on the ground, especially concerning vulnerable groups such as patients, women, Roma and children. The measures adopted by the Government of the Slovak Republic and subsequent negative impacts of COVID-19 pandemic have not allowed the Centre to dedicate resources to any follow-up activities. Even if the Centre would attempt to carry out any specific follow-up initiatives, the key stakeholders are fully occupied with managing the health, economy and human rights crisis. Therefore, the response of state authorities and/or regional actors would not be adequate, if any.

Independence and effectiveness of NHRIs

Changes in the regulatory framework applicable to the Institution

There have been no changes in the legislative framework after the 2020 ENNHRI Rule of Law report.

Enabling space

Given the current state of affairs (COVID-19 pandemic and change of the government in 2020), the situation has worsened. The Centre has been excluded/or not invited (as usual) to several policy and legislation processes. Some of the processes that the Centre participated in were impacted by the COVID-19 measures. The capacity of the Centre to intervene was restricted. The Council of the Government of the Slovak Republic on Human Rights, National Minorities and Gender Equality was not fully operational (some of its committees were fully disabled, e.g., Committee on Rights of LGBTI People).

When collecting information through regular procedures established by the Act No. 308/1993 Coll. on the Establishment of the Slovak National Centre for Human Rights, as amended, or the Act No. 211/2000 Coll. on Free Access to Information (the Freedom of Information Act), as amended, it took much more time to receive information and data. Some of the requests were not responded. Moreover, the Centre has been “bullied” after requesting information and data concerning the access to healthcare of patients other than those infected by SARS-COV-2. In response, the Centre was requested to provide information and expert opinions on its mandate in the field of healthcare. There were approximately 8 to 10 identical requests delivered over a period of two weeks from individual members of the Association of the Hospitals of the Slovak Republic (all members concerned were state-owned hospitals managed directly or indirectly by the Ministry of Health of the Slovak Republic).

Developments relevant for the independent and effective fulfilment of the NHRIs’ mandate

The Centre would like to point out, that the situation was also impacted by the fact that the Centre did not have regular management – the position of the executive director was vacated in December 2019 due to the regular end of mandate. From January 2020 to October 2020, the Centre was managed by the executive director ad interim (an employee). However, his powers were restricted by the Administrative Board, which also

impacted on the mandate of the Centre. The new executive director was elected in September 2020 with the start of her mandate in November 2020.

Human rights defenders and civil society space

After the elections, a new Minister of Labour, Social Affairs and Family of the Slovak Republic – Mr. Milan Krajniak (hereinafter the “Minister”) was appointed. The Minister is a conservative and decided to change the approach of the Ministry of Labour, Social Affairs and Family of the Slovak Republic (hereinafter the “Ministry”) to promotion and protection of gender equality on national level. The term of gender equality was stopped to be used and was changed for equality between men and women. All experts working for the Ministry and its contributory organisation – Institute for Research of Labour and Family – were either fired, demoted or pushed out. A new conservative management was introduced.

Against this background, the Ministry decided not to award grants to feminist organisations working on issues such as sexual and reproductive rights (including access to safe abortion) or LGBTI rights, despite the fact that the expert evaluating the applications for funding awarded the respective organisations with the highest number of points. Instead of that, the Ministry awarded funds to conservative (pro-life) organisations closely connected to the new management introduced at the Ministry. Apart from the state funded grant scheme, the Ministry fully stopped funding for the projects selected for funding within the EEA Norway grant scheme promoting gender equality and work-life balance (DGV01). The project of the Centre and its co-applicant (civil society organisation Freedom of Choice) was also selected for funding in April 2020. Until now, the grant agreement has not been signed.

Moreover, the Minister engaged in smears and misinformation about the feminist and pro-choice organisations (civil society organisations Freedom of Choice, Aspect and Alliance of Women Slovakia), their activities and funding by using his public social media accounts.

In November 2020, the Ministry amended laws on existing grant scheme and restricted the eligibility of potential applicants and beneficiaries. Under the new scheme, only organisations promoting marriage and values of family will be able to apply. The amendments excluded those organisations which are working on issues related to gender equality, including also protection and promotion of LGBTI rights.

The Centre made a public statement of the current state of affairs through available channels (e.g., website, social media). The Centre encouraged the Minister to apologize to the organisations against which the misinformation and smears were directed and offered the respective organisations legal aid concerning their discrimination in the access to the funding provided by the grant scheme.

References

- SME/Slovak Spectator: "New head of a Labour Ministry's body considered controversial by some" (6 July 2020) available online in English at: <https://spectator.sme.sk/c/22441819/new-head-of-a-labour-ministrys-body-considered-controversial-by-some.html>
- SME/Slovak Spectator: "Conservative NGOs received gender equality subsidies despite experts' recommendations" (19 January 2021) available online in English at: <https://spectator.sme.sk/c/22577137/conservative-ngos-received-gender-equality-despite-experts-recommendations.html>
- Social media (Facebook) post made by the Minister of Labour, Social Affairs and Family of the Slovak Republic (20 January 2021): <https://www.facebook.com/krajniakmilan/photos/a.389503057883154/1807254349441344/>
- Website of the Centre: <http://snslp.sk/aktuality/sirenie-dezinformacii-o-zenskych-mimovladnych-organizaciach/>
- Social media (Facebook) post made by the Centre (21 January 2021): <https://www.facebook.com/Strediskopreludskeprava/photos/a.234969393520899/1300691433615351/>

Checks and balances

Reform of the composition of the Constitutional Court of the Slovak Republic

The newly enacted Constitutional Act from 9 December 2020 amending the Constitution of the Slovak Republic No. 460/1992 Coll. as amended (hereinafter the "Constitutional Act"), introducing multiple reforms in the justice system includes the amendment of the composition and elections of judges to the Constitutional Court of the Slovak Republic (hereinafter the Constitutional Court). According to the Ministry of the Justice of the Slovak

Republic, the new composition should provide sufficient securities against the passivity of the National Council of the Slovak Republic (hereinafter the National Council) in case of the non-election of candidates for constitutional judges, as well as a check against concentration of power in the hands of one political representation in case the majority of constitutional judges were elected by one political party.

In particular, the reform of the composition of the Constitutional Court of the Slovak Republic includes redefined conditions for the appointment of a judge of the Constitutional Court (integrity, moral credit), an increase in the quorum for the election of a candidate for a judge of the Constitutional Court (qualified majority), and public voting on candidates for judges of the Constitutional Court in the National Council of the Slovak Republic. With regard to the increase in the quorum, a qualified majority of all Members of the National Council will be required for the election of a candidate for the post of a Judge of the Constitutional Court of the Slovak Republic, i.e., at least 90 Members' votes. If the candidates fail to be elected by the qualified majority even in a re-election, only a simple majority of all Members will suffice in the new election.

The Constitutional Act also deals with the possible passivity of the National Council in the case of non-election of the required number of candidates for constitutional judges. Judges of the Constitutional Court will be able to be appointed by the President of the Slovak Republic even without the proposal of the National Council of the Slovak Republic, provided that the National Council of the Slovak Republic does not elect the required number of candidates within the specified time limits. The aim of the legal regulation is to avoid a situation where the Constitutional Court will be dysfunctional only because the political parties within the National Council are not able to agree on the necessary number of candidates for judges of the Constitutional Court of the Slovak Republic.

The Constitutional Act also contains a mechanism that prevents the concentration of power in the hands of one political representation in the event that a majority of constitutional judges are elected by a single political party. According to the new amendment, the tenure of judges of the Constitutional Court appointed after 1 January 2021 varies in length.

Amendment of the legislation on the state of emergency

In December 2020, the National Council of the Slovak Republic approved the amendment to Constitutional Act No. 227/2002 on State security in times of war, state of war, state of emergency, and state of crisis, as amended (hereinafter the "Constitutional Act on State Security") according to which the Government of the Slovak Republic can extend the declared state of emergency repeatedly, at most by 40 days. According to the enacted

amendment, the extension of the state of emergency will have to be approved by the National Council, no later than 20 days after the extension becomes effective. According to the press release of the Ministry of Interior, this amendment was approved with the aim of constitutional safeguard in the system of the division of power and the system of checks and balances in a parliamentary republic. Such constitutional safeguard shall also be introduced when declaring a state of emergency again. The resolution of the National Council on the approval of the extension of the state of emergency or the repeated declaration of the state of emergency will be published in the Collection of Laws. The amendment also explicitly stipulates that a state of emergency can be declared on the territory of the Slovak Republic. In relation to the adopted amendment to the Constitutional Act on State Security, Act No. 314/2018 on the Constitutional Court of the Slovak Republic, amending and supplementing certain other acts ("Act on the Constitutional Court") was also amended with the aim to include the possibility for the Constitutional Court of the Slovak Republic to review the decision on the extension of the state of emergency.

The level of trust of citizens in the state authorities remains constantly low, also in 2020. For example, when it comes to the level of trust in the national justice system, pursuant to the Eurobarometer survey findings, it remains very low. Out of all EU Member States, the level of trust in Slovak Republic is the second lowest, just after Croatia. In fact, 26% of respondents rated the independence of the Slovak justice system as very bad and 38% as fairly bad in the Eurobarometer survey. In comparison with the previous years' results of the survey, the level of mistrust has increased by 4%. Only 26% of respondents perceived the level of independence of the national justice system as very good or fairly good. The main reason often stated by the respondents in relation to the perceived lack of independence of the justice system is the interference or pressure from the Government of the Slovak Republic. In fact, the overall country results for all EU Member States show that Croatia and the Slovak Republic are the only Member States in which at least half of respondents indicated the interference or pressure from the government and politicians as the main reason for the low level of trust in the independence of the judiciary.

Accelerated legislative procedures also threaten the system of checks and balances. In 2020, accelerated legislative procedures have taken place in the Slovak Republic. A number of legislative proposals have undergone accelerated legislative procedures in response to the COVID-19 pandemic, or as part of measures directly related to the Covid-19 pandemic. For instance, the abovementioned law amending the Constitutional Act on State security as well as the amendment to the Act on the Constitutional Court were adopted in an accelerated legislative procedure. The newly adopted Constitutional Act not only enables

the government to repeatedly extend the declared state of emergency, for a maximum of 40 days, with the approval of the National Council of the Slovak Republic but also includes a number of essential restrictions and obligations adopted for an emergency declared for reasons other than danger to life and health in connection with a pandemic. Among others, restrictions on the inviolability of the person, the privacy of persons and restrictions on freedom of movement and residence are regulated in the same constitutional act. The National Council of the Slovak Republic discussed this constitutional act involving restrictions of fundamental rights and freedoms in an accelerated legislative procedure. Such measures create the legal basis for increasing the powers of the executive, including restriction on freedom of movement, freedom of assembly, or respect for personal and private life (creating limited accountability of the executive). In addition, a number of legislative proposals that do not directly relate to combatting the Covid-19 pandemic have been adopted in accelerated legislative processes.

The current status of the Centre regarding its role in the system of checks and balances remains weakened, namely due to the lack of consultation and cooperation from the state authorities when creating or passing legislative amendments. The acts being adopted may have a direct impact on the enjoyment of fundamental rights and freedoms, yet the Centre can only participate in the procedure as part of general public. Conducting impact assessments and consulting stakeholders, including the Centre, should be an established practice for enacting legislation with direct impact on fundamental rights and freedoms. There is a need for more systematic involvement of the Centre in the legislative process.

References

- Constitutional Act from 9 December 2020 amending the Constitution of the Slovak Republic No. 460/1992 Coll. as amended, available in Slovak language at: <https://www.nrsr.sk/web/Dynamic/DocumentPreview.aspx?DocID=489083>.
- Ministry of Justice of the Slovak Republic, 'Poslanci definitívne schválili reformné zmeny v justícií' 9 December 2020, available in Slovak language at: <https://www.justice.gov.sk/Stranky/aktualitadetail.aspx?announcementID=3060>.
- Proposal for the Constitutional act amending Constitutional Act No. 227/2002 on State security in times of war, state of war, state of emergency, and state of crisis, as amended, available at: <https://www.nrsr.sk/web/Default.aspx?sid=zakony/zakon&MasterID=8054>.

- Ministry of Interior of the Slovak Republic, 'Núdzový stav bude možné opakovane predložovať', Press release, 28 December 2020, available in Slovak language at: <https://www.minv.gov.sk/?tlacove-spravy&sprava=nudzovy-stav-bude-mozne-opakovane-predlzovat>.
- Act No. 314/2018 on the Constitutional Court of the Slovak Republic, available in Slovak language at: <https://www.slov-lex.sk/pravne-predpisy/SK/ZZ/2018/314/>.

Functioning of justice systems

General observations about the functioning of the justice system

In 2020, the Government of the Slovak Republic has initiated numerous proposals for amendments of legislation and reform plans to strengthen the functioning of the justice system in the Slovak Republic. These proposals include the amendment of the Criminal Code of the Slovak Republic (including introducing a new criminal offence of abuse of law to prosecute judges for unlawful decisions), amendments to the Constitution of the Slovak Republic (partial loss of functional immunity of judges, new proposal improving the structure and the appointment procedure for members of the Judicial Council of the Slovak Republic, abolition of the consent of the Constitutional Court of the Slovak Republic as a condition for the detention of a judge or a Prosecutor General), the introduction of a compulsory retirement age for judges of general court (67 years) and judges of the Constitutional Court of the Slovak Republic (72 years) and the creation of the supreme administrative court.

Reform of the Judicial Council of the Slovak Republic

The Constitutional Act contains reformed plans in the change of the composition of the Judicial Council, including amending the appointment processes to guarantee regional representation. In this regard, it includes a rule according to which the National Council of the Slovak Republic, the President of the Slovak Republic and the Government of the Slovak Republic will nominate only non-judges to the Judicial Council of the Slovak Republic. The intention according to the author of the legislation was to ensure a balance in decision-making for the whole judiciary, but also to contribute to increasing the public control of the judiciary, which is one of the constitutional tasks of the Judicial Council of the Slovak Republic. In addition, a regional principle was also introduced for the election of

members of the Judicial Council of the Slovak Republic by judges. One member of the Judicial Council of the Slovak Republic will be elected by the judges of the Supreme Court of the Slovak Republic and the Supreme Administrative Court of the Slovak Republic from among themselves, and the other eight members of the Judicial Council of the Slovak Republic will be elected by judges of other general courts in the respective constituencies. In this way, the proportional representation of the regions in the Judicial Council of the Slovak Republic will be ensured.

The new legislation extends the powers of the Judicial Council of the Slovak Republic in strengthening controls of asset declaration of judges. It enables the Judicial Council of the Slovak Republic to actively monitor the fulfilment of the conditions of judicial competence.

The creation of the Supreme Administrative Court

The Constitutional Act also created the Supreme Administrative Court of the Slovak Republic which is included in the system of courts and has an equivalent position in the hierarchy as general courts with the Supreme Court of the Slovak Republic. In addition to the general jurisdiction of the Supreme Administrative Court of the Slovak Republic in the field of administrative justice, the Supreme Administrative Court will act as a disciplinary court for judges of general courts, prosecutors and, to the extent provided by law, for other professions. The Supreme Administrative Court of the Slovak Republic should start operating in the second half of 2021, primarily by appointing the head of the Court. The selection of the head of the Supreme Administrative Court of the Slovak Republic will be in April 2021 as announced by the Head of the Judicial Council of the Slovak Republic in March 2021.

Strengthening the protection of fundamental rights – reform of the Constitutional Court of the Slovak Republic proceedings

The enacted Constitutional Act also introduces the possibility for the Senate of the Constitutional Court, which acts and decides on individual complaints of natural and legal persons alleging violations of their fundamental rights and freedoms guaranteed by international treaties, to initiate proceedings on the conformity of legal regulations concerning the individual complaint with the Constitution of the Slovak Republic, constitutional acts and international treaties. This strengthens the constitutional system of human rights protection, because if the Senate believes that a law or other regulation is in conflict with the Constitution of the Slovak Republic, it will be able to turn to the Plenary of the Constitutional Court to assess the compliance of the challenged law with the Constitution. The amendment will be effective from 1 January 2025.

The new Court Map

The proposal to reform the court map as introduced by the Ministry of Justice of the Slovak Republic, has not received as much support as the previously introduced reforms to the justice system. As stated by the Ministry of Justice of the Slovak Republic, one of the basic goals of the new court map is the specialisation of judges. The specialisation of judges shall be presumed for criminal, civil, family and commercial matters in general courts and for administrative matters in a separate administrative judiciary. As mentioned by the Ministry of Justice of the Slovak Republic, the current network of 54 district courts does not meet the condition that three specialised judges be employed in the court, which is necessary for the random allocation of files to work. The new court map also takes into account the long-term downward trend in court cases.

The Ministry of Justice of the Slovak Republic has been organising numerous roundtables, inviting representatives from selected groups of experts to discuss the proposed court map reform that should change the system of courts.

References

- Constitutional Act from 9 December 2020 amending the Constitution of the Slovak Republic No. 460/1992 Coll. as amended, available in Slovak language at: <https://www.nrsr.sk/web/Dynamic/DocumentPreview.aspx?DocID=489083>.
- Proposal for the Constitutional Act amending the Constitution of the Slovak Republic No. 460/1992 Coll. as amended, available in Slovak Language at: <https://www.nrsr.sk/web/Default.aspx?sid=zakony/cpt&ZakZborID=13&CisObdobia=8&ID=270>
- Constitutional Act from 9 December 2020 amending the Constitution of the Slovak Republic No. 460/1992 Coll. as amended, available in Slovak language at: <https://www.nrsr.sk/web/Dynamic/DocumentPreview.aspx?DocID=489083>
- Ministry of Justice of the Slovak Republic, 9 July 2020, available at: <https://www.justice.gov.sk/Stranky/aktualitadetail.aspx?announcementID=2884>.
- Judicial Council of the Slovak Republic, available in Slovak language at: <https://www.sudnarada.gov.sk/vyhlasenie-novej-volby-kandidata-na-funkciu-prveho-predsedu-najvyssieho-spravneho-sudu-slovenskej-republiky/>

- Ministry of Justice of the Slovak Republic, 'Reform of the Court Map,' available in Slovak language at: <https://www.justice.gov.sk/Stranky/Ministerstvo/Sudna-mapa.aspx>.

Media pluralism and freedom of expression

Safety of journalists

The rise in violence against journalist and the challenges to the safety of journalists has been previously highlighted and remain an issue in the Slovak Republic also in 2020. As reported by the Council of Europe's Platform to promote the protection of journalism and safety of journalists, from the period of January 2020 to 1 March 2021, there have been two alerts relating to the safety of journalists in Slovakia. One regarding an investigative journalist of the Slovakian news website Aktuality.sk who reported to the police that he found a pistol bullet in the mailbox of his Bratislava apartment, and one alert on surveillance of a newspaper editor, who reported to the police suspicious behavior, namely that she had been monitored and photographed. As is clear from the Statement of the Permanent Representative of the Slovak Republic of the Council of Europe, pursuant to the Slovak Criminal Code, the Slovak law enforcement authorities are conducting criminal investigations in both cases. In addition, pursuant to the reply of the Permanent Representative, the Ministry of Culture of the Slovak Republic is preparing a media legislative package, which should enhance the constitutional protection of journalists in the exercise of their profession, especially in the protection of their resources.

Furthermore, an additional alert was published with regard to media freedom. In 2020, criminal proceedings against a newspaper opinion writer were initiated, including criminal charges of criminal defamation. Police investigators concluded that the author's article called for the suppression of religious people's freedom of expression and "defamed the expressions of their faith" and charged the author with defamation on account of religious belief under Article 423 of the Slovak Criminal Code. According to the reply of the Permanent Representative of the Slovak Republic to the Council of Europe, the criminal proceedings against the accused are not lawfully completed and the authorities of the Slovak Republic shall proceed consistently in accordance with the principle of the presumption of innocence.

References

- Council of Europe, Platform to promote the protection of journalism and safety of journalists, 'Media freedom alerts', available at: https://www.coe.int/en/web/media-freedom/all-alerts?p_p_id=sojdashboard_WAR_coesojportlet&p_p_lifecycle=0&p_p_col_id=column-4&p_p_col_count=1&_sojdashboard_WAR_coesojportlet_keywords=&_sojdashboard_WAR_coesojportlet_selectedStringFilters=year.2021,year.2020&_sojdashboard_WAR_coesojportlet_selectedCategories=11709578.
- Council of Europe, Platform to promote the protection of journalism and safety of journalists, 'Slovak Investigative Journalist Peter Sabo Finds Bullet in His Mailbox', 26 June 2020, available at: https://www.coe.int/en/web/media-freedom/detail-alert?p_p_id=sojdashboard_WAR_coesojportlet&p_p_lifecycle=0&p_p_col_id=column-3&p_p_col_pos=1&p_p_col_count=11&_sojdashboard_WAR_coesojportlet_alertPK=68749398&_sojdashboard_WAR_coesojportlet_displayLink=SojPortlet.getDashboardPortletId%28%29
- Council of Europe, Platform to promote the protection of journalism and safety of journalists, 'Slovak Republic – Denník N Editor Monika Tódová Surveilled by Unknown Men', 15 January 2021, available at: https://www.coe.int/en/web/media-freedom/detail-alert?p_p_id=sojdashboard_WAR_coesojportlet&p_p_lifecycle=0&p_p_col_id=column-3&p_p_col_pos=1&p_p_col_count=11&_sojdashboard_WAR_coesojportlet_alertPK=90042854&_sojdashboard_WAR_coesojportlet_displayLink=SojPortlet.getDashboardPortletId%28%29.
- Statement of the Permanent Representative of the Slovak Republic to the Council of Europe on the alert submitted to the Platform to promote the protection of journalism and safety of journalists on 26 June 2020 entitled "Slovak Investigative Journalist Peter Sabo Finds Bullet in His Mailbox", available at: <https://rm.coe.int/slovakia-reply-en-journalist-p-sabo-finds-bullet-in-his-mailbox-15jummy/16809efced>.
- Statement of the Permanent Representative of the Slovak Republic to the Council of Europe on the alert submitted to the Platform to promote the protection of journalism and safety of journalists on 15 January 2021 entitled "Denník N Editor Monika Tódová Surveilled by Unknown Men", available at: <https://rm.coe.int/slovak-republic-reply-en-dennik-n-editor-monika-todova-surveilled-by-u/1680a141f3>.

- Council of Europe, Platform to promote the protection of journalism and safety of journalists, 'Slovak Columnist Charged with Criminal Defamation for Criticism of Priest,' 11 February 2021, available at: https://www.coe.int/en/web/media-freedom/detail-alert?p_p_id=sojdashboard_WAR_coesoportlet&p_p_lifecycle=0&p_p_col_id=column-3&p_p_col_pos=1&p_p_col_count=11&sojdashboard_WAR_coesoportlet_alertPK=60779625&sojdashboard_WAR_coesoportlet_displayLink=SojPortlet.getDashboardPortletId%28%29
- Statement of the Permanent Representative of the Slovak Republic to the Council of Europe to the alert submitted to the Platform to promote the protection of journalism and safety of journalists on 11 February 2020 entitled "Slovak Columnist Charged with Criminal Defamation for Criticism of Priest", available at: <https://rm.coe.int/slovakia-en-reply-slovak-columnist-charged-with-criminal-defamamtion-f/16809cdcdc>.
- Official Statement of the Spokesperson of the Police Force of the Slovak Republic, included in the article, 'Polícia sa v roku 2020 venovala aj vyvracaniu hoaxov,' 4 January 2021, available in Slovak language at: <https://www.teraz.sk/slovensko/policia-sa-v-roku-2020-venovala-aj-vyvr/518171-clanok.html>
- Ministry of Interior of the Slovak Republic, 'Koronavírus: dávajte si pozor, akým informáciám uveríte', Press release, 5 October 2020, available in Slovak language at: <https://www.minv.gov.sk/?tlacove-spravy&sprava=koronavirus-davajte-si-pozor-akym-informaciam-uverite>

Corruption

Anti-corruption framework

Challenges remain also in the area of fight against corruption. Pursuant to the findings of the latest Transparency International 2020 Corruption Perceptions Index, Slovakia scored 49/100, decreasing its position in comparison with the last three years' ranking of the Corruption Perceptions Index. It was ranked 23rd in the EU and 60th globally. According to the findings of the Special Eurobarometer survey, 87% of respondents consider corruption widespread (EU average 71%) and 41% of people feel personally affected by corruption in their daily life (EU average 26%).

Statistics on corruption

In 2020, the number of prosecutions of corruption offenses increased, with the number of indictments increasing by half to the highest level in ten years. Although, in recent years only few high-level corruption cases have been investigated and are being prosecuted, throughout 2019 and 2020, an increase in the number of cases concerning the criminal offence of corruption is reported. According to the statistics provided by the Office of the Special Prosecution, in 2019, 139 persons were prosecuted for corruption offences or suspected thereof, compared to 135 in 2018, 83 persons were indicted, compared to 48 in 2018, and 44 persons concluded plea bargain agreements in 2019, compared to 63 in 2018. There are numerous pending criminal proceedings against a number of high-ranking public officials, including judges, prosecutors.

Whistle blowers Protection Act

As reported previously, Act No. 54/2019 Coll. on the Protection of persons reporting on anti-social activities and on amendments to certain laws (hereinafter the "Act on Whistleblowers") aims to increase the protection measures of whistleblowers by establishing an independent office for complaints. In February 2021, the National Council of the Slovak Republic elected the head of office, who now has 6 months to create the office which will commence its work on 1 September 2021. However, besides the election of the head, there have been no developments, or any particular steps being taken to make this office functioning and operable to serve its purpose.

New legislation on the selection of candidates for public officials

In 2020, several acts and amendments have been enacted in order to make the selection procedure of staff in key positions, including public officials, transparent. For example, Act. No. 153/2001 Coll. on Public prosecution service, as amended, was revised and amended with the focus of enhancing the transparency of the selection procedure of the new Prosecutor General and Special Prosecutor. The amendments included enlarging the group of entities with a mandate to propose a candidate for Prosecutor General and Special Prosecutor, and conducting the selection procedure by detailed public hearings, in the presence of numerous representatives from the Office of the President of the Slovak Republic, external experts and representatives of non-governmental organisations.

Then again, the nomination procedures for the position of heads of district offices have not been as transparent, as the candidates have been nominated by the leading political party and appointed by the Government of the Slovak Republic.

Lack of regulation governing lobbying

The Anti-corruption policy adopted in September 2019 already foresees the proposal for regulatory framework regarding lobbying. According to the available information from the news, the draft legislation is being prepared. The Slovak authorities indicated that the adoption of measures on lobbying should be a combination of legal regulation, a mandatory register of lobbyists and a code of conduct. The special register for lobbyists should consist of information on the matters in which the lobbyists plan to lobby, as well as information on their clients and costs and remuneration for the lobbyist's activities. However, no specific proposals have been submitted.

Asset declaration and conflict of interest of the Members of the National Council of the Slovak Republic

The obligation for Members of the National Council of the Slovak Republic to declare gifts or other benefits and the use of immovable or movable assets has improved through amendments to Constitutional Act No. 357/2004 Coll. on Protection of public interest in the performance of functions of public officials ("Constitutional act on protection of public interest") as is also clear from the GRECO's Second Addendum to the Second Compliance Report of the Fourth Evaluation Round on the Slovak republic. However, the thresholds set remain a subject of concern vis-à-vis the minimum wage. Furthermore, as recommended by GRECO in the Second Compliance Report, the mandate of the Committee on the Incompatibility of Functions of the National Council of the Slovak Republic needed to be revised to allow for more proactivity in the supervision and enforcement of rules on conflicts of interest, asset declaration and other duties and restrictions applicable under the constitutional act on protection of public interest. New provisions concerning the amendments to Constitutional act on protection of public interest have entered into force on 1 January 2020.

References

- Special Eurobarometer Survey 502, 'Corruption', June 2020, available at: <https://ec.europa.eu/commfrontoffice/publicopinion/index.cfm/Survey/getSurveyDetail/instruments/SPECIAL/yearFrom/1974/yearTo/2021/surveyKy/2247>.
- Statistics of the General Prosecution of the Slovak Republic, available at: <https://www.genpro.gov.sk/statistiky/statisticky-prehľad-trestnej-a-netrestnej-cinnosti-za-rok-2020-3a68.html>.

- Office of the Special Prosecution, 'Report of the Special Prosecutor on the activities of the Office of the Special Prosecution and findings of the Office of the Special Prosecution on the status of legality in 2019' November 2020, available in Slovak language at:
<https://www.nrsr.sk/web/Default.aspx?sid=zakony/cpt&ZakZborID=13&CisObdobia=8&ID=116>
- Office of the Government of the Slovak Republic, 'Prevention of Corruption', 26 February 2021, available at: <https://www.bojprotikorupcii.gov.sk/urad-na-ochranu-oznamovatelov-protispolocenskej-cinnosti-ma-svoju-sefku/>.
- Proposal of the Members of the National Council of the Slovak Republic to amend Act No. 153/2001 Coll. on Public Prosecution Service, amending Act of the National Council of the Slovak Republic No. 350/1996 Coll. on the Rules of Procedure of the National Council of the Slovak Republic, as amended, May 2020, available in Slovak language at:
<https://www.nrsr.sk/web/Default.aspx?sid=zakony/zakon&ZakZborID=13&CisObdobia=8&CPT=108>.
- Act No. 153/2001 Coll. on Public Prosecution Service, amending Act of the National Council of the Slovak Republic No. 350/1996 Coll. on the Rules of Procedure of the National Council of the Slovak Republic, as amended, available in Slovak language at: <https://www.slov-lex.sk/pravne-predpisy/SK/ZZ/2001/153/>.
- Ministry of Interior of the Slovak Republic, 'Kandidátov na šéfov okresných úradov môže každý lustrovať na stránke prednostovia.sk', Press release, 6 July 2020, available in Slovak language at: <https://www.minv.sk/?tlacove-spravy-7&sprava=kandidatov-na-sefov-okresnych-uradov-moze-kazdy-lustrovat-na-stranke-prednostovia-sk>.
- Resolution of the Government of the Slovak Republic No. 585/2018, 'Anti-corruption policy of the Slovak Republic for the period 2019-2023', 12 December 2018, available in Slovak language at: <https://www.bojprotikorupcii.gov.sk/protikorupcna-politika-sr/>.
- Council of Europe's Group of States against Corruption, 'Fourth Evaluation Round – Corruption prevention in respect of members of parliament, judges and prosecutors, Second Addendum to the Second Compliance Report', GrecoRC4(2020)14, adopted 29 October 2020, published 3 February 2021, p. 2-3, available at: <https://rm.coe.int/fourth-evaluation-round-corruption-prevention-in-respect-of-members-of/1680a1417a>.

Impact of measures taken in response to COVID-19 on the national rule of law environment

Most significant impacts of measures taken in response to the COVID-19 outbreak on the rule of law and human rights protection

The impact of COVID-19 measures on access to education

With the beginning of the COVID-19 pandemic, the Slovak Republic took the precaution of closing the schools as an attempt to contain the spread of the virus. Schools were forced to replace classes with distance learning and home schooling, in most cases facilitated by teachers and parents.

However, the access to distance learning depends on the availability of information and communication technologies, which makes it possible to continue teaching and learning when physical interaction is no longer possible. As was further observed, although the absence of in-person lessons can be somewhat compensated using online platforms and other technology-rich activities, access to the necessary information and communication technologies is not equally distributed across the population. Due to the currently valid restriction on freedom of movement and a valid curfew, pupils without access to distance education using digital technologies do not have the possibility of full-time education in any form. In particular, this may severely impact the access to education of students from socio-economically disadvantaged backgrounds who lack the means to access these devices. This in turn, increases learning inequalities.

In fact, according to the survey published by the Institute of Education Policy under the Ministry of Education, Science, Research and Sport of the Slovak Republic in September 2020, based on data collected from principals and teachers around the country, almost 50,000 children, including mainly from poor localities, many of them inhabited by Roma, did not participate in distance learning at all during the first wave of the pandemic. Further analysis of the Institute of Education Policy also stressed that there was a lack of systemic measures for accessing children from the socially deprived environment to attend distance learning. 44% of children (aged 6 to 11 years) live in overcrowded households with limited possibilities for learning.

Good practices in the area of access to education

Drawing experience from the first wave, the Ministry of Education, Science, Research and Sport of the Slovak Republic developed methodical guidelines on the content and

organisation of education in primary schools and in primary school for pupils with special educational needs. The methodical guidelines encouraged employing creative methods in order to compensate for educational drawbacks regarding inaccessibility to distance learning for certain vulnerable groups of pupils. For instance, printed teaching materials or assignments and worksheet for younger children and students from disadvantaged groups without access to adequate information and communication technologies or the internet were distributed by post or teachers themselves, educational and health mediators, local administration employees, police officers and volunteers. In addition, public television provided regular broadcasts of educational television programs mainly for primary school children. Additional care was paid also to the vulnerabilities of certain groups, including Roma with regard to the provision for basic needs, such as food. The Public Health Authority issued ordinance allowing school canteens to continue to provide food in the form of food packages for children in vulnerable situations, including Roma.

Impact of COVID-19 measures on particular groups – quarantine of Roma communities

After cases of coronavirus infections have been confirmed in several Roma settlements in the Slovak Republic, several of these settlements have been locked down. While protecting health from the uncontrollable spread of COVID-19 is a legitimate aim, the widespread quarantine in the form of a general ban on contact with the rest of the population could unduly restrict the personal freedom of the inhabitants of the settlements concerned and go beyond possible restrictions on freedom of movement. The marginalised Roma communities represent a specific group in terms of prevention and protection of the population against the spread of COVID-19, due to the higher risk of this group to get the virus (due to insufficient hygiene conditions and access to water, health status, access to health services, higher population density).

For example, in the first wave of the COVID-19 pandemic, quarantine involved municipalities of for example, Bystrany, Žehra and the town of Krompachy. In the second wave, for example, the town of Bánovce nad Bebravou and the village of Ratnovce. According to the findings of the European Union Agency for Fundamental Rights from June 2020, in the second wave of the pandemic, the Slovak Republic was the only country in which entire Roma communities continued to be quarantined. The quarantine measures have had a rather negative impact on the situation of people living in segregated settlements, including worsening the access to health care for people in segregated Roma communities in quarantine, or the access to medicines.

The fight against fake news

The spread of fake news related to the pandemic of the coronavirus was one of the challenges that the Police Force had to tackle. For this purpose, the Police Force explained the misinformation on their social network page “Hoaxes and frauds – Police of the Slovak Republic” on Facebook. According to the Press release of the Ministry of Interior of the Slovak Republic in October 2020, the Police of the Slovak Republic constantly receives tips from the general public on misinformation through private messages on their special Facebook site. Such messages are evaluated separately with the main factor being the number of shares of the fraudulent post. The subsequent statuses draw attention to mass-shared misinformation and include analysis explaining why the misinformation are not based on truth. As reported in October 2020, the Police Force published and explained more than 110 misinformation issues since the outbreak of the pandemic. Currently, with more than 98 000 followers, the social network site created by the Police Force of the Slovak Republic is the most followed site among the sites dedicated to fight misinformation in the Slovak Republic. The Police of the Slovak Republic cooperates with the Ministry of Health of the Slovak Republic to refute the medical hoaxes shared in relation to the pandemic.

Actions of the Centre

The Centre, within its mandate as an NHRI and equality body, has been closely monitoring the adopted measures in relation to the COVID-19 pandemic and evaluating their impact on the protection of fundamental rights and freedoms. For example, in the area of access to education, the Centre has, in cooperation with other NGOs active in the field, expressed their position in relation to measures adopted and in force during the second wave of the pandemic in the field of education. In particular, the Centre has called on the relevant state authorities, including the Prime Minister of the Slovak Republic, in November 2020 to reintroduce the in-person classes at the secondary level of primary schools and secondary schools. The Centre has further issued an official statement and press release on 9 December 2020 on the situation in the field of education in primary and secondary schools in which it drew attention to the non-compliance of the adopted measures, including the decisions of the Ministry of Education, Science, Research and Sport of the Slovak Republic, with the principle of equal treatment as laid down by Act No. 365/2004 Coll. on equal treatment in certain areas and protection against discrimination, amending and supplementing other acts (Anti-discrimination act).

Subsequently, within its mandate, the Centre issued an expert opinion on 16 December 2020 on the evaluation of measures adopted in the area of access to education and their

impact on the protection of fundamental rights and freedoms. In its opinion the Centre evaluated and assessed the conditions for renewal of teaching at schools as laid down by the Resolution of the Government of the Slovak Republic No. 760 and subsequent legal acts and their compliance with the Constitution of the Slovak Republic and Constitutional Act on State Security. After the assessment of their legal compliance, the Centre has evaluated that due to the impossibility of „justifying“ the different treatment of pupils and teachers of grades 5 to 9 of primary and secondary schools in comparison with pupils and teachers of grades 1 to 4 of primary schools, the relevant legal acts of the Government of the Slovak Republic, as well as the Minister of Education, Science, Research and Sport of the Slovak Republic, and Public Health Office of the Slovak Republic, violate the principle of equal treatment and non-discrimination as stipulated in Article 12 of the Constitution of the Slovak Republic in connection with the fundamental right to education pursuant to Article 42(1) of the Constitution and the right of employees to fair and satisfactory working conditions and to protection against discrimination under Article 36(1)(b) of the Constitution .

The Centre continues to regularly monitor and evaluate the possible impacts of adopted measures in relation to the COVID-19 disease on fundamental rights and freedoms in the Slovak Republic.

References

- Government Resolution No.77/2021 on the proposal to extend measures regarding the state of emergency pursuant to Article 5 paragraph 2 of Constitutional Act No. 227/2002 Coll. on State Security in Times of War and State of Emergency as amended, declared by Government Resolution No. 578 of 30 September 2020 and for the adoption of measures under Article 5 paragraph 4 of Constitutional Act No. 227/2002 Coll. on State Security in Times of War and State of Emergency, as amended, 5 February 2021, available in Slovak language at: <https://www.slov-lex.sk/pravne-predpisy/SK/ZZ/2021/49/>
- Government Resolution No. 123/2021 on the proposal to adopted measures pursuant to Article 5 paragraph 4 of Constitutional Act No. 227/2002 Coll. on State Security in Times of War and State of Emergency as amended, 28 February 2021, available in Slovak language at: <https://www.slov-lex.sk/pravne-predpisy/SK/ZZ/2021/94/20210303>.

- OECD, 'School Education During COVID-19: Were teachers and students ready? Slovak Republic - Country Note,' 2020, available at: <http://www.oecd.org/education/Slovak-Republic-coronavirus-education-country-note.pdf>.
- Ministry of Education, Science, Research and Sport of the Slovak Republic on the content and organization of education in primary schools and in primary school for pupils with special educational needs, October 2020, available in Slovak language at: https://www.ucimenadialku.sk/usmernenia/otvorenie-skolskeho-roka-2020-2021/Metodicke_usmernenie_ZS_SZS_26-10-2020_NEW.pdf.
- European Union Fundamental Rights Agency, 'Implications of COVID-19 pandemic on Roma and Travellers communities, Country: Slovakia', 15 June 2020, available at: https://fra.europa.eu/sites/default/files/fra_uploads/sk_report_-_covid-19_impact_on_roma_en.pdf.
- Človek v ohrození (2020), Spájame sa na pomoc zraniteľným skupinám, available at: <https://clovekvohrozeni.sk/spajame-sa-pre-ochranu-ohrozenych-komunit/>
- Slovak National Centre for Human Rights, 'Verejná výzva na znovu zavedenie prezenčnej formy vzdelávania na druhom stupni základných škôl a stredných školách', 26 November 2020, available in Slovak language at: <http://snslp.sk/wp-content/uploads/Vyzva-predsedovi-k-zavedeniu-prezencnej-formy-vzdelavania.pdf>
- Slovak National Centre for Human Rights, 'Vyjadrenie Slovenského národného strediska pre ľudské práva k aktuálnemu stavu v oblasti vzdelávania na základných a stredných školách', Press release, 9 December 2020, available in Slovak language at: <http://snslp.sk/wp-content/uploads/TS-aktualny-stav-vzdelavania.pdf>
- Slovak National Centre for Human Rights, expert opinion, 16 December 2020, available in Slovak language at: <http://snslp.sk/wp-content/uploads/2020-2-Odborne-stanovisko-diskriminacne-podmienky-pri-obnoveni-skolskeho-vyucovania.pdf>

Most important challenges due to COVID-19 for the NHRI's functioning

Due to the rapidly changing measures in force in relation to the COVID-19 pandemic, it was not possible to file a complaint personally in the premises of the Centre during some periods of 2020. However, other available options for filing a complaint had remained in place, for example via phone or email.

Even though the strict measures adopted in relation to the COVID-19 pandemic had impacted the number of planned activities, the Centre has been working through and organising video conferences as a substitute for the cancelled working groups or meetings. The Centre continues to adapt to the challenging circumstances, while teleworking to ensure the continuity of work. It continues to carry out its mandate and deliver its services to the public. Despite the measure restricting the freedom of movement currently in force, the Centre still receives individual complaints via available options and carries out its regular monitoring and reporting activities, issuing expert opinions on topics relevant to the mandate of the Centre.

Slovenia

Human Rights Ombudsman of the Republic of Slovenia

International accreditation status and SCA recommendations

The Slovenian NHRI was [accredited](#) with A-status in December 2020. The SCA commended the efforts undertaken by the NHRI to advocate for the amendments to its enabling legislation, which took place in 2017 and addressed the SCA previous recommendations.

The SCA encouraged the NHRI to advocate for the formalization and application of clear, transparent and participatory process for the selection and appointment of the Ombudsman. While acknowledging the actions taken by the NHRI, the SCA also considered important that the ability to encourage ratification of and accession to regional and international human rights instruments is explicitly included in the NHRI's enabling legislation.

Moreover, the SCA noted that the NHRI would benefit from additional funding in order to continue to effectively carry out the full breadth of its mandate. The SCA encouraged the NHRI to advocate for changes that would grant it further financial autonomy and independence.

Impact of 2020 rule of law reporting

Follow-up by State authorities

The European Commission 2020 Rule of Law Report received attention from several public media and some professional journals in Slovenia. However, the Human Rights Ombudsman of the Republic of Slovenia (the Ombudsman) is not aware of any concrete follow-up made by state authorities regarding the report and notes that there has also been a lack of a broader expert discussion about the report in Slovenia.

The Ombudsman welcomes that the 2020 ENNHRI rule of law report was referred to by the European Commission in its country chapter of the rule of law situation in Slovenia (1).

References

- (1) European Commission, 2020 Rule of Law Report, Country Chapter on the rule of law situation in Slovenia, SWD(2020) 323 final, 30. 9. 2020.

Impact on the Institution's work

The Ombudsman has based its activities and priorities on various grounds, including the follow-up to key issues reported on in the 2020 ENNHRI rule of law report, in particular in the area of hate speech, the functioning of the justice system and the monitoring of the impact of COVID-19 and the measures taken to address it on human rights.

Follow-up initiatives by the Institution

The Ombudsman has not taken any follow-up initiatives solely based on the 2020 report due to the increase of workload related to the COVID-19 situation, and to some extent, to the lack of human resources.

Independence and effectiveness of the NHRI

Changes in the regulatory framework applicable to the Institution

The national regulatory framework applicable to the Ombudsman has not changed since the 2020 Rule of Law report. However, a highly relevant Decision of the Constitutional Court of the Republic of Slovenia for the Ombudsman's work was adopted in December 2020 (1). This Decision annulled several provisions (Articles 20, 40/2, 103/1) of the Public Finance Act on budgetary funds, insofar as they relate to the National Council, the Constitutional Court, the Ombudsman and the Court of Audit. It also decided that Article 95/1 of the same Act was inconsistent with the Constitution. In particular, the Constitutional Court has decided that the funds received by the four independent institutions must not be dependent on the government. It has exposed that the existing legislation allows the government or the finance minister to accumulate budgeting powers concerning the independent institutions in question, thus significantly affecting their financial independence. However, to implement their constitutional role, the four independent institutions must have a legal position in budgeting equal to the government. Until the law is amended, the Finance Ministry must thus include the proposals of financial plans made by the four independent institutions into the draft state budget.

The Ombudsman expects the Parliament to implement the mentioned decision within one year from its publication in the Official Gazette of the Republic of Slovenia, i.e., before 23 December 2021, as required by the Constitutional Court.

In addition, the Ombudsman advocates to further amend the Human Rights Ombudsman Act in order to comply with the GANHRI Sub-Committee for Accreditation recommendations of December 2020 (2). The Ombudsman also asks for the necessary

legislative changes to comply with the Venice Principles on the Protection and promotion of the Ombudsman Institution (3).

The Ombudsman has at several occasions (4) also clearly indicated that it is prepared to assume the responsibility and mission of an independent body for promoting, safeguarding and monitoring the implementation of the Convention on the Rights of Persons with Disabilities (the Convention) in accordance with paragraph two of Article 33 of the Convention. However, no concrete results have been reached in this regard, and Slovenia has so far not established an independent body under Article 33 of the Convention.

References

- (1) The Decision on the annulment of Article 20, second paragraph of Article 40, the first paragraph of Article 103 in connection to the first and second paragraph of Article 103 of the Public Finance Act insofar as they relate to the National Council, the Constitutional Court, the Ombudsman and the Court of Audit, on the ruling that the first paragraph of Article 95 of the Public Finance Act insofar as they relate to the National Council, the Constitutional Court, the Ombudsman and the Court of Audit in inconsistent with the Constitution and on the ruling that the fifth point of the first paragraph of Article 3, as well as the first and the third to seventh paragraph of Article 40 of the Public Finance Act, are not inconsistent with the Constitution, Official Gazette of the Republic of Slovenia, No. 195/2020 of 23 December 2020. Available also at <https://www.uradni-list.si/glasilo-uradni-list-rs/vsebina/2020-01-3501/> (1 March 2021).
- (2) Global Alliance of National Human Rights Institutions (GANHRI), Report and Recommendation of the Virtual Session of the Sub-Committee on Accreditation (SCA), 7–18 December 2020, pp. 22–24, available at <https://nhri.ohchr.org/EN/AboutUs/GANHRIAccreditation/Documents/SCA%20Report%20December%202020%20-%2024012021%20-%20En.pdf> (1 March 2021).
- (3) Principles on the Protection and Promotion of the Ombudsman Institution (“The Venice Principles”), adopted at the Venice Commission at its 118th Plenary Session (Venice, 15–16 March 2019), endorsed by the Committee of Ministers at the 1345th Meeting of the Ministers’ Deputies (Strasbourg, 2 May 2019), available also at [https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD\(2019\)005-e](https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2019)005-e) (1 March 2021).

- (4) Annual Report of The Human Rights Ombudsman of the Republic of Slovenia for 2019, also available at https://www.varuh-rs.si/fileadmin/user_upload/pdf/lp/LP_2019/Annual_Report_2019.pdf (1 March 2021).

Enabling space

In general, enabling space for the Ombudsman is sufficient, including with regard to access to legislation and policy process, as well as a level of cooperation among different human rights bodies. Regarding the recommendations given by the Ombudsman to the state authorities, mainly to the government but also to the Parliament, courts and other bodies, the Ombudsman noted in its last annual report that there were more than 200 recommendations that had not been implemented or only partially. Some had been topical since 2013, and the competent authorities had not approached them seriously enough. Nevertheless, the Ombudsman issued numerous new recommendations, 158 in its last annual report, to address countless and frequently new challenges faced in Slovenian society (1).

The Ombudsman as Slovenian National Human Rights Institution (NHRI) continued its endeavours to be accredited as a status A institution under the 1993 Paris Principles, which relate to the status and functioning of national human rights institutions. During the COVID-19 crisis, the Ombudsman increased its involvement at the international level with global and regional international organizations as well as NHRI networks. The aim has been to further promote international human rights standards at the national level. Regarding the accreditation, the GANHRI Sub-Committee on Accreditation session was postponed from March 2020 to December 2020. In January 2021, The Slovenian Ombudsman received recognition by the SCA that it fulfils the Paris Principles and was declared as a status A institution (1). It has therefore been officially confirmed that the Ombudsman meets the highest performance standards of an independent national institution for the protection and promotion of human rights. For the Ombudsman, the newly acquired status is principally a great acknowledgement and recognition of the work done so far and will also enable its full participation in various meetings within the United Nations, at the regional level, as well as within the Global Alliance of National Human Rights Institutions (GANHRI) and the European Network of National Human Rights Institutions (ENNHRI), where it was granted voting rights (2).

The SCA, however, regularly highlights that even the institutions accredited with “A” status must continue to strive to enhance their effectiveness and independence and to realise the GANHRI recommendations (2). The Ombudsman concurs with the commentary of the SCA; it notes, however, that attention and real support from the authorities, especially the Government and the legislature, will also be needed for the realisation of the targets set. The Ombudsman’s accreditation will again be reviewed in five years’ time. The Ombudsman is committed to continuing its work until then with due diligence and professionalism. The Ombudsman supports all recommendations of the SCA: on the procedure for selecting and appointing the Ombudsman and deputies, the financial autonomy of the institution, and on competence to encourage ratification or accession to human rights treaties (3).

References

- (1) Annual Report of The Human Rights Ombudsman of the Republic of Slovenia for 2019, also available at https://www.varuh-rs.si/fileadmin/user_upload/pdf/lp/LP_2019/Annual_Report_2019.pdf (1 March 2021).
- (2) Global Alliance of National Human Rights Institutions (GANHRI), Report and Recommendation of the Virtual Session of the Sub-Committee on Accreditation (SCA), 7–18 December 2020, pp. 22–24, available at: <https://nhri.ohchr.org/EN/AboutUs/GANHRIAccreditation/Documents/SCA%20Report%20December%202020%20-%2024012021%20-%20En.pdf> (1 March 2021).
- (3) For the Press Statement of the Ombudsman, see <https://www.varuh-rs.si/en/news/news/hro-slovenia-with-the-paris-principles-highest-status/> (1 March 2021).

Developments relevant for the independent and effective fulfilment of the NHRIs’ mandate

The Center for Human Rights, an organizational unit of the Ombudsman, greatly increased its activities in 2021 s in the following fields:

- research (i.e., a continuation of an analysis on the prosecutor’s practice regarding hate speech; analyses of schooling of Roma children during the COVID-19 epidemic, analyses COVID-19 and violence), short research of the access to courts);

- promotion activities (i.e., information on the position of international organizations on human rights-based approach to tackle epidemic, a project “If you see injustice, use justice” (1) on children’s rights in December 2020, the Ombudsman’s Short Guide “How and when can an individual submit a communication to UN human rights treaty bodies” (2));
- monitoring activities (i.e., the Ombudsman’s Report on the Placement of Detainees at the Postojna Aliens Center of 10 November 2020 (3), the Ombudsman’s Submission to Grevio of October 2020 (4));
- training (i.e., a webinar on individual complaint mechanisms under the United Nations Treaty Body System (5));
- opinions (i.e., on the accessibility of websites for vulnerable groups is a commitment for the EU Member State)
- international cooperation and reporting (i.e., on COVID-19 situation, on questionnaires of the UN special rapporteurs on human rights; to United Nations, to FRA, EU, Council of Europe (alternative report to the Committee on Social Rights and other global or regional organizations/networks).

The Ombudsman also opened new staff positions in order to respond to the workload and tasks of the Institution.

References

- (1) See: <https://www.varuh-rs.si/za-otroke/> (1 March 2021).
- (2) See: <https://www.varuh-rs.si/vodic-mednarodne-pritozbe/?categories=%2F> (1 March 2021).
- (3) See: <https://www.varuh-rs.si/en/news/news/the-ombudsmans-report-on-the-placement-of-detainees-at-the-postojna-aliens-centre/> (1 March 2021).
- (4) See: <https://www.varuh-rs.si/en/news/news/the-ombudsmans-submission-to-grevio/> (1 March 2021).
- (5) <https://www.varuh-rs.si/projekti/projekt/pritozbeni-postopki-po-mednarodnih-pogodbah-o-clovekovih-pravicah-zdruzenih-narodov/> (1 March 2021).

Human rights defenders and civil society space

During the COVID-19 epidemic, the Ombudsman found cases of laws, measures and practice that could negatively affect civic space and reduce human rights defender's activities.

The Ombudsman received several comments related to the alleged controversial nature of Article 42 of the amendments to the Act on measures to mitigate the effects of the epidemic (ZIUZEOP-A) (1). The Ombudsman emphasized that it is in the interest of all that the economy after the Covid-19 crisis is recovering as soon as possible; however, that the measures taken to limit public participation in environmental issues, without addressing other reasons for the length of the process, are unacceptable for present and future generations. The Ombudsman found a violation of the rule of law (Article 2 of the Constitution), a violation of the right to judicial protection (Article 23 of the Constitution), a violation of the right to a healthy living environment (Article 72 of the Constitution) and a violation of the prohibition of retroactive effect of legal acts (Article 155 of the Constitution). However, the authorities did not react, and the issue is currently under the review of the Constitutional Court (2). In the mentioned ZIUZEOP-A case on the involvement of civil society and NGOs in environmental issues, the Ombudsman forwarded its findings and a proposal for the elimination of irregularities to the Ministry of the Environment and Spatial Planning. It appealed to the Ministry to consider preparing a proposal to amend, repeal or abolish Article 42 of the ZIUZEOP-1 while taking into account also negative opinions of the Legislative and Legal Service of the National Assembly and the Commission for the Prevention of Corruption. The Ombudsman identified several violations of human rights and urged to eliminate the identified inconsistencies with the Constitution of the Republic of Slovenia and the Aarhus Convention by (again) ensuring adequate and effective public participation in all administrative and judicial proceedings that have and could have an impact on the environment, adequate and effective legal protection and eliminate all other shortcomings (below) which are pointed out not only by the institution of the Ombudsman but also by other already mentioned bodies (3).

The Ombudsman also paid attention to the freedom of assembly and the right to peaceful protest. There have been several and regular protests since Spring 2020. On 19 June 2020 the Ombudsman checked the police procedures for establishing identity during the protest in Ljubljana. It considered that circumstances such as moving in the direction of a protest rally or staying at the protest rally site immediately before or during the protest rally are not a sufficient reason for suspicion, which is a condition for the execution of the identification procedure provided for in the Police Tasks and Powers Act. The Ombudsman

recalled that in cases where different police powers can be used for the successful performance of a police task, police officers must use those with the least harmful consequences. Harmful consequences are measured by the intensity of interference with human rights and fundamental freedoms. The Ombudsman recalled that any measure or action should be proportional (4). Regarding the June 2020 protests in Ljubljana, the Ombudsman addressed a detailed inquiry to the Ministry of the Interior on 22 June 2020 from the point of view of the protection of human rights and fundamental freedoms. The circumstances provided by the police for identification of individuals were in view of the Ombudsman also so general that they could, most likely, be attributed to all the protesters, who numbered around 7,000. Therefore, it was not entirely clear on what basis the police actually established the identities of only 69 people out of all other protesters. The Ombudsman recommended once again that the police officers always exercise a careful assessment of the conditions laid down by law and other regulations for the exercise of police powers in order to exercise their power of identification (5).

The Ombudsman also called on the Ministry of Culture to engage in a constructive dialogue with NGOs operating at Metelkova 6 (a group of NGOs focused on culture and human rights), to whom the Ministry of Culture in October 2020 proposed to end their rental agreement and called to leave the building by the end of January 2021. With reference to the Council of Europe recommendation (6), the Ombudsman underlined that state authorities have a duty to remove any unnecessary, unlawful or arbitrary restrictions to civil society space, in particular with regards to freedom of association, peaceful assembly and expression. The Ministry, however, did not respond to the Ombudsman's call for dialogue (7).

Concerning other measures related to peaceful protests undertaken by the Government, the Ombudsman underlined on various occasions that the freedom of expression and freedom of assembly are integral rights. Therefore, even for epidemic control reasons, they can only be restricted if this was proportional and necessary to achieve the legitimate aim pursued. In this respect also the sanctions must be proportionate. The limitations of the freedom of assembly should also not be discriminatory; therefore, any regulations, which limit peaceful protests on such a basis and have no grounds on the epidemiological situation, are considered problematic (8).

The Ombudsman also wish to draw attention to the need for dialogue between the authorities and non-governmental organizations. As the Ombudsman publicly wrote, active two-way communication and dialogue are necessary in all areas in order not to enter a crisis of values (9). COVID-19 crisis cannot be an excuse for lack of dialogue, arbitrary decision-making or interference from a position of power. Last but not least, it is a socially

responsible community that contributes to co-creating a positive social climate and a culture of dialogue. Only in this way will the recovery process after the coronavirus disease pandemic be effective.

References

- (1) Act Amending the Act Determining the Intervention Measures to Contain the COVID-19 Epidemic and Mitigate its Consequences for Citizens and the Economy, Official Gazette of the Republic of Slovenia, No. 61/2020 of 30 April 2020, also available at <http://www.pisrs.si/Pis.web/pregledPredpisa?id=ZAKO8190> (1 March 2021).
- (2) <https://www.varuh-rs.si/sporocila-za-javnost/novica/mop-ni-uposteval-varuhaj-s-spremembo-42-clena-ziuzeop-a-znova-zagotovi-sodelovanje-javnosti-v-ok/> (1 March 2021).
- (3) <https://www.varuh-rs.si/sporocila-za-javnost/novica/mop-ni-uposteval-varuhaj-s-spremembo-42-clena-ziuzeop-a-znova-zagotovi-sodelovanje-javnosti-v-ok/> (1 March 2021).
- (4) https://www.varuh-rs.si/sporocila-za-javnost/napovednik/?tx_news_pi1%5Bnews%5D=5748&cHash=2ff02e01c1f6ad406aa8d534c8b8c384 (1. 3. 2021).
- (5) https://www.varuh-rs.si/sporocila-za-javnost/napovednik/?tx_news_pi1%5Bnews%5D=5748&cHash=2ff02e01c1f6ad406aa8d534c8b8c384 (1 March 2021).
- (6) Council of Europe, Recommendation CM/Rec(2018)11 of the Committee of Ministers to member States on the need to strengthen the protection and promotion of civil society space in Europe, Adopted by the Committee of Ministers on 28 November 2018 at the 1330th meeting of the Ministers' Deputies.
- (7) See https://www.varuh-rs.si/index.php?id=1320&L=306&tx_news_pi1%5Bnews%5D=5949&tx_news_pi1%5Bday%5D=30&tx_news_pi1%5Bmonth%5D=12&tx_news_pi1%5Byear%5D=2020&cHash=781e05d02de31bdec8369f11c5f602b2 (1 March 2021).
- (8) See: <https://www.varuh-rs.si/sporocila-za-javnost/novica/varuh-svetina-v-dz-o-svobodni-mirnega-zbiranja-in-zdruzevanja/> (18 March 2021).

- (9) The message of The Human Rights Ombudsman of the Republic of Slovenia Peter Svetina on the occasion of the International Human Rights Day, 10 December 2020, available at <https://www.varuh-rs.si/sporocila-za-javnost/novica/poslanica-varuha-clovekovih-pravic-ob-mednarodnem-dnevu-clovekovih-pravic/> (1 March 2021).

Checks and balances

The Ombudsman continued with its monitoring and calls on the need for the execution of the decision of the Constitutional Court of the Republic of Slovenia as well as of the judgments of the European Court for Human Rights. While in last years a positive development was noticed regarding the execution of the judgments of the European Court for Human Rights, no major positive development could be noticed regarding the implementation of the Constitutional Court decisions (1). Nonetheless, some development was reached regarding the implementation of the Constitutional Court decision U-I-32/15, of 18 November 2018 (2). It ruled that Article 4 of the Act Establishing Constituencies for the Election of Deputies to the National Assembly (3), which determined the area of constituencies, was inconsistent with the Constitution. The necessary changes of the Act did not meet the required deadline determined by the Constitutional Court, which expired on 21 December 2020; however, they were adopted in February 2021 and entered into force on 2 March 2021 (4).

Through several public statements and interviews, the Ombudsman brought several issues also to the attention of the general public (5). In exercising its mandate, the Ombudsman did not encounter any major obstacles with respect to its check and balances powers.

The Ombudsman made several calls regarding the lack of disaggregated data in Slovenia. It pointed out that combating discrimination requires valid, accurate and representative data on the situation of persons or groups of persons with a specific personal ground (protected ground) in different areas of social life. Equality data is used to determine the current state and trends of de facto (in)equality and is of utmost importance for the planning, implementation and review of non-discrimination policies, particularly regarding positive measures. Such data and measures to counter discrimination and inequality will also be of particular importance in the post-Covid-19 world. An EU study (6) has indeed shown that equality data collection in Slovenia is critically weak, far most EU member states. Data disaggregated by protected grounds has also been recommended to Slovenia

by several international monitoring mechanisms, including the Committee against Torture, Committee on the Rights of the Child, Committee on Economic, Social and Cultural Rights, Committee on the Elimination of Racial Discrimination and, recently, the UN Rapporteur on Minority Issues and the Committee on the Rights of Persons with Disabilities (7). In this regard, the Ombudsman recommended within the Third Cycle of the Universal Periodic Review (8) as well as in its last Annual Report to the National Assembly (9) that:

- The Government drafts and the National Assembly adopts suitable legislation on personal data protection and sector-specific legislation to determine special exemption with regard to collecting disaggregated data as per individual personal grounds in order to promote equal treatment and equal opportunities when observing applicable national and international standards on personal data protection.
- The competent authorities enable and ensure systematic collection of disaggregated data as per protected personal grounds in all areas of social life in order to accurately determine the situation and trends regarding (in)equality in society and that the competent line ministry takes over the management of the informal working group for resolving the issue of disaggregated data collection as per paragraph one of Article 62 of the State Administration Act (ZDU-1) (10), and, if the ministries fail to reach an agreement, the Government of the Republic of Slovenia should decide on the issue as per paragraph two of Article 62 of the ZDU-1.

Both recommendations remain unimplemented.

Last but not least, according to various sources, there is, in general, a low level of trust among citizens to the state authorities and between citizens and the public administration, including regarding the measures to tackle the epidemic.

References

- (1) See for example: Vlasta Nussdorfer: Zakaj se odločbe ustavnega sodišča tako težko uveljavijo, 13. 1. 2021, available at: <https://www.iusinfo.si/medijsko-sredisce/kolumne/277623> (1 March 2021).
- (2) Official gazette of the Republic of Slovenia, No 82/2018 of 21 December 2018, also available at <https://www.us-rs.si/odlocitev-ustavnega-sodisca-v-zadevi-u-i-32-15/> (1 March 2021).

- (3) Official Gazette of the Republic of Slovenia, No. 24/05 – official consolidated text.
- (4) See: Act Amending the Act Establishing Constituencies for the Election of Deputies to the National Assembly, Official Gazette of the Republic of Slovenia, No. 29/2021 of 1 March 2021.
- (5) See <https://www.varuh-rs.si/sporocila-za-javnost/vsa-sporocila-za-javnost/> (1 March 2021).
- (6) European Commission, Analysis and comparative review of equality data collection practices in the European Union, Equality data indicators: Methodological approach, Overview per EU Member State, Technical annex, p. 49, https://ec.europa.eu/newsroom/just/document.cfm?action=display&doc_id=45793 (1 March 2021)
- (7) CAT/C/SVN/C0/3 of June 2011, CRC/C/SVN/C0/3-4, of July 2013, E/C.12/SVN/CO/2 of December 2014, CERD/C/SVN/C0/8-11 of January 2016, CRPD/C/SVN/CO/1 of April 2018 and A/HRC/40/64/Add.1 of January 2019.
- (8) <https://www.varuh-rs.si/nc/en/about-us/organisational-units-and-hro-council/center-for-human-rights/levi-meni/universal-periodic-review-upr/>.
- (9) https://www.varuh-rs.si/fileadmin/user_upload/pdf/lp/LP_2019/Annual_Report_2019.pdf (1 March 2020).
- (10) Official Gazette of the Republic of Slovenia, No. 113/05 – official consolidated text, 89/07 – odl. US, 126/07 – ZUP-E, 48/09, 8/10 – ZUP-G, 8/12 – ZVRS-F, 21/12, 47/13, 12/14, 90/14 in 51/16.

Functioning of the justice system

Regarding the functioning of the justice system, the Ombudsman continued focusing on the operation of the justice system. During 2020, the Ombudsman noted a significant increase in the number of breaches of the right to judicial protection under Article 23 of the Slovenian Constitution – while the Ombudsman found six such violations in 2019, it found 22 in 2020.

The Ombudsman reiterates that, based on the complaints, a trial within a reasonable time is no longer a systemic problem in Slovenia (this also follows from the European Commission's 2020 Rule of law Report). However, according to the President of the

Supreme Court (1) and in view of the Ombudsman, the restrictions relating to the new coronavirus epidemic importantly undermined the functioning of the judicial system, especially in the courts of the first instance. This shall have an effect on the increasing backlog of cases before the Courts in the future.

On the operation of the courts, despite repeated warnings by the judiciary (2) and the Ombudsman, there still are no tangible measures aimed at improving working conditions, business organization and financial situation of judges and some groups of judicial employees. For several years, the issue of resources for the provision of appropriate staff has not been resolved - especially the appropriate support of court staff and spatial conditions. The proposals regarding a single first-instance judge have also not been implemented. The main challenges for the judiciary in 2020 were the increased number of complex new cases (e.g., transfer of competences in family matters from social work centres, administrative procedures) and preparation for a large number of specific procedures.

Several of the Ombudsman's past recommendations have still not been implemented. For example, in its last Annual Report, the Ombudsman recommended that the Ministry of Justice take additional measures to increase the number of court experts in the field of family relations, yet the recommendation remains relevant. The Ombudsman also calls on the Ministry to strengthen the efficiency of supervisory bodies in order to ensure the quality of the work of courts and to enable a more effective and accessible free legal aid.

The Ombudsman also regularly recommends that all judicial authorities continue to strengthen the efficiency and transparency of their work. It, for example, proposed that the Slovenian judiciary continues to provide appropriate information to the public and the necessary response to media-exposed allegations regarding its work; however, the recommendation has not yet been sufficiently implemented (3). The Ombudsman also recommended to the Supreme Court of the Republic of Slovenia that, in order to ensure uniform case-law, all courts continue to be encouraged to improve the operation and quality of trials, and to the Ministry of Justice to continue to strengthen the judiciary for efficient and quality judicial administration (4).

The number of cases dealt with by the Ombudsman in the wider field of justice increased slightly (to a total of 410 cases). Most of the complaints related to the quality of trials and other (judicial) decision-making issues. The most frequently raised issues in 2020 were again the right to judicial protection, equal protection of rights, the right to legal remedy, legal guarantees in criminal proceedings and other rights, including the principle of good administration. Some issues in this area were also related to the management of the

COVID-19 epidemic. The share of permissible complaints is again the highest in the field of proceedings before labour and social courts. However, the activities of the Ombudsman in the field of the judiciary are very much related to its (limited) powers in relation to this branch of state power: the Ombudsman may intervene in ongoing court proceedings only in the event of an unjustified delay in the proceedings or manifest abuse of power. The Ombudsman is not a body, which could give instructions to courts for deciding on matters within their competence. However, the Ombudsman's intervention is possible in the role of a friend of the court (*amicus curiae*) under Article 25 of the Ombudsman Act. The Ombudsman is also not mandated to determine the legality of courts' decisions (and other state bodies). In case of disagreement with the courts, the party in the proceedings has other available legal remedies (regular and extraordinary). In relation to the judiciary, the Ombudsman's actions can only be such that they do not jeopardize the independence of judges in the performance of their judicial functions. The Ombudsman's intervention, therefore, mainly extends to the judicial or justice administration.

In dealing with cases in this area, the Ombudsman continued to address court presidents and other competent persons (e.g., heads of prosecutors' offices) through its inquiries and other interventions. When necessary, the Ombudsman also turned to the Ministry of Justice for clarifications regarding the legal framework for the functioning of the judiciary and to the Ministry of the Interior when regarding the procedures of the Police as a misdemeanour body and individual police. In general, the Ombudsman is satisfied with the responses of relevant authorities in considering the initiatives, as they mostly responded to inquiries and other interventions in due time.

In September 2020, the Judicial Council proposed again to the President of the Republic to speed up the initiative to amend the Constitution and the Judicial Service Act regarding the procedure for appointing judges (5). The Judicial Council, together with the Supreme Court of the Republic of Slovenia and the Slovenian Judges' Association, has long advocated the withdrawal of the election of judges from the National Assembly, especially of the judges of the Supreme Court, as such a system is an exception to the European Union legal framework. GRECO also recommended, in its Second Compliance Report on Slovenia of 23 March 2018, that the Slovenian authorities consider revisiting the procedure of appointment of judges to the Supreme Court in order to minimise the possibilities of political influence (6). The recommendation of GRECO remains unimplemented.

References

- (1) <http://www.sodisce.si/ursrs/objave/2021021712031513/#> .
- (2) http://sodisce.si/sodni_postopki/objave/2020021213193911/ .
- (3) 2018 Ombudsman Annual Report, available at https://www.varuh-rs.si/fileadmin/user_upload/pdf/lp/LP2017_VARUH_ENG.pdf .
- (4) 2019 Ombudsman Annual Report, available at: https://www.varuh-rs.si/fileadmin/user_upload/pdf/lp/LP_2019/Annual_Report_2019.pdf
- (5) Dopis Sodnega sveta, SU 569/2019-55 z dne 16. 9. 2020, also available at [http://www.up-rs.si/up-rs/uprs.nsf/cc1b0c2e0c8f0e70c1257aef00442bbd/749059dca573ed12c12585ff004245be/\\$FILE/Pobuda%20Sodnega%20sveta.pdf](http://www.up-rs.si/up-rs/uprs.nsf/cc1b0c2e0c8f0e70c1257aef00442bbd/749059dca573ed12c12585ff004245be/$FILE/Pobuda%20Sodnega%20sveta.pdf) (1 March 2021).
- (6) Council of Europe, GRECO, Fourth Evaluation Round, Corruption prevention in respect of members of parliament, judges and prosecutors, Second Compliance Report, Slovenia, adopted in Strasbourg on 23 March 2018, published on 5 July 2018; paragraphs 22-26; also available at <https://rm.coe.int/fourth-evaluation-round-corruption-prevention-in-respect-of-members-of/16808c1a9c> (1 March 2021).

Media pluralism and freedom of expression

Regarding freedom of expression, the Ombudsman has kept a focus on the issue of hate speech in the Republic of Slovenia. The Center for Human Rights (an organizational unit of the Ombudsman) has to a large extent concluded its analysis of the prosecution of a criminal offense under the first paragraph of Article 297 (Public incitement to hatred, violence, and intolerance) of the Criminal Code of the Republic of Slovenia, which is going to be the first analysis giving an inside look to the Public Prosecutors' as well as, to a certain extent, to the courts' practice over the period from 2008 to 2018.

The situation in the field of freedom of expression (and media freedom) remains strongly linked to current social developments – both numerically and substantively – as well as to the epidemic situation. The Ombudsman draws attention on several occasions to the need for the ethics of the public world (1). Online harassment of and threats against journalist remains an issue of concern. The Ombudsman has for years recommended (2) that the Ministry of Culture, within the scope of its competences, make every effort to determine,

with regard to the implementation of the norm on the prevention of the spread of hate speech in the media (Article 8 of the Media Act):

- protection of public interest (inspections, minor offences control),
- remedial actions (such as immediate removal of illegal content)
- sanctions for the media allowing hate speech.

Unsurprisingly, public debate on the needed reform of (a set of) media legislation is highly politicized, and therefore status quo remains for years.

The Ministry's proposal of amendments of three media-related laws, introduced in July 2021, was largely criticised as it was subject to a very short public debate, a lack of coalition consensus and was based on questionable principles: the proposals received 193 comments. Consequently, the amendments of the legislation were removed from further proceedings. (3)

The Ombudsman follows several debates on the issue of a free and pluralistic media environment in Slovenia. Politicians are often in conflict with the media or journalists.

References

- (1) See, for example, <https://www.varuh-rs.si/sporocila-za-javnost/novica/varuh-svetina-o-etiki-javne-besede/> (1 March 2021), <https://www.varuh-rs.si/sporocila-za-javnost/novica/varuh-poziva-organe-odkrivanja-in-pregona-da-zajezi-epidemijone-strpnosti-in-sovraznosti/> (1 March 2021), <https://www.varuh-rs.si/sporocila-za-javnost/novica/varuh-svetina-sprejel-varuhinjo-pravic-gledalcev-in-poslusalcev-rtv-slovenija/> (1 March 2021) and <https://www.varuh-rs.si/sporocila-za-javnost/novica/varuh-svetina-razvoj-in-uporaba-digitalnih-tehnologij-naj-bo-skladna-s-clovekovimi-pravicami/> (1 March 2021).
- (2) See 2020 ENNHRI Rule of Law Report, Slovenia and Annual Report of the Human Rights Ombudsman of the Republic of Slovenia for 2018, recommendation no. 13(2018) and p. 107, available at http://www.varuh-rs.si/fileadmin/user_upload/pdf/lp/LP_2018.pdf (1 March 2021).

- (3) See, for example: <https://www.rtv slo.si/javna-razprava-o-medijski-zakonodaji/svet-delavcev-o-spremembah-medijske-zakonodaje/535517> (1 March 2021), <https://www.delo.si/novice/slovenija/kritike-kratke-javne-razprave-o-novi-medijski-zakonodaji/> (1 March 2021), <https://siol.net/novice/slovenija/pivceva-desus-ne-podpira-predlaganih-sprememb-medijske-zakonodaje-531729> (1 March 2021), <https://www.dnevnik.si/1042938911> (1 March 2021), <https://www.vecer.com/slovenija/nsi-o-medijski-zakonodaji-predlagali-bomo-popravke-paket-zelimo-se-izboljsati-10206651> (1 March 2021), <https://www.amnesty.si/spreminjanje-medijske-zakonodaje.html> (1 March 2021).

Corruption

The responsible independent institution for combating corruption in Slovenia is the Commission for the Prevention of Corruption (1), not the Ombudsman.

The Ombudsman, however, notes the adoption of relatively comprehensive amendments to the Integrity and Prevention of Corruption Act in November 2020 (2), which brought several long-expected changes (3). The Ombudsman also notes that Slovenia reached 35th place in the Transparency International Corruption Perception Index (CPI 2020) with a score of 60, which is the same score as in 2019. This means that Slovenia has not made progress on the Corruption Perceptions Index since 2012 and is below the EU average (average score of the Member States' Index is 64) and the OECD average (average score of the Member States' Index is 67) (4). The year 2020 was marked with several claims of corruption in relation to providing protective and medical equipment to prevent and limit COVID-19 infections – the procedures are ongoing.

No progress has been made so far regarding the implementation of the 2019 EU Whistleblowers Protection Directive (5). The draft of the envisaged specific law on the protection of whistle-blowers in Slovenia has not yet been made available to the public nor to the Ombudsman.

References

- (1) Commission for the Prevention of the Corruption of the Republic of Slovenia, see <https://www.kpk-rs.si/en/> (1 March 2020).
- (2) Official Gazette of the Republic of Slovenia, No. 158/20 of 2 November 2020.
- (3) For some most important changes, see <https://www.kpk-rs.si/2020/11/17/od-danes-veljajo-spremembe-zakona-o-integriteti-in-preprecevanju-korupcije/> (1 March 2020).
- (4) <https://www.transparency.si/8-novice/471-cpi-2020-slovenija-brez-napredka-ze-od-leta-2012> (1 March 2020).
- (5) Official Journal of the European Union, L 305/17, 26 November 2019.

Impact of measures taken in response to COVID-19 on the national rule of law environment

The Ombudsman has been closely monitoring the COVID-19 situation in the Republic of Slovenia and internationally and the measures adopted by state authorities to contain the epidemic and protect the most vulnerable groups of citizens. In these incredibly challenging times, decision-makers must operate the delicate balance between societal interests and individual rights, freedoms or interests.

The most significant impacts of the COVID-19 outbreak and the measures taken to address it for the rule of law and human rights protection rely on the manner in which the authorities exercise their powers to tackle the epidemic. The awareness that the measures are interfering with human rights and fundamental freedoms and should therefore meet the legitimacy test of necessity, proportionality, non-discrimination, professional justification, legality and time-limitation, sometimes seems questionable. In Slovenia, no state of emergency has been proclaimed, and the Government should, in theory, have no extended powers.

In general, a vast majority of governmental decrees claim their legal basis as Article 39 of the Communicable Diseases Act (1), which gives a general authority to the Government to order certain additional measures, when those provided for in this Act cannot prevent spreading certain infectious diseases. However, the governmental decrees include several

measures interfering with human rights and freedoms (2) inter alia: the obligation to wear face-masks in public, limitations of movement on municipalities and/or statistical regions (while there are no political regions determined in Slovenia), curfew between 9 p.m. and 6 a.m. (currently enforced since 20 October 2020), closure or limitations of operation of services (shops, hairdressers etc.), the closing of schools and schooling from home, obligation to disinfect apartment buildings, limitations to assembling in public space, closure of ski slopes, closure of gyms, conditions to cross a state border, restrictions on health services, an obligation of testing for COVID-19. Since March 2020, hundreds of such decrees, amendments or ministers' decisions have been adopted (3).

These measures had very limited Parliamentary or any other democratic oversight and were not formally explained. They are also not subjected to fast judicial review. Even when the measures are based on the views of the Governmental expert advisory group on COVID-19, related scientific analysis is, in general, not publicly accessible. Furthermore, many measures might change on a daily basis or are prolonged on a weekly basis, which makes the legal framework applicable unpredictable and difficult to follow. Besides, the existing Communicable Diseases Act has proven to be outdated and cumbersome to use in this situation. For this reason, the Ministry of Health introduced a draft of a new law in August 2020 (4), to which the Ombudsman has given several comments and views on identified shortcomings regarding its implementation.

If the above-mentioned approach and powers of the Government might somehow be tolerated due to the epidemic and specific COVID-19 situation, if adopted in good faith and limited to necessary COVID-19 measures, they should be strictly limited to counter epidemic/pandemic and not become new normality and generally applicable.

A long-term implication of the COVID-19 outbreak also concerns the manner in which the laws are adopted in Parliament. The second set of measures to address the COVID-19 situation have been adopted by the National Assembly in the form of so-called "omnibus laws", which means that one act changes several other sectoral acts. Such an approach had been rarely used before the health crises for reasons of legal certainty. As of 1 March 2021, eight packages of such laws were adopted. These acts predominantly address COVID related matters such as economic situation, social benefits, limit functioning/ access to courts, schooling from home etc. (5). However, some acts also address issues, which have no direct connection with the COVID-19 situation, like the provisions which limit the participation of environmental civil society organizations in decision-making (6). In addition, deadlines for a public debate and comments are often extremely short. More attention should be paid to democratic participation, which could also increase the trust of the public in the adopted measures.

Another issue regards the access of individuals to effective legal remedies regarding various COVID-19 measures and their access to the courts. Even though there are dozens of cases related to the COVID-19 situation pending before the Constitutional Court, it has rarely suspended the implementation of concerned regulations (7) and so far adopted only two final decisions. The first decision (U-I-83/20 of 27. 8. 2020) assesses the constitutionality of two government decrees restricting movement to the municipality of residence (8). The Court found that the Government pursued a constitutionally permissible goal, i.e., containing and controlling the spread of the infectious disease COVID-19 and thus protecting the health and lives of people at risk. (9) The second decision (U-I-445/20 of 3 December 2020) (10) regards the non-publication of governmental decrees and a decision of the Minister of Education regarding schooling from home. The Constitutional Court ruled that three decrees of the Government and a decision of the Minister of Education extending the period of distance education, published only on the webpage of the Ministry and not in the Official Gazette of the Republic of Slovenia, were invalid. The Court has given the government three days to take action, which it did; otherwise, children would return to school. This decision might also have consequences regarding the validity of other decrees enforced in a similar way. The question of whether the citizens could claim compensation could also be raised.

As to the regular courts, in one case, the Administrative Court found a poorly justified quarantine decision to have no effect (11). In cases of corona-measures related misdemeanour proceedings (including regarding disproportionately high fines for misdemeanours), individuals might undertake regular complaint procedures (although lengthy and expensive). In other cases of challenging alleged human rights violations by corona-measures, in practice the only viable option was to bring the case before the Constitutional Court. The right to an effective remedy is protected by Article 13 of the European Convention on Human Rights and should as such be meaningful and also ensured during the epidemic.

Regarding the rule of law, a publicly very exposed opinion of the Ombudsman stated that a failure to wear a mask in an enclosed public space could not be penalised under the legislation at the time. The Ombudsman noted that the adoption of the decree on the mandatory use of face masks in enclosed public spaces had been based on an article of The Infectious Diseases Act, which was only a general provision and too weak of a legal basis. The Ombudsman was, therefore, of the opinion that an individual who did not wear a facemask in an enclosed public space could not be fined for committing an offence (13).

There have also been several occasions where the Ombudsman called upon the authorities to respect non-discrimination principles and the rights of elderly persons living in

institutions. The Center for Human Rights also undertook research on domestic violence during the epidemic and the availability of counselling services and accessibility of crisis centres and shelters for women victims of violence; and distant schooling of Roma children. The Center for Human Rights also undertook a public campaign on children rights and the possibility for children to submit a complaint to the Ombudsman, under the slogan "If you See Injustice, Use Justice!" (14)

On 10 November, the Ombudsman also published a Report on the Placement of Detainees at the Postojna Aliens Center. Given the current epidemiological situation, the Ombudsman proposed inter alia that the competent authorities and epidemiological experts prepare the appropriate organisation of the detention regime at the Aliens Centre. The Ombudsman also called on the Ministry of the Interior to stop the use of service dogs for Center activities (e.g., during mealtimes) involving contact with the detainees (15).

References

- (1) Official Gazette of the Republic of Slovenia, No. 33/06 – Official Consolidated Text, 49/20 – ZIUZEOP, 142/20, 175/20 – ZIUOPDVE in 15/21 – ZDUOP.
- (2) See <https://www.uradni-list.si/glasilo-uradni-list-rs> (2. 3. 2020).
- (3) Ibidem. There have been 204 issues of the Official Gazette published in 2020 and by 1 March 2021, already 29 issues (while the average per year is usually between 80 and 90 issues).
- (4) <https://e-uprava.gov.si/drzava-in-druzba/e-demokracija/predlogi-predpisov/predlog-predpisa.html?id=11571> (2 March 2021).
- (5) <https://www.gov.si teme/koronavirus-sars-cov-2/odpravljanje-posledic-epidemije/> (2 March 2020).
- (6) See: Act Determining the Intervention Measures to Mitigate and Remedy the Consequences of the COVID-19 Epidemic, Official Gazette of the Republic of Slovenia, No. 80/2020. The Constitutional Court suspended the implementation of relevant provisions of Article 2 of the said law until its final decision (case U-I-184/20, Official Gazette of the Republic of Slovenia, No. 101/2020).
- (7) Ibidem. See also: https://www.us-rs.si/neresene-zadeve/?year_nrz= (2 March 2021).

- (8) Namely, the Ordinance on the Temporary General Prohibition of Movement and Gathering of People in Public Places and Areas in the Republic of Slovenia and the Prohibition of Movement Outside Municipalities and the Ordinance on the temporary general prohibition of movement and gathering of people in public places, areas and towns in the Republic of Slovenia and the prohibition of movement outside municipalities.
- (9) See <https://www.us-rs.si/odlocba-ustavnega-sodisca-st-u-i-83-20-z-dne-27-8-2020/> (2 March 2021).
- (10) Official gazette of the Republic of Slovenia, No 179/2020 of 3 December 2020, also available at <https://www.us-rs.si/odlocitev/?id=115421> (2 March 2021).
- (11) II U 261/2020-18 of 2 September 2020, also available at http://www.sodisce.si/mma_bin2.php?nid=2020090910514762&static_id=2020090910360488.
- (12) See <https://www.varuh-rs.si/en/news/news/ombudsman-meets-with-directors-of-rtv-sta-and-ukom-on-the-accessibility-of-information-for-vulnerab/> (2 March 2021).
- (13) See <https://www.varuh-rs.si/en/news/news/ombudsman-says-failure-to-wear-mask-in-enclosed-spaces-cannot-be-penalised/> (2 March 2021).
- (14) See <https://www.varuh-rs.si/za-otroke/> (2 March 2021).
- (15) See <https://www.varuh-rs.si/en/news/news/the-ombudsmans-report-on-the-placement-of-detainees-at-the-postojna-aliens-centre/> (2 March 2021).

Most important challenges due to COVID-19 for the NHRI's functioning

The Ombudsman continued with its activities, promoting a human-rights based approach to the measures taken with regard to the COVID-19 epidemic. The most difficult challenges the Ombudsman had to address have been related to a proper, equitable and legitimate approach to the COVID-19 epidemic and measures that needed to be adopted. A balance of values such as the protection of the right to life, the right to health, as well as public health on one side and other individual rights and fundamental freedoms on the other side, has not been an easy challenge. For the Ombudsman, an important dilemma was to identify when to respond publicly in a critical way and when to use other more discreet means (dialogue, informal advice). The Ombudsman has both been criticized for being not active enough in protecting human rights and for being too active, therefore presumably

threatening the efficiency of the adopted life-saving measures. The Ombudsman also started to promote respect for human rights, fundamental freedoms, non-discrimination, respect for diversity and the rule of law in a post-covid world (1).

The environment in which the Ombudsman operates has changed due to the COVID-19 situation and related limitations. In order to prevent the spread of infections and to act responsibly, the Institution has largely (albeit not fully) suspended physical contact in its operations. It has therefore stopped receiving complainants and carrying out fieldwork and is instead available via email, regular mail, toll-free telephone and social media. In 2020 the Ombudsman noted a considerable increase in the number of complaints (from 4.600 cases in 2019 to 6.852 cases in 2020). During 2020 the Ombudsman received over 1000 individual complaints regarding the COVID-19 measures. While the Ombudsman's workload during the COVID-19 outbreak has considerably increased, the Ombudsman still managed to process all complaints, finding 150 different violations of human rights or fundamental freedoms related to the coronavirus epidemic (most of the violations (57) were related to equality before the law and the prohibition of discrimination). The elimination of individual violations or irregularities often had an immediate effect on the initiator as well as on many other individuals, families or groups. The Ombudsman Peter Svetina delivered several public statements and press interviews as well as brought several COVID-19 related issues directly to the attention of the Government and other relevant authorities. He has promoted the human rights-based approach to tackle the epidemic.

Despite the COVID-19 situation, the National Prevention Mechanism (NPM), which operates as an organizational unit of the Ombudsman, visited 51 places of deprivation of liberty and performed two monitoring of the return of aliens (53 in total). The NPM visited 18 police stations, 10 social welfare institutions (homes for the elderly), 7 different educational institutions, 5 prisons, 5 special educational institutions, 3 psychiatric hospitals, detention facilities in the military police, a youth crisis centre, and the care work centres. All visits (except for two monitoring of foreigner returns due to the very nature of these activities) were carried out without prior notice.

Since the beginning of the epidemic, the Ombudsman has addressed more than 40 opinions to the Government or directly to the Prime Minister, and many more to Ministers and Ministries to raise human rights concerns. The Ombudsman has also held several meetings with the Prime Minister, members of the Government, non-governmental organizations and other stakeholders to address current issues. For example, in December 2020, the Ombudsman met with the Director-General of Public Radiotelevision Slovenia (RTV SLO), Director of the Slovenian Press Agency (STA) and Director of the Government

Communication Office of the Republic of Slovenia (UKOM) to discuss the importance of accessibility of information for people with disabilities and vulnerable groups (12).

The Ombudsman brought several human rights concerns to the attention of the authorities, made public statements and calls as well as promotional activities. Raising awareness on the importance of respect for human rights and the rule of law is of crucial importance also in light of the most probable economic and political crises, which will surely follow the present health crisis. Therefore, activities on the promotion of human rights will be a priority in Ombudsman's future endeavours.

Regarding a general approach to the COVID outbreak Slovenia did not declare a state of emergency, as permitted within the conditions set by Article 15 of the European Convention on Human Rights (the Convention) and Article 4 of the International Covenant on Civil and Political Rights, nor did a vast majority of European States. Under the Convention, interference with several rights might be subject only to such limitations as are prescribed by law and are necessary in a democratic society, inter alia in the interests of public health (i.e., Articles 8/2, 9/2, 10/2, 11/2). The appropriateness of the increased executive powers, or at least of increased Governmental activity in adopting and amending the governmental decrees, could also be questioned from the separation of powers viewpoint. While no temporary suspension and restriction of rights were invoked under Article 16 of the Constitution, Article 15 of the Constitution stipulates that the manner in which human rights and fundamental freedoms are exercised may be regulated (only) by law whenever the Constitution so provides or where this is necessary due to the particular nature of an individual right or freedom. It could be questioned whether the present interference in these rights and the manner in which the measures are enforced are fully in accordance with the Convention. Yet it is hard to imagine any other exceptional circumstances or public emergency but war, which would better justify invoking Article 15 of the Convention as clearly the life of the nation is threatened in the present situation.

Article 15 (derogation in time of emergency) of the Convention allows governments, in exceptional circumstances, to derogate, in a temporary, limited and supervised manner, from their obligation to secure certain rights and freedoms under the Convention, to the extent strictly required by the exigencies of the situation (2). The use of Article 15 is subjected to procedural and substantive conditions. While it is hard to imagine that substantial conditions would not be met in the present situation, the procedural conditions would include a requirement to keep the Secretary General of the Council of Europe fully informed.

It is a rule of law question, rarely addressed, whether the adopted COVID-19 measures, which interfere with the exercise of several human rights and fundamental freedoms to protect other rights and public health, are *de facto* temporal derogations of several rights. However, if Article 15 on derogation in time of emergency is not invoked, it seems that States also avoid the international reporting obligations and any other procedures, which might be applicable in such a situation.

Quick adoption of so-called corona governmental decrees, laws and their quick and sometimes unclear amendments further raised questions related to the lack of scrutiny or consultation with relevant stakeholders. The Ombudsman, therefore, often raised its voice – sometimes successfully and others not – on behalf of various vulnerable groups, most importantly affected by these measures (3).

References

- (1) Peter Svetina: Do boljšega okrevanja s človekovimi pravicami, Uvodnik, v: Pravna praksa, No. 48/2020 of 10 December 2020.
- (2) European Court of Human Rights, Factsheet – Derogation in time of emergency, September 2020, available at https://www.echr.coe.int/documents/fs_derogation_eng.pdf (2 March 2021).
- (3) See for example <https://www.varuh-rs.si/sporocila-za-javnost/novica/vlada-ni-sprejela-predlogov-varuha-o-zasciti-otrok-s-posebnimi-potrebami-v-izrednih-primerih/> (1. 3. 2021); <https://www.varuh-rs.si/sporocila-za-javnost/novica/pregled-aktivnosti-varuha-pri-zagotavljanju-clovekovih-pravic-invalidov-oktober-december-2020/> (1 March 2021).

Spain

Ombudsman of Spain

International accreditation status and SCA recommendations

The Spanish NHRI was re-accredited with A status in May 2018. The SCA encouraged the NHRI to advocate for amendments to the establishing law in order to ensure a limit to the Ombudsman's term of office, a pluralist staff composition and a broad and transparent selection process with the direct participation of civil society. The SCA acknowledged the NHRI's level of engagement with the international human rights system and encouraged the NHRI to continue advocating for the provision of adequate funding.

Impact of 2020 rule of law reporting

Follow-up by State authorities

Specific follow-up concerned the concerns raised about the impact of COVID-19 on rule of law and human rights protection.

For example, as regards the fight against disinformation, the Spanish Government stressed the need to counter recent waves of disinformation through preventing mechanisms. These efforts have been justified to defend the National Health System, citizenship's security, and even Spain's economic interests. However, the most significant justification that was highlighted is the protection of the rule of law at the national level.

Follow-up initiatives by the Institution

Developing public events in the past year was challenging due to the different periods of lockdowns, and the consequences of the second and third wave of coronavirus that have been striking Spain over the past months.

Nonetheless, the Ombudsman engaged throughout the year in actions to follow-up and address the challenges posed by the COVID-19 outbreak. For example, he addressed the Secretary General of Penitentiary during the COVID lockdown to know about the communication protocols with the prisoners' families to inform them of the health situation of the inmates, so that the information flew daily to prevent the spread of fake news

References

- https://www.defensordelpueblo.es/wp-content/uploads/2020/12/Documento_COVID-19.pdf (p. 179)

Independence and effectiveness of the NHRI

Changes in the regulatory framework applicable to the Institution

There has been no change regarding the national regulatory framework or the Institution's internal composition.

Enabling space

The institutional value of the Spanish Ombudsman is widely respected and represents an undeniable voice of reference in Spain. The effectiveness and the development of the functions and the duties of the institution are therefore adequately protected. Furthermore, the fact that it is designated by the Constitution as the protector of fundamental rights of citizens with regard to the public administration, guarantees its recognition and its independence as an external institution with access to the resources it considers necessary to fulfil its mandate. In addition, the art. 502 of the Spanish Criminal Code punishes as disobedience the lack of cooperation with the Ombudsman.

References

- https://www.legislationline.org/download/id/6443/file/Spain_CC_am2013_en.pdf

Developments relevant for the independent and effective fulfilment of the NHRIs' mandate

The Covid-19 pandemic and subsequent lockdowns changed the Institution's methods of work. Few on-site visits to places of deprivation of liberty or social centres could be carried out in order to respect the principle of Do No Harm, they resumed as soon as the situation improved.

The Ombudsman has been immersed in a digital transformation project for several years, that just crystallized in a macro-contract of 4M EUR, aiming to eliminate bureaucracy and streamline processes for citizens. The Institution's budget has raised for this reason.

There is a clear need to simplify and improve procedures, that the Ombudsman is committed to address in order to provide support to the citizens in a timely manner.

Citizens choose to submit complaints mainly through the institutional portal. For this reason, the key in the digital transformation project will be to improve the "user experience". In this way, an intelligent form will be created to help citizens expose their problems to the Institution.

In the framework of the COVID-19 outbreak, numerous issues were brought to the attention of the Institution, including in relation to the number of ERTes (temporary collective dismissals), aid to the culture sector, closure of the hotel industry, health waiting lists, nursing homes. In order to deal with these complaints more efficiently, the Institution is considering new ways of communicating with the people involved, such as a news item, a newsletter or surveys.

Human rights defenders and civil society space

The Organic Law 4/2015 on the protection of Citizen Security has continued to spark protests from civil society. Even international organizations have expressed their concern. The Venice Commission is currently preparing an opinion on this Organic Law at the proposal of the Parliamentary Assembly of the Council of Europe. The Ombudsman expressed concern and made recommendations in relation to external body searches on public roads, offences in the context of meetings and demonstrations, or the use of images or data by the police. The recent Ombudsman's annual reports, advocated for the reform of some aspects of this law, seeking the right balance between security and freedom.

Although there has been a parliamentary majority in favour of a reform of this law since 2016 and some legislative initiatives in this regard, such reform has not yet been completed, either due to a lack of sufficient political will or because of the parliamentary instability in recent years.

The Ombudsman recommends a reform of the current Organic Law 4/2015, addressing at least the following elements:

- Administrative and judicial guarantees regarding external body searches (art. 20(2)(b)) should be reinforced.

- Violation of article 37 should not hinder the rights of assembly and demonstration.
- Violation of article 36.23 should not hinder freedom of expression or the right to information.

References

- <https://www.defensordelpueblo.es/resoluciones/sobre-la-ley-organica-de-proteccion-de-la-seguridad-ciudadana-7/>
- https://www.defensordelpueblo.es/wp-content/uploads/2020/05/I_Informe_gestion_2019.pdf (p. 124–127)

Checks and balances

The “state of alarm” declared in response to the pandemic has decreased the parliamentary oversight of the government. However, the Ombudsman continued its scrutiny, and publicly shared its opinion about the relationship between state of alarm and fundamental rights on three occasions: in a resolution of January 2021 denying an appeal of unconstitutionality against the decree establishing the first state of alarm; in the public hearing before the Mixed Congress-Senate Commission on relations with the Ombudsman on November 26; and in the publication of December 2020 “Actions in the face of the COVID-19 pandemic”.

In these statements, the Ombudsman concludes that the provisions of the first state of alarm, as well as those adopted by various authorities in the intermediate period between the two states of alarm (June to October 2020), have been adopted in line with the framework of the Constitution, of the Organic Law 4/1981, of June 1, of the states of alarm, exception and siege, and of the sanitary legislation foreseeing cases of epidemic.

The mere designation of the Spanish Ombudsman as a National Human Rights Institution serves as proof of how it interacts with the system of checks and balances that constitutes the separation of powers in Spain. It is the Congress of Deputies, along with the Senate, who decide by a 3/5 majority who will be the Spanish Ombudsman, whose term is of five years. As part of the Ombudsman’s activities, it elaborates an annual report including the

issues identified as most important or which require the intervention of the executive and the legislative powers with relative urgency.

References

- <https://www.defensordelpueblo.es/noticias/segundo-estado-alarma/>
- https://www.defensordelpueblo.es/wp-content/uploads/2021/01/Resolucion-compulsada-20027822_1.pdf
- https://www.defensordelpueblo.es/wp-content/uploads/2020/12/Documento_COVID-19.pdf
- <https://www.defensordelpueblo.es/noticias/comparecencia-covid-19/>

Media pluralism and freedom of expression

In the framework of the proposals of reform made by the institution concerning the Organic Law 4/2015 on the protection of Citizen Security, the Ombudsman advocated, with respect to the fundamental right to information and concerning the serious infraction established in article 36.23 of the Law, to establish urgent instructions to guarantee the interpretation and application in the most favourable way to the full effectiveness of freedom of expression. In particular, the Ombudsman stressed that the expression "**unauthorized** use of images or personal or professional data" should not be interpreted as requiring prior administrative authorization for the dissemination of such images or data. Likewise, article 19, relating to the apprehension of the effects of a crime or administrative offense, should not be interpreted as meaning that an apprehension of informative material is possible without judicial authorization.

Finally, and considering the difficulty for citizens to be aware *a priori* that the use of certain data or images can jeopardize the success of a police operation, it is advisable to reserve the provisions' application to cases where fraud circumstances are proven.

By a decision TC 172/2020 the Spanish Constitutional Court declared the prior authorization foreseen in art. 36.23 unconstitutional and null, and the rest of the section constitutional, provided that it is interpreted in the sense established in the Legal Ground number 7 C (FJ 7 C).

References

- <https://www.defensordelpueblo.es/resoluciones/sobre-la-ley-organica-de-proteccion-de-la-seguridad-ciudadana-7/>
- https://www.tribunalconstitucional.es/ResolucionesTraducidas/STC%20172%202020%20of%2019%20November%202020.%20Legal%20grounds%20and%20separate%20opinion_.pdf
- Constitutional Court decision TC 172/2020

Corruption

Considering the national economic situation and its GDP, Spain ranks as 32nd most corrupted country in the world, according to Transparency International.

Even though the level of corruption decreased from 2019 to 2020, the frequency of corruption scandals in Spain remains considerably high. The media play an important role by unveiling these cases, which are then adequately examined by the courts.

References

- <https://www.transparency.org/en/cpi/2020/index/esp>

Impact of measures taken in response to COVID-19 on the national rule of law environment

Most significant impacts of measures taken in response to the COVID-19 outbreak on the rule of law and human rights protection

The Spanish Ombudsman, from the beginning of 2020 right until the end, carried out more than 26.000 interventions in response to the complaints brought to the Institution, most of which were related to the sanitary crisis. The Ombudsman was operating 24 hours per day via telecommuting. Amongst the different complaints, there were cases related to: incorrect sanctions in application of the Citizens Security Law, sanctions by the security forces regarding permission for minors to leave their houses; the insufficiency of the health

system and the inefficient use of the system's resources; the problematic of the most vulnerable households exposed to the most immediate effects of the pandemic; problems of assistance in nursing homes; the lack of access to digital resources, preventing impoverished children to adapt to the new format of education; non-discrimination and acceptance of migrants.

Given that Spain prevails as a major touristic destination worldwide, and as a result of the consequences that the pandemic has had short-term and medium-term, the major danger that Spain is facing at the moment is the enormous impact of the future economic recession on the country. The International Monetary Fund indeed stated that Spain will suffer the worst recession amongst the most developed countries in the world. Thus, the most worrying elements regarding rule of law and human rights protection in the following years will be marked by the lack of access to resources, decreased standards of living of a significant proportion of the population, homelessness, increase of people below /close to the income poverty line, social exclusion.

The current national and international health emergency situation represents an unprecedented challenge for all of society. Public bodies have been forced to act with an unprecedented immediacy in order to respond to changing and unpredictable circumstances, while citizens had to modify many of their habits.

The application of the health and social prevention and protection measures, approved by different Spanish public administrations to fight the pandemic, may have certain effects on the exercise of the fundamental rights recognized in the Title I of the Spanish Constitution.

Social distancing, the most effective preventive measure to prevent contagion, caused travel limitations and the generalization of blended learning at all educational levels.

On the other hand, the notable socioeconomic effects of the pandemic led to the overflow of requests for aid and social benefits.

Faced with this situation, the Ombudsman, within the framework of his powers, works to defend and safeguard fundamental rights. It published a whole report on its activities during the pandemic.

References

- https://www.defensordelpueblo.es/wp-content/uploads/2020/12/Documento_COVID-19.pdf

Most important challenges due to COVID-19 for the NHRI's functioning

The lockdown required the Ombudsman office to change its working system. The Spanish Ombudsman adapted to the circumstances through the use of technological tools, transferring many of the proceedings, meetings, or initiatives on digital platforms.

During the first state of alarm, no NPM on-site visits were carried out in application of the Do No Harm Principle, only phone calls to supervise centres were made. The NPM resumed its activities in the end of May 2020.

References

- <https://www.defensordelpueblo.es/mnp/actividad/>

Sweden

International accreditation status and SCA recommendations

ENNHRI's member in Sweden is the Swedish Equality Ombudsman, which was [accredited](#) with B status in May 2011. The SCA noted that the NHRI's mandate is limited to equality matters and stressed the need for a broader mandate to promote and protect human rights. Also, the SCA encouraged the Equality Ombudsman to advocate for the formalization of broad and transparent selection and dismissal process in the relevant legislation.

In 2019, the Swedish government took important steps in relation to a [proposal](#) for the establishment of an NHRI in Sweden in compliance with the Paris Principles. ENNHRI provided [comments](#) on the proposal and stands ready to give further support towards the establishment and accreditation of an NHRI in compliance with the Paris Principles in the country. In January 2020, the draft bill was sent to the [Swedish Council on Legislation](#) (an advisory body composed of current and former judges of the Supreme Court and Supreme Administrative Court). The bill was submitted by the government to the Swedish Parliament and [approved](#) on 9 June 2021. The new institution is planned to start operations on 1 January 2022.

In view of the ongoing process to establish an institution in compliance with the UN Paris Principles, and having regard to the limitations of its mandate, the Swedish Equality Ombudsman abstained from contributing to this reporting process.

Switzerland

At present, Switzerland does not have a National Human Rights Institution.

In December 2019, the Swiss Federal Council submitted a proposal to Parliament on the establishment of an NHRI. The future institution would replace the current *Centre suisse de compétence pour les droits humains* (CSDH), which had been created in 2011 as a pilot to assess the need for an NHRI in the country. This pilot was supposed to end in 2020 but it will be extended for 2 years, allowing enough time for the establishment of the NHRI by then.

In January 2021, the Commission for External Affairs of the Council of States (lower chamber) [asked](#) the Commission for Political Institutions for a co-report on the compatibility of the proposed Institution with the competences of the cantons and to show how the Institution would interact in the Swiss political system. In March 2021, the Commission for Political Institutions adopted an opinion on the draft bill where it advised against the conferral of monitoring powers, in accordance with a precedent opinion of the Federal Council. According to the Commission, the competence of the new institution should not be excessively extended and the competence of cantons should be preserved. In April 2021, with a vote of 9 to 1 and 2 abstentions, the Commission for External Affairs adopted a text for a draft bill to be discussed at the Council of States. The text is in line with the advice of the Commission for Political Institutions, meaning that it does not foresee monitoring powers for the new institution.

ENNHRI stands ready to further provide information to the Parliament and any other relevant stakeholder on the establishment of an NHRI in Switzerland in compliance with the Paris Principles

References

- Webpage of the government setting out the current progress on setting up an NHRI: <https://www.admin.ch/gov/fr/accueil/documentation/communiques.msg-id-77508.html>

Turkey

Human Rights and Equality Institution of Turkey

Accreditation status and SCA recommendations

The Human Rights and Equality Institution of Turkey is a non-accredited, associate member of ENNHRI. As such, the institution has committed taking proactive steps towards applying for accreditation and complying with the UN Paris Principles.

In 2019, a capacity assessment of the institution took place, led by the United Nations Development Program (UNDP) and in cooperation with OHCHR and ENNHRI. The main purpose of the capacity assessment was to identify the challenges and institutional needs of the institution in developing their capacities and to develop strategies for ensuring compliance with the UN Paris Principles.

The Institution has demonstrated interest in applying for accreditation and ENNHRI will continue to support it in its efforts to enhance compliance with the UN Paris Principles.

Independence and effectiveness of the NHRI

Changes in the regulatory framework applicable to the Institution

The Presidential Development Plan, which is aimed to be implemented until 2023, provides that human rights shall be protected and promoted more effectively and awareness of people regarding human rights shall be increased.

The government decided in December 2020 that the Human Rights and Equality Institute of Turkey (HREIT) shall gain the status of the “National Reporting” institution for the Group of Experts on Action against Trafficking in Human Beings (GRETA). Experts of HREIT are being trained to that effect.

The recently announced Human Rights Action Plan – which was prepared in consultation with multiple state institutions and NGO’s –stresses the importance of the existence and development of the HREIT. The Human Rights Action Plan includes several regulations regarding HREIT:

-In terms of institutional recommendations and decisions, attention has been paid within the Action Plan to the reports issued by the Ombudsman Institution, the Personal Data Protection Authority and the Human Rights and Equality Institution of Turkey.

-The structure of the Human Rights and Equality Institution of Turkey will be made compliant with the UN Principles relating to the Status of National Institutions and its accreditation by the Global Alliance of National Human Rights Institutions will be secured.

-The decisions of the Ombudsman Institution and the Human Rights and Equality Institution of Turkey will be made available for public access while ensuring protection of personal data.

-The periodic reports prepared by the Penitentiary Institution and Detention House Monitoring Boards will also be sent to the Ombudsman Institution, the Human Rights and Equality Institution of Turkey, and the execution judgeship concerned. In our country, regular inspections can be held in relation to the conditions of custody centres and interrogation rooms as well as of persons in custody by chief public prosecutor's offices and administrative institutions. The Committee on Human Rights Inquiry of the Grand National Assembly of Turkey, the Ombudsman Institution and the Human Rights and Equality Institution of Turkey each have the authority to examine, inquire and inspect these places.

-The Department of Human Rights of the Ministry of Justice will draft the "Annual Implementation Report" on the Human Rights Action Plan and submit it to the Monitoring and Evaluation Board for approval. The Annual Implementation Report will be assessed by the Human Rights and Equality Institution of Turkey and the Ombudsman Institution, who will submit the results to the Presidency of the Republic and the Grand National Assembly of Turkey.

References

- Presidential Development Plan 2019–2023 https://www.sbb.gov.tr/wp-content/uploads/2020/03/On_BirinciPlan_ingilizce_SonBaski.pdf
- Action Plan on Human Rights <https://rayp.adalet.gov.tr/resimler/1/dosya/insan-haklari-ep-eng02-03-202115-16.pdf>

Enabling space

In accordance with the law No. 6701, HREIT has the status of a public legal entity and administrative and financial autonomy, which ensure the institution's capacity to act independently. Furthermore, the aforementioned code provides that HREIT monitors and

evaluates the legislative work related to its field of duty and informs the relevant authorities of its opinions and suggestions. In that regard, HREIT presents annual reports and gives advice to the Grand National Assembly of Turkey (TBMM) and the Presidency, collaboratively acts with the Human Rights Commission and the Commission of Equal Opportunities for Men and Women of TBMM. All of this cooperation provides enlarged capacity for HREIT's recommendations to be implemented effectively.

Moreover, HREIT is asked expert opinions by courts in legal cases which are related to human rights law. There is a growing number of references being given to HREIT Board Decisions by different courts in their verdicts. Law No. 6701 states that the Institution may start an ex officio investigation on the relevant case if necessary. To facilitate this process, state bodies are providing HREIT technical, logistical and informative assistance. HREIT has a mandate to demand related documents from relevant persons in its ex officio investigations.

References

- <https://www.mevzuat.gov.tr/MevzuatMetin/1.5.6701.pdf>

Developments relevant for the independent and effective fulfilment of the NHRIs' mandate

HREIT started a Capacity Assessment (CA) program. It was conducted by TIHEK, facilitated by the Asia Pacific Forum of National Human Rights Institutions (APF) and the European Network of National Human Rights Institutions (ENNHRI), the United Nations Development Programme Istanbul Regional Hub (UNDP IRH) and the United Nations Office of the High Commissioner for Human Rights (OHCHR) in August 2019. HREIT was the first National Human Rights Institution (NHRI) ENNHRI member to undertake a comprehensive CA in Europe. In the capacity assessment report it was identified that HREIT's physical capacity has to be increased for a more effective operating capability. In this regard, HREIT acquired a new building and nearly doubled its physical capacity. Moreover, HREIT recruited 25 new assistant experts to increase the capability and currently 158 persons work in HREIT. In Addition to this, the HREIT organised a training program for assistant experts and the programs are still in progress. We have strengthened the dialogue with our counterparts and international organizations. The number of multilateral meetings we attend increased

and varied so that via sharing of best practices we had the opportunity to find ways to better address problematic issues.

Human rights defenders and civil society space

In the institution's efforts of protection and promotion of elderly people's rights in Turkey, related states bodies facilitate HREIT's outreach to elderly people, data collection. According to the law, HREIT has a power to independently cooperate with international organizations. Thus, she has strong cooperation with ENNHRI, GANHRI, Council of Europe, OSCE etc. HREIT's accreditation process to GANHRI is supported economically and politically by the government.

-To activate the Provincial and Sub-Provincial Human Rights board, HREIT carried out studies. In this context, a meeting was held in Sakarya with the participation of representatives of non-governmental organisations.

-Representatives from Universities and civil society were invited to the symposiums and workshops organised by HREIT and publications prepared regarding our studies were distributed to these Institutions.

-HREIT made contributions to the Human Rights Action Plan which is prepared by Ministry of Justice and will come into effect in 2021.

- According to article 9 of the Law No 6701, the HREIT prepares an annual report related to the protection and promotion of human rights. In order to prepare the annual report, the HREIT requests views and statistics for over 100 non- governmental institutions.

References

- <https://www.tihek.gov.tr/tihek-il-istisare-toplantilarinin-ucuncusunu-sakaryada-gerceklestirdi/>
- <https://www.tihek.gov.tr/siddetin-onlenmesi-calistayi/>

Checks and balances

Complaint mechanisms

Many non-judicial complaint mechanisms have been established in Turkey in different qualifications and characteristics. These mechanisms carry out human rights audits of administrative nature. One of the bodies that carry out human rights controls of administrative nature is the provincial and sub-provincial human rights boards. Another one is the Ombudsman Institution. Anyone who thinks that they are victimized or wronged by the actions and procedures of public institutions and organisations (administration) and the attitudes and behaviour of public officials can lodge a complaint to the Ombudsman Institution before going to court. The purpose of the Institution is to establish an independent and efficient complaint mechanism regarding the delivery of public services and investigate, research and give recommendations about the conformity of all kinds of actions, acts, attitudes and behaviour of the administration with law and fairness under the respect for human rights. Natural and legal persons including foreign nationals may lodge complaints to the Ombudsman Institution.

One of the non-judicial complaint mechanisms is offered By the "Presidential Communication Center" (CIMER). CIMER offers an electronic public service tool created for the use of the right to petition and information. All applications made to CIMER, created by using information communication technologies, can be followed by the Directorate of Communication. CIMER is carried out under the responsibility of the Presidency Directorate of Communications Department of Public Relations (operating under the Directorate of Communication). Having many different institutions treating the same applications/complaints can lead to the fragmentation of some functions. In particular, the inability to collect data on human rights and the multi-headed human rights issues affect the efficiency and functioning of the institutions.

NHRI's role in the system of checks and balances

Within the scope of the mandates listed in the Law No. 6701 (Law on Human Rights and Equality Institution of Turkey) it has been ensured that HREIT is an important component of the checks and balance system in Turkey. In the paragraph (e) of Article 9 of Law No. 6701, "Following and assessing development of legislation on issues falling under its mandate and submitting its opinions and proposals thereon to relevant authorities" is listed among the duties of the Institution. In this context, in 2020, HREIT has been included in the national policy studies carried out within the scope of the National Action Plan for the

Elimination of Violence Against Women and the Human Rights Action Plan and submitted its opinions and proposals.

Apart from these studies, some examples of the initiatives that HREIT has carried out as a part of the checks and balances system are following;

- The 17th High Criminal Court requested an opinion regarding repatriation of an Azerbaijani citizen within the scope of the principle of non-refoulement and the prohibition of torture, and our institution presented its views to the court in this context.
- HREIT requested participation as third party in the European Court of Human Rights (ECtHR) case *Abdi İbrahim v Norway*, but this request was not accepted due to the limitation of time.
- In order to prepare a national legislation and an international agreement on elderly rights, the HREIT Elderly Rights Working Group has been established and activities continue for this purpose.

Related to the coordination with regional actors, the application made by an Afghan immigrant Şefika Nazari to the institution was one of the prominent topics in 2020. After opening Turkey's border gates with Greece, irregular migrants and asylum-seekers headed to Edirne Border in an attempt to cross the border from different points. This led to a chaotic situation. On April 4, 2020, Afghan mother Şefika Nazari made an application to HREIT. Nazari stated that in her application, her 3-year-old daughter Elif Naz and her son Ferit Ahmet were trapped in Greece. The HREIT took up the application and took actions and contacted many national and international institutions such as the Directorate General of Migration Management, the Ministry of Foreign Affairs, the UN High Commissioner for Human Rights, the Greek authorities, UNICEF and the Afghanistan Embassy. Finally, with the contribution of the Turkish Red Crescent and the Red Cross cooperation, 75 days after the incident, the children were returned back to the family at the Edirne Pazarkule border gate.

References

- <https://www.cimer.gov.tr/>
- <https://www.ombudsman.gov.tr/>
- <https://www.mevzuat.gov.tr/MevzuatMetin/1.5.6701.pdf>
- <https://www.tihet.gov.tr/yunanistanda-kalan-cocuklarina-kavusan-afgan-aileden-tiheke-tesekkur-ziyareti/>
- <https://rayp.adalet.gov.tr/resimler/1/dosya/insan-haklari-ep-eng02-03-202115-16.pdf>

Corruption

In Turkey, in addition to the National Human Rights Institution, the Ombudsperson Institution is also treating human rights questions. Corruption is an issue addressed within the scope of the working area of the Court of Accounts and the Ombudsman Institution.

In article 5 of the Law No. 6328 (Law on the Ombudsman Institution) Duties of the Institution stated as "The Institution shall be responsible for examining, investigating, and submitting recommendations to the Administration with regard to all sorts of acts and actions as well as attitudes and behaviour of the Administration upon complaint on the functioning of the Administration within the framework of an understanding of human rights-based justice and in the aspect of legality and conformity with principles of fairness."

In Article 5 of Law No. 6085 On Turkish Court of Accounts, duties of the Turkish Court of Accounts are listed as follows;

- a) Audit the financial activities, decisions and transactions of public administrations within the framework of accountability and submit accurate, sufficient, timely information and reports to the Turkish Grand National Assembly on the results of these audits;
- b) Audit whether or not accounts and transactions of public administrations within the scope of the general government with respect to their revenues, expenses and assets are in compliance with laws and other legal arrangements, and take final decision on matters related to public loss arising from the accounts and transactions of those responsible,
- c) Submit the Statement of General Conformity to the Turkish Grand National Assembly,

d) Perform the duties of examining, auditing and taking final decision prescribed by laws.

References

- <https://www.ombudsman.gov.tr/English/law/Law.pdf>
- <https://www.sayistay.gov.tr/tr/?p=2&CategoryId=92>

Impact of measures taken in response to COVID-19 on the national rule of law environment

Most significant impacts of measures taken in response to the COVID-19 outbreak on the rule of law and human rights protection

The HREIT closely monitors the process of the COVID-19 pandemic, which has transformed into a humanitarian crisis in a short time and affects fundamental rights and freedoms, and continues to monitor the loss of rights caused by the pandemic and the impact of the measures taken to combat the pandemic on rights and freedoms. In this context, the HREIT prepared the thematic report entitled "The COVID-19 in the Context of Human Rights" and examined the pandemic process in our country. The aim of this study, was to record good practice examples in the efforts made for the protection of the right to life and the right to health in our country, and to find out deficiencies and offer suggestions. The Report is due for publication shortly.

References

- <https://www.tih.gov.tr/kultur-ve-turizm-bakanligi-personeline-insan-haklari-egitimi/>
- <https://www.tih.gov.tr/tihkten-66-ticaret-il-mudurune-insan-haklari-ve-ayrimcilik-egitimi/>
- <https://www.tih.gov.tr/baskan-suleyman-arслан-uskudar-universitesinin-duzenledigi-pandemi-surecinde-guncel-insan-haklari-sorunlari-konulu-panelde-konustu/>

Most important challenges due to COVID-19 for the NHRI's functioning

The most important challenges the Institution faced during COVID-19 outbreak related to the exercise of its duties as National Preventive Mechanism. The first case of COVID-19 was reported in Turkey in March 2020 and the process of combating the COVID-19 pandemic has intensified in our country as in the whole world. Detention centres were among the places where special measures were taken during the fight against the pandemic. Both within the scope of the measures taken and in accordance with the "do no harm principle", which is the basis of the National Prevention Mechanism, the frequency of visits planned for 2020 has necessarily decreased. We were able to carry out visits to detention centres including prisons, custody centres, removal centres where foreigners under administrative detention are placed, homes for the elderly and Care centres for children.

Because of the COVID-19 pandemic, some of HREIT's visits, within the scope of National Preventive Mechanism were suspended, but in line with the recommendations of the CPT, SPT, and APT, alternative monitoring method named SEGBIS were developed in order to continue to perform the NPM mission. The SEGBIS system is a system in which audio and video are transmitted in electronic environment at the same time, and which was created for the purpose of carrying out judicial services in electronic environment. The SEGBIS system has been integrated into the NPM unit.

HREIT organised an online training program for public institutions and organisations on human rights issues during COVID-19 pandemic. At the same time the Institution's staff participated to online symposiums and meetings organised by various national international organisations on human rights issues.

References

- <https://www.tihk.gov.tr/bolu-f-tipi-kapali-ceza-infaz-kurumuna-ziyaret-duzenlendi/>
- <https://www.tihk.gov.tr/tihk-heyeti-ankara-ataturk-cocuk-kampusune-ziyaret-gerceklestirdi/>
- <https://www.tihk.gov.tr/ulusal-onleme-mekanizmasi-kapsaminda-eskisehirde-ziyaretler-gerceklestirildi/>

Ukraine

Ukrainian Parliament Commissioner for Human Rights

International accreditation status and SCA recommendations

The Ukrainian NHRI was [reaccredited](#) with A status in October 2019. While acknowledging the proposed amendments to the establishing law, the SCA encouraged the NHRI to continue to advocate for a broader and more transparent selection and appointment process, as well as clearer limits to the terms of office of the decision-making body of the NHRI. Similarly, the SCA welcome the increase in funding to the NHRI but encourages the NHRI to keep advocating for the provision of adequate resources. Finally, the SCA encouraged the NHRI to strengthen its cooperation with civil society organizations.

Impact of 2020 rule of law reporting

Follow-up by State authorities

The ENNHRI Rule of Law Report 2020 helped to raise awareness of rule of law issues among public authorities, and to strengthen the interaction of the Parliament Commissioner for Human Rights with public authorities and local bodies. Updates on identified rule of law issues are now provided by the National Strategy for Human Rights, approved by the Decree of the President of Ukraine of 25 August 2015 № 501/2015 (amended and approved again by the President in 2021), the Association Agreement between Ukraine, on the one hand, and the European Union, the European Atomic Energy Community and their states -members, on the other hand, ratified by Law № 1678-VII of 16.09.2014 and the Council of Europe Action Plan for Ukraine for 2018-2022.

With a view to implementing the provisions of the Association Agreement, special attention was paid to the rule of law in the Resolution of the European Parliament of 11 February 2021 on the implementation of the Association Agreement between the EU and Ukraine (2019/2202 (INI)). The Resolution emphasizes that respect for the rule of law is fundamental on the path to Ukraine's European integration.

Impact on the Institution's work

As mentioned above, the ENNHRI Rule of Law Report 2020 helped strengthen the interaction of the Parliament Commissioner for Human Rights with public authorities and local bodies.

References

- (1) <https://www.president.gov.ua/documents/1192021-37537>
- (2) <https://rm.coe.int/rule-of-law-checklist-at-national-level-case-of-ukraine/1680a07dd0>

Follow-up initiatives by the Institution

The Secretariat has taken steps to promote the rule of law in Ukraine. In particular, on November 27, 2020, within the framework of the implementation of the Action Plan of the Council of Europe for Ukraine for 2018-2022, a presentation of the manual "Measuring the rule of law at the national level: practice of Ukraine" was held (1). This manual is a comprehensive detailed tool for practical assessment of the rule of law, both in rule-drafting and rule-projecting activities. This publication was aimed primarily at the legislative and executive authorities.

As part of the Commissioner's Rule of Law initiatives, a number of events were organized in order to promote the rule of law and prevent torture by police and law enforcement officers in Cherkasy and Kirovohrad regions.

Independence and effectiveness of the NHRI

Enabling space

Due to the delays in responses of the executive authorities (and their representative offices and structures within Ukraine and abroad) to the Commissioner's requests, there are in turn delays in replying to the citizens' complaints.

In order for the Commissioner to exercise parliamentary control over the observance of, in particular, the human right to a safe environment for life and health, it is usually necessary to involve state supervision (control) bodies in the relevant areas. However, the Law of Ukraine "On Basic Principles of State Supervision (Control) in the Sphere of Economic Activity" does not provide for an appeal of the Commissioner for Human Rights as a ground for an unscheduled inspection of an economic entity.

Under such conditions, inspections by regulatory authorities are carried out only in accordance with the individual's complaint about a violation of his/her rights, legitimate interests, life or health, the environment or the security of the state.

This lack of legislation creates obstacles to parliamentary observance of human rights.

Developments relevant for the independent and effective fulfilment of the NHRIs' mandate

This year in Ukraine as well as all over the world, the COVID-19 virus became an invisible enemy for humans, the rate of its spread has grown to the scale of a pandemic. The Government of Ukraine has taken measures to counteract the spread of this disease. However, the temporarily occupied territories of Crimea and Donbas remain inaccessible due to COVID related restrictions, also for the purpose of oversight over the observance of fundamental rights and freedoms, which significantly increases the threat to life and health of citizens.

National quarantine caused citizens to face not only certain restrictions on their constitutional rights and freedoms, but also violations. In particular, issues related to the respect of social and economic rights, the right to appeal against authorities' measures and to receive information, judicial protection, the right to privacy, freedom of movement, and finally, the right to life, have all become more acute.

Human rights defenders and civil space

The Commissioner sent a reminder to the Cabinet of Ministers of Ukraine to ensure the implementation of its previous recommendation provided in the Commissioner's annual report on the state of observance and protection of human and civil rights and freedoms in 2019 (1), to amend Article 185 of the Code of Administrative Offenses in order to provide for the guarantees of peaceful assemblies by law-enforcement agencies.

References

- (1) https://ombudsman.gov.ua/files/2020/opendata/Zvit%202019%20English_22.06.20.pdf

Checks and balances

Inadequate data collection

The lack of consistent policies and practices to collect data and statistics hinders effective measures to assess and counter important human rights issues.

This is the case as regards preventing and combating domestic violence for which the availability of statistics is crucial. The Commissioner's monitoring activities revealed the imperfection of the relevant collection system. The Ministry of Social Policy, as a coordinator of cooperation at the national level, collects, analyses and disseminates information on violence in accordance with the law, develops proposals for improving the system of indicators, which are reflected in the forms of state statistical reporting on preventing and combating violence. In addition, the Decree of the President of Ukraine № 398/2020 of 21.09.2020 "On urgent measures to prevent and combat domestic violence, gender-based violence, protection of the rights of victims of such violence" provides for effective monitoring, data recording and control in the field of prevention and counteraction to domestic violence and gender-based violence. At the same time, the Ministry of Social Policy of Ukraine continues to collect statistics in accordance with the Law of Ukraine "On Prevention of Domestic Violence", which expired on January 7, 2018. However, the authority in charge of data on such crimes is the Ministry of Internal Affairs of Ukraine.

Execution of Constitutional Court's judgments

The problem of execution of decisions of the Constitutional Court of Ukraine is urgent due to the lack of a clear mechanism in the legislation for the execution of these decisions.

The processing of a large number of requests from the same requester by information source managers causes an excessive burden which can limit the rights of others to a timely and proper consideration of their requests. The Commissioner was informed of such cases by a number of letters from information source managers. In particular, it was established that the Office of the Prosecutor General received 4,500 requests in 2020, paralysing their work.

In a letter to the Commissioner, the Supreme Court stated that the provisions of Law № 2939 – VI are often not used for legitimate purposes, and the obtained information is used by interrogators to harm the authority of the judiciary power by disseminating information manipulatively, unilaterally, selectively or distortedly.

At the request of the Commissioner on February 1, 2021, the Constitutional Court of Ukraine started constitutional proceedings regarding certain provisions of Ukrainian laws concerning health care, provision of medical services, liquidation and reorganization of health care facilities during COVID-19 pandemic.

The Commissioner noted that the fight against the COVID-19 pandemic was a new challenge for the country, but most government agencies and services were not ready for this from an organizational, legal and psychological point of view. Certain legislative changes, including a medical reform launched in 2017 and reforms of decentralization and administrative-territorial organization, caused difficulties in responding to the crisis.

Access to information

As part of the parliamentary control over the observance of the right to information, the Commissioner's capacity to provide timely and complete information as requested by the citizens directly depends on the available human and technical resources of the information source manager.

According to the Law of Ukraine "On Access to Public Information", a request for information may be submitted without the direct purpose of using the information, and the possibility of duplicating requests for the same or related public information is not limited. In fact, the legal mechanism for obtaining information and sending a large number of requests can significantly paralyze the work of the information source manager, which is inconsistent with elements of the constitutional principle of the rule of law such as proportionality, reasonableness, fairness and prudence.

Therefore, in order to prevent abuse of the right to information by unscrupulous inquirers, it is necessary to establish in the Law of Ukraine "On Access to Public Information" mechanisms for responding to similar information requests from the same requestor.

It should be noted that in order to unify and improve the monitoring of constitutional rights to information and appeal, "Guidelines for monitoring visits and inspections of human and civil rights to information and treatment" (1) in the framework of the project "Human Rights for Ukraine" were developed by the Commissioner and published with the assistance of UNDP in Ukraine. The project is implemented by UNDP in Ukraine and funded by the Ministry of Foreign Affairs of Denmark for the period 2019-2023. The recommendations facilitate the work of the staff of the Secretariat of the Ukrainian Parliament Commissioner for Human Rights, regional coordinators of public relations of the Commissioner, human rights defenders and representatives of public organizations.

References

- (1) Guidelines for monitoring visits and inspections of human and civil rights to information and treatment: <https://www.ombudsman.gov.ua/ua/all-news/pr/dotrimannya-prav-lyudini-%D1%96-gromadyanina-na-%D1%96nformacz%D1%96yu-ta-zvernennya/>

Functioning of the justice system

The Commissioner sent recommendations to the Ministry of Justice to prompt measures to eliminate human rights violations and bring enforcement proceedings in line with the requirements of the Law of Ukraine "On Enforcement Proceedings". As a result, an official from the Prosecutor's office was prosecuted, and an investigation was launched in order to bring the legal framework to the requirements of the Constitution and laws of Ukraine.

The Law of Ukraine "On Amendments to Certain Legislative Acts of Ukraine Aimed at Providing Additional Social and Economic Guarantees in Connection with the spread of COVID-19" introduces restrictions on a person's direct participation in court proceedings. In April 2020, the Commissioner sent a letter to the State Judicial Administration of Ukraine (SJA) with recommendations on establishing systematic work of the courts of Ukraine to ensure video broadcast of court hearings and organization of videoconferences. The SJA took into account the recommendations of the Commissioner.

In 2020, due to bad functioning of the system and omission of certain officials, there were cases of failure to enter information in the unified register of pre-trial investigations (ERDR), and failures or unjustified refusals to provide extracts from the ERDR information about crimes or closure of criminal proceedings. According to the 140 appeals received by the Commissioner, the relevant acts of response were sent to the prosecutor's office. According to the results of consideration in 67 cases, information was entered into the ERDR.

On April 1, 2020, the Cabinet of Ministers of Ukraine adopted a decision (1) on the establishment of the Commission for the Implementation of Decisions of the European Court of Human Rights and approved its Regulations (CMU Resolution № 258), where the Commissioner is a member. On September 17, 2020, the first meeting was devoted to the implementation of the decisions of the European Court of Human Rights in the cases "Yuriy Mykolayovych Ivanov v. Ukraine" and "Burmych and Others v. Ukraine". According to the results of the meeting of the Cabinet of Ministers of Ukraine, the order of September 30,

2020 № 1218-r approved the National Strategy (2) for solving the problem of non-compliance with court decisions, the debtors of which are public authorities for the period up to 2022; an Action Plan for its implementation is being developed.

The Commissioner submitted proposals to the Ministry of Justice to the draft Action Plan for the implementation of this Strategy on the development of effective mechanisms for the implementation of court decisions. On December 8, 2020, the second meeting was held on the issue of torture, improper and degrading treatment of law enforcement officers and the lack of effective investigation of complaints of such treatment, which was stated in the decisions of the European Court of Human Rights "Kaverzin/Afanasyev/Belousov v. Ukraine". At the meeting, the members of the Commission were presented with the draft Concept of the state policy to combat torture in the criminal justice system.

References

- (1) <https://zakon.rada.gov.ua/laws/show/258-2020-%D0%BF#Text>
- (2) <https://zakon.rada.gov.ua/laws/show/1218-2020-%D1%80#Text>

Media pluralism and freedom of expression

Last year, the Commissioner carried out a comprehensive monitoring of the observance of the constitutional right to freedom of speech and opinion and guarantees of the lawful professional activity of journalists. Almost a third of the total number of violations of freedom of speech in Ukraine (27%) in 2020 was related to the quarantine restrictions imposed due to the COVID-19 pandemic. In particular, 62 cases concerned the exclusion of journalists from local government sessions, as well as attacks on journalists in public places and establishments during a quarantine inspection.

Numerous facts of violation of freedom of the press and other media, which play an important role in respecting the right to freedom of thought and other human rights and fundamental freedoms, are recorded in the updated UN General Assembly Resolution "Human Rights Sevastopol, Ukraine" (1), which was adopted on December 16, 2020.

Based on the results of the Commissioner's monitoring, the military command restricted the personnel in accessing social networks, Facebook and Instagram pages, which is a

violation of the right of servicemen to freely use and disseminate information (Article 34 of the Constitution of Ukraine).

As a result of the Commissioner's response, the relevant order of the Command of the Logistics Forces of the Armed Forces of Ukraine was revoked.

The following recommendations were sent by the Commissioner to:

The Verkhovna Rada of Ukraine: to speed up the adoption of the draft Law of Ukraine "On Amendments to the Criminal Code of Ukraine on Strengthening Liability for Committing Criminal Offenses against Journalists" (Reg. № 3633 of 11.06.2020).

The Committee of the Verkhovna Rada of Ukraine on Humanitarian and Information Policy: to speed up the submission to the Verkhovna Rada of Ukraine of the draft Law of Ukraine "On Media" (Reg. № 2693 of December 27, 2019).

The Cabinet of Ministers of Ukraine: to ensure the implementation of the Commissioner's recommendation (provided in the Commissioner's annual report (2) on the state of observance and protection of human and civil rights and freedoms in 2019) to amend Article 185 of the Code of Administrative Offenses in order to provide for the guarantees of peaceful assemblies by law-enforcement agencies.

The Ministry of Reintegration of the Temporarily Occupied Territories of Ukraine, the Ministry of Culture and Information Policy of Ukraine: to develop a joint action plan to increase the capacity of television and radio broadcasting in the temporarily occupied territories of Ukraine and ensure the activities of Ukrainian journalists.

References

- (1) <https://digitallibrary.un.org/record/3896447>
- (2) https://ombudsman.gov.ua/files/2020/opendata/Zvit%202019%20English_22.06.20.pdf

Impact of measures taken in response to COVID-19 on the national rule of law environment

Most significant impacts of measures taken in response to the COVID-19 outbreak on the rule of law and human rights protection

The Commissioner's monitoring revealed violations of the **right of children to quality education** during distance learning, due to the lack of practical experience in the administration of educational institutions, and the lack of technical means or access to them. In order to create safe learning conditions and provide children and employees with personal protective equipment, the Commissioner sent letters to the Prime Minister and the Ministry of Education and Science requesting funds from the stabilisation fund, which were allocated in October 2020. During October and November 2020, the Commissioner conducted monitoring of 30 educational institutions in 18 regions, and found lack of personal protective equipment and antiseptics, as well as violation of the mask regime. Based on these results, the Commissioner sent recommendations to the Ministry of Education and Science and the heads of regional state administrations.

According to the results of monitoring of regional and Kyiv city state administrations' activities, it was found that there were restrictions such as the abolition of lectures and training events, seminars and conferences. Cooperation has been established with institutions of higher education, in which information and educational centres on human rights have been established at the initiative of the Commissioner. Within the framework of cooperation with 8 institutions of higher education, online lectures, round tables, and scientific and practical conferences were held.

The main challenge in ensuring the **right to privacy** was to strike a balance between this right and the need to take measures to prevent COVID-19. Aware of the high level of threat to the right to privacy and in order to prevent its violation, the Commissioner conducted inspections of the state web portal "Diia", including mobile apps "Diia" and "Diia Home", and the functioning of video surveillance systems in public places. Violations in the field of personal data protection were revealed. In this regard, the Commissioner issued appropriate instructions to eliminate violations. In 2020, together with the Office of the Council of Europe in Ukraine, the Commissioner drafted a course in the field of personal data protection, which will be presented in April 2021.

The monitoring revealed that the most significant consequences of the measures imposed by the Government on the outbreak of the COVID-19 pandemic were the restrictions of **freedom of movement**. Local governments have unreasonably revoked the right of certain categories of citizens to free travel on public transport. The government has included 'viral respiratory infection COVID-19' in the official list of occupational diseases. Additional social insurance for medical workers with COVID-19 has been introduced. A special procedure for investigating the death of medical workers from an occupational disease at COVID-19 has been approved. The introduction by the Russian Federation of the **rule of one-time**

departure from the temporarily occupied territory of the Autonomous Republic of Crimea is regarded as a violation of Articles 13 and 26 of the Universal Declaration of Human Rights. As a result of this rule, some students were unable to start their studies because they had already taken the opportunity to leave the Crimea during the admission campaign.

The Commissioner's monitoring revealed that as of December 31, 2020, 46,762 employees of **health care facilities** became ill with COVID-19, of which 459 died. The investigation of COVID-19 in relation to 25,881 (55%) persons has not been completed. Procrastination in the investigation leads to a violation of the right of such patients to receive social benefits and payments.

The COVID-19 pandemic is also increasing the **vulnerability of citizens to trafficking and exploitation**.

The problem of the spread of **domestic violence** in the context of a pandemic has become more concerning. During self-isolation, women and girls are at greater risk of becoming victims of such violence. In order to provide an explanation of mechanisms for protection against domestic violence, the official website of the Commissioner contains contacts of institutions that provide assistance to victims (1).

Vulnerable groups, including members of the **Roma** minority, have particularly suffered from the global pandemic.

In cooperation with the CoE Office in Ukraine, the International Charitable Organization "Roma Women's Foundation "Chirikli" prepared a special report "The impact of the COVID-19 pandemic on the Roma community in Ukraine" (2), which contains an analysis of issues faced by Roma in the spread of COVID-19, and recommendations for the authorities.

The Secretariat of the Commissioner, in cooperation with the Danish Institute for Human Rights and the International Laboratory for Business and Human Rights of the Yaroslav the Wise National Law University, conducted a study entitled "**Business and Human Rights** in the Age of COVID-19". The risks of negative impact of business entities on human rights in a pandemic have been identified and recommendations have been made to prevent such threats. The results are posted on the official website of the Commissioner (3).

The Commissioner addressed the Prime Minister of Ukraine with a proposal for a simplified mechanism for crossing the checkpoint for children heading to the territory controlled by Ukraine to pass the exams during quarantine. Based on the results of consideration of the

Commissioner's recommendations, the Resolution of the Cabinet of Ministers of Ukraine of May 29, 2020 № 424 "On Amendments to the Resolution of the Cabinet of Ministers of Ukraine of May 20, 2020 № 392" was adopted, which regulates this issue. Such measures ensured the realization of the right to education for more than 2,000 children from the temporarily occupied territories.

References

- (1) <http://ombudsman.gov.ua/ua/all-news/pr/zapob%D1%96gannya-domashnomunasilstvo-v-umovax-karantinu-kudi-zvertatisya/>
- (2) https://ombudsman.gov.ua/files/2021/SPECIAL_REPORT_11.01.2021.pdf
- (3) https://ombudsman.gov.ua/files/2020/UN/BHR_covid19_ukr.pdf

Most important challenges due to COVID-19 for the NHRI's functioning

Taking into account the Recommendations of the UN Subcommittee on Torture under the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, provided on 20 March 2020 to State Parties and national preventive mechanisms to ensure that the necessary measures are taken to human rights in places of detention, the Commissioner decided to continue the implementation of the NPM in quarantine.

In order to assess the effectiveness of measures to prevent the spread of COVID-19 in detention facilities, the Secretariat of the Commissioner has developed recommendations for the planning and conduct of targeted monitoring visits to various types of detention facilities. Online training on their use for Secretariat staff and public monitors was conducted. Since April 2020, the Secretariat of the Commissioner together with members of the public has conducted 677 monitoring visits to places of detention, of which 270 were targeted visits, during which the issue of combating the spread of coronavirus was investigated.

Monitoring visits revealed violations of human rights in a pandemic, namely violations of legislation:

for health care and medical support: there is no control over the respect of quarantine measures, in particular with regard to the use of personal protective equipment by detainees and employees of institutions;

for safe accommodation and social distancing: due to the overcrowding of pre-trial detention facilities, there are no facilities for isolating people suspected of having a COVID-19 infection;

for contacts with the outside world: in most social care institutions, patients are not provided with the opportunity to use means of communication to communicate with relatives and friends;

for the receipt of food and other devices from relatives in compliance with the necessary protective equipment: in some geriatric boarding houses, guardhouses it is generally forbidden to accept parcels and transfers for detainees.

In 2021, the Commissioner will continue to carry out monitoring visits to study the state of compliance with anti-epidemic measures in places of detention during a pandemic. In the context of restrictive measures due to the spread of COVID-19 in 2020, the Secretariat of the Commissioner also conducted on-site monitoring. Despite the fact that this form of work is new, the monitoring of human rights to a safe environment for life and health shows that violations of environmental human rights are currently systemic due to ineffective state control over compliance with environmental legislation. and sanitary legislation.

The quarantine restrictions in 2020 had a negative impact on the observance of human rights, given that under such conditions, the planned measures by the regulatory authorities in relation to economic entities - polluters were not carried out.

Annex I – Reporting questionnaire/grid

Topic	Questions
<p>Impact of 2020 ENNHRI rule of law report</p>	<p>1. To your knowledge, has there been any follow-up action or initiative on the part of state authorities to address any of the issues reported on in the 2020 ENNHRI rule of law report as regards your country and/or, more generally, to foster a rule of law culture at national level (e.g., debates in national parliaments on the rule of law, awareness raising/public information campaigns on rule of law issues, etc.)?</p> <p>2. How has the 2020 ENNHRI rule of law report impacted on your institution’s work (for example, with regard to the institution’s priorities/strategic planning, the institution’s engagement with state authorities, with civil society organisations and/or with regional actors, or the impact on dissemination/awareness of your institution and its work)?</p> <p>If you have taken any specific follow-up initiatives based on the 2020 report (such as dedicated meetings with or briefings to state authorities and/or regional actors, public events, hearings, petitions, follow-up research/reports, cooperation with civil society, awareness raising/dissemination actions, public education/information initiatives), please briefly describe them. If not, please briefly explain why (for example, mandate limitations, lack of capacity/resources, practical hurdles, lack of access to/cooperation with state authorities and/or regional actors).</p> <p>3. Would you have any recommendations to ENNHRI or to regional actors on how to further facilitate impacts on the ground of NHRIs’ annual rule of law reporting and/or that could more generally support your institution’s work to promote and protect the rule of law in your country?</p>

<p>Independence and effectiveness of the NHRI</p>	<p>4. Has the national regulatory framework applicable to your institution changed since the 2020 report?</p> <p>5. Do you consider that state authorities sufficiently ensure enabling space for your institution to independently and effectively carry out its work (for example, as regards access to the legislative and policy process, or timely response and adequate follow-up to your institution’s recommendations, level of cooperation between different human rights actors/bodies)?</p> <p>6. Have significant changes taken place in the environment in which your institution operates that are relevant for the independent and effective fulfilment of your mandate (including, for example, challenges due to COVID-19), and/or are there any other challenges related to the rule of law environment in your country that impact on your institution’s functioning?</p> <p>Has your institution taken any action to address the problematic issues raised and/or to more generally increase your institution’s ability to fulfil its mandate in compliance with the Paris Principles and/or the impact of your institution’s work?</p>
<p>Human rights defenders and civil society space</p>	<p>7. Has your institution’s human rights monitoring and reporting found any evidence of laws, measures or practices that could negatively impact on civic space and/or reduce human rights defenders’ activities (for example, limitations on freedom of association, freedom of assembly, freedom of expression or access to information; evidence of attacks on human rights defenders, their work and environment; negative attitudes towards/perceptions of civil society and human rights defenders by public authorities and the general public)?</p> <p>8. Can you briefly describe the initiatives taken by your institution to promote and protect civic space and human rights defenders, including through institutional mechanisms (such as the human rights defender focal points) and/or provide examples of your engagement in this area, including with</p>

	<p>international and regional mechanism in support of human rights defenders and civil society?</p>
<p>Checks and balances</p>	<p>9. Has your human rights monitoring and reporting found any evidence of laws, processes and practices that:</p> <ul style="list-style-type: none"> - erode the separation of powers (including, for example, increased executive powers or insufficient parliamentary oversight); - limit the participation of rightsholders, including vulnerable groups, and of stakeholders representing them, to legislative and policy processes (including, for example, by the use of expedited legislative processes, lack of scrutiny or consultation, non-publication of regulations); - limit access to information from state authorities and to public documents; - reduce the accountability of state authorities (including, for example, the lack of effective judicial or constitutional review on state laws, measures or practices); - hinder the implementation of judgments of national or supranational courts (including the Court of Justice of the EU and the European Court of Human Rights); - impair the independence and effectiveness of independent institutions (other than NHRIs); - impact on the fairness of the electoral process. <p>10. Do you consider that state authorities sufficiently foster a high level of trust amongst citizens and between citizens and the public administration? If so, how?</p> <p>11. NHRIs are recognised as an important component of the system of checks and balances in a healthy rule of law environment, including by regional actors. Can you provide examples of your engagement as part of the system of checks and balances and/or briefly describe the initiatives taken by your institution to address the problematic issues raised in that respect (including, for example, through participation in</p>

	<p>legislative and policy processes, litigation and/or interventions before courts, cooperation with regional actors)?</p> <p>Have you encountered any particular obstacles in that respect (including, for example, mandate limitations, lack of capacity/resources, practical hurdles, lack of access to/cooperation with state authorities and/or with regional actors, insufficient data/inadequacy of data collection system)?</p>
<p>Functioning of justice systems</p>	<p>12. Has your human rights monitoring and reporting found evidence of any laws, measures or practices that restrict access to justice and/or effective judicial protection (including, for example, as regards the independence and impartiality of the courts, the quality and efficiency of the justice system, the professionalism, specialisation and training of judges, the geographical accessibility of courts, access to legal aid, respect for fair trial standards, execution of judgments)?</p> <p>Has your institution taken any action to address the problematic issues raised and/or more generally promote access to justice and/or effective judicial protection in line with your institution’s mandate (including, for example, through legal advice, litigation and/or interventions before courts, through handling complaints concerning the courts and their functioning)? If not, please briefly explain why (for example, mandate limitations, lack of capacity/resources, practical hurdles, lack of access to/cooperation with state authorities and/or with regional actors, insufficient data/inadequacy of data collection system).</p>
<p>Media pluralism</p>	<p>13. Has your human rights monitoring and reporting found any evidence of laws, measures or practices that could restrict a free and pluralist media environment? (including, for example, as regards insufficient protection of journalists’ and media independence, adequacy of resources, evidence of attacks on journalists, their work and environment (including legal harassment), negative attitudes towards/perceptions of journalists and media by public authorities and the general</p>

	<p>public, protection of journalist sources, independence and effectiveness of media regulatory bodies, transparency of media ownership, disinformation).</p> <p>Has your institution taken any action to address the problematic issues raised and/or more generally promote a free and pluralist media environment in line with your institution’s mandate? If not, please briefly explain why (for example, mandate limitations, lack of capacity/resources, practical hurdles, lack of access to/cooperation with state authorities and/or with regional actors, insufficient data/inadequacy of data collection system).</p>
<p>Corruption</p>	<p>14. Has your human rights monitoring and reporting found any evidence of laws, measures or practices relating to corruption, or significant inaction in response to alleged corruption, and which could have an impact on human rights (including, for example, as regards the protection of whistleblowers, conflicts of interest, procurement rules and their implementation, respect for the principles of good administration)?</p> <p>Has your institution taken any action to address the problematic issues raised and/or more generally promote a strong framework for combating corruption in line with your institution’s mandate? If not, please briefly explain why (for example, mandate limitations, lack of capacity/resources, practical hurdles, lack of access to/cooperation with state authorities, lack of access to/cooperation with regional actors, insufficient data/inadequacy of data collection system).</p>
<p>COVID 19 measures</p>	<p>15. What are the most significant impacts of the COVID-19 outbreak and the measures taken to address it for rule of law and human rights protection in your country (e.g., emergency measures not time-limited, lack of access to the courts, limited judicial review (including constitutional review), limited oversight by parliament of emergency regimes and measures taken, disruptions in the activities of the parliaments, measures affecting human rights that are not legitimate or proportionate</p>

	<p>to the threats posed)? Are you aware of any good practices set in place by state authorities aimed at mitigating these challenges?</p> <p>16. More generally, which long term implications do you see arising from the COVID-19 outbreak and the measures taken to address it for rule of law and human rights protection in your country?</p> <p>Has your institution taken any action to address the problematic issues raised and/or more generally promote and protect rule of law and human rights in the crisis context, in line with your institution’s mandate (such as, for example, dedicated meetings with or briefings to state authorities and/or regional actors, public events, hearings, petitions, follow-up research/reports, cooperation with civil society, awareness raising/dissemination actions, public education/information initiatives)? If not, please briefly explain why (for example, mandate limitations, lack of capacity/resources, practical hurdles, lack of access to/cooperation with state authorities and/or with regional actors, insufficient data/inadequacy of data collection system).</p> <p>17. What have been the most important challenges for your NHRI’s functioning due to COVID-19? More specifically, were you able to carry out/resume visits and inspections to different institutions, including as National Preventive Mechanism?</p>
<p>Other relevant areas</p>	<p>18. Are there any pressing challenges in the field of human rights that you came across in your work, or any other relevant developments or issues, that you would like to report on in the light of their impact on the national rule of law environment (including, for example, systemic human rights violations, or systemic gaps in state accountability for unlawful laws, measures or practices)?</p>

Annex II – List and contacts of contributing NHRIs

Country	Institution	Website	Contact
Albania	People's Advocate of Albania	www.avokatipopullit.gov.al	ap@avokatipopullit.gov.al
Armenia	Human Rights Defender of the Republic of Armenia	www.ombuds.am	ombuds@ombuds.am
Austria	Austrian Ombudsman Board	https://volksanwaltschaft.gv.at/	post@volksanwaltschaft.gv.at
Azerbaijan	Azerbaijan Ombudsman Institute	www.ombudsman.gov.az	ombudsman@ombudsman.gov.az
Belgium	Unia Combat Poverty, Insecurity and Social Exclusion Service	www.unia.be www.luttepauvrete.be	info@unia.be luttepauvrete@cntr.be
Bosnia and Herzegovina	Human Rights Ombudsman of Bosnia and Herzegovina	www.ombudsmen.gov.ba	bl.ombudsmen@ombudsmen.gov.ba
Bulgaria	Ombudsman of the Republic of Bulgaria	www.ombudsman.bg	priemna@ombudsman.bg
Croatia	Ombudswoman of the Republic of Croatia	www.ombudsman.hr	info@ombudsman.hr
Cyprus	Office of the Commissioner for Administration and the Protection of Human Rights (Ombudsman)	www.ombudsman.gov.cy	commissioner@dataprotection.gov.cy
Czech Republic	Public Defender of Rights	www.ochrance.cz	www.ochrance.cz/kontakty
Denmark	Danish Institute for Human Rights	www.humanrights.dk	info@humanrights.dk
Estonia	Office of the Chancellor for Justice	www.oiguskantsler.ee	info@oiguskantsler.ee
Finland	Finnish Human Rights Centre Parliamentary Ombudsman	www.ihmisoikeuskeskus.fi www.oikeusasiamies.fi	info@humanrightscentre.fi ombudsman@parliament.fi
France	French National Consultative Commission on Human Rights	www.cncdh.fr	www.cncdh.fr/fr/contact
Georgia	Public Defender (Ombudsman) of Georgia	www.ombudsman.ge	info@ombudsman.ge
Germany	German Institute for Human Rights	www.institut-fuer-menschenrechte.de	info@institut-fuer-menschenrechte.de
Great Britain	Equality and Human Rights Commission	www.equalityhumanrights.com	international@equalityhumanrights.com
Greece	Greek National Commission for Human Rights	www.nchr.gr	info@nchr.gr
Hungary	Office of the Commissioner for Fundamental Rights	www.ajbh.hu	hungarian.ombudsman@ajbh.hu
Ireland	Irish Human Rights and Equality Commission	www.ihrec.ie	info@ihrec.ie
Italy	No NHRI		
Kosovo*	Ombudsperson Institution of Kosovo	www.oik-rks.org	info.oik@oik-rks.org

Latvia	Ombudsman's Office of the Republic of Latvia	www.tiesibsargs.lv	tiesibsargs@tiesibsargs.lv
Liechtenstein	Liechtenstein Human Rights Association	www.menschenrechte.li	info@vmr.li
Lithuania	The Seimas Ombudsmen's Office of the Republic of Lithuania	www.lrski.lt	ombuds@lrski.lt
Luxembourg	National Human Rights Commission of Luxembourg	www.ccdh.lu	info@ccdh.public.lu
Malta	No NHRI		
Moldova	People's Advocate Office	www.ombudsman.md	ombudsman@ombudsman.md
Montenegro	Protector of Human Rights and Freedoms of Montenegro	www.ombudsman.co.me	ombudsman@t-com.me
Netherlands	The Netherlands Institute for Human Rights	www.mensenrechten.nl	info@mensenrechten.nl
North Macedonia	Ombudsman	ombudsman.mk	contact@ombudsman.mk
Northern Ireland	Northern Ireland Human Rights Commission	www.nihrc.org	info@nihrc.org
Norway	Norwegian National Human Rights Institution	www.nhri.no	info@nhri.no
Poland	Office of the Commissioner for Human Rights	www.rpo.gov.pl	biurorzecznika@brpo.gov.pl
Portugal	Portuguese Ombudsman	www.provedor-jus.pt	provedor@provedor-jus.pt
Romania	Romanian Institute for Human Rights	www.irdo.ro	office@irdo.ro
Russian Federation	Commissioner for Human Rights of the Russian Federation	eng.ombudsmanrf.org	doc@rightsrf.ru
Scotland	Scottish Human Rights Commission	www.scottishhumanrights.com	hello@scottishhumanrights.com
Serbia	Protector of Citizens of the Republic of Serbia	www.ombudsman.rs	zastitnik@zastitnik.rs
Slovakia	Slovak National Centre for Human Rights	www.snslp.sk	info@snslp.sk
Slovenia	Human Rights Ombudsman of the Republic of Slovenia	www.varuh-rs.si	info@varuh-rs.si
Spain	Ombudsman of Spain	www.defensordelpueblo.es	registro@defensordelpueblo.es
Sweden	The Swedish Equality Ombudsman	www.do.se	do@do.se
Turkey	Human Rights and Equality Institution of Turkey	www.tihek.gov.tr	tihek@tihek.gov.tr
Ukraine	Ukrainian Parliament Commissioner for Human Rights	www.ombudsman.gov.ua	international@ombudsman.gov.ua

* This designation is without prejudice to positions on status, and is in line with UNSC 1244 and the ICJ Opinion on the Kosovo Declaration of Independence.

