

State of the rule of law in the European Union

Reports from National Human Rights Institutions

2022



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Executive Summary

National human rights institutions (NHRIs), as independent, state-mandated bodies with a broad human rights mandate, play a key role as pillars for the respect of human rights, democracy and rule of law. NHRIs have been the object of an increasing recognition by international and regional actors, such as the European Union, the Council of Europe and the United Nations.

The extent to which a state has in place an NHRI able to independently and effectively carry out its mandate in line with the Paris Principles is regarded by international and regional monitoring bodies as indicative of the state's respect for rule of law and checks and balances more broadly. This understanding is acknowledged, among others, in the European Commission's initiatives to protect and promote the rule of law across the EU, and related assessments are embedded in the Commission's annual rule of law reports.

Within the European Network of National Human Rights Institutions (ENNHRI) – a network connecting all NHRIs across the EU and the Council of Europe region – European NHRIs have built on their increased recognition to further deepen in recent years their strategic engagement in regional rule of law mechanisms through joint rule of law reporting, with a view to feeding international and regional policy processes aimed at monitoring, promoting and protecting the rule of law, human rights and democracy across Europe.

European NHRIs' joint reporting provides information on the extent to which NHRIs are able to independently and effectively fulfil their mandate and thus contribute to checks and balances. Moreover, the information and analysis shared by NHRIs based on the human rights situation on the ground – one of the core elements of NHRIs' legal mandate – contributes to reflect a more accurate picture of the rule of law environment in each state. As such, NHRIs' joint reporting helps to make a comprehensive assessment of the level of respect for the rule of law at national level and contribute to efforts by regional actors to address rule of law challenges in the region.

Challenges to the Rule of Law across the EU in 2021: NHRIs' perspectives

As part of the third joint rule of law reporting cycle conducted by European NHRIs through ENNHRI, this report brings together the country rule of law reports developed by ENNHRI members from EU Member States and offers an overview of trends, challenges, and recommendations, developed by ENNHRI on the basis of the country reports received. This EU report, which will be followed by the publication of a broader, regional report covering the whole ENNHRI membership, is meant to feed preparations of the European Commission's 2022 report on the rule of law in the EU.

Key findings

The trends which emerge from ENNHRI members' reporting as regards developments in 2021 reveal that not much progress was made to address problematic issues affecting national rule of law environments across the EU, as reported by NHRIs in previous years. Persisting challenges include:

- **Numerous issues negatively impact on the independence and effectiveness of NHRIs in a number of EU Member States**, such as: general difficulties in cooperation with national authorities in legislative and policy-making processes; failure to liaise effectively or in a timely manner with NHRIs on legislative proposals, reports and requests; as well as an unsatisfactory level of implementation of NHRIs' recommendations. While some NHRIs were given new competences, the expanded mandates were sometimes not accompanied by (efforts to provide) sufficient financial resources to perform them. Some ENNHRI members also warned about changes in their regulatory framework that may negatively influence their work and operations, while no substantial developments were recorded in EU countries without an accredited NHRI. In certain countries, ENNHRI members also reported experiencing pressure, smears and actions by authorities threatening the continuity of heads of institutions' service, while others regret the lack of adequate measures and rules on immunity to ensure institutions' independence and protection against attacks and intimidation. In this context, the newly adopted [Council of Europe Committee of Ministers Recommendation 2021\(1\) on "the development and strengthening of effective, pluralist and independent NHRIs"](#) provides an important impetus to further ensure the establishment and enabling environment for strong and independent NHRIs in each European country.
- **Worsening conditions in which human rights defenders (HRDs) and civil society organisations (CSOs) act**. This year's report reveals a deterioration of the enabling environment for HRDs and CSOs in several EU countries. CSOs and HRDs continue to

be in a number of Member States the object of attacks and harassment, including legal harassment and Strategic Lawsuits Against Public Participation (SLAPPs), with those working on sexual and reproductive rights, LGBTI+ rights, rights of migrants and asylum seekers and environmental protection being particularly targeted. ENNHRI members in a number of EU countries raise particular concerns about laws restricting civic space and CSOs' activities as well as laws criminalising HRDs' activities, in particular in the area of migration. Furthermore, some ENNHRI members regret the limited efforts by state authorities in ensuring CSOs' access to and involvement in law and policy making. Against this background, NHRIs across the EU continue to actively engage in providing support of and engaging in cooperation with HRDs and CSOs to address human rights challenges.

- **Severe challenges affect the national systems of checks and balances in a number of EU countries.** These often relate to the way governments have been handling the crisis situation triggered by the COVID-19 pandemic outbreak, and include the persisting use of emergency legislation, concerns over the legality of the use of emergency powers and the necessity and proportionality of restrictions to fundamental rights and freedoms, as well as low quality of law and policy-making, including in terms of impact assessments. A number of ENNHRI members also warn about gaps in accountability of public authorities and challenges affecting the judicial and constitutional review of laws, while many deplore the negative impact of reported challenges on the level of public trust in authorities. In this context, ENNHRI members are mobilising to advise and advocate for better adherence to democratic and human rights standards, more transparent and inclusive law-making and improved access to public interest information.
- **Obstacles to the effective functioning of justice systems exist in many EU Member States,** with several ENNHRI members sharing concerns over laws and practices limiting the independence of courts and judges, such as gaps in the procedure for applying and filling judicial posts and threats to the independence of national councils of the judiciary. ENNHRI members across the EU also deplore the impact of the excessive length of proceedings and the lack of adequate resources on the efficiency of the justice system, with efforts to improve the situation recorded only in a small number of Member States. Reports by ENNHRI members also expose issues affecting access to justice and fairness of proceedings, including persisting gaps in legal aid frameworks in many Member States and the lack of adequate efforts, with limited exceptions, to improve the way justice is delivered in areas such as antidiscrimination, asylum and migration and criminal justice, and to accommodate the needs of children, persons with disabilities, racialised groups and victims of crime

in the judicial process. Moreover, some NHRIs regret the failure to timely and effectively implement judgments, including of regional courts such as the European Court of Human Rights. Numerous examples are provided of NHRIs' contribution to the effective functioning of justice system, including through strategic litigation, advice on reforms and initiatives to promote access to justice by vulnerable groups.

- **A decline in media freedom and pluralism across the EU**, which ENNHRI members associate with the increasing political pressure on media, high risks of concentration, a lack of transparency of media financing and ownership and a worrying increase in episodes of harassment, threats and attacks against journalists and media outlets, including by public authorities. These include violent physical attacks, including police violence, verbal attacks, smear campaigns, as well as legal harassment including SLAPPs. ENNHRI members in a number of EU countries further alerted about laws disregarding the balance to be struck between the protection of freedom of expression and information and competing rights and interests, as well as few efforts to ensure a balanced democratic debate free from hate speech and racialized narratives.
- **Concerning corruption levels in some EU countries and persisting gaps affect whistle-blowers protection across the EU**, met with an increasing mobilisation of NHRIs in advocating for stronger anti-corruption frameworks and for the effective implementation of EU rules on whistle-blowers protection.
- **Serious challenges to rule of law and human rights protection arise from the COVID-19 outbreak and the measures taken to address it.** This not only includes the persisting impact on the checks and balances systems, as recalled above, but also concerns over the medium and long-term impact of the crisis on the enjoyment of fundamental rights and freedoms, with the right to health, other socio-economic rights and the right to equality and non-discrimination as the most affected. Challenges which NHRIs have been helping to monitor and address, prompting action by state authorities and engaging in awareness raising towards rights holders on the pandemic, the measures taken to address it, as well as available remedies and support schemes.
- **The national rule of law environment in a number of EU countries continue to be affected by systemic human rights violations**, in particular as regards the right to equality and non-discrimination, the right to liberty and social rights, as also reflected in the failure to timely and adequately implement the judgments of the European Court of Human Rights.

Recommendations to EU and national policy makers

With a view to supporting progress in addressing the most pressing challenges affecting the national and European rule of law and human rights environment, the report contains a number key recommendations addressed to national and EU policy makers, including:

1. **Ensure independent and effective NHRIs in each country**, by:

- working towards implementation of the standards and recommendations of international bodies on NHRIs, including accreditation reports of the GANHRI Sub-Committee on Accreditation and [Council of Europe Committee of Ministers' Recommendation 2021\(1\)](#);
- securing the establishment of NHRIs in compliance with the Paris Principles in those last EU Member States where an NHRI does not yet exist;
- ensuring an adequate budget, including an adequate increase in budget when NHRIs' mandates are expanded;
- engaging in cooperation with NHRIs, fostering awareness about NHRIs' role and functions and ensuring an effective consideration and implementation of NHRIs' recommendations;
- take all measures necessary to protect and support NHRIs against threats and harassment and any other forms of intimidations, including provisions on functional immunity for heads of institutions and staff.

2. **Respect and protect civic space and human rights defenders**, by:

- ensuring a framework for the protection of HRDs and taking steps to protect civil society organisations and HRDs from the abuse of laws and legal harassment, such as SLAPPs;
- evaluating existing laws and practices affecting civic freedoms, civil society organisations and HRDs and revising rules resulting in undue restrictions;
- securing a conducive legal and policy framework to enable civil society organizations and HRDs to carry out monitoring activities, humanitarian and advocacy work as well as securing an enabling financing framework;
- ensuring better involvement of civil society and HRDs in law and policy making;
- fostering awareness about the relevance to rule of law and human rights protection of the work of civil society organisations and HRDs among public authorities, stakeholders and the general public.

3. Safeguard media freedom and pluralism and freedom of expression and information, by:

- ensuring that threats and attacks against journalists by private or public actors are regularly monitored and recorded and promptly investigated and prosecuted;
- protecting journalists and media outlets from the abuse of laws or legal harassment, such as SLAPPs;
- evaluating existing laws and practices affecting the exercise of freedom of expression and information and revising rules resulting in undue restrictions, in particular as regards defamation laws, other forms of criminalization of speech, data protection, rules of secrecy, rules on disinformation and illegal content;
- ensuring free access to public interest data and information, the protection of journalistic sources and the protection of whistle blowers;
- strengthening independent media authorities, ensuring access to public service media content without discrimination and preventing and addressing political and economic pressure on media;
- fostering a free and balanced public debate, by countering disinformation, hate speech and illegal content

4. Address and mitigate the impact of COVID-19 and response measures on rule of law and human rights protection, by:

- ensuring legality, a democratic oversight and a strong legal basis for the adoption of restrictive measures in situations of public health emergency;
- securing thorough human rights impact assessments and a regular evaluation of restrictive measures in force;
- when planning, designing and implementing responses and mitigating measures, pay increased attention to challenges faced by vulnerable and marginalised groups;
- integrating in recovery and resilience plans specific actions to address the impact of the pandemic on socio-economic rights;
- supporting the efforts of and cooperating with independent monitoring bodies including NHRIs and of civil society organisations and HRDs.

5. Address structural human rights issues affecting the rule of law environment, by:

- ensuring compliance of laws and practices with international and regional human rights standards, including the Charter of Fundamental Rights of the EU and relevant provisions of EU law;

- ensuring timely and effective implementation of recommendations by international and regional monitoring bodies, as well as independent authorities including NHRIs;
- ensuring timely and effective implementation of judgments by regional courts, namely the European Court of Human Rights and the Court of Justice of the EU;
- ensuring meaningful consultation of NHRIs and civil society organisations when drafting or revising relevant laws and policies.

Supporting NHRIs' efforts to monitor, protect and promote the Rule of Law

The sustained consideration of NHRIs' and of their submissions within international and regional monitoring processes, including the European Commission's annual reports on the rule of law in the EU, confirm the relevance of NHRIs' role in the rule of law architecture and the importance of strengthened cooperation among and with NHRIs to achieve positive change for rule of law, human rights and democracy across the region.

International and regional actors are in a key position to facilitate and support NHRIs' engagement and efforts, and therefore strengthen impacts on the ground of NHRIs' rule of law monitoring and reporting. As already stressed by ENNHRI in previous reports, this requires prioritising the strengthening of fully independent and effective NHRIs in each EU Member State; supporting NHRIs' work in their countries, to make sure state authorities constructively engage with them and take action to implement their recommendations; and investing to enable NHRIs to contribute effectively to efforts by EU and other regional bodies to advance human rights, rule of law and democracy in Europe. The impact assessment conducted by NHRIs as part of this year's reporting cycle allowed to formulate a number of additional key recommendations, calling on:

The European Commission to:

- anchor its monitoring and reporting on a broad concept of the rule of law reflecting interlinkages with human rights, access to justice as well as democracy more generally;
- strengthen the preventative function of the exercise, while acting firmly on already identified violations and threats, including through enforcement action;
- organise yearly an EU high-level dialogue on the rule of law reports, involving ENNHRI and NHRIs.

National authorities to:

- recognise the strong connection between rule of law and human rights protection;

- increase transparency and participatory nature of follow-up action, including enhanced engagement with key stakeholders such as NHRIs and civil society (for example through dedicated working groups and regular dialogue);
- support the effective and wide dissemination of rule of law reports by the European Commission as well as by NHRIs and ENNHRI.

On their side, European NHRIs remain committed to continue and deepen – both individually, and collectively through ENNHRI – their strategic engagement within international and regional rule of law mechanisms, and to continue using their promotion and protection roles to engage with national actors to prompt progress in addressing the challenges identified. In this context, besides carrying on its work to support the establishment, strengthening and protection of NHRIs across the region, ENNHRI will seek to continue coordinating the regular joint rule of law reporting exercise by its members, further promote safe and sustainable NHRIs' involvement in EU and other regional policy processes, and create opportunities for mutual learning, enhanced solidarity and cooperation among NHRIs.

About ENNHRI and NHRIs

The [European Network of National Human Rights Institutions \(ENNHRI\)](#) brings together over 40 National Human Rights Institutions (NHRIs) across wider 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 fundamental 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](#).

An increasing role of NHRIs in monitoring, protecting and promoting the Rule of Law

NHRIs as indispensable part of checks and balances in each state

NHRIs are a key component of the institutional architecture that serves to realise the rule of law, human rights and democracy in each state.

NHRIs' role as pillars for the respect of human rights, democracy and rule of law has been the object of an increasing [recognition](#) by international and regional actors. Such recognition 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' [Decision on Securing the long-term effectiveness of the system of the European Convention on Human Rights](#) and the recently adopted [Recommendation on the development and strengthening of effective, pluralist and independent national human rights institutions](#) (hereinafter, the '2021 Council of Europe Committee of Ministers Recommendation on NHRIs'). At EU level, a similar recognition is clearly expressed in the European Commission's [annual rule of law reports](#) and the [revised Strategy for the effective implementation of the Charter of Fundamental Rights](#), as well as, in the field of external relations, the [new EU Action Plan on Human Rights and Democracy](#), the latest [EU enlargement package](#) and the revised [Eastern Partnership framework](#).

This has translated in an increased consideration of NHRIs as a rule of law indicator. When an independent and effective NHRI is in place in a state, international and regional 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.

This understanding is visible in particular in the context of the European Commission's initiatives to protect and promote the rule of law in the EU. The role of NHRIs as part of the institutional checks and balances to ensure a functioning democracy based on the rule of law had already been clearly affirmed in the Commission's [first annual report on the rule of law in the EU](#). Building on such recognition, in its [second annual report](#), the European Commission further emphasised, including by means of good practice examples, the key role of ombudspersons and NHRIs in defending the right to good administration and fair

treatment, in pointing to human rights violations and in ensuring an independent assessment of the impact on the realisation and protection of human rights and rule of law of the measures introduced by the Member States in response to the pandemic emergency. Accordingly, the report devoted particular attention to alert about problematic issues concerning the appointment and dismissal of ombudspersons and NHRIs, threatening NHRIs' independence and effectiveness in some Member States. In the same vein, the Commission had already [pointed](#) to the threats facing the Polish NHRI as an integral part of its dialogue with Poland on the respect for the rule of law.

The recognition of NHRIs as indispensable parts of the checks and balances in each State has driven a broad international support for the development, strengthening, protection and recognition of and co-operation with NHRIs, seen as a means to enhance promotion and protection of human rights, the rule of law and democracy. At regional level, a strong push for the establishment and strengthening of independent and effective NHRIs across the region has come from the 2021 Council of Europe Committee of Ministers Recommendation on NHRIs and from the European Commission's revised Strategy for the effective implementation of the Charter of Fundamental Rights, recalled above. Both policy documents call on Member States to take all necessary measures to [establish](#) and, when established, maintain and strengthen independent NHRIs in accordance with the Paris Principles, ensuring their operations in an environment which is conducive to them carrying out their mandate in an effective manner and in a climate of impartiality, integrity, transparency and fairness.

As also underlined by the EU Agency for Fundamental Rights (FRA) in its [recent report on NHRIs](#), the establishment and strengthening of effective NHRIs in compliance with the UN Paris Principles in all EU countries is, in turn, key to enable EU 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.

ENNHRI's first core objective is to support European NHRI establishment and compliance with the Paris Principles, including before, during and after the accreditation process. The number of NHRIs accredited by reference to the UN Paris Principles has risen significantly in the EU since the establishment of the ENNHRI Secretariat - this number has increased a 76%, from 13 to 23 countries in the EU with an accredited NHRI. Among these, the number of EU MS with an "A-status" NHRI (fully compliant with the Paris Principles) doubled, from 9 to 18 EU member states. As part of its efforts to support independent and effective NHRIs across the region, ENNHRI also provides support to NHRIs under threat and has progressively strengthened its monitoring of NHRIs' regulatory framework and enabling environment within its rule of law reporting exercise, in order to raise awareness about

existing challenges and opportunities and further greater support from regional actors to NHRIs across Europe. The special focus on NHRIs independence and effectiveness within the rule of law reporting cycle is particularly visible in this year's report, which for the first time includes an updated overview of most recent SCA recommendations for each country and even more detailed information on NHRIs' regulatory framework and enabling environment. This strengthened monitoring and reporting responds to the European Parliament's [call](#) to ensure that the next EU Rule of Law reports look in greater depth at how NHRIs function, their degree of independence and their contribution in the system of national checks and balances. It is also integral part of ENNHRI [Action Plan on the implementation of the 2021 Council of Europe Committee of Ministers Recommendation on NHRIs](#).

NHRIs engagement in rule of law monitoring mechanisms as means to promote a national and regional rule of law culture

Besides being themselves an indicator of the state of rule of law, independent and effective NHRIs are reliable sources of information on the rule of law situation at the national level. 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 rule of law monitoring initiatives as an integral part of their [mandate](#) to promote and protect human rights. Monitoring and reporting on the situation of human rights in their country is in fact 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.

International and regional actors [agree](#) that NHRIs, based on their broad human rights mandate and taking into account their accreditation status, have a key role to play in feeding into their assessment of the situation of human rights, democracy and rule of law in the countries across the region in a consistent and timely manner and 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.

Indeed, 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, NHRIs' engagement in rule of law monitoring mechanisms is seen by NHRIs themselves as an opportunity to further promote and enhance the impact of their work and

recommendations, by contributing to a more comprehensive and informed assessment of existing challenges at national and regional level and helping policy makers, at both national, regional and international level, identify the most appropriate responses and interventions.

Based on this understanding, ENNHRI has supported and advanced European NHRIs' engagement in EU and regional rule of law mechanisms, based on a common and coordinated approach. Such engagement led to the publication since 2020 of annual regional ENNHRI Reports on the State of the Rule of Law in Europe, compiling European NHRIs' country submissions and an overview of trends reflecting NHRIs' perspectives on the state of the rule of law across the region. These reports were 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.

The two annual Rule of Law Reports published by ENNHRI to date ([ENNHRI 2020 Rule of Law Report](#) and [ENNHRI 2021 Rule of Law Report](#)), and the follow-up engagement of ENNHRI and NHRIs, was greatly welcomed by EU and regional policy makers and successfully fed into key policy processes, in particular at the EU level. This is also reflected in the sustained consideration of NHRIs' submissions for the purpose of the European Commission's annual reports on the rule of law in the EU, which translated, especially in the 2021 monitoring cycle, into substantial references to NHRIs' work in the Commission's country reports and a significant involvement of NHRIs in the reports' preparations, including the country visits. NHRIs themselves expressed appreciation of the impact of the joint monitoring exercise on their work, both in terms of maximising impacts of their efforts at national and regional level and as an opportunity for mutual learning, enhanced solidarity and cooperation among NHRIs.

Taking stock: impact of and follow up to rule of law reporting in 2021

As part of the 2022 reporting exercise, ENNHRI members were asked to share information about follow-up initiatives to the rule of law reporting in 2021, as well as about their views on the impact of the reporting exercise in triggering progress on the challenges identified and in enhancing the engagement of NHRIs' themselves on rule of law issues. ENNHRI members signalled several relevant follow-up initiatives and developments, both on the side of State authorities and of institutions themselves.

Initiatives involving State authorities

Among initiatives involving State authorities, some ENNHRI members pointed to a number of public debates and awareness raising events organised in the wake of the release of the European Commission's rule of law report. This included, in Finland, a dedicated rule of law seminar organised by the government to foster an exchange of views between judges, public officials and academia, meant to be held annually. In Croatia, a similar debate was held at the initiative of civil society organisations and involved state authorities as well as the NHRI.

ENNHRI members also pointed to actions taken by State authorities to address rule of law issues identified in last year's report. In the Netherlands, the ENNHRI member underlined how a plan of action to uphold and promote the rule of law has been included in the governmental plan. A number of specific interventions were also mentioned by ENNHRI members aimed at improving the efficiency and independence of the justice system, as reported in Croatia, Greece and Slovakia. In some countries, and namely Croatia, Cyprus, Greece and Luxembourg, ENNHRI members also signalled that steps were taken to reinforce the anti-corruption framework, including as regards laws on whistle blowers protection. A number of ENNHRI members equally pointed to State authorities' efforts to genuinely discuss and address identified challenges affecting media freedom and pluralism, such as in Greece and Luxembourg. In Spain, the ENNHRI member pointed to the authorities' efforts to analyse and follow-up on the issues identified in relation to public participation, transparency, accountability and public integrity as part of the new 4th Open Government Plan, launched in 2021. ENNHRI members also welcomed steps taken in a number of Member States to make progress on NHRIs' strengthening and accreditation, as reported for example in Austria and in Romania.

Authorities also engaged in research, monitoring and reporting activities. For example, in Romania, the ENNHRI member mentioned how State submissions to international monitoring bodies included references to the Commission rule of law report.

A number of governments are also making efforts to promote the rule of law beyond the domestic context. Examples include action taken to promote the rule of law within the EU region, such as the Netherlands' interventions before the Court of Justice of the EU (CJEU) in relevant cases raising rule of law issues, as well as forms of inter-state cooperation – such as the monitoring and good practice exchange project launched in Slovakia with the financial support of the Netherlands, and the rule of law dialogue organised in Slovakia in cooperation with the Swedish embassy. Elsewhere, initiatives were taken as part of governments' external relations and development cooperation activities. For example, in Finland, the ENNHRI member mentioned the establishment of a new institution (the 'Rule

of Law Centre') to support developing countries in creating and reinforcing the rule of law framework.

Initiatives by and impact on the work of NHRIs

ENNHRI members' engagement in rule of law monitoring and reporting is leading to an increasing integration of rule of law issues and their interlinkages with human rights in the institutions' action plans and activities, and the prioritisation of progress on identified rule of law issues in the institutions' strategic engagement at national, regional and international level.

ENNHRI members illustrated in their 2022 submission how this reflects in an enhanced engagement with national, regional and international stakeholders. This has for many ENNHRI members translated in an increased engagement on rule of law issues and targeted advocacy towards national authorities on issues identified in the 2021 rule of law report, variably taking the form of statements, communications, recommendations, hearings and other interventions, as reported in Bulgaria, Croatia, Cyprus, Greece, Germany, Luxembourg and Romania. ENNHRI members in Cyprus and Finland also inputted in their governments' submissions to the European Commission's rule of law report and organised trainings for public authorities on rule of law related issues – an initiative taken also by ENNHRI member in Greece. In Austria, Slovakia and Croatia, ENNHRI members further engaged with other independent bodies and civil society stakeholders at national and international level. In certain countries, such as the Netherlands and Slovenia, ENNHRI members stepped up their engagement with EU institutions, and in particular the European Parliament, and developed specific projects and forms of cooperation. In Bulgaria, for example, the NHRI referenced the 2021 ENNHRI Rule of Law Report's findings during the mission of the Democracy, Rule of Law and Fundamental Rights Monitoring Group of the European Parliament's Committee on Civil Liberties, Justice and Home Affairs. In addition, ENNHRI members leveraged their rule of law monitoring and reporting with regional and international monitoring bodies and mechanisms, as illustrated by ENNHRI members in Cyprus, Finland and Slovakia. This was conducive, for example in Finland, to the NHRI's monitoring of the implementation of judgments of the European Court of Human Rights (ECtHR), or, in Greece, the NHRI's efforts to encourage the ratification of international human rights instruments.

Findings of the 2021 Rule of Law Report further fed into ENNHRI members' subsequent research and reports, as mentioned in submissions on Croatia, Finland, Romania, Slovakia and Spain, and were disseminated through awareness raising events and initiatives by ENNHRI members in Croatia, Cyprus, Finland and Greece.

Supporting NHRIs' engagement to strengthen the rule of law framework at national and regional level

While ENNHRI members' reporting on follow up to the 2021 Rule of Law Report, as illustrated above, confirm the relevance of NHRIs' role in the rule of law architecture and the impact of NHRIs' engagement, efforts by international and regional actors to achieve positive change for rule of law, human rights and democracy across the region also require strengthened cooperation among and with NHRIs.

To that effect, taking stock of the experience and impacts of NHRIs' engagement in European rule of law mechanisms to date, [ENNHRI 2021 Rule of Law Report](#) already identified four key focus areas where enhanced collaboration with and support for NHRIs appears particularly crucial to achieve strong rule of law, democracy and human rights in Europe. On that basis, the report addressed a number of recommendations to regional and EU actors, many of which were also echoed by the European Parliament in its [Report on the European Commission's 2020 Rule of Law report](#). Indeed, effectively building on NHRIs' engagement to strengthen the rule of law framework both nationally and regionally appears particularly relevant at the EU level, where, despite the important steps taken by EU institutions to strengthen its '[Rule of law toolbox](#)', the EU, also considering its intrinsically intergovernmental nature, is struggling to make tangible progress in addressing breaches of the principles of the rule of law, democracy and human rights occurring in a number of Member States.

While certain progress was registered over the past year on some of the recommendations put forward by NHRIs and ENNHRI in their 2021 Rule of Law Report, all those recommendations appear still valid. They include:

- **Prioritising the strengthening of fully independent and effective NHRIs in each EU Member State.** This would require, as a priority, to build on information concerning NHRIs independence, effectiveness and enabling environment, and in particular information contained in ENNHRI and NHRIs' rule of law reports, to:
 - ensure a more consistent integration into the Commission's horizontal and country rule of law reports of developments regarding NHRIs' establishment, compliance with the Paris Principles and enabling environment, for example through a dedicated section within the checks and balances chapter;
 - develop targeted country specific recommendations addressed to Member States in the country chapters of the Commission's rule of law reports, to be identified in close consultation with NHRIs and ENNHRI in light of SCA

recommendations and on [efforts](#) to support the implementation of the 2021 Council of Europe Committee of Ministers Recommendation on NHRIs;

- devise appropriate follow-up action to ensure the implementation of such recommendations to be determined in close consultation with NHRIs and ENNHRI, including through dedicated political and technical dialogues and support for ENNHRI's core function of supporting the establishment and strengthening of NHRIs;
 - in the light of common challenges identified across the Member States, work towards an EU legal or policy document setting out EU standards and guidance for national authorities on the independence and effectiveness of NHRIs, building on the Paris Principles, the 2021 Council of Europe Committee of Ministers Recommendation on NHRIs and other relevant international instruments and standards.
- **Supporting NHRIs' work in their countries, to make sure state authorities constructively engage with them and take action to implement their recommendations.** This would require, as a priority:
 - giving visibility to NHRIs' recommendations in relevant horizontal and thematic reporting initiatives, including when drafting country specific recommendations to be included in the Commission's annual rule of law reports;
 - facilitating and supporting NHRIs' efforts to engage with national actors, including by mobilising EU national structures such as EU country delegations, making use of relevant cooperation channels such as networks of contact points and inter-parliamentary dialogues and ensuring more transparency on national follow-ups by EU institutions and involving NHRIs as appropriate;
 - supporting, including by dedicated financial support, initiatives by ENNHRI and NHRIs aimed at independently monitoring, raise awareness on and increasing impacts of national and EU efforts to safeguard and advance human rights, democracy and rule of law at national level.
 - **Investing to enable NHRIs to contribute effectively to efforts by EU and other regional bodies to advance human rights, rule of law and democracy in Europe.** This would require, as a priority:
 - a coordinated and comprehensive approach to the protection of and support for human rights defenders, [including NHRIs](#), under threat, including dedicated financial support for the establishment of an effective protection mechanism, political dialogue and public statements and support, to be designed in close

consultation with NHRIs and ENNHRI building on their expertise and existing [guidelines](#);

- enhancing complementarities of different EU policy initiatives on rule of law, democracy and human rights and strengthening the EU's cooperation with other regional actors to address common concerns, including those concerning NHRIs and human rights defenders.

Such recommendations were broadly echoed by ENNHRI members themselves in the context of their 2022 reporting. In that context, while reiterating the importance for EU and other regional and international bodies of continuing to strictly monitor rule of law developments across the EU, ENNHRI members also formulated a number of **additional recommendations to increase the impact of rule of law monitoring and reporting**. ENNHRI members' key recommendations include:

To the European Commission:

- anchor its monitoring and reporting on a **broad concept of the rule of law reflecting interlinkages with human rights, access to justice as well as democracy** more generally;
- **strengthen the preventative function** of the exercise, while **acting firmly on already identified violations and threats**, including through enforcement action;
- organise yearly an **EU high-level dialogue on the rule of law reports, involving ENNHRI and NHRIs**.

To national authorities:

- to recognise the **strong connection between rule of law and human rights protection**;
- to **increase transparency and participatory nature of follow-up action**, including enhanced **engagement with key stakeholders such as NHRIs and civil society** (for example through dedicated working groups and regular dialogue);
- to **support the effective and wide dissemination of rule of law reports** by the European Commission as well as by NHRIs and ENNHRI.

On their side, NHRIs are committed to continue and deepen – both individually, and collectively through ENNHRI – their strategic engagement within international and regional rule of law mechanisms, and to explore how to best use their promotion and protection roles to engage with national actors on findings and recommendations by EU institutions and 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.

ENNHRI, as a network connecting all NHRIs across the EU and the Council of Europe region, will seek to continue coordinating the regular joint rule of law reporting exercises and explore how to further refine the underlying methodology to achieve a more consistent progress monitoring. ENNHRI will further promote safe and sustainable NHRIs' involvement in EU and other regional policy processes, also considering information gathered on the impact of efforts by EU and other regional actors at national level and on NHRIs' follow-up initiatives in that respect. To that effect, depending on available capacity, ENNHRI intends to explore opportunities to foster mutual learning and exchanges between NHRIs, promote other regional cooperation initiatives and will continue to support NHRIs' capacity building, including through seminars and trainings dedicated to fundamental rights and rule of law – such as the recent [virtual seminar](#) on the role of the EU Charter of Fundamental Rights in the work of Equality Bodies and National Human Rights Institutions co-organised by ENNHRI, FRA and Equinet. These initiatives aim to support NHRIs 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 a number of NHRIs flagged in this report. ENNHRI will also provide NHRIs with tailored guidance on how to engage with EU actors, and seek to expand its guidance for EU actors on NHRIs within the EU, building on the [guide](#) and trainings developed to date for EU Delegations and Brussels-based EU officials working on external action.

Rule of Law reporting by NHRIs across the region: a united approach based on a common methodology

Since 2020, ENNHRI's members committed to engage with a united approach to annual rule of law reporting. They agreed, in particular, 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. These country rule of law reports are then collated and published by ENNHRI as one comprehensive regional report. In addition, sub-regional reports are compiled to feed in different consultation processes as relevant for NHRIs across ENNHRI's membership (EU Member States, Enlargement/Western Balkans, Eastern Partnership, other non-EU countries). Thematic submissions on Human Rights Defenders (HRDs) under threat are also prepared on the basis of NHRIs' reporting to inform the work of international and regional monitoring bodies including the UN ASG on Reprisals and the UN Special Rapporteur on the situation of human rights defenders.

Such a united approach 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.

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.

Considerations on methodology

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.

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 2021 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, including an updated overview of latest SCA recommendations for each country;
 - 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 freedom, pluralism and safety of journalists;
 - 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, for the purpose of this year's reporting exercise, NHRIs were also invited to:

- formulate key recommendations to national and regional policy makers to tackle rule of law challenges identified in each country;
- provide their overall assessment over the progress made in their country in the areas covered by the report over the past year;
- include their considerations as regards the impact of last year's reporting exercise;
- illustrate actions and initiatives taken by NHRIs to address the issues raised and/or to promote rule of law standards in each of the areas covered by the report.

In order to encourage concise data provision, the reporting structure allows 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 is free to report on what it deems 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 2021 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 continue to agree on 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, as well as related shared recommendations to regional and national policy makers; 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.

Scope of this report

The present report is the contribution by ENNHRI and its EU member NHRIs to the targeted stakeholder consultation [launched](#) by the European Commission in preparation to its second Annual Report on the Rule of Law in the EU.

It brings together the country rule of law reports developed by ENNHRI members from EU Member States and offers an overview of trends and common challenges, and related shared recommendations, developed by ENNHRI on the basis of analysis of the country reports received. The report also includes information provided by ENNHRI on NHRIs' establishment and accreditation status for each Member State, meant to inform the European Commission's assessment in relation to the recognition of NHRIs as rule of law indicators.

ENNHRI currently has members in all EU Member States except Malta, Italy and Sweden. In Italy and Malta, no institution is currently established as an NHRI, even if legislative proposals have been put forward in both countries. In Sweden, in view of the creation of the Swedish Institute for Human Rights, the Swedish Equality Ombudsman resigned from ENNHRI membership in 2021. The Swedish Institute for Human Rights has been invited to submit an application to join ENNHRI and has intentions to be accredited as an NHRI in accordance with the UN Paris Principles.

Despite ongoing challenges brought by the ongoing COVID-19 pandemic and the short timeframe for reporting linked to the European Commission's public consultation within its annual rule of law review cycle, almost all EU NHRIs in a position to prepare a country submission did so. This report collates all such submissions, covering 23 out of the 24 EU countries where ENNHRI currently has a member institution, and information on the process to establish an NHRI in the other EU Member States. Contributing ENNHRI members thus include 17 A-status NHRIs in the EU, 4 B-status NHRIs in the EU and 5 non-accredited institutions.¹ The list of contributing NHRIs is included in the overview table below.

¹ In the system of international accreditation, A-status NHRIs are considered fully in compliance with the UN Paris Principles and B-status partially. Non-accredited ENNHRI members have committed to work towards complying with the UN Paris Principles and becoming accredited institutions within a reasonable period. All A-status NHRIs are periodically reviewed every 5 years. Deferral of accreditation is possible – this is currently the case, among ENNHRI members from the EU, for the Hungarian Commissioner for Human Rights, which will be reviewed in March 2022.

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

EU 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
1	Austria	Austrian Ombudsman Board	B status (applying)	✓	✓	✓				✓
2	Belgium	Federal Institute for the protection and promotion of Human Rights (FIRM-IFDH)	No status (applying for A status)	✓	✓	✓	✓	✓	✓	✓
		Interfederal Centre for Equal Opportunities and Opposition to Racism (Unia)	B status							
		Myria	No status							
		The Combat Poverty, Insecurity and Social Exclusion Service	No status							
3	Bulgaria	Ombudsman of the Republic of Bulgaria	A status	✓	✓	✓	✓	✓	✓	✓
4	Croatia	Ombudswoman of the Republic of Croatia	A status	✓	✓	✓	✓	✓	✓	✓
5	Cyprus	Office of the Commissioner for Administration and the Protection of Human Rights (Ombudsman)	B status (applying)	✓	✓	✓	✓	✓	✓	✓
6	Czech Republic	Public Defender of Rights	No status	✓		✓	✓			✓
7	Denmark	The Danish Institute for Human Rights	A status	✓	✓	✓	✓	✓	✓	✓

EU 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
8	Estonia	Office of the Chancellor for Justice	A status	✓	✓	✓	✓		✓	✓
9	Finland	Finnish Human Rights Centre Parliamentary Ombudsman	A status	✓	✓	✓	✓	✓	✓	✓
10	France	French National Consultative Commission on Human Rights	A status	✓	✓	✓	✓	✓		
11	Germany	German Institute for Human Rights	A status	✓	✓	✓	✓	✓		✓
12	Greece	Greek National Commission for Human Rights	A status	✓	✓	✓	✓	✓	✓	✓
13	Hungary	Office of the Commissioner for Fundamental Rights	A status (deferred)	✓	✓	✓	✓	✓	✓	✓
14	Ireland	Irish Human Rights and Equality Commission	A status	✓	✓	✓	✓	✓	✓	✓
15	Italy	Currently no NHRI								
16	Latvia	Ombudsman's Office of the Republic of Latvia	A status	✓	✓	✓	✓	✓	✓	✓
17	Lithuania	The Seimas Ombudsmen's Office of the Republic of Lithuania	A status	No submission						
18	Luxembourg	National Human Rights Commission of Luxembourg	A status	✓	✓	✓	✓	✓	✓	✓
19	Malta	Currently no NHRI								
20	Netherlands	The Netherlands Institute for Human Rights	A status	✓	✓	✓	✓	✓		✓
21	Poland	Office of the Commissioner for Human Rights	A status	✓	✓	✓	✓	✓		

EU 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
22	Portugal	Portuguese Ombudsman	A status	✓	✓	✓	✓	✓	✓	✓
23	Romania	Romanian Institute for Human Rights	No status (applying)	✓	✓	✓	✓	✓		✓
24	Slovakia	Slovak National Centre for Human Rights	B status	✓	✓	✓	✓	✓	✓	✓
25	Slovenia	Human Rights Ombudsman of the Republic of Slovenia	A status	✓	✓	✓	✓	✓	✓	✓
26	Spain	Ombudsman of Spain	A status	✓	✓	✓	✓	✓	✓	✓
27	Sweden	NHRI under establishment								

Overview of trends and challenges

Independence and effectiveness of NHRIs

Developments in NHRIs' establishment and accreditation and changes to the regulatory frameworks

In 2021, **6 European NHRIs were reviewed** by the Sub-Committee on Accreditation (SCA) only **2 being from EU Member States** (Hungary, Ireland). In the case of the Irish NHRI, the SCA reaccruited with institution with A-status. As regards the Hungarian NHRI, the Sub-Committee recommended the Hungarian NHRI to be downgraded to B-status. However, this recommendation does not take effect for a period of one year and, in March 2022, the Hungarian NHRI will have the opportunity to provide additional information to the SCA in relation to concerns about its full compliance with the UN Paris Principles. Detailed information on the SCA recommendations and updates from the NHRIs are included under the respective country chapters.

Regarding the **establishment of NHRIs in the EU**, it is worth noting that a **new institution**, the Swedish Institute for Human Rights, was created and commenced operations on 1 January 2022. This institution is not yet accredited, but it has been established with reference to the UN Paris Principles. ENNHRI provided comments on the legislative proposal to establish the Institute and stands ready to give further support towards its functioning and possible accreditation. The Institute has also been invited by ENNHRI to join the network. It is worth recalling that another institution, the Swedish Equality Ombudsman was a member of ENNHRI until December 2021 and it was accredited with B-status by SCA in May 2011. In view of the establishment of the new Institute, the Equality Ombudsman has left ENNHRI.

By contrast, there have been **no substantial developments in EU countries without an accredited NHRI**. In Italy and Malta, legislative proposals are still stalled at the Parliament and ENNHRI is not aware of prospects for the establishment of NHRIs in both countries soon. In the Czech Republic, for various reasons the Czech Public Defender was not able to be active in the matter of the establishment of an NHRI in the country in 2021 but remains committed to supporting developments towards this objective. In Romania, no significant developments in relation to the accreditation of an NHRI occurred in 2021.

In general, NHRIs in the European Union have a **broad legal mandate to contribute to access to justice by individuals in varied ways**. Over half of the EU NHRIs have the competence to **handle complaints submitted by individuals** (Austria, Belgium, Bulgaria,

Croatia, Cyprus, Czech Republic, Hungary, Estonia, Finland, Latvia, Portugal, Poland, Romania, Slovakia, Slovenia, Spain). Moreover, almost half of the EU NHRIs are mandated to undertake **strategic litigation before courts** (in Belgium, Croatia, Denmark, Estonia, Germany, Greece, Hungary, Ireland, Latvia, Poland, Slovenia). It is worth noting that, sometimes, NHRIs can act before courts only in specific cases – for example the NHRI in Hungary can act in equality and environment cases, while the NHRI in Croatia pursues strategic litigation only in cases concerning antidiscrimination and whistle blowers. NHRIs from Estonia and Germany may only take on the role of third-party intervener to provide an amicus curiae to the Court. Some EU NHRIs also **provide legal assistance to individuals** (in Belgium, Bulgaria, Denmark, Estonia, Ireland, Latvia and Slovakia) or general legal advice and information (in Croatia, Cyprus, Portugal and Romania). The majority of EU NHRIs have an **awareness-raising** function in relation to access to justice for individuals (in Austria, Belgium, Bulgaria, Croatia, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Ireland, Latvia, Luxembourg, Portugal, Romania, Slovakia, Slovenia, Spain).

A number of EU NHRIs reported about **changes in the national regulatory frameworks** in which they operate. For instance, some NHRIs were granted **new competences**. In Ireland, the NHRI received a broader mandate to act in the area of gender equality and also became an independent rapporteur on trafficking. Moreover, the Irish NHRI is expected to be appointed as co-ordinating body of the National Preventative Mechanism framework and as an Independent Monitoring Mechanism for the United Nations Convention on the Rights of Persons with Disabilities (CRPD). The NHRI in France started acting as an independent national rapporteur on the evaluation of public policy related to the effectiveness of the rights of people with disabilities. In Finland, new human rights bodies were established – the Ombudsperson for Older Persons and a Rapporteur for Gender Based Violence – separate from the NHRI in Finland. As reported in Croatia, the NHRI received new tasks as a consequence of implementation of the EU Directive on whistle blowers protection. Although, as reported by ENNHRI members from Croatia and Germany, it has to be noted that NHRIs do not always receive sufficient financial resources to perform those additional mandates.

NHRIs also reported on **legislative reforms concerning their institutions other than additional mandates**. The NHRI from Hungary pointed at a number of changes introduced at the national level concerning the mandate of the Commissioner for Fundamental Rights – the conditions to terminate its mandate were clarified. Due to the fact that in Hungary the NHRI and equality body merged, the NHRI's powers were strengthened in the area of non-discrimination. On the other hand, in Romania, the

Government's legislative proposal to absorb the Romanian Institute for Human Rights into the state authority combating discrimination has been recently rejected by the Senate, nevertheless, the legislative reform of the Romanian institution is still ongoing. Some legislative changes in regulatory framework were also introduced during this past year in Greece, where the aim of the legislation was to improve NHRI's functional independence and administrative and financial autonomy, legal personality following NHRI mobilisation. In Latvia, a new law strengthened parliamentary requirements for the nomination of the Ombudsman and introduced a limitation on holding more than two consecutive terms, while no progress was recorded on a 2015 proposal to secure a constitutional basis for the institution. In Portugal, a new legal act strengthening institution to enhance realisation of its mandate and compliance with the Paris Principles was adopted. Moreover, it was reported by Belgian institutions that the establishment of a new regional human rights institution in Flanders, Belgium, raises concerns about its impact on Unia's (Interfederal Centre for Equal Opportunities and Opposition to Racism) mandate as well as access to justice for victims of human rights violations, considering the increasing complexity of the institutional human rights system in Belgium.

Despite reporting to have a satisfactory regulatory framework, NHRIs from Cyprus, Finland, France, Germany, Greece, Luxembourg, Slovakia and Slovenia provided suggestions to **further strengthening their institutions**. In terms of shortcomings in the national regulatory framework, the NHRI in Hungary mentioned that the NHRI's selection process is still not sufficiently transparent.

Enabling environment and safe space

A significant number of EU NHRIs reported that their relevant state authorities have a generally **good awareness of the NHRI's mandate, independence and its role** (in Austria, Belgium, Bulgaria, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Ireland, Latvia, Portugal, Romania, Slovakia and Spain). However, NHRIs from Luxembourg and Romania underlined the **need to raise authorities' attention for further compliance with the Paris Principles**, especially in terms of the NHRIs' efficiency and independence. In addition, the NHRIs from Belgium and Finland raised concerns about the existence of many human rights bodies at national level which may lead to confusion and fragmentation of the national human rights infrastructure.

While several NHRIs report an **overall good cooperation with national authorities** (in Austria, Bulgaria, Cyprus, Czech Republic, Denmark, Estonia, Germany, Hungary, Ireland, Latvia, Portugal and Spain), a number of them report **difficulties in cooperation with national authorities in legislative and policy-making processes**, as is the case for ENNHRI members in Belgium, France, Germany, Greece, Hungary, Luxembourg and

Romania (also in the context of the pandemic). **State authorities often fail to timely and effectively consult with NHRIs on legislative proposals.** Sometimes, there is no systematic involvement of NHRIs in relevant legislative and policy processes, as reported in Slovakia. In Poland, the NHRI experiences an overall problematic cooperation with state authorities while in Hungary, the NHRI reports struggles in cooperation with government and other state bodies, especially in the field of environmental issues. The NHRI from Hungary also raises concerns over the reoccurring situations when the Government either does not consult with the NHRI important draft bills at all or such consultations are established with a very short deadline to submit an opinion. The Romanian institution reports only to be consulted at request from the Parliament, while the NHRI in Spain does not formally include in the process of drafting laws but contacts policy-makers at its own initiative. The NHRIs from Croatia and Luxembourg highlighted that they sometimes witness **lack of cooperation to provide data and information requested by the institution.** Furthermore, as identified by the NHRI from Luxembourg, what sometimes negatively impacts NHRIs' effectiveness is **insufficient knowledge about the National Human Rights Institution's role and mandate.**

Despite the 2021 Council of Europe Recommendation for states to make it a **legal obligation for addressees of NHRIs' recommendations to provide a timely and reasoned reply**, with a view to enhance impact of NHRI recommendations, this is not the case in many EU countries, including Belgium, Denmark, Finland, France, Germany, Greece, Ireland, Latvia, Luxembourg, Romania and Slovakia. EU NHRIs from Belgium, Greece, Luxembourg, Slovakia and Slovenia explicitly signalled **the need to introduce a legal obligation to implement the NHRI's recommendations.** ENNHRI members from Austria, Bulgaria, Croatia, Cyprus, Estonia, Portugal, Spain and Slovenia confirmed that a legal obligation to provide a timely and reasoned response is established in their countries. NHRIs in Croatia and Luxembourg reported that state **authorities sometimes fail to provide a reply to the NHRI's recommendations, requests and reports at all**, whereas the NHRI from Slovenia found that the state authorities' legal obligation to address the NHRI's proposals still remains insufficient and **the implementation rate of the NHRI's recommendations, unfortunately, remains unsatisfactory.** In this sense, it is noteworthy that the 2021 Council of Europe Recommendation on NHRIs recommends authorities to develop processes to facilitate effective follow-up of NHRI recommendations, in a timely fashion.

In relation to possible threats to the NHRI's independence and effectiveness, many institutions pointed at an **overall good level of protection of heads of institutions and staff against threats and harassment and any other forms of intimidation** (including

SLAPP actions) in their countries. This is the case for institutions in Belgium (FIRM), Bulgaria, Cyprus, Czech Republic, Estonia, Finland, Germany, Greece, Hungary, Ireland, Latvia, Romania, Slovenia and Spain. Increased criminal protection was noted in Cyprus, Czech Republic, Estonia, Hungary and Latvia, while in Germany the focus also lies on the protection of privacy. However, **no specific measures and rules on immunity to ensure NHRIs' independence** are in place in Austria, Belgium (UNIA), Denmark, France, Ireland, Luxembourg, Portugal and Slovakia.

Despite some measures introduced at national level to combat threats towards NHRIs, in Slovenia the NHRI experienced **pressure and smear attacks in concrete cases**, when taking actions on specific topics. Likewise, in Poland the NHRI's work and effectiveness was impacted by state authorities **actions threatening the continuity of head of institution's service** as well as the state of emergency imposed on the Belarusian-Polish border (in terms of the NHRI activities in the area of migrants' rights).

Some EU NHRIs also raised the subject of **insufficient financial and human resources** which are crucial to ensure NHRI's effectiveness. While in some countries the institution's budget was increased (such as in the case of NHRIs from Luxembourg and Slovakia), in Poland an increase in budget still did not meet the NHRI's reasonable needs. Also, the NHRIs from Bulgaria, Croatia, Greece and Slovenia stressed the need to ensure more resources and adequate conditions to exercise their mandate. The NHRI from Germany drew attention to the **lack of additional resources provided to carry out additional, specific mandates** to perform international obligations (f. ex. acting as a monitoring body under the CRPD). In addition, NHRIs from Hungary, Portugal and Slovenia argued **the importance of financial independence** of their institutions. For example, in Portugal the NHRI's budget is still a part of the Parliament's budget. Last but not least, NHRIs from Austria and Cyprus highlighted that the effectiveness of the NHRI could also be enhanced if the financial situation would be improved and allowed the institution to employ more staff.

Human rights defenders and civil society space

Reporting by ENNHRI members reveals a **deterioration of the enabling environment for human rights defenders (HRDs) and civil society space more generally** in several EU countries.

HRDs and civil society organisations continue to be the target of **attacks, smears and threats** in many EU countries. These reportedly target in particular HRDs and civil society organisations working on **sexual and reproductive rights, LGBTI+ rights, rights of migrants and asylum seekers and environmental protection**, as reported by ENNHRI

members in France, Greece, Poland and Slovakia. In Greece, the NHRI explains how such attacks occur in a broader, concerning context of racist violence. In Poland, ENNHRI's member also alerts about activists being targeted by police during demonstrations, and retaliations against prosecutors opposing controversial judicial reforms. Cases of **legal harassment, including Strategic Lawsuits Against Public Participation (SLAPPs)**, also seem to be on the rise, as reflected in reports on Luxembourg and Slovenia.

Many ENNHRI members further raised concerns about **laws restricting HRDs' and civil society organisations' activities**.

In this respect, a new emerging trend concerns **provisions providing for the dissolution of associations which undermine basic values and principles**. While requiring associations to align their objectives and activities with human rights standards and democratic principles is indeed a legitimate aim, legal provisions foreseeing the dissolution of associations based on vague formulations risk leading to disproportionate and arbitrary interferences with the right to freedom of association – as mentioned by ENNHRI members in Belgium as regards the bill on associations inciting hatred and discrimination and by ENNHRI's member in France as regards the law on the respect of Republican values. Such objective can, by contrast, be supported through positive measures, as reflected in a bill under discussion in Germany aimed at fostering and strengthening the democratic engagement of civil society organisations.

At the same time, ENNHRI members alert that problems persist with **laws criminalising HRDs' activities, in particular in the area of migration**, as reported in Croatia and Hungary – where the CJEU recently intervened to declare Hungarian provisions criminalising and obstructing the provision of assistance to asylum seekers as incompatible with EU law. ENNHRI members also report how HRDs and civil society organisations active on the protection and promotion of the rights of migrants and asylum seekers are also **increasingly the object of restrictive measures and practices**, as reflected in the burdensome registration requirements introduced in Greece, where the NHRI also raises concern on the lack of transparency and consistency as regards their application; in Croatia and France, where authorities continue to limit access to information and physical access to migrants settlements; and in Poland, where the emergency regime and related rules applicable to the Belarus border zone have obstructed monitoring and humanitarian assistance by HRDs and civil society.

Similarly, ENNHRI members continue to point to the impact of the advocacy and campaigning work of associations of existing laws in areas such as **citizens' security** (in Spain), **counterterrorism** (in Belgium and France) and **political advertising** (in Ireland).

Limitations on access to funding and donations and an unfavourable financing framework for civil society organisations also remain an issue ENNHRI members continue to point to, for example in Bulgaria, Croatia, Germany, Portugal and Slovakia. This has an impact also on access to EU funding, as reported in particular by ENNHRI member in Croatia, while public financing remains inaccessible to organisations working on LGBTI+ and women rights in Slovakia. In Denmark, ENNHRI member reiterates its concerns over the introduction in 2021 of rules **banning donations from persons or organisations attempting to undermine democracy and human rights**, which in the Institution's view pose a risk of arbitrariness and legal uncertainty.

ENNHRI members have also continued to raise concerns on **laws restricting civic space and freedoms**. ENNHRI members in Finland and Portugal make general reference to the **impact on civic space of measures adopted in response to the COVID-19 pandemic**, while in a number of countries including Hungary, Slovenia and Romania (as well as Poland, but in connection to the emergency regime declared in response to developments at the Belarus border), ENNHRI members reported about persisting **interferences with the exercise of the freedom of peaceful assembly**. This prompted interventions by constitutional courts in Hungary, where the Constitutional Court recently recommended to the government to ensure a regular review of restrictions, and in Slovenia, where the Court declared restrictions disproportionate. By contrast, measures were considered balanced by ENNHRI's member in Estonia, allowing protests to take place peacefully. In Denmark, ENNHRI's member reported that the security bill aimed to restrict gatherings and activities in the public space was eventually rejected by the parliament.

Reporting by ENNHRI members also reveals **little efforts by State authorities to ensure access to and involvement in law and policy making** for civil society organisations. ENNHRI members in Bulgaria, Croatia, France, Germany, Hungary, Ireland, Luxembourg, Slovenia and Slovakia expose **several gaps affecting consultation frameworks and practices**. These include late consultations, the absence of consultations when expedited procedures are used, the lack of inclusiveness, as well as inadequate timeframes. ENNHRI members in Finland and Ireland especially regret the **limited involvement of rightsholders and organisations representing affected groups or minority communities**, such as children, persons with disabilities, victims of racism and discrimination and migrants and asylum seekers. This is coupled with **limited access to public interest information**, as reported for example in Luxembourg, as well as in Croatia as regards the field of migration. In Latvia, limited CSOs' access and participation is mentioned as an issue in particular at the **local level**. As a result, ENNHRI members deplore an **inefficient use of civil society groups' knowledge and expertise**.

At the same time, ENNHRI members reiterated and illustrated their **active engagement in supporting and cooperating with HRDs and civil society organisations**.

This ranges from **NHRIs' efforts to monitor and alert about problematic issues and support HRDs and CSOs at national as well as international level**, as illustrated in country reports on Bulgaria, Croatia, Finland, France, Germany, Estonia, Ireland, Slovenia and Spain; **advocacy to ensure better protection of HRDs**, as exemplified by efforts made by the NHRI in Greece to push for the adoption of a bill on the "Recognition and Protection of Human Rights Defenders", or the trainings for public authorities delivered by ENNHRI member in Romania; **efforts to secure CSOs' involvement and participation in law and policy making**, as mentioned by ENNHRI member in Latvia; **capacity building activities**, as organised by ENNHRI members in France and Greece; and **financial support**, as offered by ENNHRI member in Ireland.

ENNHRI members also provided **examples of successful cooperation** with HRDs and civil society organisations, including in terms of **coordinated advocacy** (as reported by ENNHRI members in Finland, Estonia and Ireland, particularly in the area of equality); **joint monitoring activities** (such as in Estonia in the context of the Universal Periodic Review, in Greece as regards the monitoring of the execution of ECtHR judgments, the monitoring of racist violence and of incidents of informal forced returns of migrants, in Hungary as regards detention conditions, and in Slovenia as regards the rights of migrants and asylum seekers); as well as **human rights awareness raising initiatives**, as exemplified by the 'Human Rights Alliance' in Denmark.

Checks and balances

In continuity with the findings of last year's report, many of the challenges affecting the national systems of checks and balances reported by ENNHRI members relate to the **way governments responded to the crisis situation created by the COVID-19 pandemic outbreak**.

The most common concern shared by ENNHRI members in many Member States is the **persisting use of emergency legislation**. In this respect, a number of ENNHRI members alert about **issues of legality**, including the **lack of a clear legal framework** regulating the adoption of restrictive measures during public health emergencies, as mentioned in country reports on Ireland and Portugal. Many ENNHRI members also voice concern over the **low quality of law and policy making**. This is mainly due to the **widespread use of accelerated legislative procedures** and the **lack of transparency** of decision making by the executive, as reported in Croatia and Luxembourg; and in the **weak impact assessments of and lack of consultation** on restrictive measures, in particular as regards

impact on human rights and vulnerable groups such as persons with disabilities – as reported in particular in the Czech Republic (which also regrets a lack of access to information), France and Ireland. ENNHRI members in France, Greece and Slovakia also alert about how the protracted use of accelerated procedures and the increase in the executive powers risks having a **long term impact on the system of checks and balances**, as laws not directly linked to the pandemic emergency undergo accelerated procedures (such as, in Slovakia, the law on motorway vignettes which was eventually vetoed by the President as not meeting the conditions for such accelerated procedure); or laws originally adopted to tackle the emergency are being progressively embedded in ordinary laws (such as, in France, law enforcement powers for home searches and surveillance).

But concerns in this area go beyond challenges brought by the pandemic emergency.

The **need for public consultations on laws to be more transparent, inclusive and effective is a general concern** expressed by ENNHRI members in several Member States, including Bulgaria, Croatia, Denmark, Finland, France, Greece, Germany, Hungary, Ireland, Poland and Slovakia. In Poland, the NHRI particularly regrets the poor impact assessment and lack of consultation on the emergency legislation on the Belarus border zone, while similar concern is expressed by ENNHRI member in Luxembourg as regards the reform of the constitution. In Bulgaria, the NHRI regrets the government's failure to submit a draft law on combatting domestic violence despite intense discussions and contributions among political forces, rightsholders and stakeholders facilitated by the Ombudsman. **Limitations on access to public interest information** also frustrate participation in law and policy making, as mentioned by ENNHRI members in particular in relation to sensitive topics such as migration (in Belgium) or nuclear and military installations (in France). In Poland, the NHRI warns how a pending motion challenging the constitutionality of existing provisions regulating access to public interest information could, if upheld, seriously undermine the exercise of this right. In Slovakia, ENNHRI member mentions the criticism expressed by civil society to the proposed amendments to the Freedom of Information Act, considered too narrow and inadequate to address all the issues people face when trying to access public interest information. In Slovenia, ENNHRI member mentions the **lack of equality data collection** as another obstacle to sound law and policy making.

A number of ENNHRI members also point to **gaps in accountability of certain public authorities**, such as law enforcement authorities in France and Germany, against the background of increased powers granted by means of recently introduced laws on security and counter-terrorism. On a **positive note**, ENNHRI member in Denmark reports about a new act allowing the Parliament to establish "scrutiny commissions" of independent

experts with the purpose of examining cases which have been under heavy criticism either in the Parliament or in the public. Elsewhere, ENNHRI members **call for the improvement of accountability frameworks**, such as the role and operations of the State Audit Office in Hungary, accountability for the adoption of unconstitutional legislation in Luxembourg or the need for a more transparent follow-up of the infringement case opened by the European Commission on the Constitutional Court's ruling on primacy of EU law in Germany. At the same time, ENNHRI members alert about cases of **maladministration**, such as in Bulgaria, Cyprus and Estonia, with ENNHRI member in Bulgaria also pointing to numerous issues affecting the **electoral system**.

Challenges affecting the judicial and constitutional review of laws, also referred to in the chapter on the functioning of justice systems, are equally regarded by ENNHRI members in some Member States as having a negative impact on effective checks and balances. In Poland, the NHRI refers to the problematic consequences of the controversial jurisprudence of the Constitutional Court as regards primacy of EU and international law, as well as the lack of a full independence of courts and prosecutors, including the Constitutional Court itself. As regards the **constitutional review of laws**, ENNHRI member in Slovakia published its legal opinion on the amendment, reported on in last year's report, which excludes the competence of the Constitutional Court to review constitutional acts. Other ENNHRI members flag how **gaps in the framework for judicial review generally impact checks and balances**, including the courts' reluctance to refer questions for preliminary rulings to the CJEU in Belgium, in particular in the area of migration, a huge backlog of cases in Cyprus, the lack of a "judicial review culture" in Luxembourg and the **lack of implementation of court decisions**, including by the supreme, constitutional and supranational courts such as the ECtHR as reported in Bulgaria, Slovenia and Spain.

ENNHRI members in many Member States deplore the negative impact of these challenges on the **level of public trust in institutions**, as mentioned in country reports on Belgium, Croatia, Cyprus, Denmark, France, Germany, Greece, Hungary, Luxembourg, Slovakia, Slovenia, Spain – with trust reported as especially low among marginalised and vulnerable groups, such as persons with disabilities and persons in precarious socio-economic conditions, as reported by ENNHRI member in Ireland; and impacting particularly on certain categories of public authorities such as police (as reported in Greece and Slovakia) and the judiciary (as reported in Croatia, Slovakia and France). Other factors are also identified by ENNHRI members as negatively impacting on the level of public trust, including the high polarization of the public and political debate in Finland, Slovenia and Spain, the consequences of the pandemic, as mentioned in relation to Hungary, and the failure to effectively communicate with constituencies, as flagged by ENNHRI members

in Belgium. By contrast, ENNHRI's member in Portugal continues to report a high level of public trust in institutions, while ENNHRI's members in Bulgaria and in Finland record positive efforts to address identified challenges, as for example demonstrated, in Finland, by the recent launch of a dedicated public survey on the matter.

Reporting by ENNHRI members offers numerous examples of the **role NHRIs play in the system of checks and balances**. These include the active engagement of NHRIs in advising State authorities on ways to strengthen the checks and balances system itself, as reflected in NHRIs' recommendations on the review of administrative decisions in Belgium; the more effective audit and control of public bodies in Hungary; or the need to improve the quality of the legislative process in Croatia, Cyprus, France, Germany, Greece, Ireland, Luxembourg, Poland, Slovakia, Slovenia and Spain. Such engagement adds to NHRIs' regular efforts to provide advice and review laws in the making, as examples show in Austria, Belgium, Bulgaria, Cyprus, the Czech Republic, Denmark, France, Germany, Greece, Hungary, Ireland, Luxembourg and Slovakia; to handle and act upon complaints concerning good administration, as mentioned in particular by ENNHRI members in Croatia, Cyprus, Estonia and Finland; to engage in strategic litigation initiatives, as illustrated in country reports on Bulgaria, Belgium, Denmark, Ireland and Latvia; or to feed monitoring and reporting mechanisms at regional and international level, and encourage follow-up action by State authorities on recommendations and decisions, as reported in Belgium, the Czech Republic, Finland, Greece and Ireland.

Yet, as also reflected in the chapter on the independence and effectiveness of NHRIs, many ENNHRI members experience **obstacles and challenges in fulfilling this role**. These include a lack of cooperation and consultation, reported by ENNHRI members in France, Greece, Luxembourg and Poland; the failure or unwillingness to implement NHRIs' recommendations, as particularly flagged by ENNHRI members in Poland and Slovenia; and a lack of capacity and resources, as reported in Cyprus.

Against this background, many ENNHRI members have become **more vocal on the need to strengthen the independence and effectiveness of NHRIs and other independent institutions**, including data protection authorities, equality bodies and ombudspersons – as reported in Belgium, Finland and Germany. At the same time, some are investing in achieving **closer cooperation with national authorities**, such as the NHRI in Greece as regards the Parliament; or **enhancing their engagement at regional and local level**, such as ENNHRI member in Hungary, through the creation of regional offices.

Functioning of justice systems

Reporting by ENNHRI members reveals that challenges continue to affect the functioning of justice systems in several Member States.

Despite some improvements and the progress in terms of digitalisation of the justice system triggered by the situation created following the COVID-19 pandemic, ENNHRI members **generally point to the need for further legislative reform** to strengthen the judiciary in particular in Greece and Slovakia. In the latter Member State, ENNHRI member also alerts about the persisting **low level of public trust** in the justice system. By contrast, ENNHRI member in France reported about a bill to foster public trust in the judicial system.

Concerns over the **independence of courts and judges** remain common to a number of Member States. The situation continues being particularly worrying in Poland, where the NHRI denounces a continued deterioration and the lack of implementation to date of judgments on the matter of the ECtHR and the CJEU. In Hungary, ENNHRI member notes some progress as regards the equation of salaries of judges and prosecutors, but still points to **gaps in the procedure for applying and filling judicial posts**, in particular as regards the availability of effective remedies – an issue on which the Constitutional Court recently intervened to annul provisions of the existing law which excluded the possibility to complain about procedural irregularities affecting the outcome of selection procedures. Flaws in the system of judicial appointments and composition of courts are also mentioned by ENNHRI members in Finland, Greece and Ireland. In Ireland, the NHRI also continues to question the independence and composition of the special criminal court for crimes against the State.

The **independence and operations of national councils of the judiciary** is questioned by ENNHRI members in Hungary – where a case on the matter is pending before the Constitutional Court, in Slovakia – where ENNHRI's member signals gaps in the dismissal system of council members, and in Spain – where the council has still not been renewed due to a political impasse. As regards the **disciplinary regime**, the NHRI in Romania signals ongoing efforts to eliminate the Section for the Investigation of Offences in the Judiciary and replace it with a new body within the Public Prosecution Office; while this is seen as a potentially positive development, ENNHRI's member informs about concerns expressed by judges' associations over the bill's proposed solution. ENNHRI's member in Croatia signalled a spike of disciplinary proceedings initiated against judges in 2021, as well as an increasing number of complaints against judges submitted by citizens to the institution.

In terms of the **efficiency of the justice system**, ENNHRI members in Finland, Germany, Luxembourg and Spain alert about the need for **securing more resources**, while the **excessive length of proceedings** is still mentioned as an issue by ENNHRI members in several Member States. This seems to be a rather general problem in Croatia, Cyprus, Denmark, Finland, France, Estonia, Greece, Portugal and Spain, said to be exacerbated by the restrictions imposed to respond the public health emergency; while ENNHRI's member in the Czech Republic makes particular reference to how excessive length affects proceedings in fields such as childcare and family matters. Against this background, ENNHRI members in a number of Member States account of **efforts by State authorities to improve the efficiency of proceedings** – including digitalisation efforts in Greece and measures to combat delays in Denmark and Spain.

At the same time, ENNHRI members in some Member States also flag **challenges affecting the effective judicial review framework**. These particularly affect decisions on social assistance benefits in the Czech Republic, and decision on misdemeanours in Estonia, while ENNHRI's member regrets a lack of "culture" of prompting judicial review in Luxembourg. By contrast, ENNHRI's member in Slovakia welcomes the creation of a new Supreme Administrative Court as a **positive step** to ensure better judicial review of administrative decisions. ENNHRI's member in Croatia further points to gaps in the enforcement of court decisions, while ENNHRI members in Bulgaria and Greece deplore the **non-execution of rulings by the ECtHR**, and ENNHRI member in Slovakia reports about a prominent 2020 judgment concerning police ill-treatment of Roma as being under enhanced supervision of the Council of Europe Committee of Ministers. In the Czech Republic and Estonia, ENNHRI members raise the issue of **transparency and the lack of publication of court decisions**.

ENNHRI members' reporting also continue to expose issues affecting **access to justice and fairness of proceedings**.

A main common problem relates to the **accessibility and effectiveness of the legal aid system**, on which ENNHRI members signal lack of progress in Croatia, Greece, Luxembourg and Slovenia, as well as in Ireland, where promised reform stalled and limited legal aid is still said to constitute a barrier for access to justice especially for persons with low income, women, victims of domestic violence, victims of trafficking and labour exploitation, applicants for international protection and ethnic minorities such as Roma and Travellers. In Greece, the inefficiency of the legal aid system is also coupled with **rising costs of court proceedings in civil cases**. On both issues, the NHRI in Finland mentions some **positive developments**, including a planned reform of the legal aid system and a

new procedure proposed by the Bar Association which would reduce the cost and time of proceedings in small civil claims.

More generally, ENNHRI members in several Member States continue to question the adequacy of current legal and procedural frameworks in terms of ensuring **effective access to justice and fairness of proceedings in areas such as antidiscrimination** (as reported in the Czech Republic), **family law proceedings and proceedings involving children** (as reported in Bulgaria, Germany, Ireland, Luxembourg and Slovenia), as well as **asylum and migration** (as reported in Belgium, the Czech Republic, Greece and Latvia – with ENNHRI member in Finland signalling on this point ongoing efforts to map challenges and improve access to justice for asylum seekers). Furthermore, ENNHRI members in Finland, Germany, Ireland and Luxembourg deplore the lack of accommodation of **needs of persons with disabilities in judicial proceedings**, and ENNHRI members in Belgium mention challenges in accessing courts for **people in a situation of poverty**, as well as structural issues of **racial equality before courts**. In the area of **criminal proceedings**, some ENNHRI members stress the existence of **gaps in ensuring the respect of the rights of victims of crime** – with particular reference to access to justice for victims of hate crime and domestic violence in Germany, the right to compensation for victims of trafficking in Luxemburg and non-nationals victims of crime in Slovenia. By contrast, a new law on the rights of victims of crime was adopted in Slovakia. Furthermore, ENNHRI member in Romania calls for the improvement of **awareness of procedural rights**, while ENNHRI members in Bulgaria and Luxembourg underline the need for a reform of **children's protection and juvenile justice systems**. By contrast, in France, ENNHRI member signals a number of **improvements**, including a reform of the juvenile justice system and a new law to improve detention conditions, adopted as a follow-up to a ruling by the ECtHR.

Reporting by ENNHRI members illustrates the **role of NHRIs in contributing to the effective functioning of the justice system**, including through complaints handling, targeted reporting (as per examples in France, Luxembourg and Slovenia), fostering discussions on reforms and steps to take to ensure respect of constitutional and international standards (as illustrated in Bulgaria, Croatia, Latvia, Poland, Romania, Slovakia and Slovenia) and promoting access to justice for vulnerable groups (as reflected in the NHRI's involvement in public funded projects on violence against women, victims of trafficking and victims of racist violence in Germany).

Media freedom, pluralism and safety of journalists

ENNHRI members in several Member States pointed to a **decline in media freedom and pluralism over the past year**. This was mentioned as a general concern by ENNHRI

members in Bulgaria, Croatia, Greece, Luxembourg, Poland, Romania, Slovakia and Slovenia.

Various problematic issues are raised by ENNHRI members as regards **media freedom and independence**. These range from **political pressure on independent media**, as reported in Poland, and **on public service media**, as reported in Slovenia, to **weak media authorities**, as ENNHRI member alerts in Ireland.

Media pluralism is also said to be affected by **high risks of concentration**, also in countries with a traditionally enabling media environment such as Finland, as well as the **lack of transparency of media financing and ownership**, as reported in Greece, Slovakia and Slovenia. In Poland, the NHRI reports about attempts to “**re-nationalise**” the **media market**, while ENNHRI members in Finland and Hungary regret **unequal conditions in the access to public service media content**, in particular for minorities.

ENNHRI members in several EU countries also report about an **increasing incidence of harassment, threats and attacks against journalists and outlets**. These include **violent physical attacks** reported in Croatia, Germany, Greece, Luxembourg, the Netherlands, Romania, Slovakia and Slovenia – with ENNHRI members in Croatia, Germany and Luxembourg citing in particular attacks targeting journalists covering protests against COVID-19 related measures; **verbal attacks and hate speech, offline as well as online**, as reported in particular in Belgium, Croatia, Finland, Latvia, the Netherlands and Slovenia; as well as **legal harassment including SLAPPs**, as reported in Croatia, Luxembourg, Romania and Slovakia. In some countries, **journalists seem particularly vulnerable when working on sensitive issues such as anticorruption**, as reported in the Netherlands and Romania, **or COVID-19**, as reported by ENNHRI member in Latvia. ENNHRI member in Finland alerts about journalists’ fear of being subjected to pressure and intimidation, which leads to **censorship especially on certain sensitive topics** such as migration, the public health crisis or environmental protection. Against this background, only ENNHRI’s member in Slovakia reports about **plans by the government to enhance the protection of journalists**, but informs that no concrete proposal was yet presented.

In certain countries, journalists and outlets are also the object of **smears, attacks and harassment, including SLAPPs and prosecutions, by authorities**. The situation in Slovenia is reported as particularly concerning, with journalists subject to smears, attacks and SLAPPs by government representatives. Smears and attacks against journalists by politicians are also reported by ENNHRI member in Latvia, while ENNHRI member in Bulgaria reports about a case of **police violence** against a journalist. Journalists are also reportedly targeted by SLAPPs brought by pro-government media and representatives of the ruling party in Poland, where the NHRI also reports about obstacles to reporting at the

Belarus border – based on provisions eventually declared unlawful by the Supreme Court. In Romania, ENNHRI member alerts about **criminal prosecutions** triggered against journalists by politicians and public authorities. Elsewhere, charges are brought against journalists based on the alleged disclosure of classified or confidential information, as reported in Finland and Slovakia, while in Denmark some editors-in-chief of the biggest media outlets perceived it as an intimidation when they were approached by the intelligence service after a leak of classified information. ENNHRI member in Luxembourg also mentions how **limitations on access to information** obstruct journalistic work, while the NHRI in Greece deplores a general **deterioration of working conditions** for journalists.

At the same time, ENNHRI members in Greece, Ireland, Latvia, Slovakia and Slovenia denounce the low quality of information and news, frustrated by **the poor adherence to professional standards and ethics**, in particular as regards **hate speech, racialized narratives and the stigmatization of vulnerable groups**. In this regard, ENNHRI members in Bulgaria and Slovenia points to the need of a better implementation of hate speech laws.

ENNHRI members further alerted about **laws affecting the delicate balance between freedom of expression and of information and competing rights and interests**, such as new provisions on disinformation in Greece, defamation laws in Bulgaria and Greece and new provisions included in the law on adherence to Republican values in France, which introduced summary trial proceedings for certain speech related offences.

Corruption

Corruption remains at concerning levels in some EU countries. NHRIs in Bulgaria, Cyprus, Greece, Hungary, Slovakia and Slovenia reported on the high level of public perception of corruption. For example, it relates to perception of politicians and to a lower extent – to judiciary in Greece, while in Slovenia a general decline in public perception of corruption was noted. What is more, the interlinkage between COVID-19 pandemic measures and corruption was identified. The NHRI in Spain indicated that concerns regarding corruption arose due to emergency contracting in urgent procedures during COVID-19 pandemic, while the NHRI from Greece expressed its concerns regarding lack of transparency in case of the frequent use of an expedited legislative process in time of pandemic. The NHRI from Finland, however, pointed to the problem of lack of analysis of the impact of corrupted practices on the human rights and rule of law as well as lack of a corruption prevention body independent from the Government. The NHRI in Estonia outlined that supervision of financing of political parties should be strengthened whereas

the NHRI in Bulgaria reported that corruption allegations scandals came under public scrutiny especially in the context of the 2021 general elections.

At the same time, some European NHRIs declared that **new legal acts and mechanisms were established in order to strengthen regulatory framework in their countries to combat corruption**. In Finland the Resolution on an Anticorruption Strategy and Action Plan for the period 2021–2023 to combat corruption more broadly at all levels of public administration as well as an Act on the Transparency Register were adopted. In Greece, the National Transparency Authority and the Anti-corruption National Strategic Plan for 2022–2025 were established. Moreover, the National Strategy on the Fight against Corruption 2020–2024 was introduced in Portugal while in Cyprus a new independent body starts its functioning in 2022. It is also worth mentioning that in Slovakia the new Office for the Management of Seized Property was put in place and criminal provisions on corruption were extended. Although, the NHRI in Slovakia acknowledged that there is still more to be done to tackle successfully high-level corruption.

NHRIs from Cyprus, Denmark, Latvia and Slovakia reported on the adoption or entry into force of new legal acts and establishment or initial functioning of special bodies to ensure protection of whistle blowers. Nevertheless, NHRIs from some EU countries also reported on the **gaps in whistle blowers protection**. In Belgium, Bulgaria, Finland and Greece a delay in implementation of the EU Directive 2019/1937 on the protection of whistle blowers raised concerns, whereas in Luxembourg the need to fully implement the Directive occurred. The NHRI from Hungary pointed to gaps in protection related to the internal reporting channels operated by public bodies while in Ireland the legal framework was strong, but general hostility towards whistle blowers was still intimidating and impacted effectiveness of such protection.

The role of NHRIs in the framework of combatting corruption is, in particular, established within the framework of whistle blowers protection – NHRIs in Hungary and Portugal were granted additional responsibilities in that area, while the NHRI in Latvia mentions a case where the Ombudsman intervened to ensure a whistle blower's fair treatment. NHRIs also advocate for stronger anticorruption policies and handle complaints – as reported by the NHRI from Cyprus. Moreover, NHRIs also make official recommendations to public authorities – for example the NHRI in Spain published recommendations regarding emergency contracting in the fight against the COVID-19 pandemic and its impact on corruption practices. However, in some EU countries, such as Luxembourg, a lack of NHRI's capacity to tackle corruption was identified. Even though the NHRI from Bulgaria has not received complaints explicitly implying corruption practices,

the Bulgarian NHRI indeed has been the addressee of numerous complaints concerning violation of a right to good governance and good administration.

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

How measures taken to address the COVID-19 pandemic affect rule of law and human rights protection

Reporting by ENNHRI members in 2021 pointed to a serious impact of measures taken to address the COVID-19 pandemic on rule of law and human rights protection. This year's reporting confirm this trend is persisting.

As already mentioned above in the chapter on checks and balances, ENNHRI members in several Member States reported in particular about a **persisting impact of COVID-19 on the checks and balances systems**. Among the most pressing, common concerns, ENNHRI members refer to the **need to secure legality and legal basis** of restrictive measures, as illustrated in detail by ENNHRI members in Belgium, Croatia, Estonia, Portugal, Romania, Slovenia and Spain – also following, in particular in Romania and Slovenia, interventions by constitutional courts. In Portugal and Slovenia, ENNHRI members also point, in this regard, at the fact that measures severely limiting fundamental rights entered or remained in force during periods not covered by the state of emergency, or where the pandemic alert was revoked. The NHRI in Bulgaria too raised concerns about persistence of COVID-19 measures affecting human rights that are no longer legitimate or proportionate. ENNHRI members in Austria, Bulgaria, Croatia, the Czech Republic, Estonia, Finland, Ireland, Luxembourg, Poland, Slovakia, Slovenia and Spain also variably referred to the **need to ensure quality of law and policy making** despite the challenging situation, especially in terms of avoiding the systemic use of accelerated procedures, ensuring more clarity, openness and transparency of regulations and provide for inclusive and genuine consultations of independent bodies, civil society organisations and experts; but also, as mentioned by ENNHRI member in Portugal, as a means to avoid **delays in implementation and the insufficient or incorrect application of measures**, and to prevent **abuses by law enforcement authorities**, signalled by ENNHRI member in Greece. In a number of Member States, ENNHRI members further pointed to the **importance of sound impact assessments and an effective review of administrative decisions** to ensure proportionality: this was particularly mentioned by ENNHRI members in Austria, the Czech Republic, Germany, Ireland, Poland and Slovenia. Only in Denmark, ENNHRI's member **commended the increased proportionality of restrictions** compared to the measures first introduced in 2020 and welcomed the normalisation of law-making

procedures. In Germany, Romania, Slovakia and Slovenia, ENNHRI members provided examples of the **important role played by constitutional courts** in ensuring the review of restrictive measures.

Reporting by ENNHRI members also exposed how far-reaching restrictions imposed in response to the public health emergency still affected the exercise of a number of fundamental rights in 2021. These include **restrictions on freedom of assembly**, as reported in Belgium, Denmark, Hungary, Luxembourg and Slovakia – with ENNHRI members in Denmark and Hungary welcoming the progressive phasing out of assembly bans; **restrictions on free movement and travelling**, including access to private and public spaces and establishments, as mentioned by ENNHRI members in Belgium, the Czech Republic, Denmark, Slovakia, Slovenia and Spain; **restrictions affecting the right to family life**, in particular childcare, as illustrated in the country report on the Czech Republic; **disruptions on access to and delivery of justice**, particularly illustrated by ENNHRI member in Bulgaria and Greece; as well as **data protection derogations**, as reported in Belgium.

But the **right to health, other socio-economic rights and the right to equality and non-discrimination** appear as the mostly affected according to ENNHRI members' reporting.

As regards the right to health, some ENNHRI members, for example in Greece, praised the authorities' efforts to vaccinate the population and voiced the need to continue and strengthen efforts for a **fair, affordable, timely and full access to a COVID-19 vaccine**, including through the prioritisation of most vulnerable population groups by means of objective and transparent criteria. Elsewhere, ENNHRI members alerted about **unequal access to vaccination** especially for certain categories of people, such as foreign nationals (as reported in the Czech Republic) and ethnic minorities such as Roma (as reported in the Czech Republic and Hungary). At the same time, in-depth discussions about the **opportunity of compulsory vaccination** took place in countries such as Greece and Luxembourg. ENNHRI members also expressed concern about **unequal access to testing opportunities**, especially for vulnerable groups such as children with disabilities (as reported in the Czech Republic), and **reduced access to primary healthcare services** (as reported in Bulgaria, Portugal, Romania and Slovakia).

The **impact on socioeconomic rights** is also a common concern of ENNHRI members, as particularly illustrated in country reports on Austria, Bulgaria, Greece, Ireland, Romania and Spain. Common concerns related to the sharp **increase of unemployment, deteriorating working conditions, the widening digital gap, obstacles to the enjoyment of the right to education and to housing** as well as **unequal access to unemployment and social assistance benefits**. In Greece, the NHRI is particularly concerned with the widespread

impact of the socioeconomic crisis, and the long-term strain likely to affect the labour market and the national system of social protection.

Lastly, ENNHRI members in a majority of Member States expressed concern for the **exacerbation of systemic inequalities, discrimination and marginalization** as a result of the pandemic and the measures taken to address it. A number of specific groups are said to still be particularly impacted, including **minority ethnic groups** (in Cyprus and Ireland), and namely **Roma and Travellers** (as reported in Belgium, Bulgaria, Croatia, the Czech Republic, Cyprus, Greece, Hungary, Ireland and Slovakia) – especially as regards education and access to vaccination (in the Czech Republic and Hungary), primary healthcare (in Bulgaria), and widespread segregation practices and mass quarantines (in Slovakia); **women, children and youth** (as reported in Belgium, Bulgaria, the Czech Republic, Cyprus, Ireland, Portugal, Romania, Slovakia and Spain); **LGBTI+ people** (as reported in Greece); **victims of domestic violence** (as signalled in Ireland and Romania); **people in situation of poverty, precarious employment and in situation of homelessness** (as reported in Belgium, Croatia, Cyprus, Ireland, Portugal and Spain); the **elderly** (as reported in Belgium, Bulgaria, Croatia, Cyprus and Ireland); **persons with disabilities** (as reported in Bulgaria, Croatia, Cyprus, Greece, Ireland and Romania); **detainees and other persons deprived of liberty** (as reported in Austria, Cyprus, Greece, Ireland and Romania); **refugees, asylum-seekers and migrants** (as reported in Bulgaria, Cyprus, Greece and Romania). The **introduction of immunity certificates** is also seen as a potential measure that might deepen inequalities by ENNHRI members in Belgium, Croatia, Hungary, Romania and Spain.

Government initiatives to mitigate pandemic consequences

Many ENNHRI members **welcomed State authorities' efforts** to contain the pandemic and mitigate economic and social consequences. Notable examples are the public campaign to reduce debts towards public institutions in the Czech Republic and the suspension of energy and water cuts in Belgium and Spain.

However, some ENNHRI members noticed **gaps in particular in terms of access to measures of financial assistance**, including in Greece, Portugal and Slovakia, and **low awareness and take-up by beneficiaries** (such as in Belgium).

In some Member States, ENNHRI members also alerted about the risk that inadequate responses to the pandemic lead to **lower public trust** (as mentioned by ENNHRI member in Croatia and Latvia) and the **further polarisation of society**, which may be exploited by extremist movements (as signalled by ENNHRI members in Germany and Romania).

NHRIs' role and related challenges

ENNHRI members offer many examples of the **key role played by NHRIs** in dealing with the impact of the COVID-19 pandemic on rule of law and human rights protection.

NHRIs have been **drawing attention to problematic issues and advised and prompted follow-up action by State authorities** to address them: this includes the drawing up of a checklist on human rights impact assessments in Belgium, as well as the provision of opinions and advice taking many forms in several other countries including Austria, Bulgaria, Croatia, Cyprus the Czech Republic, Estonia, Finland, Germany, Hungary, Ireland, Latvia, Luxembourg, Portugal, Romania, Slovakia and Slovenia.

NHRIs also engaged in **regular and close monitoring of the impact of the pandemic and measures taken to address it on rule of law and human rights protection**, as reflected for example in the work of the COVID-19 Human Rights Observatory set up by the NHRI in Greece, or in the monitoring work focussed on persons in situations of vulnerability in Croatia and Cyprus, detainees and persons deprived of liberty in Austria, Belgium, Hungary and Ireland, of people with disabilities and people in situation of poverty in Belgium and Ireland, and of minorities in Germany and Slovakia.

ENNHRI members in Belgium, Bulgaria, Croatia, Estonia and Latvia particularly invested in **ensuring accessible communication on public interest information and awareness raising on the pandemic and measures taken** to curb or mitigate its consequences, including testing and vaccination campaigns and social protection measures. Elsewhere, such as in Portugal, ENNHRI members are working on **studies to assess the medium- and long-term impact of the pandemic on human rights and rule of law**.

While NHRIs' efforts are a tangible contribution in terms of monitoring, addressing and mitigating the challenges brought by the pandemic to rule of law and human rights, many ENNHRI members signalled **challenges in carrying out this work**.

These include **lack of cooperation and follow-up by national authorities**, as reported in Luxembourg and Slovenia; but also challenges related to the **impact of the pandemic on institutions themselves**, including in terms of workload (as reported in Belgium, Bulgaria, the Czech Republic, Portugal, Slovenia and Spain); limitations on contacts with the public, stakeholders and authorities and on the possibility to hold in-presence meetings and events (as reported in Austria, the Czech Republic, Denmark, Finland, Germany, Greece, Luxembourg, Slovakia and Slovenia); and restrictions on the possibility of carrying out onsite inspections (as reported in Belgium, Denmark and Greece). Against this background, ENNHRI members overall **strived to adapt their work and operations**, including by investing in their ICT systems, adapting their monitoring work to public health

requirements and ensuring flexibility in terms of staff working conditions – with most of them mentioning that this allowed them to maintain quality and efficiency in their day-to-day work.

Other systemic human rights issues impacting on the national rule of law environment

ENNHRI members also pointed at other systemic human rights issues which negatively impact on the rule of law environment in their countries.

ENNHRI Members reported on **systemic discrimination** such as school segregation of Roma children or discrimination in terms of use of national minority languages in Hungary. Concerns were also raised about police violence and ethnic profiling in Belgium. Whereas, in Slovenia the need to improve situation of persons with disabilities and other vulnerable groups was identified.

What is more, NHRIs in Poland and Slovakia identified **regression on the respect and realisation of sexual and reproductive rights as well as rights of LGBTI persons**.

Some ENNHRI members also acknowledged systemic human rights violation related to **conditions of detention**, including in Belgium and Poland. ENNHRI member from Belgium also pointed to the problem of non-execution on the ECtHR judgments on this matter.

It is worth noting that ENNHRI members from Bulgaria, Finland and Greece reported on the general problem occurring in their countries with **delays on and non-implementation of the judgments of the European Court of Human Rights**.

Some NHRIs indicate systemic human rights issues related to **social rights**. The NHRI in Austria highlighted that social rights are not protected on the constitutional level, while the NHRI in Spain outlined the problem with increase of poverty among Spanish citizens.

The NHRI in Denmark underlined the ongoing issue with **data retention rules** which are still in risk of violating EU law, despite state's attempt to introduce legislative reforms.

Addressing identified common challenges to the Rule of Law across the EU: Key Recommendations to national and EU policy makers

As this report shows, countries across the region, including in the EU, continue to be faced with important human rights, democracy and rule of law challenges, also exacerbated by the persisting impacts of the COVID-19 pandemic. The overview of trends illustrated above particularly points to challenges to NHRIs establishment, independence and effectiveness, threats and attacks to civic space and HRDs, restrictions on media freedom and pluralism and the impact of COVID-19 and measures taken to address it on rule of law and human rights protection as the most pressing common challenges emerging from this year's reporting, affecting rule of law both at national and EU level. Based on their monitoring functions, ENNHRI members also point to persisting human rights issues which, due to their systemic nature, continue to impact on national rule of law environments.

With a view to inform EU follow-up action to address these key challenges, as well as the country specific recommendations which the European Commission [committed](#) to include in its annual reports on the rule of law in the EU as of 2022, ENNHRI draws attention to the following policy recommendations which have been formulated on the basis of NHRIs' reporting and recommendations.

Ensuring independent and effective NHRIs in each country

As it was the case last year, reporting by ENNHRI members expose persisting challenges to NHRIs' establishment, independence and effectiveness across the EU. While most European countries have established and accredited NHRIs, some yet do not, and no significant steps were taken to that effect. In several Member States, existing institutions continue to experience obstacles in carrying out their work and are the object of threats to their independence and effectiveness, such as reduced formal independence, mandate limitations, lack of sufficient resources, dismissal attempts and other obstructions to their work including flawed consultation practices and poor cooperation on the side of authorities.

Against this background, ENNHRI and its members recommend to national authorities and EU and other regional and international actors to work together, in close cooperation with ENNHRI and NHRIs, to:

- Secure with no delay the **establishment of NHRIs** in compliance with the Paris Principles in those Member States when an NHRI does not yet exist;
- **Strengthen and streamline the mandate of existing institutions** in accordance with the Paris Principles, taking into account SCA opinions and the 2021 Council of Europe Committee of Ministers Recommendation on NHRIs;
- Ensure in all Member States **provisions on functional immunity** to protect heads of institutions and other staff in supervisory positions against threats, pressure and coercion;
- Provide NHRIs with **adequate budget**, including where needed additional financial and human resources, while taking steps to secure NHRIs' **financial independence**
- Engage in **genuine cooperation** with NHRIs, including in terms of ensuring thorough and timely debates of NHRIs' reports, involvement in law and policy making and access to information and data;
- Ensure an **effective consideration and implementation of NHRIs' recommendations**, including as appropriate by providing for legal standards as regards State authorities' response obligations and procedural rules on implementation, including timeframes;
- **Foster awareness about NHRIs' role and functions** among public authorities, stakeholders and the general public.

NHRIs, including through ENNHRI, stand ready to cooperate with national authorities and EU and other regional and international actors to that effect, while ENNHRI will continue to support the [establishment](#) and [accreditation](#) of NHRIs across the region, and to provide [support for NHRIs under threat](#).

Respecting and protecting civic space and human rights defenders

ENNHRI members' reporting confirm that civic space and HRDs continue to be negatively affected by restrictive laws and practices across the EU. No real progress was made on challenges identified in this area last year, including limited funding, gaps in access to and participation in decision-making and measures negatively impacting the exercise of freedom of expression and peaceful assembly, while threats and attacks, including legal harassment, are reportedly on the rise in some Member States.

With a view to safeguard and restore an enabling environment for the free exercise of civic freedoms and the safe and unhindered work of civil society organisations and HRDs, ENNHRI and its members recommend to national authorities and EU and other regional

and international actors to work together, in close cooperation with ENNHRI and NHRIs, to:

- Ensure a **framework for the protection of HRDs**, including better monitoring of threats and attacks and measures to promptly investigate incidents and prosecute perpetrators, including where they are State authorities;
- Take steps to protect civil society organisations and HRDs from the abuse of laws or process laws which result in forms of **legal harassment, including SLAPPs**;
- **Evaluate existing laws and practices** regulating or otherwise affecting civic freedoms, civil society organisations and HRDs against national, EU and international legislation, including regional and international human rights standards, and **repeal or revise rules resulting in undue restrictions**, in particular as regards rules on registration and dissolution, reporting and transparency obligations and criminalization of activities;
- Secure a conducive legal and policy framework to **enable civil society organizations and HRDs to carry out monitoring activities, humanitarian and advocacy work**;
- Ensure **better involvement of civil society and HRDs in law and policy making**, in particular to secure consultation and participation of vulnerable groups, including through representative associations and civil society organisations;
- Secure an **enabling financing framework** for all civil society organisations and HRDs to carry out their work and prevent or eliminate any undue obstacles to access to funding, including from foreign sources;
- **Foster awareness** about the relevance to rule of law and human rights protection of the work of civil society organisations and HRDs among public authorities, stakeholders and the general public.

This will remain an important area of work for European NHRIs, on which ENNHRI will continue to [foster collective action and collaboration](#) as well as engagement with national authorities, EU and other regional and international actors, in accordance with its [Regional Action Plan on HRDs](#).

Safeguarding media freedom and pluralism and freedom of expression and information

Several ENNHRI members across the EU point to a further deterioration of media freedom and pluralism. There was an increase in reported physical and verbal attacks, intimidation and harassment targeting journalists and media outlets, including through arbitrary arrests,

prosecutions and SLAPPs – also favored in a number of Member States by the existence of laws unduly restricting free speech and freedom of information. In some Member States, journalists faced further obstacles to reporting on sensitive issues while concentration, political and economic pressure continue to affect media, including public service media. At the same time, the rise in disinformation and hate speech overall does not seem to be met with adequate responses.

Considering the crucial importance of free, independent and pluralist media for the enjoyment of all human rights, and for rule of law and democracy, ENNHRI and its members believe it is urgent to address these challenges and recommend to national authorities and EU and other regional and international actors to work together, in close cooperation with ENNHRI and NHRIs, to:

- Ensure that threats and attacks against journalists by private or public actors are **regularly monitored and recorded and promptly investigated and prosecuted**;
- Take steps to protect journalists and media outlets from the abuse of laws or process laws which result in forms of **legal harassment, including SLAPPs**;
- **Evaluate existing laws and practices regulating or otherwise affecting the exercise of freedom of expression and information** against national, EU and international legislation, including regional and international human rights standards, and **repeal or revise rules resulting in undue restrictions**, in particular as regards defamation laws, other forms of criminalization of speech, rules on disinformation and illegal content, in particular online, as well as rules on secrecy and data protection;
- Secure a conducive environment for journalists to carry out their work, including by ensuring **free access to public interest data and information**, the **protection of journalistic sources** and the **protection of whistle blowers**;
- **Better safeguard media freedom and pluralism**, including by strengthening independent media authorities, ensuring access to public service media content without discrimination and preventing and addressing political and economic pressure on media;
- Fostering a **free and balanced public debate**, by countering disinformation, hate speech and illegal content, in particular online, while safeguarding freedom of expression and information, and by promoting adherence of all journalists and media to professional standards and ethics.

NHRIs, individually and collectively through ENNHRI, will continue to pay attention to challenges affecting media freedom, pluralism and freedom of expression and information across the region, as part of their [efforts](#) to address threats to democracy and rule of law.

Addressing and mitigating the impact of COVID-19 and response measures on rule of law and human rights protection

ENNHRI members' reporting point to continued impacts of the COVID-19 outbreak and of the measures taken to address the pandemic on rule of law and human rights protection. Common concerns include the continued use of emergency law-making procedures and the potential long-term impact on checks and balances as well as the persisting impact on the enjoyment of human rights and in particular the right to health, socio-economic rights and the right to equality and non-discrimination.

As outbreaks of COVID-19 may continue, and in light of the identified medium and long-term consequences of the public health crisis and measures taken to address it on rule of law and human rights protection, ENNHRI and its members recommend to national authorities and EU and other regional and international actors to work together, in close cooperation with ENNHRI and NHRIs, to:

- Ensure **legality and a strong legal basis for the adoption of restrictive measures** in situations of public health emergency, including by revising current emergency regimes or establishing new legal frameworks if needed;
- Take steps to ensure that **emergency law-making is subject to a sufficient degree of democratic oversight**, including through parliamentary scrutiny, genuine and effective public consultations with rightsholders, stakeholders and independent bodies, dissemination of clear, accessible and timely information and effective constitutional and judicial review;
- Secure **thorough human rights impact assessments**, including a specific attention to vulnerable and marginalised groups, and a **regular evaluation of restrictive measures** in force and their practical application in the light of the principles of legality, legal certainty, necessity and proportionality;
- When planning, designing and implementing responses and mitigating measures, pay **increased attention to challenges faced by vulnerable and marginalised groups**, to be reflected in positive measures, inclusive consultations, the adequate provision of information, and steps to promote access to justice and effective remedies against undue restrictions or unintended consequences of restrictive measures;

- Integrate in recovery and resilience plans **specific actions to address the impact of the pandemic on socio-economic rights**, including the right to health, the right to work and to fair working conditions, the right to education, the right to housing and the fight against poverty and social exclusion;
- **Support the efforts of independent monitoring bodies including NHRIs and of civil society organisations and HRDs** to monitor, report on and contribute to address challenges to rule of law and human rights protection, and **genuinely cooperate** with them, including by ensuring access to information and authorities and taking into due consideration their recommendations.

NHRIs, individually and collectively through ENNHRI, will [continue](#) to actively monitor and report on COVID-19 related developments relevant to rule of law and human rights protection, to inform and advise responses by national, EU and other international and regional actors and to map and raise awareness about efforts and good practices by NHRIs and civil society to respond and mitigate challenges.

Addressing structural human rights issues affecting the rule of law environment

Reports by ENNHRI members alert that the national rule of law environment in a number of EU countries continue to be affected by structural human rights issues. Common concerns relate to widespread violations, or the systemic failure to ensure protection, of the right to equality and non-discrimination, the right to liberty as well as social rights. This impairs the equal enjoyment of rights by individuals in society and risks perpetuating and even exacerbating societal divisions, inequality and marginalisation. In a number of countries, challenges are coupled with the pervasive neglect of the duty to ensure timely and effective implementation of relevant recommendations by monitoring bodies, including international and regional human rights mechanisms and independent authorities such as NHRIs themselves; and, likewise, compliance with relevant judgments by regional courts, and in particular the ECtHR and the CJEU, which contributes to a culture of impunity and lack of accountability of state authorities.

In view of the persisting and systemic nature of the identified human rights issues, and their impact on national rule of law environments, ENNHRI and its members recommend to national authorities and EU and other regional and international actors to work together, in close cooperation with ENNHRI and NHRIs, to:

- Ensure **compliance of laws and practices with international and regional human rights standards**, including the Charter of Fundamental Rights of the EU and relevant provisions of EU law;

- Ensure **timely and effective implementation of recommendations** by international and regional monitoring bodies, as well as independent authorities including NHRIs;
- Ensure **timely and effective implementation of judgments by regional courts**, namely the European Court of Human Rights and the Court of Justice of the EU;
- Ensure **meaningful consultation of NHRIs and civil society organisations** when drafting or revising relevant laws and policies, also as a means to ensure that the needs and interests of rightsholders, including vulnerable groups and marginalised communities, are properly taken into account.

As a European network of institutions whose legal mandate is to protect and promote human rights at the national level, a core component of ENNHRI's work is to raise awareness of, support and further build NHRIs' expertise and ability to strengthen the application of international and regional human rights standards and instruments. ENNHRI will continue to invest in coordinating capacity building and the sharing of practices, building in particular on its recently launched [Action Plan on strengthening the application of the Charter of Fundamental Rights in the European Union \(2021-2024\)](#). Leveraging the complementary and mutually reinforcing nature of the different layers composing the regional human rights protection system, the Action Plan identifies priority actions to foster broad regional learning on the application of the EU Charter, as a means to inspire NHRIs' practices on carrying out their human rights mandate and foster NHRIs' engagement with EU and other regional human rights actors.

Country reports

Austria

Austrian Ombudsman Board

Impact of 2021 rule of law reporting

Impact on the Institution's work

Following the last ENNHRI Rule of Law Report the Austrian Ombudsman Board (AOB) started a reaccreditation process for an "A" Status in autumn 2021. Since the last accreditation, the mandate of the AOB has been considerably expanded and a bundle of competences as well as the focus on human rights protection now ensure sustainable human rights work and full compliance with the Paris Principles. Therefore, this year's due decision about the AOB's request is awaited with anticipation.

Follow-up initiatives by the Institution

Despite the difficult situation of the pandemic, the ombudsman's office was able to hold many meetings, participate in exchanges and cooperate with civil society organisations, local actors, state authorities and other stakeholders on important issues. In the following, a few examples of the meetings and activities organized or joined in 2021:

- On 12 January 2021, the Ombudsman Board in cooperation with the EU Fundamental Rights Agency (FRA) organised an exchange to shed light on human rights protection in Austria in times of Covid-19 and to discuss how the independence of national human rights institutions (NHRIs) can be strengthened. The European perspective was broadened by the Slovenian Ombudsman Peter Svetina and the head of the European NHRI Network (ENNHRI), Debbie Kohner. (1)
- On March 11th, 2021 Austrian Ombudsman and IOI General Secretary Amon welcomed Prof. Michael O'Flaherty, Director of the European Union Agency for Fundamental Rights (FRA) for a conversation. Besides discussions about cooperation between the FRA and the IOI as well as the Austrian Ombudsman Board and the topics dealt with included inter alia the rights situation with regard to the Covid19-pandemic, how to strengthen NHRI's in the EU, current developments and focuses of both institutions, the FRA and the IOI. (2)

- The Ombudsman for International Affairs, Werner Amon, who is also Secretary General of the International Ombudsman Institute (IOI), received the European Ombudsman, Emily O'Reilly, at the premises of the Ombudsman Board for a joint exchange on October 12th, 2021. Both emphasised the importance of good cooperation and networking within the European Network of Ombudsmen (3).
- On Tuesday, 23 November 2021, Ombudsman Walter Rosenkranz welcomed a delegation from the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT), based at the Council of Europe in Strasbourg. The AOB-Experts used the opportunity to explain current developments in their respective fields of competence, to present initiatives of the Ombudsman Board and to point out current problem areas. Questions from the delegation on compliance with human rights standards in prisons, hospitals, care facilities and police inspectorates and detention centres were also answered (4).
- On the occasion of the visit to Austria of Dunja Mijatović, Commissioner for Human Rights of the Strasbourg-based Council of Europe, the Ombudsmen received a delegation from the Commissioner's office in Vienna on 15 December 2021. Ombudsman and Secretary General of the International Ombudsman Institute (IOI) Werner Amon reported on the planned expansion of the multilateral cooperation of the IOI, especially at the level of the United Nations. This was followed by an exchange on the main topics of Ms Mijatović's visit to Austria, "Women's rights and gender equality issues" and "Reception and integration of refugees, asylum seekers and migrants. The Ombudsman Board regularly receives the current office bearers of the Commissioner for Human Rights and cooperates closely with various committees of the Council of Europe that deal with human rights issues, such as the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) (5).
- The annual conference of the NPM Forum of the Council of Europe in 2021 addressed the role of the NPM in the effective implementation of judgments of the European Court of Human Rights and recommendations of the CPT. The thematic focus of the conference, in which the Austrian NPM participated, was on the problem of ill-treatment or allegations of ill-treatment by the police.
- The OSCE Office for Democratic Institutions and Human Rights (ODIHR) organised a training programme specifically for the Austrian NPM in the reporting period. The two-day training was dedicated to the use of direct coercion and the use of weapons as well as the use of teasers in prisons and by the police.

- The Austrian NPM is member of the South-East European NPM network (SEE NPM Network) and as such took part at two Meetings organized by the 2021's SEE NPM Network Chair Serbia. The first one offered an exchange platform for NPMs conducting preventive control during the pandemic, which was also joined by representatives of the United Nations Subcommittee on Prevention of Torture (SPT) and the European Committee for the Prevention of Torture (CPT).
- Since 2014, the Austrian NPM has been a partner in a programme for the exchange of experiences between NPMs in German-speaking countries (Germany, Austria, Switzerland - D-A-CH for short). Within the framework of this D-A-CH network, the National Agency for the Prevention of Torture in Germany invited to an exchange of experiences in Berlin in 2021.
- The AOB also cooperates bilaterally with Universities, experts and other stakeholders that are preoccupied with human rights and other topics with regard to the AOBs work. In 2021 an expert of the AOB and a Member of the NPM commissions, for example, contributed with a Speech about the work of the NPM with focus on the mandate to accompany and police during operations and manifestations and examine them, to the „Human Rights Clinic“, a project called into live by the department for public and penal law of the University of Bern. Moreover, the Austrian NPM was also represented in the yearly conference on health-promotion in incarceration which was dedicated to the topic „Deprivation of liberty in times of Covid-19 - challenges and opportunities“. The Austrian NPM gave a presentation on the special problems of migrants in law enforcement.

References

- (1) https://volksanwaltschaft.gv.at/artikel/Staerkung-unabhaengiger-Nationaler-Menschenrechtsinstitutionen-und-Menschenrechtsschutz-in-Zeiten-von-Covid-19?topic_type=archiv
- (2) https://volksanwaltschaft.gv.at/artikel/Direktor-der-Agentur-fuer-Grundrechte-der-EU-zu-Besuch-bei-Volksanwalt-Amon?topic_type=archiv
- (3) https://volksanwaltschaft.gv.at/artikel/Volksanwalt-Amon-trifft-die-Europaeische-Buergerbeauftragte-Emily-O-Reilly?topic_type=aktuelles&archiv=0
- (4) https://volksanwaltschaft.gv.at/artikel/Austausch-mit-dem-Europaeischen-Komitee-zur-Verhuetung-von-Folter?topic_type=archiv&archiv=2021

- (5) https://volksanwaltschaft.gv.at/artikel/Besuch-der-Menschenrechtskommissarin-des-Euoparats-in-der-Volksanwaltschaft?topic_type=archiv&archiv=2021

Regarding the information given without sources, we refer to the soon to be published annual reports of the AOB. All the AOBs reports are published on our website:

<https://volksanwaltschaft.gv.at/berichte-und-pruefergebnisse/berichte-an-den-nationalrat-und-bundesrat>

Independence and effectiveness of the NHRI

International accreditation status and SCA recommendations

The Austrian NHRI was last reaccredited with B-status in May 2011 (1).

At that occasion, the Sub-Committee on Accredited (SCA) found that the legislation at the time did not make specific provision for a broad mandate to protect and promote human rights, while acknowledging that the institution already interpreted its mandate widely, beyond maladministration issues. The SCA also encouraged the institution to develop regular and systematic working relations with civil society organisations. The Austrian NHRI was also recommended to advocate for a selection and appoint process that is clear, transparent and participatory, in line with the requirements under the UN Paris Principles and SCA's General Observations.

Due to several relevant developments that have taken place since the SCA's review, which was over a decade ago, the Austrian NHRI has applied for reaccreditation in order to demonstrate its compliance with the UN Paris Principles. Some of these developments are outlined below. The SCA will review the Austrian NHRI in March 2022.

References

- (1) [https://www.ohchr.org/Documents/Countries/NHRI/GANHRI/SCA%20REPORT%20MAY%202011%20-%20FINAL%20\(with%20annexes\).pdf](https://www.ohchr.org/Documents/Countries/NHRI/GANHRI/SCA%20REPORT%20MAY%202011%20-%20FINAL%20(with%20annexes).pdf)

Regulatory framework

The Austrian Ombudsman Board continues to function on the constitutional basis. The AOB enjoys full independence, which is granted within the constitution (Article 148a para 6 Austrian Constitution). Moreover, it has received an increase in staff as well as in budget.

The national regulatory framework applicable to the institution has not changed since the 2021 ENNHRI Rule of Law Report. The AOB is being recognized and accredited as Ombudsinstitution as well as NHRI and NPM. The Austrian NHRI has the mandate to contribute to access to justice for individuals, including through complaints handling and awareness raising. The mandate does not include the NHRI's engagement in strategic litigation before the courts.

The AOBs competence to investigate individual complaints as well as to conduct ex-officio investigations is enshrined in Art 148a item 1 & 2 of the Federal Constitution. According to Art 148a (4) Federal Constitution anyone may complain to the Ombudsman Board about an alleged delay by a court in the performance of a procedural act to the Ombudsman Board, if she/he is affected by it. If the AOB identifies a grievance or for another reason deems it necessary to make a recommendation to the bodies entrusted with the supreme administrative functions of the Confederation. Article 148c of the Federal Constitution stipulates that, the organ concerned shall either comply with these recommendations and inform the Ombudsman Board thereof or give reasons in writing why the recommendation has not been complied with. Furthermore, it grants the AOB the power to file a motion for the setting of a time limit aimed at eliminating the default of a court in specific cases (Art. 148a par. 4 Federal Constitution) as well as suggest measures of official supervision. Moreover, the AOB can recommend legislative reforms (Article 7 (2) Austrian Ombudsman Act 1982 (Volksanwaltschaftsgesetz). Another way the AOB is contributing to justice for individuals is preventive; through its right to comment on any proposed draft legislation or ordinance (Article 1 (2) item 4 Austrian Ombudsman Act 1982). For these purposes, all drafts must be forwarded to the AOB in a timely fashion (Article 7 (1) Austrian Ombudsman Act 1982). 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). According to Art 148a (5) The Ombudsman Board is also be responsible for participating in the handling of petitions and citizens' initiatives submitted to the National Council.

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. 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. Since the enactment of the Pensions for Victims of Children's Homes Act (Heimopferrentengesetz - HOG, BGBl. I Nr. 69/2017) in July 2017, the Pension Commission [Rentenkommission] has its seat at the AOB. The Pension Commission deals with the granting of pensions under this law to those people who have not yet been recognized as victims of violence and who suffered violence between 1945 and 1999 in a care home, foster family, hospital, psychiatric institution or a sanatorium. The same applies to persons who were victims of an act of violence in a private institution, provided that they were referred to it by a youth welfare agency. The commission's task is to examine whether the prerequisites for granting a pension have been met. Subsequently, it is responsible for submitting a proposal for a comprehensibly justified, coherent written recommendation of the College (meaning of the three members) of the AOB to the decision-maker (§ 15, para. 1, HOG). These recommendations are another means by which the AOB assists individuals in obtaining their rights.

References

- (1) Federal Constitution (mentioned here: Artikel 148a bis 148j des Bundes-Verfassungsgesetz, B-VG), available online:
<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);
- (2) Austrian OMBUDSMAN Act (Volksanwaltschaftsgesetz, Federal Law Gazette No. 433/1982), available online:
<https://www.ris.bka.gv.at/GeltendeFassung.wxe?Abfrage=Bundesnormen&Gesetzesnummer=10000732>
- (3) Pensions for Victims of Children's Homes Act (Heimopferrentengesetz - HOG, BGBl:
<https://www.ris.bka.gv.at/GeltendeFassung.wxe?Abfrage=Bundesnormen&Gesetzesnummer=20009898>

Enabling and safe space

The relevant state authorities have good awareness of the Austrian Ombudsman Board's mandate, independence and role of the NHRI, also because of the 45 years of activity of the AOB and the high level of recognition of the AOB among the civic society.

The AOB can recommend legislative reforms (Article 7 (2) Austrian Ombudsman Board Act 1982) and has the right to comment on any proposed draft legislation or ordinance (Article 1 (2) lit 4 Austrian Ombudsman Act 1982). For these purposes, all drafts must be forwarded to the AOB in a timely fashion (Article 7 (1) Austrian Ombudsman Act 1982). 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). Moreover, Article 148b. (1) of the Federal Constitution stipulates that, all organs of the federation, the provinces, the municipalities and the municipal associations and other self-governing bodies shall support the Ombudsman Board in the performance of its duties. Meaning that they have to allow the AOB to inspect files and to provide the necessary information upon request. Official secrecy does not exist vis-à-vis the Ombudsman Board.

In case the AOB issues a formal recommendation, the body concerned must either comply with these recommendations within eight weeks 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 1982). However, the AOB does not have any means of coercion to enforce this. It uses, however, reporting and awareness raising to draw attention to the maladministration and non-response of administrative authorities.

Due to its position in the constitutional structure, the Austrian NHRI enjoys complete independence and protection from interference hence there are no specific, additional measures introduced to protect the NHRI, heads of institution and its staff against threats and harassment. According to the Federal Constitution, the AOB is an auxiliary body of the National Council and is assigned to the legislative state function. This means that the AOB due to its status as a legislative body is independent of the entire state administration, the federal government and the governments of the Laender (provinces). Article 148a, para. 6 of the Federal Constitutional Law underlines that "the Austrian Ombudsman Board is independent in the exercise of its duties". The AOB is not subject to any instructions, neither from administrative, judicial nor legislative bodies. Although the members of the AOB are elected by the Austrian National Council (Article 148g, para. 2, Federal Constitutional Law), the three members (Ombudspersons) are not accountable to parliament. According to Article 148g, para. 6, Federal Constitutional Law, the members of the AOB have the same legal liability as the members of the Federal Government. A

member may also not be voted out of office by the National Council or the parliament (Landtag) of one of the Laender (provinces). For the performance of their duties, the three Ombudspersons are solely subject to legal liability before the Constitutional Court. (Article 141, para. 1, lit. e, Article 142, para. 2, lit. b, Article 148g, para. 6, Federal Constitutional Law ; §§ 72 et seq., Constitutional Court Law).

References

- (1) <https://www.ris.bka.gv.at/GeltendeFassung/Bundesnormen/10000138/B-VG%2c%20Fassung%20vom%2018.05.2021.pdf> (German)
https://www.ris.bka.gv.at/Dokumente/Erv/ERV_1930_1/ERV_1930_1.html
(bilingual)

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

The Austrian Ombudsman Board fulfils the criteria set out in the Paris Principles relating to the Status of National Institutions, Article 2, as the AOB through the amendment of the Federal Constitutional Law in 2012 has been given "a mandate as broad as possible" which is set forth in a constitutional text, which clearly specifies the AOB's composition and spheres of competence, but also additional features mentioned as essential requirements under G.O.1.1 in GANHRI's General Observations of the Sub-Committee on Accreditation. The crucial amendment the Parliament made in 2012 specifically enshrined the mandate of the AOB to protect and promote human rights in constitutional law (Article 148a, paras. 1 to 3, Federal Constitutional Law). In addition, according to the then newly introduced Article 148a, para. 3, Federal Constitutional Law, in order to protect and promote human rights, the AOB in cooperation with the newly established expert commissions, was, firstly, designated as National Preventive Mechanism (NPM) to monitor places of detention under the Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT). Secondly, the AOB and the expert commissions were given the role to monitor the conduct of executive authorities entitled to exercise direct administrative command and coercive power and thirdly, they got the responsibility to monitor facilities and programmes for people with disabilities under Article 16 , para. 3, UN Convention on the Rights of Persons with Disabilities (CRPD). With this reform of the Austrian Constitution, the AOB was firmly constitutionally anchored as National Human Rights Institution (NHRI). Since then, the AOB, which has always considered human rights work as an important part of its activities, has an explicit human

rights mandate enshrined in constitutional law. In 2017, another essential amendment to the Constitution was made, as the constitutional provision § 15, Pensions for Victims of Children's Homes Act (Heimopferrentengesetz - HOG, BGBl. I Nr. 69/2017) was introduced and, in order to implement this law, the Pension Commission was established by the AOB. Thus, in fall 2021 the AOB applied for an A-Status GANHRI re-accreditation in fall 2021 and is currently waiting for the decision.

In April 2021, the AOB announced a novation with regard to the NPM and its commissions: a separate nationwide commission, which is set up alongside the six regional commissions already in place, audits starting July 2021 the prisons and the correctional system. The six regional commissions continue to inspect old people's and nursing homes, facilities for people with disabilities, psychiatric institutions, facilities for children and youths accommodated by foreigners, barracks and police facilities. Police operations during demonstrations, border controls and deportations also fall under their control competence (1).

Apart from that, it has to be said that the constitutional legislator is responsible for the AOB and that the constitution guarantees the AOB complete independence. Due to the far-reaching mandate, the AOB can act entirely in accordance with the Paris principles.

References

- (1) https://volksanwaltschaft.gv.at/artikel/Volksanwaltschaft-Praeventive-Menschenrechtskontrolle-neu-aufgestellt?topic_type=archiv&archiv=2021

Human rights defenders and civil society space

With regard to the situation of human rights defenders and civil society space in Austria, the Austrian NHRI politely refers to the soon to be published annual reports of the AOB, where identified shortcomings, concerns, positive observations as well as AOB's recommendations will be presented. The AOB not only functions as an ombudsman institution, but also functions as NHRI, NPM, HOG and holds a mandate in accordance with the CRDP. Since 2014, the report has been presented in two separate volumes. The first volume deals with the control of the public administration and essentially includes the audit procedures concerning the federal ministries. The second volume covers, in particular, the preventive tasks to be fulfilled since 1 July 2012 by the Ombudsman Board and the commissions appointed by it in the context of their activities as a National

Preventive Mechanism (NPM) in implementation of the Optional Protocol to the UN Convention against Torture and as a control body under the UN Convention on the Rights of Persons with Disabilities. They cover cases of maladministration, shortcomings as well as positive perceptions, investigation and thematic focal points, recommendations, legal opinions, follow up on the reaction of authorities as well as information's about projects, held events, conferences joined, statistics, international involvement etc. Moreover, they comprise the impact of the pandemic on the situation of human rights, the actions of the authorities and the AOBs work. In these, you will please find a detailed list of our monitoring activities and observations as well as recommendations to the legislator as well as to public authorities.

References

- The reports will be published on the AOBs website:
<https://volksanwaltschaft.gv.at/berichte-und-pruefergebnisse/berichte-an-den-nationalrat-und-bundesrat>

Checks and balances

The Austrian Ombudsman Board notes that a comprehensive assessment of the impact of the pandemic on the system of checks and balances in Austria is not yet possible, as the pandemic is still ongoing and new measures to address the situation are being continuously enacted. The discussion about the legality of restrictions to fundamental rights and freedoms is a prominent one. The AOB is very engaged to help ensure that these are not disproportionately restricted and that action of public authorities complies with the rule of law in times of crisis. The AOB follows all the developments closely and precisely reports all observations and any possible emerging concerns. On this matter, we also kindly refer to the AOBs 2021 reports (to be published soon), in which, the current situation, concerns, and recommendations of the AOB in connection with checks and balances system will be presented in detail.

One example of the maladministration criticised by the AOB in the upcoming report is the long duration of proceedings in immigration law cases. In the last two years, the number of complaints in this area has risen sharply. The AOB has been pointing out deficiencies in the implementation of the law on non-refoulement and residence the Municipality Department for Immigration and Citizenship of Vienna, and recommends faster and more

uniform procedures. Besides that, due to the pandemic, there was an increased need for information and protection due to new and rapidly enforcing rules, which the AOB had to meet. It was often not clear which rules applied when, where and to what extent. Short-term changes in the legal situation can be unsettling. Authorities and competent bodies that were supposed to provide information and create legal certainty were overloaded and sometimes difficult to reach. This was problematic, for example, in the case of unclear segregation and quarantine measures. Another concern was, that it was hardly possible to measure the exact goals and effects of measures and thus to check their proportionality. However, the AOB is involved in the legislative process and has provided expertise within the scope of its mandate on this issue.

In Austria, too, there is a considerable number of opponents of the measures and restrictions imposed to handle the crisis and thus protests are increasing. An insight into the findings of the AOB concerning checks and balances in times of the pandemic is already available in the special Covid-19 report of 2020 (1).

References

- (1) <https://volksanwaltschaft.gv.at/downloads/60q2/PB%2044%20Covid-19%202020.pdf>

NHRIs as part of the system of checks and balances

Since 1920, the Austrian constitution has embedded a strong system of checks and balances. Since 1977, this has been supplemented by the establishment of the AOB, using soft law. Not least because of the high level of acceptance, the mandate of the AOB has been considerably expanded since 1977. The Parliament made a crucial amendment in 2012 (now Section 9 of the Federal Constitutional Law), in which it endowed the AOB with a broader human rights mandate. The mandate of the AOB to protect and promote human rights was specifically enshrined in constitutional law (Article 148a, paras. 1 to 3, Federal Constitutional Law).

In addition, according to the then newly introduced Article 148a, para. 3, Federal Constitutional Law, in order to protect and promote human rights, the AOB in cooperation with the newly established expert commissions, was, firstly, designated as National Preventive Mechanism (NPM) to monitor places of detention under the Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT). Secondly, the AOB and the expert commissions were given the role

to monitor the conduct of executive authorities entitled to exercise direct administrative command and coercive power and thirdly, they got the responsibility to monitor facilities and programmes for people with disabilities under Article 16, para. 3, UN Convention on the Rights of Persons with Disabilities (CRPD). With this reform of the Austrian Constitution, the AOB was firmly constitutionally anchored as National Human Rights Institution (NHRI). In 2017, another essential amendment to the Constitution was made, as the constitutional provision § 15, Pensions for Victims of Children's Homes Act (Heimopferrentengesetz - HOG, BGBl. I Nr. 69/2017) was introduced and, in order to implement this law, the Pension Commission was established by the AOB.

References

- Federal Constitution (mentioned here: Artikel 148a bis 148j des Bundes-Verfassungsgesetz, B-VG), 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);
- Pensions for Victims of Children's Homes Act (Heimopferrentengesetz - HOG, BGBl. I Nr. 69/2017) available online at <https://www.ris.bka.gv.at/GeltendeFassung.wxe?Abfrage=Bundesnormen&Gesetzesnummer=20009898>

Functioning of the justice system

In view of the AOB, in 2021 there were no specific laws, measures or practices that had impeded access to justice in Austria.

It is worth mentioning, though, that the majority of complaints Austrian NHRI received concerned the penitentiary system the detention of mentally ill offenders. The AOB for many years has been advocating for a legislative reform regarding prison system to ensure respect for mentally ill offenders' rights. Nevertheless, the AOB reflects on the functioning of the justice system in Austria in the soon-to-be published the Austrian Ombudsmen Board's Annual Report.

References

- https://volksanwaltschaft.gv.at/artikel/Volksanwalt-Amon-fordert-Reform-des-Massnahmenvollzugs?topic_type=archiv
- https://volksanwaltschaft.gv.at/artikel/Wie-ist-es-um-den-Massnahmenvollzug-in-oesterreich-bestellt?topic_type=archiv

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 order to get the rising number of infections under control, numerous restrictions in private and public life were also necessary in 2021. At the same time, these restrictions entailed massive encroachments on human rights, which were not always proportionate. For example, people in institutions were sometimes more restricted in their fundamental rights and personal freedom than the rest of the population. In almost all places where people are deprived of their liberty, from old people's homes to institutions or residential communities for people with disabilities, to prisoners and migrants in police detention centers, personal liberties have been disproportionately curtailed: visiting hours were cut or reduced to a minimum, exposing these groups of people to severe isolation. Similarly, other measures, such as bans on sports for detainees, the cancellation without replacement of daily programs as well as prohibition of interaction with other persons in appropriate facilities for elderly and disabled persons and persons in detention centers, have led to a disproportionate reduction in personal freedoms.

Fortunately, the criticism of the Commission's acting as NPM was often taken into account, so that in the course of the crisis the criticized conditions in various institutions improved. As an NHRI, the Austrian Ombudsman Board pays particular attention here to ensuring that the restriction measures are proportionate and limited in time. It is important to avoid a habituation effect. The AOB also uses its weekly television program as well as press releases to repeatedly address this issue and to inform about developments.

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

2021 still was shaped by the Covid-19 Pandemic, subsequently so was the functioning and work of the AOB. In February 2021, neither personal consultations could take place, nor the

regular consultation days of the ombudsmen held due to the necessary distance rules. Complaints and concerns could of course still be submitted in writing, by letter, e-mail or online form. If people preferred to present their complaint in person, the ombudsmen offered telephone consultations (1).

Since the need for control deemed necessary by the NPM, especially in times of the pandemic and the associated restrictions on freedom of movement, a lot of engagement from the Austrian NPM granted successful monitoring within the second year of the pandemic. In total, the commissions carried out 570 inspections in the reporting year, of which 541 were carried out in facilities and 29 during police operations. This exceeded the number of visits and observations in 2018, 2019 and 2020. In addition to their visit and observation activities, the commissions also held 13 round-table discussions with institutions and their superior departments. In 351 visits to facilities, the commissions found it necessary to complain about the human rights situation. In 210 inspections (190 facilities and 20 of 29 police operations), on the other hand, there were no complaints at all. Overall, the commissions found deficiencies in 63% of the inspections. The AOB also took advantage of a window of facilitated COVID 19 protection measures and conducted an exchange of experience with the commissions. At this exchange, the sites were presented in the development of the audit priorities and, in particular, the newly appointed commission members were thus able to gain an in-depth insight into the individual areas of control activity. The perceptions from the activities of the commissions and the recommendations derived from them are presented at the end of the respective chapter of the 2021 NPM report.

References

- (1) https://volksanwaltschaft.gv.at/artikel/Die-Volksanwaelte-sind-nach-wie-vor-persoenlich-fuer-Sie-da-ab-sofort-ueber-telefonische-Sprechtage?topic_type=archiv

The list of all recommendations since 2012:
www.volksanwaltschaft.gv.at/empfehlungsliste

Actions taken by the NHRI to promote and protect rule of law and human rights in the crisis context

The Austrian NHRI took further action to address problematic issues raised. The AOB took part in numerous meetings and exchange with other actors concerning this matter (the list

of such meetings is presented in the chapter on the impact of 2021 Rule of Law Reporting – follow-up initiatives by the institution). Initiatives and follow up research and reports regarding will be able to be found in the AOBs reports. In the following, some examples of how the AOB used press releases and other forms of media appearance to raise awareness and draw attention to matters deemed urgent:

- In May 2021 Ombudsman Achitz used his appearance on the TV-Show "eingeschenkt" as well as a following press-release to address mistakes made in Corona-Policy. He stated that the AOB has pointed out to the authorities that it is not appropriate to issue regulations at 10 pm that come into force at midnight the next day. Neither the police, who are supposed to enforce the rules, nor the people who are supposed to abide by them know what applies. This leads to lack of acceptance of the rules and sometimes unduly restricts fundamental rights and freedoms (1).
- In March 2021 Ombudsman Amon used a press release to draw attention to grievances in the prison "Stein", where, after the appearance of a Covid-Cluster in the facility, the Ombudsman deemed an ex-officio investigation necessary requested the Federal Minister of Justice to explain the measures taken and to inform the Ombudsman Board how the prison intends to contain the spread of the virus (2).
- On January 20, Ombudsman Achitz issued a press statement addressing shortcomings in the allocation of corona aid. Many people who became unemployed during the Corona pandemic received a one-time payment of 450 euros in spring as an "unemployment bonus" in addition to their unemployment assistance. However, many participants in courses for unemployed or vocational rehabilitation measures did not receive anything. "They are just as blameless for their situation as others who lost their jobs because of the Corona pandemic, and they need financial support just as badly. But because of technical details they have fallen over for the unemployment bonus," explained Ombudsman Bernhard Achitz. The Ombudsman Board confronted the Ministry of Labour with this and has now received a pleasing answer, said Achitz: "The Ministry assures that those affected will not only be taken into account in the next 'one-off payment'. They will also receive the unemployment bonus for the spring (3).
- In February 2021 the AOB published criticism about the inaction after the AOB has identified grievances with the Corona Family Hardship Fund (Corona-Familienhärtefond) which was introduced since the pandemic hit families with low incomes especially hard. However self-employed people only received the full

amount of support when the loss of income could be calculated by means of a tax assessment - i.e. only in the following year. Moreover, there was nothing about this in the support guidelines. Subsequently, the Ombudsmen sent a so-called "collegial maladministration assessment" to the regarding ministers. The Government largely ignored the criticism. However, they at least want to provide better information about the rules applied. The government also does not want to change the fact, criticised by the Ombudsmen, that there is no legal entitlement to the family hardship fund. Nevertheless, in the same press release Ombudsman Achitz was able to share good news as well: The AOB had also criticized fact that the government had not complied with EU law when it transferred benefits only to accounts at Austrian banks. The recommendations of the AOB have been heard in the meantime, now payments are also made to accounts in other EU countries (4).

- Moreover, the Human Rights Advisory Board issued comprehensive statements both on the basis of submissions by the AOB and on its own initiative. One based on submissions by the AOB: Supplementary questions on violations of the obligation to wear mouth and nose protection and to keep a distance at meetings (5), and another based on own initiative: Children and adolescents in institutions during the pandemic period (6).

References

- (1) https://volksanwaltschaft.gv.at/artikel/Soziale-Menschenrechte-in-die-Verfassung?topic_type=archiv
- (2) https://volksanwaltschaft.gv.at/artikel/Covid-Cluster-in-Justizanstalt-Stein-Volksanwalt-Amon-leitet-amtswegiges-Pruefverfahren-ein?topic_type=archiv
- (3) https://volksanwaltschaft.gv.at/artikel/Arbeitslosenbonus-Volksanwaltschaft-erreicht-Nachzahlung-fuer-Arbeitslose-in-Schulungen-und-beruflicher-Rehabilitation?topic_type=archiv
- (4) https://volksanwaltschaft.gv.at/artikel/Missstaende-beim-Familienhaertefonds-werden-offenbar-weiter-nicht-behoben?topic_type=archiv
- (5) https://volksanwaltschaft.gv.at/downloads/2ubou/Stellungnahme%20des%20MRB_Verst%C3%B6%C3%9F%20gegen%20die%20Pflicht%20zum%20Tragen%20eines%20Mund-Nasenschutzes%20und%20Versammlungsrecht%20-%2013.01.2021.01
- (6) <https://volksanwaltschaft.gv.at/downloads/6qr9c/Stellungnahme%20des%20MRB%20zur%20Einhaltung%20von%20Menschenrechten%20bei%20Kindern%20und%20Jugendlichen%20in%20Einrichtungen%20w%C3%A4hrend%20der%20COVID-19-Pandemie.pdf>

The special Covid-19 report 2020 issued by the AOB provides a first insight into the range of restrictions and the recommendations the AOB gave consequently, in the first year of the pandemic:

https://volksanwaltschaft.gv.at/downloads/164qi/PB%2044%20Covid-19%202020_BF.pdf

NHRI's recommendations to national and regional authorities

The Austrian NPM is recommending more and qualified personal and better working conditions in nearly all facilities dealing with health. In this field the pandemic must not be used as a justification for the lack of care. In order to ensure dignified and good care for people in old people's homes, institutions for the disabled, psychiatric institutions and hospitals, more staff and resources are indispensable.

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

The AOB's Ombudsman Achitz continuously campaigns for an inclusion of social human rights in the constitution. In Austria rights to housing, care for sick and old people, working rights etc. are stipulated on the basis of simple laws which can be abolished easily, thus there is a need to introduce them into the constitution, which also would make them more enforceable. Moreover, granted social rights also contribute to the enforcement of political rights. Since the agenda of the government includes the resumption of the catalogue of fundamental rights, the occasion to bring that topic to the table would be given. As many effects of the Corona pandemic have a much more drastic impact on people at risk of poverty than on the wealthy, an implementation of those rights could also ensure better protection for potential coming crisis.

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- https://volksanwaltschaft.gv.at/artikel/Volksanwalt-Achitz-Soziale-Menschenrechte-in-die-Verfassung?topic_type=aktuelles&archiv=0
- https://volksanwaltschaft.gv.at/artikel/Achitz-Sozialhilfe-Reform-muss-fuer-Existenzsicherung-und-Rechtssicherheitsorden?topic_type=aktuelles&archiv=0

Belgium

Federal Institute for the protection and promotion of Human Rights (FIRM-IFDH), Interfederal Centre for Equal Opportunities and Opposition to Racism (Unia), Federal Migration Centre (Myria) and Combat Poverty, Insecurity and Social Exclusion Service

This report was written by four ENNHRI member institutions: the Federal Institute for the protection and promotion of Human Rights (FIRM-IFDH), the Interfederal Centre for Equal Opportunities and Opposition to Racism (Unia), the Federal Migration Centre (Myria) and the Combat Poverty, Insecurity and Social Exclusion Service. The report was coordinated by FIRM-IFDH, and the latter is responsible for any editorial errors contained therein.

Furthermore, the four author institutions would like to point out that this report is incomplete: some elements relevant to the evaluation of the rule of law in Belgium are not mentioned, generally because the institutions have not had the opportunity to deal with this issue in recent months. The report therefore reflects the work of the institutions better than it provides a complete view of the strength of the rule of law in Belgium.

Impact of 2021 rule of law reporting

Follow-up by State authorities

Similarly to what happened in 2020, the federal advisory committee on European issues of the Belgian engaged in a national dialogue on rule of law with Commissioner Reynders on 13th December 2021. To the best of our knowledge, there was no other action or initiative.

References

- Sénat de Belgique, Le rapport 2021 de la Commission européenne sur l'État de droit, 13 December 2021:
https://www.senate.be/www/?MIval=/index_senate&MENUID=55000&LANG=fr&PAGE=/event/20211213-ComEurop/20211213-ComEurop_fr.html

NHRI's Recommendations to National and European policy makers

The institutions recommend the competent authorities to:

- Bring together the institutions and national authorities responsible for the follow-up of the Commission's rule of law report to help increase the impact of the annual rule of law reporting
- Organize an audition of the institutions by Parliament about the rule of law report

Independence and effectiveness of the NHRI

International accreditation status and SCA recommendations

At present, Unia is the only accredited institution in Belgium, currently holding a B-status. Myria and the Combat Poverty Service (also ENNHRI members) are not accredited, due to their restricted human rights mandate. FIRM/IFDH is also not yet accredited. However, all ENNHRI members work collaboratively to promote and protect human rights in Belgium.

Unia is effectively the successor to the Centre for Equal Opportunities and Opposition to Racism ('the Centre') which was officially created by an Act of Parliament of 15 February 1993 as an independent public body initially dedicated to the opposition to racism and the promotion of equal opportunities. The Centre for Equal Opportunities and Opposition to Racism was given B status in 1999, confirmed by a reaccreditation in March 2010. The interfederalisation of the Centre for Equal Opportunities in July 2012 prompted institutional change that resulted in the creation of two distinct juridical entities, Unia and Myria and the status associated with the parent institution was lost. Consequently, Unia and Myria decided to conclude a cooperation agreement. When Unia submitted a new request for accreditation in 2017, its statement of compliance referenced and took into account this cooperation agreement.

Unia was accredited with B-status in May 2018. During its accreditation, the SCA noted that Unia interprets its mandate broadly and undertakes a range of activities to promote all human rights, both on their own and in cooperation with other human rights bodies in Belgium. Yet, the SCA encouraged Unia to advocate for appropriate amendments to its enabling law to vest it with the mandate to promote and protect all human rights. In addition, the SCA put forward recommendations regarding the need for protection from criminal and civil liability for official actions and decisions undertaken in good faith, the selection and appointment of members of the decision-making body, and the need to ensure that the decision-making body includes full-time members. Unia has informed the SCA, after the accreditation, that this last recommendation can be a difficult observation to

address, and clarified the role, standards and functions of Unia's Interfederal Management Board.

FIRM-IFDH was created in 2019 with the aim of establishing an A-status NHRI in Belgium and will apply for accreditation as soon as possible. FIRM-IFDH has a human rights mandate limited to federal matters that are not covered by pre-existing bodies active in the field of human rights. However, to cover human rights issues as broadly as possible, FIRM-IFDH works in collaboration or in complementarity with other public institutions, both at the federal and the regional level.

In September 2019, the Flemish Government has announced its intention to cease its cooperation agreement with Unia, which is valid until March 2023. Since then, the Flemish Government has put forward an initiative for creating the Flemish Institute for Human Rights. In December 2021, the Flemish Government endorsed a preliminary draft decree providing the framework for the establishment of the new institution. The Flemish Government expressed the intention that the new Institute would comply with the UN Paris Principles and eventually seek to be accredited with A-status. In response to these developments, ENNHRI published a statement clarifying the applicable international standards. In line with the definition of an NHRI in the GANHRI Statute, no sub-national or regional institutions are accredited as NHRIs, the only historical exception being the United Kingdom. ENNHRI continues to provide its advice to Belgian authorities regarding the applicable international standards and the prospect of the establishment of an NHRI in full compliance with the Paris Principles in Belgium.

References

- GANHRI Sub-Committee on Accreditation Report – May 2018: https://www.ohchr.org/sites/default/files/Documents/Countries/NHRI/GANHRI/SCA_Report_May_2018-Eng.pdf
- ENNHRI advises on possible establishment of Flemish Institute for Human Rights and the UN Paris Principles: <https://ennhri.org/news-and-blog/ennhri-advises-on-possible-establishment-of-flemish-institute-for-human-rights-and-the-un-paris-principles/>

Regulatory framework

FIRM-IFDH

The national regulatory framework applicable to the institution has not changed since 2021.

FIRM-IFDH has no constitutional basis. While the institution does not handle individual complaints and does not provide legal assistance to individuals, it has the power to conduct strategic litigation before courts as well as awareness raising initiatives. FIRM-IFDH is also entrusted a general mandate to issue advices and reports on, monitor the respect of and promote human rights, including with regards to access to justice. Mandate includes follow-up on the decisions and recommendations of international courts and mechanisms, including on access to justice.

FIRM-IFDH believes its regulatory framework should be strengthened. As FIRM-IFDH is only competent for matters within the mandate of the federal authorities, there currently is no human rights institution with overall competence over human rights issues for the matters under the mandate of the Belgian federated entities (Communities and Regions). This is notwithstanding the mandate of institutions, which currently have an interfederal mandate, such as Unia and the Combat Poverty Service, and the mandate of regional human rights institutions, such as the commissioners for children's rights. The mandate of these institutions being limited to specific human rights issues, this leave important gaps in the protection of human rights. The federal government announced its intention to expand FIRM-IFDH's mandate to issues under the competence of the Belgian federated entities (the so-called 'interfederalisation' of FIRM-IFDH's mandate). This can be done by adopting a cooperation agreement between the federal state and federated entities, but no steps have been taken toward this end. On the contrary, the Flemish community is in the process of establishing a Flemish Human Rights Institute. While the process and details remain unclear for now, this may fill the above-mentioned gap at the Flemish level, but could also cause more delay and further complexify the situation. At the level of the French- and German-speaking Communities and Regions, no steps have been taken in any direction so far.

The federal government also stated it would give FIRM-IFDH the mandate to handle individual complaints. If granted, it would require increasing significantly FIRM-IFDH's budget. No steps have been taken in 2021 toward this end.

References

- Law of 12 May 2019 holding the establishment of the Federal Institute for the protection and promotion of Human rights (2019/12931), published 21 June 2019:
http://www.ejustice.just.fgov.be/cgi_loi/change_lg.pl?language=fr&la=F&cn=2019051210&table_name=loi
- Belgian federal governing agreement, 30 September 2020:
https://www.belgium.be/sites/default/files/Accord_de_gouvernement_2020.pdf

Unia

Unia is an independent interfederal public body and the former federal Centre for Equal Opportunities and Opposition to Racism. A cooperation agreement between and undersigned by the Federal government and the governments of the Regions and the Communities extended to cover the competencies of the Regions and Communities in addition to federal competences. This agreement opened up new opportunities for dialogue and collaboration between the government and civil society at different levels and in different parts of the country.

The national regulatory framework applicable to the institution has not changed since 2021.

Unia has no constitutional basis but has a legal basis through a cooperation agreement between the communities, the regions and the federal State. This cooperation agreement has the same rank as a law within the pyramid of norms.

The NHRI has the mandate to contribute to access to justice for individuals, including through complaints handling, strategic litigation before courts, providing legal assistance to individuals, conducting awareness raising initiatives and being granted the power to access and monitor prisons through its mandate under the Convention on the Rights of Persons with Disabilities (CRPD).

Unia believes its regulatory framework should be strengthened. Unia was recognized as a National Institution for the protection of Human Rights, B status, by the competent

international bodies². And if NHRIs, when they act as equality bodies, are to make a difference in the fight against discrimination, they must have investigation powers when allegations of discrimination are made, including the creation of an obligation to receive an answer to questions submitted by the NHRI, and to receive any useful document while respecting the provisions relating to privacy.

References

- Cooperation agreement between the federal authority, the Regions and the Communities aimed at creating an Interfederal Centre for Equal Opportunities and Opposition to Racism and Discrimination in the form of a joint institution, in the sense of article 92bis of the Special Act of 8 August 1980 on the Reform of the Institutions:
https://www.unia.be/files/Z_ARCHIEF/cooperation_agreement_0.pdf

The Combat Poverty, Insecurity and Social Exclusion Service

The Combat Poverty Service is a non-accredited, interfederal, institution that 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, Myria and the Federal Institute for the Protection and Promotion of Human Rights (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. There have been no changes in the regulatory framework applicable to the Combat Poverty Service in the past year.

References

- Cooperation Agreement between the Federal State, the Communities, and the Regions concerning the continuation of the Poverty Reduction Policy, published 16 December 1998 and 10 July 1999:
<https://www.combatpoverty.be/publications/Cooperation%20Agreement.pdf>

² In 2014, the former Centre for Equal Opportunities and Opposition to Racism lost its status as national human rights institutions in the context of the split into Unia and Myria. Unia was thus required to demonstrate its independence and expertise anew.

Myria

Myria, the Federal Migration Centre, is an independent, non-accredited, federal body. It analyses migration, defends the rights of foreigners and combats human smuggling and trafficking. Myria promotes public policies based on evidence and human rights.

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

References

- Act of 17 Augustus 2013 adapting the Act of 15 February 1993 creating a Centre for Equal Opportunities and Opposition to Racism with a view to transforming it into a Federal Centre for the Analysis of Migration Flows, the Protection of the Fundamental Rights of Foreigners and the Fight against Human Trafficking, Belgian Official Bulletin, 5 March 2014:
<https://www.myria.be/files/170813.pdf>

Enabling and safe space

Overall, institutions generally have a satisfactory framework in Belgium which enables them to carry out their tasks. However, a number of changes are required to strengthen their effectiveness and independence, and the creation of new regional institutions raises some concerns.

Federal Institute for the Protection and Promotion of Human Rights (FIRM-IFDH).

FIRM-IFDH only became operational in February 2021. We have had introductory meetings with all relevant Parliamentary commissions and political groups, several relevant administrations and public institutions. So far, there seems to be a good understanding of our mandate, role and independence.

FIRM-IFDH is being invited on a regular basis to issue advisory opinions on draft legislation. In addition, FIRM-IFDH has issued advisory opinions of its own initiative, which has been welcomed by Parliament. At this stage, FIRM-IFDH is not automatically called upon by Parliament on relevant legislation pertaining to human rights. This can be explained by the relative newness of FIRM-IFDH, but remains nevertheless a point of attention. FIRM-IFDH has not been involved yet in any process of policy development. Therefore, FIRM-IFDH will continue and further develop its advocacy and awareness-

raising activities, as to be on the radar of Parliament and policy makers on a permanent basis.

There is no legal obligation to provide a response to FIRM-IFDH's recommendations or to consider FIRM-IFDH's advisory opinions. There is no obligation for Parliament to organize a public hearing on FIRM-IFDH's annual report or its recommendations.

As regards measures to protect and support the institution, heads of institution and staff against threats and harassment and other forms of intimidation, board members and staff have been granted immunity by law and cannot be held accountable under civil or criminal law for any decisions, acts or activities within the limits of their mandate.

In particular, FIRM-IFDH draws attention to three elements:

1. **Mandate:** FIRM-IFDH's mandate is limited to matters under federal competence and to residuary matters for which no other independent public institution is competent for. In order to cover human rights issues as broadly as possible, FIRM-IFDH works in collaboration or in complementarity with other public institutions, such as Unia, Myria, the Combat Poverty Service, the Central Monitoring Council for Prisons, etc. In addition, the announced creation of a Flemish Human Rights institute, which – in the absence of any institution with an overall mandate to protect human rights on matters under the competences of the Flemish community and region – is a positive development, risks to further complicate the promised 'interfederalisation' of FIRM-IFDH's mandate. In addition, it will create more complexity for citizen's who deal with human rights issues which would be partly under the mandate of FIRM-IFDH and partly under the mandate of the new Flemish institute.
2. **Independence:** FIRM-IFDH's independence is well established and guaranteed by law. Yet, a point of attention is the ongoing exercise of Parliament to create more synergy between the various public institutions created by Parliament, in view of centralising certain support services (e.g. IT, translations, accountancy, printing services, HR processes, reception services...). FIRM-IFDH has recently sent a position paper to Parliament drawing attention to the fact that this exercise, if taken too far, may affect FIRM-IFDH's independence under the Paris Principles, with reference to the SCA-GANHRI general observations. It notably highlighted the need to ensure the independence of the shared service centre from Parliament and also emphasized the need for FIRM-IFDH to retain its independence with respect to the recruitment of future staff. Finally, it stressed the need to make sure that proposed new staff regulations respect the independence and freedom of expression of FIRM-IFDH's staff.

3. Mandatory response to recommendations: there is currently no legal obligation to respond to FIRM-IFDH's recommendations or to consider its advisory opinions, nor an obligation for Parliament to have a public hearing on its annual report and recommendations. Such an obligation was proposed by the recent Recommendation 2021/1 of the Committee of Ministers of the Council of Europe on NHRIs, but does not exist as such in the Paris Principles.

Unia also advised stakeholders and the Flemish government relating to the creation of a new human rights institution in Flanders, following the Flemish government's decision to withdraw from Unia in 2023. The current proposal of legal framework for the new Flemish institution does not fully respect the standstill principle. Indeed, contrary to Unia, the Flemish institution would not be allowed to litigate before courts. This would lead to a diminished protection for the victims of human rights abuse.

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

Although the authorities are generally well informed of Unia's interfederal mandate, role and independence, the multiplicity of human rights institutions in Belgium contributes to the confusion of the message. The creation of a new institution intended to be the regional human rights institution in Flanders in 2023 (for regional competences) may further increase the complexity of the Belgian institutional landscape and access to justice for victims of human rights abuse.

Unia is regularly invited to take part in different parliamentary assemblies and is sometimes consulted by the ministerial cabinets regarding draft legislation. For example, in 2021, Unia presented its annual report to the Federal Parliament and exchanged with the MPs on different topics, was auditioned on the socio-economic impact of migration, on a draft law banning nazi symbols as well as on a draft law on the prohibition of anti-democratic groups.

Unia's recommendations are generally taken into account, although not always in a timely nor a systematic manner. There are no measures or practices in place in Belgium to ensure timely and reasoned response to Unia's recommendations.

As regards measures to protect and support the institution, heads of institution and staff against threats and harassment and other forms of intimidation, there is no functional immunity from threats, pressure or coercion guaranteed, even for persons in managerial or supervisory positions, for acts related to the exercise of their mandate. Such functional immunity should be introduced in the legislation.

References

- Unia statement on the future Flemish human rights Institute:
<https://www.unia.be/fr/articles/le-gouvernement-flamand-discute-de-la-creation-dun-unia-flamand>
- ENNHRI Statement on the future Flemish human rights Institute:
<https://ennhri.org/wp-content/uploads/2021/11/ENNHRI-statement-on-Flemish-initiative.pdf>

NHRI's recommendations to national and regional authorities

- persons in managerial or supervisory positions in the Equality body and public independent human rights institutions that do not yet benefit from it, for acts related to the exercise of their mandate, to protect them from threats, pressure or coercion.
- Create an obligation to index the budget of the Equality body and public independent human rights institutions that do not yet benefit from it, in line with changes in the cost of living (particularly wages). Create an obligation to accompany any new mission or mandate given to the NHRI and the Equality Body by a recurrent and sufficiently large additional budget to ensure its effectiveness.

Human rights defenders and civil society space

Human rights defenders in Belgium generally have a good level of protection against threats, violence and intimidation. Civil society is generally strong, with some specific concerns with apparent financial retaliations against some organizations. However, there are some specific areas of concern, such as the impact on civic space and rights defenders of measures taken in the context of the fight against terrorism or the banning of associations considered undemocratic.

Laws and practices negatively impacting on civil society space and/or on human rights defenders' activities

In June 2021, FIRM-IFDH [commented](#) on three law proposals aimed at prohibiting and allowing the dissolution of certain groups and organizations formed for the purpose of inciting hatred, violence or discrimination. These proposals also meant to allow sanctioning those who set up, assist or are members of such organizations. While FIRM-IFDH

welcomed the legislator's continued commitment to combating organizations that incite hatred, discrimination and violence, it noted that the current legal framework was sufficient to that end. It further stressed that alternative sanctions to the dissolution constituted more proportionate sanctions, less likely to impact the right of association. FIRM-IFDH also emphasized that any dissolution of an association or a group should be decided by the judiciary and not by the executive. Unia was likewise auditioned on this same issue.

In its [report](#) to the UN the Committee against torture, FIRM-IFDH criticized the use of the concepts of “radicalism” and “radicalization” by Belgian authorities to preventively manage the terrorist threat. It highlighted the increasing tendency to use vague and ill-defined concepts in order to justify i.a. bans on working in certain sensitive areas, refusals to grant Belgian nationality, the closure of establishments by communal authorities, refusal to issue a Belgian passport or travel document, revocation of a residence permit as well as expulsion of foreigners from Belgian territory. FIRM-IFDH found that, while there exists no legal definition of the concepts of “radicalism” and “radicalization”, Belgian authorities nonetheless relied on working definitions given [by the National taskforce](#) coordinated by the Coordination Unit for Threat Analysis, which lack precision, notably describing radicalism as “the willingness to accept the most extreme consequence of an opinion and to follow it up with action”. This finding was taken up by the Committee against torture in its August 2021 [concluding observations](#) on the fourth periodic report of Belgium. They had also previously been made by the [Special Rapporteur](#) on the promotion and protection of human rights and fundamental freedoms while countering terrorism. FIRM-IFDH considers that the use of imprecise concepts such as “radicalism” and “radicalization” can have a deterrent effect and prevent speech on some topics deemed too sensitive by the authorities, as well as incite individuals not to associate to discuss those issues, thus limiting disproportionately freedom of expression and association. This is especially the case as parliament members have labelled groups of individuals or civil society organisations as “radical” in the context of discussions on the aforementioned law proposals aimed at prohibiting and allowing the dissolution of certain groups and organizations formed for the purpose of inciting hatred, violence or discrimination.

References

- FIRM-IFDH, 14 June 2021, Report of the Federal Institute for the Protection and Promotion of Human Rights to the Committee against Torture, available in English:
<https://www.federalinstitutehumanrights.be/file/cc73d96153bbd5448a56f19d925d05b1379c7f21/dbfb742c3ae04d5f41f7f92036b579a03a5671a9/read-the-report.pdf>
- FIRM-IFDH, 23 June 2021, Observation No. 1/2021, available in [French](#) and [Dutch](#).
- United Nations General Assembly, Report of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism – Visit to Belgium, UNGA., 40th session, 8 May 2019, A/HRC/40/52/Add.5.
- Committee against Torture, Concluding observations on the fourth periodic report of Belgium, 30 July 2021, 41st sess., CAT/C/BEL/CO/4

NHRI's role in promoting and protecting civil society space and human rights defenders

FIRM-IFDH has not yet produced a general report on the issue of "Defend the human rights defenders". This is one of its priorities for 2022.

Unia is a member of ENNHRI and of Equinet. Both organisations regularly invite their members to join actions in support of threatened NHRIs and equality bodies, including threats and actions taken against their staff. Unia contributed by sending letters and sensibilising Belgian national authorities to situations arising in third countries. FIRM-IFDH, Myria and the Combat Poverty Service also took part in some of those actions, including sensibilising the government on supporting the Afghan Independent Human Rights Commission following the Taliban takeover of Afghanistan.

References

- FIRM-IFDH's Strategic Priorities for 2022:
<https://www.institutfederaldroitshumains.be/publications/plan-annuel-2022>

Checks and balances

Checks and balances are historically strong in Belgium. However, several worrying trends show a weakening of these checks and balances, notably due to a lack of respect for judicial decisions, in particular European ones, insufficient execution of certain judgments, and an important conflict of interest within the Data Protection Authority. These issues have arisen in relation to three specific areas: migrants' rights, to access to information and to the independence of human rights public institutions.

Migrants' rights

Myria notes several problems relating to access to information and judicial review for foreigners. These include:

- 1. Persistent problems with information to access international protection.**
Myria notes that the Belgian regulation does not comply with the obligation to inform and relay an asylum application addressed to an incompetent authority (police, magistrate...), contrary to the case law of the ECJ (25 June 2020, [VL v. ministerio fiscal](#)). In Belgium, the incompetent authority to which an asylum application is submitted is not obliged to transmit this application to the Office des Étrangers. [There is a lack of training to make these authorities](#), the police, prosecutors and magistrates, aware of the dual obligation (information and transmission of the application to the Office des Étrangers) under EU law.
- 2. No automatic suspensive appeal for foreigners at risk of refoulement** (Article 19 Charter). The Belgian procedure does not provide for an appeal with suspensive effect ipso jure against a return or removal decision for foreigners who claim a serious risk of ill-treatment in the country of origin, residence or transit, despite two judgments of the ECJ ([B. v. CPAS de Liège](#), § 46; [LM v. CPAS de Seraing](#), § 35, both from 30 September 2020). As soon as a foreigner invokes a grievance which is not manifestly ill-founded, the appeal lodged must be fully suspensive. It is up to the legislator to reform the law in this sense, and to the courts to leave the legislation unapplied pending the legislative amendment ([B. v. CPAS de Liège](#), § 57).
- 3. Refusal to refer questions to the ECJ for a preliminary ruling.** In a [judgment of 23 December 2020](#), the Court of Cassation refused to refer a preliminary question to the ECJ on the compatibility of the Belgian procedure for appealing against a decision to detain a foreigner administratively with European standards. This decision is also concerning because it appears to be contrary to the [Saqawat judgment](#) of the ECtHR (§§72-73).

Freedom of access to information

Access to public information is generally not a problem for researchers in Belgium. However, a researcher recently raised awareness on difficulties encountered to receive information about the functioning of a data warehouse called "OASIS". OASIS is a data warehouse for social security, operational since 2005, that is also used to profile individuals in order to fight social fraud. In a recent scientific paper, Elise Degrave, an academic specialised in information technology law, reports that she was denied access to information about OASIS. Moreover, she underlines that the legal framework for OASIS was missing between 2004 and 2018. A legal provision was introduced in 2018, but still lacks clarity and specificity.

Independence of public institutions:

In February 2021, after writing to the Parliament, two directors of the Data Protection Authority (Alexandra Jaspar and Charlotte Dereppe) sent a letter to the European Commission about conflicts of interests on the part of some members of their institution. On 9 June 2021, a letter of formal notice was sent to Belgium by the Commission. Following a lack of appropriate response and the retention of the members found in conflict of interests, a reasoned opinion was sent to Belgium on 12 November 2021.

This conflict of interests remains to be unsolved. Instead, a parliamentary working group was tasked to investigate serious misconduct of some of the five directors, including the two whistle blowers. This investigation do not cover all the persons for which a conflict of interest had been flagged. The two whistle blowers have denounced harassment and bullying measures, and Alexandra Jaspar resigned from her position on 8 December 2021.

Furthermore, a law proposal "amending the law of 3 December 2017 establishing the Data Protection Authority (...)" was submitted to the Parliament on 26 November 2021, creating an "Advisory Board". Several actors within the Belgian civil society have raised concerns that some or all of the members whose independence is being questioned could be offered a position in the Advisory Board.

References

Migrants' Rights

- Myria, la migration en chiffres et en droits (2021), cahier « Protection Internationale »: <https://www.myria.be/fr/publications/le-rapport-migration-2021-sous-forme-de-cahiers>
- Cass., arrêt du 23 décembre 2020, P.20.1196.F.:
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Freedom of access to information:

- Degrave, E 2020, 'The Use of Secret Algorithms to Combat Social Fraud in Belgium', *European review of digital administration & law*, vol. 1, no. 1-2, pp. 167-178: <http://www.aracneeditrice.it/pdf2/978882553896015.pdf>

Independence of public institutions:

- European Commission, June infringement package: key decisions, 9 June 2021 : https://ec.europa.eu/commission/presscorner/detail/en/inf_21_2743
- European Commission, October infringements package: key decisions, 12 November 2021:
https://ec.europa.eu/commission/presscorner/detail/en/inf_21_5342
- RTBF (national television), Alexandra Jaspar, l'une des directrices de l'Autorité de Protection des données démissionne: "L'APD est un chien de garde qui ne mord pas !", 8 December 2021:
https://www.rtbf.be/info/belgique/detail_alexandra-jaspar-l-une-des-directrices-de-l-autorite-de-protection-des-donnees-demissionne-l-apd-est-un-chien-de-garde-qui-ne-mord-pas?id=10893477
- Ligue des droits humains, Lettre au Parlement, 8 December 2021:
<https://www.liguedh.be/wp-content/uploads/2021/12/21.12.08-Lettre-parlement-APD.docx.pdf>
- Proposition de loi modifiant la loi du 3 décembre 2017 portant création de l'Autorité de protection des données, visant à modifier la composition du centre de connaissances pour garantir l'indépendance de ses membres:
<https://www.lachambre.be/FLWB/PDF/55/2347/55K2347001.pdf>

Trust amongst citizens and between citizens and the public administration

In its role of handling complaints, Unia has received many reports of distrust or at least a certain distance from decisions taken by public authorities, including, sometimes, as regards the scientific findings on which such decisions are based, in particular in the context of the ongoing public health crisis. Unia has been addressed questions and has been involved in debates that show the difficulty of finding a democratic compromise in which divergent points of view are not excluded. In particular, the implementation of the Covid Safe Ticket has polarised our society. The introduction of this instrument has led to an important increase of complaints: between 21 August and 15 October 2021, an initial count of complaints about the pandemic and the Covid Safe Ticket had reached 1,255 (almost half of the 2,357 complaints received during the same period). While it is true that it has been an opportunity for those who already held radical views to find a sympathetic ear with many, the communication and implementation of these measures by the authorities have also contributed to this effect.

References

- Unia, Report “COVID-19, les droits humains à l’épreuve”, 2021 : <https://www.unia.be/fr/publications-et-statistiques/publications/covid19-les-droits-humains-a-lepreuve-2021>

NHRIs as part of the system of checks and balances

In 2021, FIRM-IFDH and Unia have undertaken actions to contributing to a healthy and effective system of checks and balances in Belgium. Furthermore, Unia litigated before courts and cooperates with regional actors on a regular basis. Examples of such initiatives are outlined in the paragraphs which follow.

In an advisory opinion⁽¹⁾ to the Belgian parliament, FIRM-IFDH strongly emphasized the need for more transparency in the use of artificial intelligence (AI) and algorithmic systems by public authorities, including modifying legislation in order to allow human rights defenders and civil society to effectively scrutinize the use of AI by the authorities and its impact on the enjoyment of human rights. Transparency on how those tools are developed and used is of paramount importance to ensuring respect for the rule of law and access to information by civil society. It is also of the utmost importance to ensure the capacity of the judiciary to provide redress in situations where the rights of individuals may have been breached by the actions of authorities using these systems. In order to achieve

this transparency, FIRM-IFDH suggested the creation of a registry inventorying the uses of AI and algorithmic systems, how they were created, and the safeguards adopted to ensure they don't contribute to human rights violations.

In another opinion (2), FIRM-IFDH highlighted the need to ensure the existence of effective remedy when a citizen is denied access to administrative documents. It stressed the importance of the right of access to information as part of a wider approach to effective checks and balances. In yet another opinion (3), FIRM-IFDH stressed the importance to notify individuals who have been subjected to surveillance measures by security and intelligence services, as a necessary precondition to an effective remedy for the persons affected by those measures.

FIRM-IFDH has also developed a systematic practice of monitoring the execution of judgments of the ECtHR against Belgium. In this way, FIRM-IFDH has made numerous bilateral contacts to evaluate respect for the right to an effective remedy, access to justice or the right to free elections. More importantly, FIRM-IFDH, in collaboration with the Conseil central de surveillance pénitentiaire (CCSP-CTRG)(4), sent a Rule 9 communication to the Council of Europe criticising the execution of the *Clasens* and *Detry* judgments, with regard to the prevention of torture and inhuman and degrading treatment in prison. Another Rule 9 communication on the detention of foreigners, drafted with Myria, is currently being finalized. A similar implementation monitoring process has also been put in place for decisions of the European Committee of Social Rights (ECSR). FIRM-IFDH reported to the Committee (5) in June 2021 on the lack of follow-up to Belgium's condemnation by the Committee for tolerating corporal punishment of children.

Likewise, Unia submitted a communication under Rule 9.2 to the Committee of Ministers for the follow-up of the implementation of the case *L.B. v. Belgium*(6), which concerns the 7 years-long detention of a man suffering from mental health problems in psychiatric wings of prisons. Unia also submitted third parties interventions to the ECSR, as in the collective complaint n°141/2017 (*FIDH et Inclusion Europe c. Belgique*). The Committee ruled that Belgium does not comply to the Charter when it comes to inclusion of children with intellectual disabilities in the school system. Unia was also auditioned on numerous occasions by Parliament, among which by the Interior's Commission regarding three bills related to groups that incite to discrimination, hatred or violence(7).

References

- (1) FIRM-IFDH's advisory opinion on the use of AI by public administration:
<https://www.institutfederaldroitshumains.be/publications/usage-d-algorithmes-par-les-administrations>
- (2) FIRM-IFDH's advisory opinion on the reform of the access to public documents Act (to be published shortly).
- (3) FIRM-IFDH's advisory opinion on the creation of a duty to inform individuals that have been subjected to surveillance measures by security services:
<https://www.institutfederaldroitshumains.be/publications/usage-d-algorithmes-par-les-administrations>
- (4) Communication from an NHRI (Federal Institute for Human Rights) and Central Monitoring Council for Prisons in the *Clasens* group of cases v. Belgium: [https://hudoc.exec.coe.int/eng - {%22EXECIdentifier%22:\[%22DH-DD\(2021\)1104F%22\]}](https://hudoc.exec.coe.int/eng - {%22EXECIdentifier%22:[%22DH-DD(2021)1104F%22]})
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Functioning of the justice system

The Belgian judicial system continues to function well, and several ambitious reforms have been announced in 2021 or have started to be implemented. However, the multiple condemnations of Belgium by the European Court of Human Rights in the Bell Group remain unexecuted, almost 20 years after the first conviction. Several issues regarding respect of migrants' rights are also outstanding.

Right to an effective remedy and a fair trial in relation to migrants' rights

Effective remedy to guarantee the right to reception for applicants for international protection

Since October 2021, dozens of asylum seekers have found themselves without the possibility of registering their application and without access to the reception to which they are entitled on the basis of the law and the Reception Directive (2013/33/EU). Those migrants receive little information about the possibilities of judicial review. The Brussels Labour Tribunal has rejected some appeals due to the absence of Annex 26, the document proving the registration of the application for international protection (see, i.e., judgments of [10 December 2021](#) and [26 November 2021](#)). However, the impossibility of access to the administrative premises of the Arrival Centre prevented the migrants from obtaining this document. This case law appears to be contrary to EU law, which guarantees the right to reception without any particular formality (see [VL v. ministerio fiscal](#), 25 June 2020, § 92 and fol.). Failure to provide a judicial remedy has consequences for access to reception and international protection itself.

Signature of a waiver of appeal or court order by foreigners at the border without full information

Myria has encountered situations where detained foreign nationals sign voluntary return documents that explicitly state a waiver of appeal or court order. These documents are rarely signed in the presence of a professional interpreter and the foreigner is sometimes unable to discuss them with his or her lawyer. Belgium has already been condemned twice by the ECtHR for a return considered as "voluntary" by the authorities, deemed contrary to Article 3 ECHR ([M.A. v. Belgium](#), 27 October 2020, §§ 26-31, §§ 60-61 ; [M.S. v. Belgium](#), 31 January 2012, §§ 120-125). In M.A., such a document was signed without an interpreter and without prior consultation with a lawyer and, according to the applicant, under the threat of an uniformed man stating that a sedative would be administered to him if he refused, despite the fact that a prohibition on his deportation had been issued by the court of first instance (see § 28).

Insufficient information for foreigners at the border on their right to international protection and effective remedy

Myria is concerned by the insufficient transposition of Article 8 of the [Procedure Directive](#) by Belgium and the difficult access to information, to an interpreter and to legal aid for foreigners intercepted by the border police, including when they are [potential applicants for international protection or victims of human trafficking](#). Its recommendations for a harmonised procedure for detecting and informing vulnerable groups at all Belgian border points and the integration of this procedure into training for all police officers involved remains relevant. Furthermore, the [practical tool of the European Agency for Fundamental Rights](#) presenting 10 principles to be respected by border guards remains too rarely used in Belgium.

Wearing of religious symbols in courts

In 2018, a [Muslim woman appealed to the ECrHR](#) after she was denied access to a court hearing because she was wearing a headscarf. The judge had applied the Judicial Code to the letter: the person attending the hearing must be "uncovered, respectful and silent". This potentially included various religious symbols, as well as head coverings for medical reasons. Belgium was condemned by the ECrHR, which considered that this practice violated freedom of religion. The Minister of Justice at the time did not want to amend the Judicial Code and merely sent a circular to the courts and tribunals to draw their attention to Belgium's conviction.

However, Unia kept receiving complaints about courts in Belgium that refused access to court for wearing a headscarf. Unia addressed two communications to the Department of the Execution of Judgments of the ECrHR in March 2019 and in March 2020. Belgium has now amended article 759 of the Judicial Code, removing the words "uncovered".

Access to justice for underprivileged people

Given that in recent years a number of regulatory changes have increased the barriers to accessing justice, the Combat Poverty Service keeps pointing out the difficult access to justice for people with a low income and asks an evaluation of these measures, based in part on its [Biennial Report 'Sustainability and Poverty'](#). Partly based on advice from the Combat Poverty Service, second-line legal assistance was made accessible to more people by raising the lower financial threshold necessary for claiming it. This is thus made progressively more accessible each year. In 2021 as well, [the lower limit was increased by 100 euros for a single person](#).

Magistrates' view on poverty

For the sixth time, The Combat Poverty Service organized a [reflection day about magistrates' views on poverty](#), in collaboration with the Institut de Formation Judiciaire (Institute for Judicial Training). During this reflection day, magistrates and magistrates to be, as well as social organizations, exchange views on the effectiveness of the exercise of human rights in poverty situations and practices of cooperation.

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NHRI's recommendations to national and regional authorities

The Combat Poverty Service recommends to improve financial access to justice for people living in poverty, including by:

- evaluating the application of the legislation to legal protection insurance
- reducing the financial thresholds (registration fees, VAT on lawyers' fees, etc.
- evaluating the system of second line legal aid and its accessibility (financial access thresholds, administrative charges incumbent on lawyers and plaintiffs, creation of lawyers' practices specializing in legal aid, etc.).

Media freedom, pluralism and safety of journalists

The Brussels Criminal Court handed down a judgment on 13 April 2021 in the case Djunga and unambiguously condemned the dissemination of hate messages online. In September 2018, Cécile Djunga, a journalist of the public television (RTBF), published a video on social

networks in which she expressed her suffering following the racist messages she had been the target of since the beginning of her career. In reaction to this video, several hate messages were sent to her and her employer. The investigation identified the author of one of these messages with particularly hateful and threatening content: "[...] Africa will always welcome you with open arms if you find Belgium so unbearable! If you were to be attacked (hopefully fatally) I would not denounce your attacker I would congratulate him or her!". This was not the first time that the author had expressed himself in this way. He was therefore prosecuted both for his remarks against Cécile Djunga and for other publications with racist and antisemitic content.

Belgium is ranked 11 in the 2021 World Press Freedom Index.

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Corruption

The Belgian government had until 17 December 2021 to transpose Directive 2019/1937 on the protection of whistle blowers. Unfortunately, this deadline has not been met by the federal government nor any of the federated entities. This situation is not unique in Europe, but it is all the more regrettable that there is currently no legislation that sufficiently protects whistle blowers in Belgium, especially in the private sector. FIRM-IFDH has had the opportunity to discuss the transposition of this directive with the federal government, the competent authorities and several partners during the last months of 2021. In its exchanges with the federal government FIRM-IFDH has called for a set of measures to improve the support and protection of whistle blowers, with a focus on an integral approach to whistle blower support measures. Furthermore, FIRM-IFDH advocated that an independent monitoring of whistle blowers protection should be included in the transposition of the directive to periodically assess the quality of their protection in Belgium. This matter will require sustained examination in the coming months by human rights institutions.

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

The adoption of the Pandemic Act is a step forward in rule of law terms, since it provides for a legal framework that is better tailored to addressing an epidemic outbreak. Concerns however remain regarding the phasing out of COVID-19 measures and their short- and long-term impact on vulnerable groups.

Emergency regimes and related measures

In early 2021, following criticism of its reliance on the 2007 Act on Civic Safety to adopt measures to address the pandemic, the Government introduced a bill in parliament specifically designed to provide a more appropriate legal basis for emergency measures in the context of an epidemic outbreak. FIRM-IFDH submitted [an advisory opinion on this bill to parliament](#), which was partly taken into account in the [Act of 14 August 2021 concerning measures of administrative police during an epidemic emergency](#) ('Pandemic Act').

The evaluation of the Pandemic Act by NHRIs is mixed. The Pandemic Act provides a more appropriate legal basis for the COVID-19 measures, and, accordingly, is a major step forward. In addition, the Pandemic Act contains important safeguards against abuse of emergency powers. The Pandemic Act was 'activated' for the first time by the [Royal Decree of 28 October 2021](#) declaring an epidemic emergency, to enable the government to take the necessary measures to deal with the 2021 fall/winter wave. [Recommendations on the need for a stronger parliamentary oversight](#) regarding the measures themselves were not taken into account. As a result, a strong concentration of power regarding the emergency measures remains at the executive level.

Overall, the use of measures complying with rule of law standards increased in 2021. Some concerning measures were abandoned, such as the use of local administrative sanctions in preference to criminal enforcement measures, with very different implementation from one region to another. This gave rise to many questions in terms of equality, proportionality and legal remedies. The use of local administrative sanctions seems fortunately to have been abandoned in the more recent management of the pandemic. On the other hand, the use of FAQs to communicate sanitary measures, albeit less frequent than in 2020, remained concerning and led to confusion since they could be stricter or broader than the actual rules.

From October 2020 onwards early May 2021, strict measures were in place, including a curfew, limitations to the number of people one could meet at home or outside, closures of businesses (cultural venues, bars, restaurants, nightlife, ...). Between May 2021 and September 2021, most of these emergency measures were gradually lifted.

The government introduced the so-called Covid Safe Ticket (CST), for which a legal basis was created by the [Cooperation Agreement of 14 July 2021](#). The CST allows to limit access to particular venues (e.g. bars, restaurants, ...) to persons either fully vaccinated, recovered or recently tested, but gave rise to concerns about the duration and the scope of the measures, as well as its impact on social cohesion. FIRM-IFDH [considers](#) the CST system in its present form to be compatible with human rights standards. FIRM-IFDH however invited the relevant authorities to periodically evaluate the proportionality of this measure, considering that restrictions on the social life of the unvaccinated could become disproportionate if the CST system is maintained for too long. At present the Government has not yet indicated a tentative end date for the system. Furthermore, [Unia received reports](#) of persons whose Covid Safe Ticket was required outside the legal scope of the measure (employment, health cares, schools, etc.). In particular, Unia has received several reports of refusal of care to unvaccinated people. Remedies for refusal of access to health care are not very transparent and difficult to implement, impacting the right to health care, especially for the most vulnerable.

Since November 2021, stricter measures have been adopted once again, to address the fourth COVID-19 wave, including the reintroduction of mandatory teleworking where possible, and limitations on activities. To anticipate a fifth COVID-19 wave, cultural venues and movie theatres were again closed altogether in December 2021. However, this measure was withdrawn after a successful challenge before the [Council of State](#).

More generally, access to services and assistance became more difficult over the past two years. Overall, [COVID-19 crisis reinforced and exacerbated existing inequalities](#).

Many services, such as municipal services or aid organizations, often oriented themselves towards appointment-only contacts, which highly raises the threshold for people in precarious situations. Digitalization of these services, which grew immensely during the pandemic, hampered their access to assistance and benefits, as well to information concerning COVID-19 and vaccination. Given the digital divide, this evolution is particularly worrying. COVID-19 protection measures strongly affected people in precarious jobs: social protection for loss of income was much less efficient for those at the edge of the labor market.

The lack of awareness and enjoyment of rights remained concerning. This was evidenced, i.a., by [an analysis of the Combat Poverty Service on the application for a free rail pass](#) provided in the context of the COVID-19 crisis: nearly 3.5 million residents of Belgium applied for the pass, but with lower take-up among those in a lower socio-economic position.

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

The following list is exemplary (and not exhaustive) of some possible medium and long-term implications from the Covid-19 outbreak and its related measures.

Weakened parliamentary oversight : Unia deems the dominant role of the executive in the management of the health crisis risks leading to a form of habituation to the situation. It would hinder the possibility for civil society to influence the legislative process and leads to a widening gap between the population and the policy makers. FIRM-IFDH considers the Pandemic Act unlikely to weaken parliamentary oversight in the long term, since the exceptional powers for the executive are linked to a temporary declaration of epidemic emergency. However, concerns predating the pandemic do remain regarding the quality of parliamentary oversight over the executive in Belgium, given the strong disciplining power of political parties over their members of Parliament.

Measures or practices affecting human rights that are not or no longer legitimate or proportionate to the threats posed might remain in place. For example, [questions remain](#) on the stockage, exchange and use of personal and health data by public authorities, whose use may continue after the health crisis.

Impact on most vulnerable people. Restrictions on individual and collective rights burden unevenly on the population. The most vulnerable persons are disproportionately affected: young and older people, people with disabilities, Roma and Travelers, people living in poverty, etc. The medium and long-term implications of the pandemic on these

populations are difficult to assess with precision, due to a lack of available data, but [some trends have been identified](#).

For example, because of COVID-19 restrictions, it is difficult for people in poverty to gather with other members of their associations and to discuss policy directions. Access to services and assistance is increasingly provided digitally upon appointment. This leads to a greater risk of non-take-up of rights and service provision, particularly for people in precarious situations. There is also concerns that the greater distance between services and citizens will increase social isolation, and the need for psychological assistance.

In its [impact analysis of the draft of the Belgian Relaunch Plan](#), the Combat Poverty Service noted a strong emphasis on further digitalization and on smart mobility. At the same time, too little attention is paid to additional initiatives for people in a vulnerable position, with regard to the digital divide and to the lack of quality jobs for low-skilled people. This risks to further increase inequalities.

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Good practices set in place by state authorities

The authorities have generally tried to limit the negative effects of the measures taken by consulting (mostly a posteriori) the publics affected. Remedial measures have been adopted in some cases.

From the start of the COVID-19 pandemic, the various levels of government within the country have taken measures. In the [overview of the Combat Poverty Service of all COVID-19 related measures](#) taken by all governments in order to support people in situations of poverty or insecurity, several interesting measures can be identified.

For example, energy and water cuts, as well as evictions have been halted for a while. Some control measures regarding social benefits were also suspended. In addition, the degressivity of benefits - whereby benefits are reduced according to the duration of the benefit - was temporarily halted. A number of measures of social security - such as the wide application of temporary unemployment for employees and the bridging right for the self-employed - have limited the loss of income for many families. On the other hand, a great number of people in precarious jobs have seen their situation worsen, and it was only later – upon insistence of various actors - that measures were adopted to provide a supplementary benefit to people on social welfare. Another interesting measure concerned [the expansion of the target group of persons benefitting of a social fare for electricity and gas](#), recently extended until the end of March 2022.

Several of these measures, should arguably be structurally anchored.

An important concern was also the consultation and involvement of the stakeholders in the design and definition of authorities' responses to the crisis, and the question of how proposals by stakeholders and rights defenders, including human rights institutions, could find their way into policy choices. To this end, task forces were established at various policy levels, allowing for input from stakeholders and an exchange between policies and actors.

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Role of the institutions and most important challenges due to COVID-19 for the institutions' functioning

Unia

An interdisciplinary working group dedicated to monitoring COVID-19-related measures and policies and their human rights implications was established within Unia in 2021. Unia has [published various opinions, reports and views on the pandemic](#) and its human rights implications. These documents are gathered in a specific section of its website to guarantee its access to the public and decision makers.

The Unia CRPD Support Committee acted as a sounding board for the difficulties encountered by people with disabilities, which then helped strengthen Unia's opinions and recommendations. For example, a [recommendation from September 2021](#) deals with triage in hospitals.

Unia has developed a checklist for decision-makers to help them take human rights into account when measures are decided.

As regards the impact on the institution's work and related challenges to its functioning, Unia is still receiving a very high number of individual reports related to the Covid crisis. This situation creates a significant workload. In addition, health measures and the obligation to protect workers lead to a context in which visits and inspections can hardly be carried out, which has a particular impact on the CRPD service, which is responsible for visits to the psychiatric annexes of prisons.

FIRM-IFDH

FIRM-IFDH has published two [Advisory Opinions](#) related to the Government's COVID-19 policy. In addition, FIRM-IFDH has raised certain COVID-19 related concerns in [its parallel report to the Committee against Torture](#). In particular, FIRM-IFDH voiced its concerns about certain policing techniques (e.g., tear gas) used in the context of anti-lockdown protests in 2021, and on the severe impact of sanitary measures in prison on the rights of detainees (e.g., rights to family visits, activities, education, etc.) and the failure to consider them as a priority category for vaccination. It also stressed that sanitary measures had impacted the possibility for persons held in police custody to physically meet their lawyer, thus weakening the protection against ill-treatment in custody.

As regards challenges to the institutions' functioning, given the nature of its mandate (no inspection powers or National Preventive Mechanism function), the activities of FIRM-IFDH were not negatively affected by COVID-19.

The Combat Poverty Service

The Service concluded that existing inequalities were enhanced during the COVID-19 pandemic: the most vulnerable groups in society are more heavily impacted by the virus and related health protection measures. The Service repeated its message from the [Biennial Report in the context of climate policy](#) – to leave no one behind – through press releases and recommendations. Within the context of the SDGs, regular links could also be made with human rights.

The Service published its [Biennial Report 'Solidarity'](#), based on a consultation from July 2020 to November 2021 with associations of people in poverty and other actors. The Service organized 10 digital meetings, each attended by 30 to 50 people, half of them being people in poverty. Their commitment and energy to participate in these meetings despite COVID-19 can be highlighted. The [Biennial Report](#) has a focus on the health crisis, its impact in situations of poverty, and the meaning of solidarity in society and current conditions. This report has been addressed to the Interministerial Conference "Integration in Society", and transmitted to various governments, and, through them, to their parliaments and advisory bodies.

In April 2020, the 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. [The last updated version dates from July 2021](#). This important instrument can inspire governments and has shown which groups have been less included in governmental policies (e.g. tenants).

As a member of the Task force about vulnerable groups on the federal level, the Combat Poverty Service organized and supported a stakeholder discussion of the Flemish Taskforce 'vulnerable families'.

The Combat Poverty Service also made recommendations in favor of accessible communication about COVID-19 but about how to reach vulnerable groups for vaccination, and as well as stressing out the existence of the digital divide. The Service was member of the communication and societal dialogue cell of the Taskforce Vaccination of the corona Commissioner, and created a [specific webpage](#) with an overview of communication materials for people in precarious situations, health workers, and social workers.

Finally, the Combat Poverty Service made recommendations and press releases around [the coverage of precarious groups in the vaccination strategy](#), the [extension of the target group of the social tariff for electricity and gas](#), the [financial accessibility of self-testing](#) and the [design of the Belgian Relaunch Plan](#).

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NHRI's recommendations to national and regional authorities

The institutions recommend the competent authorities to:

- Duly consider the impact on human rights, in particular those of persons belonging to vulnerable groups, and the proportionality before adopting new measures and policies. For instance, the authorities may use a human rights checklist, such as the one developed by Unia.
- Ensure that the objective(s) pursued by each measure are clearly defined in advance, and that the proportionality of each measure (e.g. the Covid Safe Ticket) is periodically assessed, while ensuring that the objectives are clearly distinguished from the means used to achieve them.
- Ensure that additional and structural funding is provided to crucial sectors such as health care, education, organized care for vulnerable groups (elderly, persons with a disability,...), etc.
- Systematically carry out an impact analysis of new measures for people in precarious situations, both ex ante (in advance, when the measures are being developed) and ex post (after a certain period of implementation), with attention to the non-take-up of rights, at each policy level, as a means for the effectiveness of the exercise of the rights envisaged by the various human rights texts.

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

Belgium has been repeatedly condemned by the ECtHR and criticized by the Committee on the Prevention of Torture and UN human rights bodies for the structural problem of severe prison overcrowding. While the authorities have taken measures to decrease overcrowding (including through the transfer of offenders with mental health problems to two new forensic psychiatric centers), severe overcrowding persists (at an average of

around 10 %, while certain prisons even have an overcrowding rate of 50% or more). Belgium currently ranks third in terms of prison overcrowding on the Council of Europe's list. Alternatives to a prison sentence and alternative ways of serving a prison sentence (e.g. electronic surveillance or the probation sentence) have been introduced in recent years. However, as pointed out in the [parallel report of FIRM-IFDH to the UN Committee to Torture](#), these have mostly resulted in net-widening effects: rather than being imposed as an alternative for (the serving of) a prison sentence, these are mostly imposed on persons who would otherwise not have been imprisoned or would have been conditionally released.

In [its report to the UN CAT Committee](#), FIRM-IFDH expressed concern about the exceptions in the conditions of detention of persons accused of or convicted of terrorist offences. The detention of so-called "radicalised" detainees is characterised by a certain opacity, by the absence of legal remedies and by isolation measures that contravene fundamental rights. These measures have led Fionnuala Ní Aoláin, the UN Special Rapporteur on the protection of human rights while countering terrorism, [to express her "deep concern"](#) about these measures. It is recommended to review the use of security measures with regard to so-called "radicalised" detainees and to create a clear legal framework to avoid arbitrary decisions by prison authorities. Furthermore, the authorities must determine objective criteria for identifying so-called "radicalised" prisoners rather than leaving this identification to the judgement of prison officers. Finally, it is also necessary to provide for an effective remedy against the classification of a person as "radicalised" under general principles of the rule of law.

In May 2021, in the context of Belgium's Universal Periodic Review, several countries expressed concerns about police violence and ethnic profiling. Belgium still does not have complete, objective and reliable statistics on the number of police stops-and-searches or on the prevalence of discriminatory profiling. No legal framework allows a citizen to know the reason for a police check, which affects the relationship of trust between police and citizens and prevents the police from objectively assessing the phenomenon. Unia calls for the introduction in the legislation of an obligation for the police to issue a receipt specifying the reasons for the control and the remedies available. In addition, FIRM-IFDH calls for the need to collect reliable data on the prevalence of illegitimate violence committed by police officers, and to expressly recognize, in legislation, the right of citizens to film police officers when the public interest is at stake.

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NHRI's recommendations to national and regional authorities

The institutions recommend the competent authorities to:

- Continue the efforts to reduce the problem of prison overcrowding, including through ensuring that alternatives to a prison sentence or alternative ways of serving detention effectively contribute to a decrease of the prison population.
- Review the use of security measures with regards to so-called "radicalised" detainees and provide a strict framework that respects their fundamental rights in order to avoid any form of arbitrary decision by the prison authorities, in accordance with the recommendations of the UN Special Rapporteur.
- Ensure that reliable data are collected on the prevalence of illegitimate violence committed by police officers.

Bulgaria

Ombudsman of the Republic of Bulgaria

Impact of 2021 rule of law reporting

Follow-up by State authorities

The rule of law turned out to be an issue of intense discussion in Bulgarian society in 2021 as an immediate outcome of the 2020 protests. Rule of law challenges came under particular scrutiny during the electoral campaigns that preceded the regular general elections in April 2021, as well as the anticipated general elections in July and November 2021. This rendered discussions highly politicized, with no direct references to expert reports and independent reviews. Both political and public rule of law debates intensified at the time of the formation of the new coalition government of Bulgaria on December 12, 2021.

Impact on the Institution's work

2021 ENNHRI rule of law report served the Ombudsman of the Republic of Bulgaria as an important framework for selecting annual working plan priorities for 2022.

Follow-up initiatives by the Institution

As mentioned above, 2021 has been marked by a specific political context with three general elections taking place in just few months. The interim caretaker governments were focused on the management of overlapping crises of different type. The National Assembly worked just for few months with a special focus exclusively on adopting limited number of legislative amendments on critical issues, related to the pandemic and the economic crisis.

As a consequence, the venues that would have normally been used to foster a discussion on the ENHRI report were for most not available. Moreover, even if there is an obligation for the Parliament to review and discuss the Annual Report of the Ombudsman institution for the previous year (2020), such hearings started to regularly take place only in January 2022.

Nonetheless, the Ombudsman made an explicit reference to the ENNHRI Rule of Law report evidences and recommendations during the country mission of the LIBE

Democracy, Rule of Law and Fundamental Rights Monitoring Group of the European Parliament, which took place on 24-25th September 2021.

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NHRI's Recommendations to National and European policy makers

The Ombudsman recommends the adoption of a common platform for sharing evidences from the different NHRIs' annual rule of law findings. Thus, it may boost more specific attention on the tool and its recommendations.

Independence and effectiveness of the NHRI

International accreditation status and SCA recommendations

The Ombudsman of the Republic of Bulgaria was re-accredited with A-status in March 2019 (1).

Among its recommendations, the SCA took the view that the selection process outlined in the enabling law would be strengthened by explicitly requiring the advertisement of vacancies, and by describing how a broad consultation and participation of civil society is to be achieved. The SCA encouraged the Bulgarian NHRI to advocate for the formalisation and application of a broad and transparent process.

The Bulgarian NHRI also reported that, while its budget had improved, it would benefit from additional funding to carry out its functions (including as an NPM and NMM), to establish regional offices and to ensure that its communications are accessible to all. The SCA encouraged the NHRI to continue to advocate for the funding necessary to ensure it can effectively carry out the full extent of its mandate.

Finally, the Bulgarian NHRI reported that there had been inadequate responses by state authorities, including relating to the NHRI's recommendations on the issue of domestic violation and the ratification of the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence. The SCA encouraged the Bulgarian NHRI to continue to conduct follow-up activities to monitor the extent to which their recommendations have been implemented.

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Regulatory framework

The national regulatory framework applicable to the Bulgarian national human rights institution has not changed since 2021. The Ombudsman of the Republic of Bulgaria continues to function on a constitutional basis. The Ombudsman's mandate to contribute to access to justice for individuals includes complaints handling, providing legal assistance to individuals as well as awareness-raising.

Moreover, within exercising the mandate the Ombudsman of the Republic of Bulgaria:

- can also make proposals and recommendations for the promotion and protection of the endangered citizens' rights and freedoms from private entities;
- may approach the Constitutional Court with a petition to establish unconstitutionality of any law whereby any rights and freedoms of citizens are violated;
- may submit a request for an interpretative decision or interpretative decree to the Supreme Court of Cassation and/or the Supreme Administrative Court;
- makes proposals and recommendations for reinstatement of the violated rights and freedoms to the respective authorities and private entities;
- mediates between the administrative authorities and the persons concerned for overcoming the violations committed and reconcile their positions;
- protects children's rights;
- makes proposals and recommendations for elimination of the reasons and conditions which create prerequisites for violation of rights and freedoms, including proposals for regulatory amendments;
- submits opinions to the Council of Ministers and the National Assembly on bills relevant to human rights;
- monitors and promotes effective implementation of signed and ratified international instruments in the field of human rights;
- makes proposals and recommendations to the Council of Ministers and the National Assembly concerning the signing and ratification of international acts in the field of human rights;

- may act on his or her own initiative, too, when he or she has established that the conditions necessary for protection of citizens' rights and freedoms have not been created;
- functions as a National Preventive Mechanism within the meaning of and in conformity with the Optional Protocol to the UN Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment adopted on 18 December 2002.

References

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Enabling and safe space

The independence of the Ombudsman institution is well established in the Constitutional provisions and the Ombudsman Act.

The relevant state authorities have good awareness of the Bulgarian NHRIs' mandate, independence and role of the NHRI. Furthermore, the Ombudsman has adequate access to information and to policy makers and it is involved in all stages of legislation and policy making with human rights implications.

It should be noted that the addressees of the NHRI's recommendations are legally obliged to provide a timely and reasoned reply. According to the Ombudsman Act (art. 6, al. 1), the state and municipal bodies and their administrations, the corporate bodies and citizens shall be obliged to submit information consigned to them officially, and to assist the ombudsman in connection with the complaints and signals sent to him. In addition, administrative penal provisions of the Ombudsman Act provide for a set of sanctions for those institutions and bodies who obstruct the Ombudsman to fulfil his official duties or who fail to submit requested information. So far none of these administrative penal provisions have been used by the Ombudsman's institution as there was no such cases.

In Bulgaria, measures necessary to protect and support the NHRI, heads of institution and staff against threats and harassment and any other forms of intimidation (including SLAPP actions) are in place.

According to Art. 16 (1) of the Ombudsman Act, the Ombudsman enjoys immunity on an equal basis as the MPs. In addition, the actions taken by the Ombudsman administration in response to citizens' complaints are protected by a special provision in the Rules of Procedure of the Ombudsman Institution which stipulates that the documents of the Ombudsman shall be inviolable and shall not be subject to control or seizure (Art. 7 (1) and that the correspondence between the Ombudsman and the persons who address him with complaints or signals shall be inviolable and shall not be subject to control nor used as evidence in any proceedings (pursuant to Art. 7 (2).

References

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NHRI's recommendations to national and regional authorities

In order for the institution to fulfil in a more effective way its competencies as assigned by the law, the Ombudsman of the Republic of Bulgaria is constantly requesting an increase of its annual budget with the purpose to enlarge the team of experts. For instance, with amendments to the Law on Foreigners in the Republic of Bulgaria (SG, issue 23 of 2013) the Ombudsman was obliged to monitor the coercive administrative measures imposed on foreigners, namely, forced removal to the border of the Republic of Bulgaria and expulsion, but no additional budget was provided to support the implementation of this task.

Furthermore, the Bulgarian NHRI calls for support for the development of the Ombudspersons to the Municipal councils at local level.

Human rights defenders and civil society space

The Ombudsman takes the view that the situation of human rights defenders and civil society space in Bulgaria has slightly improved in comparison to the worrying situation in 2020.

The human rights monitoring and reporting of the Ombudsman's institution in Bulgaria did not find any evidence of laws, measures or practices that could negatively impact on civil society space and/or reduce human rights defenders' activities in 2021. In fact, the two caretaker governments did not have the time nor the competence to pass any new

legislation. Allegations were commented in the National Assembly that prior to April general elections political and public opinion leaders were under mass wiretapping surveillance. No such proofs were afterwards presented to the ad-hoc parliamentary inquiry committee.

NHRI's role in promoting and protecting civil society space and human rights defenders

In the beginning of 2021 a new Law on Social Services entered into force with some implications on civil society organisations that are community based and deliver services to different marginalised social groups. The law was perceived by civil society as limiting the opportunities for some CSOs to get financial support from the state budget for different type of social services, delivered by civil society organisations to local communities (such as providing support to families with kids in risk, working with drop-out children from Roma community, etc.). The Ombudsman sent a recommendation to the relevant state authorities to address such concerns.

The Ombudsman submitted an opinion on a bill under discussion, which would support the introduction of the possibility for remote participation of members of the General Assembly and Boards of non-profit legal entities, which, in addition to being in line with the pandemic situation, will contribute to facilitating the process of taking solutions.

Checks and balances

The Bulgarian NHRI human rights monitoring and reporting found some evidence of practices that limit the participation of rights holders, including vulnerable groups, and of stakeholders representing them, to legislative and policy processes. In the beginning of 2021 the use of expedited legislative processes together with a refusal to support civil-society led legislative amendments have marked the last months of the 44th National Assembly. For instance, a long-awaited draft law amending the Law for Domestic Violence Protection was not deposited by the Ministry of Justice to the National Assembly under the legislative procedure even if a WG with the participation of a large-spectrum of civil society organisations has assisted the Ministry of Justice in preparing the amendments. In order to speed-up the process, the Ombudsman organised an on-line public discussion with the participation of MPs, the Minister of Justice, all interested parties like civil society organisations, academics, etc. Nevertheless, in February 2021 the law amendment procedure failed and the draft law is still awaiting the new government to put it to the legislative agenda once again.

Furthermore, the Ombudsman identified national practices hindering the implementation of judgments of supranational courts. In its Annual Reports, the Ombudsman is regularly

alerting on the failure of Bulgarian authorities to implement the general measures the Council of Europe Committee of Ministers requires with a view of executing judgments of the European Court of Human Rights (ECtHR). Some ECtHR judgments reveal systemic or structural problems that need to be addressed through legislative amendments or changes in the case-law or administrative practice. These general measures, whose implementation is under the supervision of the Committee of Ministers, remain non-implemented for years by the national institutions. One of the main reasons is that the implementation requires active efforts on the part of different institutions which, in many cases, fail to timely take the necessary measures to execute the judgments. The coordination role of the Ministry of Justice is insufficient to ensure the adoption of measures which are within the competence of other institutions.

The Ombudsman also stresses that, as expected, given the April, July and November 2021 elections for MPs, a relatively large number of complaints were received from citizens this year regarding their voting rights. The most common complaints are related to: automated voting systems; problems with the exercise of the right to vote by quarantined citizens or by citizens who, due to their official duties on election day, are seconded to another location other than their permanent address; protection of personal data during the organization and conduct of elections; the need for more information on the voting of voters with permanent disabilities and those subject to mandatory quarantine or isolation. The Ombudsman sent a recommendation to the Chairman of the Central Election Commission, informing him of a serious problem related to the inability of citizens engaged in the technical logistics of machine voting to exercise their constitutional right to vote.

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Trust amongst citizens and between citizens and the public administration

The Bulgarian NHRI considers that the state authorities sufficiently foster a good level of trust amongst citizens and between citizens and the public administration. This was a part of the inaugural statement of the newly elected government on the 13th of December 2021.

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NHRIs as part of the system of checks and balances

Legislative amendments initiated by the Ombudsman

In 2021 despite the lack of a regularly working parliament for most of the year, the Ombudsman actively exercised his powers for legislative proposals and initiatives to protect citizens' rights:

- At the beginning of the year, the MPs accepted the Ombudsman's proposal to include an explicit normative provision for non-sequestration of funds provided by the state as social payments in the Bill on Amendments to the Law on Measures and Actions during the State of Emergency.
- At the suggestion of the Ombudsman, the MPs solved the problem with the vicious practice of unscrupulous buyers not to register an acquired vehicle and it continues to be owned by the seller, and a crime can be committed with it. The specific legislative change is included in the Road Traffic Act.
- The Ombudsman also sent an opinion to the Minister of the Interior, in which he strongly disagreed with the provisions of the Draft Amendments to the Rules of Procedure of the Ministry of Interior published for public discussion. The reason is the intention of the ministry to create - through its regulations - a legal opportunity for border police officers to check whether traveling citizens have unpaid fines and unpaid tickets for traffic violations and, accordingly - to collect and serve them at the border. The Public Defender has repeatedly criticized the ministry's attempts to improve the collection of these fines by restricting citizens' basic rights, such as free movement or leaving the country, including by referring it to the Constitutional Court.

Appeals to the Constitutional Court with a petition to establish unconstitutionality

In 2021, the Constitutional Court granted five ombudsman requests for a declaration of unconstitutionality, finding a contradiction with the Basic Law.

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NHRI's recommendations to national and regional authorities

1. Citizens' complaints show that it is necessary to make efforts to change the provisions of the Electoral Code to ensure the maximum enjoyment of the fundamental rights and freedoms of citizens in the electoral process, namely: the right of all persons who are quarantined for COVID-19, to exercise their right to vote, including persons quarantined at a different address from their current and permanent address; the right of persons who, due to their official duties on election day, are seconded to another place other than their permanent address, to exercise their right to vote; providing for the possibility of opening a sufficient number of polling stations for Bulgarian citizens abroad in countries outside the EU, and providing an opportunity for all Bulgarian citizens before the polling station abroad to exercise their right to vote; legal and organisational order, in which for all citizens in their capacity as members of the PEC to be provided equal working conditions and participation in the process of handing over the ballot papers.
2. Strengthen the coordination mechanisms among the institutions responsible for the execution of ECtHR judgments against Bulgaria. The lack of progress in this regard in 2021 has once again shown that general preventive measures need to be applied as taken by the State. This is why the Ombudsman proposes that an inter-institutional coordination council be set up involving representatives (experts) of all national institutions which need to be engaged directly in the process of coordination and monitoring of the implementation of the measures to execute ECtHR judgments.

Yet again the Ombudsman recalls that after the entry into force of the provision of Article 28, para 3 of the Statutory Instruments Act at the end of 2016, the National Mechanism for compliance review of statutory instruments with the ECHR needs to be applied both by the executive and the legislature powers. A practice where the bills put forward by Members of

Parliament are not checked for compliance with the ECHR and the ECtHR case-law could lead to a violation of the international standards of observance of human rights and new convictions of Bulgaria in Strasbourg.

Functioning of the justice system

The functioning of the justice system and its ability to effectively implement the rule of law standards is still under monitoring from the LIBE Democracy, Rule of Law and Fundamental Rights Monitoring Group of the European Parliament.

In 2021 the Ombudsman institution continued to alert public authorities that the reform of juvenile justice in Bulgaria is long overdue. There are still no adequate correctional and educational services established in line with the leading standards of protection of the rights and interests of the child. The Ombudsman is constantly urging public authorities to Repeal the Combating the Anti-Social Behaviour of Minor and Underage Persons Act in effect since 1958 and adopt a Law on Deviation from Criminal Proceedings and Imposition of Educational Measures on Juveniles. The Ombudsman also called on the authorities to implement the EU Directive 2016/800 on procedural guarantees for children suspected or accused in criminal proceedings into the Criminal Procedure Code, as well as to reform the system of juvenile justice and assess the need for specialised judicial juvenile panels.

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- 2021 Annual Report of the Ombudsman as National Preventive Mechanism
<https://www.ombudsman.bg/pictures/file/%D0%93%D0%BE%D0%B4%D0%B8%D1%88%D0%B5%D0%BD%20%D0%B4%D0%BE%D0%BA%D0%BB%D0%B0%D0%B4%20%D0%9E%D0%BC%D0%B1%D1%83%D0%B4%D1%81%D0%BC%D0%B0%D0%BD%20%D0%9D%D0%9F%D0%9C%20-%202021.pdf>

Role of the NHRI in contributing to the effective functioning of the justice system

Besides advocacy efforts to prompt an adequate reform of the juvenile justice system, as reported above, in June 2021 the Ombudsman appealed before the Constitutional Court a provision of the Criminal Procedure Code (CPC, Article 64, para. 2, second sentence) which allows the accused not to appear in person in court when deciding whether to remain behind bars or impose a lighter measure of restraint. The Ombudsman argued this constitutes a violation of the Constitution because it opposes the principles of the rule of law (Article 4, para. 1), the right to personal liberty and inviolability (Article 56), and rules

on proceedings before the court (Art. 122) of the Constitution. The constitutional judges supported the arguments made by the Ombudsman that the contested provision violates the right to protection of citizens under Article 122 in connection with Article 56 of the Constitution.

Furthermore, in view of the letters, petitions, objections and opinions received by the institution, on the model of judicial card optimization reform that provided for the abolishment of several city courts in the country-side, the Ombudsman sent a recommendation to the Supreme Judicial Council expressing his position on the proposed closure of courts, which in her views restricts the right to access to justice. The Ombudsman called on authorities to hold a public consultation with citizens and to ensure a system that delivers quality and unhindered justice in accordance with the right to access to justice.

NHRI's recommendations to national and regional authorities

The Bulgarian NHRI recommends that any reform that address the access to justice should be done after extensive consultation with citizens and take into consideration the judgments of the ECtHR.

Furthermore, particular attention ought to be paid to the need to set up a modern juvenile justice system. The reform of juvenile justice in Bulgaria remains at an early stage. There are no adequate correctional-educational services compliant with the international standards for the protection of children's rights and interests in place yet. A comprehensive assessment needs to be made of the need for specialised judicial panels to handle cases for children and young people.

Media freedom, pluralism and safety of journalists

The Bulgarian NHRI stresses that the situation of media freedom, pluralism and safety of journalists remains worrying in Bulgaria.

Among major developments in 2021, the Sofia Appellate Prosecutor's Office (SAP) has confirmed its refusal to launch an investigation into police violence against journalist Dimitar Kenarov during anti-government protests. The Ombudsman institution is monitoring this case as part of its monitoring on police violence issues.

Role of the NHRI in promoting and safeguarding an enabling environment for media and freedom of expression

For the last three years, the Ombudsman institution has been approached with just 3 complaints on violation of freedom of expression. This might be related to the fact that there are two more independent state bodies that have a specific mandate to deal either

with issues related to media pluralism (the Council for Electronic Media) (1) or with infringements of the freedom of expression, such as hate speech, (the Commission for Protection against Discrimination) (2). Nevertheless, the Ombudsman is constantly advocating for the respect of freedom of expression as a fundamental right. The latest statements of the Ombudsman relate to hate speech and include specific recommendations to public authorities to put more effective instruments for monitoring and reporting hate speech crimes (4) (5).

The Ombudsman institution is closely monitoring the execution by Bulgarian authorities of the European Court of Human Rights final judgments related to violations of Article 10 of the ECHR under the *Bozhkov v. Bulgaria* case (3) – still an issue of concern is related to 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. In its 2019 Annual Report the Ombudsman of the Republic of Bulgaria has underlined the need for completing the work of the special inter-ministerial working group which has prepared draft amendments to the Criminal Code with the aim to include the exemption from criminal liability and the imposition of an administrative sanction where the defamation concerns a public authority or official and the removal or reducing of the lower limits of fines.

References

- (1) Council for Electronic Media - www.cem.bg/
- (2) Commission for Protection against Discrimination, established in 2005 by a special Act. The Commission also acts as a national contact point on hate crimes with the Organization for Security and Cooperation in Europe.
- (3) *Bozhkov v. Bulgaria* case - [https://hudoc.exec.coe.int/eng#{%22EXECIdentifier%22:\[%22004-1909%22\]}](https://hudoc.exec.coe.int/eng#{%22EXECIdentifier%22:[%22004-1909%22]})
- (4) Speeches of the Ombudsman <https://www.ombudsman.bg/news/5211?page=10#middleWrapper>
- (5) Statement of the Ombudsman <https://www.ombudsman.bg/news/5287?page=4#middleWrapper>

Corruption

Corruption in Bulgaria since last year's rule of law reporting has remained at worrying levels. This assessment is based, among others, on the continued monitoring by the LIBE Democracy, Rule of Law and Fundamental Rights Monitoring Group of the European Parliament. Corruption allegation scandals continue to be part of the public discourse in Bulgaria in 2021, especially in the context of the three electoral campaigns preceding the general elections in April, July and November 2021.

Although no corruption related complaints have been received in 2021 by the office of the Ombudsman institution, some 988 complaints were received in relation to the right to good governance and good administration – an increase by 0.5% in comparison to 2020. As a result of the inspections carried out, in 47% of the complaints the Ombudsman has established violation of the right to good governance. In 337 cases, the Ombudsman gave recommendations and proposals to administrative authorities and the majority of them were taken into account. In 478 cases, a solution was found through mediation between citizens and the administration.

The protection of whistle blowers is still deficient in Bulgarian law. The Ombudsman has invited state authorities to pay special attention to the urgency of 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 recent statement before the Parliamentary Committee on Human Rights, Religion and Citizens' Complaints, the Ombudsman 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.

References

- 2021 Annual Report of the Ombudsman of Bulgaria, to be published by 31 March 2022 : <https://www.ombudsman.bg/pictures/REPORT%202021-ANNUAL%20FINAL-BG.pdf>
- The Parliamentary Committee on Human Rights, Religion and Citizens' Complaints: <https://www.parliament.bg/en/parliamentarycommittees/2968>

NHRI's recommendations to national and regional authorities

As called by the Ombudsman in his statement, authorities should take steps to adequately ensure legal protection for whistle-blowers in line with the requirements of 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. Special focus should be put on the prohibition of retaliation and support measures including comprehensive and independent information and advice. Information on available procedures and remedies on protection against retaliation and on the rights of the person concerned shall be easily accessible to the public and free of charge.,

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

Based on the number and the type of complaints received by the Bulgarian NHRI in 2021, it seems that the major risks for the human rights in the post-COVID-19 will be:

1. persistence of measures affecting human rights that are not or no longer legitimate or proportionate to the threats posed, especially with a long-term impact on school pupils and the mental health of kids,
2. exacerbation of social exclusion, especially persistent for the Roma group members in Bulgaria
3. impact on vulnerable sectors of the population, especially Romani women and children
4. negative implications for the enjoyment of socio-economic rights, especially for retired and elderly people, refugees and migrants.

References

- Speeches of the Ombudsman
<https://www.ombudsman.bg/news/5529?page=5#middleWrapper>

Actions taken by the NHRI to promote and protect rule of law and human rights in the crisis context

As an immediate response to the epidemic situation, 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 to hear and respond to citizens' concerns. This approach resulted in a constant increase of complaints received and services delivered to citizens during the emergency period as compared to the same period during the previous year.

Key achievements of the Ombudsman of Bulgaria institution in addressing problematic issues include:

Immunity from seizure for funds provided as a financial compensation in the emergency epidemic situation

Citizens, whose employment was affected by the COVID 19 crisis and who received financial support from the state, complained that banks withheld such funds and remitted them to private enforcement agencies (private bailiffs). They were, consequently, left with no income, as well as with no money for food and for pressing needs. Funds granted through the 'Keep Me Employed' programme are considered as a financial compensation provided to insured workers employed in economic activities whose pursuit is temporarily restricted. An amendment to the *Measures and Activities during the State of Emergency Declared by Decision of the National Assembly of 13 March 2020 and Overcoming the Consequences Act* was made on a proposal of the Ombudsman to include a ban on the seizure of compensation funds granted.

Access to justice

In the Bulgarian NHRI's opinion addressed to the Standing Parliamentary Committee on Internal Security and Public Order in connection with the floor debate on the *Bill to Amend the Measures and Activities during the State of Emergency Declared by Decision of the National Assembly of 13 March 2020 and Overcoming the Consequences Act*, the Ombudsman stressed that access to justice was an indisputable and inalienable right that should be exercised freely and the state authorities and institutions should take all possible measures and actions to create the necessary arrangements and conditions for the free exercise of the right to access justice. The Ombudsman recommended that the legal provisions governing the use of videoconferencing to hold court proceedings in civil, criminal, and administrative cases should be voted on and adopted as soon as possible.

Right to healthcare

A recommendation was put forward to the Minister for Health following numerous complaints filed by essential healthcare professionals about the government's failure to disburse medical checks of pregnant Romani women.

Rights of persons with disabilities

The amendments to the Family Allowances for Children Act (FACA), promulgated in the State Gazette, issue 14 of 2021, with effect from 17 February 2021, have rendered the families of relatives and near friends, as well as the volunteer foster families providing care and support in a family setting to children whose type and degree of disability or permanent incapacity for work have been determined at 90 percent or more, eligible to receive the monthly monetary benefits payable according to Article 8e(5) of the FACA.

Abolition of fees for community-based social services provided remotely during the state of emergency

Upon a recommendation sent by the Ombudsman to the National Assembly, the fees for community-based social services that were provided remotely during the state of emergency have been abolished.

Rights of the child

The Ombudsman put forward more than 100 recommendations. Some of those referred to specific cases while others related to the rights of large groups of children. Most recommendations were addressed to the competent child protection authorities – Social Assistance Directorates (SAD), the Agency for Social Assistance (ASA), the State Agency for Child Protection (SACP), the Ministry of Labour and Social Policy (MLSP), the Ministry of Education and Science (MES) and certain Regional Departments of Education, the Ministry of Health (MH) and the National Health Insurance Fund (NHIF), mayors of municipalities, and law enforcement authorities. In response to her recommendations, the Ombudsman was informed of the actions taken, including findings of infringements and the sanction meted out.

The Ombudsman office resumed in 2021 monitoring inspections acting as National Preventive Mechanism (NPM). In 2021, despite the complicated epidemic situation, the Ombudsman acting as NPM carried out inspections at 64 sites, which is an increase by 35% as compared to 2020. The main purpose of the inspections was, first of all, to assess the anti-epidemic measures taken in the closed institutions, as well as to monitor the implementation of the recommendations given during previous visits.

References

- 2021 Annual Report of the Ombudsman of Bulgaria, to be published by 31 March 2022
- <https://www.ombudsman.bg/pictures/REPORT%202021-ANNUAL%20FINAL-BG.pdf>
- 2021 Annual Report of the Ombudsman as National Preventive Mechanism
<https://www.ombudsman.bg/pictures/file/%D0%93%D0%BE%D0%B4%D0%B8%D1%88%D0%B5%D0%BD%20%D0%B4%D0%BE%D0%BA%D0%BB%D0%B0%D0%B4%20%D0%9E%D0%BC%D0%B1%D1%83%D0%B4%D1%81%D0%BC%D0%B0%D0%BD%20%D0%9D%D0%9F%D0%9C%20-%202021.pdf>

NHRI's recommendations to national and regional authorities

The Ombudsman of the republic of Bulgaria recommends to put forward effective tools to respect the principle of proportionality when implementing new measures, especially in the field of access to education.

Croatia

Ombudswoman of the Republic of Croatia

Impact of 2021 rule of law reporting

Follow-up by State authorities

As a follow up to the European Commission's Rule of Law Report, Human Rights House (an NGO which unites 8 organisations, also whose representative is a member of the advisory body of the Ombudswoman) organized a public discussion that brought together civil society representatives, representatives of the Ministry of Justice and Public Administration, Constitutional court representatives, representatives of the Government (Governments' Office of the Agent before the European Court of Human Rights), the Ombudswoman and representatives of our institution and representatives of the European Commission. State Secretary of the Ministry of Justice and Public Administration announced that as a follow up to the Rule of Law Report a number of legislative proposals will follow aimed at ensuring the strengthening of independence of judiciary and fight against corruption.

References

- <https://www.kucaljudskihprava.hr/2021/12/03/okrugli-stol-vladavina-prava-u-hrvatskoj-izazovi-i-preporuke-u-podrucju-pravosuda-i-drugim-institucionalnim-podrucjima-iz-perspektive-ljudskih-prava/>
- <https://www.ombudsman.hr/en/rule-of-law-in-croatia-challenges-and-recommendations-in-the-areas-of-legislature-and-checks-and-balances-from-a-human-rights-perspective/>

Impact on the Institution's work

The rule of law is a significant part of the Ombudswoman's work and the Institution has been recognised by stakeholders for its work on the issues involved.

The Ombudswoman used the 2021 ENNHRI Rule of Law Report to raise awareness on rule of law through its webpage and meetings with relevant stakeholders. Additionally, the

European Commission's Rule of Law Report is used as a source of information for our Annual Report for 2021.

Additionally, the Croatian NHRI continues closely monitoring issues in relation to rule of law (judiciary, whistle blowers' protection, media freedoms, human rights defenders, checks and balances and others) and we will include them in its 2021 Annual Report, to be submitted to the Croatian Parliament, and which is being drafted at the moment.

References

- <https://www.ombudsman.hr/hr/download/izvjesce-pucke-pravobraniteljice-za-2020-godinu/?wpdmdl=10845&refresh=6215ffa3e08271645608867>

Follow-up initiatives by the Institution

The Ombudswoman has shared the Rule of Law Report and its findings with members of the Human Rights Council, advisory body to the Ombudswoman as well as with staff of the Ombudswoman's Office. It was also part of the NHRI's meetings with civil society organizations and state administration bodies (in particular in drafting of legislation on social care, law on whistle-blowers' protection and discussions on migration).

Furthermore, the Ombudswoman has organised a conference at the beginning of January 2022 on *30 years of protection and promotion of human rights in Croatia: past, present and future* and one of the panels was focused on state of rule of law in Croatia.

References

- <https://www.ombudsman.hr/hr/30-godina-zastite-ljudskih-prava-u-republici-hrvatskoj-proslost-sadasnjost-i-buducnost/>

NHRI's Recommendations to National and European policy makers

The Ombudswoman suggests including NHRIs more visibly in discussions on the rule of law reporting by European policy makers and providing visible space for NHRI input in the EC Report.

Also, organise a yearly EU level conference on the Rule of Law Report, co-organised by the Commission and ENNHRI, as high level as possible to ensure impact, with strong Commission's participation, with all EU NHRIs and national Government representatives, focusing on the parts of the RoL country reports that specifically pertain to the independence, work and standing of NHRIs, as well as the overall situation across the EU.

Independence and effectiveness of the NHRI

International accreditation status and SCA recommendations

The Ombudsman of the Republic of Croatia was last re-accredited with A-status in March 2019 (1).

Among the recommendations, the SCA encouraged the Croatian NHRI to advocate for broad consultation and participation of civil society in the selection process.

The SCA also noted that the Croatian NHRI had recently been mandated with additional responsibilities under the whistle-blower legislation, but that no new funding had been allocated to allow it to carry out these new responsibilities. Therefore, the SCA encouraged the Croatian NHRI to continue to advocate for the funding necessary to ensure that it can effectively carry out the full extent of its mandate, including its newly mandated responsibilities.

Additionally, the SCA noted that the term of office of the Ombudsperson is of 8 years and that the enabling law does not limit the number of re-appointments. The SCA took the view that it would be preferable for this to be limited to one re-appointment.

Finally, the SCA acknowledged that the regional offices in Rijeka was not accessible to persons with disabilities at the time. It encouraged the NHRI to continue to seek a solution of this situation, including by advocating for additional funds to ensure that all its offices are accessible.

References

- (1) <https://www.ohchr.org/Documents/Countries/NHRI/GANHRI/SCA%20Report%20March%202019%20-%20EN%20.pdf>

Regulatory framework

The Ombudswoman of Croatia continues to function on a constitutional basis. It has the mandate to contribute to protection of human rights for individuals, including through complaints handling, strategic litigation before courts (only in antidiscrimination and whistle-blowers' protection cases) or taking part in legislative procedures. Furthermore, it provides general legal information to individuals continues to raise awareness and does research.

The national regulatory framework applicable to the Ombudswoman of Croatia has not changed since the 2021 Rule of Law Report. However, due to the obligation to transpose Directive (EU) 2019/1937 of the European Parliament and the Council of 23 October 2019 on the protection of persons reporting breaches of Union law, in 2021 the Government has commenced the adoption of the new Law on the Protection of the Reporters of Irregularities, which is still ongoing and which foresees an additional broadening of the Ombudswoman's mandate. Representatives of the Ombudswoman's office participated in drafting the new Law as one of the members of the Working Group. Proposals and comments were presented also during the public consultation on the Draft Law, as well as during the further parliamentary procedure since not all of our proposal were accepted during the work of the Working Group.

The Croatian NHRI's regulatory framework is sufficient. During 2021 the new Ombudswoman and subsequently three Deputies have been elected by the Parliament, in line with the regulatory framework. The Law on the Ombudsman from 2012 provides the Ombudsman shall have "a minimum of 3 deputies". However, given a completely new additional mandate was given to the institution since then (in 2019, whistle-blowers protection mandate, which will now extend even further with the new Law transposing Directive (EU) 2019/1937) the Croatian NHRI considers that the need for a fourth Deputy has been established. This is additionally relevant given the regulated structure of the organisation, namely, Ombudswoman's 3 deputies are not just 'deputies' of the Ombudswoman, but are also the only management/supervisory level in the institution other than the Ombudswoman herself (there are no heads of units, heads of departments etc.). While there is no need to amend the existing Law on the Ombudsman, a change in established practice would be beneficial to the effectiveness of the institution.

References

- <https://www.ombudsman.hr/en/new-deputy-ombudspersons-appointed/>
- <https://www.ombudsman.hr/hr/jacanje-zastite-zvzdaca-novi-zakon-o-zastiti-prijavitelja-nepravilnosti-na-prvom-citanju-u-saboru/>

Enabling and safe space

The understanding of the NHRI mandate, its independence and role varies across the system and depends on individual institutions. As previously noted, voting on the Annual Report in the Croatian Parliament, and in particular the negative vote on the annual report which is an assessment of the situation regarding human rights in the country, affects the level of implementation of the recommendations.

Also, some state authorities still perceive the institution to a large extent by its first mandate of the ombudsman (focusing on maladministration) which it has had for 30 years, rather than the newer mandates, including the NHRI mandate. Part of this can be contributed to a general public lack of awareness and knowledge about human rights, including on the role of NHRIs in promoting and protecting human rights.

Additionally, regarding the NHRI's work on the treatment of irregular migrants - in spite of some positive steps regarding access to information during Ombudsman's (announces and unannounced) visits to police stations, the Ministry of the Interior still continues to deny the Ombudswoman direct access to data in their information system.

In relation to enabling and safe space for NHRI, the Croatian Ombudswoman highlights three issues: 1) that of the importance of timely discussions of our Annual Reports by the Parliament and 2) that of the impact of the Parliament voting on the Ombudswoman's Reports and 3) the currently inadequate premises of the institution.

Firstly, it is important that the Parliament discusses Ombudswoman's annual reports in a timely manner, as the Parliament not debating them in time, but with a considerable delay, makes the findings in the reports less relevant due to the passage of time, as well as negatively impacts the implementation of the recommendations from the annual reports. That was the case with the Ombudswoman's annual reports for 2018 and 2019, which were not debated in 2019 nor in 2020. In 2021, the newly elected Ombudswoman had to present 3 annual reports: Report for 2018, Report for 2019 and Report for 2020 (and additionally 1 Special report) to the Parliament at the same time during a single discussion on all 3 annual reports together.

Secondly, the annual report and particularly the implementation of the recommendations contained therein should not depend on the outcome of the Parliamentary vote on the annual report. Currently several different outcomes of the vote are possible, given there is voting "in favour", "duly noting" and voting "against" the Ombudswoman's annual report. While the results of the negative vote on the annual report do not affect the incumbent's mandate, they impact the reception of the report including and particularly importantly the reception of recommendations by the institutions they are addressed to. At the same time, Ombudswoman's annual reports are not reports on the institution's internal operations/reports on the work of the Ombudswoman for the previous year but an independent overview and assessment of the situation regarding human rights in the country. Therefore, while there should be public scrutiny and accountability of all public institutions and public officials, the vote on the report is a vote on the independent assessment of the situation regarding human rights. We think these assessments should be debated by the Parliament, but should not be subject to a vote, rather they should be always "duly noted".

Finally, the Office of the Ombudswoman still continues to work in the temporary office space, which cannot even accommodate all of our staff, nor our case files (archives) and generally does not meet our needs (no meeting room for instance).

Nevertheless, Croatian NHRI perceives that, in general, it has adequate access to information and to policy makers, also is involved in all stages of legislation and policy making with human rights implications.

In relation to the NHRI's recommendations, the Ombudswoman can issue recommendations in individual cases and through the Annual Report. The addressees of the NHRI recommendations are legally obliged to provide a timely and reasoned reply.

When it comes to individual cases, in line with the Article 27 of the Ombudsman Act the bodies to which recommendation was issued shall notify the Ombudswoman, within the time limit set by her, of the measures undertaken as a result of her recommendation. If the bodies do not notify within the set time limit the Ombudswoman on the measures undertaken or if they do not act in accordance with her recommendation, the Ombudswoman shall inform thereof the body authorised for supervision of that bodies. If the body that conducts the supervision does not notify, within the open deadline, the Ombudswoman shall inform thereof the Government of the Republic of Croatia. In the case of a more serious violation of or threat to the citizens' rights, the Ombudswoman may notify the Croatian Parliament and the public of the failure of undertaking measures in accordance with her recommendation or proposal.

Regarding recommendations issued in annual reports - the Governmental Office for Human Rights and Rights of National Minorities is formally tasked with the systematic monitoring of the implementation of recommendations from the Ombudswoman's annual report. However, currently the Governmental Office is not fulfilling this obligation.

The Ombudswoman on the other hand regularly monitors the implementation of recommendations from the Annual Report. The Croatian NHRI has an obligation from the Ombudsman Act to include in each annual report an assessment on the level of implementation of the recommendations from the last annual report. Data on the level of implementation is collected from responsible bodies at the end of each year, during the preparation of the next Annual Report, so that each Chapter of the Annual Report looks into specific recommendations from previous years in more detail. In addition, as an example of good practice, in cooperation with the Committee on Human and National Minority Rights of the Croatian Parliament, thematic sessions on the implementation of recommendations from the Ombudsman's Annual Report were organized in the past which gathered representatives of all relevant ministries and governmental agencies and this aided in the implementation.

When analysing NHRI's safe space, it is worth noting that in Croatia measures necessary to protect and support the NHRI, heads of institution and staff against threats and harassment and any other forms of intimidation (including SLAPP actions) are in place. In line with the Article 8 of the Ombudsman Act, the Ombudswoman and her Deputies enjoy immunity as do Members of the Croatian Parliament and the provisions of the Constitution of the Republic of Croatia on the immunity in the Croatian Parliament are applied to them appropriately (Article 76).

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

The Croatian NHRI has taken an action to improve its functioning in compliance with the Paris Principles and Recommendations 021/1 of the Committee of Ministers of the Council on National Human Rights Institutions. *In line with those recommendations:*

- The institution changed the premises in the regional office in Rijeka to ensure its accessibility
- Raised the issue of the need on the Government side for the provision of adequate resources corresponding to our extended mandate in relation to whistle-blowers' protection (planned new staff members)
- Raised the issue of the inadequate premises of the institution
- In the election of the Ombudswoman advocated for a broad consultation and participation of civil society in the selection process, resulting in the fact that during

the public hearing in the selection process questions to the candidates could be asked not only by members of the Parliament but also by external members of committees, who are representatives of CSOs and academia. Also, the public hearing was streamed online and is/was publicly accessible.

NHRI's recommendations to national and regional authorities

- Provide the institution of the Ombudswoman with adequate resources (including staff members and deputy) corresponding to broadening of mandate.
- Ensure adequate premises for the work of the institution following the earthquake.
- Debate annual reports of the Ombudswoman in a timely manner and discontinue voting on the annual report on the situation of human rights - the reports should be debated, but should be "duly noted".
- Ensure unannounced and free access to all data, including data in the information system of the police/the Ministry of the Interior needed for our work on protecting human rights of irregular migrants.

Human rights defenders and civil society space

Laws and practices negatively impacting on civil society space and/or on human rights defenders' activities

The situation of human rights defenders and civil society space in Croatia has remained equally worrying throughout last year.

During 2021 the National Plan for the Creation of Enabling Environment for Civil Society has still not been adopted, although the last strategic document expired in 2015.

In relation to CSOs access to financial resources, a number of CSOs have reported that there is a lack of funding opportunities for those working on issues of human rights and anti-discrimination, particularly in relation to monitoring and advocacy initiatives. This is partly 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.

When it comes to ESI funds, CSO point to demanding administration of these projects and point to the shortcoming in evaluation, such as giving the support to associations that were among the first to submit their projects. This puts 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.

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

Furthermore, regarding the work of CSOs in the area of migration, in 2021 the High Misdemeanour Court confirmed the judgment of the Misdemeanour court against a volunteer who was found guilty of committing the offense of aiding and abetting the illegal crossing of the state border in line with the Aliens Act and issued a high financial sanction.

In the ECtHR judgment *M.H. against Croatia* (1), currently being considered as a possible case for the Grand Chamber, the ECtHR presented the important role of NGOs for the protection of migrants rights, which should be viewed as partners in the authorities' efforts to deal with migration challenges.

References

(1) <https://hudoc.echr.coe.int/fre?i=002-13480>

Access to and involvement of civil society actors in law and policy making

When it comes to the participation of CSO representatives in working groups for the adoption of strategic and public policy documents, representatives of associations point out that the number of calls for participation in such activities has increased in recent years. However, they also emphasize that they are often involved with a delay, at a time when the process of drafting the document in question has already begun, as was the case, for example, with the process of drafting EU funding documents for the financial period 2021-2027, when a document has already been drafted and sent to the EC for consultation.

In the context of the legislative procedure, according to preliminary data from the Office for Legislation, a total of 823 consultations were conducted through the e-Consultation system in 2021, in which 274 NGOs participated. Out of a total of 23,476 comments received from all categories of stakeholders through the e-consultation portal, 5,076 were accepted or partially accepted, 6,506 were not, and 1,808, or slightly less than 8%, were not answered.

Threats and attacks, including strategic litigation against public participation (SLAPPs)

In reference to civic space, in 2021 journalist continued to be faced with SLAPPs, which are referenced in the chapter on Media freedom.

Furthermore, in the 2021 ECtHR judgment *M.H. against Croatia* currently being considered as a possible case for the Grand Chamber recognised that in the migration context NGOs regularly work alongside lawyers and help them establish a connection with persons in need, since they have greater opportunities for contact with such persons. Furthermore, the Court pointed to the important role of NGOs for the protection of migrants' rights, which should be viewed as partners in the authorities' efforts to deal with migration challenges.

NHRI's role in promoting and protecting civil society space and human rights defenders

The Ombudswoman continues to monitor the situation and has a dedicated chapter on Human Rights Defenders in its Annual Report to the Parliament, as well as number of recommendations on the issue.

In preparation of the 2021 Annual Report the Ombudswoman has sent out an open public call, as well as a large number of specific letters inviting CSOs to contribute to it by sending their data, insights and specifically asking about key challenges to their work (the work on our Annual Report is ongoing).

Additionally, in her media activities the Ombudswoman continues to underline the important role played by human rights defenders. During 2021 the Ombudswoman issued a press statement in relation to media freedom and attacks on journalist during the protest. Furthermore, during a Human Rights Film Festival in December 2021 the Ombudswoman organized a public consultation with civil society organizations – the aim of this consultation was to get a better insight in challenges they face as human rights defenders and to identify key challenges in human rights protection during the year from their perspective. These input from these consultations will be reflected in the Ombudswoman's Annual Report for 2021 which is currently being prepared.

Finally, during the UPR process, the Ombudswoman has included information on the challenges identified, which is reflected in recommendations Croatia received.

NHRI's recommendations to national and regional authorities

- To adopt a new National Strategy for the Creation of an Enabling Environment for Civil Society Development;

- To adopt a new National Programme of Protection and Promotion of Human Rights, which recognizes the role of human rights defenders;
- To continuously undertake activities aimed at the promotion of the UN Declaration on human rights defenders

Checks and balances

When it comes to checks and balances, the works of National Civil Protection Headquarter was discussed – as they were the key body in making decisions on measures against COVID – 19. Part of the criticism related to the lack of transparency in their decision making and lack of inclusive participation of citizens, civil society and other stakeholders in response to epidemic. Additionally, the criticism related to inadequate inclusion of the Parliaments in relation to COVID measures.

This has all led to the starting of the process of a potential referendum (collection of signatures) , initiated to oppose introduction of COVID certificates and their usage and at curtailing the powers of the Headquarter.

As already stated, the right to participate in public discussion through consultation and participation in decision – making still to be further improved to increase trust of public in the work of institutions.

Furthermore, in relation to the elections, one of our complaints pointed to the lack of remedy in the context of the right to vote. Namely, when the person is not included in Electoral register and finds out that at the voting place, there is no possibility for that persons to enjoy their right.

In the context of legislative processes, provisional data from the E-Counselling platform that supports involvement of citizens and CSO in public policy and law making processes, shows that in 823 consultations that took place in 2021 there were 274 NGOs participating. Through this platform 23.476 comments were received, of which 8% were unanswered by authorities, which is a positive step compared to 2020 when 35% were unanswered. However, CSO representatives still point to the fact that the answers provided by relevant bodies are only formalistic and that there is a lack of other forms of consultations. Additionally, in 2021 the Government sent into procedure 120 laws, out of which 77.5 % went through first and second reading in the Parliament, while 22.5% were adopted through fast-track, urgent procedure. The Preliminary Impact Assessments were conducted on the impacts of proposed legislative initiatives, including in reference to how they impact human rights. As in the vast majority of cases no direct impact on human rights were identified, it would be important to strengthen the capacity of civil servants to monitor impact of legislative initiatives on human rights in the upcoming period.

Trust amongst citizens and between citizens and the public administration

When it comes to the level of trust between citizens and public administration it is not high. Citizens address the Ombudswoman, citing problems in accessing public bodies and services, ranging from inability to contact institutions and lack of response to their submissions, to unethical conduct of public servants as well as irregularities in the procedures conducted in deciding on citizens' rights. Additionally, citizens often complain in regards to exceeding of deadlines. It is also indicative that citizens ask us general questions about how they can get a service or how to protect their right, who they can turn to or complain to, what the procedure should look like and so on, which shows that public service bodies themselves do not provide sufficient information on procedures and services or are simply not responsive. Problems in the functioning of public administration are also recognized by the Government, and the Draft National Plan for the Development of Public Administration from 2021 to 2027, which was in a public consultation during 2021, states that the quality and efficiency of Croatian public administration remains low compared to other EU Member States looking at global governance indicators. According to the NAP, administrative burdens, repeated searching for data that different public administration bodies have in their records, slowness in resolving (administrative) cases and complicated procedures and regulations are the most common challenges faced by citizens and businesses in the Republic of Croatia.

NHRIs as part of the system of checks and balances

The Ombudswoman regularly takes part in legislative and policy processes. For example, the Ombudswoman took part in a legislative procedure in relation to the new Social Welfare Act. The adoption of the Act has been a long standing recommendation. Also, the new Act, together with other pieces of legislation, introduced a reform of the social welfare system. The Ombudswoman used her previous work and complaints and got involved in public discussion on the proposed text through e-counselling platform. Additionally, as it was a proposal which got a very large number of comments and there were dissonant voices in the public on the direction of the reform, the Ombudswoman organized a public discussion gathering key stakeholders – the Minister and representatives of the Ministry proposing the new Act experts, academia, and providers of social services and users to discuss the proposed solutions. Furthermore, she later took part in the discussion in the committees of the Parliament in both the first and second round of reading, as well spoke publicly/to the media on the issues which the Act is regulating and on the ways forward.

NHRI's recommendations to national and regional authorities

- Ensure various forms of consultations with rights holders, including vulnerable groups.
- Strengthen the capacity of civil servants to monitor impact of legislative initiatives on human rights in the upcoming period.
- Improve the way of providing services to citizens through more intensive digitalization and electronic communication with citizens while at the same time upgrading the "traditional" way of providing services.

Functioning of the justice system

The functioning of justice system in Croatia needs to be improved.

Although in 2021 certain steps have been taken towards better efficiency of the court proceedings and returning the confidence in the judiciary, at the same time the Ombudswoman received a higher number of complaints in this area compared to the previous year. As it could be read from the received complaints the level of citizens' trust in the judiciary is still low. We noticed inappropriate expressions towards the judicial authority throughout the year, in the complaints we receive, but also in the public space, especially in the period of the election the President of the Supreme Court of the Republic of Croatia.

Furthermore, as in previous years, the Ombudswoman observed the access to justice and judicial protection through the received citizens' complaints, media coverage, communication with various stakeholders such as NGOs, government bodies, through participating in working groups formed to draft proposals for regulations concerning, among others, justice system, and others.

During 2021, the Croatian NHRI received a total of 324 complaints on the judiciary, which is 18.93% more than in 2020. Of that number, 107 related to the work of courts, which is an increase of 13.83%. Most of the complaints, 46 of them, related to abuse of power, then 33 to the length of the procedure, 24 to the outcome of the procedure and 4 to the affairs of the court administration.

In 2021, a total of 23 disciplinary proceedings were initiated against judges, which is 76.92% more than in 2020, 13 sentences were imposed, 3 judges were removed due to disciplinary proceedings and one due to criminal proceedings. The State Judicial Council also approved requests to initiate criminal proceedings against judges and deprive them of pre-trial detention and detention in 3 cases, and in one case on a private lawsuit.

Although the professional position requires judges to refrain from conflicts in public life, due to the atmosphere created in public in relation to the judiciary, judges of the Supreme

Court responded with a statement drawing the public's attention that there is a clear line between freedom of expression and legitimate criticism on the one hand and disrespect and undue pressure on the judiciary on the other, pointing out that it is intolerable in a public space to encourage and promote general intrepidity towards judges.

Therefore, while it is necessary to foster the openness of the judiciary to the public, it is also necessary to preserve its independence and resilience against possible attempts of external influences. Thus, when criticizing the judiciary, state officials, the media and the public should do so in a manner that does not jeopardize the constitutionally guaranteed autonomy and independence of the judiciary, respect for personal and family life, dignity, reputation, and honour, as rights guaranteed by the Croatian Constitution.

It is worth noting, however, that in 2021 not all complaints were on the rise. Namely, during the year, the Ombudswoman also received 67 complaints against the work of the state's attorney's office, which is 6.94% less than in 2020. Complaints, as in previous years, were mostly related to dissatisfaction with the decisions of the public prosecutor's office, the lengthiness of its conduct, failure to respond to submissions and complaints, the absence of impartial internal oversight, etc. Some citizens also submitted criminal charges to the Ombudswoman instead of the public prosecutor's office, or to both institutions, indicating a lack of information regarding proper channels and the Ombudsman's authorities.

Further, out of the total number of complaints received in the area of justice, 79 related to **compulsory enforcement**. Although it has not been referred in the previous ENNHRI rule of law report, complaints in this area are relevant for gaining the broader picture of the situation in the judiciary. Thus, this is an opportunity to also highlight several specificities related to these complaints.

Although the Ombudswoman does not have the authority to act on these complaints, they are important to the NHRI because they indicate difficulties faced by the parties when trying to protect their rights, which also relate to the functioning of the judiciary.

Citizens addressed their institution expressing, among others, dissatisfaction with unnecessary delays of the procedure as well as with the court decisions concerning the merits, rejection of the motion to exclude the judge, as well as forced eviction. Complaints of possible abuse of power in enforcement proceedings were mainly justified by dissatisfaction with court decisions which, however, can be only examined by the higher court in proceedings initiated after the use of remedies.

Although in smaller numbers, we also received complains sent by parties seeking enforcement, stating they failed to collect their claim recognised in finalised court proceedings and thus questioning the effectiveness of the enforcement proceedings. For

example, dissatisfaction was expressed by a citizen whose grandmother had to initiate enforcement proceedings against the state administration body, which, even after being ordered to do so by a final and enforceable court order, did not return the possession of the apartment.

Received complaints often show that citizens are insufficiently familiar with enforcement proceedings, they do not know how to protect their rights or who they should contact, which is why they sometimes fail to use remedies in a timely manner, as it is also indicated by some providers of free legal aid. Considering our institution's authorities, in such cases we provide complainants with the general legal information on the available legal instruments of redress, instructing them to engage a lawyer and, when necessary, providing them with the information how to exercise the right to free legal aid.

Citizens' failure to properly protect their rights in the enforcement proceedings is partly due to frequent legislative changes. Thus, the Ombudswoman has already made a recommendation to the Ministry of Justice and Administration to thoroughly review the current enforcement system and draft a proposal for a new, comprehensive Enforcement Act, stressing the need to discontinue the practice of partial interventions in enforcement law regulations.

In the context of the free legal aid (FLA), complaints received throughout 2021 largely indicate the same challenges that we reported on in previous years.

The increase in citizens' need for FLA is also evident from the Ministry of Justice and Administration Report on the Exercise of the Right to Free Legal Aid and Expenditure of Funds in 2020 (hereinafter: the FLA Report), published in July 2021, which provides information on the increase in the number of provided primary legal aid by 31.48% in 2020 compared to 2019. However, this trend is not accompanied by an adequate increase in financial resources intended to finance the work of legal aid providers. Thus, in 2021, the amount of HRK 1.985 000,00 (around 263.263,00 EUR) was provided for FLA, which was distributed to 23 providers through a public tender, ranging from HRK 50.000,00 (around 6.631,00 EUR) to a maximum of HRK 95.000,00 (around 12.599,00 EUR) per year. If the maximum amount of allocated funds, which includes fees to lawyers providing FLA and office and overhead costs, is distributed over a period of 12 months, it is evident that the monthly amount that providers have available to provide FLA is HRK 7.916,66 (around 1.050,00 EUR), which is not sufficient to ensure the continuous operation of authorized providers.

According to the FLA Report, associations and legal clinics provided primary legal aid in more than 80% of cases, while the remaining part referred to administrative departments

in counties. It is to be expected that the data for 2021 are very similar (*still not received at the time of publication of this report*), given that many citizens approached associations and legal clinics, especially in the earthquake-affected areas. According to the report on the work of the NGO Civil Rights Project (PGP Sisak), during 2021 only 7% of the total legal aid provided was financed through the FLA system.

There is also the problem of the lack of lawyers providing FLA in certain parts of Croatia, which is especially challenging on islands where there are no law offices. In such cases, citizens who are within the FLA system are denied access to redress and in some situations access to court.

It is therefore necessary for the Ministry of Justice and Administration to provide additional funding for providers of free legal aid, in particular in the earthquake-affected areas, as well as to ensure a sufficient number of FLA providers, both of primary and secondary FLA.

Role of the NHRI in contributing to the effective functioning of the justice system

The institution of Ombudswoman addresses problematic issues in respect to the access to justice and effective judicial protection, primarily by acting on complaints concerning the lengthiness of judicial procedures and abuse of judicial powers, in which cases we can seek the explanation of the President of the Court.

However, other complaints in the field of justice are also important, because although we do not have the authority to act in the individual case, they point to us the general situation in the judiciary, which we report on in the annual report to the Croatian Parliament and can be the subject of initiatives for the improvement of the legal framework and case-law.

As pointed out in a reply to the previous question, in 2021 we acted in a higher number of cases concerning Judiciary than in the previous year which shows that citizens have recognised us as an institution that promotes and protects the rule of law, including the access to justice and effective judicial protection.

When dealing with complaints, some of them pointed to systemic problems, such as the lack of public notaries in certain, more isolated and/or rural parts of Croatia. In addition to handling complaints, the Croatian NHRI also actively participates in the drafting of relevant regulations concerning our mandates providing comments and proposals through public consultations, as well as by participating in working groups.

During 2021, the draft proposal for a National Plan for the Development of the Judicial System from 2021 to 2027 began (further in text: National Plan), with the aim of further reducing the duration of court proceedings, streamlining the judicial network, and

modernising the entire judicial system. Representatives of the Ombudswoman's office were members of the Working Group, which actively worked throughout the year to draft the proposal for a National Plan.

The specific objectives of the National Plan have been defined as following: improving the efficiency of judicial proceedings; ensuring transparency, legal certainty, quality and predictability of judicial decisions; developing human resources in the judicial system; modernising infrastructure and improving the level and scope of the use of information communication technologies to automate, digitise and provide e-judicial services; improvement of the quality of the prison system and probation. The National Plan has undergone a public consultation and should be approved in 2022.

In 2021, a draft Law on the Protection of Reporters of Irregularities (further in text: Law) was also drafted and representatives of the Ombudswoman's Office were members of the Working Group in charge for its drafting. This law is essential not only to encourage and protect reporters of irregularities, but also to restore their trust in the judicial protection of their rights, which is a key precondition for citizens reporting irregularities. Since the institution of Ombudsman has been appointed as the body responsible for external reporting of irregularities since 1 July 2019, our experience has given the opportunity not only to contribute to the implementation of the Directive (EU) 2019/1937 of the European Parliament and the Council of 23 October 2019 on the protection of persons reporting breaches of Union law, but also to highlight the challenges that occurred while applying the current Law, in order to prevent them in future situations after adopting a new Law.

Thus, it has been very important for us to actively participate in the work of this expert working group and make proposals to better regulate the protection of the irregularity' reporters in the Republic of Croatia. Although the work of the Working Group has ended, we are still actively providing opinions and proposals on draft Law and have presented on three parliamentary committees regarding our opinion on the draft proposed text (currently the first reading has ended and the final draft will be debated in the Parliament soon and it is expected to enter into force in the first part of 2022).

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NHRI's recommendations to national and regional authorities

- Anonymised judicial decisions of all courts should be made public and accessible to citizens as soon as possible in order to improve legal certainty by providing the citizens with the possibility to monitor case law.
- Faster decision making on appeals submitted by citizens against decisions rejecting the application for free legal aid.

Media freedom, pluralism and safety of journalists

In the opinion of the Croatian NHRI, the situation of media freedom, pluralism and safety of journalists has deteriorated throughout this past year.

In the first pandemic year (2020), journalists were less likely to be exposed to threats and physical attacks, and such excesses were mostly associated with reporting lockdown violations.

However, in 2021 not only the number of threats and attacks on journalists increased, but the motives and causes expanded as well. Although a significant number of attacks were related to media coverage of the COVID-19 virus, there were threats and intimidation towards journalists who were on different work assignments. Also, in addition to hate speech, threats, and physical attacks, in 2021 journalists were increasingly exposed to the so-called Strategic Lawsuits Against Public Participation (SLAPP).

Data published by Platform for the Protection of Journalism and the Safety of Journalists at the Council of Europe, also support the conclusion on the increase in violence against journalists and significant deterioration in their safety in 2021. Namely, while in 2019 the Platform recorded two media threat alerts, one such case was reported in 2020 and as many as eight in 2021.

Practice that continued into 2021, negatively affecting the independence of journalists and the ability to pursue their profession, are SLAPP lawsuits.

SLAPP presents a threat to public debate since intimidated targets, in this case journalists, might start to censor themselves in order to avoid new lawsuits. Such lawsuits have a negative impact on questioning, critically pondering and investigating matters of public interest, which can lead to corruption and other social illegalities and irregularities.

Prosecutors are often public figures, including judges of the national courts, in which cases journalist believe that they are in an unequal and subordinate position in the proceedings due to the inadvertent influence that the prosecutor may have on the judge handling the case. Also, the claims for damages are quite high, which is contrary to the practice of the ECtHR and national Constitutional Court. Therefore, the Ombudswoman holds that it would be useful for the Judicial Academy to provide continuous education of judges related to SLAPP lawsuits with particular reference to the practice of the ECtHR regarding claims in such procedures and their impact on human rights.

In addition to financial exhaustion, the Croatian Institution noticed a negative precedent in the ongoing case before the Croatian court in which, within the framework of the Enforcement Law, the court imposed a temporary measure banning the journalist and the portal from publishing content, in order to protect the dignity, professional work and achievements of insurance proposers / future prosecutors. The measure is justified by the fact that the continued publication of the content would represent irreparable damage to the insurance applicant whose disputed publications violated the right to honour, reputation and dignity. At the same time, the violation of honour, reputation and dignity can be compensated and is regulated by the Civil Obligations Act.

Besides SLAPP lawsuits and other legal instruments used before the court with the negative impact on the freedom of media, in 2021 individual verbal and physical threats and attacks against journalist due to their professional work were also witnessed.

There were multiple attacks on journalists from several media outlets when reporting from a public gathering of citizens due to the introduction of COVID certificates. Due to subject attacks, the Ombudswoman issued a statement pointing out that one of the preconditions for professionally reporting and fostering the right to freedom of expression is the ability

of journalists to do their job without fear of verbal and physical attacks, which is necessary and important in any democratic society.

Although a number of attacks were related to media coverage of the COVID-19 virus, verbal and physical attacks, threats and intimidation were present also against journalists who were on thematically different work assignments. One of such cases concerned online threats of violence against a journalist who allegedly trespassed on the property of a public celebrity in preparation of a work assignment. For pointing out the inadmissibility of hate speech against journalists and in general, the Ombudswoman issued a statement stressing out that we all have a role to play in combating threats and hate speech online. Therefore, it would be useful for the Ministry of Culture and Media to design and conduct a comprehensive media campaign on citizens' responsibility for published content on social networks and electronic portals.

There has also been a case of a journalist who received death threats for publishing text that was shocking and offensive to a number of citizens. When acting upon complaints submitted against this journalist, the Council for Electronic Media pointed out the legitimacy of the text that is offensive to a large number of citizens (because used vulgarism for many citizens means profanity and gross insult), since the freedom of expression is one of the fundamental values of modern society and despite rude and offensive speech, it can represent a different way of informing through exaggeration, even profanity.

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Role of the NHRI in promoting and safeguarding an enabling environment for media and freedom of expression

In its annual report for 2020, the Ombudswoman reported to the public and the Croatian Parliament on the problems of media freedoms, freedom of expression and other related threats to a pluralistic society.

With public announcements published on the official website, the Croatian NHRI continuously point out the problems related to this topic and offer solutions.

The Institution of Ombudswoman also participated in a public consultation related to the adoption of the new Law on Electronic Media.

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NHRI's recommendations to national and regional authorities

Regarding threats and hate speech to which journalists are exposed, and which can lead to violence towards journalists and media freedom, the Ombudswoman has publicly stated that such messages are incompatible with freedom of expression. Therefore, at least three conditions need to be met in order to combat hate speech on the Internet.

The first is that the competent bodies react and act within their powers in cases of hate speech, where threats addressed to journalists are considered a more serious form of the criminal offense of threat, for which a more severe punishment is envisaged.

Second is that users of social networks and visitors to the portal show personal responsibility in communication. It is also important that anyone who comes across such messages reports the illegal content.

Third is that the media and profile administrators on social networks remove all unacceptable messages in a timely manner.

Corruption

The problem of corruption in Croatia has remained at the worrying level last year.

According to Transparency International's Corruption Perceptions Index, the Republic of Croatia ranks 63rd out of 180 countries in terms of corruption perception, 17 points behind the European Union average with its 47 points, and the same indicators were in 2020 and 2019, resulting in no positive progress in this regard. Cases in which the Ombudswoman acted as the authority responsible for external reporting of irregularities indicate that it is still difficult to talk about the culture of reporting irregularities in the Republic of Croatia and that there is still no sufficiently stimulating environment for such activities.

This is particularly evident in those cases where employees regularly point out the irregularities they encounter in their work environment, but their motives and even their personality are questioned, regardless of the seriousness and merit of what they report.

In 2021, more citizens than previous year decided to publicly expose illegalities in the conduct of public figures, pointing to acts of corruption and followed by legal proceedings against some of them, initiated by the reported persons. However, it is a positive fact that such public statements and media attention especially in the period of adoption of the new Law, have prompted other citizens to publicly expose irregularities, and that the media has provided them with sufficient media attention to inform the public in detail about the irregularities they have pointed to.

Nevertheless, it is necessary to ensure that the legal framework for the protection of reporters of irregularities under the Law on the Protection of the Reporters of Irregularities is comprehended by public, especially those who plan to report, so they can adequately protect their rights. Not every situation of whistleblowing is covered by the Law and it is crucial for every whistle blower to correctly identify the regulations that apply to his/her case so they can seek adequate protection. In this sense, it is important for the application of the Law to a specific case, when an irregularity has been reported and when retaliation has been taken for reporting irregularities, whether the reporting channels as regulated by Law have been used, whether the reported irregularity threatens the public interest, whether the reporting person reports irregularities related to his or her performance of activities with the employer and others.

Since 1 July 2019, the institution of Ombudsman has served as the body responsible for externally reporting irregularities under the Law on the Protection of the Reporters of Irregularities (further in text: Law) and monitors the implementation of the internal reporting channel. Through this mandate, the Ombudswoman monitors and participates in the fight against corruption.

In 2021, the Ombudswoman acted upon 49 cases on externally reported irregularities, out of which 17 were open cases from the previous two years and 32 were newly opened. In relation to these figures, it should be emphasized that reporters often report multiple irregularities with the same employer, so within the same case it is necessary to act on a number of reports of irregularities, each treating individually and proceeding it to the authority responsible for handling the content of the irregularity. In accordance with the received reports of irregularities and information sent by the confidential persons, external reporting of irregularities continues to prevail in the so-called public sector while internal reporting is more represented in private sector.

In relation to the internal reporting channels, confidential persons provided the Croatian Institution with 48 notifications of irregularities received in 2021, which is an increase from the previous year (when 26 notifications were received) most of which related to irregularities within employers in the economy and crafts. According to statistic data, internal reporting of irregularities is less used in the public sector, indicating the possible distrust of the employees that the employers in public sector will eliminate irregularities and that they will receive the required protection.

In 2021, the Ombudswoman witnessed an increasing number of public disclosures of irregularities, which were accompanied by numerous media reports. The reported irregularities mostly referred to the public sector and they related, among others, to the abuse of position and authority in relation to illegal employment, illegal disposal of state property favouring certain natural and legal persons, etc. Some of reporters sought the protection from retaliation in court, while at the same time they have been prosecuted by the individuals they have reported. Most of the court cases are still ongoing as well as the state prosecution authorities' acting upon reports of illegal conduct. It is therefore necessary to wait for the final court decisions to see how the Law will be applied to specific cases and what will be the outcome of legal proceedings, both those initiated by the reporters and the proceedings brought against them after they have reported and publicly exposed irregularities.

The media also reported on the case of an employee who was fired as a whistle blower 10 years ago and in December 2021 the Constitutional Court issued a decision ruling that his right to the freedom of expression has been violated. This decision of the Constitutional Court is important not only for understanding the protection of the right to freedom of expression when reporting illegal activities, but also for understanding the legal framework for the protection of whistle-blowers even irrespective of/before the entry into force of the Law on the Protection of the Reporters of Irregularities.

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The role of NHRI in combatting corruption at the national level

The Ombudswoman has been taking multiple action to address the issues raised and promote a strong framework for combating corruption in line with the institution's mandate. As mentioned above, since 2019 Ombudswoman has a mandate as the body responsible for externally reporting of irregularities. Within this mandate, Ombudswoman forwards reports of irregularities to the authorities responsible for handling their content (e.g., the State Attorney's Office of the Republic of Croatia, State Inspectorate of the Republic of Croatia, etc.), protecting the identity of the applicant, as well as the confidentiality of the received information, and monitoring the conduct of these bodies. At the same time, the Ombudswoman protects the reporters of irregularities from retaliation. It is a very demanding mandate that assumes sufficient professional and technical capacities for its successful performance that the Ombudswoman's office still does not fully dispose with.

Therefore, the Croatian Institution, among others, represents a bridge between the reporters of irregularities, who wish to remain anonymous, and the bodies that act on the content of the report.

Due to the obligation to transpose Directive (EU) 2019/1937 of the European Parliament and the Council of 23 October 2019 on the protection of persons reporting breaches of Union law (herein: the Directive) into national law, in 2021 the Government has commenced the adoption of the new Law on the Protection of the Reporters of Irregularities, which is still ongoing. Representatives of the Office of the Ombudswoman participated in drafting the new Law as the members of the Working Group that was in charge for providing proposals of its provisions. They also made proposals and comments during the public consultation on the Draft Law, as well as during the further parliamentary procedure since not all the Institution's proposals were accepted during the work of the Working Group.

Among other points, the Ombudswoman emphasized the necessity to ensure the psychosocial assistance, as well as free legal aid for the reporters (regardless of property census), both primary and secondary, which would be provided by civil organisations and/or in cooperation with the Croatian Bar Association. The need to regulate dissuasive sanctions for employers for misdemeanours regulated by the Law were also pointed out. Further, the Croatian NHRI proposed the obligation of all persons/organisational units of the employer who receive reports of irregularities (e.g. ethics commissioner, dignity person, various committees and commissions for the examination of petitions/complaints, etc.) to forward the same, especially if they are not authorised to act on it, to a confidential person without delay. The purpose of this proposal is that even those reporters of

irregularities who omit to report irregularities to a confidential person, nevertheless, ultimately enjoy protection under the Law.

The purpose of our proposals is creating an effective legal framework for protecting irregularity reporters and preventing ambiguity in the application of the new Law, all with the aim of effectively protecting irregularity applicants and detecting irregularities in the public interest.

Representatives from the Office of Ombudswoman were also members of the Working Group on drafting the Anti-Corruption Strategy for the period 2021-2030.

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NHRI's recommendations to national and regional authorities

Conduct continuous trainings for confidential persons, lawyers, state attorneys, judges, trade union members and potential whistle-blowers on Croatian and EU legal framework on the protection of the reporters of irregularities as well as whistle-blowers in the broader sense (those that are not protected by the Law on the Protection of the Reporters of Irregularities), primarily on the national regulation, the Directive, as well as the relevant and up-to-date case law.

Educate/train journalists on the national and EU legal framework on the protection of the reporters of irregularities and whistle-blowers in broader sense, so they can transmit accurate and adequate information to the public when reporting about reported irregularities.

To take measures to speed up the conduct of judicial proceedings, especially in cases related to corruption and to inform the public continuously and adequately about the initiation, course and outcome of these court proceedings, in order to aid in restoring the trust of citizens in the judiciary and the suppression of corruption.

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

The impact of measures taken in response to COVID-19 on the national rule of law environment in Croatia continued to cause concerns.

During the last year, the government has continued adopting epidemiological measures to prevent the spread of the virus, including those that have affected human rights.. Numerous resistances arose in response to them raising questions about the permissible limits of state interference in the lives of citizens and at the same time the limits of personal freedoms and rights in light of generally accepted scientific facts about the spread of coronavirus and its effects on human health and life.

Looking at the complaints the Ombudswoman received, the main challenges were related to access to the right to health and the way the system was organized, inadequate vaccination and testing capacities, lack of clarity on procedures due to numerous changes, impact of measures on the most vulnerable (eg older persons, Roma, the poor). Additionally, there was lack of clear and targeted communication on why certain measures were introduced (in particular EU COVID digital certificates), sometimes contradictory messages being sent, as well as sometimes unclear criteria for setting in motion certain measures and lack of quality and easily accessible to all information. This all resulted in opposition to measures and decreased trust in the decisions of National Civil Protection Headquarter, resulting in the campaign for referendum on COVID digital certificates.

Emergency regimes and related measures

Croatia has not introduced an emergency regime, however it has taken a number of measures to address COVID-19, which affected a number of rights such as, for example, freedom of assembly.

The main challenge in 2021 related to the introduction of obligatory use of the COVID certificates first for the employees in the health care and the social welfare sectors, as well as the obligatory use of the COVID certificates or of the other acceptable document for some groups of patients and later for public sector employees, also citizens using their services. The introduction of these measures has once again triggered discussions on whether the ability of citizens to exercise some of their rights conditionally upon the possession of COVID certificates, limits the citizens' human rights and exposes some of them to discrimination. Moreover, it opened up the question of whether COVID certificates are equally accessible to everyone and whether the citizens who do not fulfil the conditions to be issued COVID certificates due to their health status may be put in a more unfavourable position.

Experience has shown that it is important to inform the citizens in a timely manner about the aims to be achieved by the measure, its planned manner of implementation, possible exceptions as well as the consequences in cases of its breaches, both when it comes to employees as well as the citizens using the services of the institutions in question.

The Ombudswoman has highlighted that a specific, albeit a small, group of citizens must be taken into account – those who cannot get vaccinated due to health reasons.

Furthermore, the position of the persons who cannot get vaccinated and are simultaneously in an unfavourable financial situation is even more challenging, since they cannot cover the cost of the testing, which, in case they live in a remote area, can also include transportation costs. Thus, it is necessary to provide these individuals with both physically and financially available testing, so that they would not be subject to discrimination based on their health and/or financial status.

In public the obligatory use of COVID certificates often gets unjustifiably equated with obligatory vaccination. However, this is grounded neither in law nor in the headquarters' decisions, taking into account the fact that in the Republic of Croatia vaccination is only one of the three possible avenues for fulfilling the conditions to be issued with a COVID certificate.

Finally, a number of protest were organized as a response to measures introduced . There were no incidents of police using force to break up the protests. During the protests, attacks on journalist covering the issue were recorded as well as on medical staff, which the Ombudswoman condemned.

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

The situation in Croatia has been additionally challenging due to the fact that during COVID-19 outbreak two devastating earthquakes – the one in March 2020 which hit Zagreb and the one in December 2020 which hit Sisak-Moslavina county, strongly impacted lives of citizens. Hence, a number of challenges have been identified.

First, the decreased trust in the work of those making decisions, ie. public institutions – which shows how important it is to build trust of citizens prior to such situations.

Furthermore, the communication on why certain measures are taken and explanation of measures linked to clear criteria are equally important for the increase of trust in them and willingness of citizens to abide by them, which was lacking.

Additionally, certain groups in society were in a more vulnerable position due to their health status or income status for example even prior to the crises, so it is important to be aware of the impact of individual measures on the most vulnerable (e.g. Roma, older persons, poor, persons with disability) and mitigate it.

Finally, in decision-making it is important to consult with right holders in advance, which has been missing in the state response, as the deadlines for consultation were either very short or there was no possibility to influence policy making.

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

The main challenge to the office of the Ombudswoman's work has been related to the destruction of our office space by the earthquake, which means that the Croatian NHRI does not have adequate space to accommodate all its staff. In spite of COVID-19, the NPM visits to places of detention have continued, albeit to a lesser degree. When it comes to the promotional work, many of the NHRI's public events have converted to online or hybrid formats, as a benefit – more easily attracting participants from whole Croatia.

Actions taken by the NHRI to promote and protect rule of law and human rights in the crisis context

The Ombudswoman has worked closely with civil society working in local communities affected by the earthquake. When CSOs set up a Humanitarian Coalition, the Ombudswoman joined as an observer. In cooperation with civil society the Ombudswoman conducted survey with people in vulnerable position to assess main challenges they face and understand how the earthquake affected their position and realization of rights. In cooperation with them, The Ombudswoman also organized field visits to monitor human rights situation. Main finding of this work have also been presented to National Civil Headquarter so that their work can respond to the challenges identified.

NHRI's recommendations to national and regional authorities

- Build trust through timely and better suited communication with citizens.
- When developing measures, take into account the position of the most vulnerable groups.
- Ensure consultation with right-holders in decision making processes.

Cyprus

Commissioner for Administration and the Protection of Human Rights (Ombudsman)

Impact of 2021 rule of law reporting

Follow-up by State authorities

Further to the information we provided last year, to our knowledge, the main follow up actions taken by the state during the year 2021 to address the issues reported in the 2021 ENNHRI rule of law report and foster a rule of law culture, were the following:

- Further discussions were held before the Parliamentary Committee for Legal Affairs for the finalisation of the draft bills which provides for the establishment of an "Independent Body against Corruption". The passing of the bill has been postponed for 2022. The delay was caused due to ensuing disagreements between relevant stakeholders (including the Cyprus bar Association) regarding the exact competences of the Body to be established. (1)
- The draft bill for the protection of whistle-blowers (which was until recently under discussion in Parliament) was passed into Law in January 2022 (with 49 votes in favour and only 1 vote against). The provisions of the new (comprehensive) law have also transposed into national legislation the provisions of Directive 2019/1937/EC). (2)
- Furthermore, 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"). 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.

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Impact on the Institution's work

The 2021 ENNHRI Report on Rule of Law, as previous ENNHRI's Reports on Rule of Law, had a positive impact on our work, for the same reasons we cited in our last year's response. Specifically:

- It 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 provided an important benchmark to compare/evaluate our work on the respect of Rule of Law in Cyprus, with the work of other NHRIS in Europe.
- 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

During 2021, we undertook a number of actions in relation to the strengthening of the Rule of Law in Cyprus.

These included, firstly, submission of Reports or the issuance of Public Opinions or Public Announcements, on the protection of rights of citizens, especially those belonging to more vulnerable groups. Our interventions often contained specific recommendations to change administrative decisions or practices in accordance with the Law.

Indicative examples of such Reports/Opinions, which focused on the respect of human rights and the principal of non-discrimination, were the following:

- A Report was submitted regarding the handling of a request for transfer to Cyprus of a LGBTI community person who was convicted abroad. In line to Commissioner's recommendations, the applicant was finally transferred to a Cyprus prison.
- In July 2021, we issued a public Statement/Report regarding the phenomenon of hate speech that promotes/incites racism and xenophobia and the specific implications that such speech has when it is expressed online through the internet. In the Statement/Report we cited a number of complaints that we received concerning online hate speech (e.g. online publications and comments and social media posts), which we found to be derogatory and offensive to specific groups of people and contributed to the cultivation of negative stereotypes and hostility against them, on the basis of their origin and/or religion. Amongst the recommendations we made to the Police was to take measures that facilitate the identification, recording and investigation of public statements, publications or posts that constitute extreme hate speech, and, in cooperation with the Law Office of the Republic, promote the effective prosecution of those who have committed relevant offenses. (1)
- In April 2021, and following an episode of vandalism of a mosque in a village in Cyprus, we issued a public Statement in relation to safeguarding the freedom of religion and cultural heritage. The Statement aimed to remind and underline the need to respect the right of religious freedom which includes ensuring and supporting the unobstructed expression of all religious beliefs, in the context of a modern democratic society and in particular in the Republic of Cyprus in the light of our Constitution which explicitly refers to both the Greek Cypriot and Turkish Cypriot communities and other religious groups. (2)
- On October 25, 2021, the Commissioner and Officers of her Office visited the House of Cooperation in the buffer zone, where they met and talked with the two Cameroonians who lived in tents outside, collecting information in order to address it to the competent Authority (Ministry of Interior) exercised her mediation role to achieve a treatment to the best of their interest, on a humanitarian basis.
- In December 2021, another own initiative intervention was submitted, on the occasion of an arson attack on the Buyuk Mosque in Larnaca. Even though from the police investigation was revealed that it was an unfortunate incident (personal and not racist motives of the arsonist), however, given the extent of the issue, it was

deemed appropriate and necessary to refer again to the issue of actions aimed at places of worship of any religion and monuments of the cultural heritage of the place. (3)

- In December 2021 we filed a Report regarding the detention conditions at the Menogia Detention Centre for Irregular Migrants, with recommendations on maintaining those detention conditions in line with human rights law and the international standards set by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) (4)
- In December 2021 we filed another Report regarding the need to combat racial incidents in football matches and sports events in general. The Report was filed after we were informed about an incident that occurred, in a first division football match, during which a number of supporters of the home team racially abused with monkey chants a black player of the visiting team. Even though, for the said incident, a fine was imposed against the home team, we reiterated the responsibility of the state to show zero tolerance to racial incidents in sport. (5)
- During 2021 we also made a number of Reports regarding the protection of the rights of Persons with Disabilities, in accordance with the Law and the UN Convention on the Rights of Persons with Disabilities. (6)
- In March 2021, we filed a Report/Statement on the prevention and handling of cases of harassment and sexual harassment in the workplace. (7)
- In December 2021, a Report was submitted regarding gender discrimination at the workplace against women non-commissioned officers (8)

Secondly, further to interventions in the form of Reports/Statements and Announcements, our NHRI has also engaged in the course of 2021 in a number of actions which aimed to raise awareness on human rights issues and/or contribute with our experience on the promotion of the rule of law. Indicative examples of such actions were the following:

- Officers of our NHRI continued to do regular Presentations/Trainings 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.
- We continued 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. In this framework, we participated in a Working Group that has prepared/finalised an Action Plan on the

promotion of LGBTQI Rights, including the strengthening of the relevant institutional and legal framework.

- In 2021, in cooperation with the Office for Democratic Institutions and Human Rights (ODIHR) of the Organization for Security and Co-operation in Europe (OSCE), we have launched a joint initiative to explore the possibilities that exist for the development and promotion of interagency co-operation between competent public authorities and civil society bodies, in order to more effectively address hate crimes in Cyprus. In the framework of this cooperation, a Working Group has been set up, with the responsibility to define and promote specific actions that will strengthen and improve the national framework which deals with racist crimes and support of the victims. The 1st Meeting of this Working Group was held November 2021, during which, inter alia, we discussed the promotion of a functional definition of what constitutes hate crime and the appointment of prosecutors with more specific competence and knowledge on prosecuting hate crimes. (9)

In 2021, we also organised the following awareness raising campaigns addressed to rightsholders and the general public:

- In March 8, 2021, we launched a Campaign called "Break the Silence" (2021). The Campaign was launched on the same date that an Own Initiative Report was published regarding the prevention and treatment of harassment and sexual harassment in workplace. The campaign started with a press conference, 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 public sector departments, to be placed in their premises. (10)
- A Campaign to promote the "Equal Participation of Persons with Disabilities in Elections" was launched in May 15, 2021. In this framework, an Own Initiative Report was published regarding the said rights of persons with disabilities. Furthermore, an information leaflet was also prepared and published, containing information about the rights of persons with disabilities according to the UN CRPD Convention, before and during election procedures, for ensuring the equal exercise of their civil rights. The Report and the leaflet were sent to all implicated 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. (11)

- On December 2021, the Commissioner for Administration and the Protection of Human Rights, in view of the 30th anniversary of the introduction of the Institution of the Commissioner of Administration in the Republic of Cyprus, is organizing an Awareness Campaign for Human Rights. In the occasion of the campaign, among others, short videos/spots were published regarding human rights and the 30-year course that has been carried out so far by the institution of the Commissioner, through all his/her mandates. the videos/spots are shown free of charge by the television stations. (12)
- 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 March 2020, an Awareness Campaign on COVID-19 & Human Rights. (13)
- Within the framework of her responsibilities as the National Independent Authority for Human Rights, the Commissioner has been carrying out since 2020 an information campaign on hate speech and the freedom of expression. More specifically, a special page was created on the Office's website which gathers the most important interventions made by the Commissioner as the National Independent Authority for Human Rights with regard to issues related to hate speech and the freedom of expression. This specific page is being constantly updated. (14)
- The Commissioner, under her mandate as a National Preventive Mechanism prepared, with lawyers of the Association of the Protection of the Rights of Prisoners & Ex-Prisoners a Guide of Prisoner's First Contact. The Guide was prepared after taking into consideration the articles of the existing legislation and the rules and regulations in force, as well as real experiences gained from having contact with persons who remained in custody either as detainees pending trial or convicts in the Central Prisons of the Republic of Cyprus. For the publication of the guide we requested and received the views of the Department of Prisons. This is a guide to inform new detainees / prisoners about their rights, obligations, and rules of safe cohabitation within the prison. The guide aims to answer, in a plain and simple language, some initial simple questions about prisoner's rights. This will be followed by translations into languages understood by foreign prison inmates and will be reissued. (15)

- We also continued to be engaged, and express our views, in discussions held in Parliamentary Committees, as regards the drafting of bills affecting the Rule of Law in matters related to our competences.

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NHRI's Recommendations to National and European policy makers

We recommend to National and European policy makers:

- Recognise that the rule of law cannot be implemented in an environment that does not provide protection to fundamental human rights.
- To study, and take into due consideration, the findings in ENNHRI's annual rule of law Reports and more generally cultivate the practice of taking into due account the decisions of National Human Rights Institutions, in a way that their recommendations are fully respected
- To develop a firm and comprehensive legal framework on the basis of which NHRIs in Europe will be set up and function effectively. The said legal framework should lay down certain standards that all NHRIs should meet, across Europe.
- To further safeguard the independence of NHRIs from the Executive and provide effective protection from threats and undue pressure.

Independence and effectiveness of the NHRI

International accreditation status and SCA recommendations

The Cypriot NHRI was [accredited](#) with B-status by the Sub-Committee on Accreditation (SCA) in November 2015. During a scheduled review in June 2021, the SCA decided to defer further consideration of the reaccreditation of the institution until October 2022.

In June 2021, the SCA acknowledged the efforts made by the Cypriot NHRI to address the SCA previous recommendations through its activities since its last review.

It also encouraged the NHRI to continue its efforts to promote and protect all human rights, and to continue to strengthen its institutional framework and effectiveness in line with some recommendations.

First, the SCA was of the view that the selection and appointment process for the Commissioner was not sufficiently broad and transparent. It encouraged the Cypriot NHRI to advocate for amendments that would formalize a process with all requirements under the UN Paris Principles and SCA's General Observations. The SCA acknowledged the information provided by the Cypriot NHRI that the safeguards for the selection and appointment of the Commissioner are stronger if compared to other independent public functions in the country.

Further, the SCA encouraged the Cypriot NHRI to strengthen its promotional mandate, while noting that the institution undertakes a wide range of promotional activities in practice, including awareness campaigns and issuance of public statements.

The SCA also called for strengthened adequate funding and financial autonomy to the Cypriot NHRI. It noted that, while the institution has management and control of its budget, budgetary amendments must be approved by the Ministry of Finance. The SCA was concerned that this may restrict the institution's ability to direct its budget to those areas it has identified as most important. The Cypriot NHRI reported that it had not encountered issues in this regard.

In addition, the SCA encouraged diversity in the membership and staff of an NHRI. The SCA recalled that, in the case of single-member institutions such as the Cypriot NHRI, pluralism can be achieved by ensuring staff are representative of the diverse segments of society.

Finally, the SCA noted that the NHRI's legislation was silent on the number of times the Commissioner can be re-appointed, which leaves open the possibility of unlimited tenure. In order to promote institutional independence, the SCA was of the view that it would be

preferable for the term of office to be limited to one re-appointment, and encouraged legislative amendments in this regard.

The Cypriot NHRI is scheduled to undergo reaccreditation in October 2022.

Regulatory framework

The NHRI does not have a constitutional basis and its regulatory framework did not change since the 2021 report.

The NHRI has the mandate to contribute to access to justice for individuals, including through complaints handling and legal advice and awareness raising. The NHRI also has competence to launch own initiative investigations on systemic issues of human rights violations and to call and engage in consultations between implicated parties, for the implementation of the Institution's recommendations and the finding of practical solutions to problems that individuals face.

Our NHRI has additional broad competence to also act as: Ombudsman Institution, Equality Body, National Mechanism for the Prevention of Torture, Independent Authority for the Promotion of the Rights of Persons with Disability (in accordance with article 33(2) of the UN Convention on the Rights of Persons with Disabilities), Mechanism for the Monitoring of Forced Returns of irregular immigrants and mandate for examination of Employee terms of employment and human rights violations.

While the existing regulatory framework provides a satisfactory basis for the Cyprus NHRI to function, it could be further strengthened in terms of the capacity of the NHRI to provide legal assistance to individuals whose human rights are violated.

Regarding the Recommendation of the Committee of Ministers of the Council of Europe on the functioning of NHRIs to member States, adopted on 31 March 2021(CM/Rec(2021)1), we would like to note the following:

- **Recommendation 4** (On the process of selection and appointment of the leadership of a NHRI)

According to the applicable 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, still the appointment of the Ombudsman-Commissioner depends on prior consent and approval by the majority of the House of Representatives. Because of

the fact that the government has not the majority in the Parliament, the approval of the candidate by the Parliament needs the synergies of the political parties. In this way, even though the Commissioner is appointed by the President, based on the recommendation of the Council of Ministers, the final decision is upon the House of Representatives prior consent and approval. During this period of time, from the proposal of the Council of Ministers till the final decision of the Parliament, NGO's and other civil society representatives bring their views before the Parliament members, related to the candidate who has been selected by the Council of Ministries or for any other person whom may thing could be more eligible for the position. The discussions between Parliament members and NGOs/civil society usually lasts for several days as well as the brainstorming and other names of candidates promoted via mass media. Their point of view is taken seriously into consideration by the Parliament before their final decision to approve or to reject the Council of Ministers proposal. This procedure, ensures the full independence of the Commissioner, since the Commissioner is the only Incumbent in Cyprus whose selection must be approved prior by the majority of the Parliament and not directly appointed by the President. Please kindly not that the governmental party does not have the majority of the parliament and thus the appropriate synergies from all the political parties are needed for the candidate to earn the prior approval of the representatives before his/her appointment.

It is very important to underline that Cyprus Republic and the Constitution has a very strict separation of Powers and the necessary prior approval of the appointment of the Ombudsman by the Parliament is the only exception which allows the House of Representatives to have a decisive role on the competence of executive Power.

It is worth be noted that when the term of the Commissioner ends and the position becomes vacant, it is made publicly known. Therefore, every person who is interested in, may express his/her interest for the position either addressed directly to the Council of Ministers or use another way like expressing his /her interest via mass media. In this way, a number of interested persons are brought before the Council of Ministers, from whom which a merit based selection candidate proposed at last to the President of the Republic. The latter has not the right to appoint the candidate before the prior approval of the Representatives in a discussion which it takes place in couple of weeks after the Council of Ministers suggestion.

- **Recommendation no 5** (regarding the dismissal process of the of the NHRI leadership)

According to the relevant Law, the Commissioner (head of the NHRI) is appointed for a term of six years and during that term, he/she may not be dismissed or withdrawn from Office, except for the same reasons and in the same way that judges of the Supreme Court may be dismissed or withdrawn from Office.

- **Recommendation no 6** (regarding the provision to the NHRIs with adequate, sufficient and sustainable resources to allow them to carry out their mandate), ...

In 2020, the Institution's staff was increased by the recruitment of four (4) new Officers, and more vacant positions have been approved and are expected to be filled in 2022 .It is worth noting that process for filling them has already begun.

The last decade (at least) there is not any restriction to the resources allocated to the Commissioner. Every year, Commissioner's budget is prepared by his/her Office upon their needs and also upon its strategic plan. The proposed budget is approved as a whole by the Parliament via its submission by the Ministry of Finance. This way, the Commissioner is provided with the necessary financial, technical and human resources to fulfil its broad mandate.

The budget includes, among others, the necessary amount for the premises of the Institute, which is housed in a building based on a private contract concluded by the Commissioner with the owner of the building.

Additionally, and regarding to the budget, it is noted that following its approval, the Commissioner has absolute management and control of the appropriated funds, on condition that the limits set for each category of expense are respected.

- **Recommendation no 7** (regarding the NHRIs authority to determine their staffing profile and recruit their own staff)

As we stated in last year's report, 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 organizes 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, at a later stage, 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 (Officers) to take the general governmental exams. To that purpose, in the Annual Budget , an

amount of 18,000 EUR was included for the preparation of specialized exams for the recruitment of new staff.

The final selection for the recruitment of the staff of the Office will henceforth be taking place among candidates who have the academic qualifications the set for employment positions in our Institution and are eligible to apply for the post, without any limitations. Note that, according to a relevant Law in force, 10% of the vacant post are offered to persons with disabilities, when they are candidates,.

Regarding the functioning of our NHRI in compliance with the Paris Principles, please see our answers above, in relation to the comments of the Sub-Committee on Accreditation (SCA) on “selection and appointment” “adequate funding and financial autonomy”, and “pluralism”.

Regarding the regulatory framework under which our NHRI operates, please also refer to the 2021 ENNHRI Rule of Law Report (under “Changes in the regulatory framework applicable to the Institution”).

The Commissioner has already sent a letter to the Ministry of Justice in order to promote the amendment of the Commissioner for Administration and Protection of Human Rights Law so they can reach the full compliance with Paris Principles and, in particular, regarding the term of the Commissioner in order to be renewed only once and not more.

Enabling and safe space

State authorities have good awareness of the NHRIs’ mandate, independence and role.

The NHRI also has adequate access to information and to policy makers, and is often involved in the preparation of legislation and policy making with human rights implications.

The bodies and authorities which are affected by investigations conducted by our NHRI, have a legal obligation to respond to questions/enquiries that we address to them, as well as to present to us relevant documents/evidence. Even though the Law does not indicate a specific timeframe for the said organisations/authorities to respond, a “reasonable” time frame can, and is often set, by our NHRI, depending on the circumstances of each case.

Protection of the head and staff of NHRI against threats and harassment, is provided in the Law which regulates the NHRI’s operation (1). Specifically, according to Commissioner for Administration Laws 1991-2014:

- During Commissioner’s term of office, he/she may not be dismissed or withdraw from Office, except for the same reasons and in the same way that judges of the Supreme

Court may be dismissed or withdraw from Office [article 3(7) (on the ground of misconduct)].

- No legal proceedings may be brought against the Commissioner in relation to any act done by him/her or any opinion expressed by him/her or report submitted by him/her in the exercise of his/her functions, provided that he/she has exercised his functions and powers under the Law, in good faith and within their limits [article 12(1)].
- The Commissioner or any other member of the staff of his/her Office may not be called to testify before a Court or in any proceedings of a legal nature in respect of any matter that has come to his knowledge in the exercise of his/her duties [article 12(2)].

In relation to article 3(7) of the Law, is noted that the mentioned reasons of dismissal are defined in Articles 133.7(4) and 153.7(4) the Constitution of the Republic of Cyprus, according to which, the Judges may be dismissed only on the ground of misconduct. In such a case, the Attorney General appeals to the Supreme Court and if the appeal is accepted after hearing, the Council of Judges (article 153.8 of the Constitution) decides regarding the removal or not from his/her office.

As mentioned above, in view of the NHRI's broad mandate, and in line with Recommendation no 10 of Council of Europe Committee of Ministers' 2021/1, further additional resources have been allocated to our NHRI to effectively perform our functions.

References

- (1) Articles 12 and 3(7) of the Commissioner for Administration Laws:
http://www.cylaw.org/nomoi/enop/non-ind/1991_1_3/full.html

Human rights defenders and civil society space

We consider that overall, the human rights defenders and civil society enjoy a safe space to operate and express their opinions.

We did not find any evidence of laws, measures or practices that could have a negative impact on civil society space and/or reduce human rights defenders' activities, nor we observed evidence of threats and attacks.

Overall, we find that civil society actors are often consulted in law drafting and policy making which is related to the sphere of their mandate.

NHRI's Recommendations to National and European policy makers

We recommend to national policy makers to continue to ensure respect for freedom of speech, secure financial support for NGO and consult them on draft laws that are related to the sphere of their competences and operations.

Checks and balances

We consider that, overall, there are structures for checks and balances between each branch of government (executive, legislative and judicial) with individual powers to check the other branches.

However, the delays observed in the completion of court proceedings and the backlog of cases pending before courts (a problem which has been pointed out in a number of international reports), have not, yet, been addressed adequately, negatively affecting the check and balances system of Cyprus.

Trust amongst citizens and between citizens and the public administration

As we stated in last year's report, 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.

NHRIs as part of the system of checks and balances

Our NHRI regularly intervenes in cases where we observe violations or limitations in the enjoyment of citizen's human rights, as these are protected by Law.

In most cases our interventions and recommendations are done/submitted through Letters, Reports /Statements and in Public Announcements, reinforcing in this was the national system of checks and balances.

Indicative examples of such interventions are cited above, in the first section concerning follow-up initiatives by the institution on identified challenges affecting rule of law and human rights protection.

NHRI's recommendations to national and regional authorities

The national system of checks and balances could be further strengthened by:

- The allocation of additional resources to our NHRI, to more effectively and timely perform its mandate, and

- The promotion and introduction of changes in the functioning of the judicial system, that will shorten the time required by Courts to examine cases/appeals against decisions of the Executive or Public Administration.

Functioning of the justice system

Despite the delays observed in the completion of court proceedings, as already mentioned above and in last year's report, we observe that the judiciary maintains its independence, and does not refrain from reversing unlawful decisions by the Executive and the Public Administration.

NHRI's recommendations to national and regional authorities

As stated above, we recommend the promotion and introduction of changes in the functioning of the judicial system, that will shorten the time required by Courts to examine cases/appeals that are brought before them.

Media freedom, pluralism and safety of journalists

We observe that journalists and media enjoy a safe space to fulfil their role and are free to criticize the branches of government and public administration. Our human rights monitoring and reporting did not find any evidence of laws, measures or practices that could restrict a free and pluralist media environment over the past year. Although, there was an incident 2-3 years ago, when the Attorney General began, after accusations by the Auditor General, an investigation for the criminal prosecution against a journalist of the newspaper "Politis", due to the content of his article in the newspaper. Eventually the relevant accusations were withdrawn and the case did not proceed.

NHRI's recommendations to national and regional authorities

Generally, we recommend national and regional authorities to ensure that a strong legal framework should be implemented across Europe to ensure media freedom, pluralism and the safety of journalists.

Corruption

Despite the existence of checks and balances mechanisms, cases of corruption of public officials are sometimes identified. Furthermore, public opinion polls show that a significant percentage of the public believes that corruption is widespread. (1)

The bill which provides for the establishment of an "Independent Body against Corruption" has not yet been finalized, albeit this is expected to happen in 2022. Procurement rules in Cyprus, are in line with the relevant EU acquis. (2)

Until recently, Cyprus did not have a comprehensive national legislation to protect whistle-blowers and people who reported actions or breaches of the legislation that were harmful to the public interest. The introduction of such a Law in January 2022, already mentioned above in the first section on follow-up initiatives by authorities on identified challenges affecting rule of law and human rights protection, is a positive development.

We are not aware of any other laws or measures relating to corruption and we have not found any evidence of significant inaction in response to alleged corruption, nor did we find concrete evidence of corruption in the framework of investigating individual complaints and cases.

Our NHRI participated and contributed in the discussions that were held in Parliamentary Committees, for the establishment of an “Independent Body against Corruption” and the Law for the protection of whistle-blowers.

References

- (1) <https://www.philenews.com/koinonia/eidiseis/article/955495>
- (2) http://www.treasury.gov.cy/treasury/treasurynew.nsf/page21_gr/page21_gr?op=endocument; http://www.cylaw.org/nomoi/enop/non-ind/2017_1_11/full.html

NHRI's recommendations to national and regional authorities

We recommend the introduction of a strong legal and institutional framework, especially within the sphere of public administration, which will have internal control mechanisms and will ensure transparency and accountability.

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

The measures that the Government took to contain the pandemic have affected many rights of citizens, especially those who remained unvaccinated. Our NHRI has received a significantly large number of complaints regarding these measures, predominately by people in situations of vulnerability (eg. people with disabilities) and unvaccinated citizens. In some situations, our NHRI considered it necessary to make interventions with recommendations to cancel or modify existing measures.

Emergency regimes and related measures

Since the outbreak of the COVID-19 Pandemic, the Government took several measures to contain the pandemic, which affected the rights of citizens (e.g. restrictions in movement, and social gatherings, temporary closure of businesses, on line school attendance, mandatory wearing of face mask).

The measures to contain the pandemic are taken with Decrees issued by Minister of Health, on the basis of the Law to Combat Infectious Diseases [Cap 260], and are of a specified duration. Furthermore, these measures are taken after consultation with a scientific advisory committee. The most recent Decree was issued on 27/1/2022. (1)

Currently, no inland restrictions of movement are in place, while schools and businesses are open (operating under certain safety conditions).

Generally, access to places where people gather is available for people who have the so called "Safe Pass", issued to people who are fully vaccinated or were diagnosed with COVID - 19 in the last 90 days or have a recent negative Rapid or PCR test.

However, in view of a new wave of infections and the high transmissibility of the "omicron" variant of the virus, since last December, access to certain places of gathering and/or socializing has been restricted only to people to people who are fully unvaccinated or have been diagnosed positive to the virus in the last 90 days with Covid-19 (such places include: restaurants, bars, theaters, cinemas and stadiums).

Generally, our NHRI's approach to the complaints we received against these measures is to assess whether they were: legally based, time-limited, proportionate and non-discriminatory. Furthermore, we gave special emphasis to the protection of rights of people in situations of vulnerability.

Specifically, during 2021, our Awareness Raising Campaign on COVID-19 & Human Rights which began in March 2020 in relation to the COVID-19 virus and the protection of human rights, continued. It is noted that in the context of the campaign, 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. (2)

Furthermore, our 2020 interventions regarding COVID-19 pandemic and human rights were included in a special edition that was published in December 2020. (3)

It has to be underlined that during 2020, we were pleased to observe a very high implementation rate of our recommendations regarding ensuring the proportionality and non-discrimination of the measures taken in relation to the pandemic, such as ensuring equal access to education for children with disabilities, the right to maternity during

childbirth, the release of a number of prisoners for the decongestion of prisons during the pandemic, etc.

In the context of the mentioned ongoing campaign, a number of Reports and Interventions were also submitted in 2021, underlining the need for the measures taken to be limited to what is absolutely necessary, proportionate, lawful, non-discriminatory and to not violating human rights in any way. Reference to some of our main interventions regarding the pandemic in 2021, is made in the following section concerning actions taken by the NHRI.

References

- (1) <https://www.pio.gov.cy/coronavirus/uploads/%CE%94%CE%99%CE%91%CE%A4%CE%91%CE%93%CE%9C%CE%91%20%CE%91%CE%A1.%205-2022%20-%20PDF.pdf>
- (2) <http://www.ombudsman.gov.cy/ombudsman/ombudsman.nsf/All/3C95B6EC728A9A27C22586B700331FE4?OpenDocument>
- (3) <http://www.ombudsman.gov.cy/ombudsman/ombudsman.nsf/All/A0DAB3C222F23E9DC22586B7003427BB?OpenDocument>

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

Our main concerns, regarding the (medium and long-term) implications arising from the COVID-19 outbreak, relate to the effect that the pandemic may 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).

Another concern is the implications that the pandemic may have to the quality of education. School closures or restriction of access to schools or universities premises, long distance education in both secondary and higher education, have a negative effect on the quality of education provided and may hinder young people's academic and professional prospects.

Actions taken by the NHRI to promote and protect rule of law and human rights in the crisis context

With our contribution to the 2020 and 2021 ENHRI Rule of Law Reports we referred to a number of interventions made by our NHRI regarding measures taken by the State to combat/contain the Pandemic, mainly to ensure the protection of rights of vulnerable groups of people (specifically: people with disabilities, detainees, asylum seekers in Reception Centres and psychiatric patients).

The NHRI was also active to promote and protect rule of law and human rights in the context of the COVID-19 pandemic during 2021. Main interventions included the following.

In January 2021, we submitted an ex officio Report regarding the distance education of children attending the Special Units of Primary Education Schools. Specifically, according to a circular of the Ministry of Education, Culture, Sports and Youth, during the period 11-29 January 2021 the children who attended the Special Units of the Primary Schools, would receive distance education during this period, although in the Special Units of Kindergartens and Special Schools, the children would attend in person. This decision discriminated against children attending the Special Units of Primary Schools, as it was not possible for them to attend classes remotely and, consequently, they were excluded from access to appropriate education tailored to their individual needs. (1)

As noted, the provision of personalized education and the benefits that children receive in Special Units cannot be replaced by distance education. Therefore, the restrictions arising from distance education can lead to unfavorable treatment of children, as the individual needs and special characteristics of children receiving support in Special Units are not taken into account. Furthermore, given that distance education becomes particularly difficult or impossible for specific children, the decision in question amounts to less favorable treatment and discriminates against children in the Special Units of Primary Schools.

Consequently, without the implementation of the necessary reasonable accommodations, children attending the Special Units are excluded from any form of education.

In our Report, we addressed a recommendation to the Ministry for the immediate review of its decision regarding children with disabilities attending the Special Units of Primary Schools, taking into account the opinion of parents and their representative organizations, so that by taking individualized measures, the education of the children can continue unhindered and any discrimination against them, compared to other children of the same age who are in the same position with them, to be removed. Following our Report, the Ministry implemented the abovementioned recommendation.

In April 2021, a Statement was published in relation to the measures taken to deal with the spread of COVID-19 pandemic in Athalassa Psychiatric Hospital.

In the Statement, we noted that the competent authorities are obliged to take actions to ensure the respect of the human rights, specially of people living in psychiatric facilities who are in a state of confinement, due to compulsory hospitalization, which may lead to recurrence of mental illness.

Furthermore, we recalled that any measures that may be taken to limit the spread of coronavirus on hospital premises should be for a limited period of time and with a view to protecting patients' rights so that they do not end up inhuman or degrading treatment.

The Statement included, among others, recommendations for ensuring respect for the human rights of the quarantined persons, finding ways for such individuals to remain in contact with other persons, providing access to alternative means of communication, as well as providing to them access to open space. (2)

In July 2021, we issued a Statement/Opinion regarding a number of measures that were adopted at the time by the state to combat COVID-19, and their compatibility with human rights law. (3)

The Statement/Opinion was issued after a number of complaints were received against specific measures adopted, including: the obligation to wear protective masks, the requirement for mandatory examination of employees with rapid tests in order to have physical presence at their workplace, the requirement for compulsory examination of high school students via rapid tests in order to return to schools and attend classes in person, the introduction of the SafePass as a precondition to enter crowded places, and the abolition (from August 1, 2021) of the free provision of rapid antigen detection test (rapid test) to unvaccinated citizens

In our Statement/Opinion recorded and analysed the relevant legislative, jurisprudential and institutional framework, both at international and national level. Emphasis was placed on the provisions of international human rights instruments which protect the right to privacy, equal treatment and non-medical treatment without the consent of the person concerned. At the same time, we cited and analysed the provisions contained in these legal documents, which independently guarantee individuals the collective right to high quality public health, and provide the possibility of imposing legal restrictions on the enjoyment of fundamental freedoms and rights in specific cases, such as the protection of other people's rights and / or the protection of public health and well-being .

Furthermore, we referred to the views of international organizations in relation to the implementation of measures to limit the transmission of COVID-19 so that they are in line with human rights principles, as well as to the views and recommendation of various international scientific organizations, in respect to combatting the spread of the pandemic.

In essence, we stated that, according to the human rights legislation, individual rights may be restricted through special legal provisions which, however, must be in line with the principle of proportionality, have a temporary duration, facilitate a legitimate aim and are absolutely necessary in a democratic society.

Taking everything into consideration, we concluded that there seems to be no other available, and less restrictive ways for the State to implement its positive obligation to safeguard public health.

Notwithstanding the above, we made the following recommendations / suggestions:

- In the context of the positive obligation of the State to protect public health from the pandemic, it must be ensured that all the measures taken to this end are in line with the principles of the human rights that are recalled in the Statement, and in particular, with the principles of necessity, proportionality and non-discrimination, and are of a temporary nature.
- The measures applied should take into account the specific circumstances of people with increased vulnerability (such as low-income people, the unemployed, people with a migration background, etc.), for whom the negative effects of the measures may be greater, compared to the rest of the population.
- The measure of having a SafePass in order to enter crowded places should be not to discriminate in the field of access to essential services and goods (eg. access to medical treatment).
- The decision to abolish the free provision of rapid antigen detection test to certain categories of people should be reconsidered, so that it is in line with the relevant recommendations of the World Health Organization (which recommended the increase of access to free tests) and the EU Fundamental Rights Agency (which stated that diagnostic tests should be universal, accessible, timely and free).

In December 2021 we also issued an Opinion/Report regarding the protocol of operation that was decided by the Cyprus' Technological University, in view of the pandemic. (4)

Our intervention emphasized on the University's decision to allow access to campus and physical presence to lecture rooms and laboratories, only to student who were vaccinated or were diagnosed positive to the virus.

A large number of unvaccinated students complained to us against the controversial decision, claiming that they were unjustifiably discriminated and that their right to access to education was violated.

In the framework of our investigation the written comments/views of the Dean of the University were received.

In our Report under the Commissioner's mandate as Equality Body we concluded that there was a violation of the right of access to education and thus we proceeded with a binding decision, concluding that the controversial decision was not adequately justified by the University, and that, taking all into consideration, the said Decision did not comply with the principals of proportionality and non-discrimination.

As a result, with a binding decision, after a consultation occurred between The Commissioner as Equality Body, the representatives of the affected students and the University Leadership, we recommended that the University's protocol of operation is reconsidered and modified, in line with our recommendations, something that already is being implemented.

The abovementioned binding recommendation of the Commissioner, as well as the relevant report, were formally sent to the Council of Ministers, the Minister of Health, as well as to the Attorney General of the Republic, as the Legal Advisor of the Council of Ministers and the Ministers.

References

- (1) [http://www.ombudsman.gov.cy/ombudsman/ombudsman.nsf/All/B7434AEFD11330AC225865C003890F0/\\$file/54.2021_12012021.pdf?OpenElement](http://www.ombudsman.gov.cy/ombudsman/ombudsman.nsf/All/B7434AEFD11330AC225865C003890F0/$file/54.2021_12012021.pdf?OpenElement)
- (2) [http://www.ombudsman.gov.cy/ombudsman/ombudsman.nsf/All/2A70E8B74AC751C9C22586C4003E37F8/\\$file/2_564_2021.pdf?OpenElement](http://www.ombudsman.gov.cy/ombudsman/ombudsman.nsf/All/2A70E8B74AC751C9C22586C4003E37F8/$file/2_564_2021.pdf?OpenElement)
- (3) [http://www.ombudsman.gov.cy/ombudsman/ombudsman.nsf/All/2FE43D11CF57A376C225872500338CD1/\\$file/COVID.pdf?OpenElement](http://www.ombudsman.gov.cy/ombudsman/ombudsman.nsf/All/2FE43D11CF57A376C225872500338CD1/$file/COVID.pdf?OpenElement)
- (4) [http://www.ombudsman.gov.cy/ombudsman/ombudsman.nsf/All/6950E359058C484DC22587AE00429272/\\$file/1832_2021.pdf?OpenElement](http://www.ombudsman.gov.cy/ombudsman/ombudsman.nsf/All/6950E359058C484DC22587AE00429272/$file/1832_2021.pdf?OpenElement)

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

As we stated in last year's report, we were able to carry out our operation (including visits and inspections to different institutions, including as National Preventive Mechanism), in accordance with the safety protocols decided by the State. During this period we carried out visits and inspections to Athalassa Psychiatric Hospital, Aradippou Police Station, Menogia Detention Centre for Irregular Migrants and Reception and Accommodation Centre for Political Asylum Seekers in Kofinou.

NHRI's recommendations to national and regional authorities

We recommend to the authorities to:

- Ensure that any measures taken to combat/contain the pandemic are: based in law, time-limited, proportionate and non-discriminatory.
- Give special emphasis to the protection of rights of people in situations of vulnerability.

Czech Republic

Public Defender of Rights of the Czech Republic

Independence and effectiveness of the NHRI

International accreditation status and SCA recommendations

The Public Defender of Rights is a non-accredited associate member of ENNHRI. As such, under the ENNHRI Statute, it commits to take active steps towards compliance with the UN Paris Principles and A-status accreditation.

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, monitor of forced returns (under the EU Return Directive), and body promoting equal treatment and supporting workers in the European Union and their family members (under the Directive 2014/54/EU).

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 Commissioner for Human Rights promised to present a legislative proposal concerning the NHRI in a reasonable future.

The Public Defender was not active in the matter of the establishment of an NHRI in the Czech Republic in 2021. There were several reasons for this. First, the Parliamentary elections (Chamber of Deputies) took place in autumn 2021, making it reasonable for the Public Defender to wait for a new Government to take a stand in this matter. Second, the COVID-19 pandemic has had a great influence on the priorities of the Czech Government and of the Chamber of Deputies. Third, the Government's Commissioner for Human Rights expressed a positive approach to this issue in the past and, to the knowledge of the Public Defender, her office has been working on a draft law/amendment to the Act on the Public Defender of Rights to that effect. Therefore, the Public Defender decided not get actively involved at the moment but is following the developments closely.

Regulatory framework

There were no significant changes in this field compared to 2021.

The Public Defender continues to work without a constitutional basis and with the same mandate, which includes complaint handling, the possibility to file *amicus curiae* before the Constitutional Court and the action in public interest before the administrative courts, initiation of proceedings pursuant to the Act on Proceedings in Matters of Judges and Public Prosecutors, the provision of advice and recommendations to the Government and to the Chamber of Deputies, including in the context of the legislative process, and awareness raising. The Public Defender cannot engage in strategic litigation before courts nor it can provide legal assistance to individuals.

Enabling space

Relevant state authorities have good awareness of the Public Defender's mandate, independence and role and the Public Defender has adequate access to information and to policy makers in all stages of legislation and policy making in matters where it has competence.

Addressees of the Public Defender's recommendations are legally obliged to provide a timely and reasoned reply. While the Public Defender is not aware of any state measures or practices to ensure timely and reasoned response to such recommendations, authorities do abide to this obligation in the vast majority of cases.

Measures are in place to protect and support the Public Defender of Rights and his/her Deputy against threats, harassment and intimidation. In particular, pursuant to Section 7 (1) of the Act on the Public Defender of Rights, the Defender may not be criminally prosecuted without the consent of the Chamber of Deputies, and if the Chamber of Deputies denies consent, criminal prosecution of the Defender shall be impossible during the term of exercise of the Defender's competence. The same applies to the Deputy Public Defender of Rights.

References

- (1) Act 349/1999 Coll. of 8th December 1999 on the Public Defender of Rights, Section 7 (available on: <https://www.ochrance.cz/en/o-nas/predpisy/>)

NHRI's recommendations to national and regional authorities

The Public Defender recommends to the Government to propose to the Chamber of Deputies the establishment of the NHRI in the Czech Republic, either through strengthening the legal mandate of the Public Defender of Rights, or through the establishment of a new institution.

Checks and balances

The Public Defender of Rights regularly takes part in the comment procedure. The Defender may also submit a petition to the Constitutional Court of the Czech Republic pursuant to Section 64 (2f) of the Constitutional Court Act (182/1993 Coll.) and propose the annulment of other enactment than statute, or individual provisions thereof. The Defender may also take part in the proceedings before the Constitutional Court as the *amicus curiae*.

In 2021, the Defender proposed the annulment of Section 9 (5) of the Regulation on Lawyer's Tariff to the Constitutional Court and his petition was successful.

The Defender may also recommend to the Government and to the Chamber of Deputies to issue, amend or cancel a legal or internal regulation.

The Defender also cooperates with many international partners such as ENNHRI, IOI, European Ombudsman, Commission, OSCE-ODIHR, Council of Europe, United Nations, etc. This cooperation usually includes sharing the Defender's experiences and findings (shadow reports, questionnaires, analysis, ect.) and thereby contributing to the monitoring and reporting process on the international level.

The Defender also dealt with the accessibility of the information line "1221", which is meant to provide up-to-date information about COVID-19 for people with hearing impairments who prefer communication in written form. The Ministry for Health started providing this service since September 2020, but only in March 2021 the bidirectional simultaneous transcription of information was launched. The Defender criticized the delay (6 months) in implementing such service effectively, complaining that the Ministry failed to take into account the needs of this specific group of people from the outset. Following the Defender's recommendations, the Ministry made the line "1221" accessible also for sign language users.

References

- (1) https://www.ochrance.cz/aktualne/ustavni_soud_vyhovel_navrhu_ombudsman_azrusil_protiustavni_zastropovani_odmen_pro_advokaty_ustanovene_jako_opa_trovniky/
- (2) Recommendation of the Defender: Case 50/2020/OZP (available on: <https://eso.ochrance.cz/Nalezene/Edit/9220>)

Functioning of the justice system

Length of proceedings

In general, the Defender detected a longer duration of court proceedings in matters related to childcare.

Access to a court in relation to calls of tax offices to withdraw the application for the compensation bonus

The Public Defender detected the practice of several tax offices who advised the applicants for the compensation bonus to withdraw their application because according to the authority's opinion the applicants were not entitled to it. In such case, the applicant did not receive a decision with the reasoning why he/she was not awarded by the compensation bonus. As a result of this, the applicant could not appeal against it or file an action to the court. This inquiry has not been concluded yet; so far, the Defender informed the media and held a meeting with the General Financial Directorate (the Directorate partially changed the above-mentioned practice).

Mandatory publication of court decisions

For several years, the Defender has been struggling for the enactment of the obligation of courts to make their decisions public (in an anonymized version) which currently does not exist in the Czech legal order. Currently, there is the parliamentary legislative proposal to implement the mandatory publication of court decisions.

Justice in antidiscrimination matters

There are long-term systemic efforts the Defender has been pursuing for several years as regards justice in antidiscrimination matters – the following issues, also raised in 2021, remain of concern:

- Sharing of burden of proof in antidiscrimination matters: under the current legislation, sharing of burden of proof in antidiscrimination matters does not cover all situations where discrimination is prohibited by the Anti-Discrimination Act. While the burden of proof is always shared in cases of discrimination on grounds of race and ethnicity, with respect to other protected characteristics, it applies only in the area of labour law (with the exception of “sex and gender”, where the burden of proof is also shared in the area of access to goods and services). Victims discriminated on the basis of their age or disability thus have a worse procedural standing if they defend themselves against discrimination in access to education, healthcare, but also housing, goods and services.
- Reducing the judicial fee for appealing against a court decision relating to antidiscrimination actions: to file the antidiscrimination action, there is a flat fee of CZK 1,000. To file an appeal, the fee amounts to CZK 2,000 or 1% of the amount of compensation for intangible damage claimed if it exceeds CZK 200,000. The Defender recommends that the uniform flat fee of CZK 1,000 would be set also for an appeal in antidiscrimination matters.
- Actio popularis in antidiscrimination matters: the Anti-Discrimination Act does not include the procedural institute known as “action in public interest” (actio popularis), which could be used by organisations advocating the rights of discrimination victims (typically NGOs). The Defender recommends enacting this procedural institute into the Czech legal order.

Justice in asylum and migration cases

- Access to classified information: in cases when a foreign national is not granted by a visa because it would jeopardize the security of a state and the decision is based on a classified information, the foreign national cannot access the classified file so he/she could effectively defend himself/herself before a court.
- Stateless persons: according to the Act on the Residence of Foreign Nationals, stateless persons cannot file an appeal against the decision which does not grant them the status of a stateless person; therefore, they do not have access to justice in such cases.

References

- <https://www.ochrance.cz/aktualne/ombudsman-proveri-vyloucení-casti-podnikatelu-z-naroku-na-kompenzacni-bonus-a-praxi-finan/>
- <https://www.ochrance.cz/aktualne/ombudsman-podporuje-poslanecky-navrh-ke-zverejnovani-soudnich-rozhodnuti/>
- [OMBUDSMAN-NF_monitor-z-01_EN.pdf \(ochrance.cz\)](#)
- [Decision-making of Czech courts in discrimination disputes 2015–2019.pdf \(ochrance.cz\)](#)

NHRI's recommendations to national and regional authorities

The Public Defender recommends national authorities to take measures to ensure that:

- The burden of proof in discrimination cases is shared in all situations where discrimination is prohibited by the Anti-Discrimination Act.
- The possibility to file an “action in public interest” (actio popularis) is foreseen in antidiscrimination matters.
- Stateless persons have effective access to justice in cases when their application for the status of a stateless person was rejected.

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 state of emergency in 2020/2021 took place from October 2020 to 11th of April 2021 and from 26th of November to 25th of December 2021.

The Public Defender of Rights takes part in the legislative comment procedure. In 2021, the participation in the comment procedure for all institutions and authorities participating in it was in some cases more complicated due to shorter deadlines for submitting the comments (examples: Decree 537/2006 Coll., on the vaccination against infectious diseases, implementing the mandatory vaccination against COVID-19 of people older than 60 years).

The repeated announcement of a state of emergency and other pandemic measures had a negative impact on ordering oral hearings and a general fluency in proceedings concerning administrative offences. The Czech Business Inspection significantly reduced its legal advice services for consumers (protection of its employees).

Measures taken to curb the spread of the pandemic also affected the enjoyment of certain rights.

During the spring wave 2021, family members of Czech citizens not having any form of residence permit in the Czech Republic and coming from countries with a high risk of infection were not allowed to enter the territory of the Czech Republic. Moreover, these persons could not apply for a short-stay visa in the country with a high risk of infection. In August 2021, both issues were remedied after the intervention of the Deputy Public Defender of Rights. (1)

In matters related to the childcare, the Defender received complaints reflecting uncertainties in relation to the contact of children with parents who do not have the children in their care (this concerned also children in foster care and children in facilities for children).

In matters related to healthcare, the Defender dealt with several issues:

- there were problems related to regular testing of children at schools (children had to take a test twice a week without proper reasoning – compared to the employees of schools who had to take a test only once a week). Children with mental impairment or with the autism spectrum disorder who could not take a test due to their health condition were not allowed to be physically present at school. After the Defender's intervention, the frequency of testing for children at schools decreased and children who could not take a test due to their health condition could be personally present at schools (2)
- in several hospitals, visits of children by their parents were either significantly limited or not possible at all (the same problems were detected in relation to people limited in their personal autonomy and people in the terminal stage of the disease): the Defender discussed these issues with the Minister of Health and was striving for the cooperation (sharing of good practices, etc.)
- recognition of vaccination from third countries: the number of third countries from which the vaccination certificate is or can be recognized is increasing (4)
- vaccination of foreign nationals residing in the Czech Republic (EU citizens and third country nationals): at first, it was not possible for foreign nationals to register for vaccination against COVID-19 in the Czech Republic; after the Defender's discussion

with the Ministry of Health, the vaccination for these persons has been made available in June 2021 (3)

The Public Defender also witnessed how the situation is particularly affecting certain groups.

Problems were registered in relation to the education of Roma children from the socially excluded areas. Schools were closed in the Czech Republic for a very long time so children had to be educated in the online regime. Unfortunately, this form of education was not suitable for all children, especially for those coming from socially excluded areas. There is also a lower vaccination rate among Roma people, especially among those coming from the socially excluded areas. This issue was also discussed on the session of the Inter-ministerial Commission for Roma Community Affairs. (5)

The Defender also detected that many parents had a problem to reconcile work and childcare in the situation of closed schools and online education. Women were especially affected by the pandemic and related measures because there is a higher percentage of women working in the front-line professions and the professions most affected by the pandemic measures. The occurrence of anxieties and depressions among women significantly increased as well as the occurrence of domestic violence. The pandemic measures also had an extreme impact on lives of single parents.

In order to ease the difficult situation of the hundreds of thousands of people facing execution of their debts towards public authorities, also exacerbated by the economic consequences of the pandemic, the government launched the "Merciful Summer" on 28 October 2021. The purpose of the "Merciful Summer" campaign, coming to an end on 28 January 2022, is to give an opportunity to hundreds of thousands of people in the Czech Republic facing execution to pay their debts without various fines and penalties and by paying only the original amount recovered plus a fee to the executor of CZK 907.50 including VAT. The "Merciful Summer" event concerns only debts where the creditor is a public institution. (6)

References

- (1) <https://eso.ochrance.cz/Nalezene/Edit/9726>
- (2) <https://eso.ochrance.cz/Nalezene/Edit/9954>
<https://www.ochrance.cz/aktualne/zastupkyne-ombudsmana-se-obratila-na-ministra-zdravotnictvi-ohledne-testovani-zaku/>
- (3) <https://eso.ochrance.cz/Nalezene/Edit/9952>
- (4) <https://koronavirus.mzcr.cz/certifikaty/>
- (5) https://test.ochrance.cz/dalsi-aktivity/archiv-vzdelavacich-akci/?tx_odcalendar%5Buid%5D=374&cHash=a62c84939b2d28c8e7d5db6e69d11f30
<https://www.clovekvtisni.cz/jak-se-uci-na-dalku-socialne-znevyhodnene-deti-7374gp>
<https://www.vlada.cz/assets/ppov/zalezitosti-romske-komunity/aktuality/Zapis-z-jednani-Rady-vlady-pro-zalezitosti-romske-mensiny.pdf>
<http://www.romea.cz/cz/zpravodajstvi/domaci/romove-a-ockovani-proti-onemocneni-covid-19.kdo-si-necha-dat-vakcinu-a-kdo-ne>
- (6) https://www.exekuceinfo.cz/novinky/milostive-leto?gclid=CjwKCAiAz--OBhBIEiwAG1rIOrnaMpe61Mxa7CIzuRw3vCeMGMMEqzSHzN96IK2XKFgYjdvgUgdYwxoC_OwQAvD_BwE
<https://milostiveleto.cz/>

Role of the NHRI

The Public Defender of Rights repeatedly turned to public authorities (especially to the Ministry of Health) with his questions and recommendations concerning the problematic issues connected with the COVID-19 measures. For example, the Defender appealed on the Ministry of Health several times to achieve the change of conditions under which Czech nationals and foreign nationals could enter the territory of the Czech Republic.

The Defender was actively engaged in many other issues related to COVID-19 measures, for example in the opening of the register for vaccination for foreign nationals or in the

issue related to the testing of children with mental disability who could not be tested due to their health condition.

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

The Defender received many complaints related to COVID-19 measures (mandatory vaccination, mandatory wearing of respirators, issues related to testing, positive discrimination of vaccinated people, etc.).

The effectivity of functioning of the institution was not affected by the COVID-19 measures. There were restrictions and measures the Office of the Public Defender of Rights had to implement but it never impacted the effectivity of the institution's work. The Office introduced necessary safety measures (mandatory wearing of respirators, mandatory testing at the workplace, etc.), enabled an extended home working and provided the employees with all necessary equipment. The office hours for the public were restricted but the Office did not have to be closed for the public entirely. The systematic visits took place in 2021.

Denmark

Danish Institute for Human Rights

Impact of 2021 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 to address any of the issues reported on in the 2021 ENNHRI Rule of Law Report.

Impact on the Institution's work

The Danish Institute for Human Rights stressed that the 2021 ENNHRI Rule of Law Report has helped give a fruitful overview of the rule of law situation in Europe.

Independence and effectiveness of the NHRI

International accreditation status and SCA recommendations

The Danish NHRI was last reaccredited with A-status in October 2018 (1).

In relation to the selection and appointment process, 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 advocate for the Human Rights Council of Greenland to adopt a guideline or similar administrative instrument to regulate the selection process. The council subsequently adopted a guideline in October 2020.

The SCA acknowledged that there is a relevant body of Danish jurisprudence defining 'personal and professional integrity'. Nonetheless, in the interest of clarity and consistency, the SCA encouraged the NHRI to provide greater precision in its Bylaws or other binding administrative guidelines to clarify the scope of 'personal and professional integrity' as it relates to the dismissal of members of the Board of Directors. The Institute's Bylaws were subsequently adjusted in January 2020.

The SCA encouraged the DIHR to continue to interpret its protection mandate in a broad manner and to conduct a range of protection actions, including monitoring, enquiring, investigating and reporting.

The SCA noted that the DIHR is not explicitly mandated with the responsibility to encourage ratification or accession to international human rights instruments. Finally, acknowledging that the NHRI conducts these activities in practice, the SCA encouraged the DIHR to advocate for amendments to its enabling law to make this mandate explicit.

References

- (1) https://www.ohchr.org/Documents/Countries/NHRI/GANHRI/SCA_Report_October_2018-Eng_FINAL.pdf

Regulatory framework

There have been no changes in the regulatory framework after the 2021 ENNHRI Rule of Law Report.

The situation of the Danish NHRI in terms of its independence, effectiveness and regulatory framework is balanced. The Danish Institute for Human Rights does not have a constitutional basis. The Institute is established by law as an independent state institution. The institution is bound by legislation on e.g. access to information, public archives, financial accountability and transparency, but the Government has no power of instruction over the institution concerning its strategic priorities, choice of actions, analyses etc.

As a National Human Rights Institution, it has a mandate to contribute to access to justice for individuals, including through monitoring, reporting, analyses, awareness raising etc. The Institute does not have a general mandate to handle complaints made by individuals. The Institute provides limited legal assistance to individuals, especially concerning equal treatment and through strategic litigation in selected cases.

Enabling and safe space

In general, the relevant state authorities have good awareness of the Danish NHRI's mandate, independence and its role. The addressees of the Danish NHRI's recommendations are not legally obliged to provide a reply. The Danish Institute for Human Rights found, however, that state actors tend to take recommendations from the Institute into thorough consideration.

The Danish Institute for Human Rights works with political policy processes in Denmark and Greenland in various ways. One way is by responding to public consultations on draft bills, including giving recommendations for alterations of the text etc. Furthermore, the Danish Institute for Human Rights does research and analyses in various fields of human

rights and equal treatment giving recommendations to, primarily, public authorities to enhance the protection and promotion of human rights. It reports to international organisations on human rights in Denmark and Greenland and cooperates with different stakeholders, including state authorities and civil society. The Danish Institute for Human Rights also gives legal advice to people experiencing discrimination and takes steps of strategic litigation in selected matters of principle.

There are no specific, formal measures established in order to protect and support the NHRI, heads of institution and staff against threats and harassment and any other forms of intimidation (including SLAPP actions). Rules of immunity are uncommon in Danish legal tradition and only apply to members of Parliament and of the royal family.

Human rights defenders and civil society space

Laws and practices negatively impacting on civil society space and/or on human rights defenders' activities

The Danish Institute for Human Rights identified two examples of laws, measures that negatively impact on civil society space and reduce human rights defenders' activities:

1. The introduction in 2021 of rules banning donations from persons or organisations attempting to undermine democracy and fundamental human rights and freedoms through donations was described in the 2021 ENNHRI rule of law report. The Danish Institute for Human Rights noted that the rules posed a risk of arbitrariness and legal uncertainty. As of March 2022, a list of prohibited donors has not yet been published.
2. In a bill, also described in the 2021 ENNHRI rule of law report, the Danish Government suggested 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. – a “safety-creating ban” – to keep an area safe from a group of persons likely to make residents or other persons in the area unsafe. However, after much criticism of e.g. the risk of arbitrariness in the enforcement of such rules, including from the Danish Institute for Human Rights, the bill could not reach the necessary political support and was rejected.

References

Ban on donations:

- 2021 ENNHRI rule of law report: https://ennhri.org/rule-of-law-report-2021/denmark/#Human_rights_defenders_and_civil_society_space
- Information (in English) on the list of donors prohibited from making donations to Denmark: <https://us.dk/vores-opgaver/forbudslisten/list-of-prohibited-donors/>

“Safety-creating ban”, rejected 3 June 2021:

- Danish Parliament website (in Danish): L 189 B Forslag til lov om politiets virksomhed (Tryghedsskabende opholdsforbud), rejected: <https://www.ft.dk/samling/20201/lovforslag/l189B/index.htm>

Access to and involvement of civil society actors in law and policy making

As described in the 2021 ENNHRI rule of law report, the Danish Institute for Human Rights found that law-making processes could sometimes be expedited or in other ways differ from usual procedure and with expedited or no public consultation. In general, though, public consultation took place with regard to law-making processes and with a consultation time period of 3-4 weeks, therefore providing access and involvement of civil society actors in law and policy making.

NHRI’s role in promoting and protecting civil society space and human rights defenders

The Danish Institute for Human Rights cooperate with a range of civil society actors to protect and promote human rights and to facilitate a link between civil society and the authorities.

Through the “Human Rights Alliance” the Danish Institute for Human Rights established a partnership with Roskilde Festival (music festival), Amnesty International Denmark, Ungdomsbureauet (“the Youth Bureau”), Mino Denmark and Danish Youth Council. The partnership works to promote knowledge of and support to human rights among young people in Denmark through campaigns and events related to education, arts, creativity and sport.

References

- Information on the Human Rights Alliance (in Danish):
<https://menneskeret.dk/unge-kamp-frit-lige-samfund>

Check and balances

The Danish Institute for Human Rights found several examples of laws, processes and practices that impact the mechanism of checks and balances:

Impeachment of minister for unlawful administration

In December 2021, former minister of foreigners and integration, Ms. Inger Støjberg, was sentenced to 60 days in prison for maladministration in a trial before the Court of Impeachment. Impeachment of a minister for maladministration is extremely rare in Denmark and only the second in 25 years. The court consists of up to 15 Supreme Court judges and the same number of politically appointed judges. This case, having also been scrutinised by a commission beforehand, concerned a decision in February 2016 of separating asylum-seeking couples, where one of the persons were under 18 years, allowing no exceptions. Following instructions from the minister (overriding internal doubts as to the legality of the measure), couples were separated and accommodated in separate asylum centres without the possibility of an individual examination of their case, violating their rights under the European Convention on Human Rights (Article 8) and overriding common principles of administration. Several external actors, including The Danish Institute for Human Rights, had contacted the Ministry of Foreigners and Integration and raised concern over the decision.

New type of examination commission, anchored in parliament

A new act from April 2021 allows the Danish Parliament to establish “scrutiny commissions” consisting of three independent experts, of which at least one is a judge, with the purpose of examining cases which have been under heavy criticism either in the Parliament or in the public. The examination should last less than a year and the scope should be a shorter/smaller format than existing ad hoc examination commissions established by the Government.

Doubt about legal basis for mink culling

Due to the covid-19 pandemic, as described in the 2021 ENNHRI rule of law report, the Danish government in November 2020 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 2020 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. As of January 2022, the case is under examination by the first parliamentary scrutiny commission, the so-called "Mink Commission", established under the new rules described above. A report is expected to be published in 2022.

References

Impeachment trial:

- The Court of Impeachment press release (in Danish), including link to judgement from 2021 impeachment case against former minister Ms. Inger Støjberg, 13 December 2021, <https://rigsretten.dk/aktuelt/2021/12/rigsretten-har-afsagt-dom-i-sagen-mod-fhv-minister-inger-stoejberg/>
- Consolidated Act no. 641/1986 on the Court of Impeachment (in Danish): <https://www.retsinformation.dk/eli/lta/1986/641>

Parliamentary Scrutiny Commissions:

- Act no. 671 of 19 April 2021 on scrutiny commissions etc. (in Danish): "Lov om ændring af lov om undersøgelseskommissioner og retsplejeloven (Indførelse af granskningskommissioner, Folketingets samtykke til nedlæggelse af undersøgelseskommissioner m.v.)", <https://www.retsinformation.dk/eli/lta/2021/671>
- Background information on Parliamentary Scrutiny Commissions (in Danish): <https://www.minkkommissionen.dk/da/baggrund>

The Mink Commission:

- Information on the Mink Commission (in Danish): "Granskningskommissionen om sagen om aflivning af mink", <https://www.minkkommissionen.dk/da>

Trust amongst citizens and between citizens and the public administration

The level of trust among citizens and between citizens and the authorities is very high in Denmark. A few cases, though, resulted in widespread criticism, including the “mink culling case”, as described above and in the 2021 ENNHRI rule of law report.

NHRIs as part of the system of checks and balances

The Danish Institute for Human Rights strives to participate in legislative processes and other policy measures via a range of avenues, including public consultation, contact with decision makers and stakeholders as well as through strategic litigation in selected matters of principle.

For example, please see the 2021 ENNHRI Rule of Law Report concerning Institute’s work on a new epidemics act.

Examples also include the Institute’s work in the case leading to an impeachment trial against the former minister of foreigners and integration) as well as data retention (described above). On data retention, the Danish Institute for Human Rights has been consistent throughout the years in its critique that Danish legislation should be in accordance with jurisprudence from the Court of Justice of the EU.

Lastly, the Institute intervened before the national courts in support of a man from Syria, M.A., who was barred from family reunification with his wife under rules of a mandatory waiting period of three years. The case went on to the European Court of Human Rights. In July 2021, the Grand Chamber with 16 votes to 1 found the national rules in violation of the European Convention on Human Rights, article 8. The Danish Institute for Human Rights had intervened in the case before the Strasbourg Court.

References

- Our work on a new epidemics act: Please refer to the 2021 ENNHRI rule of law report, http://ennhri.org/rule-of-law-report-2021/denmark/#Human_rights_defenders_and_civil_society_space
- The Danish Institute for Human Rights third-party intervention in M.A. v. Denmark – see the European Court of Human Rights, judgment 9 July 2021, <https://hudoc.echr.coe.int/fre#%7B%22itemid%22:%5B%22001-211178%22%5D%7D>

NHRI's recommendations to national and regional authorities

The Danish Institute for Human Rights recommends that national and regional authorities ensure transparency and public consultation in law-making procedures.

Functioning of the justice system

The Danish Institute for Human Rights reported that the case handling times at the Danish courts were under pressure, due to an increase in the number and complexity of cases and partly due to a backlog from the covid-19 lockdown in 2020. Criminal cases which earlier on took approximately 4 months to hear in 2017, now take approximately 7 months.

To ensure progress in cases before the courts, the Act on Administration of Justice includes a rule that defendants in criminal case cannot choose a certain defence lawyer, i.e. a lawyer of their own choice, if the choice will result in a delay of the proceedings of a certain time period. This rule has been expanded with an amendment from December 2021. The Danish Institute for Human Rights had recommended that the limitation of choice should only apply after an individual assessment by the court in each case if the limitation – and consequently an assignment of another defence lawyer – is necessary for the case handling.

Another measure, adopted in June 2021, also with a view of furthering efficiency in the case handling of the courts, tightens up the rules of documentation for allowed absence if the defendant cannot meet in court. The defendant must now, at the latest by the time of the beginning of a court hearing, present the necessary documentation, e.g. a medical certificate. If the demands are not met, and the defendant is absent, the case can go ahead without the defendant being present. The Danish Institute for Human Rights had recommended that the law should take into account situations where it would be practically impossible to produce the necessary piece of documentation at the beginning of the hearing.

References

- On case handling times at Danish courts, please see press release by the Courts of Denmark, 18 March 2022 (in Danish), "Endnu længere sagsbehandlingstider i 2021", <https://domstol.dk/aktuelt/2022/3/endnu-laengere-sagsbehandlingstider-i-2021/>
- Act no. 2601 of 28 December 2021 amending Administration of Justice Act (in Danish), Lov om ændring af straffeloven, retsplejeloven, hvidvaskloven og forskellige andre love (Implementering af initiativer i aftale om politiets og anklagemyndighedens økonomi 2021-2023, herunder etablering af National Enhed for Særlig Kriminalitet), <https://www.retsinformation.dk/eli/lta/2021/2601>
- Danish Institute for Human Rights, public consultation memo on limitation of choice of defence lawyer (in Danish), 20 September 2021, <https://menneskeret.dk/hoeringssvar/implementering-initiativer-aftale-politiets-anklagemyndighedens-oekonomi-2021-2023>
- Act no. 1169 of 8 June 2021 amending Administration of Justice Act (in Danish), Lov om ændring af retsplejeloven og forskellige andre love og om ophævelse af lov om udpantning og om udlæg uden grundlag af dom eller forlig (Effektivisering af straffesagskæden, digital kommunikation i skiftesager, pligtig afgangsalder for dommerfuldmægtige m.v.), <https://www.retsinformation.dk/eli/lta/2021/1169>
- Danish institute for Human Rights, public consultation memo on documentation for allowed absence (in Danish), 12 March 2021, <https://menneskeret.dk/hoeringssvar/effektivisering-straffesagskaeden-mv>

NHRI's recommendations to national and regional authorities

The Danish institute for Human Rights recommends that Denmark provides the necessary funding of the courts to ensure that case handling times are kept at a reasonable level in accordance with Article 6 of the European Convention on Human Rights.

Media freedom, pluralism and safety of journalists

With regards to media freedom and threats to journalists, the Danish Institute for Human Rights reported the incident where the two chiefs of Denmark's two intelligence services (Danish Security and Intelligence Service and Danish Defence Intelligence Service) took initiative to meetings with CEOs and editors-in-chiefs at the largest Danish media, including Berlingske Media, JP/Politikens Hus and DR (Danish Broadcasting Corporation) in December 2021. According to news reports, the intelligence chiefs held the meetings to remind media executives that passing on classified information might be a criminal offence, risking imprisonment for up to 12 years. The visits, which followed the arrest a few days earlier of four intelligence officers accused of leaking information in a case where charges are still secret to the public, were seen as an intimidation campaign by media executives.

References

- (in English): World Association of News Publishers, "World's Press Alarmed by Chilling Effect on Danish Press Freedom", 14 December 2021, <https://wan-ifa.org/2021/12/worlds-press-alarmed-by-chilling-effect-on-danish-press-freedom/>
- (in Danish): Politiken (Danish daily newspaper), "Professor i medieret om PET's og FE's besøg hos mediechefer: Det lyder ikke til, at man har orienteret helt sagligt om gældende ret", 14 December 2021, <https://politiken.dk/indland/art8527430/Det-lyder-ikke-til-at-man-har-orienteret-helt-sagligt-om-g%C3%A6ldende-ret>
- (in Danish): Berlingske (Danish daily newspaper), "PET og FE er på intimideringstur blandt chefredaktører og udgivere", 13 December 2021, <https://www.berlingske.dk/samfund/pet-og-fe-er-paa-intimideringstur-blandt-chefredaktoerer-og-udgivere>

Corruption

The Danish Institute for Human Rights stated that there are, in general, very few detected cases of corruption in Denmark.

Nonetheless, it is worth highlighting that a new act on whistle blowers, adopted in 2021, requires that public authorities and larger enterprises (50 or more employees) must establish an internal system of whistle blower protection. The act also makes way for a whistle blowers channel to the Danish Data Protection Agency.

References

- Act no. 436 of 29 June 2021 on the protection of whistle blowers (in Danish), Lov om beskyttelse af whistleblowere, <https://www.retsinformation.dk/eli/lt/2021/1436>
- The whistleblower channel in the Danish Data Protection Agency, <https://whistleblower.dk/english>

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

The Danish Institute for Human Rights assessed that while in 2020 the impact of measures undertaken by Danish authorities in response to COVID-19 pandemic on the national rule of law was worrying, in 2021 the situation improved. It resulted from the fact that the covid-19 blanket restrictions or official guidelines in 2020-2021, have developed into more tailor-made restrictions or guidelines in the winter of 2021-2022, even if some restrictions/guidelines, also this year, has had serious consequences for a range of actors of society, including but not limited to elective hospital procedures, universities/schools, restaurants, cafés, night clubs, etc.

In Denmark and Greenland, a political ambition to keep society open as much as possible in close observance of the development of the covid-19 epidemic and vaccination rates has been observed in 2nd half of 2021. Some restrictions were reintroduced, however, e.g. restrictions on culture life (closed theatres, concert venues, museums, zoos etc.), closed night clubs and restricted opening hours on restaurants etc, including limits on number of persons assembled, as well as travel restrictions.

Vaccination against covid-19 is voluntary and either full vaccination, a negative Covid-19 test or documentation of a cleared infection has been sufficient to participate in public life, including visits to hospitals, care homes etc. Furthermore, there is a possibility of being

exempt from documenting vaccination, test, infection, if a person signs a solemn declaration stating that exemption is mandated by health reasons.

In a few weeks of December 2021, Greenland introduced vaccine as a requirement of participating in public life in parts of the country. As of January 2022, Greenland changed its test strategy due to an overwhelming a number of Covid-19 cases, thereby limiting tests to people with or in risk of serious illness. As a consequence of the changed test strategy, persons from 15 years of age, who were not vaccinated against Covid-19, could not go to restaurants, the library, indoor sporting activities, museums, theatres/cinemas, hairdressers etc. Shops, mail offices, public authorities' offices etc. were not included. This rule applied until February 2022.

Please refer to the 2020 and 2021 ENNHRI rule of law report to learn more on Covid-19-measures in Denmark and Greenland.

References

- Danish authorities' official website on covid-19 restrictions, <https://en.coronasmitte.dk/rules-and-regulations> (accessed 10 January 2022).
- Greenlandic authorities' official website on covid-19, <https://corona.nun.gl/en/>
- Order on restrictions for parts of Greenland (only in force in a few weeks of Nov.-Dec. 2021) in Danish), Selvstyrets bekendtgørelse nr. 65 af 20. november 2021 om restriktioner for Nuuk m.fl., <https://lovgivning.gl/da-DK/Lov?rid={10544CB2-2E40-4DFC-84C0-3CF10AEAE660}>
- Order on restrictions for the whole of Greenland (in Danish) as of 26 January 2022, Selvstyrets bekendtgørelse nr. 8 af 25. januar 2022 om midlertidige restriktioner for hele landet, <https://lovgivning.gl/da-DK/Lov?rid={AC72B8F2-0A98-45F0-826F-1E3EA15BDE7E}>

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

Covid-19 still affects the work of the Danish Institute for Human Rights, both in terms of less travel and less meetings/events in person with partners and authorities, and in terms of more work being done from home. While the positive aspects of digitalised meeting facilities etc. have been explored and in some way institutionalised, negative effects of not travelling, not meeting each other and external partners as much in person as before, are

also seen. Physical visits and inspections to institutions (National Preventive Mechanism) have taken place in 2nd half of 2021, while in the 1st half they were held digitally.

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

New data retention rules still in risk of violating EU law

In November 2021 the Danish Government presented a bill to the Parliament to ensure that Danish rules on data retention follow jurisprudence from the Court of Justice of the European Union which puts a ban on general and indiscriminate retention of traffic and location data from electronic communication unless there is a serious and actual or foreseeable threat to national security. The coming act shall regulate the registration and storage of traffic and location data and the later access to these data in criminal investigation and proceedings. In its assessment of the draft bill, the Danish Institute for Human Rights found that retention is still in risk of being general and indiscriminate and that the access by police and prosecution to these data by and large is a continuation of previous practice which was in violation of EU law. In its remarks to the bill, the Ministry of Justice admits that there is a serious risk of a part of the new rules being found in violation of EU law ("væsentlig procesrisiko"). The Danish Institute for Human Rights finds it problematic that changing governments since 2016 have postponed a revision of rules violating EU law and now, at last taking an initiative of new rules, are proposing retentions scheme which to the Institute's opinion is also likely to be in violation of the EU Charter of Fundamental Rights. The bill was adopted by the Parliament in March 2022.

References

Data retention:

- Bill no. 93, presented before parliament on 18 November 2021 and adopted in March 2022 (in Danish), "Forslag til Lov om ændring af retsplejeloven og lov om elektroniske kommunikationsnet og -tjenester (Revision af reglerne om registrering og opbevaring af oplysninger om teletrafik (logging) m.v.)":
<https://www.ft.dk/samling/2021/lovforslag/193/index.htm>
- Danish Institute for Human Rights, public consultation memo (in Danish), "Revision af reglerne om registrering og opbevaring af oplysninger om teletrafik (logging) m.v.", 25 October 2021:
<https://menneskeret.dk/hoeringssvar/revision-reglerne-registrering->

Estonia

Chancellor of Justice

Impact of 2021 rule of law reporting

Impact on the Institution's work

Rule of law is and always has been an integral part of the Chancellor's work when supervising the activities of state agencies. More specifically, this involves monitoring whether laws and other legislation organising the lives of people, institutions and companies are compatible with the Constitution and other laws and whether applicable rules are also lawfully implemented. The core of the state based on the rule of law is the principle that everyone is equal before the law. The principle of separation of powers and independent institutions must guarantee a situation where the lawfulness of norms can be checked and, if necessary, contested.

References

- <https://www.oiguskantsler.ee/annual-report-2021/>

Independence and effectiveness of the NHRI

International accreditation status and SCA recommendations

The Chancellor of Justice was accredited with A-status in December 2020 (1). The Sub-Committee on Accreditation welcomed the establishment of the Chancellor of Justice as an NHRI and commended its efforts to promote and protect human rights in Estonia since then.

Regarding the selection and appointment of the Chancellor of Justice, the Estonian NHRI clarified that, in practice, the Estonian President consults all political parties represented in the Parliament as well as the legal community before submitting a proposal to the Parliament. However, the SCA took the view that the process enshrined in the NHRI's enabling legislation was not sufficiently broad and transparent. The SCA encouraged the Chancellor of Justice to advocate for the formalization and application of a process that includes all requirements under the UN Paris Principles and SCA General Observations.

Further, the SCA noted that the legislation is silent on the number of times the Chancellor can be re-appointed, which leaves open the possibility of unlimited tenure. The Chancellor of Justice reports that, in the past, re-appointment has not occurred. Nevertheless, the SCA encouraged the NHRI to advocate for amendments to ensure that the term of office be limited to one re-appointment.

Finally, the SCA encouraged the Estonian NHRI to advocate for an appropriate legislative amendment to make explicit its mandate to encourage ratification of and accession to regional and international human rights instruments. However, the SCA acknowledged that the Estonian NHRI interprets its mandate broadly and carries out activities in this regard in practice.

References

- (1) https://www.ohchr.org/Documents/Countries/NHRI/GANHRI/SCA_Report_December_2020-24012021-En.pdf

Regulatory framework

The NHRI has a constitutional basis and has the mandate to contribute to access to justice for individuals, including through complaints handling, strategic litigation before courts, providing legal assistance to individuals and carrying out awareness-raising.

The national regulatory framework applicable to the institution has not changed since the 2021 report.

Enabling and safe space

The relevant state authorities have good awareness of the NHRIs' mandate, independence and role.

The Chancellor of Justice has unrestricted access to documents, other materials and areas, which are in the possession of the agencies under supervision (para. 27 of the Chancellor of Justice Act). Agencies and persons shall enable the Chancellor of Justice unconditional and immediate opportunity to receive all documents and other materials in the possession of the agencies and persons and access to relevant places. Additionally, para. 28 provides that the Chancellor of Justice has the right to **request information** necessary for the performance of their duties and agencies under supervision, parties to conciliation proceedings, other persons and agencies shall communicate such **information within the term set by the Chancellor of Justice**. Para. 35, subsection 2 provides that the Chancellor

of Justice has the right to apply for commencement of disciplinary proceedings against officials who obstruct the activities of the Chancellor of Justice or his or her advisers.

The addressees of the NHRI's recommendations are legally obliged to provide a timely and reasoned reply and overall the recommendations are usually taken into account. Threats and harassment and any other forms of intimidation against the NHRI, heads of institution and staff are dealt with in accordance with applicable criminal law provisions. The Chancellor of Justice may be removed from office by a court judgment only (paragraph 140 of the Constitution) and criminal charges may be brought against the Chancellor only on the proposal of the President and with the consent of the majority of the Parliament (paragraph 145 of the Constitution and paragraph 11 of the Chancellor of Justice Act).

References

- <https://www.riigiteataja.ee/en/eli/528052020006/consolide>

Human rights defenders and civil society space

Laws and practices negatively impacting on civil society space and/or on human rights defenders' activities

Although COVID-19 related regulations have set certain limitations to the exercise of the right to freedom of assembly, such as distancing rules or limitations to the number of participants in some spaces, and created tensions in people's everyday lives, general observations demonstrate that protests (assemblies) have been taking place safely and without violence, including protests questioning the Government and the restrictions.

NHRI's role in promoting and protecting civil society space and human rights defenders

We have direct relationships with human rights NGOs and human rights defenders through our three advisory bodies (Advisory Committee on Human Rights, Advisory Council for Persons with Disabilities, Advisory Committee for Children's Rights). When preparing for the last Universal Periodic Review and review on the implementation of the Convention of the Rights of Persons with Disabilities (CRPD), the Chancellor was in contact with relevant NGOs to coordinate some of the recommendations and focus points (while remaining independent).

The Chancellor monitors civil society space through responding to and investigating individual complaints and through monitoring developments more broadly (including those reported in the media).

Checks and balances

The principle of good administration means, inter alia, that state and local government officials communicate with people politely and to the point. State agencies must also organise their work so that no one is left uninformed or in an uncertain or simply confusing situation as a result of action or inaction by the agencies.

People contacting the Chancellor are often dissatisfied with how state agencies deal with their requests and applications. (1) The problem starts right from an agency's failure to register a person's application. Applications and other documents must be registered in the document register no later than on the working day following their receipt. This requirement is laid down by the Public Information Act (§ 12(1) clause 1). The requirement of registering documents is not an end in itself but helps to ensure that each application leaves a trace and is also dealt with. It is unlawful to keep an application simply on an official's desk or in the e-mail inbox. Due to failure to register applications and requests, the Chancellor had to admonish the Agricultural Board (2), Kohtla-Järve City Government (3) as well as Kose Rural Municipal Government.

Põlva and Rakvere town and Tallinn city and Valga rural municipality failed to reply by deadline to people's memorandums and requests for explanation. Problems with the respect for deadlines also occurred in the Ministry of Justice, the Ministry of the Interior, the Ministry of Social Affairs, and the Health Board. The law stipulates that memorandums and requests for explanation must be replied to promptly but no later than 30 calendar days as of registration. In complicated cases, the deadline for reply may be extended to two months. In line with the principle of good administration, an individual must be informed at the first opportunity about a delay in replying or extension of the deadline for reply and the reasons for it.

Problems over compliance with the principle of good administration also occurred in organising social services. This was particularly evident in a case in Toila rural municipality where a petitioner complained about being taken to a care home. According to the Chancellor's assessment (4), in terms of applicable law Toila rural municipality clearly violated the petitioner's rights while the municipality's activities in organising the general care service were not lawful. The rural municipal government failed to draw up a record of the petitioner's alleged oral request to obtain the general care service, failed to present data on involving the petitioner in the proceedings for provision of the social service,

ensuring their right to be heard and taking account of their will, nor did it prepare an all-round assessment of the petitioner's need for assistance. It also remained unclear in this case in what condition the petitioner was at the time of signing the contract with the care home and whether and what kind of will they expressed at all.

Kohtla-Järve city also failed to resolve an application for housing in line with applicable law. The petitioner requested housing from the city because they lived in an unheated garage and had been identified as lacking capacity for work. The Chancellor found that Kohtla-Järve city had failed to lawfully resolve the petitioner's application for housing (5). The city government failed to assess the petitioner's need for assistance, failed to draw up a proper decision concerning the petitioner's application, nor did it duly notify the petitioner of the decision.

References

- (1) <https://www.oiguskantsler.ee/annual-report-2021/rule-of-law#p2>
- (2) https://www.oiguskantsler.ee/sites/default/files/field_document2/M%C3%A4r_gukirjale%20vastamine.pdf
- (3) https://www.oiguskantsler.ee/sites/default/files/field_document2/Eluruumi%20taotluse%20lahendamine.pdf
- (4) https://www.oiguskantsler.ee/sites/default/files/field_document2/%C3%9Cldh_ooldusteenuse%20korraldamine.pdf
- (5) https://www.oiguskantsler.ee/sites/default/files/field_document2/Eluruumi%20taotluse%20lahendamine.pdf

Trust amongst citizens and between citizens and the public administration

The level of public trust towards public institutions is something that can always be improved. There has been some fluctuation during the pandemic times, but overall people trust different state authorities. For example, 71% of the respondents to a survey carried out in November 2021 stated that they trust the Estonian courts.

References

- (1) <https://www.riigikohus.ee/et/uudiste-arhiiv/uuring-kohtuid-usaldab-71-protsekti-eestimaalastest>

NHRIs as part of the system of checks and balances

As illustrated above, the Chancellor's task is to monitor whether the authorities comply in their work with legislation, including the principle of good administration, and handle complaints concerning the respect of the principle of good administration.

The Chancellor can also make observations when a draft legislation has serious constitutionality issues.

Functioning of the justice system

The Chancellor comes into contact with the work of the courts in three ways. The Chancellor of Justice is a member of the Council for Administration of Courts; the Chancellor may initiate disciplinary proceedings in respect of all judges, and the Chancellor prepares an opinion for the Supreme Court in constitutional review court proceedings.

By virtue of office, the Chancellor serves on the Council for Administration of Courts, which convened for a session twice in the second half of 2020 and four times in the first half of this year (all four sessions were held online).

The complaints received by the Chancellor concerning the functioning of the justice system raised the following issues, as illustrated in the Chancellor's 2021 annual report:

- Isolated cases of alleged misconduct of judges in proceedings: during the reporting period, there were 15 such cases. With regard to some cases, the Chancellor also asked for an explanation from a judge and/or chair of the court. These included a case concerning a judge's conduct during a court hearing, a case concerning the refusal by a judge to allow into a public hearing people wishing to listen to the hearing, a complaint on the failure to ensure proper interpretation at an administrative court hearing and one on the excessive length of judicial proceedings in a civil case. During the reporting year, in none of the cases did the Chancellor find a reason to initiate disciplinary proceedings in respect of a judge.
- Lack of publicity of judicial decisions in administrative court proceedings concerning the social sphere and privacy concerns due to the public disclosure of court decisions concerning criminal offences or misdemeanours

- Different treatment of witnesses in court
- Subsequent imposition of aggregate sentences on a person for committing several criminal offences
- Alleged breaches of the principle of presumption of innocence.

The Chancellor also made a proposal (2) for the Code of Misdemeanour Procedure to be amended so that a person suffering damage as a result of a misdemeanour may access the misdemeanour file after the court decision in the case. The suggested amendments to the Code of Misdemeanour Procedure entered into force on 30 April 2021. Regrettably, petitions received by the Chancellor revealed that even after the amendment to the Code of Misdemeanour Procedure, when issuing a copy of the file, officials of the Police and Border Guard Board still also cover other information in the file, such as the contact data of the person causing the damage or witnesses. Since this is contrary to the aim of amending the Code of Misdemeanour Procedure, the Chancellor [recommended](#) that the Police and Border Guard Board should ensure that a person who has directly suffered damage as a result of a misdemeanour is entitled to examine the entire file, while protecting special categories of personal data of other persons contained in the file according to the law.

References

- (1) <https://www.oiguskantsler.ee/annual-report-2021/rule-of-law#p3>
- (2) https://www.oiguskantsler.ee/sites/default/files/field_document2/Ettepanek%20viia%20v%C3%A4%C3%A4rteomenetluse%20seadustik%20p%C3%B5hiseadusega%20koosk%C3%B5lla.pdf

Corruption

Under the Political Parties Act, the Chancellor of Justice appoints one member to the Political Parties Financing Surveillance Committee. The Chancellor has appointed the editor-in-chief of the cultural paper *Sirp*, Kaarel Tarand, as a member of the Committee. The Committee and its members are independent, they have no obligation to report their activities to the persons or institutions appointing them, and they also do not accept or receive instructions from the persons appointing them.

In spring 2021, ten years had passed from setting up the Political Parties Financing Surveillance Committee in its present form. This has been a sufficiently long time to reveal

whether and how well the established procedure leads to the desired objective, and whether supervision is effective and economical and supports law-abiding behaviour by political parties and election coalitions equated with them. And not only this. Supervision is also a sort of a mirror: it shows that statutory financing rules – not only control – contribute to fair competition and the development of representative democracy exercised through political parties.

When an attempt was made a year ago in the Riigikogu to change the current procedure for supervision, unfortunately the approach initially pursued was not of the kind that would have led to a solution. Instead, as of this spring, work has been ongoing on remedying shortcomings in the Political Parties Act based on the so-called traditional approach, beginning from collecting and analysing data and preparing a draft by experts in the Ministry of Justice. However, regardless of who does the preparatory work, final political decisions are for the parliament to make. Both sides must be weighed in combination, i.e. both financing of political parties and supervision thereof. The choice of tools provided for supervision depends on what is allowed and what is prohibited in financing political parties.

The period of the global corona pandemic has very well revealed why every detail in the structure of state power is important. The idea and purpose of supervision over financing of political parties is not to undermine the authority of political parties. Likewise, it cannot be the aim of political parties to discredit supervision. Cooperation carried out in line with clear and precise rules should ensure that public power in its entirety, including political parties as its building blocks, enjoys sufficient trust in the eyes of citizens. There could be more trust in political parties, and shortcomings in this respect also cast a shadow on state institutions. If citizens do not trust political parties, they do not trust the state, which in turn affects the state's ability to succeed: this time in dealing with the health crisis, next time with some other crisis originating independently of Estonia which, nevertheless, the Estonian state must deal with. Thus, in establishing rules for financing and supervising political parties, human lives and openness of society are indirectly at stake.

Possible changes in the set-up and financing of institutions must be weighed carefully, yet quickly, because the entry into force of the changes should not hamper election of the next composition of the Riigikogu. Everyone concerned – recipients, donors and guardians of money – must be given time and opportunity to prepare and get adjusted. After all, it is in the interests of everyone involved that competition is fair and a corrupt act by a single individual involved in the system should not cause unfair reputational damage to their colleagues who abide by the rules.

As is usual in years when elections of municipal councils take place, the focus of supervision also falls on local authorities. Compared to the time four years ago, some improvement in the conduct of candidates running for municipal councils may be perceived, including in the use of communication channels of local authorities, or to be precise, in non-use of those channels for political advertising.

Based on complaints received by the surveillance committee, room for improving the situation still exists, but undoubtedly the persistent work of the Political Parties Financing Surveillance Committee, precepts issued by it and court rulings have had an effect at least on the conduct of political parties in power in larger local authorities. At the same time, we should not forget the question whether resources spent in the course of supervision to investigate misuse of an insignificant monetary amount have indeed been used for a good purpose and whether an indirect consequence of burdening the committee with these acts might not be that a larger – in monetary terms more significant – violation, creating an unfair advantage for the perpetrator, might evade proper scrutiny.

In this case, an example of citizens seeing most directly how extensive the effect of changing just one detail in the law can be is the abolition of the restriction on outdoor political advertising during the active campaign period. This should inspire the Riigikogu to deal swiftly and properly with other details of political competition as well.

References

- (1) <https://www.oiguskantsler.ee/annual-report-2021/rule-of-law#p8>

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

Rule of law needs care and attention at all times, also in crisis situation. Our last Annual Report has a long section on Rule of Law and COVID-19 (1). In the following paragraphs we give an overview of some of the main issues observed.

The Chancellor had to draw attention to the fact that a local authority cannot impose restrictions on fundamental rights **without a legal basis** by merely referring to the corona situation (2). The Chancellor also noted that the law does not allow a police prefect to

enact a restriction overnight on sale of alcoholic drinks **by simply notifying the public about the order** (3).

During the reporting year, the Chancellor explained repeatedly the general points of departure for imposing restrictions with a view to combating the spread of COVID-19 (4). In the case of combating an infectious disease, it should be kept in mind that the principle of proportionality enshrined in § 11 of the Estonian Constitution allows imposition only of those restrictions which are unavoidably necessary to prevent the spread of the infection. Each restriction has to be assessed individually as well as the aggregate of all the restrictions simultaneously imposed.

The Chancellor also had to explain repeatedly the legal nature of the corona restrictions imposed by order of the Government of the Republic (5). Certainly, the fact that resolving an epidemic situation has been left for the Government has some advantages. In particular, this enables a quick response in a changing situation. However, on the other hand, it has brought about decisions passed at very short notice (sometimes essentially overnight). This does not leave any possibility for public debate. It is not normal if undertakings are given only 24 hours to express an opinion concerning an important change that affects them significantly (6). It would be understandable if such overnight changes were due to an unexpected change in the epidemic situation requiring extremely rapid intervention. However, such rapid changes cannot be acceptable when the emergence of a situation was known long in advance (in which case planning the changes should have started earlier) or if the situation allows giving those concerned a reasonable time for expressing an opinion.

References

- (1) <https://www.oiguskantsler.ee/annual-report-2021/rule-of-law#p1>
- (2) https://www.oiguskantsler.ee/sites/default/files/field_document2/M%C3%A4r_gukiri%20Peipsi%C3%A4%C3%A4re%20vallas%20SARS-CoV-2%20viiruse%20leviku%20t%C3%B5kestamiseks%20v%C3%B5etud%20meetm_ete%20suhtes.pdf
- (3) https://www.oiguskantsler.ee/sites/default/files/field_document2/Alkoholsete%20jookide%20jaem%C3%BC%C3%BCgi%20piiramine.pdf
- (4) https://www.oiguskantsler.ee/sites/default/files/field_document2/Covid-19_levikuga_seotud_piirangutest.pdf
- (5) https://www.oiguskantsler.ee/sites/default/files/field_document2/Vastus%20%C3%B5igusaktide%20eristamise%20ning%20COVID-19%20haiguse%20levikuga%20seotud%20piirangute%20%C3%B5igusliku%20iseloomu%20ja%20vaidlustamise%20kohta.pdf
- (6) <https://leht.postimees.ee/7314392/vaikeettevotjad-kardavad-et-valitsus-paneb-nad-vaktsineerimisrindel-tanki>

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

Despite the challenging situation, the institution continued to carry out inspection visits as National Preventive Mechanism throughout the pandemic.

References

- (1) <https://www.oiguskantsler.ee/annual-report-2021/inspection-visits>

Finland

Finnish Human Rights Centre

Parliamentary Ombudsman

Impact of 2021 rule of law reporting

Follow-up by State authorities

Rule of law as a theme has been increasingly discussed in Finland during the reporting year in professional circles but also in the media. Inspired by the European Commission's Rule of Law Report, but also some domestic initiatives, the Ministry of Justice organised a rule of law seminar in November 2021. The seminar gathered judges, public officials, and academia to discuss the current state of rule of law in Finland. The European Commission participated in the seminar. The seminar is planned to become a yearly event. There was a common understanding among the speakers that the situation regarding the rule of law remains stable in Finland, and at a high level, but that we also need to be prepared for possible rule of law challenges. The main issues dealt with in the seminar were the independence of the courts and the resources of the justice system. Although the seminar was welcomed and well attended, there was some criticism expressed by some lawyers and human rights advocates that the approach was too narrow. For example, access to justice was not included as topic. Also, the civil society had no role given at the seminar.

This year a new Rule of Law Centre (*Oikeusvaltiokeskus*) has been established within the University of Helsinki in cooperation with the Ministry for Foreign Affairs and funded by the MFA official development funds (ODA). The aim of the Centre is to "support developing countries in creating and reinforcing the foundation of the rule of law; in developing the capacity of the rule of law institutions; and in strengthening legislation by providing expertise, training and other support." As the activities of the Centre are financed from development cooperation funds, the support is available for ODA eligible countries only. The Centre aims to bring together a broad selection of relevant Finnish experts to support their networking and to include them in the development projects to be implemented. The Human Rights Centre is cooperating with the Rule of Law Centre in accordance with its own Action Plan for 2022 and is member of its Advisory Board.

There is a new important Government commissioned research project focusing on rule of law issues in the EU, by the Helsinki Rule of Law Forum, also situated at the Helsinki

University Law Faculty. "The Rule of Law, Finland, and the European Union" project runs from February 2021 to April 2022 and includes workshops, seminars and publications both in English and Finnish. Obviously, there are also many other rule of law research activities, but this project has been a visible addition with its open access workshops and seminars of very high quality.

The HRC sees these developments as a positive sign of growing recognition of the importance of rule of law in Finland. However, the HRC is somewhat concerned that human rights aspects might be sidelined if the focus on the rule of law is too narrowly defined. Fundamental and human rights are intrinsically linked to the rule of law and questions such as access to justice, good administration and institutions dealing with human rights and equality need to be included.

References

- Rule of Law Centre: <https://www.helsinki.fi/en/networks/rule-law-centre>
- Helsinki Rule of Law Forum: <https://www2.helsinki.fi/en/researchgroups/helsinki-rule-of-law-forum>
- Speech of the Minister of Justice at the Rule of Law seminar on 11 November 2021: <https://valtioneuvosto.fi/-/1410853/oikeusministeri-anna-maja-henrikssonin-avauspuheenvuoro-oikeusvaltioseminaarissa-11.11.2021>

Impact on the Institution's work

The HRC has over the past few years put more emphasis on the rule of law and the interlinkages between human rights and rule of law in its own activities. The priority given to the rule of law was strengthened in the action plan for 2022, which was approved in December 2021 by its governance body, the Human Rights Delegation. The HRC follows the rule of law discussion in Finland and contributes to it with its activities. The HRC has organised workshops and training on the theme, for example to a law students' association, done some initial research on corruption and continued monitoring the Rule of Law recommendations by Council of Europe mechanisms as well as the implementation of the decisions of the European Court of Human Rights and European Committee of Social Rights. The Human Rights Delegation, the HRC's decision making and governance body consisting of members representing the Finnish human rights actors and the Finnish society, has discussed rule of law issues several times in its meetings during the year.

The main piece of research by the HRC is the “Report on the Primacy provision of Section 106 of the Constitution and the requirement of evident conflict” published in June 2021. The report examined existing case law relevant to the requirement of *evident* conflict and focused on decisions where courts had found, in accordance with Section 106 of the Constitution, an *evident* conflict between the Constitution and the application of a law in a concrete case. The report was reviewed by prominent experts, distributed widely, also in the Parliament and as such the report for its small part contributed to the discussion on the rule of law and the role of the courts.

In relation to monitoring the implementation of pending Finnish cases of the European Court of Human Rights and European Committee of Social Rights, the HRC requested information on the reasons for the long delays in June 2021 from the Ministry for Foreign Affairs. The HRC received a reply in September 2021 explaining the reasons behind the delays as well as the planned timetable and actions for advancing the implementation. One of the reasons mentioned as a cause to the delays was the lacking resources of the MFA responsible for the coordination of government responses. The limited resources given to human rights work within the Ministry remains a concern. The implementation of judgments will be treated further in the part on checks and balances.

References

- The HRC: Action Plan 2022 (not yet published)
- The HRC: Report on the Primacy provision of Section 106 of the Constitution and the requirement of evident conflict:
<https://www.humanrightscentre.fi/uutiset/press-release-report-on-the-primacy/>
- Delays in implementation of pending cases of the European Court of Human Rights and the European Committee of Social Rights concerning Finland need to be clarified: <https://www.humanrightscentre.fi/uutiset/delays-in-implementation-of-pending/>

Follow-up initiatives by the Institution

The HRC has provided input and comments to the Government Report on Human Rights Policy, which also includes the rule of law as a theme. The HRC has been heard by several committees dealing with the Report in the Parliament in the early 2022.

The HRC has closely monitored rule of law related discussions that have taken place in the Finnish Parliament in its various committees.

References

- Publications of the Finnish Government 2021:92: Government Report on Human Rights Policy: <http://urn.fi/URN:ISBN:978-952-383-971-7>

NHRI's Recommendations to National and European policy makers

The Rule of Law report should be based on a broad concept of rule of law and interlink fundamental and human rights, access to justice and the rule of law and human rights institutions. Participation of NHRIs and civil society organisations in the process should be further strengthened to ensure impact and follow up beyond government and justice circles.

As the rule of law mechanism is a preventive tool aiming at preventing the erosion of the rule of law in member states, the Commission should pay careful attention to the information received from the civil society and NHRIs.

Independence and effectiveness of the NHRI

International accreditation status and SCA recommendations

The Finnish National Human Rights Institution (FNHRI) is comprised of the Human Rights Centre, its Human Rights Delegation, and the Parliamentary Ombudsman. All the three parts that together form the FNHRI have their own specific legal duties, whereby the role of the Human Rights Centre is to take part and represent the FNHRI in international and European human rights co-operation among its statutory tasks. It needs to be emphasized that despite the three-part structure of FNHRI, there is only one NHRI in Finland.

The FNHRI was last reaccredited with A-status in October 2019 (1).

The SCA recommended that adequate funding be made available to the FNHRI to perform its function as a National Preventive Mechanism under the OPCAT (only the Parliamentary Ombudsman) and National Monitoring Mechanism under the CRPD (the FNHRI joint task), and for the Human Rights Centre to work on business and human rights. The SCA encouraged the FNHRI to continue advocating for the necessary funding to ensure that it can effectively carry out its mandate.

Further, the SCA was of the view that due to the different procedures through which the annual reports of the FNHRI are submitted to the Parliament, the Parliament is not provided with a complete account of the work of the FNHRI. The SCA encouraged the FNHRI to continue to advocate for the Human Rights Centre to have the competence to table reports to the Parliament for discussion to align this procedure with that followed by the Parliamentary Ombudsman.

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Regulatory framework

There have been no changes in the regulatory framework of the FNHRI after the 2021 ENNHRI Rule of Law Report.

New human rights bodies and tasks were created in Finland during 2021 (Ombudsperson for Older Persons and a Rapporteur for Gender Based Violence). These new additions, although as such created to engage with important human rights topics, risk fragmenting and complicating the Finnish human rights architecture even further.

The Parliamentary Ombudsman has a strong constitutional basis. The HRC and its Delegation have a legal basis. The Parliamentary Ombudsman has a mandate to deal with individual complaints, mandate to oversee legality and to monitor the implementation of fundamental and human rights whereas general human rights promotion is a task given to the HRC.

The statutory tasks of the HRC are: to promote information provision, training, education and research on fundamental and human rights; to draft reports on the implementation of fundamental and human rights; to take initiatives and give statements for the promotion and implementation of fundamental and human rights; to participate in European and international cooperation related to the promotion and protection of fundamental and human rights; to perform other similar tasks associated with the promotion and implementation of fundamental and human rights.

The FNHRI has been given a joint task to promote, protect and monitor the implementation of the United Nations' Convention on the Rights of Persons with Disabilities.

The Human Rights Delegation serves as a national cooperative body for actors in the sector of fundamental and human rights; deals with fundamental and human rights matters that are of far-reaching significance and principal importance; approves annually the Human Rights Centre's plan of action and annual report; promotes, protects and monitors the implementation of the United Nations' Convention on the Rights of Persons with Disabilities together with the Human Rights Centre (HRC) and the Parliamentary Ombudsman.

The Parliamentary Ombudsman oversees and promotes the legality of actions taken by authorities and other parties performing public tasks as well as the implementation of fundamental and human rights. The Ombudsman examines complaints, takes initiatives on his own and carries out inspections of administration and, in particular, at prisons, military garrisons and other closed institutions. The legislative reform process to divide the tasks of the Chancellor of Justice and the Ombudsman by enacting a new law is still ongoing. The Government proposal has been given to the Parliament on 21 October 2021. The new law will not change the constitutional competences and tasks of the two supreme guardians of legality.

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Enabling and safe space

The working environment for the FNHRI is safe and enabling and there have not been threats or harassment towards the FNHRI.

The Parliamentary Ombudsman is a well-known old institution and enjoys high standing and respect in the Finnish society. It is also known by the public due to its long history, the connection to the Parliament and in particular its complaints handling mandate. The HRC has been established more recently and is not yet as widely known to the public. The HRC has gradually become a respected expert body in the field of human rights through its advisory, advocacy, outreach and international and European co-operation activities.

The FNHRI has adequate access to information.

According to Parliamentary Ombudsman Act Section 7 “The right of the Ombudsman to receive information necessary for his or her oversight of legality is regulated by Section 111 (1) of the Constitution.” The Ombudsman has access to all information, including classified. According to Section 19 d “In order to carry out its tasks, the Human Rights Centre shall have the right to receive the necessary information and reports free of charge from the authorities.” The HRC does not have right to receive classified information neither is it necessary for its tasks.

The Parliamentary Ombudsman’s decisions with recommendations issued to the authorities usually have a high compliance rate. The addressees generally comply and report back to the Ombudsman on the measures they have taken as a standard procedure, but there is no legal obligation for them to do that.

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

The HRC is carrying out a comprehensive study on the human rights structures in Finland, which will be published in June 2022. It will include recommendations to the Government on how to improve the independence and effectiveness of the human rights structures in Finland. It will also include more targeted recommendations addressing specific issues and concerns. The study also deals with the SCA recommendations addressed to the FNHRI.

The HRC has also commissioned a study on the various international and European standards dealing with human rights and equality bodies, which will be published in at the same time in June 2022. Both reports will be used for information and advocacy purposes and include follow-up activities.

References

- Both the study on human rights structures in Finland and the study on international and European standards dealing with human rights and equality bodies will be published in June 2022.

NHRI's recommendations to national and regional authorities

The Government should pay more attention to the relevant international and regional standards and recommendations and be strategic when developing human rights structures with a view of strengthening them. The resources given should be commensurate with the tasks given.

Human rights defenders and civil society space

The overall environment for human rights defenders and civil society has not changed since last year. However, discussion on certain contentious issues is often hostile and may discourage work on these issues.

Access to and involvement of civil society actors in law and policy making

The Government is developing human rights impact assessments in legislative processes. The involvement of civil society in law and policy making is routine, but there are question marks if the hearings and consultations have always sufficient impact. During the COVID-19 pandemic broader participation – also geographically – has been possible due to increased online consultations.

Knowledge based decision making usually refers to information and expertise by legal and sociological experts. The legislative processes often lack information based on lived experiences and impacts on people that are subject to legislative measures. Some people and groups have less means to participate in legislative processes. The legislation may have an impact on or even cause risks for the most vulnerable persons that were not intended. For a wider knowledge base and a more inclusive consultation in decision making and law drafting, those without a voice or at least their legitimate representatives should also be heard in some ways.

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- Silent Agents and Legislation, SILE-project: <https://www.hiljaisettoimijat.fi/?lang=en>

NHRI's role in promoting and protecting civil society space and human rights defenders

The HRC cooperates with and supports a broad range of civil society organisations defending fundamental and human rights generally and especially disability and older persons rights. The Human Rights Delegation includes NGOs and human rights defenders.

The HRC has been promoting the protection of human rights defenders in the Finnish foreign policy and asking for protection mechanism or programme to be set up in Finland. The HRC continues to monitor how the policy is implemented in practice.

NHRI's recommendations to national and regional authorities

Civil society actors should be included in decision making, heard adequately and in a timely manner. The resources for advocacy and communications activity should be included in the funding decisions.

Checks and balances

The system of checks and balances is generally working well in Finland. The constitutionality of legislation under preparation is primarily assessed by the Constitutional

Law Committee of the Parliament. The courts, on the other hand, do not have the right to assess the constitutionality of laws generally and in abstract, but they perform ex post supervision which only applies to concrete individual cases.

According to Section 106 of the Constitution, if the application of an Act would be in evident conflict with the Constitution, the court of law shall give primacy to the provision in the Constitution. In light of enhancing the courts' role in protecting fundamental and human rights, the need of removing the requirement of *evident* conflict with the constitution has been discussed. The HRC's "Report on the Primacy provision of Section 106 of the Constitution and the requirement of evident conflict" (published in June 2021) contributes to this discussion. Removing the need for the "*evident*" requirement would be one way of strengthening the courts' role in protecting human rights even when the law has been considered earlier to be compliant with the constitution by the Constitutional Law Committee. This would enable the courts to apply the same threshold as for when a provision of law is in conflict with an EU law or international human rights obligations.

The Venice Commission of the Council of Europe has stated in 2008 that the difference between ex ante (conflict) and ex post (requirement of evident conflict) constitutionality review would not seem justified and might be reconsidered. The judicial control of constitutionality by the courts would thus be strengthened.

The citizen initiative has been in place in Finland for almost ten years. The number of initiatives has risen over the years and during the current parliamentary term, over 30 initiatives have gone to the Parliament (compared to 19 during the last electoral term).

The Speaker of the Parliament has in November 2021 underlined the importance of active participation of the civil society and the need to strengthen the trust between citizens and institutions by constantly developing new ways of taking part in decision making.

When it comes to the structural independence and effectiveness of independent human rights institutions there is room for improvement even if most have legal guarantees. Even though independent institutions are functionally independent, the structure might not be as independent as it should. The fact that equality bodies are structurally connected to the Government and financed by the Ministry, may have an indirect impact on their ability to set up their own objectives and priorities. This does not seem to be a problem for the moment but is still a vulnerability that could be addressed. This issue is dealt with in detail in the forthcoming study of the HRC on the Finnish human rights structures.

The independence of the courts has been on the legal discussion agenda during the reporting year. Developments in some other countries in Europe has been noted with concern.

According to the Fundamental Right Barometer, published by the Ministry of Justice and the HRC in June 2021, 76 % of the whole population believe that a judge can do their work always or mostly without the Government's interference.

The President of the Supreme Administrative Court, the Association of Finnish Lawyers and the Finnish Association of Judges consider it important or even necessary to examine the legal guarantees for the independence of the judiciary. Following the Parliamentary Law Committee's observations on the current state of the administration of justice and the discussion on the lacking resources, the Ministry of Justice is preparing a report on the administration of justice covering the judiciary, the Prosecutor's Office, the National Enforcement Office, the Criminal Sanctions Agency and the Legal Register Centre and the legal aid and guardianship. The report will be given to the Parliament in fall 2022.

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Trust amongst citizens and between citizens and the public administration

As reported in previous years, the overall trust in the public administration in Finland is high. However, reports and cases of maladministration and lack of openness in decision making by the Government impacts negatively on citizens' trust in public administration.

In June 2021, the HRC and the Ministry of Justice published a Fundamental Right Barometer to survey the views and trust of people in the public administration. It examined the views and experiences of people in Finland in general, but also the views of persons with disabilities as well as people belonging to linguistic minorities (Russian, Arabic and Swedish speakers). When using services provided by public administration or local authorities, respondents felt that long processing times, difficulties in finding information and lack of the necessary service or information on the internet were problematic. According to the results the least satisfied with the different factors in general were people with disabilities or functional limitations and Swedish speaking people.

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NHRIs as part of the system of checks and balances

The Parliamentary Ombudsman as the supreme guardian of legality is one of the key institutions for checks and balances in Finland. The role of the HRC is more general and it contributes through the provision of information, monitoring and conducting research, providing training and in engaging in domestic, European and international human rights and rule of law cooperation.

For the first time ever, in October 2021 the HRC has used the possibility to participate in the monitoring of the implementation of ECtHR judgments as an NHRI. The HRC submitted a rule 9 intervention to the Council of Europe Committee of Ministers, responsible for monitoring the implementation of ECtHR judgments, in the case *X v. Finland* concerning involuntary medication and lack of legal remedy against it. In the case the Court found in 2012 a violation with regard to Article 5 § 1 (Right to liberty and security of person) and Article 8 (Right to private life).

In its intervention the HRC noted that – in regard to legal remedies against forced medication – the previous attempts by the Government and the Parliament to bring the legislation in line with the requirements of the judgment in this case, as well as other international human rights instruments, have failed. Instead, since 2012, guidelines that were intended to be temporary are still in force. The repeated failures to legislate the matter in over 10 years' time shows the difficulties towards full and proper implementation of this judgment and the inability to correct the situation in general. This is highlighted further by the fact that a new case concerning lack of legal remedy against forced medication in a psychiatric hospital (*E.S. v. Finland, application no. 23903/20*) has been lodged before the Court in June 2020 and communicated to the Government in March 2021.

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Functioning of the justice system

As described before, during this reporting period there has been more discussion on the justice system, although the issue of lack of resources has been on the table for a long time. The impartiality and independence of the justice system and the courts and the possible weaknesses in the legislation dealing with the composition of the courts and appointments of judges have been discussed.

The Parliamentary Law Committee has several times this year expressed its concerns about the respect for the rule of law and lack of legal protection. The resources in the justice administration are insufficient, which has ultimately an impact on the processing times and legal protection of people.

The Association of Finnish Lawyers, the Finnish Bar Association as well as legal professionals among others have expressed their concern on the issue. The cost of proceedings in civil cases has risen and the time for judicial processes (*oikeudenhoidon käsittelyaika*) have become longer – as the pandemic has also lengthened the processes. To tackle the problem, the Association of Finnish Lawyers has proposed a new procedure for minor civil cases, which would reduce the cost and time of the process. The costs and lengthy proceedings affect especially middle-income people, as they have a risk for high costs if they decide to take the matter to court.

The Government proposals for an Act on Legal Service Agency (*Oikeuspalveluvirasto*) and an Act on Special Judicial Authorities Agency (*Oikeushallinnon erityisviranomaiset -virasto*), are on circulation for comments in February 2022. The aim of establishing a Legal Service Agency is to secure the equal availability of public legal aid and guardianship services and to transfer the central administration of the sector from the Ministry of Justice to the new authority. This proposal is part of the project on establishing a Special Judicial Authorities Agency, the aim of which is to bring together the operational administrative tasks of 11 special authorities¹ and to strengthen their administrative expert support, which would reduce overlapping administrative work and free resources for the authorities' substance work.

Access to justice and services for vulnerable groups, especially people with disabilities and migrants does not always materialize. According to the annual report 2020 of the Parliamentary Ombudsman: "The most common shortcomings found in the oversight of legality by the Ombudsman involve delays in processing applications for benefits and services granted to persons with disabilities and neglecting the authority's duty to make decisions. These procedural errors jeopardise the implementation of legal protection of persons with disabilities, as the customer's appeal is delayed." There have been cases where no personal service plan (*palvelusuunnitelma*) has been drawn up or the authority has neglected its duty to make decisions. Thus, there is no legal remedy to appeal since there is no decision to be appealed about.

When it comes to migrants and people without or with less knowledge of the national languages, interpretation plays an important role. Unfortunately, the level and quality of interpreters has deteriorated since there is no obligation for the authorities to use registered legal interpreters (*rekisteröity oikeustulkki*). A recent case by the Supreme Administrative Court concerned the fact that the asylum seeker (*KHO 2021:165*) had not had a proper language interpreter and the court stated there had been a procedural fault concerning interpretation.

A positive change considering access to justice for asylum seekers is the changes adopted in July 2021 to the Aliens Act and to the Legal Aid Act to improve access to legal aid and to lengthen the appeal period. However, these are changes following the previous Government's decision to tighten these rights. A report on the effects of the amendments made to the Aliens Act on asylum seekers during the previous Government term was published in February 2021. According to the report the focus was on making the asylum process efficient, rather than protecting the applicants' human rights. A project on strengthening the legal protection of asylum seekers was in place from July 2019 until July 2021 and resulted in the above-mentioned amendments in favour of the asylum seekers.

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NHRI's recommendations to national and regional authorities

The justice system needs adequate resources to be able to perform its function efficiently and to ensure access to justice in reasonable time. Access to justice also requires available, affordable and efficient legal aid.

Media freedom, pluralism and safety of journalists

The situation of media is relatively good and stable in Finland. However, hate speech, different type of harassment and targeting of journalists have been an alarming threat

against media freedom in Finland. In addition, concentration of the national media market raises some concern.

According to a recent survey, around 42 % of journalists feel that pressure and intimidation increase the burden of work. Almost every third respondent stated that they rather not write about certain topics or perspectives because they fear they will be subjected to pressure and intimidation. Topics that caused the most intimidation were migration and asylum. Also, environmental issues caused pressure, and as a new subject causing pressure and intimidation was the COVID-19 pandemic, restrictions, and vaccinations. The gender of the journalist does not according to the survey have an impact on the amount of intimidation but is clearly visible in the severity of experienced consequences.

The Media for Democracy Monitor 2021 (MDM) contains several indicators relating to the media. To highlight some examples, according to the publication: independence of the Finnish news media from powerholders is generally strong, but it is increasingly tested; all the largest news media organisations in Finland have their own internal protocols and guidelines for protecting their journalists against external interference and harassment; the national media market remains relatively concentrated, with only a handful of companies dividing the market in each sector; dominant regional newspapers generally face no direct competition in their own market area; apart from Swedish and Sámi media content other minority and alternative media organisations are limited; independent media criticism in Finland is weakly institutionalised, and there is an existing law that, in principle, provides open access to public information, but problems remain in practice.

The limits of freedom of speech and journalists' responsibility in their work has been discussed during the reporting year. The prosecutor has in October 2021 charged three journalists of the national daily newspaper Helsingin Sanomat for revealing and for attempt of revealing a security secret. The chair of the Union of Journalists has seen the charges as one of the hardest ones in the history of Finnish freedom of speech and that it would be a "tough thought" that journalists in Finland could be sentenced, even though it could be conditional imprisonment.

The charges raised concern the publication of an article in 2017 concerning military intelligence by the Defence Forces and the activities of the Communications Experiment Centre (*Viestikoekeskus*) conducting signals intelligence. The main question of the case relates to the journalists' right not to reveal their sources.

The case has raised broader discussion on the limits of freedom of speech and on the responsibility of journalists in their work. There have also been other journalists who have

either been prosecuted or convicted of defamation. In general, journalists have asked whether the justice system has a proper understanding of the profession of journalists and whether the sanctions have been just. On the other hand, on 11 January 2022, the Supreme Court overturned the defamation sentence of a journalist in relation to commenting political action. The court thus clarified the ambit of freedom of speech, and what is allowed within the freedom of speech, which is of importance for future cases.

When it comes to the media pluralism, there are both low and high-risk areas according to the results of the Media Pluralism Monitor 2021 report. In the category of fundamental protection, the risk to media pluralism is low (28 %), however, the indicators of protection of right to information as well as universal reach of traditional media and access to the internet, present a medium risk. The market plurality on the other hand presents a high risk, of which the indicator of news media concentration presents a risk of 90 %. The category of political independence presents a medium risk, which nevertheless is mostly due to the absence of regulation preventing politicised control of the media.

As a sign of progress in the implementation of ECtHR pending cases, 11 repetitive ECtHR cases against Finland concerning freedom of speech have been closed by the Committee of Ministers in October 2021. The cases had been waiting for implementation for a long time, hence this is a welcome development.

During the war in Ukraine, three Nordic newspapers (the Finnish newspaper Helsingin Sanomat, the Swedish Dagens Nyheter and the Danish Politiken) publish their articles on the war in Russian language to provide Russians with impartial and trustworthy news and coverage.

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- Annica Lindström ja monet muut toimittajat ovat joutuneet oikeuteen työnsä takia. Miltä tutkinnan kohteena oleminen tuntuu ja ymmärtääkö oikeusjärjestelmä journalisteja? <https://journalisti.fi/artikkelit/2021/12/annica-lindstrom-ja-monet-muut-toimittajat-ovat-joutuneet-oikeuteen-tyonsa-takia-milta-tutkinnan-kohteena-oleminen-tuntuu-ja-ymmartaako-oikeusjarjestelma-journalisteja>
- Journalistiliiton puheenjohtaja HS:n toimittajien saamista syytteistä: "Todella kova ajatus, että Suomessa tuomittaisiin toimittajia vankeuteen" – rikosoikeuden professori odottaa "aikamoista oikeudenkäyntiä" <https://www.hs.fi/kotimaa/art-2000008368395.html>
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- Compilation of pending judgments of ECtHR and decisions of European Committee of Social Rights <https://bin.yhdistysavain.fi/1598743/gjNtkF7AyM5l88lUQIn40WkU-a/EN%20LIITE%20Compilation%20ECTHR%20and%20European%20Committee%20of%20Social%20Rights.pdf>

Corruption

According to the Transparency International index CPI, Finland is one of the world's least corrupt countries. The prevalence of street-level or petty corruption, such as bribery, is low or almost non-existent in Finland. However, Finland is not fully free of corruption; corruption is structural and hidden corruption is more difficult to detect. In addition, corruption occurs as part of economic crimes and as the provision and taking of unlawful benefits, conflicts of interest and favouritism. It is also manifested as an unethical preparation of decisions outside formal decision-making structures.

Efforts have been made to investigate the prevalence of corruption and the risk management related to it, but the analysis of the impact of corrupted practices on the realisation of human rights is lacking.

In May 2021, the Government adopted a Resolution on an Anti-Corruption Strategy and Action Plan for the period 2021–2023, with the objective being to combat corruption more broadly than is done now at all levels of public administration. The strategy is a welcome development; however, it took far too long to be adopted; a working group was set in 2015 and the draft for the strategy was given to the Ministry of Justice in 2017. The strategy and Action Plan were pending since then but have now finally been adopted. The measures of the Action Plan include, among others, improving cooperation between the authorities, raising awareness of corruption, exposing cases of corruption, examining the functioning of anti-corruption legislation and promoting research. However, no separate funding has been allocated for the implementation of the Action Plan.

Finland lacks a corruption prevention body that would be independent from the Government. There are several different actors, such as the Ministry of Justice and its departments, the police, the Ministry of Finance, the Association of Finnish Municipalities, the Ministry for Foreign Affairs, the Finnish Competition and Consumer Authority that play a role in the corruption prevention and together form an anti-corruption cooperation network, but there is not one single actor, whose main responsibility would be anti-corruption as a whole.

There are only a few civil society actors, such as Finnwatch and Transparency International Finland, working with anti-corruption. The scarcity of actors might affect monitoring but also reporting on this issue or result in only partial information.

Corruption as a crime is investigated and understood but there is room for improvement on the impacts of corrupted practices to the rule of law and respect for fundamental and human rights.

In relation to lobbying and influencing political decision making, an Act on the transparency register will be enacted. In December 2021, the Ministry of Justice organised a seminar on the transparency register, the aim of which is to increase the transparency of lobbying and influencing activities.

There is also Government proposal on implementing the EU directive on whistle blowers that is being prepared by the Ministry of Justice. Implementation of the directive should have taken place by the end of year 2021, but there have been delays due to the extent of the EU directive and the vast and diverse feedback received during the consultation round.

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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 Chancellor of Justice gave a decision relating to the lack of openness in the management of the COVID-19 pandemic on 21 December 2021. The Chancellor suggested the Ministry of Social Affairs and Health to improve the openness and transparency of decision making in relation to the management of COVID-19 pandemic. He stated that the Ministry shall inform how it will develop openness in COVID-19 pandemic management both in the Ministry and its administrative branch. The Chancellor also criticized the fact that he has repeatedly had to request that the reasoning of Government proposals relating to the management of COVID-19 pandemic improves.

Actions taken by the NHRI to promote and protect rule of law and human rights in the crisis context

In January 2021, the HRC published a report with recommendations by the Human Rights Delegation "The impacts of the coronavirus pandemic on the implementation of fundamental and human rights", the content of which was already presented in the 2021 report. The monitoring of the impacts continues also in 2022.

The COVID-19 pandemic has had an impact on the number of complaints filed to the Ombudsman. During 2021, the Ombudsman received 7732 complaints, which is around 700 more than in 2020. The growth was biggest in complaints relating to health care. During the last three years, the number of complaints has risen over 38 %. Despite the large number of complaints, the Ombudsman was able to achieve its processing time

target at the end of the year, as there were no cases that would have been pending for more than a year.

References

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- Parliamentary Ombudsman receives again record number of complaints 19 January 2022 <https://www.oikeusasiamies.fi/en/web/guest/-/oikeusasiamiehelle-jalleen-ennatysmaara-kanteluja>

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

The COVID-19 pandemic and measures related to it still affect the FNHRI's work in the sense that most of the work is done remotely. The Human Rights Delegation has not been able to organise its meetings in person but has been able to perform its tasks via online meetings. Most of the inspections of the Ombudsman are still done remotely. Return to working places and in present meetings has begun in early 2022 as no restrictions are in place due to the pandemic.

NHRI's recommendations to national and regional authorities

The impacts of all measures taken must be properly assessed. The decisions must be made with adequate reasoning, and they must be open and transparent. Information must be timely, clear and accessible to everyone, including to the most vulnerable people.

France

French National Consultative Commission on Human Rights

Independence and effectiveness of the NHRI

The French National Consultative Commission on Human Rights evaluates the state of its independence and the level of its effectiveness as 'pleasing'.

No significant changes have taken place in the environment in which the Commission operates. The NHRI, however, calls for being more regularly consulted on any draft or proposals of legislative texts that could have an impact on human rights or IHL including in the framework of the health crisis.

International accreditation status and SCA recommendations

The French NHRI was last reaccredited with A-status by the Sub-Committee on Accreditation (SCA) in March 2019 (1). The SCA noted with appreciation the continuous efforts by the institution to implement the previous recommendations made by the SCA.

Regarding the mandate of the French NHRI, the SCA encouraged the NHRI to continue to broaden its activities in relation to its protection mandate and to advocate for amendments to its enabling law to make its broad protection mandate explicit. The SCA also recommended the institution to continue to strengthen its cooperation with the Défenseur des droits and with other national entities with responsibility for the promotion and protection of human rights.

In addition, the SCA was of the view that, in order to promote institutional independence, it would be preferable for the terms of all members of the CNCDH to be limited to one renewal and encouraged the institution to advocate for amendments to its Decree to address this issue.

Finally, the SCA reminded that, where an NHRI has been mandated with additional responsibilities, it must be provided with the adequate funding to effectively fulfil these duties. Thus, the SCA encouraged the institution to continue to advocate for adequate funding to effectively carry out the full extent of its mandate, especially in view of its expanding responsibilities.

References

- (1) <https://www.ohchr.org/Documents/Countries/NHRI/GANHRI/SCA%20Report%20March%202019%20-%20EN%20.pdf>

Regulatory framework

No change has occurred in the regulatory framework applicable to the CNCDH since the last review by the SCA.

The CNCDH's independence is enshrined in Act n°2007-292 of 5th March 2007. Legislative drafts and proposals concerning human rights and international humanitarian law are put before or taken up by CNCDH. The institution's composition (64 individuals and representatives from civil society organisations) reflects the diversity of opinions expressed in France as regards human rights and IHL issues. The CNCDH is dedicated to respect for and the implementation of human rights and IHL in France and combats the violation of civil liberties and fundamental rights. The commission occupies a unique position in the French institutional landscape and contributes to the strengthening the rule of law.

The CNCDH continues operating without a constitutional basis but on legislative basis.

Awareness-raising is the main way in which the NHRI contributes to individuals' access to justice. The mandate of the commission, however, does not include complaints handling, providing legal assistance to individuals or strategic litigation before courts.

In addition, the CNCDH holds five specific mandates as independent national rapporteur:

- fight against racism, antisemitism and xenophobia
- fight against trafficking in human beings,
- implementation of the UN Guiding Principles on business and human rights
- fight against anti-LGBTI people hatred
- evaluation of public policy related to the effectiveness of the rights of people with disabilities.

Since December 3, 2020, the CNCDH has a new mandate as an independent national rapporteur on the evaluation of public policy related to the effectiveness of the rights of people with disabilities. As part of this new mandate, the CNCDH presented to the government its preliminary report entitled "Know, define, raise awareness, combat stereotypes and prejudices against people with disabilities" (Connaître, définir, sensibiliser,

combattre les stéréotypes et les préjugés à l'égard des personnes handicapées).
stereotypes and prejudices against people wenvironment and safe space

The relevant state authorities have good awareness of the CNCDH mandate, independence and role.

The CNCDH has adequate access to policy makers and to information, particularly in the areas in which it operates as independent national rapporteur. The Commission has regular contacts with the administrations in charge of implementing these public policies and is regularly consulted on the development of national action plans.

The CNCDH, however, is not involved in all stages of legislation.

The addressees of the NHRI's recommendations are not legally obliged to provide timely and reasoned replies. However, even though there is no legal obligation, some administrations provide reasoned replies. For instance, this was the case for the CNCDH work on the situation of migrants in Calais and the opinions given on "online hate".

References

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https://www.cncdh.fr/sites/default/files/rapport_preliminaire_handicap_juillet_2021_-_format_a5_1.pdf

NHRI's recommendations to national and regional authorities

The CNCDH would like to be consulted, or at least informed, on the preparation of legislative texts and public policies, in particular those that are directly related to human rights.

Human rights defenders and civil society space

The CNCDH reports that some infringements on human rights (or risks of such) have occurred over the year and have had negative impact on civil society space and/or freedom of expression. The CNCDH attaches great importance to safeguarding, and, if needed, extending, the public space for debate and expression of opinions, which is essential for democracy and rule of law.

Laws and practices negatively impacting on civil society space and/or on human rights defenders' activities

The NHRI expresses concern over the adoption of the law « confortant le respect des principes de la République » (confirming the respect for Republic principles) on 24 August 2021.

The CNCDH adopted two critical opinions on the draft law "confirming the respect for Republic principles". The Commission considers that the text risks weakening republican principles instead of reinforcing them. While the purpose of better combating criminal fanaticism is legitimate, it cannot justify the implementation of disproportionate measures that undermine fundamental freedoms, which lie at the heart of the republican and democratic pact.

The law was adopted on 24 August 2021 without modification of the provisions contested by the CNCDH.

The NHRI is concerned that the creation of a "republican commitment contract" (contrat d'engagement républicain) for any association benefiting or wishing to benefit from State subsidies risks creating a general climate of mistrust towards associations. The CNCDH reaffirms that associations, have a fundamental role in promoting the values of the Republic.

In the extension of its previous work, the CNCDH expresses reservations on the provisions of the law aimed at "fighting against online hate and illegal content" which carries the risk of disproportionate infringement of fundamental rights and freedoms.

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Threats and attacks, including strategic litigation against public participation (SLAPPs)

The CNCDH warns on the new dissuasive measures put in place by the authorities to prevent the presence of observers, associations or journalists, at the time of evacuation operations of people exiled in Calais and Grande-Synthe. The disproportionate security perimeters imposed by the police which hinder the observation of dismantling operations by third parties.

References

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NHRI's role in promoting and protecting civil society space and human rights defenders

Through its mandate as well as its composition, the CNCDH contributes to the existence of a civil society space. It also provides steady support to the activities of Human Rights defenders, for instance CNCDH receives and holds meetings regularly with Human Rights defenders from foreign countries.

French Republic's Human Rights Prize: This prize is awarded each year on the 10th December to five laureates (NGOs and human rights defenders), regardless of their nationality. It recognizes the fundamental role of civil society in the promotion and protection of human rights all around the world (with themes including covid 19 and human rights; education or environment). The winners receive a financial contribution and the prize has a protective value.

Generation Equality Forum: During the event organised in Paris under the aegis of UN Women, the CNCDH held a panel on women human rights defenders on July 1, 2021. The purpose of this panel was to highlight the role of women human rights defenders in the promotion and protection of human rights and in the fight against impunity around the world. The panel was moderated by the former Special Rapporteur on the situation of human rights defenders and member of the CNCDH Michel Forst with the intervention of five female human rights defenders from different countries (Kyrgyzstan, Philippines, Uganda and Spain).

Furthermore, the CNCDH has addressed the issue of human rights defenders and civil society in many of its opinions and declarations. In its declaration on the situation of Afghan people adopted on September 30, 2021, the CNCDH stressed that human rights defenders, as well as all Afghan people, exposed to risks of persecution by the Taliban regime and who wish to seek asylum in France, must be able to benefit from protection.

In its opinion on Climate Emergency and Human Rights adopted on May 27, 2021, the CNCDH dedicated a paragraph on Human rights defenders involved in the fight against climate change and the protection of environment. It stressed the importance of providing a safe and enabling environment for HRDs to operate freely and without any restriction. On the basis of the first report issued by the Observatoire des libertés associatives, the CNCDH noted that human rights defenders (and especially those concerned with the protection of the environment) find their activities hampered in France. The obstacles to activists and associations in France can take many forms. They can be, resource-related, judicial, administrative, police-related or physical. Two recommendations have been addressed to public authorities in this regard.

Human Rights Treaty: As part of its interaction with the treaty bodies, the CNCDH monitors France's international commitments. In this regard, the institution submitted a written contribution to the Human Rights Committee with a view to establishing a list of issues addressed to France. Considering that defenders of rights, and in particular those operating in the field of the environment, participate actively in the fight against climate change in France, the CNCDH recommended the Committee to focus on the measures taken by the public authorities aiming to ensure the protection of these rights defenders.

References

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NHRI's recommendations to national and regional authorities

The CNCDH recommends that the public authorities take all the necessary measures to protect human rights defenders and particularly those working in the field of environment and climate change. In order to increase the protection of human rights defenders, the CNCDH recommends that the French public authorities incorporate the definition of the defender of rights into the French legislative framework by transposing the 1998 Declaration on Human Rights Defenders.

Furthermore, The CNDCH recommends that observations by citizens or journalists are not obstructed during camp evacuation operations.

The CNCDH highlights that the President of the Republic has sought the implementation of a new initiative aimed at strengthening France's action in favour of human rights defenders, both abroad and in France. The Marianne initiative for human rights defenders was launched on 10 December 2021 with contributions from various parties: State, associations and NGOs, foundations, local authorities.

The CNCDH expresses willingness to be involved in the implementation of this initiative.

References

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Checks and balances

The system of the Fifth Republic is characterized by a strong role of the President of the Republic and the Government. They possess broad powers under the Constitution which are reinforced in practice when presidential and parliamentary majorities align. This represents the regular functioning of the political institutions. As a result, the President conducts in practice the national political agenda together with the Government lead by the Prime Minister and can count on a strong majority within the National Assembly. The executive, thus, has the predominant power, which weakens the Parliament's role in the development of legislation and in the monitoring of the government's actions.

With a strong majority within the National Assembly, the Government uses certain powers which allow it to ensure its predominance in the legislative process. Such an example is the accelerated legislative procedure. A significant number of laws were adopted under the accelerated procedure in 2021 such as: the Law about the prevention of terrorism and intelligence (30.07.2021), the Law on trust in the judiciary (to be enacted very soon) and the Law on criminal responsibility and internal security (which addresses in particular the use of drones) still in discussion in the Parliament. The CNCDH repeatedly expressed disapproval of the frequent use of this procedure in relation to many bills, outside any emergency requirement and in several areas that have direct impact on public freedoms and human rights. This process restricts significantly the parliamentary debate, essential in a democracy. In the context of the pandemic crisis, one law after another gives considerable powers to French public authorities in the health field in order to manage the health crisis and take measures to fight COVID 19

According to article 1 of the law of May 31, 2021, the Prime Minister may, in the interest of public health and for the sole purpose of combating the spread of COVID19, in particular: regulate or prohibit the movement of people, regulate access to means of public transport, to establishments open to the public, etc. (the PM could reinstate containment).

Article 1 of this law also gives the Prime Minister the power to make the presentation of a vaccination pass (since the law of January 22, 2022 before it was a health pass) concerning COVID19 the access of people aged 16 and over to certain places, establishments, services or events where activities are carried such leisure activities, restaurants, fairs, trains, etc.

With regard to the fight against terrorism, the CNCDH deplored on several occasions the inclusion in ordinary law of preventive measures that were part of the law relating to the state of emergency. These include individual monitoring and surveillance measures and home searches decided by the administrative authorities.

Initially introduced into ordinary law on an experimental basis (in November 2017), these measures were made permanent in the past year (the Law about the prevention of terrorism and intelligence, 30.07.2021). During a hearing with parliamentarians, the CNCDH reiterated its concern about these measures, especially given that their impact on human rights has not yet been independently assessed.

The CNCDH has also expressed concerns about an article in the draft law on the prevention of terrorism. This provision, which in fact is not related to terrorism, further restricts the access to public archives classified as "defence secrets". It aims to extend beyond the fifty-year deadline the communication of archives vaguely defined as relating to the "operational procedures" and "technical capacities" of many intelligence or security services.

In July 2021, the Constitutional Council expressed two reservations on the interpretation of this article. It ruled that it cannot apply to documents whose disclosure does not reveal information previously inaccessible to the public. The other reservation is related to the access to archives concerning nuclear or military installations. While these reservations are welcomed, they do not address all the concerns expressed by the CNCDH and historians.

In February 2021, the CNCDH issued an opinion on the relationship between the police and the population. Noting the growing mistrust by a part of the population towards the police, in a context marked by high-profile police violence, the CNCDH made a number of recommendations on restoring trust. In particular, it highlighted the need to further guarantee the independence of investigation mechanisms targeting police officers due to their words or behaviour.

Following a consultation with stakeholders (known as the "Beauvau of security"), the President of the Republic announced in September 2021 a number of reforms in the police system he did not, however, call into question the current system of police control.

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NHRIs as part of the system of checks and balances

The CNCDH identified challenges to its engagement as part of the system of checks and balances. The main one is the adoption within a very short time frame of numerous draft laws with an impact on human rights without provision of information to the CNCDH on the matter.

NHRI's recommendations to national and regional authorities

The CNCDH recommends to the French government:

- To increase the rights of the parliamentary opposition;
- To conduct more prominent consultations with the commission
- To include the NHRI in the various supervisory bodies in sensitive areas (e.g. counter-terrorism, data protection, police supervision).

Functioning of the justice system

The Commission judges the situation of the functioning of the justice system in France as 'balanced'. This marks a positive change in comparison to last year's report in which the CNCDH identified the situation as 'worrying'.

Last year the situation was marked by great challenges. Those were mainly linked to the sanitary crisis, which exacerbated existing difficulties in the judicial system, namely the managerial approach, the lack of financial means and of sufficient time to render judgments. The government launched the Justice General Assembly (Etats généraux de la justice) in October 2021 for a period of at least 4 months. It aims to provide new insights into the role of judges, detention conditions, consider ways to manage caseload flow as well as to restore the link between the citizens and the justice system. These discussions are taking place while legal professionals, and in particular judges, are increasingly expressing discomfort in their work and after having faced numerous suicides in their professional circles.

In addition to an important reform of the justice system in 2019 with the adoption of the Law of 23 March 2019, several new pieces of legislation related to the justice system have been adopted since then.

The reform of juvenile criminal justice came into force on 30 September 2021. It established a code of juvenile criminal justice and thus abolished the former text governing the specific rules applicable to juvenile delinquency. While the CNCDH agreed that a reform was necessary, it called for the drafting of a childhood code that would be the result of an interdisciplinary reflection and would integrate civil and criminal matters, in order to avoid incoherence between civil and criminal legislations, for example with regard to the notion of discernment (13 years old in criminal matter, 7 or 8 in civil matter). The age of criminal liability has been set at 13 years old, but this is only a presumption, which means that it can be assessed on a case-by-case basis and even lowered.

The bill on confidence in the judiciary system (loi pour la confiance dans l'institution judiciaire), was adopted by the French National Assembly on 18 November 2021, but a challenge has been brought against it before the Constitutional Council. The challenge is still pending. Its main goal is to restore the relationship of trust between citizens and the judicial system. It contains some provisions in this regard. For example, it reinforces to a certain extent the professional secrecy of lawyers (but not for all offences) and limits the duration of preliminary investigations. However, it does not incorporate in the Constitution the independence of the Public Prosecutor's office. Furthermore, the bill generalises the "departmental criminal courts" that have already been experimented for a year, in order to,

amongst others, render quicker justice. The CNCDH fears a movement towards a general abolition of Criminal Courts for the same reason. Lastly, automatic sentence reductions are difficult to combine with the overcrowding of prisons as they are likely to increase the number of short sentences and make rehabilitation more difficult.

Following the rejection by the Constitutional Council of a few provisions in the draft “Global security law” (projet de loi pour la sécurité globale), the bill on criminal liability and internal security (Projet de loi relatif à la responsabilité pénale et à la sécurité intérieure) was drafted and adopted by the National Assembly on 18 November 2021. It creates a new crime of voluntary violence against police officers and a new legal framework for surveillance. The CNCDH reiterates its concerns regarding the weakness of this framework and the insufficient safeguards to avoid abuses.

After France was condemned by the ECtHR in 2020 on the topic of detention conditions and treatment of prisoners, the law of April 8th 2021 guaranteeing the right to respect for dignity in detention (Loi du 8 avril 2021 tendant à garantir le droit au respect de la dignité en détention) was adopted. It is aimed to offer to detainees the possibility to seize a judge in case of violation of their dignity. The CNCDH highlighted that this law fills a legal void but does not give an adequate answer to the main problem of prison overcrowding.

Role of the NHRI in contributing to the effective functioning of the justice system

The CNCDH has drafted many reports related to the functioning of justice system. CNCDH reports from last year could apply to this year’s reforms too.

References

- CNCDH, Avis relatif à la lutte contre la haine en ligne, 08.07.2021. : <https://www.cncdh.fr/fr/publications/avis-sur-la-lutte-contre-la-haine-en-ligne-2021-9>
- CNCDH, Avis relatif à la lutte contre la haine en ligne, 08.07.2021.: <https://www.cncdh.fr/fr/publications/avis-sur-la-lutte-contre-la-haine-en-ligne-2021-9>
- CNCDH, Déclaration relative à la proposition de loi tendant à garantir le droit au respect de la dignité en détention, 25.03.2021.: <https://www.cncdh.fr/fr/publications/declaration-relative-la-proposition-de-loi-tendant-garantir-le-droit-au-respect-de-la>

- CNCDH, Avis sur les rapports entre police et population : rétablir la confiance entre la police et la population, 11.02.2021.: <https://www.cncdh.fr/fr/publications/avis-sur-les-rapports-entre-police-et-population-retablir-la-confiance-entre-la-police>
- CNCDH, Second avis sur le projet de loi confortant le respect des principes de la République, 25.03.2021. : <https://www.cncdh.fr/fr/publications/second-avis-sur-le-projet-de-loi-confortant-le-respect-des-principes-de-la-republique>
- CNCDH, Avis sur le projet de loi confortant le respect des principes de la République, 28.01.2021.: <https://www.cncdh.fr/fr/publications/avis-sur-le-projet-de-loi-confortant-le-respect-des-principes-de-la-republique>
- 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>
- CNCDH, Avis relatif à la réforme de la justice des mineurs : premier regard de la CNCDH, 09.07.2019.: <https://www.cncdh.fr/fr/publications/avis-relatif-la-reforme-de-la-justice-des-mineurs-premier-regard>
- CNCDH, Avis sur le projet de loi de programmation 2018-2022 et de réforme de la justice tel que présenté en conseil des ministres le 20 avril 2018 - analyse des dispositions relatives à la procédure pénale et au droit des peines, 20.11.2018. : https://www.cncdh.fr/sites/default/files/181120_avis_sur_la_lutte_sur_la_reforme_de_la_justice_penal_pour_mail.pdf
- Loi n° 2022-52 du 24 janvier 2022 relative à la responsabilité pénale et à la sécurité intérieure. <https://www.legifrance.gouv.fr/jorf/id/JORFTEXT000045067923>
- Loi n° 2021-1729 du 22 décembre 2021 pour la confiance dans l'institution judiciaire. <https://www.legifrance.gouv.fr/jorf/id/JORFTEXT000044545992>
- The reform of juvenile criminal justice came into force on 30 September 2021.
- Loi du 24 août 2021 confortant le respect des principes de la République. <https://www.legifrance.gouv.fr/jorf/id/JORFTEXT000043964778>

- Loi du 25 mai 2021 pour une sécurité globale préservant les libertés. <https://www.legifrance.gouv.fr/jorf/id/JORFTEXT000043530276>
- Loi du 8 avril 2021 tendant à garantir le droit au respect de la dignité en détention. <https://www.legifrance.gouv.fr/jorf/id/JORFTEXT000043339226>

NHRI's recommendations to national and regional authorities

Concerning criminal matters, the CNCDH recommends a reform of the Criminal Procedure Code with the aim of clarifying the role of each stakeholder, in order to protect the rights of all parties, simplifying and making the procedure more effective.

Also, the CNCDH recommends a reform of the status of the public prosecutor so that its independence is ensured in the constitution.

Despite an increasing budget, the CNCDH recommends that substantial budgetary resources are allocated to the judicial system as a whole, and not mainly to prisons.

Media freedom, pluralism and safety of journalists

The law of 24 August 2021 reinforcing compliance with principles of the Republic (loi confortant le respect des principes de la République) introduces the summary trial procedure for crimes within the framework of the law of 29 July 1881 on freedom of the press (public incitement to hatred or violence, negationism, etc.). The CNCDH recalls that emergency procedures, in particular the summary trial, are not appropriate for litigation concerning abuses of freedom of expression. The CNCDH highlights that due to the complexity of the topic and the fundamental principles at stake, a specific treatment is required. The CNCDH recalls the importance of procedures that preserve the judge's intervention and guarantee more rights to the defence than in the emergency procedure.

The CNCDH also warns on the new dissuasive measures put in place by the authorities to prevent the presence of observers, especially journalists, at the time of evacuation operations of people exiled in Calais and Grande-Synthe. The security perimeters imposed by the police are disproportionate and hinder the observation of dismantling operations by third parties.

Germany

German Institute for Human Rights

Impact of 2021 rule of law reporting

Follow-up by State authorities

Due to the general election in September 2021, there have been no legislative or administrative initiatives addressing the issues raised in the 2021 ENNHRI rule of law report. With the formation of a new government coalition, which is comprised of the Social Democratic Party, the Green Party and The Liberal Democratic Party, more progressive legislation is expected on a variety of issues concerning human rights and rule of law (e.g. LGBTIQ* rights, evaluation of security laws, non-profit organizations) according to the coalition agreement.

References

- Coalition agreement:
<https://www.bundesregierung.de/resource/blob/974430/1990812/04221173eef9a6720059cc353d759a2b/2021-12-10-koav2021-data.pdf?download=1>

Follow-up initiatives by the Institution

While the Institute has not taken any specific follow-up initiative based on the 2021 report, it did raise, within the framework of the September 2021 general election, specific issues highlighted in the report and advocated for their inclusion in the respective election manifestos as well as in the coalition agreement of the new government coalition (e.g. independent complaint bodies for police and structural reforms to address racial profiling).

NHRI's Recommendations to National and European policy makers

The Institute recommends that the German federal and state parliaments schedule annual public dialogues with civil society actors/academia on the EU Commission's annual rule of law report in their relevant parliamentary committees.

Independence and effectiveness of the NHRI

The new government coalition does not include the Christian Democratic Party anymore, which used to block the increase of financial resources for the Institute. The coalition agreement of the new government coalition has specifically committed to increase the financial and human resources of the Institute.

International accreditation status and SCA recommendations

In November 2015, the German NHRI was re-accredited with A status (1). 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. The SCA also included recommendations calling for a broader and more transparent process for selection and appointment, a clear and objective dismissal procedure for members of the Board, and stronger provisions on protection for members of the Board from legal liability for acts undertaken in good faith in their official capacity. On these recommendations, the German NHRI will provide clarification to the SCA regarding the Institute's structure and German law in the context of its reaccreditation in March 2022, and it is of the opinion that no legal or statutory changes are necessary in relation to these matters.

References

- (1) https://www.ohchr.org/sites/default/files/Documents/Countries/NHRI/GANHR_I/SCA_FINAL_REPORT_-_NOVEMBER_2015-English.pdf

Regulatory framework

The Institute (hereinafter also referred to as "GIHR") has a legislative basis and the national regulatory framework applicable to the institution has not changed since the 2021 report. The NHRI has the mandate to contribute to access to justice for individuals, through awareness-raising and amicus curiae briefs in human rights cases, especially before the Federal Constitutional Court (upon request by the Court, following a proposal by the Institute).

Enabling and safe space

The relevant state authorities have good awareness of the NHRIs' mandate, independence and role.

The Institute does not have a special right of access to information but can only use the general right of access to information. However, so far information requests by the Institute to federal and state ministries have been fulfilled mostly.

The Institute has the general mandate to give "policy advice", i.e. to advise parliaments and governments on the federal and state levels. However, there is no legal obligation for these actors to involve the Institute in all stages of legislation or policy making with human rights implications. At the stage of draft legislation, the Institute is, in fact, generally invited along with other relevant stakeholders to comment on draft legislation. In previous reports the Institute has already raised the issue that oftentimes the deadlines for such input are very short (a few days). The Institute usually publishes these statements on its website.

As mentioned in last year's report the Institute can only participate in parliamentary hearings on a draft law when it is invited by a political party.

Thus, the Institute recommends that the federal parliament changes its rules of procedure extending a standing invitation to the Institute to participate in parliamentary hearings or submit a written statement on draft laws with human rights implications and to accept any written submission of the Institute on draft laws and to circulate them as official parliamentary documents.

Beyond its general power to give advice to parliaments and governments, which includes making recommendations, the Institute may also be invited to participate in independent commissions of experts established to formulate recommendations regarding a specific or structural human rights issue (e.g. prevention of violence in institutions for people with disabilities or police reforms).

The addressees of the NHRI's recommendations are not legally obliged to provide a timely and reasoned reply.

The Institute is required to submit an annual report on the situation of human rights in Germany to the federal parliament. The Institute presents this report shortly before international human rights day, and the federal parliament uses the plenary discussion on human rights on that day to also discuss the report; subsequently, the report is an agenda item of the Committee on Human Rights and Humanitarian Aid. According to the Law on the GIHR, parliament "should" respond to the report, but is not obliged to. So far, no such response has been formulated.

Measures are in place to protect and support the NHRI, heads of institution and staff against threats and harassment and any other forms of intimidation. Among others, where necessary, the Institute staff can apply to the authorities and have access to their address in civil registries blocked. Some staff working on sensitive issues such as right-wing extremism have made use of this possibility. The Institute supports such applications with an official letter from the director.

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

The Institute has successfully addressed the issue of adequate funding with political parties before the general elections of September 2021. As mentioned above, the coalition agreement of the new government coalition promises to increase the Institute's financial and human resources. The Institute will now address this issue during the budgetary negotiations of 2022.

In March 2021, during the discussion of the 2020 GIHR Report on the Human Rights Situation in the Committee on Human Rights and Humanitarian Aid, the Institute raised the issue of the Institute's involvement in legislation and policy making, specifically the need for the federal parliament to change its rules of procedure to include the Institute in all parliamentary hearings concerning human rights issues in Germany. The GIHR will continue to advocate for this change with the new federal parliament.

NHRI's recommendations to national and regional authorities

The Institute recommends that:

- the federal parliament substantively increases the Institute's financial and human resources in the upcoming budgetary cycle
- the federal parliament in its next revision of its rules of procedure includes a provision whereby the Institute is invited ex officio to parliamentary hearings (standing invitation), is invited to submit a written statement on all draft laws with human rights implications and that these statements will be circulated as official parliamentary documents.
- on the state level, governments provide a legal basis as well as permanent and sufficient funding when designating the Institute as monitoring body under art. 33 of the UN Convention on the Rights of Persons with Disabilities (CRPD).

Human rights defenders and civil society space

In its last report the Institute raised the issue of tax privileges for CSOs and the need for legal reforms. The situation is unchanged due to the federal elections in September 2021, but the coalition agreement takes up the issue, so that a change can be expected in the nearer future.

Laws and practices negatively impacting on civil society space and/or on human rights defenders' activities

As mentioned in the previous 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 organisations to function and proceed with their work in order to actively participate in democratic discourse and social welfare has been affected or at least jeopardised. The legal situation remains unchanged, but according to the coalition agreement, new government is willing to address the issue.

While a proposal for a Democracy Promotion Law had been introduced in May 2021, the legislative work could not be concluded before the elections in September 2021. The proposal mainly intended to create a reliable legal framework for federal funding activities aimed at strengthening the democratic engagement of civil society organisations.

Sustainable and long-term funding from the federal level for civil society structures to promote democracy remains an unsolved issue in Germany as funding is often limited to the maximum of a three-year project cycle. The new government coalition has pledged to tackle the issue and the presentation of a new draft law is expected for 2022.

References

- [https://www.institut-fuer-menschenrechte.de/fileadmin/Redaktion/Publikationen/Stellungnahmen/Position Paper International recognition of a human right to a clean healthy sustainable environment.pdf](https://www.institut-fuer-menschenrechte.de/fileadmin/Redaktion/Publikationen/Stellungnahmen/Position_Paper_International_recognition_of_a_human_right_to_a_clean_healthy_sustainable_environment.pdf)

Access to and involvement of civil society actors in law and policy making

As mentioned in the previous report there has been a tendency, equally noted by CSOs, to provide very short timeframes for stakeholder consultations. While ministries, federal and

state 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.

Given the reduced legislative activity since the previous report due to the general election in September 2021, the reference provided remains pertinent.

References

- 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>

NHRI's role in promoting and protecting civil society space and human rights defenders

The Institute has continued to support the human rights defenders protection programme of the Ministry of Foreign Affairs (Elisabeth-Selbert-Initiative). With the coming into power of the Taliban in Afghanistan members and staff of the Afghanistan Independent Human Rights Commission (AIHRC) have come under extreme danger; human rights work has become virtually impossible. Together with the Asia Pacific Forum of NHRIs the Institute has successfully advocated for the inclusion of members and particularly exposed staff in the German evacuation list. Thus, some members and staff of the AIHRC and their families have been relocated to Germany and received a residence permit. The GIHR is advocating for continuing these evacuation efforts, also extending to other human rights defenders, and has published a study on Germany's human rights obligations in this regard.

References

- Grund- und menschenrechtliche Verantwortung nach dem Abzug aus Afghanistan Zu den Schutzpflichten Deutschlands für besonders schutzbedürftige Afghan*innen: https://www.institut-fuer-menschenrechte.de/fileadmin/Redaktion/Publikationen/Analyse_Studie/Analyse_Grund_und_menschenrechtliche_Verantwortung_nach_dem_Abzug_aus_Afgghanistan.pdf

NHRI's recommendations to national and regional authorities

With regard to Germany the Institutes recommends that the new Government tackles the issue of tax privileges so that the grounds for such privileges cover promotion and protection of human rights, climate protection, and promotion of democracy and rule of law.

Checks and balances

The concerns raised in last year's report remain valid. In particular, the issue of lack of time for stakeholder participation during the legislative process remains a concern in Germany (see also the section above).

Following the PSPP ruling of the Federal Constitutional Court (FCC), in May 2020 the EU Commission started an infringement procedure against Germany in June 2021. It appears that the case has now been quietly settled. This raises transparency concerns as it is unclear what promises were made or on what conditions the infringement procedure has been settled (1).

The Institute is a member of the advisory council of the Federal Anti-Discrimination Agency (FADA). It has now been several years that the Government has not filled the position of director of the agency. The Advisory Council of the FADA is proposing a substantive organizational change so as to strengthen the independence of the FADA (2).

The powers of police, public prosecutors and secret services have been considerably expanded over the past 20 years, yet quite a few of these laws were declared unconstitutional by the Federal Constitutional Court, forcing the legislature to amend them. The Institute had been advocating since 2006 for a human rights-based evaluation of security legislation. The issue has been taken up by the new government which promised in its coalition agreement to undertake such an evaluation (3).

References

- (1) <https://www.tagesspiegel.de/politik/ezb-urteil-des-bundesverfassungsgerichts-warum-der-konflikt-zwischen-karlsruhe-und-europa-etwas-zu-still-beerdigt-wurde/27864242.html>
- (2) <https://www.antidiskriminierungsstelle.de/DE/ueber-uns/beirat/beschluesse-des-beirats/beschluesse-des-beirats-node.html>
- (3) <https://www.institut-fuer-menschenrechte.de/publikationen/detail/die-evaluation-von-sicherheitsgesetzen>

Trust amongst citizens and between citizens and the public administration

According to a recent survey public trust in institutions has slightly fallen over the last year. This concerns politicians and political parties, police and courts (including the FCC), but also media. Some of this loss could be due to poor communication and late action during the pandemic.

References

- <https://www.n-tv.de/politik/Weniger-Ostdeutsche-haben-Vertrauen-in-die-Polizei-article23049926.html>; <https://www.n-tv.de/politik/Vertrauen-in-Politik-sinkt-vor-allem-in-den-Kanzler-article23036025.html>

NHRIs as part of the system of checks and balances

The Institute continues to participate in the legislative and policy process through the provision of policy advice through written statements, participation in public hearings and engagement with various political actors.

During the 2021 election campaign the Institute has advocated for a thorough evaluation of security legislation, to address the concerns mentioned above.

NHRI's recommendations to national and regional authorities

The Institute recommends the EU and other regional bodies to:

- address incisive sanctions to states that systematically undermine the independence of the judiciary, in particular when systematically ignoring judgments of the Court of Justice of the EU and the European Court of Human Rights in this regard.
- ensure systematic election monitoring, including amendments of electoral laws to the disadvantage of opposition parties and unfair conditions for opposition parties during the electoral campaign; non-recognition of election results in cases of widespread and systematic violations

Functioning of the justice system

The situation remains largely unchanged compared to last year's report.

Challenges with access to justice for persons with disabilities, women victims of gender-specific violence, victims of human trafficking, and victims of racist violence continue to persist.

While the reform of guardianship law (Betreuungsrecht) is a step towards more self-determination for persons with a legal guardian, there are still provisions in the new legislation that are incompatible with the human rights laid down in the CRPD. The reform is an attempt to lay the legal groundwork ensuring that courts order guardianships only to the extent absolutely necessary (necessity principle). However, a person can still be placed under guardianship against their "natural will" under certain circumstances and provisions creating the legal bases for coercive measures, such as placement in an institution or medical treatment against the will of the subject, still stand. (1)

An additional point to note is that, with the entry into force of amendments to the anti-hate speech legislation in social media (Netzwerkdurchsetzungsgesetz), prosecutors and courts are understaffed to deal with the (expected) high numbers of cases that will reach the authorities if social media enterprises fulfill their reporting obligations.

References

- (1) https://www.institut-fuer-menschenrechte.de/fileadmin/Redaktion/Publikationen/Menschenrechtsbericht/Executive_Summary_Annual_Report_Development_Human_Rights_Situation_Germany_2021.pdf

Role of the NHRI in contributing to the effective functioning of the justice system

The Institute continues its work as described in the 2020 report. On the issue of access to justice for women victims of gender-specific violence and victims of human trafficking the Institute started the second phase of a project, funded by the Federal Ministry for Family Affairs, Senior Citizens, Women and Youth, that aims at establishing a monitoring body for the Council of Europe (CoE) Istanbul Convention on preventing and combating violence against women and domestic violence and a monitoring body for the CoE Anti-Trafficking Convention. (1)

The Institute also continued a project, funded by the Federal Ministry of Justice, that aims at 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.

References

- (1) https://www.institut-fuer-menschenrechte.de/fileadmin/Redaktion/Publikationen/Weitere_Publikationen/Leitbild_Berichterstattungsstelle_geschlechtsspezifische_Gewalt.pdf

NHRI's recommendations to national and regional authorities

The Institute recommends that the federal and state governments

- set up independent bodies to receive complaints from persons claiming to be victims of human rights violations by the police, e.g. excessive violence or racist practices;
- strengthen counselling and assistance services, offered by civil society, for persons affected by racist police practices;
- systematically incorporate human rights education across all subject areas in the initial and advanced training and professional development for all police officers, and the personnel of other law enforcement, prosecutorial and judicial authorities, especially on the role of international human rights law within the German legal order and on antisemitism, racism (especially against Roma and Sinti, racism against Muslims).

Media freedom, pluralism and safety of journalists

The Institute does not carry out systematic monitoring in this area. As mentioned in the 2021 report, it remains of concern that in the context of demonstrations against the Corona protection measures, journalists' organisations have reported an increasing number of attacks against, and harassment of, journalists by demonstrators.

References

- <https://www.reporter-ohne-grenzen.de/nahaufnahme/2021>

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

The Institute takes the view that the pandemic response has been often late and deficient, thus failing to ensure prompt and effective measures able to tackle the threats posed by the COVID-19 outbreaks in accordance with fundamental rights and freedoms.

Emergency regimes and related measures

Generally speaking, the Institute takes the view that the main problem in Germany throughout the pandemic has been that the political response to the pandemic has been consistently late and deficient, ignoring scientific evidence and advice by scientific experts and advisory bodies, and downplaying the dangers and need for effective measures to combat the pandemic. While it is important to discuss the legality of measures addressing the pandemic that would limit rights and freedoms, politics has oftentimes 'hidden' behind a general claim of potential unconstitutionality of proposed measures instead of discussing in a nuanced way the specific purposes and expected impact and side-effects of measures. This fuels a misguided understanding about human rights whereby rights and freedoms cannot be limited.

In this sense it is important that the Federal Constitutional Court (FCC) in a recent ruling confirmed the legality of the measures taken during the third wave of the pandemic including curfews and contact restrictions.⁽¹⁾ It recognised that rights to life and to health as well as the need to maintain the proper functioning of the healthcare system are "exceptionally significant interests of the common good in their own right". ⁽²⁾ It emphasized that the state must show a sufficient evidentiary basis for its measures, but that "[w]here scientific knowledge is tentative and the legislator's possibilities to draw

sufficiently reliable conclusions are therefore limited, it is enough for the legislator to proceed on the basis of a context-appropriate and tenable assessment of the available information and evidence.” It thereby handed back to politics responsibility for addressing the Covid-19 pandemic to politics, requiring them to take into account the continuing increase in scientific knowledge for its assessment of the proportionality of measures encroaching on human rights.

Another negative human rights impact of the repeated insufficient and late response to the pandemic and the exponential growth of the virus is that the longer a state waits to take measures, the more restrictive they will need to be to adequately address the pandemic and prevent the worst. Thus, in Germany, the lack of preventive measures during the summer has resulted in a fourth wave in the fall of 2021, which will continue well into 2022 causing unnecessary deaths and a rising number of people suffering chronic illness. This fourth wave as well as the uncertainties around the new escape variant Omicron make further restrictions necessary. Thus, lack of early and consistent, but time-limited measures to address the pandemic has each time reliably led to the need to impose very tough measures and for a much longer period than if the same or similar measures had been taken early on.

References

- <https://www.dw.com/en/covid-german-constitutional-court-rules-emergency-brake-measures-were-legal/a-59975212>
- <https://www.bundesverfassungsgericht.de/SharedDocs/Pressemitteilungen/EN/2021/bvg21-101.html>

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

The lack of a coherent and honest response to the pandemic has fuelled the radicalisation of protests against the pandemic measures – positions which are now being supported by, and merging with, right-wing extremism. This has led to further polarisation making a growing number of people not only unreceptive to public health messaging and vaccination campaigns, but also disenchanted from the basic values of democracy, rule of law and human rights in general. The increasing number of open death threats against politicians (1), (2), (3) as well as attacks and threats against vaccination centres and doctors shows how far this radicalisation has got to (4), (5).

References

- <https://www.dw.com/en/german-police-investigating-anti-vax-assassination-plot-against-saxony-leader-michael-kretschmer/a-60058223>
- <https://www.dw.com/en/germany-torchlit-rally-against-covid-measures-in-saxony-prompts-outcry/a-60020777>
- <https://www.zeit.de/politik/deutschland/2021-12/corona-protest-karl-lauterbach-impfgegner-koeln>
- <https://www.tagesschau.de/inland/angriffe-impfzentren-101.html>
- <https://www.tagesschau.de/inland/gesellschaft/drohungen-impfung-aerzte-101.html>

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

As reported last year, 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. Due to falling case numbers and relaxation of Covid-19 restrictions during the early summer 2021 more and more in person meetings became possible. However, with rising case numbers during the fall and uncertain perspectives regarding the escape variant Omicron, it is unclear when the Institute will be able to resume in person activities as before the pandemic.

Greece

Greek National Commission for Human Rights

Impact of 2021 rule of law reporting

Follow-up by State authorities

The Greek National Commission for Human Rights (GNCHR) is not aware of any direct follow-up action or initiative on the part of state authorities, which could be traced back to the 2021 ENNHRI Rule of Law Report, nor was the Report specifically discussed among the general public or the public authorities. The limited impact could be explained by the persistence of other issues of concern for both civil society and public authorities, such as the COVID-19 pandemic and the emergency measures taken to contain it.

However, and though not directly related to ENNHRI's and the European Commission's Reports, there have been specific actions taken by the state authorities aiming at improving the rule of law situation across the Country. In particular, during the year 2021, there have been concrete initiatives taken by the state authorities in this direction, aiming at improving the efficiency and the quality of the Greek justice system (eg. digitalisation of justice), combating corruption (eg. Anti-corruption National Strategic Plan for 2022-2025 of the National Transparency Authority), enhancing the transparency of media ownership and public availability of media ownership information (eg. adoption of Law 4779/2021 transposing into national law Directive 2010/13/EU of the European Parliament and of the Council of 10 March 2010 on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the provision of audiovisual media services, as amended by Directive 2018/1808/EU of the European Parliament and of the Council of 14 November 2018 and other provisions within the competence of the General Secretariat for Communication and Information) and improving the system of checks and balances (eg. during the COVID-19 pandemic Greece has not triggered a state of emergency and all relevant measures were taken according to the normal legislative procedure).

Despite the above positive steps in the direction of fostering a rule of law culture, important shortcomings and challenges remain in terms of rule of law in general, as provided below, in all four areas of interest (justice system, media, anti-corruption framework and institutional issues related to checks and balances). Indeed, according to the World Justice Project (WJP) Rule of Law Index, Greece's overall rule of law score decreased by less than 1% in this year's

Index. At 48th place out of 139 countries and jurisdictions worldwide, Greece fell one position in global rank. Greece's score places it at 29 out of 31 countries in European Union, European Free Trade Association, and North America region.

Furthermore, in this regard, the GNCHR notes with particular disappointment that **in the Chapter on the rule of law situation in Greece of the 2021 Rule of Law Report of the European Commission**, which was published in 20 July 2021, **there's absolutely no reference to the Country's NHRI: the GNCHR**. Bearing in mind the increasing recognition by regional actors over the past year of 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, this omission raises reasonable concerns. The GNCHR remains determined, however, to continue fulfilling its mission and investing in a regular and comprehensive monitoring and follow-up of developments related to the rule of law in Greece, as a means to making concrete progress in advancing rule of law, human rights and democracy in the Country.

References

- European Commission, 2021 Rule of Law Report Country Chapter on the rule of law situation in Greece, Brussels, 20 July 2021, SWD(2021) 709 final: https://ec.europa.eu/info/sites/default/files/2021_rplr_country_chapter_greece_en.pdf
- World Justice Project (WJP) Rule of Law Index, Country Press Release: Greece, 14 October 2021: https://worldjusticeproject.org/sites/default/files/documents/Greece_2021%20WJP%20Rule%20of%20Law%20Index%20Country%20Press%20Release.pdf

Impact on the Institution's work

The GNCHR, as the NHRI in Greece, not only has been voicing the issues addressed in the 2021 ENNHRI rule of law Report since its establishment, but furthermore these issues have been its priority. Bearing in mind that the main mission of the GNCHR consists of the constant monitoring and reporting on issues pertaining to human rights promotion and protection, bringing these issues to the attention of national, regional and international actors working on advancing the rule of law and democracy across the region is among the core mission and values of the GNCHR.

This being said, the 2021 ENNHRI rule of law report has impacted the GNCHR's work in many ways:

- It has provided us with a **fruitful overview of the rule of law situation in Europe**, which the GNCHR has benefitted from in several parts of its work. In particular, stressing the link between rule of law and democracy, on the one hand, and human rights protection and promotion on the other hand, the GNCHR put more emphasis on promoting and protecting the rule of law in Greece.
- It inspired the GNCHR to **continue promoting 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, allows the GNCHR to draft a concrete plan of action, which is regularly monitored and adjusted to achieve specific objectives.
- It provided us with a **very useful and synthesised information on the challenges that other NHRIs face in their work regarding the implementation of the rule of law, as well as on best practices** and the way they manage to safeguard their independence and strengthen their effectiveness, which helped the GNCHR improve its everyday work in particularly difficult times.

Follow-up initiatives by the Institution

In 2021, despite the COVID-19 pandemic, the **GNCHR intensified its efforts and work**. In particular, the GNCHR played a decisive role in the follow-up to the 2021 ENNHRI rule of law report, among others, by:

- issuing and submitting approximately 30 reports, statements, press releases and other contributions,
- conducting 8 Plenary meetings and other hearings on various human rights issues,
- raising awareness and triggering a genuine discussion at national level, including through open seminars, trainings and discussion in Parliament.

In particular, the GNCHR:

- on its own or through the work of RVRN, continues to **support human rights defenders and promote their work**, for example through sharing best practices and holding training workshops, presenting awards.
- **continues to encourage the ratification of international Human Rights standards**, through its reports submitted both to national authorities and international human rights monitoring mechanisms. To this end, the GNCHR

updated its list of 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.

- **continues to contribute to the compliance of the judiciary with international human rights standards, by increasing 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, in **December 2021, a more specialised cycle of seminars to judicial officers on Legal Gender Recognition**, while it proposed the organisation of closed seminars on Hate Crime for Special Prosecutors for Racist Crime.
- **continues to maintain a particularly rich and important cooperation with the ECtHR**, through for instance the translation in the Greek language of the ECtHR thematic factsheets or through systematically promoting the ECtHR case law in the GNCHR reports, positions, and recommendations.
- **carried out its Third Cycle of annual (open) seminars on human rights**, on a wide range of human rights thematics.
- **established a Mechanism for recording and monitoring incidents of informal forced removals**, with the participation of civil society organisations active in the field and with the assistance of European and international organisations.
- **continues to operate as a de facto COVID-19 Human Rights Observatory, bringing** together experts from different human rights fields, with a wide range of backgrounds, in order to (a) monitor the situation in the field, (b) adopt specific recommendations focusing mainly on the most vulnerable groups and (c) alert national authorities at the highest level of risks of human rights violations in the context of the COVID-19 outbreak.
- **organised a human rights awareness-raising campaign to celebrate the International Human Rights Day (10 December 2021)**, by making short videos of Greek celebrities reading articles of the Universal Declaration of Human Rights and sending their own message for equality and human rights.

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NHRI's Recommendations to National and European policy makers

In light of the above observations, the GNCHR considers that, in order to maximise the impact of the annual rule of law reporting, the competent national and/or European authorities should:

- Undertake **concrete and effective measures to widely disseminate** both – ENNHRI's and the Commission's – **Rule of law Reports**, as well as any relevant information which would allow and promote the improvement of rule of law and democracy in the Country.
- **Respect NHRI's mandate and work**, by facilitating mutual engagement, considering their recommendations and making serious efforts to implement them.

NHRIs are not only central elements of a strong national human rights system. They also "bridge" civil society and Governments; they link the responsibilities of the State to the rights of citizens and they connect national laws to regional and international human rights systems. Furthermore, as institutions responsible for ensuring national compliance with international human rights commitments, NHRIs are crucial elements of the institutional architecture necessary for the realisation of the 2030 Agenda. Therefore, **national and European policy makers must step up to their commitments and support the establishment and maintenance of effective and independent NHRIs across the region. They can only gain from NHRIs' added value.**

In order to further facilitate NHRIs' annual rule of law reporting and/or more generally support NHRIs' work to promote and protect the rule of law in our respective countries, ENNHRI could develop and promote the use of a **framework of appropriate quantitative and qualitative indicators aiming at monitoring human rights implementation and measuring progress** made in that regard. Taking into account that human rights indicators are essential in the implementation of human rights standards and commitments, to support policy formulation, impact assessment and transparency, NHRIs' role in elaborating and using human rights indicators in their work is crucial and needs to be supported by relevant regional and national actors.

Independence and effectiveness of the NHRI

International accreditation status and SCA recommendations

The Greek National Commission for Human Rights (GNCHR) was last re-accredited with A-status in March 2017 (1).

The SCA was of the view that the selection and appointment process enshrined in the GNCHR's enabling law was not sufficiently broad and transparent; particularly, it did not specify the process for achieving broad consultation and participation in the application, screening, selection, and appointment process. Further, the SCA noted that providing for different stakeholders to select members according to their rules of operation could result in the different entities using different selection processes. It took the view that these processes should be standardised across nominating entities. The SCA encouraged the GNHCR to continue its efforts to advocate for the formalization of a detailed process in its enabling law.

The SCA also recommended GNCHR to strengthen the applicable grounds of dismissal of members of the NHRI. It recalled that the grounds for dismissal must be clearly defined and appropriately confined to those actions that impact adversely on the members'

capacity to fulfil their mandate. It recommended that this process should apply uniformly to all nominating entities.

Finally, acknowledging that the financial situation in Greece at the time limited the NHRI's ability to advocate for increased funding, the SCA encouraged the GNCHR to continue to advocate for an appropriate level of funding to carry out its mandate including, where appropriate, the establishment of regional offices.

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Regulatory framework

The independence of the GNCHR, through the dual mandate for the promotion and protection of human rights entrusted to it by the legislator, is guaranteed by its law and ensured *inter alia* by providing for a mandate as broad and clear as possible in the legislation. The GNCHR has a **broad mandate, in accordance with the Paris Principles**, to promote and protect human rights. This mandate covers the whole range of human rights, including social, economic and cultural rights, as they are enshrined in the Constitution, in international and European treaties and other normative texts as well as in soft law instruments such as declarations and guidelines.

The Greek National Commission for Human Rights continues to work on the legislative basis with the same mandate that allows NHRI to contribute to access to justice for individuals, including through awareness raising. Furthermore, due to the new law implemented (Law. No. 4780/21) NHRI has the mandate to engage in strategic litigation.

There have been changes introduced in relation to the regulatory framework of the NHRI. The Greek National Commission for Human Rights points to the new legal provisions adopted in Greece to enhance NHRI's independence. On 23 February 2021 the Greek Parliament successfully voted on the 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), 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.

The Greek National Commission for Human Rights believes that the NHRI regulatory framework should be further strengthened.

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 was aimed at offsetting the negative changes brought by recent legislative measures which affected the regulatory framework of the Institution by downgrading its scientific staff and unilaterally altering its composition and violating its independence. As a result, as above mentioned, 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), was finally voted by Parliament in 2021.

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Enabling and safe space

The Greek National Commission for Human Rights finds that the relevant state authorities have good awareness of the NHRIs' mandate, independence and role of the NHRI. Nevertheless, the GNCHR notes that in several cases the state authorities' awareness of the GNCHR's mandate, independence and role is not at a satisfactory level. The state authorities often confuse the NHRI with Civil Society Organisations or confuse the roles of the NHRI and the Ombudsman. To that end, **state authorities should increase awareness raising about the importance of engaging with NHRIs** as a vehicle for ensuring greater respect for the rule of law, in order to avoid confusion with other types of institutions which operate independently at a national level, but do not have a broad human rights mandate, such as the GNCHR's mandate.

The Greek National Commission for Human Rights states that it has an adequate access to information and to policy makers and it is involved in all stages of legislation and policy making with human rights implications, **but not in a satisfactory level.**

According to its founding legislation, the GNCHR, as the NHRI in Greece, "is the independent advisory body to the State on matters pertaining to human rights protection

and promotion" (Art. 10(2) of Law no. 4780/2021) and has as its mission, among others, "the formulation of policy proposals on matters concerned with its object" (Art. 11(c) of Law no. 4780/2021). For the fulfilment of its mission, the GNCHR, in particular, is entrusted by the legislature specific duties and powers, such as to submit recommendations and proposals, carry out studies and deliver an opinion on the adoption of legislative, administrative and other measures which contribute to the improvement of human rights protection (Art. 12(b) of Law no. 4780/2021), to examine the adaptation of Greek legislation to the provisions of international law on human rights protection and deliver an opinion in this connection to the competent bodies of the State (Art. 12(c) of Law no. 4780/2021), to monitor and express recommendations to the State for the permanent and constant impact assessment of policy measures on human rights (Art. 12(d) of Law no. 4780/2021), to monitor and express recommendations to the State for the operation of a reliable and effective system for recording incidents of discrimination, racism and intolerance (Art. 12(e) of Law no. 4780/2021) or to deliver an opinion on reports which the country is to submit to international organisations on related matters, draw up and submit its own independent reports (Art. 12(g) of Law no. 4780/2021). Furthermore, Article 21 of Law 4780/2021, entitled "Assistance provided by public and private entities", states that "public services must assist the work of the Commission. In order to fulfil its mission, the Commission may conduct on-the-spot investigations, as well as seek from both public services and individuals, any information, document or any other element relating to the protection of human rights. The President may take cognizance of documents and other elements, which are classified as confidential, unless they are affiliated with national defence, state security and international relations of the State".

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.

Despite the above legal provisions and the GNCHR's efforts to raise awareness on the added value of working together with the Country's NHRI in terms of effective and sustainable good governance and rule of law, 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.

It is worth noting that the addressees of the NHRI's recommendations are not legally obliged to provide a timely and reasoned reply -there are no concrete state measures or practices in place to ensure timely and reasoned response to the GNCHR's recommendations. Nonetheless, it derives from the spirit of the GNCHR's founding legislation and, in particular, from Articles 10(2), 11(c) and Art. 12(b), (c), (d), (e) and (g) of Law no. 4780/2021, as stated above, that there is an obligation of the competent state authorities to work together and consult the designated NHRI in the Country, in its institutional role as "the independent advisory body to the State on matters pertaining to human rights protection and promotion". Besides from its own founding legislation, the Manual for the Scrutiny of the Effects of Legislation of the Presidency of the Government refers to the Opinion of the GNCHR as obligatory.

In relation to the NHRI's safe space provided in Greece, the GNCHR confirmed that measures necessary to protect and support the NHRI, heads of institution and staff against threats and harassment and any other forms of intimidation (including SLAPP actions) are in place.

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

As previously mentioned, 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 to offset the negative changes brought by recent legislative measures which affected the regulatory framework of the Institution by downgrading its scientific staff and unilaterally altering its composition and violating its independence. As a result, in 2021, Law no. 4780/2021 was passed to address 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.

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NHRI's recommendations to national and regional authorities

Despite the GNCHR continuing efforts to promote and protect human rights in Greece, operating in challenging circumstances, and acknowledging the very positive development of the revision of its founding legislation towards strengthening the mandate and independence of the NHRI, the GNCHR notes that there are still **pending issues** which constitute a setback in relation to the common goal and the will to ensure the independence of the NHRI 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.

In addition, the GNCHR considers that the competent national authorities should:

- Continue to provide the GNCHR with **adequate, sufficient and sustainable resources** to allow it to carry out its mandate.
- Implement the GNCHR's recommendations. To this end, they are encouraged to make it a **legal obligation for all addressees of the GNCHR's recommendations** to provide a reasoned reply within an appropriate time frame, to develop processes to facilitate effective follow-up of the GNCHR's recommendations, in a timely fashion and include information thereon in their relevant documents and reports.
- Foster **awareness and the co-operation of all relevant public authorities in relation to the mandate, independence and role of the GNCHR**, including through training and awareness-raising activities.

Human rights defenders and civil society space

The Greek NHRI assesses that the overall environment for human rights defenders and civil society is continuously worrying. Risks of repression of civil CSOs supporting refugees and migrants in Greece have been exacerbated by successive legislative reforms in 2020, introducing disproportionate and ambiguous requirements for registration on two Registries managed by the Ministry of Migration and Asylum. In 2021, not only there hasn't been any change, but an increasing number of institutions at Greek, European and international level have raised concerns as to the compatibility of the NGO registration rules with the country's legal obligations.

Laws and practices negatively impacting on civil society space and/or on human rights defenders' activities

With regards to **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 "Registry of Greek and Foreign NGOs", operating under the Ministry for Migration and Asylum. However, by virtue of Laws no. 4636/2020 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 certain aspects of their work".

On March 31st, 2021, the **Special Rapporteur on the rights to freedom of peaceful assembly and of association, the Special Rapporteur on the situation of human rights defenders, and the Special Rapporteur on the human rights of migrants** voiced concerns on the "significant and detrimental impact on the operation of all civil society organizations working with migrants and refugees in Greece", with particular focus on the complexity and high costs of registration imposed by Greek legislation, contrary to the right to freedom of association. The three Special Rapporteurs urged Greece to "undertake a review of Law on NGOs and the JMD to ensure that they are in accordance with Greece's international human rights obligations".

In reference to the positions taken by the Expert Council on NGO Law and the UN Special Rapporteurs, on May 3, 2021, the **Council of Europe Commissioner for Human Rights** stated that she "share[d] these concerns, and call[ed] on the Greek authorities to build on the recommendations issued by these bodies in order to actively create and maintain an enabling legal framework and a political and public environment conducive to the existence and functioning of civil society organisations". The Greek authorities replied to the Council of Europe that the "objective of the Registry is not to set barriers to the NGOs and in no case the registration procedure is intended to be excessive or cumbersome." They added that "the objective is to set the same rules for all NGOs operating in Greece... as well as to verify that they offer high quality services to the beneficiaries".

As far as the implementation of the NGO registry so far is concerned, in an information note released in May 2021, the Ministry of Migration and Asylum referred to 36 registered organisations and 78 rejected applications. Another 97 applications are pending. Taking into

account that the negative decisions are more than double the number of positive decisions on registration applications, the assessment of registration applications in practice gives rise to grounds for believing that the **criteria are not applied transparently, fairly, consistently and lawfully**.

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Threats and attacks, including strategic litigation against public participation (SLAPPs)

GNCHR is deeply concerned about the **tensions manifested in 2020 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 2020 RVRN Annual Report published in April 2021, highlight a worrying trend which points to an increasingly hostile environment for humanitarian organisations, and CSOs 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 **increase in incidents of racist violence, particularly against refugees, migrants and human rights defenders who were targeted due to their affiliation** with the above-mentioned groups, which was recorded by RVRN in 2020, reaffirms that 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.

The increasingly hostile conditions of harassment and intimidation imposed by Greek authorities under which human rights defenders are forced to operate are confirmed by a recent press release issued by the **Special Rapporteur on the situation of human rights defenders**, by which the UN expert urged judicial authorities in Greece against criminalising the work of migrant rescuers in the Mediterranean Sea. According to the Special Rapporteur, a guilty verdict in a court case against two human rights defenders

could translate into 'death sentences' for countless more migrants. The case concerns two search and rescue volunteers, Sarah Mardini and Seán Binder, who currently face criminal charges related to their lifesaving humanitarian work off the Greek island of Lesbos. The two were held in pre-trial detention for 107 days in 2018 while authorities investigated the "misdemeanours" and possible felony charges: facilitation of illegal entry, money laundering and fraud. The investigation continues and the two have not been formally indicted with any felonies. If convicted on all misdemeanour and felony charges, they could face up to 25 years in prison. The Special Rapporteur's call was endorsed by the **Special Rapporteur on trafficking in persons, especially women and children and the Special Rapporteur on the human rights of migrants.**

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NHRI's role in promoting and protecting civil society space and human rights defenders

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 51 NGOs and CSOs, which 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.

Furthermore, and albeit repeated calls by the GNCHR and other national and international bodies upon the Greek Government to effectively investigate reported incidents of push backs, summary returns and other forms of informal forced removals of third country

nationals at the Greek-Turkish sea and land borders, the Greek Government still denies all relevant allegations. The GNCHR, in order to tackle these important challenges, is currently working on the **establishment of a Mechanism for Recording Incidents of Informal Forced Returns (MRIIFR)**. The main objectives of this initiative are the following: (a) the monitoring, recording and awareness-raising of the practices of informal forced returns of third country nationals from Greece to other countries; (b) the promotion and consolidation of respect for the principle of non-refoulement in Greece and the safeguarding of guarantees and legal procedures; (c) the strengthening of accountability for alleged human rights violations occurring during informal forced returns of third-country nationals from our country to other countries, and (d) the enhancing of the credibility of the reported incidents through the adoption of a common, transparent and scientific methodology in the recording. The MRIIFR consists of NGOs and CSOs which have the mandate, the operational capacity and the experience in recording informal forced returns against third country nationals. The GNCHR is the coordinator of this Mechanism and the Greek Office of UNHCR provides technical assistance as a Cooperating Agency.

In any case, it is important to highlight that 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
- **Legal recognition and protection of human rights defenders.** To this end, 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 this context, the GNCHR considers the establishment of a focal point for human rights defenders within the NHRI.
- **Capacity strengthening and promotion and support of human rights defenders' work.** 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, while sending at the same time 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 thematic.

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NHRI's recommendations to national and regional authorities

The GNCHR, on its own or through RVRN's reports, **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 protecting human rights defenders and ensuring the safety of humanitarian workers and members of civil society.

In particular, both the GNCHR and RVRN have repeatedly called upon:

- The Greek police and the Greek justice system to **effectively investigate the complaints** about excessive use of force by the police, particularly off duty as well as racist attacks from organised or unorganised groups against newcomer refugees and migrants, human rights defenders, staff of international and civil society organizations as well as journalists, while **guaranteeing the safety** of all persons working in the field;
- The Ministry of Citizen Protection to ensure the **protection of human rights defenders**, as well as the **safety of humanitarian workers** and members of civil society;

- The Ministry of Justice to proceed to the **adoption of a legislative provision** for the protection of human rights defenders.

Checks and balances

Even though the system of checks and balances in Greece seems balanced, the shortcoming with regard to the quality of the legislative process remains. 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. The level of trust among citizens to the State authorities and between citizens and the public administration is rather low in Greece.

The GNCHR has welcomed the fact that the **Greek Government did not resort to the most drastic institutional measures in order to deal with the pandemic by declaring a de jure state of emergency**. Indeed, instead of activating, for example, Article 48 of the Constitution on the "state of siege" or the "derogation clause" of Article 15 ECHR, the Greek State deployed the possibility of exceptional legislation under article 44(1) of the Constitution, which provides for the issuance of legislative acts by the President of the Republic in order to address an "emergency situation of extremely urgent and unforeseen need". It is worth mentioning, however, at this point that the Council of Europe Venice Commission is in favour of a system of de jure constitutional state of emergency powers, which provides for better guarantees of fundamental rights, democracy and the rule of law and better serves the principle of legal certainty deriving therefrom than a system of a de facto extra-constitutional state of emergency.

The GNCHR also welcomes, with particular satisfaction, the fact that, despite some initial thoughts for the complete cessation of its operations, the Greek Parliament has continued to operate.

With regard to the **quality of the legislative process, the GNCHR has on several occasions called the competent state authorities to take further steps to improve it**, repeatedly emphasising its role in the system of checks and balances, in particular when legislation is enacted. Besides from its own founding legislation and, in particular, from Articles 10(2), 11(c) and Art. 12(b), (c), (d), (e) and (g) of **Law no. 4780/2021**, as stated above, assigning to the State authorities the obligation to work together and consult the designated NHRI in the Country, in its institutional role as "the independent advisory body to the State on matters pertaining to human rights protection and promotion", the **Manual for the Scrutiny of the Effects of Legislation** of the Presidency of the Government refers to the Opinion of the GNCHR as obligatory. 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. 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 criticised 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). 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 fact that the GNCHR was not consulted in advance with regard to the amendment of the Criminal Code and the Code of Criminal Procedure. On the contrary, it took note of this initiative once uploaded to the official public consultation platform (opengov.gr) in September/October 2021. Furthermore, despite the fact that GNCHR monitors issues related to the protection of Roma rights and the promotion of their social inclusion, while participating from the outset in the consultation process for the development of the New National Strategy for Roma Social Inclusion 2021- 2030 (ESKE) (ongoing procedure), however it was not invited by Parliament to the Meeting of the Special Permanent Committee on Equality, Youth and Human Rights, in order to discuss the New National Strategy for the Social Inclusion of the Roma 2021-2030 (ESKE).

Finally, with regard to other institutional issues related to checks and balances, such as safeguarding the independence and effectiveness of independent institutions (other than NHRIs), the GNCHR recalls the Prime Minister's announcement, dated March 12, 2021, regarding the further **strengthening of the Greek Ombudsman's competences**. In particular, bearing in mind that the said announcement highlighted 4 key issues related to the response to incidents of violence by police officers, including the enhancement of the Ombudsman by creating an autonomous structure with a Deputy Ombudsman, specialised staff and exclusive responsibility to assist in dealing with police violence, the GNCHR stresses that it is monitoring the implementation.

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Trust amongst citizens and between citizens and the public administration

In general, **the level of trust among citizens to the State authorities and between citizens and the public administration is rather low in Greece**, including regarding the measures to tackle the pandemic. In fact, whereas the level of trust in the government's handling of COVID-19 was generally high during 2020, the crisis as well as the containment measures taken by the State authorities in period that followed the first wave of the COVID-19, during the last months of 2020 and mostly during 2021, resulted in **widespread criticism**.

The factors which 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 further developed and strengthened. This was particularly visible during the pandemic. The GNCHR recalls at this point, aligning itself fully with the observation of the UN Committee on the Elimination of Racial Discrimination, as well as the findings of RVRN, that "people who perceive that they have been subjected to discriminatory law enforcement actions tend to have less **trust in law enforcement** and, as a result, be less willing to cooperate, thereby potentially limiting the effectiveness of the latter. Racial profiling practices influence law enforcement daily routines and undermine, consciously or unconsciously, their capacity to support victims of crimes belonging to these communities. This sense of injustice, humiliation, loss of trust in the law enforcement, secondary victimisation, fear of reprisals and limited access to information about legal rights or assistance may result in reduced reporting of crimes and information for intelligence purposes". In addition, the very concept of social cohesion through the maintenance of citizens' trust in the Greek Police requires the isolation from the body itself of such incidents in case they take place.

A useful conclusion, which the GNCHR wishes to highlight, is the **need to strengthen trust between the citizens and Police**. It is vital for the competent authorities to realise that the

ability of the police to deal effectively with crime depends entirely on this sense of trust in the law enforcement. An aggressive policing model, which bares the risk of incidents of arbitrariness and excessive violence, will negatively affect this relationship.

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NHRIs as part of the system of checks and balances

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**

Recognising 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. The List is constantly updated. In 2021, the GNCHR updated its List of international and European legally binding texts.

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NHRI's recommendations to national and regional authorities

In light of the above observations, the GNCHR considers that, in order to strengthen the system of checks and balances, including the role of NHRIs within such system, the competent national and/or European authorities should:

- **Enhance visibility of the GNCHR's recommendations and the level of their implementation** in progress monitoring and reporting. To this end, it would be useful to integrate the timely and effective implementation of the GNCHR's recommendations as an indicator to measure progress towards key benchmarks and objectives set by regional or international actors in relation to rule of law, human rights and democracy.
- **Increase interaction between Parliament and the GNCHR.** The GNCHR 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.
- Bearing in mind that the main obstacle affecting the GNCHR'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, **eliminate any possible obstacle in terms of participation in legislative and policy making process.**

Functioning of the justice system

The GNCHR recognises that digitalisation of Justice constitutes a significant challenge for Greece, welcomes the initiatives of the Ministry of Justice in cooperation with the Ministry of Digital Governance for the realisation of the National Strategy for the Digital Justice and encourages the increase of the use of digital tools to all the different stages of the functioning of justice. However, **acknowledging the very important concrete steps taken in the direction**, the GNCHR deplores that **significant challenges remain**. For instance, as confirmed by the European Commission in the Country Chapter on the Rule of Law situation in Greece, the full implementation of electronic filing is hampered by delays and its availability remains partial, inconsistent, and mainly restricted to some courts. Even in those courts, the actual use of e-filing remains minimal, partly due to a lack of familiarisation of stakeholders with the new tools.

Furthermore, **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 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 "Harmonisation 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.** 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 deplores, nonetheless, the total absence of any cooperation until today. In fact, during the Committee's session in July 2020, where the above-mentioned Draft law proposal on "Harmonization of national provisions with the ECtHR case law" was discussed, the Greek NHRI was not invited nor consulted. The aforementioned draft law proposal has not yet received any further elaboration/discussion by the Parliament.

Furthermore, with regard to the **selection process of higher judges**, who occupy the posts of Presidents and Vice-Presidents of the higher courts, namely the Council of the State, the Audit Office, and Supreme Civil and Criminal Court of Greece-Court of Cassation, the GNCHR also recalls the recommendation of the Council of Europe's Group of States against Corruption (GRECO), included in the **Second Compliance Report on Corruption prevention in respect of members of parliament, judges and prosecutors (2020)**, according to which it is recommended to the competent authorities to revise the method of selection concerning the most senior positions of judges and prosecutors so as to involve the peers in the process and to consider amending the modalities for the initiation of disciplinary proceedings in their respect.

The GNCHR confirms that **the pandemic has had a decisive impact on the functioning of all the significant aspects of the justice system on many levels**, with multifaceted consequences not only for the courts, but also for the entire spectrum of the functioning of justice. During the lockdown, for instance, no special attention was paid to vulnerable groups at even greater risk, in order to prioritise cases concerning them. A typical example is the suspension of the procedure pursuant to Law no. 4491/2017 (Article 4(2)) for the legal gender recognition procedure, which however is conducted in a private office without publicity, and therefore without endangering public health and should have been included in the proceedings carried out for a number of categories of cases (in accordance with JMD no. Δ1α / ΓΠοικ .: 71342).

The above observations lead to the conclusion, as confirmed by the European Commission in the Country Chapter on the Rule of Law situation in Greece, that **Greece is facing a clear risk of building up additional backlogs, further exacerbated by the consequences of partial interruptions of work due to the COVID-19 pandemic**. Postponements caused significant delays and backlogs, some cases having been scheduled for trial on remote future dates, up to 2026 or even later.

The GNCHR feels the need to acknowledge that the pandemic, along with the challenges it has posed for society, has created a very important **window of opportunity to accelerate the digitalisation process of the State**, which Greece has taken advantage of, to the maximum extent possible. As the Organization for Economic Co-operation and Development (OECD) observes, Greece is among those countries who have, by example, made good use of the digital media in its efforts to limit the spread of the coronavirus, as it immediately proceeded to the implementation of digital media in order to reduce the risk of transmitting the virus. In this context, the GNCHR welcomed the initiatives of the Ministry of Justice, in cooperation with the Ministry of Digital Policy, for the implementation of the

National Strategy for e-Justice and expressed the hope that this transition of Justice to the digital age will soon produce results.

Nonetheless, this being said, **a lot remains to be done**. 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. Indeed, the GNCHR has repeatedly stressed the need to tackle the problem of **high litigation costs impeding access to justice**, reiterating its recommendations aiming at overcoming barriers to access to court and to effective judicial protection. In particular, the GNCHR has repeatedly stressed that the massive increase of court fees limits access to Justice for individuals only, since it is only individuals who pay them. This is in clear violation of the ECHR. However, it is the State and public entities that are mainly responsible for the over-burdening of the courts. Therefore, the GNCHR has recommended that when a remedy lodged by the Administration or a public legal entity is dismissed, a substantially higher court fee and a high fine should be imposed on them, as a deterrent. In this way, the burden of the courts may be alleviated, without the equality of the parties being affected, since the ECHR protects individuals against the State and not the State against individuals. In addition the GNCHR recommends, as a means to support those suffering from the consequences of unemployment, labour insecurity and deregulation of collective agreements, the abolition of court fees, in compliance with the requirements of Articles 21, 22 (1) and (5) and 25 of the Constitution, at least for labour and social-security cases. In other cases, the fees should at least be substantially reduced. In addition, **legal aid must be reorganised and extended to administrative cases**. The GNCHR has repeatedly expressed its concern regarding the inadequacy of legal aid as it was structured and applied in Greece and stressed that legal aid should be available to every person who is in need of it, in all jurisdictions and all procedural stages. Providing legal aid to particularly vulnerable persons in order to ensure their legal protection, and more specifically the effective protection of their rights in the framework of a modern Rule of Law, has been established in Europe as fundamental human right.

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. Furthermore, the GNCHR strongly believes that any legislative reform to strengthen the judiciary (eg. 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. To this end, the GNCHR, as the Greek NHRI and therefore the best placed Institution to monitor the compliance of the Greek justice system with international human rights standards, has on several occasions confirmed 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”. The GNCHR also undertook, in December 2021, a more specialised cycle of seminars to judicial officers on Legal Gender Recognition, while it proposed the organisation of closed seminars on Hate Crime for Special Prosecutors for Racist Crime.

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.

- **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.

- **Sensitisation 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.

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NHRI's recommendations to national and regional authorities

In the light of the above remarks, the GNCHR recommends to the relevant authorities **to address the systemic and chronic problem of the delay in the delivery of justice**, which has led to several ECtHR judgments finding violations of the ECHR by Greek authorities and aligns itself fully with the **findings-recommendations of a study carried out by the Research and Analysis Organisation diANEOsis, published in January 2021**. In particular, the Study provides a detailed analysis of the shortcomings of the current judicial map and

proposes changes taking into consideration current demographics, developments in information and communication technology, and other relevant parameters. It is considered rather encouraging that, in the framework of the preparation of the Greek Recovery and Resilience Plan, the Ministry of Justice stated its intention to carry out such reform as a priority on the basis of data to be collected by the office for the collection and processing of judicial statistics.

Furthermore, the GNCHR urges competent authorities to consider implementing the GRECO recommendations included in the **Second Compliance Report on Corruption prevention in respect of members of parliament, judges and prosecutors (2020)**, including the recommendation regarding the amendment of the selection process of higher judges, an amendment requiring constitutional reform.

In addition, the GNCHR, in its recent **Recommendations to the State regarding the impact of the pandemic and the measures taken to address it on human rights**, has addressed to the relevant state authorities specific recommendations-guidelines for the functioning of the justice system in view of the loosening of the COVID-19 restrictions, such as, for instance, the need to take special care of vulnerable groups who are at an even greater risk of having their rights infringed, by prioritising the cases concerning these groups or the training of judicial officers in emerging cases, such as IT usage, remote working, new types of cases concerning the pandemic etc.

Media freedom, pluralism and safety of journalists

The GNCHR assesses that the state of media freedom, pluralism and safety of journalists in Greece is worrying. In its annual World Press Freedom Index for 2021, Greece ranked 70th out of 180 countries, five places lower than 2020, while according to the 2021 Media Pluralism Monitor of the Centre for Media Pluralism and Media Freedom of the European University Institute, "Greece faces challenges with respect to media pluralism in all four domains under study". Since the beginning of 2021, one can see Greece featuring in numerous statements of International Press Associations on a regular basis.

The GNCHR has on several occasions expressed its deep concerns over the **safeguarding of journalists' safety in Greece** and the wide range of challenges and threats they are confronted with, including inter alia murder, kidnapping, offline and online harassment or intimidation. Media freedom in Greece was thrust into the international spotlight in April when well-known Greek crime reporter Giorgos Karaivaz was gunned down outside his house in Athens. Shortly after the murder, the Prime Minister called on the police to solve the case quickly, while the Minister for Citizen Protection promised that the investigation would be accelerated until it achieved its goal. But, since then, the police and the Ministry of

Citizen Protection have provided little official information about progress in the case. Furthermore, the case has confirmed, according to RSF, the inadequacies of the measures taken by the Greek authorities to protect media personnel. When a plan to murder investigative reporter Kostas Vaxevanis was revealed in late April, RSF urged the Greek authorities to adopt measures to restore trust between the media and the police, on whom they depend for their protection. With regard to Kostas Vaxevanis, most recently, on January 20th, 2022, 8 international media freedom and freedom of expression organisations issued a statement registering their concern over the serious criminal charges levelled against him and Ioanna Papadakou, two investigative journalists in Greece linked to their reporting on a major corruption scandal. According to the statement, the organisations are following the two legal cases with utmost scrutiny given the obvious concerns they raise with regard to press freedom, urging authorities to issue guarantees that the process is demonstrably independent and free of any political interference.

In addition, following the GNCHR's remarks on Human Rights Defenders working with migrants and refugees, the GNCHR notes also with emphasis that **journalists reporting on the contentious issue of illegal refugee "pushbacks" in the Aegean continue to face pressure from government officials and law enforcement authorities**. In the latest case, in May 2021, a reporting team from the Dutch public broadcaster VPRO was arbitrarily detained by police while trying to document an alleged "pushback" of migrants by the Greek authorities in the forest near the town of Dikaia. Police detained the reporting crew and took them to a police station for questioning, demanding access to the team's recordings.

Greece has suffered a **decline in press freedom**, according to data published by Reporters Without Borders (RSF). In its annual World Press Freedom Index for 2021, Greece ranked 70th out of 180 countries, five places lower than 2020. According to RSF, journalists had to get the government's permission before reporting in hospitals while the health ministry banned medical staff from talking to the media. RSF also expressed its serious concerns about **Law no 4855/2021** (OJ 215/A/12.11.2021) amending the Greek Criminal Code and, in particular, about the **provision amending Article 191 of** the Code aiming at preventing the spread of misinformation. Under Article 191 of the Penal Code, the dissemination, in public or online, of any information that "causes concern or fear among citizens" or "disturbs public confidence in the national economy, defence or public health" is now punishable by a prison sentence ranging from three months to five years. If the offence is committed repeatedly in the media or online, the minimum sentence increases to six months in prison. These penalties are not limited to the person who is the source of the information. They also apply to the owners and directors of the media that publish it, or simply publish links to it. Bearing in mind that the new legislation aims at expanding the definition of fake news and extending the offense of spreading fake news to any information likely to raise public concern or

undermine public confidence, especially in public health, the Journalists' Union of Athens Daily Newspapers (ESIEA) had called on the Greek authorities to withdraw the specific provision, stressing that this would pose a serious threat to journalists' right to publish information in the public interest. The same concerns were confirmed by several European partners of the Media Freedom Rapid Response (MFRR), such as *inter alia* the European Centre for Press and Media Freedom (ECPMF), the European Federation of Journalists (EFJ) or the International Press Institute (IPI).

The GNCHR expresses its deep concerns over the **challenges affecting media pluralism in Greece**, which seem to be increasingly worrying, according to the 2021 Media Pluralism Monitor of the Centre for Media Pluralism and Media Freedom of the European University Institute, which concludes that "Greece faces challenges with respect to media pluralism in all four domains under study". In particular, in the area of "fundamental protection", key issues are: failing to decriminalise defamation, deficiencies in domestic remedies in cases of infringement of free speech, deteriorating working conditions for journalists and ineffective tools to ensure respect for professional standards and journalistic ethics. In addition, in the area of "market plurality", a key concern remains the lack of publicly available data on a broad range of issues, from concentration trends to journalists' levels of employment and remuneration, as well as the effects of the pandemic on the latter. Data collection is piecemeal and fragmented. The Media Pluralism Monitor also stresses that, in the area of "political independence", private media are not fully shielded from political interference, while as regards "social inclusiveness" action should be taken to address gender stereotypes in news media broadcasting.

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 **sensitisation 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.

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NHRI's recommendations to national and regional authorities

Bearing in mind that a safe environment is essential for journalists to perform their role as watchdogs of democracy, which is essential not only for journalists' working conditions, but also for citizens' access and right to information, the GNCHR urges European and national authorities to **create a safe environment for journalists** and, in particular, for those reporting on the humanitarian situation in Greece. In this regard, it is essential to **continue to fight disinformation and hate speech targeting migrants and asylum seekers**, contributing to fuelling the tensions at the crossing points. To this end, it is essential to deploy all available means to avoid impunity for crimes that are linked to journalism.

In addition, if **political pluralism** is to be achieved, mechanisms should be put in place, and effectively implemented, in order to prevent all political actors from undue interventions in the media market, and from attempts to influence editorial decisions or public opinion more directly, among others through the services of online platforms.

Corruption

The perception of corruption remains at high levels, as confirmed by the most recent findings of a public opinion poll conducted by the National Transparency Authority (NTA) on December 9, 2021. The vast majority of Greeks (97%) believe the Country has a significant problem with corruption which exists and is perpetuated mainly by the political system and its clientelism. The introduction of a new whistle blower protection law is still pending, one month after the the 17 December 2021 deadline for the transposition of the EU Directive on whistleblowing.

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. 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. These figures are confirmed by the most recent findings of a **public opinion poll conducted by the National Transparency Authority (NTA) presented at the 1st Integrity Forum on December 9, 2021**, the vast majority of Greeks (97%) believe the Country has a significant problem with corruption which exists and is perpetuated mainly by the political system and its clientelism. The number of people who described the problem of corruption as "very extensive" was 67%, while 30% called it "fairly extensive". A total of 87% of those polled said the sectors most likely to involve corruption include public works and state procurements (62%), the political system (59%) and mass media (48%). These were followed by municipalities and regions (39%), the justice system (21%), the provision of medical services in the National Health System (18%), construction licensing (14%), services imposing the law (11%), the public sector (9%) and business licensing (3%). Results were based on 777 questionnaires completed online between September 11 and November 30 2021.

According to the latest **GRECO Report, and in particular 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 acknowledges with satisfaction the **important steps Greek authorities have undertaken in order to fight corruption**, such as the establishment and operation of the National Transparency Authority (NTA), the Anti-corruption National Strategic Plan for 2022-2025 or, more recently, the new AFCOS website (<https://afcos.aead.gr>), a fraud risk-management tool for risk mapping in public institutions, released by NTA. However, **shortcomings regarding the new anti-corruption mechanisms remain**, while it is possible for Greece to implement further measures to fight corruption, particularly today when trust towards political institutions is needed in order to continue fighting the COVID-19 pandemic.

In particular, the **GNCHR deplores the delay with regard to the introduction of a new whistle blower protection law in Greece**, recalling that it has on several occasions invited 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 had until the 17th of December 2021 to transpose its provisions into their national legal and institutional systems. The GNCHR welcomed the establishment by the Greek government of 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". Nonetheless, it notes with disappointment that, approximately one month after the 17 December 2021 deadline for the Directive to be fully transposed in all member States, the effective transposition of the EU Directive on whistle blowing is still pending.

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**

The GNCHR has on several occasions deplored 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 criticised 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 blowing**

The GNCHR deplores that the protection of whistle blowers in Greece is still pending and has on many occasions invited the competent State Authorities to consider with special attention the need for addressing the gap, while underlining the need for timely and effective transposition of the Directive.

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NHRI's recommendations to national and regional authorities

The GNCHR has proved its **determination to play a more active role in contributing to the effective prevention and fight against corruption** either by advising the government

on improving the legal and regulatory anti-corruption framework, or by monitoring its implementation, as well as the implementation of the transparency of public procurement procedures.

In particular, in the light of the above remarks, the GNCHR recommends to the relevant authorities to proceed to the **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, which has been delayed.

Furthermore, it is essential to continue and escalate efforts in order to **improve the perception of corruption** among citizens which remains at concerning levels, also in connection with the reduced transparency and accountability determined by the pandemic context.

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

Whereas the level of trust in the government's handling of COVID-19 was generally high during 2020, the crisis as well as the containment measures taken by the State authorities in period that followed the first wave of the COVID-19, during the last months of 2020 and mostly during 2021, resulted in widespread criticism.

The GNCHR reiterates that has welcomed the fact that the **Greek Government did not resort to the most drastic institutional measures in order to deal with the pandemic by declaring a *de jure* state of emergency**. Indeed, instead of activating, for example, Article 48 of the Constitution on the "state of siege" or the "derogation clause" of Article 15 ECHR, the Greek State deployed the possibility of exceptional legislation under article 44(1) of the Constitution, which provides for the issuance of legislative acts by the President of the Republic in order to address an "emergency situation of extremely urgent and unforeseen need". The GNCHR also welcomes, with particular satisfaction, the fact that, despite some initial thoughts for the complete cessation of its operations, the Greek Parliament has continued to operate.

It is worth mentioning, however, at this point that the Council of Europe Venice Commission is in favour of a system of *de jure* constitutional state of emergency powers, which provides for better guarantees of fundamental rights, democracy and the rule of law and better serves the principle of legal certainty deriving therefrom than a system of a *de facto* extra-constitutional state of emergency.

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

The GNCHR has already warned the relevant state authorities, reminding them **that the absence of more drastic measures does not in itself guarantee the Rule of law**. In particular, the GNCHR aligns itself with the Venice Commission's Reflections on Respect for Democracy, Human Rights and the Rule of Law during states of emergency, by which the Commission provides governments with a toolkit for dealing with the present unprecedented and massive scale sanitary crisis in a way that respects the fundamental values of democracy, rule of law and human rights. More specifically, the Venice Commission emphasises the need for effective parliamentary and judicial scrutiny of both the country's declaration of a state of emergency and its possible extension, as well as the activation and application of other emergency powers - often with equivalent effect. In the same direction, the GNCHR, already from the first months of the COVID-19 crisis, had pointed out to the State that "as long as challenges remain, drastic measures should be taken and implemented to protect public health with full respect for the fundamental values of democracy, the rule of law and the human rights based on the principles of solidarity and proportionality in order to avoid disproportionate impact on people belonging to vulnerable groups". To this end, "restrictive measures must have a legal basis, be proportionate and time-limited", while "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".

Furthermore, with regard to the **impact of the COVID-19 pandemic on human rights**, the GNCHR has published two Reports, in May 2020 and May 2021 respectively, pointing out that the pandemic has caused an unprecedented health, economic, social and humanitarian crisis, exacerbating pre-existing systemic inequalities, discrimination and marginalisation, while disproportionately affecting the most vulnerable social groups, including Roma, refugees, asylum-seekers and migrants, detainees, persons with disabilities and chronic diseases and LGBTQI+ people. Indeed, acknowledging that COVID-19 is a syndemic pandemic, interacting with and exacerbating existing inequalities in chronic diseases and the social determinants of health, the GNCHR concluded that the pandemic created a vicious circle, whereby high levels of inequality and discrimination fuel the spread of the virus, which, in turn, perpetuates and exacerbates serious pre-existing inequalities against those groups who are affected the most. With this in mind, the **GNCHR insists that human rights are key in shaping the pandemic response and they need to be at the centre of national strategies to combat COVID-19**, while not only mitigating the broader impact of the crisis on people's lives, but also avoiding creating new or exacerbating exist-ing problems.

More specifically, **the GNCHR** proceeded to specific recommendations-proposals to the relevant State authorities, **grounded in three main principles that need to be consolidated in order for the pandemic response to be effective: the virus does not discriminate (I), the threat is the virus, not the people (II) and, when we recover, we must be better than we were before (III).**

In particular, with regard to the **disproportionate impact of the pandemic on vulnerable groups**, the GNCHR is focusing on the need to address the disproportionate impact of the pandemic and the containment measures on vulnerable groups, including Roma, refugees, asylum-seekers and migrants, detainees, persons with disabilities and chronic diseases and LGBTQI+ people.

As far as **fair, affordable, timely and full access to a COVID-19 vaccine as a human right** is concerned, the GNCHR stresses the need to continue and strengthen efforts for a fair, affordable, timely and full access to a COVID-19 vaccine, corroborating that an affordable and non-discriminatory access to a vaccine constitutes a human right. Recognising that the State's attempt to vaccinate the population is an extremely difficult venture, with which the competent national Authorities are coping in a responsible and effective manner, the GNCHR recalls that the necessary, in many cases, prioritisation of specific population groups should be done with objective, appropriate and transparent criteria, which take into account the vulnerability of these groups and are in accordance with the standards and rules set forth by human rights law. At the same time, the GNCHR stresses the need to promote the vaccination of those population groups who are most exposed and vulnerable to the virus due to the health conditions they are living under, such as detainees, asylum-seekers, refugees or migrants who find themselves in unsafe health conditions. Moreover, the GNCHR seizes the opportunity to point out that the legally prescribed possibility of compulsory vaccination against COVID-19, in order to prevent the spread of the disease and to protect public health, is in compliance with the Constitution and stresses that the State needs to secure that the necessary guarantees are in place for the protection of citizens' human rights in general, and, in particular, for the protection of the right to protection of personal data of the recipients of health services who will be called to be vaccinated.

With regard to **access to justice during the pandemic**, the GNCHR confirms that the pandemic has had a decisive impact on the functioning of all the significant aspects of the justice system on many levels, with multifaceted consequences not only for the courts, but also for the entire spectrum of the functioning of justice. The GNCHR particularly reiterates that there is an urgent need to address the systemic and chronic issue of delivering justice within reasonable time, which the ECtHR has found Greece to be in violation of in many cases.

Concerning **policing during the pandemic**, the GNCHR acknowledges the role of law enforcement Authorities as vital for the protection of citizens' life and health and accepts, to some extent, that in many cases it may be necessary to grant the Police extensive powers for the monitoring of compliance with emergency measures. The serious impact of the pandemic on people's lives intensifies this need. At the same time, the GNCHR recognises that Greek Police, which has been entrusted with the supervision of the implementation of strict restrictive measures, is, from the beginning, at the forefront of tackling the pandemic and understands its enhanced role as regards the management of health risk. Nevertheless, following the allegations for unjustified violence, the GNCHR stresses that the pandemic does not exonerate the Police from its obligation to use its currently extensive powers in a manner that is fully compliant with its mandate, which is no other than to serve and protect citizens while respecting their fundamental freedoms and human rights. The GNCHR highlights at this point, as it has now been proven, two years after the outbreak of the pandemic, that abusive police practices and undue reliance on strict repression measures have not only led to serious infringements, but in fact have undermined any effort to combat the virus. The GNCHR lays particular emphasis on the importance of proper, initial and periodic training and retraining of law enforcement officers on human rights and welcomes the Prime Minister's announcement for a comprehensive upgrade of police studies.

The GNCHR concludes its Report with reference – not accidentally – to the **vital "investment" in social rights, seeking to deliver the message of returning to a "normality" in the post-pandemic era**, to a next day when we will indeed be better than we were before. More specifically, the GNCHR, taking as a point of departure the economic and social crisis brought by the pandemic, expresses the strong belief that the existence of a crisis should not result to the impairment – or even more, to the abolition – of the protection of social rights. The GNCHR insists that effective measures are needed not only for the mitigation of the adverse impact of the measures taken to address the pandemic on social rights, but mainly for accelerating the **post-pandemic social and economic recovery**.

The GNCHR feels the need to recognise that the pandemic, along with the challenges it has posed for society, it has created a very **important window of opportunity to accelerate the digitisation process of the State, which Greece has taken advantage of, to the maximum extent possible**. As the Organization for Economic Co-operation and Development (OECD) observes, Greece is among those countries who have, by example, make good use of the digital media in its efforts to limit the spread of the coronavirus, as it immediately proceeded to the implementation of digital media in order to reduce the risk of transmitting the virus.

Recognising that the **State's attempt to vaccinate the population is an extremely difficult venture**, with which the **competent national Authorities are coping in a responsible and effective manner**, the GNCHR recalls that the necessary, in many cases, prioritisation of specific population groups should be done with objective, appropriate and transparent criteria, which take into account the vulnerability of these groups and are in accordance with the standards and rules set forth by human rights law. At the same time, the GNCHR stresses the need to promote the vaccination of those population groups who are most exposed and vulnerable to the virus due to the health conditions they are living under, such as detainees, asylum-seekers, refugees or migrants who find themselves in unsafe health conditions.

Finally, the GNCHR recognises that digitisation of Justice constitutes a significant challenge for Greece, welcomes the initiatives of the Ministry of Justice in cooperation with the Ministry of Digital Governance for the realisation of the National Strategy for the Digital Justice and encourages the increase of the use of digital tools to all the different stages of the functioning of justice.

In view of this unprecedented crisis, the GNCHR has, throughout the pandemic period, been meeting – and continues to do so – regularly online, with the participation of stakeholders in the decision-making process, in order to best meet the new challenges, to assess the impact of the restrictive policy measures on human rights and democratic values, to provide appropriate advisory to the Greek Government on matters related to human rights protection and, at the same time, to inform the public of its rights and the respective risks of its rights violations posed by the pandemic.

In fact, 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, emphasised 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.

In this context, with regard to the **impact of the COVID-19 pandemic on human rights**, the GNCHR has published two Reports, in May 2020 and May 2021 respectively, pointing out that the pandemic has caused an unprecedented health, economic, social and humanitarian crisis, exacerbating pre-existing systemic inequalities, discrimination and marginalisation, while **disproportionately affecting the most vulnerable social groups**, including Roma, refugees, asylum-seekers and migrants, detainees, persons with disabilities and chronic diseases and LGBTQI+ people. Moreover, the GNCHR pointed out that **restrictive measures must have a legal basis, be proportionate and time limited**.

At the same time, pursuant to the mandate assigned to it by its founding legislation regarding the development of initiatives for the cultivation of respect for human rights in the context of the educational system and for the awareness raising of the public and media about respect for human rights, the GNCHR seizes the opportunity to recall its own **initiatives and activities on human rights education and training on many levels**, among which the organisation of the [Annual Open Seminars](#) covering a wide range of critical human rights issues.

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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. 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 emphasise that the GNCHR has held online plenary meetings on a weekly basis during the first wave of 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 has adopted a hybrid model of work, combining a mixture of both remote work and office work, while 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 were conducted by teleconference from February to June 2021. Finally, it is worth mentioning that, in celebration of the International Human Rights Day, on Thursday, 10 December 2020, the GNCHR organised a human rights awareness-raising campaign, by making short videos of Greek celebrities reading articles of the Universal Declaration of Human Rights and sending their own message for equality and human rights.

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NHRI's recommendations to national and regional authorities

Focusing on matters related to **access to justice during the pandemic**, the GNCHR recommends to the competent authorities the following:

- In case of emergency measures, observance of the principles of legality, legal certainty and proportionality and continuous re-evaluation of these measures. The GNCHR stresses that all measures taken must have a set expiration date and be subject to judicial review in a timely manner. Where needed, the judicial Authorities, as well as the representatives of the trade unions of the justice sector, should be consulted on emergency operations.
- Take special care of vulnerable groups who are at an even greater risk of having their rights infringed, by prioritising the cases concerning these groups.
- In view of the increase of the courts' backlog, ensure that cases are distributed in such a way that the post-emergency case ranking does not focus on financial issues related to the protection of individuals' rights and follows fair and objective criteria, while encouraging mediation.

With regard to **other matters related to the impact of COVID-19 and of measures taken to address it on rule of law and human rights protection**, the GNCHR recommends to the national authorities the following:

- Ensure participation of all vulnerable social groups in the planning and implementation of the emergency measures taken to combat the pandemic, with a view to including them to the decision-making process.
- Strengthen measures to ensure, among others, the right of access to health, the right to education and the right to work, for all without discrimination, including the

most vulnerable and marginalised groups (such as *inter alia* refugees, asylum-seekers, migrants, detainees, persons with disabilities and chronic diseases, Roma, mental patients etc.).

Hungary

Commissioner for Fundamental Rights

Impact of 2021 rule of law reporting

Impact on the Institution's work

The 2021 ENNHRI Rule of law Report impacted the work of the Commissioner for Fundamental Rights (hereinafter referred to as: CFR) in many ways. The fact that its findings were channelled 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 2021 Report also gave an excellent overview of the trends and challenges in the European scene and shared 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 provided 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.

Independence and effectiveness of the NHRI

International accreditation status and SCA recommendations

The Hungarian NHRI was first accredited with A-status in October 2014 (1). In October 2019, the SCA decided to defer its decision on the re-accreditation of the NHRI (2). In June 2021, the SCA recommended that the Hungarian NHRI be downgraded to B-status, with recommendations on 'addressing human rights violations', 'selection and appointment',

‘interaction with the international human rights system’ and ‘cooperation with civil society’ (3).

In accordance with Article 18.1 of the GANHRI Statute (4), a recommendation to downgrade does not take effect for a period of one year. Therefore, the Hungarian NHRI maintains its A-status at least until March 2022 and has the opportunity to provide the documentary evidence necessary to establish its continued conformity with the UN Paris Principles. In March 2022, the SCA will decide whether it confirms its recommendation to downgrade or it is satisfied that the Hungarian NHRI is operating in full compliance with the UN Paris Principles.

Regarding the selection and appointment of the Commissioner, the NHRI informed that it has transmitted the SCA concerns in a letter written to the Hungarian Ministry of Justice. Moreover, the NHRI noted that the Commissioner and his or her deputies shall be elected for six years with the votes of two thirds of the Members of the Parliament (MP). Therefore, in most cases, the support of the opposition is also needed for the election of the CFR, which supposes strong legitimacy and a wide-ranging support independent of party affiliation.

In addition, the President of the Republic shall propose candidates for the position of Commissioner and, before the election, MPs may address questions to the nominee. Moreover, any Hungarian citizen can be elected as Commissioner or Deputy Commissioner if he/she holds a law degree, has the right to stand as a candidate in elections of MPs, outstanding theoretical knowledge or at least ten years of professional experience, has reached the age of thirty-five years and has considerable experience in conducting or supervising proceedings concerning fundamental rights. The mandate of the Commissioner and Deputies is incompatible with any other state, local government, social or political office or mandate, or any other gainful occupation, with the exception of scientific, educational, artistic activities.

Finally, the Hungarian NHRI notes that the Hungarian President has no political liability either to the voters or to the Parliament and his/her independence is ensured by strict conflict of interest rules. The President is, thus, free to nominate anybody who meets the statutory criteria, independently from the approval or the permission of the Government. Thus, the Hungarian NHRI argues that, in the Hungarian legal system, a nomination by the President of the Republic ensures a high level of legitimacy for the official elected by the Parliament.

Regarding the Deputy Commissioners, it is the Commissioner who makes a proposal for potential nominees, who must also be lawyers with outstanding theoretical knowledge in

their own academic fields or having at least ten years of professional experience, who have gained considerable experience in conducting and supervising the procedures concerning the relevant fundamental rights, as well as in the academic theory thereof.

On 6 October 2021, the Hungarian NHRI has submitted a letter outlining the CFR's views regarding the findings that served as the basis of SCA's recommendations. The procedure is still ongoing.

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- (3) <https://www.ohchr.org/sites/default/files/Documents/Countries/NHRI/GANHR/EN-SCA-Report-June-2021.pdf>
- (4) GANHRI Statute:
https://www.ohchr.org/sites/default/files/Documents/Countries/NHRI/GANHR/EN_GANHRI_Statute_adopted_05.03.2019_vf.pdf

Regulatory framework

The CFR has a constitutional basis and has the mandate to contribute to access to justice for individuals, including through complaints handling, contribution to and participation in strategic litigation before courts and awareness raising.

There is an efficient legal remedy available for the CFR to challenge any decisions adopted in an administrative procedure conducted pursuant to Act CXXV of 2003 on Equal Treatment and the Promotion of Equal Opportunities (hereinafter referred to as: Ebktv) with regard to the violations of both procedural and substantive law. An administrative lawsuit can be started against such decision. Such procedural case may be requested in the form of a written petition addressed to the Metropolitan Court of Budapest and lodged to the CFR within 30 days from delivery.

Pursuant to the Ebktv, the CFR may act as a representative in any procedures that were launched because of the violation of the requirement of equal treatment, especially in lawsuits started for the enforcement of personality rights, labour cases, lawsuits related to

public service legal relationships, and he may also launch such procedures as an entity enforcing public interest claims.

During the review of the administrative decisions adopted on the basis of the Ebktv, the CFR acts as a contestant in court. In the case of condemning decisions made in procedures launched ex officio, he also represents the case in the course of the judicial review.

As long as the police decision adopted in the case of a police complaint investigated into by the CFR is challenged by the affected person before the court, the CFR may intervene in this lawsuit on the basis of the provisions set out by the Act CXI of 2011 on the Commissioner for Fundamental Rights (Hereinafter referred to as: CFR Act).

The CFR may also intervene in court cases launched in relation to environmental law decisions on the basis of the provisions set out in the CFR Act.

The reports issued by the Commissioner may be submitted to the court as evidence by the persons and civil society organisations seeking the enforcement of their rights.

The national regulatory framework applicable to the CFR changed since the 2021 report.

Act CXXII of 2021 on the Amendment of Certain Laws on Justice and those related to Justice made it clear that the votes of two-thirds of the Members of Parliament are required for the termination of the mandate of the Commissioner for Fundamental Rights.

In addition, on 1 January 2021, the Equal Treatment Authority (hereinafter referred to as: ETA) was merged into the Office of the CFR. The CFR took over all the responsibilities and functions of the ETA, including its power to make legally binding decisions. The fact that an inquiry has been conducted under the CFR Act does not preclude that, after its conclusion, the CFR may 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 violation, intimate against the continuation of the violation, and even impose a fine ranging from HUF 50,000 to HUF 6,000,000. In order to ensure the professional performance of tasks, the former staff members of the ETA have been taken over by the Office, the institution's legal successor.

References

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- Act providing for the merger of the ETA into the Office of the CFR (Act CXXVII of 2020; in Hungarian): <https://njt.hu/jogszabaly/2020-127-00-00.0>

Enabling space

Relevant state authorities have good awareness of the CFR's mandate, independence and role. However, the CFR is often not involved in timely manner and in all stages of legislation and policy making with human rights implications.

In accordance with the CFR Act, 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. In practice, not all relevant or important bills are being sent to the CFR by the Government. Due to discussions with several ministries, there seems to be an improvement in this regard. The ministries often send the bills to the CFR with extremely short deadlines. The CFR 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. In his opinions on the draft bills received, the CFR also emphasized the need for adequate public participation in the legislative processes and - when in line with the topic of the legislation - also calls attention to compliance with the Aarhus Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters.

The addressees of the CFR's recommendations are legally obliged to provide a timely and reasoned reply. The organs affected by the recommendations/initiatives/legislative proposals made by the Commissioner, as well as their controlling organs and the legislator are obliged to provide a reasoned reply within 30 or 60 days, respectively, pursuant to the provisions set out by the CFR Act.

Timely compliance with the CFR's recommendations is promoted by the fact that, to our knowledge, within some ministries (for example, at the Ministry of Justice), there is a

specific organisational unit designated to prepare the responses to be given to the Ombudsman's measures or legislative proposals.

Pursuant to Section 459 of the Criminal Code of Hungary, the Commissioner for Fundamental Rights, his deputies and the staff of his office enjoy increased criminal law protection. This means that some crimes committed to their detriment entail a more severe sanction, as they are qualified as public officials by the Criminal Code. The CFR and his Deputies also enjoy an immunity equal to the Members of Parliament. These measures are, in our opinion, sufficient to ensure a safe environment.

Human rights defenders and civil society space

Laws and practices negatively impacting on civil society space and/or on human rights defenders' activities

In case No. C-821/19 the European Commission v Hungary, the Court of Justice of the European Union examined the amendment of some of the statutory provisions on asylum. The case was related to some of the rules set out in Act LXXX of 2007 on Asylum, Act C of 2012 on the Criminal Code of Hungary, as well as Act XXXIV of 1994 on the Police. According to the judgement, Hungary violated the law of the European Union by having sanctioned, by criminal law, any organisational activity aimed at allowing those persons who do not meet the criteria for international protection defined in the national law to initiate procedures aimed at providing international protection. The Court stipulated that qualifying such acts as crimes violates the exercising of the rights to provide support to the persons applying for international protection, as guaranteed by the EU legislator.

The bans on assembly introduced at different occasions in response to the COVID-19 pandemic affected the activities performed by the civil sector and the advocacy organisations. A blanket ban on assembly was ordered by Government Decree No. 46/2020 of 16 March 2020 in the first wave of the pandemic until 18 June 2020, and again by Government Decree No. 484/2020 of 10 November 2020 in the second wave of the pandemic. The latter ban was in force until 23 May 2021. The Constitutional Court was called to rule on the constitutionality of the ban on assembly, i.e. on Government Decree No. 484/2020. (XI. 10.). In Constitutional Court decision No. 23/2021. (VII. 13.), the Constitutional Court declared that overcoming the coronavirus pandemic, more precisely, the mitigation of the health, social and economic effects thereof, as well as the alleviation of the pandemic consequences are goals which justify the restriction of fundamental rights, including the right of assembly, from a constitutional perspective. Consequently, the Court maintained that the restriction of the fundamental right to freedom of peaceful assembly has a constitutionally justifiable, legitimate goal. On the other hand, in its decision, the

Constitutional Court stipulated the following constitutional requirements to be complied with in the future: the legislator may only suspend the exercise of the right of assembly to the extent and for a duration that is absolutely necessary, even in a state of danger; in addition, the legislator should ensure that at reasonable intervals, it should be examined whether the circumstance that made the restriction necessary continues to justify the suspension, or the restriction of the fundamental right in question, in accordance with the definition specified in Section (3), Article I of the Fundamental Law of Hungary.

References

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- Constitutional Court decision No. 23/2021. (VII. 13.) (in Hungarian):
<http://public.mkab.hu/dev/dontesek.nsf/0/D40B2E62697552C4C1258709005BC5DF?OpenDocument>

Access to and involvement of civil society actors in law and policy making

Civil society organisations do not always receive the draft laws that affect their activity for comments. The Commissioner for Fundamental Rights has called the ministries concerned to ensure the right of the civil society organisations to express their opinions in several of his comments on laws.

NHRI's role in promoting and protecting civil society space and human rights defenders

In the area of equal opportunities and children's rights, the civil society organisations that are involved in the protection of human rights most frequently appear as professional petitioners, as a kind of intermediary of citizens' complaints. In 2021, there were several reports and inquiries whose petitioners were civil advocacy groups. In addition to these, there are some specifically civil-professional fora of which the Ombudsman and his staff have been participating as invited members for a long time (for example, the Commissioner is a consulting member of the Civil Society Coalition on the Convention on the Rights of the Child).

According to the CFR Act, the CFR has to “cooperate with organizations and national institutions aiming at the promotion of the protection of fundamental rights.” According to Act, the CFR has to perform the tasks of the National Preventive Mechanism (hereinafter referred to as: NPM) autonomously. However, in accordance with the above-mentioned regulation, in order to “utilize the outstanding practical and/or high-level theoretical knowledge of various organizations registered and operating in Hungary relative to the treatment of persons deprived of their liberty”¹, the NPM established a Civil Consultative Body (hereinafter referred to as: CCB).

The CCB, which consists of invited members and also members selected as a result of a public call for applications, assists the activities of the NPM with its recommendations. The sessions of the CCB are convened by the CFR as necessary, but at least twice annually.

Its members may make recommendations relative to the contents of the annual schedule of visits of the NPM and the inspection priorities; initiate visits to certain places of detention; recommend the involvement of experts with special knowledge who may be affiliated with the organization that they represent.

The CCB may review the NPM’s working methods, reports, and other publications; discuss the training plan designed for developing the capabilities of the staff members authorized to perform the tasks related to the NPM; furthermore, it may participate in conferences, and other events.

Its current members are the following: Hungarian Dietetic Association, Hungarian Medical Chamber, Hungarian Psychiatric Association, Hungarian Bar Association, Hungarian Catholic Church, Evangelical Lutheran Church in Hungary, Reformed Church in Hungary, Federation of Hungarian Jewish Communities, Together for Fundamental Rights Foundation, Hungarian Helsinki Committee, Hungarian Civil Liberties Union, Hungarian Association for Persons with Intellectual Disability, Mental Health Interest Forum, Pressley Ridge Hungary Foundation, Streetlawyer Association. The body held its last meeting on 17 December 2021.

NHRI’s recommendations to national and regional authorities

The CFR recommends to the Minister of the Interior that the members of the civil sector be involved in the implementation of the activities supporting the reintegration of detainees in penitentiary institutions.

Checks and balances

In case No. AJB-4461/2021, the President of the Hungarian Chamber of Civil Law Notaries and the President of the Hungarian Bar Association turned to the Commissioner for

Fundamental Rights in a joint petition. The petitioners objected to the statutory regulation allowing the State Audit Office of Hungary to perform audits with regard to public bodies, such as the two affected chambers. The petitioners stated that the State Audit Office of Hungary was currently performing audits at the two chambers concerned. It should be noted that chambers and public bodies are organisations that are self-governed and do not qualify as state organs, which, however, participate in the performance of public tasks.

The State Audit Office of Hungary is the economic-financial control organ of the Hungarian Parliament. The Office enjoys a high level of independence and its ability to perform its operations without any interference or control is protected by constitutional and statutory provisions. In order to ensure independence of such body, Act CXI of 2011 on the CFR, among others, specifically declares that the CFR is not entitled to review the activities performed by the State Audit Office of Hungary. Accordingly, the inquiry conducted by the Ombudsman was only targeted at reviewing the statutory environment with regard to fundamental rights, but did not extend to the specific procedures and measures of the State Audit Office.

As a result of the inquiry, the CFR established that it might be justified to clarify Act LXVI of 2011 on the State Audit Office of Hungary. Consequently, the Commissioner made a legislative proposal asking the Minister of Justice to examine the possibility to amend Act LXVI of 2011 on the State Audit Office regarding the State Audit Office's tasks in connection with public bodies. The CFR noted that it might be reasonable in particular to clarify under what conditions the State Audit Office may exercise its right of scrutiny pertaining to public bodies and chambers. The CFR pointed out that the revision of the relevant regulations could contribute to the enforcement of the right of the respective professional and economic chambers subject to audits to fair administration of official matters to the fullest extent possible, and, at the same time, it could also be a step forward in the enforcement of the constitutional values of the rule of law and legal certainty. It is also important to note that in the case of those organisations that are legitimately subject to an audit by the State Audit Office, the clarification of the regulations could lead to the promotion of increased cooperation. This could also facilitate the professional activities of the State Audit Office, as well as the execution of audits. As part of the initiative, the CFR also requested the Minister of Justice that during the preparatory phase of the legal amendment, the Ministry should work in cooperation with the State Audit Office and that it should also meaningfully involve public bodies and especially, chambers representing legal professions.

References

- Press release on Report No. AJB-4461/2021 of the Commissioner for Fundamental Rights (in Hungarian): <https://www.ajbh.hu/en/-/2670755-22>

Trust amongst citizens and between citizens and the public administration

The Commissioner for Fundamental Rights may not pursue any political activities. Accordingly, the Commissioner does not, as a general rule, review state measures from the point of view of fitness for the purpose of increasing trust towards public administration. The Commissioner only reviews state measures with regard to their compliance with fundamental rights.

The CFR monitors the procedures of the actors of state administration in general, to check whether fundamental rights are respected. Thus, it has no direct information on the data regarding the confidence of the citizens in each other, and in the players of state administration. However, one cannot state that the coronavirus pandemic and the consequent global economic and political situation have not affected the citizens' trust in institutions and government decision-makers in Hungary.

The impacts of the public health crisis in undermining public confidence are further strengthened by the rapid, almost unhindered spreading of fake news, which, for example, increases mistrust in vaccinations and thus also prevents the effective management of the pandemic.

At the same time, almost twice as many petitions as in the previous year came in via the secure electronic system of public interest disclosures operated by the CFR in 2021 (316 petitions in 2020; 529 petitions as of 11.12.2021), which were forwarded by the CFR to the organs that have competence for their investigation. We think that the increase is an indication of the critical approach of the citizens to the management of the problems caused by the pandemic, and at the same time, their confidence in the checks and balances, as they have searched for the channel applicable for the reception and forwarding of public interest disclosures, which gives them the opportunity for anonymous reporting. Of course, choosing the option of making anonymous reports also involves the fear of retaliation but trust in the system as well, i.e. that the detected problem will be remedied or considered by the addressed institution.

NHRIs as part of the system of checks and balances

The initiative taken by the CFR in case No. AJB-4461/2021 to advise on the reform of the regulations governing the operations of the State Audit Office of Hungary is an example of the role of the CFR in contributing to the strengthening of the national system of checks and balances.

In the context of cooperating with regional actors, especially in terms of increasing the role of the CFR within the system of checks and balances, it can be mentioned that in 2021, the CFR started the creation of Regional Offices in six regional centres throughout the country. The fundamental reason and goal of establishing the network of regional rapporteurs is to bring the performance of the tasks of the CFR closer to the citizens in a geographical sense, especially because the types of cases and procedures as well as the fundamental-rights-related activities of the CFR were expanded over the last two years. Through the offices in the regional centres, the CFR can directly reach citizens, and he can establish more personal contacts with the institutions, too.

NHRI's recommendations to national and regional authorities

As explained above, the CFR proposes the revision of Act LXVI of 2011 on the State Audit Office in order to determine those very specific cases in which the State Audit Office may audit public bodies.

Functioning of the justice system

In its decision No. 13/2021 of 14 April 2021, the Constitutional Court of Hungary annulled certain provisions of the law regulating the application for judicial posts on the ground of their incompatibility with the Fundamental Law. The law excluded any complaint based on a procedural irregularity potentially affecting the outcome of the proceedings to the detriment of the losing candidates. According to the Constitutional Court, existing provisions regulating the complaint procedure in the context of the application for judicial posts did not sufficiently ensure the respect of the right to a legal remedy, insofar as they did not provide for any remedy to be used in order to challenge the assessment of the application and the decision on the filling of judicial posts.

In March 2019, the CFR proposed that the Constitutional Court should interpret Paragraphs (5) and (6) of Article 25 of the Fundamental Law of Hungary to solve the constitutional law issue concerning the operations of the National Judicial Council (hereinafter referred to as: OBT). The OBT operated with a smaller number of members than prescribed by law and the president of the OBH (administrative body of the court system) considered this unconstitutional, while the president of the OBT did not see any issue of unconstitutionality.

This divergence of views led to some uncertainty of interpretation which risked jeopardizing legal certainty, therefore an interpretation of the regulations of the Fundamental Law concerning the court system was deemed necessary by the CFR. According to the complaint, in the absence of relevant statutory provisions, such an issue could only be resolved through the abstract interpretation of the relevant provisions of the Fundamental Law of Hungary. The case is still pending at the Constitutional Court.

In 2021, the unjustified distinction that had existed for years – namely that the salaries of the representatives of the prosecution, i.e. the prosecutors were higher than those of the judges – was terminated. This is included in the annual Act on the budget of Hungary.

It has to be noted that, in accordance with the principle of the separation of powers, as well as from the constitutional requirement of judicial independence, the competence of the Commissioner for Fundamental Rights does not extend to the examination of the judicial practice of the courts. According to Section (3) Article 18 of the CFR Act, the CFR may not conduct inquiries into the activities of the courts. According to Section (7) of Article 18 of the CFR Act, the CFR may not proceed in cases where administrative court proceedings have been initiated for the review of the decision or where a final court decision has been rendered. However, we think that it is essential that we assist the complainants turning to the Office in enforcing their rights by providing them with a wide range of information.

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NHRI's recommendations to national and regional authorities

The CFR recommends that the independence of the judiciary be reflected by maintaining the salaries of judges at an adequate level.

Media freedom, pluralism and safety of journalists

In Report No. AJB-422/2021, the CFR summarised the results of his inquiry into the issuance of a normative order by a major pertaining to the communications of the executive managers of the commercial companies owned by the local government. According to the CFR, the order violated freedom of expression insofar as, exceeding Hungarian labour law regulations, prohibited to employees to communicate anything that would “cause a moral, economic or professional disadvantage” or would “shake the inhabitants’ trust in the local government”. The Ombudsman emphasized that the normative order in question, worded in a way that it could be applied not only to the executives but comprehensively to the entire staff of the companies, may give rise to an interpretation which may – extensively and in a preventive manner – restrict the freedom of expression of the employees affected due to the negative labour law and civil law consequences therein implied. After his inquiry into a case, the CFR pointed out that the person exercising executive power is entitled to act against the expression of any opinion by the employees that violates or threatens the employer’s specific interests. According to the CFR, however, in the actual implementation, complying with the statutory regulations, the enforcement of the principles of the rule of law and the obligation to respect the fundamental right to freedom of expression, as well as the observation of the appropriate formal requirements, are also fundamental constitutional principles whose observance must be ensured. The CFR requested the major to repeal the instruction raising concerns, and to take the necessary measures to ensure redress against any prejudice suffered by the employees, from a labour law perspective, as a result of the application of the contested instruction.

Within the framework of monitoring the enforcement of the rights of national minority communities to preserve their cultural identity, the Deputy Commissioner for the Rights of National Minorities examined the current situation of the availability of national minority public service radio broadcasts in 2021. In her General Comment No. 2/2021, the Deputy Commissioner outlined how the reception options of national minority public service radio broadcasts are affected by the fact that the digital radio broadcasting using the so-called DAB+ technology was switched off in Hungary in September 2020. Indeed, the bodies responsible for public service radio broadcasting previously considered this technology as the solution for the broadcasting of nationality radio programmes with adequate quality and availability. As it is elaborated in the General Comment, the Deputy Commissioner underlined the importance to make sure that the technical conditions for receiving public service radio programmes be equally available to both users from national minorities and the majority population.

References

- (1) https://www.ajbh.hu/documents/2664086/4216263/General+Comment+2_2021_summary.pdf/8dc45562-c40f-80fe-77b9-76550689ce28

NHRI's recommendations to national and regional authorities

The Deputy Commissioner considers it appropriate for the relevant Ministry to develop a long-term strategy for the broadcasting conditions of radio programmes addressed to national minorities, based on a real dialogue between the management of the public service media provider and the elected representatives of the nationalities in Hungary.

Corruption

As regards whistle blowers protection, Article 4(1) of Government Decree No. 50/2013 of 25 February 2013 provides for the establishment of a system/channel for the management of reports on integrity and corruption risks related to the operation of an organisation, in particular at public administration bodies (i.e., the internal reporting channels operated by public bodies) and for procedural rules of receiving lobbyists. However, it is to be noted that the definition of internal reporting channel as laid down in the EU Whistle blowers Protection Directive covers a broader range of reports than those related to the issue of integrity.

As already outlined in detail in last year's report, the assessment of the issue of corruption lies with the responsibility of the National Protective Service (Hereinafter referred to as: NVSZ). Reports on possible corruption cases received through the protected electronic system operated by the Commissioner for Fundamental Rights are forwarded by the OCFR to the NVSZ as the competent body; however, the number of such cases does not exceed 10 per year. According to the legislation in force, the information provided to the whistle bower on the investigation of the case is considered sufficient if it contains the measures to be taken in the given case.

NHRI's recommendations to national and regional authorities

The CFR started a comprehensive examination (AJB-543/2021) on the internal and external whistle blowers channels of public organisations in accordance with the definitions of the EU Whistle blowers Protection Directive. The preparation of the report is in progress and will provide practical guidance to the authorities in reviewing the recommendations and good practices stated in the report so that they can more effectively design their systems and processes for handling whistle blowers' reports and protect the whistle blowers. The

results are showing that rather few (yearly one or two) cases on corruption are submitted through these channels.

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

Important restrictions were introduced as regards the right to assembly due to the COVID-19 pandemic, as also mentioned above in the section on civic space and human rights defenders. Such restrictions have been phased out as follows. Government Decree No. 46/2020 of 16 March 2020 imposing a blanket ban on assemblies during the first wave of the pandemic in Hungary entered into force on 17 March 2020. This piece of legislation, with the ban on assemblies included therein, ceased to have effect upon the termination of the state of danger ordered during the first wave of the pandemic, i.e. on 18 June 2020. Government Decree No. 484/2020 of 10 November 2020, which reintroduced the general ban on assemblies as part of the second phase of the protection measures, was applicable from 11 November 2020. The temporal application of the ban on assemblies was extended by Government Decree No. 27/2021 of 29 January 2021. The general ban on assemblies imposed by this decree was in force until 23 May 2021. Following that, partial epidemiological restrictions were introduced in the field of assemblies for a short period of time: gatherings of up to five hundred people could be attended by anyone, while assemblies of more than five hundred participants could only be attended by those protected against the coronavirus (i.e. persons with an immunity certificate or those who could confirm their recovery from the COVID-19 infection), alongside with minors subject to their supervision. Participation in spontaneous gatherings was prohibited during this period. The full lifting of the restrictions on assemblies introduced due to the epidemiological situation took effect on 14 June 2021.

The CFR undertook many initiatives to raise attention, and propose solutions, to the problematic human rights issues emerging in the public health crisis context, in line with its mandate.

The Deputy Commissioner for the Rights of National Minorities published a message in November 2021 in connection with the fourth wave of the coronavirus pandemic, as it posed a new challenge for the socially vulnerable, disadvantaged citizens, among them many Roma people. She drew attention to the fact that the competent state and local government bodies had the duty to take effective and targeted action, while individuals could contribute to the rapid resolution of the critical situation by assuming responsibility towards each other,

especially by taking up vaccination. She underlined in her message that in order to optimise access to mass vaccination, the abolition of registration obligations and the deployment of vaccination buses and mobile vaccination points in deprived settlements were of key importance.

In connection with the petitions submitted to the Office, the CFR summed up the constitutional requirements pertaining to the application of immunity certificates, and formulated proposals aimed at finding a solution to the practical issues having emerged. Immunity certificates raise several constitutional and practical questions. This is demonstrated by the fact that the CFR received more than eight hundred complaints from private persons over just a few days in relation to this issue. The CFR reviewed the complaints, and in addition to evaluating the legal regulation from the perspective of constitutionality, turning to the Minister of Interior in charge of the Operational Group for the Protection Against the Coronavirus Epidemic and the Minister of Human Capacities with proposals aimed at facilitating the solution of problems that emerged in the application of the law.

In the field of healthcare, the report issued on Case No. AJB-3479/2021 should be highlighted, in which the Commissioner examined – in relation to medical interventions – the fundamental rights-related questions of requiring PCR and antigen tests from patients and of their financing. The CFR asked the Minister of Human Capacities to repeal all of his instructions issued in connection with rehabilitative care and elective procedures, and he also demanded that as the managing body of the National Public Health Centre, the Minister takes action regarding the withdrawal of the circulars published on this matter. The Government took actions in response to this report, presenting a government decree on the order of planned dental treatments, rehabilitation care and planned invasive procedures in a state of danger.

In Case No. AJB-4849/2021 the CFR explained his position in connection with the air-conditioning of operating rooms in healthcare institutions. He inquired into which authority had competence to check the implementation of the relevant regulations for health and safety at work, and whether such monitoring was indeed conducted. In conclusion, he formulated several recommendations for the Ministry concerned, pertaining to both practice and the legal regulatory aspect.

Partly and indirectly connected to the effects of the pandemic, in Report No. AJB-1151/2021 the CFR underlined the necessity of firmer and swifter assistance and clear professional rules in the context of preventing adolescent suicide attempts. While inquiring into a specific case, the CFR came to the conclusion that currently, the recognition and efficient prevention of

potentially suicidal behaviours among adolescents is hampered due to the lack of adequate professional regulations and practices.

In 2021, too, the Commissioner for Fundamental Rights deemed it important to maintain personal contacts and dialogues and gathering experience, so he continued his country-wide series of visits that he had launched in spring 2020, the aim of which was to monitor the measures taken in order to curb the waves of the COVID-19 pandemic. In 2021, the Ombudsman once again wished to examine whether the fundamental rights of the most vulnerable groups of society were ensured. In the context of this series of visits across Hungary, the Commissioner continuously monitored – in person or through his staff members – the measures taken for the prevention of the coronavirus pandemic, as well as their impacts. During these visits, the Commissioner was able to monitor the actual, everyday enforcement of the rights of the members of the most vulnerable social groups, and he could offer more prompt and efficient help in solving them.

The Commissioner talked to the heads of the institutions and inspected the living conditions of children, patients, persons living with moderate or severe disabilities, and detainees residing there. Moreover, he also inquired about the strategies of the institutions to be applied in the state of danger. The aim of the visits was to inspect the implementation of the measures taken with a view to preventing the coronavirus pandemic and to averting its consequences, as well as to examine how the restrictions ordered due to the state of danger affected the rights of those concerned. Brief reports were drawn up about the experience gathered during each visit.

The OPCAT National Preventive Mechanism conducted visits also during the third and fourth wave of the COVID-19 pandemic to a wide range of places of detention, including penitentiary institutions, police detention facilities, a reformatory and social care homes. The purpose of the visits was to check the execution of the measures taken to prevent the spread of the coronavirus infection and to remedy the harmful effects of the pandemic. In order to assess the application of restrictive measures, the visiting group examined the accessibility and effectiveness of means of communication with the outside world (telephone, Skype), made available to detainees in the impossibility to ensure in-presence visits. The members of the visiting group conducted interviews with the detainees, members of the staff and the management and reviewed the relevant documentation.

References

COVID-related acts:

- Government Decree No. 46/2020 of 16 March 2020, <https://net.jogtar.hu/jogszabaly?docid=a2000046.kor>
- Government Decree No. 484/2020 of 10 November 2020, <https://net.jogtar.hu/jogszabaly?docid=a2000484.kor>
- Government Decree No. 27/2021 of 29 January 2021, <https://net.jogtar.hu/jogszabaly?docid=A2100027.KOR>
- Message of the Deputy Commissioner for the Rights of National Minorities of November 2021: <https://www.ajbh.hu/en/web/njbh/-/2681089-11>
- Statement of the Commissioner on the immunity certificate: <https://www.ajbh.hu/en/web/ajbh-en/-/policy-statement-of-the-commissioner-for-fundamental-rights-regarding-the-evaluation-of-the-immunity-certificate-from-a-fundamental-rights-perspective>

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

As mentioned above, the CFR continued to perform all its monitoring functions while strictly ensuring compliance with precautionary measures and implementing the 'do no harm' principle. In particular, the CFR ensured that visiting teams wear protective equipment during inspections and visits.

NHRI's recommendations to national and regional authorities

The CFR has recommended the competent Ministry to set up a working group to enhance the role of school psychologists as gatekeepers in order to prevent, identify and address potentially suicidal behaviours among adolescents, as a means to better protect children's rights. The Ministry promised to do so.

The CFR also addressed a recommendation to the Minister of Interior and the Minister of Human Capacities not to prohibit the reception of visitors in places of detention (penal institutions, residential care homes) due to the COVID-19 pandemic, but rather to allow visits subject to the appropriate precautionary measures to be adapted in the light of the evolution of the epidemiological situation.

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

In her General Comment No. 5/2021 on the educational situation of Roma children in Gyöngyöspata, the Deputy Commissioner for the Rights of National Minorities summed up the events that had taken place in the domain of segregation and integration in the primary school of the settlement over the past ten years since her comprehensive inquiry conducted in 2011. Education in its current form – as a result of now spontaneous segregation – in the Gyöngyöspata Primary School, which educates only Roma children, results in the unlawful segregation on the basis of nationality. Therefore, she made recommendations to the Ministry of the Interior, the Ministry of Human Capacities as well as to the head of the school affected, and she also called attention to the necessity of eliminating not only the segregation process that had begun locally in Gyöngyöspata but also to the general need for national-level state interventions.

General Comment No. 1/2021 also concerned the same matter. In such General Comment, the Deputy Commissioner drew attention to the individual and systemic level deficiencies exposed during the inquiry into the educational and child protection problems of a Roma pupil. She drew attention to the developmental, educational and integration problems of a Roma pupil with difficulties in integration, behaviour and learning, and the resulting serious conflicts between parents and teachers, based on the experience of the investigation of a specific complaint. The observations and suggestions offered may also help other children with similar problems and provide guidance for the institutions and authorities concerned. In addition to the requests formulated to the attention of the head of the competent school district centre, the principals of the primary schools affected, the competent district office, as well as of the family assistance and child welfare centres, the Deputy Commissioner also proposed some legal amendments to the State Secretary for Public Education. In particular, the Deputy Commissioner recommended that the EMMI Decree No. 15/2013 (II. 26.) be amended in order to ensure that, in the case of the status of pupils with difficulties in integration, learning and behaviour, the expert opinion not requested for review by the parents must be forwarded by the expert committee to the educational institution where the child is being educated. Furthermore, she proposed to consider the amendment of EMMI Decree No. 20/2012 (VIII. 31.) so that in the case of the transfer of a child or pupil with integration, learning and behavioural difficulties, the transferring educational institution should always be obliged to provide the receiving educational institution with the expert opinion containing the pedagogical tasks and improvements.

The Deputy Commissioner also issued General Comment No. 3/2021 in relation to the investigation of the complex situation of the individual use of names in nationality languages, the registration of births and deaths in accordance with the rules of nationality languages and other related official procedures, in particular the issuing of official certificates and the enforcement of the individual use of names in nationality languages. She emphasised that the right to use one's individual name in one's nationality language is closely linked to the right of nationalities living in Hungary to use their mother tongue. She made proposals aimed at promoting the more effective enforcement of the rights of persons belonging to nationality communities. Her proposals mainly concerned the promotion of legal awareness among persons belonging to nationalities and officials and registry offices involved in birth registration, the partial amendment of the rules on birth registration in the nationality language and the online accessibility of nationality surname registers.

References

- https://www.ajbh.hu/documents/2664086/4216263/General+Comment+1_2021_summary.pdf/ecec5c3c-aa53-008d-dd0e-d68c64031ba9
- https://www.ajbh.hu/documents/2664086/4216263/General+Comment+3_2021_summary.pdf/8aa12251-3581-528e-a584-81736b45f002
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NHRI's recommendations to national and regional authorities

As already recommended in the General Comments No. 1 and 5/2021 referred to above, the Deputy Commissioner for the Rights of National Minorities calls on the Ministry of the Interior, the Ministry of Human Capacities, the State Secretary for Public Education as well as the management of educational institutions concerned to take all the measures necessary to prevent and address school segregation of Roma children, including by proposing relevant legal amendments.

In order to promote the more effective enforcement of the rights of persons belonging to nationality communities, the Deputy Commissioner recommends the reform of relevant rules on birth registration in the nationality language, measures to ensure the online

accessibility of nationality surname registers as well as awareness raising initiatives among persons belonging to nationalities and officials and registry offices involved in birth registration.

Ireland

Irish Human Rights and Equality Commission

Independence and effectiveness of the NHRI

International accreditation status and SCA recommendations

The Commission was re-accredited as an “A” status NHRI by GANHRI’s Sub-Committee on Accreditation at its June 2021 session (1). The SCA commended the efforts of the Commission to promote and protect human rights in the Republic of Ireland and encouraged the Commission to continue these efforts. The SCA made a number of recommendations in relation to the Commission’s human rights mandate; the process for the selection and appointment of members of the Commission; the provision of adequate funding; and term of appointment of members of the Commission.

The SCA encouraged the Commission to continue to advocate for changes to its enabling law to ensure that all the full range of civil, political, economic, social and cultural rights are covered by the Commission’s mandate. At the same time, the SCA has acknowledged that the Commission has argued that a wider definition of human rights should apply to all of its powers but that the government has argued that a wider definition would attract constitutional difficulties and legal challenge.

Further, the SCA noted that the Commission does not have the explicit mandate to encourage ratification or accession to international human rights instruments; however, it acknowledged that the Commission interprets its mandate broadly to include actions in this regard. The SCA encouraged the Commission to advocate for changes to its enabling law to mandate it with the explicit responsibility to encourage ratification and accession to international instruments.

Acknowledging that the Commission has engaged with policy-makers, society, and government departments on the ratification of the UN OPCAT and provided views on the establishments of an NPM in the country, the SCA noted that the Commission does not have the explicit mandate to monitor places of deprivation of liberty. Therefore, the SCA encouraged the Commission to continue advocating for an explicit mandate to conduct unannounced visits to all places of deprivation of liberty.

The SCA noted that while Section 13 of the enabling law provides certain requirements for the selection and appointment process, including on diversity, pluralism, and publicising of

vacancies, the law is silent on a permanent selection criteria and process. The SCA encouraged the Commission to advocate for the formalisation and application of a uniform process that ensures the broad participation of civil society in the selection and appointment process, and the assessment of applicants on the basis of pre-determined and objective criteria.

Additionally, the Commission reported that its mandate has expanded, that its responsibilities are increasing and that it would benefit from additional funding for its existing mandate as well as all expanded powers. The SCA encouraged the Commission to continue to advocate for additional funding to ensure that it can effectively carry out the full breadth of its mandate.

Finally, while acknowledging that in practice, all members of the Commission appointed after its establishment were appointed for five-year terms, the SCA encouraged the Commission to advocate for amendment to its enabling law to provide for a fixed minimum term of appointment for members of the Commission.

References

- (1) GANHRI Sub-Committee on Accreditation, Report and Recommendations of the Virtual Session of the Sub-Committee on Accreditation (SCA) 14-24 June 2021 (June 2021) : <https://www.ohchr.org/Documents/Countries/NHRI/GANHRI/EN-SCA-Report-June-2021.pdf>
IHREC, The Irish Human and Equality Commission Retains “A” Status UN Accreditation (press release, 1 September 2021) : <https://www.ihrec.ie/the-irish-human-and-equality-commission-retains-a-status-un-accreditation/>

Regulatory framework

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 Commission has a constitutional basis and the mandate to contribute to access to justice for individuals, including through strategic litigation before courts, the provision of legal assistance to individuals and awareness-raising.

In 2021 some changes were introduced to the national regulatory framework applicable to the institution.

Section 5 of the Gender Pay Gap Information Act 2021 inserts a new provision into section 32 of the Irish Human Rights and Equality Act 2014, to allow the Minister for Children, Equality, Disability, Integration and Youth to request the Commission to consider exercising its powers, concerning carrying out equality reviews and the drawing up of equality action plans, under that section. It will be for the Commission to decide whether to exercise its section 32 powers following the Minister's request.

The Commission was designated in October 2020 as Ireland's Independent National Rapporteur on the Trafficking of Human Beings. To fulfil this function, the Commission has established an Anti-Human Trafficking section, and was allocated additional resources in 2021 for staff and operational resources.

The Commission will be designated as the co-ordinating body of the National Preventative Mechanism (the 'NPM') framework under the legislation incorporating the Optional Protocol to the Convention Against Torture (the 'OPCAT'). The Government committed to ratifying and implementing the OPCAT by the end of 2021. The General Scheme of a Bill to ratify and implement the OPCAT is yet to be published. The Commission has emphasised the importance of appropriate funding, staffing, and data access for the effective functioning of the NPM co-ordinating body, and the importance of the involvement of civil society organisations in the operation of OPCAT.

In November 2021, the Government published the General Scheme of the Assisted Decision-Making (Capacity) (Amendment) Bill 2021, which will establish the statutory basis for the Commission's role as the Independent Monitoring Mechanism for the United Nations Convention on the Rights of Persons with Disabilities in Ireland.

References

- Department of Children, Equality, Disability, Integration and Youth, “Pay transparency is now one step closer” - Gender Pay Gap Information Bill passes all stages in Dáil and Seanad Éireann (press release, 7 July 2021) : <https://www.gov.ie/en/press-release/910ee-pay-transparency-is-now-one-step-closer-gender-pay-gap-information-bill-passes-all-stages-in-dail-and-seanad-eireann/>
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- Department of Justice, Justice Plan 2021 (February 2021): <https://www.gov.ie/en/press-release/02a50-minister-mcentee-publishes-justice-plan-2021/>
- Department of Justice, Justice Plan 2021: Mid-Year Progress Report (August 2021): <https://www.gov.ie/en/publication/da0c1-department-of-justice-action-plan-2021-mid-year-progress-report/>
- IHREC, Submission to the Third Universal Periodic Review Cycle for Ireland (March 2021): https://www.ihrec.ie/app/uploads/2021/07/IHREC_UPR_2021_FINAL.pdf

Enabling and safe space

The relevant state authorities have good awareness of the Commission’s mandate, independence and role of the Commission and the institution has adequate access to information and to policy makers, being involved in all stages of legislation and policy making with human rights implications.

However, the Commission would draw attention to its longstanding recommendation for the State to establish a dedicated Oireachtas Committee on human rights, equality and diversity. A dedicated Oireachtas Committee would have a mandate to examine closely the human rights and equality implications of all legislation and policies.

The addressees of the Commission's recommendations are not legally obliged to provide a timely and reasoned reply. However, the Commission regularly engages with key stakeholders in the policymaking process to follow-up or draw attention to its recommendations. The Commission also assesses developments in relevant areas of legislation and policy against the recommendations it has provided.

Measures necessary to protect and support the institution, heads of institution and staff against threats and harassment and any other forms of intimidation (including SLAPP actions) are in place.

References

- IHREC, Submission to the Third Universal Periodic Review Cycle for Ireland (March 2021) : https://www.ihrec.ie/app/uploads/2021/07/IHREC_UPR_2021_FINAL.pdf
- IHREC, Ireland and the International Covenant on Economic, Social and Cultural Rights: Submission to the UN Committee on Economic, Social and Cultural Rights for the List of Issues on Ireland's Fourth Periodic Report (December 2021): <https://www.ihrec.ie/app/uploads/2022/01/Ireland-and-the-International-Covenant-on-Economic-Social-and-Cultural-Rights.pdf>

NHRI's recommendations to national and regional authorities

- The Commission recommends the State implement the recommendations of the GANHRI Sub-Committee on Accreditation. The Commission would draw particular attention to the Sub-Committee on Accreditation's recommendation on the provision of additional funding to ensure the Commission can carry out the full breadth of its mandate.
- The Commission recommends that the State establish a dedicated Oireachtas Committee on human rights, equality and diversity.
- The Commission recommends that the State ratify and implement OPCAT without further delay; and to ensure that appropriate appropriate funding, staffing, and data access is in place for the NPM co-ordinating body, and the involvement of civil society organisations in the operation of OPCAT.

Human rights defenders and civil society space

Laws and practices negatively impacting on civil society space and/or on human rights defenders' activities

In the 2020 and 2021 ENNHRI Rule of Law reports, the Commission highlighted concerns around legislation regulating civil society space in Ireland, including the wide definition of 'political purposes' in the Electoral Act 1997 and the exclusion of the advancement of human rights from the definition of 'charitable purpose' in the Charities Act 2009. The Commission referenced these concerns in its submission on the General Scheme of the Electoral Reform Bill, which does not include provisions addressing these issues. While the Commission is of 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; such legislative and regulatory measures should avoid placing undue restrictions on civil society engagement and advocacy. A report of the Oireachtas Committee on Justice recommended that a definition of 'political purposes' be included in the Bill based on the submissions of the Commission and other civil society organisations.

References

- IHREC, Submission to the Committee on Housing, Local Government and Heritage on the General Scheme of the Electoral Reform Bill (February 2021): <https://www.ihrec.ie/app/uploads/2021/02/Submission-to-the-Committee-on-Housing-Local-Govt-and-Heritage-on-the-Electoral-Reform-Bill-Feb-2021.pdf>
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- Oireachtas Joint Committee on Housing, Local Government & Heritage, Report on Pre-Legislative Scrutiny of the General Scheme of the Electoral Reform Bill 2020 (July 2021): https://data.oireachtas.ie/ie/oireachtas/committee/dail/33/joint_committee_on_housing_local_government_and_heritage/reports/2021/2021-08-19_report-on-pre-legislative-scrutiny-of-the-general-scheme-of-the-electoral-reform-bill-2020_en.pdf

Access to and involvement of civil society actors in law and policy making

The Commission emphasises the important advocacy role that civil society plays in democratic discourse and in the promotion of human rights. The Commission has called for a more inclusive and enabling environment for civil society actors to participate in the design, implementation and monitoring of legislation and policy. For example, in the Commission's submission on the General Scheme of the Online Safety and Media Regulation Bill, the Commission recommended that the development and implementation of the legislation should be informed by specific consultations with children and with persons with disabilities and representative groups of persons with disabilities to ensure the legislation meets their requirements.

The Commission has repeatedly highlighted concerns around the level of involvement of persons with disabilities in decision-making processes relating to persons with disabilities. This was particularly notable in the response to the COVID-19 pandemic, where legislation and policies, which have significant implications for the rights of persons with disabilities, were adopted without meaningful engagement with people with disabilities. The Commission has stressed the importance of closely consulting and actively involving persons with disabilities and Disabled Persons Organisations in legislative and policy decision-making processes. To ensure the meaningful participation of persons with disabilities in law and policy making, the Commission has called for the State actively support the further development and involvement of Disabled Persons Organisations by providing sustainable core funding, capacity building and training.

In the Commission's recommendations on designing a new National Action Plan Against Racism, the Commission called for the Action Plan to explicitly set out how rights holders will be involved in the implementation and monitoring of the Plan. The Commission recommended that the principle of participation be evident in the involvement of all ethnic minority communities in leadership and strategic oversight, evaluation, monitoring, review and implementation throughout the lifetime of the National Action Plan Against Racism. This participation needs to be directly resourced, given the low socio-economic status of many groups who are subjected to racism, and child / adult care costs must also be covered.

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):
<https://www.ihrec.ie/app/uploads/2021/03/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-FINAL.pdf>
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<https://www.ihrec.ie/app/uploads/2021/05/Submission-to-the-Oireachtas-Joint-Committee-on-Justice-COVID-19-and-Civil-Liberties-Final-PDF.pdf>
- IHREC, Developing a National Action Plan Against Racism: Submission to the Anti-Racism Committee (August 2021):
<https://www.ihrec.ie/app/uploads/2021/09/Developing-a-National-Action-Plan-Against-Racism-IHREC-Submission-to-the-Anti-Racism-Committee.pdf>
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- IHREC, Submission on the Review of the Equality Acts (December 2021):
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NHRI's role in promoting and protecting civil society space and human rights defenders

The Commission continues to engage with State bodies, the Oireachtas and international monitoring mechanisms in support of civil society and human rights defenders both nationally and internationally.

In July 2021, the Commission addressed GANHRI's High-level event on the Global Action Plan to support the protection and promotion of human rights defenders and civic space. The Commission recognised the importance of an enabling environment, both online and offline, for human rights defenders and civil society actors to meaningfully engage in the democratic process. The Commission stressed the importance of setting out clear actions to implement the Marrakech Declaration.

In October 2021, the Commission addressed the pre-session of the Universal Periodic Review of Ireland on a number of issues of concern for civil society including access to justice, gender equality, immigration policy, and the human rights and equality framework.

In June 2021, the Government announced a review of Ireland's Equality Acts. To support civil society groups and individuals to engage in the review process, the Commission and the civil society organisation, FLAC (Free Legal Advice Centres), have launched a joint project, Equality ACTION to encourage and support civil society engagement with the Review.

To empower the advocacy and work of civil society organisations, rights-holder and community led groups, and trade unions in Ireland; the Commission operates a grant scheme to support human rights and equality projects across Ireland, including research programmes, training or resource activities, conferences or events and cultural initiatives. Under its Human Rights and Equality Grants Scheme 2021, the Commission is supporting 28 projects which encompass a range of issues; social exclusion and socioeconomic discrimination; racism and discrimination experienced, in particular, by ethnic and minority communities; and empowering people with disabilities to advocate for their rights.

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NHRI's recommendations to national and regional authorities

- The Commission recommends that legislative and policy measures to regulate civil society organisations should avoid placing undue restrictions on civil society engagement and advocacy.
- The Commission recommends that the State ensure the active and informed participation of individuals in the development, implementation and monitoring of legislative, executive and administrative decisions that concern them.

Checks and balances

The Commission has identified concerns around the process of legislating for emergency powers in its response to COVID-19. The Commission has highlighted gaps in transparency and in our systems of democratic accountability including a lack of human rights and equality expertise in decision-making structures. The delegation of legislative power to the Minister for Health resulted in a black hole for the consideration of human rights and equality concerns.

The Commission has repeatedly raised its concerns on how the State is meeting its human rights obligations for people with disabilities. The Commission has particularly emphasised the need for the State to ratify the Optional Protocol to the CRPD, which would allow people with disabilities to make individuals complaints directly to the UN. Ireland is one of only three EU member states to have neither signed nor ratified the Optional Protocol. In order to support accountability and transparency, the Commission has called for the

Government to make an annual statement to the Dáil (Lower House of the Oireachtas) on Ireland's progress on the implementation of the CRPD.

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Trust amongst citizens and between citizens and the public administration

The Commission notes several relevant findings of its Annual Poll for 2021:

- Two-fifths (40%) of respondents believe the efforts made to fight human rights abuses in Ireland are effective, a decrease on 2020 levels (52%).
- 48% rate the efforts made in Ireland to fight all forms of discrimination as not effective.
- Close to nine in ten (87%) agree that people with disabilities face barriers in participating fully in Irish society, a similar proportion to 2020 (86%).
- A significant majority (79%) agree that people with less money generally get a worse outcome in a legal challenge.

- Two-thirds (67%) agree with the statement: Ireland's response to COVID-19 has increased the solidarity I feel to older, vulnerable and minority groups.
- One-quarter (24%) agree that they feel left out of society.
- Two-fifths (43%) of respondents agree with the statement: I don't feel that the value of what I do is recognised by others.
- One-third (35%) of respondents report they feel some people look down on me because of their job situation or income.

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NHRIs as part of the system of checks and balances

As part of the system of checks and balances, the Commission regularly engages with Government departments, public bodies, Oireachtas Committees and international monitoring mechanisms.

In 2021, the Commission made a submission to the Universal Periodic Review as well as a Submission to the UN Committee on Economic, Social and Cultural Rights to inform its preparation of the List of Issues for Ireland. The Commission has also made a number of appearances before Oireachtas Committees on certain issues, including on disability and Direct Provision.

In addition to a number of other legislation observation submissions referenced in this report, in 2021 the Commission also submitted observation on proposed legislation, including:

- Smuggling of Persons Bill
- Criminal Justice (Exploitation of Children in the Commission of Offences) Bill
- Dying with Dignity Bill
- Certain Institutional Burials (Authorised Interventions) Bill
- Housing and Planning and Development Bill 2019
- Birth Information and Tracing Bill

In the 2021 ENNHRI Rule of Law report, the Commission highlighted its recent designation as Ireland's National Rapporteur on Trafficking of Human Beings. In October 2021, the Commission submitted its report to Council of Europe Group of Experts on Action against Trafficking (GRETA) on Ireland's compliance with the Convention. The Commission also met with the EU Network of National Rapporteurs on Trafficking in Human Beings to provide its update on Ireland's progress.

Since 2015, the Commission has consistently used its legal standing to contribute to the execution of the European Court of Human Rights judgement in the case of Louise O'Keefe. In its written submissions to the Council of Europe's Committee of Ministers, the Commission has set out that the State's redress scheme put in place for victims of sexual abuse in schools is unduly restrictive. Under the State's restrictive interpretation of the O'Keefe judgment, a victim of child sexual abuse is required to establish the existence of a prior complaint before the State's liability was triggered. Placing the onus on victims to explain how their abuse could have been prevented is redundant when the O'Keefe ruling made clear Ireland failed to put in place effective mechanisms of child protection in Irish schools. The Commission has, as a result, asked the Council of Europe to transfer this case to an "enhanced supervision" process which would see Ireland more closely monitored on its implementation of the 2014 O'Keefe ruling.

In the 2021 ENNHRI Rule of Law report, the Commission outlined concerns raised regarding the final report of the Mother and Baby Homes Commission of Investigation. The Commission exercised in *amicus curiae* function in two leads cases challenging aspects of the final report of the Commission of Investigation into Mother and Baby Homes. In the High Court, the State acknowledged that the Commission of Investigation breached its statutory duty to provide the survivors, who were identifiable in the report, with a draft copy of the final report before its publication. The Commission also submitted independent advice to the Government on its planned redress scheme for survivors of Mother and Baby Homes and other related institutions. The Commission called for the design and implementation of the redress scheme to be underpinned by human rights and equality principles. The Commission also stated that a redress scheme should not be bound by the significant limitations of the Commission of Investigation's report and recommendations. The Commission emphasised that redress extends beyond financial compensation, and the Scheme should be designed to facilitate apologies from officials representing the State and relevant private entities to survivors. The Commission further recommended that provisions seeking to deny or limit liability should not find expression in the proposed scheme.

The Commission appeared as amicus curiae in a High Court case concerning driving licences for asylum seekers. The High Court found that the applicants are lawfully resident in the State, and therefore eligible for a licence. The Commission has also appeared as amicus curiae in cases concerning the eviction of a Traveller family, a disability assessment of a boy, and a father's eligibility for a carer's allowance.

In July 2021, the Commission published accounts of equality reviews for Ireland's 31 local authorities which focused on their provision of Traveller-specific accommodation to Members of the Traveller Community. The reviews highlighted a number of overarching issues including the underspend in the drawing-down of allocated funds for Traveller-specific accommodation; poor information gathering to inform decision-making; and failings to identify Traveller's true accommodation preference.

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NHRI's recommendations to national and regional authorities

- The Commission recommends that emergency legislation be subjected to strict human rights and equality standards and oversight. Equality and human rights expertise should be included in decision-making structures, including in the systems to implement and scrutinise decisions. This includes ensuring effective consultation with groups likely to be particularly impacted by emergency legislation.
- The Commission recommends the Government make an annual statement to the Dáil on Ireland's progress in implementing the UNCRPD; and to prioritise the ratification of the Optional Protocol to the UNCRPD.
- The Commission recommends the State overhaul the approach to investigating historical human rights abuses to ensure that all allegations of such abuse are afforded timely, independent, thorough and effective victim-centred investigations, in line with international human rights standards.
- The Commission recommends that the State ensure that redress schemes for human rights abuses are based on the right to truth, justice, reparation, non-recurrence and memory processes, and include clarity on rights of access to

personal data and legislative measures to ensure that those who died in institutions receive dignity in death.

Functioning of the justice system

The Commission has repeatedly highlighted concerns with the operation of the civil legal aid system, including the minimum financial contribution. This has proven to be barrier to access to justice for those on low incomes, women, victims of domestic violence, victims of trafficking and labour exploitation, international protection applicants, Travellers, Roma, and minority ethnic communities. Ireland's civil legal aid system does not cover representation before quasi-judicial tribunals and bodies dealing with social welfare appeals, housing issues, and employment and equality cases. The Government committed to a review of the system and to bring forward proposals for reform by the end of 2021; however, the Government did not publish proposals by the end of 2021. The Government has also not published its One Year Follow Report, due December 2020, to the Committee on the Elimination of Racial Discrimination on Ireland's implementation of the Committee's recommendations on legal aid.

The Commission has expressed concern about the proposed structure of the new Judicial Appointments Commission ('JAC') as it is contrary to international guidance on ensuring independence of such bodies as it is proposed that fewer than half of the members are judges. The Commission recommended that members of the judiciary should be increased to at least half of those who sit on the JAC; as well as removing the Attorney General from membership of the JAC, to ensure independence from the Government. The Commission also called for the membership of the JAC to reflect the diversity of the population, and recommended the proposed legislation require the JAC to publish statements on how they will pursue the objectives of improving diversity in the judiciary and to collect and publish disaggregated equality data in relation to both candidates and appointments to the judiciary.

The Commission is of the view that the current Irish system of child and family law proceedings are not child, family or disability friendly. In the Commission's submission on the General Scheme of the Family Court Bill, the Commission identified persistent issues with the family court system including chronic delays in court proceedings, delays in conducting assessments of children and adults, inconsistent approaches to hearing views of the child, adversarial approaches to proceedings, inconsistency in decisions, and a lack of specialist training for judges and legal practitioners. To bring the Bill in line with human rights and equality standards, the Commission recommended that the family court system should put in place better processes to determine the best interests of the child

and ensure the right of the child to be heard is adequately protected. The Commission also recommended strengthened protection for marginalised groups who are disproportionately represented in child and family law proceedings.

The Commission has consistently expressed concern in submissions to international monitoring mechanisms, in particular the Human Rights Committee, about the existence and operation of the non-jury Special Criminal Court. In 2021, the Government launched an independent review of the Offences Against the State Acts, which govern the operation of the Special Criminal Court. In the Commission's submission to the Independent Review Group, the Commission raised concern with the functioning of the Court including the implications for a right to a fair trial with the rules of admission of evidence; the use of belief evidence and inference drawing from the conduct of an accused or the silence of an accused when questioned in detention. The Commission recommended that the Special Criminal Court be abolished and the Offences Against the State Acts be repealed as ordinary courts are adequate to secure the effective administration of justice and the preservation of public peace and order without resorting to non-jury trials.

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Role of the NHRI in contributing to the effective functioning of justice systems

The Commission's legal functions include amicus curiae interventions, legal assistance to individuals and equality reviews.

Recent examples of the Commission's amicus curiae interventions include:

- DPP v. RK and LM (Court of Appeal): on the admission of Garda (Irish police force) belief evidence, and the appropriate balance to be struck between the vital public interest in protecting Garda investigations and the procedural safeguards required for a fair trial.
- Director of Public Prosecutions v. JD (Supreme Court): on the rights of an accused person where the Gardaí failed to interview the accused in relation to an indictable offence before charging them with that offence.

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NHRI's recommendations to national and regional authorities

- The Commission recommends the State ensure that the planned review of the civil legal aid scheme is underpinned by international human rights and equality standards; has the scope to address all of the barriers to accessing legal aid in a timely manner; is structured with clear timeframes for reform and dedicated resources; and ensures the participation of rights holders, civil society organisations and other key stakeholders.
- The Commission recommends that the State ensure that the proposed Judicial Appointments Commission aligns with international standards on judicial independence, and that the membership of the Judicial Appointments Commission reflects the diversity of Irish society.

- The Commission recommends the State abolish the Special Criminal Court and repeal the Offences Against the State Acts. If the State decides not to abolish the Special Criminal Court or repeal the Offences Against the State Acts, the Commission recommends that the State should strengthen procedural safeguards in the use of the Court and the legislation. This includes independent and parliamentary oversight.

Media freedom, pluralism and safety of journalists

In the 2021 Rule of Law report, the Commission referred to its 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, which will transpose the revised Audiovisual Media Services Directive into Irish law. In its observations, the Commission recommended that the financial independence of the Media Commission, to be established under the Bill, be strengthened by ensuring that grants for budgetary allocation to the Media Commission should be subject to a separate vote in the Oireachtas. The Commission also recommended that the Bill be amended to exclude reference to removal of members of the Media Commission in the interests of the effective and economical performance of the functions of the Commission. To support a pluralist media environment, the Commission has called for the membership of the Media Commission to reflect the nature and diversity of Irish society.

The final report of the Joint Committee on Media, Tourism, Arts, Culture, Sport and the Gaeltacht on the General Scheme of the Online Safety and Media Regulation Bill presented a number of recommendations on amendments to the Bill, which relate to the concerns raised by the Commission, including:

- highly precise detail is given as to the roles and responsibilities of the Media Commission and of the Online Safety Commissioner;
- no possible source of infringement of independence should be placed upon the Media Commission or upon the Online Safety Commissioner;
- any provision allowing for the removal of commissioners, either by the Minister or by the Department, be removed from the General Scheme of the Bill;
- the Media Commission and the Online Safety Commissioner are satisfactorily resourced, with the level of staffing and expertise adequate to allow optimal operational capacity and enforcement;
- there is a pluralistic and diverse-oriented approach taken during the legislative process for the present Bill and during the regular work of the Media Commission

and the Online Safety Commissioner, with full participation sought from all sects of Irish society, including liaising with vulnerable groups to ensure that their lived experience is reflected.

The Commission has emphasised that a strong link can be observed between editorial decisions and the emergence of online and real-world hate speech and incidents, meaning it is imperative that media professionals adhere to journalistic ethics and codes of practice, and that such codes of practice are responsive to the modern media environment. The Commission has called for the Press Council of Ireland's Code of Practice, which prohibits the publication of material intended or likely to cause grave offence or stir up hatred based on protected characteristics, to be updated in light of ongoing developments in respect of the legislative framework on hate speech. African-Irish young people report that negative narratives and stereotypes in the media are a pervasive barrier to integration, whereas authentic representation facilitates inclusion and has a significant impact on emotional wellbeing. More diverse representation within the media professions will help to ensure more authentic representation, for example, by promoting more inclusive editorial decision making.

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NHRI's recommendations to national and regional authorities

- The Commission recommends that the National Action Plan Against Racism includes an action for a strategy to encourage the media to promote diversity within its professions, increase the visibility and positive representation of ethnic minorities, and better equip people to discuss issues concerning race, racism and anti-racism.
- The Commission recommends that the State ensure the proposed Media Commission is structurally and financially independent, and that its membership reflects the diversity of Irish society.

Corruption

The current legislation in Ireland concerning protection for whistle-blowers, the Protected Disclosures Act 2014, is recognised as being very strong by international standards. However, it is difficult to conduct a meaningful assessment of its effectiveness as the case law that has developed since 2014 is relatively small and there is no data available on the total number of protected disclosures made each year and the outcome of such disclosures.

Against this background, the Commission submitted legislative observations on the Protected Disclosures (Amendment) Bill 2021, which provides for the transposition of the EU Whistleblowing Directive (EU) 2019/1937. While acknowledging the international leadership role that Ireland has taken to date in the area of protected disclosures, the Commission is concerned that the State has taken an unnecessarily cautious approach to transposing the Directive rather than further enhance the existing protections. The Commission has emphasised the importance of ensuring the transposition of the Directive into Irish law is used as an opportunity to further strengthen the legal safeguards in the Protected Disclosures Act and that no existing protections are weakened or removed in the process. In terms of access to justice, the Commission has emphasised the importance of ensuring workers (particularly women, minorities and people in precarious work situations) are facilitated to make protected disclosures and are protected in the process.

The Commission has highlighted troubling attitudes and treatment towards those who make protected disclosures. The labelling of someone as a ‘whistle-blower’ and the negative connotations it has gained in media reports and society is a real concern for those who simply wish to report a wrongdoing. The experience and fear of the potential negative impact that making a disclosure will have on an individual’s career and personal life can be a barrier to reporting a concern. This is reflected in research where a relatively high number of people stated that fear of losing their job, harming their career or isolation from colleagues would deter them from speaking up.

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NHRI’s recommendations to national and regional authorities

- The Commission recommends that the State should ensure that the transposition of the EU Whistle blower Directive in the Protected Disclosures (Amendment) Act does not result in any diminution in protections for individuals who make a protected disclosure, instead the legal safeguards for individuals should be strengthened.
- The Commission recommends that the fear of negative consequences on career and personal life around making a protected disclosure should be taken into consideration by the State during the drafting process to ensure that there is adequate resources and supports in place for those who choose to make a protected disclosure.

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 2021 ENNHRI Rule of Law report, the Commission highlighted the lack of regard to human rights and equality standards in emergency law-making in the context of Covid-19. The Commission outlined a number of concerns, including:

- Blurred boundaries between guidance and regulations, leading to confusion among people;
- Concerning gaps in transparency and in the systems of democratic scrutiny;
- Certain groups were potentially disproportionately affected by policing powers but there is a lack of comprehensive and detailed disaggregated data to clarify this; and
- Defects in the law making and review process have led to a lack of human rights and equality expertise in decision-making structures, or in the systems that implement and scrutinise these decisions.

The Commission has repeatedly stressed the need for the State to have regard to the human rights and equality impacts of its emergency decision-making, noting the disproportionate effects of the pandemic across various equality groups. While the pandemic is a challenge for the whole country, it is impacting, and will continue to impact, different people more acutely than others, including: women; older people; people with disabilities; residents in Direct Provision; members of the Traveller community; minority ethnic groups; people living in homelessness; people experiencing domestic violence; prisoners, and people in precarious employment. However, there has been a notable lack of consultation with groups likely to be particularly impacted.

The Covid-19 pandemic has had a significant impact on socio-economic rights and has exacerbated many existing inequalities relating to the rights to decent work, housing, health and education, amongst others. The lack of disaggregated data presents significant gaps in our understanding of the differential impact across ethnic minorities during a time of rapid change – including across education, work and employment, contact with the criminal justice system, access to services, housing, access to justice, and health outcomes. Remote education and moves to remote work have illustrated the digital divide in Irish society. Dimensions of digital exclusion include connectivity, material access (including ICT equipment), and digital competency.

The Commission emphasises the importance of addressing poverty and social exclusion in Ireland's continued response to and recovery from the Covid-19 pandemic. The Commission notes that in May 2021, Ireland submitted its draft National Recovery and Resilience Plan ('NRRP') to the European Commission to secure a significant investment of approximately €989 million to mitigate the public health, economic and social crisis caused

by the Covid-19 pandemic. In its guidance to Member States, the European Commission stressed the importance of incorporating gender equality and equal opportunities for all as objectives in the plan. However, the Irish NRRP does not specifically reference or address human rights and equality concerns.

From the outset of the pandemic, and from the earliest introduction of legal and policy measures to address it, the Commission has stressed the need for the State to have regard to the human rights and equality impacts of its emergency decision-making. In the 2021 ENNHRI Rule of Law report, the Commission referred to its research report published in February 2021 which 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. In its submission to the Oireachtas Joint Committee on Justice in May 2021, the Commission outlined many of the concerns, expressed above; including reiterating its recommendation for a dedicated Oireachtas Committee on equality, human rights and diversity which in the context of COVID-19 would provide close parliamentary oversight of the implementation of emergency legislation introduced in response to COVID-19, and the equality and human rights implications of COVID-19. To mainstream human rights and equality in emergency decision-making, the Commission also emphasised the importance of the Public Sector Equality and Human Rights Duty to inform decision-making on all aspects of law and policy.

The final report of the Joint Committee on Justice on Civil Liberties during the Covid-19 Pandemic made a series of recommendations, which mirror the concerns and recommendations of the Commission including:

- The difference between public health guidance and regulations should be clear to the public.
- The Government should ensure that minority groups have access to accurate information which has been adapted to best meet their individual needs.
- A regular human rights impact assessment on the impact of the emergency situation and restrictions on at-risk groups be carried out in order to ensure Government takes appropriate and sufficient measures to mitigate negative impacts.
- Detailed and disaggregated data on the use of enforcement powers by the Gardaí should be collected and published.
- Cultural competency training forms an integral part of continuous professional development for all members of An Garda Síochána, to ensure that their powers are

being exercised in a non-discriminatory manner, in line with best practice in cultural competency, human rights and equality.

- The views of experts in the fields of human rights, equality and inclusion ought to be sought as part of the democratic oversight of decisions made by the Government, to ensure that the impact of these decisions on individuals' human rights and civil liberties is taken into account.
- Emergency legislation should be subject to robust democratic oversight.

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- Oireachtas Joint Committee on Justice, Report on Civil Liberties during the Covid-19 Pandemic (September 2021): https://data.oireachtas.ie/ie/oireachtas/committee/dail/33/joint_committee_on_justice/reports/2021/2021-09-28_report-on-civil-liberties-during-the-covid-19-pandemic_en.pdf

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

The Commission has worked virtually throughout 2021, and has invested in its ICT systems to facilitate this.

NHRI's recommendations to national and regional authorities

- The Commission recommends that any measures put in place to address COVID-19 should be subject to robust democratic scrutiny and accountability; and human rights and equality expertise must be in place in decision-making and oversight structures.
- The Commission recommends that the measures put in place to address COVID-19 must be human rights proofed, and should be informed by the Public Sector Equality and Human Rights Duty.
- The Commission recommends that the State prioritise addressing poverty and social exclusion in Ireland's continued response to and recovery from the Covid-19 pandemic.

Italy

Independence and effectiveness of the NHRI

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 (1). 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 (2). 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 (3).

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 (4).

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.

As far as ENNHRI is aware, after a governmental crisis in February 2021, the draft bill has not been rescheduled for discussion in the Chamber of Deputies.

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. In December 2021, ENNHRI has reached out to Italian authorities to ask for any steps taking towards establishing an Italian NHRI.

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Latvia

Ombudsman's Office of the Republic of Latvia

Independence and effectiveness of the NHRI

International accreditation status and SCA recommendations

The Ombudsman of the Republic of Latvia was re-accredited with A-status in December 2020.

The SCA was of the view that the selection and appointment process enshrined in the Law was not sufficiently broad and transparent. It noted that the Latvian NHRI has proposed amendments to its enabling law to provide for the advertisement of vacancies and the ability for all interested candidates to submit their application prior to the proposal being made by the members of Parliament. The SCA encouraged the NHRI to advocate for the formalisation and application of a broad and transparent process.

With regard to the provisions on dismissal of the Ombudsman, the SCA took the view that the process does not provide sufficient procedural safeguards to ensure that it could not be undertaken for political reasons. It encouraged the Latvian NHRI to advocate for appropriate amendments to its Law to ensure an independent and objective dismissal process.

Further, the SCA noted that the enabling Law is silent on the number of times the Ombudsman can be re-appointed. It encouraged the Latvian NHRI to advocate for amendments to its enabling law to provide for limits on the term of office.

Finally, the SCA encouraged the NHRI to advocate for the inclusion in its founding legislation of express provisions that clearly establish the functional immunity of the Ombudsman for actions taken in his or her official capacity in good faith.

References

- <https://www.ohchr.org/Documents/Countries/NHRI/GANHRI/SCA%20Report%20December%202020%20-%2024012021%20-%20En.pdf>

Regulatory framework

The Ombudsman Law was amended on 7 January 2021, and the amendments entered into force on 1 January 2022. According to the changes made, a candidate for the position of Ombudsman may be nominated by no less than 10 members of the Parliament (MPs), the Saeima (previously, no less than 5 MPs were required); the same person may serve as an Ombudsman for a maximum of two consecutive terms (previously, the number of terms was not limited).

In order to strengthen the guarantee of the Ombudsman as an autonomous constitutional entity, in May 2015 the Ombudsman urged the Parliament to consider a proposal to supplement the Constitution of the Republic of Latvia with a new chapter named "Ombudsman". Strengthening the Ombudsman's entity in the Constitution of the Republic of Latvia would protect against undesirable political manipulation; promote the compliance of the national human rights authority with the so-called Paris Principles; strengthen the principle of power-sharing enshrined in the Constitution of the Republic of Latvia; exclude any doubts that the Ombudsman belongs to any state powers. The proposal has not progressed any further yet.

The NHRI continues to contribute to access to justice for individuals, including by handling complaints and providing legal assistance to individuals, engaging in strategic litigation before courts as well as awareness-raising initiatives. The Ombudsman can also conduct research and analyse the situation in the field of human rights, as well as provide opinions regarding the topical human rights issues.

References

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Enabling and safe space

Relevant state authorities have good awareness of the NHRIs' mandate, independence and role of the NHRI and the NHRI has adequate access to information and to policy makers and is involved in all stages of legislation and policy making with human rights implications.

Recommendations of the Ombudsman are not legally binding. Yet, the average implementation of Ombudsman's recommendations exceeds 70%.

As regards measures to protect and support the NHRI, heads of institution and staff against threats and harassment, Criminal Procedure Law states that only the Prosecutor General shall initiate criminal proceedings against the Ombudsman. The ombudsman may be held criminally liable or arrested only with the consent of the Parliament. A decision on placing the Ombudsman under arrest, conveyance by force, detention, or subjection to a search shall be taken by a specially authorised Supreme Court judge. If the ombudsman has been apprehended in the committing of a serious or especially serious crime, a decision on conveyance by force, detention, or subjection to a search shall not be necessary, but the specially authorised Supreme Court judge and the Prosecutor General shall be informed within 24 hours.

References

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Human rights defenders and civil society space

Access to and involvement of civil society actors in law and policy making

Civil society is involved in the legislative processes. Also prompted by the Ombudsman, leading civil society organisations (CSOs) working on public interest issues are invited to participate and intervene in relevant meetings of Parliamentary Committees and Consultation Councils of Ministries. The Ombudsman received no complaints about cases where a CSO wished to participate in a meeting of a committee and was not allowed to do so. In the context of COVID-19, we also observed that the most prominent CSOs participate in Government meetings, and they are given an opportunity to express themselves.

One of the priorities of the Ombudsman for 2022 is to study the involvement of civil society in the work of governments at local level. There are concerns that CSOs participation and involvement in law and policy making is not always respected by local governments as it is at the level of the Parliament and national Government. There are also signs that, at local level, the capacity of CSOs is weaker and local government support for CSOs is itself limited (including in terms of involvement in advisory councils and working groups; consideration of CSOs' proposals; involvement in activity research; support by local governments to CSOs' activities).

NHRI's role in promoting and protecting civil society space and human rights defenders

When the Ombudsman discovers that an issue that affects the interests of a certain group is being discussed in the Parliament or Government, but representation of that group is not ensured in the meeting, we alert the relevant CSOs and encourage them to participate (e.g. at a meeting of the State Administration and Local Government Commission on access to housing for persons with disabilities). This normally ensures that CSOs' representation and participation is subsequently secured. We are particularly attentive to CSOs' involvement and participation in all discussions affecting people with disabilities, building on the principle 'Nothing about us without us'.

The Ombudsman cooperates with various CSOs both in the organisation of thematic events and in reacting to specific cases of possible human rights or good governance violations.

Checks and balances

NHRIs as part of the system of checks and balances

During the last 3 years, the Ombudsman has filed 8 cases in the Constitutional Court. In 2021, for example, he filed a case on personal income tax. The Ombudsman successfully argued that the norms of the law "On Personal Income Tax", insofar as they provide for the application of personal income tax to a performer of economic activity even if the economic activity has been performed at a loss, are contrary to the economic nature of personal income tax and are not fair. On 7 January 2022, the Constitutional Court ruled that the contested provision does not comply with Article 105 of the Constitution.

References

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Functioning of the justice system

The Ombudsman had the opportunity to investigate a case on access to court in asylum procedures. While it concluded that the current regulatory framework ensured minimum standards on the right to a fair trial, namely as the case was heard by a first instance court,

it also stressed that the fact that such court's decision cannot be appealed poses potential risks for effective access to justice. The Ombudsman therefore highlighted the need to consider improving the regulatory framework so as to provide for the possibility to appeal against decisions of courts of first instance in asylum procedures, as is the case in most European Union member states.

References

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- <https://www.tiesibsargs.lv/news/lv/jau-ritdien-tiessaistes-diskusija-par-tiesibam-uz-taisnigu-tiesu-patveruma-lietas>

Role of the NHRI in contributing to the effective functioning of the justice system

On 21 May 2021 the Ombudsman organized a public discussion with representatives from the Parliament, Administrative Case Department of the Supreme Court, Administrative regional court, Ministry of Interior, Ministry of Justice and the Office of Citizenship and Migration to discuss the possible violations of the right to a fair trial that can derive from the fact that, according to existing rules, decisions by first instance courts in asylum cases cannot be appealed, and cases may be heard solely by written procedure.

Media freedom, pluralism and safety of journalists

Media pluralism

The quality of public media has improved significantly in recent years, and various types of broadcasts are provided (informative, educational, entertaining) on different topics and for different groups of society. Electronic communications providers offer various programmes on Latvian commercial media channels, as well as foreign channels (in English, German, French, Lithuanian, Estonian, Russian).

The pandemic highlighted the huge impact that social media has on society. In social media, a large part of content relates to unverified facts, deliberately distorted facts, and disinformation. There were various public debates on media literacy in the course of 2021 in Latvia and public institutions (e.g., the Ministry of Culture) carried out various campaigns to promote media literacy. (1)

Following the Russian invasion of Ukraine on 24 February 2022, the National Electronic Mass Media Council banned the distribution of many channels in Russian. These decisions were based on the Electronic Mass Media Law, which prohibits hate speech, and propaganda of war and armed conflict. This law also incorporates the requirements of the Audio-visual Media Services Directive, which prohibits propaganda of violence, war, and armed conflict. On a positive note, public media in Russian (rus.lsm), active to date only on the internet, resumed work on terrestrial television. The Ombudsman considers this as a very positive step that will allow people who speak Russian to receive high-quality, objective information in Russian on current developments.

Safety of journalists

During the pandemic, some politicians as well as private individuals and associations engaged in smears against journalists. Disinformation about Covid-19 and vaccines was widespread. When journalists denounced fake news, they often faced verbal and even physical attacks, as well as harassment and persecution.

In several cases, politicians engaged in unconstructive criticism and verbal attacks against public media challenging their position, or sharing different views. For example, after several judgements by the Constitutional Court advancing equality for same-sex couples, the political party National Alliance criticized the media for not reflecting the opinion of the conservative members of public. On another topic, in autumn 2021, a populist member of the Parliament threatened that, if he was in power, journalists would lose their jobs for allegedly failing to accurately reflect the number of demonstrators at a rally.

In February 2022, a court judgment was handed down at first instance against a person who had been harassing for a long time an investigative journalist. On 11 March, Riga City Vidzeme District Court found the accused guilty of persecution of a journalist and punished him/her with temporary deprivation of liberty for two months.

Role of the NHRI in promoting and safeguarding an enabling environment for media and freedom of expression

The Ombudsman appeared on the Latvian radio program “Doma laukums” (The Dome square) regarding the suspension of several Russian TV channels in connection with alleged violations of electronic media regulations. The Ombudsman emphasized that when the broadcast of several channels is suspended, authorities should make sure that users have access to a range of equivalent and diverse programmes and channels. Upon examining implications of the decision on freedom of expression, the Ombudsman emphasized the need for diversity of opinion in a democratic society, as well as the

importance of ensuring respect of gender equality and of countering the spread of hate speech.

The Ombudsman also organised a public debate on "Art - Freedom or the Right to Shock", where it was emphasized that art is one of the forms of expression protected by freedom of expression. Discussions promoted an exchange on the freedom of artistic creation and the readiness of the society to accept the unusual and the different. (2)

References

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National Library of Latvia webinar on media literacy

[https://www.youtube.com/watch?v=qTII7cp07Qo;](https://www.youtube.com/watch?v=qTII7cp07Qo;https://www.facebook.com/lmepadome/videos/821030805199620https://www.lmepadome.lv/news/params/post/3370645/latvian-media-ethics-council-invites-to-attend-the-closing-event-of-media-ehttps://www.facebook.com/balticmediacentre/videos/607951950441460https://www.tiesibsargs.lv/news/lv/starptautiskaja-cilvektiesibu-diena-tiesibsargs-rikos-diskusiju-maksla-briviba-vai-tiesibas-soket)

Association "Latvian Media Ethics Council" online event on the opening of the Media Ethics Month

[https://www.facebook.com/lmepadome/videos/821030805199620](https://www.facebook.com/lmepadome/videos/821030805199620https://www.lmepadome.lv/news/params/post/3370645/latvian-media-ethics-council-invites-to-attend-the-closing-event-of-media-ehttps://www.facebook.com/balticmediacentre/videos/607951950441460https://www.tiesibsargs.lv/news/lv/starptautiskaja-cilvektiesibu-diena-tiesibsargs-rikos-diskusiju-maksla-briviba-vai-tiesibas-soket)

and closing event "Challenges of Infodemic: Can and Should We Fight It?"

[https://www.lmepadome.lv/news/params/post/3370645/latvian-media-ethics-council-invites-to-attend-the-closing-event-of-media-e;](https://www.lmepadome.lv/news/params/post/3370645/latvian-media-ethics-council-invites-to-attend-the-closing-event-of-media-ehttps://www.facebook.com/balticmediacentre/videos/607951950441460https://www.tiesibsargs.lv/news/lv/starptautiskaja-cilvektiesibu-diena-tiesibsargs-rikos-diskusiju-maksla-briviba-vai-tiesibas-soket)

Baltic Centre for Media Excellence discussion "Comprehensive Approach and Advancement of Media Literacy in Georgia, Latvia, Moldova and Ukraine":

[https://www.facebook.com/balticmediacentre/videos/607951950441460](https://www.facebook.com/balticmediacentre/videos/607951950441460https://www.tiesibsargs.lv/news/lv/starptautiskaja-cilvektiesibu-diena-tiesibsargs-rikos-diskusiju-maksla-briviba-vai-tiesibas-soket)

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Corruption

On 4 February 2022 the new Whistleblowing Law has entered into force. The law is meant to ensure adherence to EU rules on the establishment of alert channels and protection guarantees for whistle blowers, provided for by the Directive of the European Parliament and of the Council on the protection of persons reporting breaches of European Union law. The new law expands the circumstances in which an alert can be issued and provides that if the whistle bower has a reason to believe that reporting to the competent

authorities may have adverse consequences, he or she may decide to rather report on the issue publicly, for example to the media.

References

- <https://likumi.lv/ta/id/329680-trauksmes-celsanas-likums>

NHRI's recommendations to national and regional authorities

In 2021, the Ombudsman found a breach of good governance in the actions of the State Police when considering a whistle blower's report. The whistle blower, who had reported alleged violations in the actions of the State Police senior management, was transferred to the same district where later the senior management official who was the object of the report was also transferred. Following the opinion of the Ombudsman, the transfer order of the whistle blower was revoked.

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

Actions taken by the NHRI to promote and protect rule of law and human rights in the crisis context

The Ombudsman acknowledges that the Covid-19 crisis has caused divisions and vulnerabilities in society and has also cast doubt on the rule of law and democracy in Latvia.

Some people questioned the existence of the COVID-19 pandemic, asking the Ombudsman for support and active intervention on their concerns. People also reported various cases where they felt that the government's procedures were not effective and appropriate, or where practices were proving inadequate. The Ombudsman regularly provided his assessment on the admissibility of restrictions, and informed about the legal remedies available to rights holders.

The deterioration of the epidemiological situation in the country and the overload of the healthcare system in the autumn of 2021 are, in the Ombudsman's view, a consequence of the government's failure to take coordinated and collective decisions, and of existing divergences among ministries in various sectors. This prevented the authorities to timely adopt the necessary measures, and led to a situation where the population was eventually faced with particularly significant human rights restrictions. The Ombudsman repeatedly

approached the government and the legislature on various issues regarding the management of the COVID-19 crisis, including to alert on the need to improve the conditions for granting support, to ensure closer cooperation with non-governmental organizations and to better communicate and explain relevant decisions to the public.

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

In the spring of 2021, after the revocation of the state of emergency, on-site inspection visits resumed in institutions within the National Preventive Mechanism (NP). A total of 32 visits were carried out by the Ombudsman's office as NPM during 2021. Due to circumstances, the institutions to visit and the timings of the visits were chosen with great care and the visits were carried out in strict adherence to the epidemiological security measures in force, in order not to put the residents of the institutions visited at risk.

On 1 March 2022, on-site consultations were also resumed at the Ombudsman's Office. Until then consultations were available by phone, email, or mail.

Lithuania

Seimas Ombudsmen's Office

Independence and effectiveness of the NHRI

International accreditation status and SCA recommendations

The Seimas Ombudsmen's Office of the Republic of Lithuania was accredited with A-status in March 2017 (1).

The SCA noted that the enabling law does not provide an explicit promotion mandate or a mandate to interact with the international human rights system and encourage ratification or accession to international human rights systems. Recognising that, in practice, the Lithuanian NHRI undertakes functions in these areas, the SCA encouraged it to continue doing so and to advocate for legislative amendments that would explicitly include a mandate for these activities.

Further, the SCA acknowledged the Ombudsman's engagement with other Ombuds institutions and civil society in Lithuania and encouraged the NHRI to continue to develop, formalise and maintain working relationships, as appropriate, with other domestic institutions established for the promotion and protection of human rights.

Finally, the SCA noted that the enabling law is silent on whether and how many members enjoy functional immunity for actions taken in their official capacity in good faith. It recommended that the NHRI's legislation should include provisions to protect members from legal liability for acts undertaken in good faith in their official capacity.

References

- (1) <https://www.ohchr.org/Documents/Countries/NHRI/GANHRI/SCA%20Final%20Report%20-%20March%202017-%20English.pdf>

Luxembourg

Consultative Human Rights Commission of Luxembourg

Impact of 2021 rule of law reporting

Follow-up by State authorities

The Consultative Human Rights Commission of Luxembourg states that there have been several follow-up state initiatives that would tackle the issues reported in the 2021 ENNHRI Rule of Law Report. However, it is not clear whether these actions or initiatives are the results of a direct impact of 2021 ENNHRI rule of law report.

In Luxembourg there have been political discussions about media pluralism. However, the situation remains problematic. The independent Luxembourg authority for controlling audio-visual content highlighted some deficiencies/shortcomings in their recent opinion.

Furthermore, the Parliament has voted a new legislation on financial aid for professional journalists. It must be noted that the journalist association ALJP remains sceptical and critical about both the content of the law and its drafting process.

Last but not least, the draft Whistle blower legislation has finally been published.

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3. Cordula Schnuer, *L'accès à l'information demeure problématique*, Paperjam, 22.07.2021, <https://paperjam.lu/article/acces-a-information-suppressio>

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- Draft whistleblower legislation:
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- Association luxembourgeoise des journalistes, 22.02.2021,
<http://journalist.lu/fr/assez/>

Impact on the Institution's work

The Consultative Human Rights Commission of Luxembourg has been focussing on rule of law questions mostly in a transversal manner in all publications and recommendations.

References

- <https://ccdh.public.lu/fr/avis.html>

Follow-up initiatives by the Institution

Due to a lack of capacity and resources, the NHRI was not able to take any specific follow-up initiatives.

NHRI's Recommendations to National and European policy makers

- Organise compulsory and inclusive meetings/exchanges with stakeholders to discuss the findings of the rule of law report (for example in the interministerial committee of human rights lead by the Ministry of Foreign Affairs)
- Oblige the government (and parliament) to respond or justify why they are not following the institution's recommendations

Independence and effectiveness of the NHRI

International accreditation status and SCA recommendations

The Luxembourgish NHRI was last reaccredited with A-status by the Sub-Committee on Accreditation (SCA) in November 2015 (1). The next reaccreditation of the institution is scheduled for March 2022.

In its 2015 review, the SCA recommended that the selection and appointment process for members of the Luxembourgish NHRI include greater representation from diverse segments of society. Moreover, the SCA encouraged the NHRI to advocate for changes to its enabling law to provide for remunerated full-time members in its decision-making body. The SCA also called on the NHRI to advocate for the inclusion of provisions that guarantee protection from actions by staff and members of the NHRI undertaken in good faith in their official capacity.

Further, the SCA recalled that it is preferable for a NHRI to have the explicit power to table reports directly in the legislature, rather than through the Executive, and in doing so to promote action on them.

The SCA also found that the Luxembourgish NHRI's resources, including its staff complement and financial resources, were not sufficient to effectively carry out its mandate. Thus, the SCA encouraged the institution to continue to advocate for processes to ensure financial autonomy, and sufficient and sustainable State funding.

Finally, the SCA noted that, at that time, the Luxembourgish NHRI was not systematically consulted on draft legislation by the Executive. The SCA commended the institution for continuing to produce reports and recommendations despite this.

References

- (5) [https://www.ohchr.org/sites/default/files/Documents/Countries/NHRI/GANHR I/SCA_FINAL_REPORT - NOVEMBER 2015-English.pdf](https://www.ohchr.org/sites/default/files/Documents/Countries/NHRI/GANHR%20I/SCA_FINAL_REPORT_-_NOVEMBER_2015-English.pdf)

Regulatory framework

The situation of the Luxembourgish NHRI in terms of its independence, effectiveness and regulatory framework is balanced.

It is, though, to be noted, that the CCDH has invested a lot of time and resources in the screening of the Covid-19 legislation. At the same time, working on other time- and

resource heavy projects such as the biannual report on human trafficking led to the result that some other important projects could not be finalised within a reasonable timeframe. However, the NHRI has received additional funding for human resources, which is expected to improve the situation.

There have been no significant changes in the regulatory framework after the 2021 ENNHRI Rule of Law Report. It is to be noted, though, that Covid-19 measures introduced at the national level has impacted the ways of working of the NHRI (f. ex. Access to building and working in the office, attending in-person meetings).

The Consultative Human Rights Commission of Luxembourg (the CCDH) is established by law as an independent state institution and does not have a constitutional basis. The Commission has the mandate to contribute to access to justice for individuals, including through awareness-raising.

The CCDH believes that the NHRI regulatory framework should be further strengthened. The NHRI's role could be enshrined in the Constitution. In the context of the current constitutional reform in Luxembourg, the Parliament has the intention to grant the Ombudsman a constitutional basis. The equality body, the Ombudsman for the rights of the child and the CCDH however "only" have a legal basis. The CCDH recommended considering creating a constitutional basis for the latter institutions as well.

Moreover, it would be useful to consider reinforcing the impact of the NHRI's recommendations, for instance by explicitly obliging the government and/or the parliament to respond and justify their (in)actions (at the very least give a timely and reasoned response).

References

- CCDH, Avis sur la réforme de la Constitution, https://ccdh.public.lu/dam-assets/dossiers_th%C3%A9matiques/constitution/avis/R%C3%A9vConstit-Avis-CCDH-v10-final.pdf

Enabling and safe space

At least some relevant state authorities have good awareness of the NHRIs' mandate, independence and role of the NHRI but it largely depends on the different state authorities. While some seem to be unaware of the existence, the independence, the mandate and the role of a NHRI (mistaking it for an NGO), an increasing number of state authorities seem to become aware of the NHRI's mandate.

Some ministries and administrations, with whom the CCDH is, until now at least, rarely working with (for instance agriculture, environment, SMEs ...), are most likely unaware of the NHRI's mandate independence and role. The NHRI could maybe proactively reach out to these actors in order to raise their awareness and reinforce the transversal approach to human rights.

In addition, unfortunately, the Luxembourgish NHRI does not have adequate access to information and to policy makers and it is not involved enough in all stages of legislation and policy making with human rights implications.

Overall, the CCDH has access to information and can access to most of the data it is requesting. But the access largely depends on the authorities involved. Some ministries or administrations are not very cooperative which could be due to the general lack of collecting disaggregated data in Luxembourg. Better data collection and collaboration is therefore still necessary. Others take their time to respond, only respond partially or do not respond at all. This could also be a result of the lack of awareness of the NHRI's mandate. Some ministries and administrations fully cooperate and respond to the CCDH's requests for information and meetings.

Another more general flaw is that Luxembourg's legislation is mostly not consolidated, which makes it rather difficult and laborious to assess the applicable law. Legislation should be easily accessible not only for the CCDH, but for the public as a whole.

The same could be said about the case law. The government has recently published a national database with case law. However, it seems like the relevant authorities only publish a selection of decisions on the database. (Anonymised) case law should thus also be more accessible and, if possible, even linked to the relevant legislation.

Another concern raised by the Commission is the fact that the addressees of the NHRI's recommendations are not legally obliged to provide a timely and reasoned reply. There are no such measures or practices in place to ensure authorities' timely reply. The responsiveness largely depends on the Ministry and the administration (and its public officials/employees) involved as well as on their commitment to a human rights based approach. For instance, during a meeting in the context of the CCDH's role as the National Rapporteur on Human Trafficking, one minister refused to cooperate and instructed his administration not to share "internal" information with the Rapporteur. The director and employees of his administration previously cooperated with the NHRI.

In terms of measures in place necessary to protect and support the NHRI, heads of institution and staff against threats and harassment and any other forms of intimidation (including SLAPP actions), so far, the Luxembourgish NHRI has not experienced a pressing

need for special protection. The Luxembourgish NHRI does not have any form of special protection against such threats or attacks. Although, its deliberations and meetings are protected by a legal confidentiality clause. However, during a meeting, a minister has questioned the NHRI's role as an independent human rights advisory body in the context of the Covid-19 pandemic. This does not amount to a threat or harassment. Anyway, it may serve as an indication that some ministers tend to question the NHRI's role, value and significance. Some other members of the government most likely share the minister's opinion.

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

The Commission has taken actions to address to improve its functioning by sporadically raising attention to issues linked to the Paris Principles (via the Commission's opinions, communications, press conferences, etc.), especially regarding its efficiency and independence, the role of civil society, etc. The NHRI has also applied for and received additional human resources to enhance the NHRI's efficiency. The CCDH has not specifically acted upon the Recommendation 2021/1 of the Committee of Ministers of the Council of Europe on NHRIs.

References

- See for instance the opinions on the Covid-19 laws:
<https://ccdh.public.lu/fr/avis.html>

NHRI's recommendations to national and regional authorities

- Put in place a follow-up procedure or an obligation to respond for public authorities
- Introduce a constitutional basis for functioning of the NHRI
- Provide more human resources for the NHRI
- Improve general knowledge about the NHRI's role, mandate and independence
- Ensure better data collection by public authorities and communication with the NHRI

Human rights defenders and civil society space

The Consultative Human Rights Commission of Luxembourg assessed that human rights defenders and civil society space situation in Luxembourg has not changed since last year. While some of the issues reported remain relevant, as illustrated below, the CCDH overall assesses the situation as balanced.

Laws and practices negatively impacting on civil society space and/or on human rights defenders' activities

Social tensions seem to be more generally on the rise. Freedom of assembly in the context of Covid laws is currently limited to a specific area in Luxembourg City. This was justified by the fact that there have been violent physical and verbal outbursts by protesters.

On 10th January 2022, the Minister of Justice proposed a draft legislation aiming at transposing the EU Whistle blower Directive 2019/1937 into national law. It is worth noting that Luxembourg failed to respect the deadline set by the Directive (17th December 2021). While it seems that a press association has been consulted during the drafting process of the draft national legislation, at least to a certain degree, some of the other relevant stakeholders have not been consulted in advance. They have however been asked to issue an opinion on the draft legislation. The CCDH's opinion has not (yet) been formally requested. Nonetheless, it is currently analysing its scope and content in order to assess whether or not it offers sufficient protection for whistle blowers.

Access to and involvement of civil society actors in law and policy making

As reported in 2021 ENNHRI Rule of Law Report, government's communication and transparency, as well as access to information, especially for journalists, still need improvement.

Threats and attacks, including strategic litigation against public participation (SLAPPs)

The CCDH did not assess whether or not any specific lawsuits amount to SLAPPs. However, politicians, private individuals and businesses have sued journalists, artists, scientific experts and civil society actors speaking out on matters of public interest. For instance, some prominent individuals involved in anti-COVID-19 and anti-vaccination protests sued a newspaper outlet. Said newspaper previously portrayed some of the leaders of these protests in a critical article. A couple of months later, a member of parliament sued a journalist of the same outlet for comments made during a live radio event, where he criticised the politician.

Anti-COVID-19 and anti-vaccination groups filed a lawsuit against a scientific expert (virologist) because of a statement of his in which he strongly criticised people who decided not to be vaccinated.

Some years ago, an artist was sued by politicians and prosecuted because of the criticism and the language used in a song. Also, an NGO was sued by a company for publicly criticising the company of contributing, through its value chain, to human rights abuses.

References

- M. Bucher and S. Wiltgen, *Slapp-Klagen gegen Journalisten*, 17.12.2021, <https://www.tageblatt.lu/headlines/slapp-klagen-gegen-journalisten-wenn-das-rechtssystem-zum-einschuechtern-missbraucht-wird/>
<https://5minutes.rtl.lu/actu/luxembourg/a/1832212.html>

NHRI's role in promoting and protecting civil society space and human rights defenders

The CCDH participated in an initial "brainstorming" event organised by the government in order to gather input for the development of the project "shelter cities" for human rights defenders. The aim of this governmental project aimed at setting up a procedure for the reception of individual human rights defenders in Luxembourg for a predetermined rest period, via the protectdefenders.eu website. Since the abovementioned initial meeting, there has not been any noticeable progress, at least not to the CCDH's knowledge. However, the government reiterated its commitment to the project "shelter cities" in its candidacy pledge for the Human Rights Council 2022-2024.

In addition, the Luxembourgish NHRI has issued recommendations regarding the protests in the context of Covid-19 and the need for protection for journalists. It also highlighted the importance of valuing scientific expertise. More specifically, the CCDH made an appeal to the government to tackle disinformation and the risk of radicalisation, to take into account the diverse reasons and motivations of people who have not yet been vaccinated by adapting its strategy accordingly and maintaining an inclusive approach, to avoid marginalisation and stigmatisation, to improve its communication strategy (needs to be clear, continuously adapted and based on scientific data) by including independent experts, etc.

References

- Luxembourg Candidacy for the human rights council 2022-2024, <https://maee.gouvernement.lu/dam-assets/directions/d1/candidature-cdh/EN-Brochure-candidature-CDH.pdf>
- See, for example, CCDH, *Avis sur les mesures de lutte contre Covid-19*, p. 2, https://ccdh.public.lu/dam-assets/dossiers_th%C3%A9matiques/pand%C3%A9mie/avis/2021/Avis-CCDH-PL7924-final.pdf

NHRI's recommendations to national and regional authorities

- Ensure and protect the right to access to information for journalists
- Fully implement the whistle blower directive and protect against SLAPPs
- Finally put in place the "*Shelter cities*" project (for foreign human rights defenders)

Checks and balances

The CCDH considers that the situation of the checks and balances system in Luxembourg has remained balanced. In the institution's opinion, however, the Covid-19 pandemic continues to put the checks and balances on a stress test. The situation has not improved, nor has it become worrying. However, as the time passes, it becomes more and more difficult to justify some worrying practices or habits in the legislative procedure.

Most of the CCDH more recent findings concerning negative impact on checks and balances mechanism in Luxembourg are related to the Covid-19 pandemic consequences, and are illustrated in the dedicated section on the impact of COVID-19 on rule of law and human rights protection, below.

In addition, there is overall a lack of a judicial review "culture" in Luxembourg. State authorities are only rarely accused and held accountable in courts for example for lack of effective implementation of judgments of supranational courts or treaties as well as for unconstitutional legislation. This could be due, at least in part, to the fact that Luxembourg does not have any national independent authority invested with the power to file formal human rights complaints to the courts or represent individuals before the courts.

The judicial authorities, or more precisely the public prosecution, are currently occupying a predominant role in the “protection” of children and are involved in the proceedings that can lead to the removal of children from their families and/or other measures deemed necessary for their protection and their well-being. Children that do not break the law can also be subject to such measures and they have less procedural guarantees than adults do. The rule of law is thus currently flawed when it comes to minors. After lengthy discussions stretching over more than a decade and with the help of an external expert of the UN CRC, the legislation is finally about to change and there is going to be a clear-cut separation of the “protection system” and the “criminal justice system” for children. While the Minister of Justice is seemingly fully supporting the change of legislation, it is unclear whether it is going to be accepted by the public prosecution and the judicial authorities.

References

- <https://ccdh.public.lu/dam-assets/avis/2019/avis-pl-7276-protection-de-la-jeunesse.pdf>

Trust amongst citizens and between citizens and the public administration

The Luxembourgish NHRI does not have the impression that state authorities sufficiently foster a high level of trust. There is a risk that public trust decreased during the pandemic because of the lack of transparency and coherence in the government’s response to Covid-19. The government and parliament have launched sporadic initiatives to improve participation and transparency. However, most of these initiatives were not really participatory, nor transparent. Recently, the government improved its exchanges with the public by organising “Live” Q&A sessions, sometimes together with scientific experts. It remains to be seen whether these activities can be considered as a good practice or not.

Unfortunately, the current reform of the Constitution is a good example of how not to foster trust between citizens and the public administration. After political tensions between some of the major political parties, the parliamentarians involved in the reform have decided to divide the planned reform into four different chapters and votes, rendering the reform process even more inaccessible – for legal professionals and citizens alike. In addition, the initial idea of holding a referendum has been abandoned. The same happened to a planned large-scale information campaign. Instead, each chapter of the reform seems to be preceded only by a televised presentation and a one-time information session has been organised during which citizens could ask their questions to the

members of parliament in charge of the reform. In all fairness, there has also been a public consultation on how to modify the Constitution. Overall, this approach was unsatisfactory and the result is a rather disappointing text that does not meet the required standards of a modern democracy.

References

- (3) CCDH, Avis sur la réforme de la Constitution, https://ccdh.public.lu/dam-assets/dossiers_th%C3%A9matiques/constitution/avis/R%C3%A9vConstit-Avis-CCDH-v10-final.pdf

NHRIs as part of the system of checks and balances

The CCDH is publishing opinions and other activities on various topics. Its recommendations are mostly addressed to the government; however, it also addresses recommendations to the legislative and judicial authorities. It addresses the rule of law issues in a transversal manner in its opinions, most recently in its opinions in the context of Covid laws. It also meets with government officials and its administrations, participates as an observer in interministerial committees and addresses letters to the government in order to point out problematic practices and to ask for explanations. Most of its interventions are published on its website and/or presented during press conferences.

The CCDH is also a member in two consultative assemblies: The independent audio-visual media authority of Luxembourg (ALIA) and the newly created consultative commission on video surveillance. Its independence is very important in that respect and it reserves itself the possibility to issue dissenting opinions.

The CCDH is monitoring the government's national and international legal and political commitments, for instance, by submitting and presenting alternative reports to various organs of the treaties.

As already mentioned above, recently, one Minister was reluctant to cooperate with the CCDH and prevented his administration to communicate important information to the CCDH in the context of its human trafficking report. Other ministries sometimes do not respond to the requests of the CCDH, but, overall, the relationship with state authorities and non-state bodies has improved a lot over the past few years.

NHRI's recommendations to national and regional authorities

- Strengthen the resources and powers of the NHRIs for instance by legally obliging the Government and/or Parliament to provide a reasoned reply within an appropriate timeframe Better/more training for judicial authorities regarding human rights
- Strengthen the position of the Press and create an explicit right to access to information for journalists

Functioning of the justice system

The CCDH has not been made aware of any particularly worrying shortcomings. However, in its recent human trafficking report, it found that there is a lack of human resources in the judiciary system that needs to be addressed. Moreover, the judicial is in need of additional human rights training. Some decisions showed legal inconsistencies, insufficient access to compensation for victims and a risk of victim blaming.

Also, as already mentioned above, the justice system for children is in dire need of improvement. The on-going legislative reform aims to ensure clear separation of the "protection system" and the "criminal justice system" for children to enhance the protection of rights of the children.

Also, access to legal aid, specialisation and training of judges are in need of improvement. As already mentioned above, the CCDH has found that additional human rights trainings and specific trainings regarding victims and certain types of crimes are necessary, because some judges seem to adopt an approach that could be interpreted as focussing too much on the victim's behaviour.

Furthermore, access to compensation for victims of human trafficking is also insufficient.

Third country nationals, who are not victims of human trafficking but may very well be victims of other forms of labour exploitation, are insufficiently protected under Luxembourgish law.

Access to legal aid is insufficient and in need of improvement. Substantial modifications have been announced and it remains to be seen whether these are going to be sufficient or not.

Role of the NHRI in contributing to the effective functioning of the justice system

The CCDH has raised these issues in its 3rd report on human trafficking. It published the report, presented it to the press and to the human trafficking working group of the government.

References

- Rapport sur la traite des êtres humains (Années 2019-2020):
https://ccdh.public.lu/dam-assets/dossiers_th%C3%A9matiques/traite_des_%C3%AAtres_humains/rapports/Rapport-TEH3-03122021-FINAL.pdf

NHRI's recommendations to national and regional authorities

- More/better human rights (and specialisation) training for judges
- Improving access to legal aid, remedies and compensation
- Raising awareness and usefulness of NHRI contributions for the justice system

Media freedom, pluralism and safety of journalists

In the opinion of the Consultative Human Rights Commission of Luxembourg, the situation of media freedom, pluralism and safety of journalists in Luxembourg deteriorated comparing to 2020 and is worrying.

The situation is getting worse for journalists, especially those who are working on Covid-19. They are victims of verbal attacks and threats. Also, they are subjected to alleged "legal harassment". Opponents of the government's Covid-19 strategy have (mostly verbally) attacked journalists. A politician of a far-right political party has shared the private phone number of a journalist on a social media platform. Members of that same political party are suing journalists for criticizing them.

Furthermore, as mentioned above, the right to access to information for journalists is still not fully respected.

Role of the NHRI in promoting and safeguarding an enabling environment for media and freedom of expression

The CCDH has raised these issues in its various opinions and repeatedly advocated in favour of a right to access to information for journalists.

References

- https://ccdh.public.lu/dam-assets/dossiers_th%C3%A9matiques/constitution/avis/R%C3%A9vConstit-Avis-CCDH-v10-final.pdf
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- Paperjam.lu, *Des journalistes menaces dans l'exercice de leur profession*, 7.1.2020, <https://paperjam.lu/article/journalistes-menaces-dans-exer>
- David Marques, *A côté de la plaque*, 7.12.2021, <https://lequotidien.lu/editoriaux/a-cote-de-la-plaque/>

NHRI's recommendations to national and regional authorities

- Right to access to information for journalists
- Transposing the Whistle blower directive
- Protection against SLAPPs

Corruption

Mostly the lack of capacity and resources lead to the fact that the CDDH has not more specifically tackled the question of corruption. Related issues are not a current priority in the CCDH's work and therefore have not yet been considered.

NHRI's recommendations to national and regional authorities

- Implementing the Whistle blower's directive

- Putting in place a comprehensive and wide-ranging transparency register for politicians

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

The CCDH finds that the situation concerning COVID-19 measures in Luxembourg has deteriorated and it is worrying.

While some measures aimed at the general public have been lifted, the measures are now aimed at certain categories of people. They are rather strict and prevent them from accessing certain parts of public and private life, the aim being exerting pressure in order to convince people to get vaccinated. Plus, decision-making is still not very transparent and the legislative process is not very inclusive nor comprehensive. Democratic processes and institutions are weakened.

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

Measures for the general public have largely phased out and been replaced by strict measures for unvaccinated persons and persons who do not fit in the major categories. For instance, it remains unclear how people who are vaccinated with vaccines not yet recognised by the EU are being treated.

Legislation is still being revised on a monthly or bimonthly basis, which, at least in theory, is rather positive since human rights restrictions need to be reviewed on a regular basis. In practice, however, this approach has some serious shortcomings. Sometimes there are only three days between the presentation of a draft legislative proposal by the government and the vote by parliament, thus leaving little or no time to parliament and the advisory bodies to do their work. The overall “legal” quality of the legislation is decreasing with each modification. It is increasingly difficult for the general public to understand and therefore follow the rules. As an example, in a timeframe of barely 4 weeks, the Covid legislation has been substantially amended three times. It did not seem like the information justifying these measures had not already been available before. We therefore encourage the government and parliament to take the time required to draft qualitative legislative proposals. Even if the pandemic requires sometimes swift and emergency decision-making, this approach does not seem justified in every case.

It is certainly a good practice that parliament has always been involved in the drafting and voting process of Covid-19 laws. However, the decision-making process remains rather

foggy and the same goes for the justification of some of the measures. There is no transparency and inclusive approach.

Recently, there has been a request for input by parliament and the government regarding the question of whether or not compulsory vaccination should be introduced. However, the actors and institutions involved had to issue their opinion within 3 working days. There has been a debate in Parliament – however, it is unclear whether the different opinions and arguments have been properly discussed or even analysed (the deadline for submission was on the 18th on January and the debate in parliament was on the 19th. The government seems to have taken its decision that same day, or even before). The aim of the consultation appears to have been mostly of a symbolic nature.

It must also be noted that some measures circumvent the ordinary legislative procedure - they are instead based either on recommendations (which seem to be considered as *de facto* compulsory, this is the case for the education sector or persons living in institutions) or “ordonnances” taken by the Health Directorate (for instance country entry conditions). No explanation has been offered by the government so far for this approach which raises serious rule of law questions.

In terms of possible medium and long-term implications for rule of law and human rights protection in Luxembourg, arising from the COVID-19 outbreak and the measures taken to address it, the CCDH stressed that there are calls for stricter freedom of assembly and protest rules because of violent Covid-19 protests and the government seems to be willing to follow these calls.

References

- David Marques, Manifestations antirestrictions: “Il nous faut être plus fermes », 14.1.2022, <https://lequotidien.lu/police-justice/manifestations-antirestrictions-il-nous-faut-etre-plus-fermes/>

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

Covid-19 measures also affected the NHRI’s work and access to its premises. Meetings of more than 10 people had to be organised under a “Covid check regime” meaning attendees either need to have proof of vaccination, recovery or a negative test result. Since this is a legal sanitary requirement, the CCDH complied with them.

Other than that, the NHRI decided to continue to allow people to enter its premises without having to show abovementioned proof, while respecting other sanitary rules, in order to adopt an inclusive approach and remain as accessible as reasonably possible.

Efforts by state authorities to mitigate challenges

The government asked a group of independent scientists to write a reasoned opinion on the question of compulsory vaccination. This is a good practice as it finally showed on what basis the government wanted to take its decisions. However, as already mentioned above, the concerns and opinions raised by other institutions and organisations were not taken into account.

There is emergency and recovery funding which is of course important in the context of the pandemic. The CCDH does not have any information whether or not this kind of funding can be seen as a good practice.

Actions taken by the NHRI to promote and protect rule of law and human rights in the crisis context

The CCDH has published numerous opinions and reports, given interviews, exchanged with Ministers and civil society. However, overall, there has been no or only little follow-up on the CCDH's recommendations and questions.

References

- <https://ccdh.public.lu/fr.html/>

NHRI's recommendations to national and regional authorities

- Obliging public authorities to give a reasoned response or follow-up to the CCDH's recommendations
- Taking the required amount of time and resources to improve the Covid laws, while adopting a transparent and inclusive approach
- Adequate legal basis for all Covid measures

Malta

Independence and effectiveness of the NHRI

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 (1).

On July 2019, the Bill on the Human Rights and Equality Commission was presented to the Maltese Parliament, which would establish an NHRI (2). ENNHRI, alongside civil society organisations and other actors, has supported the establishment of a Maltese NHRI and advised national actors in their efforts (3). Prior to the submission of the bill to Parliament, the Council of Europe's Venice Commission published its Opinion on the draft bill (4).

As far as ENNHRI is aware, the revised Bill is still being discussed before the relevant Parliamentary Committees, but there has not been considerable progress since 2019. 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 Malta, including the legislature, government, academics and civil society organisations.

References

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- <https://www.parlament.mt/media/101106/4-bill-97-the-human-rights-and-equality-commission-bill.pdf>
- <http://ennhri.org/news-and-blog/ennhri-advised-on-maltas-plan-to-establish-nhri/>
- [https://www.venice.coe.int/webforms/documents/?pdf=CDL-AD\(2018\)014-e](https://www.venice.coe.int/webforms/documents/?pdf=CDL-AD(2018)014-e)

Netherlands

The Netherlands Institute for Human Rights

Impact of 2021 rule of law reporting

Follow-up by State authorities

The governmental pact of the new Dutch government ranks effective action on the rule of law highly. More generally, the Dutch government consistently considers intervening in ECJ cases with a rule of law aspect and has insisted on swift implementation of the rule of law conditionality regulation.

Impact on the Institution's work

The 2021 ENNHRI Rule of Law Report did not substantially impact the Netherlands Institute of Human Rights' work. The Institute already had EU rule of law as a priority because protecting and promoting of human rights in any Member State effectively requires effective EU, European and international structures. It gives shape to this by membership of one of its Commissioners in the Meijers Committee, a well-established group of Dutch lawyers, judges and academics advising independently on EU law matters. The main impact of the Dutch NHRI on the European institutions' rule of law work is bottom-up, in the sense that the Institute has consistently aimed at influencing the Dutch government, Dutch parliamentarians and European parliamentarians for them to remain active on this topic. In doing so the Netherlands Institute of Human Rights has drawn mainly from its own work and expertise.

Follow-up initiatives by the Institution

The Netherlands Institute of Human Rights gave many briefings to civil servants, national and European parliamentarians and national ministers about the topic of the rule of law situation in other member states, but this was not the result of the 2021 report. Given the assumption that a bottom-up approach is most effective, the Dutch NHRI works together with a national alliance of Dutch NGOs, that help amplify the message to the NL and other governments and parliaments that a critical mass is to be built to change the political dynamic at EU level.

Furthermore, it is also worth noting that the Dutch NHRI's Commissioner in January 2022 took part in consultations to feed the European Commission's rule of law monitoring cycle in 2022. Being a member of the Meijers Committee, the Netherlands Institute for Human

Rights' Commissioner provided its feedback on the rule of law situation in Netherlands and European Union within a joint contribution prepared by several Dutch NGOs (Netherlands Helsinki Committee (NHC), Nederlands Juristen Comité voor de Mensenrechten (NJCM), Free Press Unlimited (FPU) Transparency International Nederland (TI-NL), Commissie Meijers).

NHRI's Recommendations to National and European policy makers

Focus on enabling national level change makers, like NGOs, and draw on the expertise of national level NHRIs directly as eyes and ears on the ground, and a source of reliable independent data. Focus less on reporting, and more on enforcement.

Independence and effectiveness of the NHRI

International accreditation status and SCA recommendations

The Netherlands Institute for Human Rights was [re-accredited](#) with A-status in December 2020.

The SCA understood that the NHRI's jurisdiction includes the Caribbean territories of the Netherlands; however, as the Dutch Equal Treatment Act is not applicable in these territories, the Netherlands Institute of Human Rights, which is also an equality body, cannot discharge the full breath of its mandate in these territories. The SCA encouraged the NHRI to advocate for the extension of the Equal Treatment Act to the Caribbean territories of the Netherlands, which the NHRI has consistently done.

On the issue of possible conflicts of interest, the SCA acknowledged that where part time members of the governing body or staff of the Dutch NHRI wish to engage in other paid or unpaid activities, an internal discussion occurs, and a decision is made by the governing body. The NHRI makes relevant details relating to other activities publicly available on its website. However, the SCA noted that there did not appear to be further guidance on what types of activities would constitute a conflict of interest, in legislation, regulations or other binding administrative guidelines. The SCA encouraged the NHRI to advocate for the development of further binding guidance with respect to what constitutes a conflict of interest and the process by which the existence of such a conflict can be determined.

The NHRI reported that its budget was the minimum necessary to carry out its mandate and that it can therefore prioritise a limited number of issues. The SCA encouraged the NHRI to continue to advocate for adequate funding necessary to allow it to address a broad range of priorities, including, for example, the rights of migrants and of the LGBTI community. In the meantime, the new governmental pact, in a push to strengthen various

different independent external supervisors, has systematically raised the NHRI's budget by about 10% as of 2022.

References

- (1) https://www.ohchr.org/sites/default/files/Documents/Countries/NHRI/GANHRI/SCA_Report_December_2020_-_24012021_-_En.pdf

Human rights defenders and civil society space

Laws and practices negatively impacting on civil society space and/or on human rights defenders' activities

The Netherlands Institute of Human Rights' monitoring and reporting have not found any evidence of laws, measures or practices that could negatively impact on civil society space and/or reduce human rights defenders' activities. However, concern raised in the ENNHRI 2021 Rule of Law Report regarding freedom of assembly remains unaddressed. The Institute reported that under the Dutch Public Assemblies Act (wet openbare manifestaties) planned assemblies needed to be pre-notified to the public authorities. Despite this being a procedural requirement allowing authorities to assess security risk and make arrangements on time, sometimes it led to also checking the actual substantive contents of the planned assembly which played a role in decision-making.

Access to and involvement of civil society actors in law and policy making

The Netherlands Institute of Human Rights has not identified any serious shortcomings in national laws and practices regulating access to and involvement of civil society actors in law and policy making.

Threats and attacks, including strategic litigation against public participation (SLAPPs)

The Netherlands Institute of Human Rights has not found any evidence of the abuse of laws or of process laws, including strategic lawsuits against public participation (SLAPPs), to intimidate civil society organisations, rights defenders and other actors, such as journalists, speaking out on matters of public interest.

Checks and balances

The consequences of the so-called 'child benefit scandal' concerning parents who received a day-care child support, subjected to discriminatory, unjustified and disproportionate

treatment by the public authorities, as reported by the Institute in the ENNHRI 2021 Rule of Law Report remain to be fully tackled. The issue of insufficient oversight regarding tax authorities and in general public authorities was raised. The government was in the process of improving the day-care allowance system and reviewing legislation and the practice of the tax authorities. The NHRI received significant incidental additional funding to deal with equality cases stemming from this problem, as well as to develop and provide specific trainings to personnel working in administrative agencies.

NHRIs as part of the system of checks and balances

As already mentioned in ENNHRI 2021 Rule of Law Report, the Netherlands Institute of Human Rights continues to be engaged in awareness-raising and trainings for public authorities on f. ex. equality law, following the so-called 'child benefit scandal' where parents entitled to receive a day-care allowance were subjected to unjustified, unproportionate or discriminatory practices from public authorities. The Dutch NHRI is also handling individual complaints from parents who are victims of such discriminatory treatment, but the Institute has a competence to indicate whether an unequal treatment on the basis of only one ground (race/ethnicity) occurred.

Moreover, the Institute is continuously involved in legislative processes through reporting and advising the government, both as regards new law proposals and existing laws and policies.

References

- <https://mensenrechten.nl/nl/nieuws/nooit-meer-een-toeslagenaffaire-pak-discriminatie-aan>

Functioning of the justice system

Challenges reported in the ENNHRI 2021 Rule of Law Report, regarding respect for fair trial standards and the right to liberty in Netherlands, remain still unresolved. These concerns mostly the problem of lack of motivation of (continuation of) pre-trial detention decision-making by judges. The Netherlands Institute of Human Rights intervened in the case regarding this issue and shared results of its study indicating the systemic nature of this problem.

Media freedom, pluralism and safety of journalists

Safety of journalists is a relevant theme in the Netherlands, particularly after the assassination of the well-known crime journalist Peter R de Vries. The Netherlands Institute of Human Rights will dedicate its next annual report to this theme for that reason.

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 Netherlands Institute of Human Rights, in its Annual Report 2020, published in June 2021, discussed the long-term impact of the COVID-19 outbreak on human rights in the area of employment. The Institute identified challenges related to labour market, such as access to employment and internships, discrimination in the recruitment and selection process for a job. These may lead to long-term unemployment and, subsequently, to poverty and violation of fundamental rights. Moreover, the Institute reflected that employment conditions sometimes do not meet human rights standards, f. ex. working conditions of migrant workers, increasing flexibility of employment contracts leading to insufficient access to social security after termination of the contract.

Actions taken by the NHRI to promote and protect rule of law and human rights in the crisis context

The Dutch NHRI has taken various actions by providing information and advising the government on Acts to be enforced.

Poland

Commissioner for Human Rights

Independence and effectiveness of the NHRI

International accreditation status and SCA recommendations

The Polish NHRI was last reaccredited with A-status in November 2017. The SCA commended the efforts of the Polish NHRI in discharging its mandate effectively despite the challenging political context in which it operates.

In addition, while noting that the Polish NHRI carries out activities that can be considered promotional in nature, the SCA encouraged the NHRI to continue interpreting its mandate in a broad manner and to advocate for amendments to its enabling legislation to give it a more comprehensive mandate to promote human rights.

The SCA also encouraged the Polish NHRI to advocate for amendments to its enabling legislation to require a pluralistic composition in its membership and staff. It acknowledged that the Polish NHRI informed that it is prohibited by law from inquiring about citizens' ethnic, religious or other background, and that in practice its staff is inclusive of members of these groups.

Moreover, the SCA encouraged the Polish NHRI to advocate for amendments to its enabling legislation to protect the Deputy Commissioners and staff members of the NHRI from legal liability for actions undertaken by them in good faith in their official capacity.

Finally, the SCA noted the Polish NHRI's views that it does not have adequate resources to effectively fulfil its mandate, including as the NPM. The SCA encouraged the Polish NHRI to advocate for the funding necessary to ensure that it can effectively carry out its mandate.

References

- (1) [https://www.ohchr.org/sites/default/files/Documents/Countries/NHRI/GANHR I/SCA Report November 2017 - ENG.pdf](https://www.ohchr.org/sites/default/files/Documents/Countries/NHRI/GANHR%20I/SCA%20Report%20November%202017%20-%20ENG.pdf)

Enabling and safe space

The issues raised in last year's report remain unaddressed. These include the tendency of the authorities and relevant bodies, including the Constitutional Tribunal, not to take into account the opinions expressed by the CHR on key issues relevant for civil rights and freedoms and the rule of law. The CHR cooperation with state authorities remains difficult, including due to the authorities' refusal to react on general statements and to take CHR's comments and recommendations into account, as well as the CHR's inability to obtain information on planned bills. The cuts made to the CHR budget over the last years limits the CHR's capacity and ability to act effectively for the protection of fundamental rights. The financial situation of the CHR has partially improved in the second half of 2021 due to a budgetary subsidy accorded by the parliament. However, the means of the Office of the CHR remain not sufficient to fully exercise its missions.

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

As reported in last year's report, 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 shall 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. (1)

Following concerns raised by international and regional bodies, as also expressed in the joint statement of 12 May 2021 promoted by ENNHRI, in collaboration with the OSCE Office for Democratic Institutions and Human Rights (ODIHR), the UN Human Rights Office of the High Commissioner – Regional Office for Europe (OHCHR), the European Network of Equality Bodies (Equinet), the Global Alliance of National Human Rights Institutions (GANHRI) and the International Ombudsman Institute (IOI) (2), that pending a new appointment, on which there were several delays, the Office of the NHRI would have to function for several months without a Commissioner for Human Rights, seriously limiting its effectiveness as an institution, the term of office of the previous Commissioner, Adam Bodnar, which had formally ended on 9 September 2020, was eventually extended until the week before the appointment of a new Commissioner. The new Commissioner, Marcin Wiącek, was eventually elected by the Polish Sejm on 8 July 2021, and that election was subsequently confirmed by the Polish Senate on 21 July 2021. Although in practice the danger of a potential lack of the ombudsman in office ceased with the election of the present ombudsman, the fact that the principle of continuity of service of the CHR as the

national human rights institution has been successfully challenged before the Constitutional Tribunal can still have some negative effects on human rights protection in analogous situations in the future.

References

- (1) <https://trybunal.gov.pl/postepowanie-i-orzeczenia/wyroki/art/11490-pelnienie-obowiazkow-przez-rzecznika-praw-obywatelskich-po-uplywie-piecioletniej-kadencji-do-czasu-objecia-stanowiska-przez-nowego-rzecznika>
- (2) https://ennhri.org/wp-content/uploads/2021/05/Joint-Statement-in-Support-of-the-Polish-NHRI_ENG.pdf

Human rights defenders and civil society space

The effectiveness of human rights as well as of NGO acting as human rights defenders has been, in general, largely undermined with the introduction of the emergency state at the Polish eastern border with Belarus due to migration crisis in this area. The presidential regulation which provided for special security measures applicable in this area has substantially limited or even, for certain categories of people and entities, excluded the right to free movement and access to information. Due to the doubts persisting as to if the measures applied equally to CHR's staff members, the Commissioner has addressed the Minister of Home Affairs and Administration to claim that the CHR's representatives should be allowed to fully exercise their mandate in the area of the state emergency, involving on-site investigations.

Despite some minor incidents (1), the authorities have allowed for CHR's continuous mission in the area, however some of the state organs (National Chief of Police) have been questioning the prior status of CHR mandates with relation to the newly passed bill reforming the law on the protection of the national border and excluding, by this, the exemption of CHR's staff members from restrictive measures provided for in it. The application of the emergency legislation to CHR can have very negative on its mission, in particular on the protection of the rights of migrants and CHR's mandate as a monitoring institution the framework of the UN Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment (OPCAT).

References

- (1) See the case of the Deputy Commissioner and the Council of Europe CHR stopped on their way to the border region:

<https://bip.brpo.gov.pl/pl/node/23494/revisions/24635/view>

Threats and attacks, including strategic litigation against public participation (SLAPPs)

Concerns raised in last year's report as regards threats and attacks on civil society activists remain outstanding. These included restrictions on freedom of assembly, which, while enacted in response to the COVID-19 pandemic, raised concerns as to their legality and proportionality, also exacerbated by a reportedly widespread use of direct coercive measures against demonstrators (gas, 'kettling', stopping), as well as journalists covering demonstrations.

In 2021, concerns were also raised, including by the European Parliament (1), about numerous legal cases brought against rights defenders and activists for the rights of LGBTIQ+ people and for sexual and reproductive rights.

Over the past year, the repression of prosecutors who are opposed to changes in the judiciary has also increased. Overnight prosecutors were delegated to cities away from their place of residence (2). Prosecutor Katarzyna Kwiatkowska for criticizing the actions of the General Prosecutor's Office and the National Public Prosecutor, including a delegation of prosecutors, was sued for payment of PLN 250,000 as compensation.

References

- (1) <https://lgbti-ep.eu/2021/01/12/press-release-the-slapps-against-lgbti-activists-in-poland-are-attempts-at-stifling-democratic-participation/>
- (2) <https://bip.brpo.gov.pl/pl/content/rpo-prokuratorzy-lex-super-omnia-delegacje-zbigniew-ziobro>

Checks and balances

Separation of powers between the executive and the judiciary and recent case-law of the Constitutional Tribunal

One of the main challenges to the rule of law framework in Poland is the recent development of case law of the Polish Constitutional Tribunal, especially the decisions which, in fact, aim to invalid previous judgments of both European Court of Human Rights and the Court of Justice of the EU in cases concerning the independence of Polish judiciary. The Commissioner for Human Rights regularly takes part in the proceedings before the Tribunal to point out to dangers for the fundamental rights protection which may originate from such practice.

Firstly, after the issuance of interim measures in the case C-791/19 R by the CJEU, the Disciplinary Chamber of the Supreme Court requested the Constitutional Tribunal to examine whether the provisions of the TEU, in so far as they result in the obligation of a EU Member State to execute provisional measures relating to the shape of the system and functioning of the constitutional organs of the judiciary of that State, comply with the provisions of the Constitution of Poland. The Constitutional Tribunal ruled that selected TEU provisions, in so far as the Court of Justice of the European Union imposes *ultra vires* obligations on the Republic of Poland as a Member State of the European Union, by issuing interim measures relating to the system and jurisdiction of Polish courts and the procedure before Polish courts are inconsistent with the Polish Constitution (1).

On 7th October 2021 the Constitutional Tribunal, in a case initiated by the Prime Minister, ruled that the provisions of the TEU on the basis of which the judgments of the CJEU C-719/19 and C-204/21 R were issued, were found to be inconsistent with the Polish Constitution (2). The Constitutional Tribunal stated, *inter alia*, that the provisions of the TEU, which authorize to review of the legality of the procedure of appointing a judge, including the review of the legality of the act of appointment of a judge by the President of the Republic of Poland, the review of the legality of the resolution of the National Council of the Judiciary containing an application to the President for the appointment of a judge, as well as a domestic court finding that the judge's appointment process is defective and, as a result, of the judge's refusal recognition of a judge as a judge, are inconsistent with the provisions of the Polish Constitution. Further cases concerning the provisions of the TEU on the basis of which the CJEU applied interim measures against Poland were registered in the Constitutional Tribunal under ref. no. K 5/21, ref. no. K 8/21 (CJEU fines issued to give effect to interim measures) and ref. no. K 1/22 (EU conditionality mechanism).

In addition to the issues mentioned above, there are moreover serious doubts also about the very standing of the Polish Constitutional Tribunal to adjudicate in cases enumerated above. With regard to this, the Commissioner's for Human Rights efforts focused on the necessity to comply with the ECHR judgment in case *Xero Flor v. Poland* which declared that judgments by the Constitutional Tribunal delivered in a panel composed of judges whose nomination was made in violation of Polish constitution are to be considered as a breach of the right to fair trial (Article 6 of ECHR). In order to override the cited decision in *Xero Flor* case, on 24th November 2021 the Constitutional Tribunal declared that Article 6 of the Convention (right to fair trial) does not apply with the Constitution – *de facto* invalidating constitutionally the cited decision *Xero Flor* (3). The Commissioner for Human Rights took part in the proceedings before the Constitutional Tribunal in this case and indicated that such a decision would be detrimental to fundamental human and constitutional rights. Now similar efforts are taken to render some of the ECtHR's judgments ineffective, as proven i.a. by the case lodged by the Prosecutor General on 9 November 2021 before the Constitutional Tribunal following the ECtHR judgments in cases of *Reczkowicz v. Poland*, *Broda and Bojara v. Poland* and *Dolińska-Ficek and Ozimek v. Poland* (case in the Constitutional Tribunal ref. no. K 7/21). The motion of the Prosecutor General aims to declare as unconstitutional the interpretation of Article 6 of the Convention as allowing the judges in individual cases to examine the question of independence of justice and disapply binding decisions of the Constitutional Tribunal which may contravene the right to fair trial.

In context of numerous disciplinary proceedings and other administrative procedures against independent judges and the lack of independence of the Disciplinary Chamber of the Supreme Court (which was suspended by the decision of the CJEU), the activity of the Constitutional Tribunal cast a very serious doubts about as to the procedural safeguards of judicial independence in Poland. The national authorities, through the judgments of the Constitutional Tribunal, seek in such a way to curtail the legal effect of the judgments of the ECtHR and the CJEU in the national legal system.

Process for preparing and enacting laws

The legislative process in Poland has been deficient for years, which has been raised regularly by the Commissioner for Human Rights (see e.g. annual information delivered to the parliament). Important draft bills are not subject to public consultations, which are circumvented by drafts proposed by the Parliament deputies instead of the regular multi-stage governmental legislative drafting procedure. The work is carried out very quickly and without sufficient reflection, which is often detrimental for the fundamental rights protection. The CHR's has the chance to present opinions on the compliance of the drafts

with human rights standards only at the parliamentary stage, usually already at the second stage of the legislative procedure, i.e. voting in the Senate, which, in practice, rarely proves to be effective, especially due to the possibility of the Sejm to reject the amendments adopted by the Senate by a simple majority voting.

In 2021, the ruling party prepared a major reform of tax laws (called Polish Deal, „Polski Ład”). The act was widely criticized. Specialists kept repeating that so many changes affecting individuals cannot be introduced in such a short time. The Commissioner for Human Rights made his comments and indicated that taxpayers should have enough time to prepare for the "Polski Ład", which introduces significant changes to the tax system (4). The government however did not depart from its idea. Two months elapsed from the date of receipt of the bill to the Sejm to its final adoption (5). The act entered into force on January 1, 2022.

At present, more and more groups report their problems related to the reform to the Commissioner for Human Rights (6).

Following the expiry of the state of emergency, the Sejm amended the Law on the State Border. Under the new provisions, where there is a need to ensure security or public order in the border area in connection with a threat to human life or health or to property resulting from crossing the state border illegally or attempting to cross the state border, a temporary ban on staying in a specified area in the border area adjacent to the state border constituting the external border of the EU may be imposed. During the legislative work, the Commissioner submitted to the Senate a critical opinion on the draft law. The Commissioner was critical of the possibility given to the Minister of the Interior and Administration to define in detail the principles of the ban on staying in boarder areas. The Commissioner also drew attention to the negative impact of the new laws on freedom of expression, freedom of assembly and the daily lives of people living in border areas. order zones. The detailed grounds for such a ban should be regulated in statue. The Commissioner also drew attention to the negative impact of the new laws on freedom of expression, freedom of assembly and the daily lives of people living in border areas (7).

Access to public interest information

Obstacles reported in last year's report continued to affect the exercise of the right to access public interest information.

In addition, the motion submitted to the Constitutional Tribunal on 16 February 2021 by the First President of the Supreme Court to review the constitutionality of the Law on access to public information represents an important risk for further backsliding in this area. In the motion, the most fundamental provisions of the law are being challenged, i.e. the definition of public information and the scope of the obligation to make it available to the public especially with regard to the range of the organs subject to such obligation, as allegedly, too extensive. The First President also argues that the current provisions of the law are disproportionate with regard to the right to privacy of persons exercising public functions. This goes against previously established case-law of the Constitutional Tribunal which already confirmed the conformity of current provisions with the Constitution. The motion also raises important doubts as to the competence of the Tribunal to rule on the matter. In fact, the motion challenges the case-law of the administrative courts on public information, and not the law itself whereas, under the Polish Constitution, the Tribunal is not competent to review the constitutionality of judicial decisions. In addition to that, there are some doubts as to lack of impartiality of some of the members of the bench in the case. Should the Constitutional Tribunal follow the reasoning of the First President, the standard of the right to access to public information will be substantially undermined. The procedure is still pending.

References

- (3) CT judgment of 14.07.2021, case P 7/20
- (4) CT judgment of 7.10.2021, case K 3/21:
<https://trybunal.gov.pl/en/hearings/judgments/art/11662-ocena-zgodnosci-z-konstytucja-rp-wybranych-przepisow-traktatu-o-unii-europejskiej>
- (5) CT judgment of 24.11.2021, case K 6/21:
<https://trybunal.gov.pl/en/hearings/judgments/art/11709-art-6-ust-1-zd-1-konwencji-o-ochronie-praw-czlowieka-i-podstawowych-wolnosci-w-zakresie-w-jakim-pojeciem-sad-obejmuje-trybunal-konstytucyjny>
- (6) <https://bip.brpo.gov.pl/pl/content/rpo-senat-polski-lad-opinia>
- (7) <https://www.sejm.gov.pl/sejm9.nsf/PrzebiegProc.xsp?nr=1532>

- (6) <https://bip.brpo.gov.pl/pl/content/rpo-mf-osoby-niepelnosprawnoscnizsze-dochody-ulga-rehabilitacyjna-problemy>;
<https://bip.brpo.gov.pl/pl/content/rpo-polski-lad-nizsze-emerytury-interwencja-mf>; <https://bip.brpo.gov.pl/pl/content/rpo-mf-polski-lad-podatki-samotni-rodzice>
- (7) <https://bip.brpo.gov.pl/pl/content/rpo-senat-ustawa-granica-panstwowa-uwagi>

Functioning of the justice system

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. Despite the judgments issued by the EU Court of Justice and the European Court of Human Rights, as well as infringement proceedings initiated by the European Commission and numerous concerns raised by other regional and international institutions and civil society, the situation has not yet improved since the last report. The lack of progress in the area of judicial independence also led the European Commission to delay the approval of the Polish Recovery and Resilience Plan.

Despite the judgments of the ECtHR and the CJEU, the Disciplinary Chamber of the Supreme Court has continued to consider cases of judges concerning, i.a., lifting of their judicial immunity enabling criminal responsibility of judges. When ruling on the permission to bring a judge to criminal justice, the Chamber also decides on the suspension of the judge from exercising professional activities and the reduction in remuneration.

Only very recently, on 3 February 2022, the Polish President announced the intention to file a draft of a bill changing the functioning of Poland's Supreme Court. The proposed amendments (1) include the liquidation of the Supreme Court's disciplinary chamber, which the Court of Justice of the EU (CJEU), following an infringement procedure launched by the European Commission in October 2019, declared restrictive to judicial independence and thus incompatible with EU law, demanding the Polish government to immediately suspend it. At the same time, however, the bill also announces the creation of a Chamber of Professional Responsibility, a new body still within the Supreme Court. Furthermore, it proposes that the so-called 'judges' from Disciplinary Chamber would be offered to join other chambers of the Supreme Court. On 27 October 2021, the CJEU had imposed a EUR 1 million daily fine on Poland until it complied with such request, on the basis of which the

European Commission sent, in January 2022, its first call for payment of the fine to cover the period from November 3, 2021 to January 10, 2022, amounting to around EUR 70 million.

References

- (1) <http://orka.sejm.gov.pl/Druki9ka.nsf/dok?OpenAgent&9-020-794-2022>

Role of the NHRI in contributing to the effective functioning of the justice system

The CHR in 2021 has continuously taken part in the legislative process and proceedings before the Constitutional Tribunal which were relevant for lawful the organisation of the judiciary in Poland. The CHR stands on the firm position that human rights standards related to the right to fair trial as established in the recent case-law of the ECHR and CJEU, especially as far as the independence of the judiciary is concerned, should be implemented in the Polish law and respected by the State authorities. The Commissioner has been also monitoring the disciplinary proceedings against judges as a major threat to judges independence in their office as well as to their freedom of expression.

Media freedom, pluralism and safety of journalists

Concerns raised in last year's report as regards pressure on and safety of journalists remain outstanding.

These include reports of attacks, arrests and police brutality against journalists covering public demonstrations as well as, more recently, journalists reporting on the situation at the Polish-Belarus border (1).

As of 2 September 2021, a state of emergency was introduced in the areas bordering Belarus. This decision was justified by the authorities by a particular threat to the security of citizens and public order in connection with numerous attempts to illegally cross the border. This crisis was triggered by the actions of the Belarusian authorities. By means of a regulation, the Council of Ministers introduced restrictions on freedom of assembly, a ban on organising mass events, a ban on people who do not live there residing in the area covered by the state of emergency, as well as restrictions on the right of access to public information. Among others, reporters and aid workers were banned from the 3km (2 miles)-wide border zone, where dozens of asylum seekers who manage to cross from Belarus go in hiding. On 18 January 2022, Poland's Supreme Court stated that the governmental regulation preventing journalists from accessing the border with Belarus is

incompatible with current Polish law, including the Polish Constitution, and also violates European and International law. (2) The Commissioner for Human Rights also pointed out that the complete restriction of journalists' access to the area covered by the state of emergency and the complete exclusion of the right of access to public information raise doubts. The Commissioner pointed out that it would be reasonable to introduce a mechanism for granting passes to journalists entering border areas. The authorities have not taken account of the Commissioner's recommendations in this regard (3).

Legal proceedings which may be qualified as SLAPPs are also been reportedly brought against investigative journalists. A study published in June 2021 by the Polish Society of Journalists noted at least 66 instances of SLAPPs brought to silence journalists between 2015 and 2021, with public institutions, state-owned bodies, and politicians and their relatives among those who most frequently launched these legal actions. Prominent cases have also been denounced by international press freedom groups, such as proceedings brought against *Gazeta Wyborcza* reporter Katarzyna Włodkowska (4) and the criminal defamation claims brought against *Polityka* journalist Ewa Siedlecka, who was convicted of criminal defamation (5).

On a positive note, following concerns raised by national media and civil society, as well as EU and other regional and international bodies, the ruling party partly backed on its efforts to “re-Polonize” the domestic media. In 2021, the government’s suspended its plans to introduce a new tax on the media levied on income from advertisements and the Polish President vetoed the controversial media bill known as “Lex TVN”, that would have tightened the rules on foreign ownership of media in the country. The CHR has on numerous occasions presented his opinion (both to the Senate in the legislative procedure on the bill as well as in response to National Radio and Television Council letter) that such changes would substantially undermine the freedom and plurality of media in Poland and, as such, would be in blatant contradiction with the freedoms and rights enshrined in the Polish constitution and violate Poland’s obligations under EU law. The bill has been afterward vetoed by the President of the Republic.

At the same time, however, the situation in the public media sector has not improved.

References

- (1) <https://www.aljazeera.com/news/2021/11/18/journalists-allegedly-blocked-from-reporting-poland-border-crisis>
- (2) [Supreme Court's Judgment of 18 January 2020, I KK 171/21: https://www.sn.pl/sites/orzecznictwo/Orzeczenia3/I%20KK%20171-21.pdf](https://www.sn.pl/sites/orzecznictwo/Orzeczenia3/I%20KK%20171-21.pdf)
- (3) <https://bip.brpo.gov.pl/pl/content/rpo-senat-ustawa-granica-panstwowa-uwagi>
- (4) <https://rsf.org/en/news/will-poland-be-only-eu-country-jail-journalist-doing-their-job>
- (5) <https://www.article19.org/resources/poland-journalists-criminal-defamation-conviction-may-further-impair-freedom-of-expression/>

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

Emergency regimes and related measures

The measures adopted in response to COVID-19 pandemics have continued to have a detrimental impact on human rights standards in Poland. This was especially the case of public and political freedoms, in particular of the freedom of assembly, as well as on the conduct of businesses within the exercise of economic freedoms. Both the substantial assessment of adopted measures as well as the way in which they have been adopted have posed important threat to rule of law environment with regard to both to constitutional rights and freedoms as well as constitutional provisions on legislative procedures and adoption of special measures in cases of state of emergency.

In December 2021 the CHR has published a special report 'Report on pandemics. Experiences and conclusions' (1). The main identified issues were linked with a persistent lack of regularity of legislation in this area. The legislative process was in most of cases too hasty and not followed by a robust and comprehensive assessment on human rights impact. Many of the measures have been adopted in a violation of the Polish Constitution by adoption of measures by means of regulations adopted by the executive power. Among other actions taken to strike down the adopted measures, the CHR has filed many appeals against individual, both penal and administrative measures (in particular in cases

of penalties applied for failure to comply with the obligation to wear mask in public or gather in public spaces). This has now resulted in an established case law of domestic courts censuring the governmental measures on the grounds of their unconstitutionality.

The CHR urged the state authorities to adopt appropriate measures without circumventing the constitutional regime of state of emergency and to suspend the application of restrictive measures and execution of individual penalties based on unconstitutional provisions.

References

- (1) https://bip.brpo.gov.pl/sites/default/files/2021-12/Raport_RPO_pandemia_2021.pdf

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

In its quality as National Mechanism for the Prevention of Torture (NPM), the CHR visited places of detention to verify recommendations of international and regional monitoring bodies. The NPM's findings were illustrated in a thematic report published in January 2022. The NPM found that most of the monitoring bodies' recommendations have not been implemented. Among the greatest concerns are the failure to take action with regard to fundamental safeguards against torture for persons in police custody and persons deprived of their liberty and with regard to the long-standing recommendations to ensure decent detention conditions, including the minimum living space per prisoner in a cell and appropriate recording of injuries observed in prisoners.

References

- CHR, Human rights in places of detention. How Poland is implementing into practice the recommendations of the international bodies for the prevention of torture (CPT and SPT), <https://bip.brpo.gov.pl/sites/default/files/2022-01/Human%20rights%20in%20places%20of%20detention%20-%20NMPT%20report.pdf>

NHRI's recommendations to national and regional authorities

The CHR, in its quality as NPM, recommends to national authorities:

- to review the recommendations of monitoring bodies in order to assess the possibility of changing the legislation applicable to the issues raised by these bodies, in close cooperation with professional association bodies and civil society
- to give due account to the standards and recommendations of monitoring bodies when drafting relevant legislative acts, strategies, policies, guidelines and regulations
- to ensure financial support to the relevant institutions so as to enable them to practically implement the monitoring bodies' recommendations, and put in place awareness raising and training initiatives addressed to officers and employees of places of detention
- to recognise torture as a separate crime under the Criminal Code provisions so as to meet the standards provided for in the UN Convention Against Torture
- to ensure wide dissemination of the Istanbul Protocol among professional groups that may come into contact with persons deprived of their liberty or victims of violence
- to adhere to the procedure of automatic publication of reports of the Committee on the Prevention of Torture and subsequent government responses to the reports.

Portugal

Portuguese Ombudsman

Independence and effectiveness of the NHRI

International accreditation status and SCA recommendations

The Portuguese NHRI was last reaccredited with A-status by the Sub-Committee on Accreditation in November 2017 (1).

At that occasion, the SCA welcomed the amendments to the institution's law that provided it with a broad mandate to promote and protect human rights. It also highlighted the institution's appointment as the National Preventive Mechanism (NPM) and National Monitoring Mechanism (NMM) under the UN Convention on the Rights of Persons with Disabilities.

With regards to the selection and appointment of the Provedor, the SCA acknowledged that the process is governed by Portuguese Parliament's Rules of Procedure but took the view process enshrined in the enabling law was not sufficiently broad and transparent. The SCA recommended the Provedor to advocate for the formalization of a clear, transparent and participatory selection and appointment process.

Moreover, the SCA encouraged the Portuguese NHRI to advocate for appropriate amendments to its law to provide for an independent and objective dismissal process for the deputies. As it stands, Article 16(1) of the legislation provides that the Provedor may, at any time, dismiss the deputies chosen, and is silent on the ground and process for such a dismissal.

References

- (1) <https://ganhri.org/wp-content/uploads/2019/11/SCA-Report-November-2017-ENG.pdf>

Regulatory framework

The Portuguese Ombudsman continues to function with a constitutional basis and with the same mandate that allows him to contribute to access to justice by handling complaints,

therein providing legal assistance to individuals, and by participating in awareness-raising initiatives. Furthermore, The Ombudsman acts within a National Preventive Mechanism against Torture and Ill-treatments under OPCAT. The Ombudsman also has competence to request for abstract constitutionality review. The mandate does not include the NHRI's engagement in strategic litigation before the courts.

The national regulatory framework applicable to the institution has not substantially changed since the 2021 ENNHRI Rule of Law Report. All guarantees of independence of the Ombudsman remain in force.

According to the Constitution (Article 23 (3)) and the legal Statute (Article 1 (1)), the Ombudsman is an independent State body elected by the Parliament. This means that the Ombudsman cannot receive instructions from any other body, institution or entity, including the Government. The practice confirms the complete respect, namely by public authorities, regarding the independence and integrity of the Ombudsman institution in the performance of its duties.

The Ombudsman's budget is part of the Parliament's budget and the Ombudsman reports its activities annually to the Parliament. However, even as for the relationship between the Ombudsman and the Parliament, it should be underlined that the Portuguese Ombudsman is not part of the legislative power – it is neither a parliamentary body, nor an ancillary body to the Parliament.

As far as the avoidance of conflict of interests is concerned, the Statute determines that the appointment as Ombudsman may only fall upon a citizen who, besides meeting the conditions required for being elected a Member of the Parliament, enjoys a well-established reputation of integrity and independence. Moreover, Article 11 of the Statute stipulates that the incumbent shall be subject to the same incompatibilities that apply to court of law judges in office (paragraph 1) and prohibits him/her from holding any position within the bodies of political parties or associations, as well as from engaging in any public political party activities (paragraph 2).

The Portuguese Ombudsman is also endowed with a set of other important personal, institutional, functional and organisational guarantees, provided for by the law and that cement and strengthen the independence and autonomy of the institution.

Hence, the choice of the Ombudsman falls on a person who fulfils the eligibility criteria to become a Member of Parliament and whose integrity and independence are widely acknowledged. The Ombudsman takes office before the President of Parliament.

The mandate of the Ombudsman is a 4-year mandate with the possibility of one re-election only for an equal period. The Ombudsman remains in office until replaced by its successor.

The Ombudsman is independent and can only be dismissed in the cases and due to the reasons expressly provided by law, which are: death or permanent physical incapacity; loss of eligibility requirements; supervening incompatibility; or voluntary resignation.

The Ombudsman is not civil nor criminally liable for the recommendations, remarks or opinions issued in the course of his/her functions. The Ombudsman cannot be arrested nor detained without prior authorisation of Parliament, except for crimes punishable with prison of more than three years and when caught committing the offense (*flagrante delicto*). If criminal proceedings are brought against the Ombudsman, Parliament will decide on the suspension of the mandate, except in the cases referred to above. While imprisoned the mandate is automatically suspended.

The Ombudsman enjoys all honours, rights, guarantees and privileges (e.g., category and remuneration) equivalent to those of Minister of Government. He/she cannot be prejudiced with regard to his/her previous employment situation, career and social security benefits. The time in office counts for pension rights.

The Ombudsman carries a special identification card issued by Parliament which allows access to all services of the central, regional and local administration as well as to civil and military services under its supervision. The Ombudsman, alongside the deputy Ombudsman and the members of the Ombudsman Office are deemed public authorities under the law, also for criminal purposes. All authorities of the state must provide the necessary support and assistance to the good performance of the Ombudsman's functions.

Without prejudice to the above, in the course of 2021, the Government adopted a new Act on the Ombudsman's Office (cf. Decree-Law n° 80/2021, of 6th of October). The new legislation aims to bring up to date the structure of the supporting services to the Ombudsman and better ensure compliance with the Paris Principles.

The increased recourse to the Ombudsman in the last decades, the attribution of a new competence as the head of the national preventive mechanism against torture and ill-treatments, as well as its accreditation as the national human rights institution have all contributed to put in evidence the insufficiencies and unbalances of the pre-existing supporting structures and the outdatedness of the applicable normative framework. Furthermore, the pre-existing organisational model was deemed excessively rigid to respond both to the new acquired competences and the changes meanwhile introduced in

labour law, precluding also the renovation and revitalization of the institution and its services.

In this light, the new Act on the Ombudsman's Office formalizes the existence of three new departments that add up to the existing complaints unit (which is also re-structured). The new departments have specific competences in the fields of prevention against torture, international relations and development of studies and projects. Each department will be headed by a separate coordinator. The complaints unit will furthermore include a specialised triage unit entrusted with the task of filtering complaints before they are handled by the dedicated team. Additionally, some changes were introduced with regard to the organisation of the supporting administrative services.

References

- Portuguese Constitution: <https://www.provedor-jus.pt/quem-somos/legislacao-base/constituicao-da-republica-portuguesa-extratos/>
- Statute on the Portuguese Ombudsman: <https://www.provedor-jus.pt/quem-somos/legislacao-base/estatuto-do-provedor-de-justica/>
- Resolution of the Council of Ministers no. 32/2013: https://www.provedor-jus.pt/documentos/Resolucao_Conselho_de_Ministros.pdf
- New Act on the Ombudsman's Office: <https://www.provedor-jus.pt/quem-somos/legislacao-base/lei-organica-da-provedoria-de-justica/>

Enabling and safe space

The relevant state authorities have good awareness of the NHRIs' mandate, independence and role of the NHRI. The practice confirms the complete respect, namely by public authorities, regarding the independence and integrity of the Ombudsman institution in the performance of its duties.

Pursuant to Article 29 of the Statute on the Ombudsman all authorities subject to his/her supervision must cooperate with him/her, providing all clarifications and information requested. Said entities must provide access to documents and procedures and perform inspections as per the Ombudsman request. This duty does not compromise legal regimes on state secrecy and determined by the need to ensure the protection of public interests.

The Ombudsman may fix a deadline for urgent requests, and may order the presence of individuals in certain places to fulfil the duty of cooperation, under the penalty of disobedience. Also, the Ombudsman may order any citizen to make depositions, under the penalty of disobedience.

The addressees of the NHRI's recommendations are legally obliged to provide a timely and reasoned reply.

Pursuant to Article 38 of the Statute on the Ombudsman, recommendations are addressed and notified to the bodies competent to remedy the illegality or injustice at stake.

Complainants are also informed.

The entities addressed by the recommendations must state their position within 60 days from the reception of the recommendation. Non-fulfilment of the recommendations must be duly justified. If recommendations are not attended and whenever the Ombudsman does not receive due cooperation, him/her may address the hierarchical superior or the Ministry responsible for the subject-matter. In cases of municipalities, the Ombudsman can address the local assembly.

If the public administration does not attend to the Ombudsman's recommendations, him/her can address the Parliament. In general, recommendations and remarks by the Ombudsman are well received and followed by their addressees.

According to the Statute of the Ombudsman the heads and staff of the Portuguese Ombudsman are considered public authorities and all other authorities must cooperate with them to ensure the performance of their duties.

The Portuguese Ombudsman confirms that there are no systematic threats, forms of harassment or intimidation to the Ombudsman heads and staff. The independence and integrity of the Ombudsman institution in the performance of its duties is generally respected.

References

- Statute on the Portuguese Ombudsman: <https://www.provedor-jus.pt/quem-somos/legislacao-base/estatuto-do-provedor-de-justica/>

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

In 2021, the Government adopted a new Act on the Ombudsman's Office (cf. Decree-Law n° 80/2021, of 6th of October) to reform the structure of the supporting services to the Ombudsman and better ensure compliance with the Paris Principles. The new Act formalizes the existence of three new departments that add up to the existing complaints unit (which is also re-structured). The new departments have specific competences in the fields of prevention against torture, international relations and development of studies and projects.

Human rights defenders and civil society space

Laws and practices negatively impacting on civil society space and/or on human rights defenders' activities

There have not been any significant changes with regard to the information provided in the 2021 Rule of Law Report. As stated in ENNHRI 2020 Rule of Law Report, the availability of public and private funding and the reduced diversity of funding sources represents a very important challenge for NGOs and this issue still needs to be addressed by the authorities.

All restrictions on rights and freedoms imposed in the course of 2021 were due to the pandemic and resulted from general measures imposed on the population as a whole, not targeting specifically human rights defenders nor civil society organisations.

- The Rule of Law Index 2021 showed that in this regard Portugal scored: Freedom of expression - 80%
- Freedom of association - 86%
- Civic participation - 76%

References

- WJP Rule of Law Index 2021, <https://worldjusticeproject.org/rule-of-law-index/country/2021/Portugal/Fundamental%20Rights/>

Checks and balances

Guarantees and safeguards described in the previous ENNHRI Rule of Law Reports remain in place. The Portuguese Constitutional system provides a strong and serious regime of

checks and balances between the several sovereign branches. It is worth mentioning, though, that the issue regarding checks and balances mechanism in Portugal identified in the previous ENNHRI Rule of Law Report remain still valid, meaning that while the Ombudsman's mandate is generally performed without any obstacles, in Portugal there is still no focal point in Parliament which would allow for a swift follow-up on the Ombudsman recommendations to Parliament.

In this chapter it is also worth highlighting, that Rule of Law Index 2021 figures for Portugal are as follows:

- Limits by legislature - 83%
- Limits by Judiciary - 75%
- Independent Auditing - 76%
- Non-governmental checks - 80%
- Lawful transition of power – 91%

References

- The Portuguese National Constitution - <https://www.provedor-jus.pt/provedora-de-justica-requer-fiscalizacao-da-constitucionalidade-de-normas-da-lei-eleitoral-dos-orgaos-das-autarquias-locais/>
- Caderno da Pandemia – The Portuguese Ombudsman's study on rule of law issues during the pandemic - <https://www.provedor-jus.pt/documentos/cadernos-da-pandemia-estado-de-direito/>
- Ombudsman's request to the Constitutional Court - <https://www.provedor-jus.pt/provedora-de-justica-requer-fiscalizacao-da-constitucionalidade-de-normas-da-lei-eleitoral-dos-orgaos-das-autarquias-locais/>
- Constitutional Court ruling (Decision no. 247/2021) - <http://www.tribunalconstitucional.pt/tc/acordaos/20210247.html>
- WJP Rule of Law Index 2021 - <https://worldjusticeproject.org/rule-of-law-index/country/2021/Portugal/Fundamental%20Rights/>

Trust amongst citizens and between citizens and the public administration

The OECD index of trust in government indicates that in Portugal there is a high level of trust in the functioning of public institutions (61,5%).

References

- OECD index of trust - <https://data.oecd.org/gga/trust-in-government.htm>

NHRIs as part of the system of checks and balances

The Portuguese Ombudsman has the competence to request a constitutionality review of laws – either enacted by the Parliament or by the Government. Moreover, the Ombudsman has also the competence to make recommendations to the Parliament. The Ombudsman has significant powers of investigation to examine matters falling within its scope of competence.

With regard to 2021, the Portuguese Ombudsman had two important interventions on rule of law issues.

Firstly, in February 2021, the Ombudsman referred to the Constitutional Court a set of rules governing municipal elections, considering that they breached the fundamental right of citizens to take part in political life and public affairs of the country as protected by the national Constitution, notably, Articles 48(1) and 239(4) thereof. The Ombudsman considered that a change introduced in 2020 in the law governing municipal elections, notably concerning the requirements applicable to the lists of candidates, indirectly precluded groups of citizens from presenting candidates simultaneously to the municipal assembly, the city council and more than one parish assembly within a given municipality, therefore breaching said fundamental rights. The request concerned participation by ordinary citizens in the electoral process.

The Constitutional Court agreed with the Ombudsman and delivered its ruling in April 2021 – which was an extraordinarily swift decision, considering the norms to be unconstitutional by a majority decision including two dissenting opinions (Decision no. 247/2021). Also, Parliament had meanwhile initiated a legislative process to amend the law.

Secondly, throughout 2021, the Ombudsman concluded a dedicated study on rule of law issues during the pandemic, where she highlighted the need to adopt new legislation on sanitary emergencies which is missing in Portugal. The initiative resulted in the establishment of a working group determined by the Government, entrusted with the task of preparing such legislation. Such group was presided by a retired judge and included a representative of the Attorney-General's Office and a member of the Ombudsman's Cabinet. The group delivered a draft bill to the Executive in November 2021, which due to the dissolution of Parliament has not yet been object of parliamentary discussion.

Functioning of the justice system

The Portuguese 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 decided. The Ombudsman 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 any case, in 2021, the Ombudsman has received approximately 234 complaints dealing with judicial delays and 71 on access to justice issues. These complaints amount to 18% of the total number of complaints on justice matters (in a total number of 1566).

Rule of Law Index 2021 figures for Portugal on Civil Justice are as follows:

- Accessibility and affordability - 71%
- Absence of discrimination – 72%
- Absence of corruption – 77%
- No improper government influence - 76%
- No unreasonable delay - 46%
- Effective enforcement - 54%

Rule of Law Index 2021 figures for Portugal on Criminal Justice:

- Effectiveness of criminal investigation - 49%
- Effectiveness and timing of criminal adjudication – 44%
- Effectiveness of correctional system – 49%
- Impartiality of criminal system – 46%
- Absence of corruption – 78%
- No improper government influence – 84%
- Due process and rights of accused – 64%

References

- WJP Rule of Law Index 2021 - <https://worldjusticeproject.org/rule-of-law-index/country/2021/Portugal/Fundamental%20Rights/>

Media freedom, pluralism and safety of journalists

The situation in Portugal and the Portuguese Ombudsman's activities regarding the area of media freedom, pluralism and safety of journalists remains the same as it was described in the previous ENNHRI Rule of Law Reports.

Rule of Law Index 2021 for Portugal in the subject of freedom of expression is estimated at 80%.

Corruption

In March 2021, after significant public debate and consultation, the Government adopted the National Strategy on the Fight against Corruption 2020—2024 (Resolution of the Council of Ministers no. 37/2021, of 6th of April).

Following this initiative, Decree-Law no. 109-E/2021, of 9th of December, created the National Mechanism on the Fight against Corruption (with the nature of an independent regulator) and established the national regime on the prevention of corruption. The new legislation aims at creating a hard law regime on the implementation of anti-corruption programmes such as prevention and risk plans, codes of conduct, formation programmes, among others. The lack of adoption of said instruments by public and private entities is subject to the application of financial penalties. Changes to the procedures adopted by the public administration are also introduced.

Also at this level, it should be noted that the Portuguese Ombudsman sits as an observer in the Network of European Integrity and Whistleblowing Authorities (NEIWA), which aims to ensure assistance and exchange of good practices with regard to the implementation of 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. The latter Directive has been implemented in the Portuguese legal order through Law no. 93/2021, of 20th December, which will enter into force 180 days after publication (counting thus from 20 December 2021).

Rule of Law Index 2021 for Portugal:

- In the executive branch - 65%

- In the judiciary - 87%
- In the police/military - 86%
- In the legislature - 49%

Judicial statistics identify 62 crimes of corruption registered by the police in Portugal in 2020, and 98 judicial convictions. It is worth noting that the Portuguese Ombudsman does not intervene in corruption cases, as this is a matter of a criminal responsibility.

Transparency international has ranked Portugal in 32th place on the corruption perception index throughout the world, and has called attention to the fact that the new National Strategy against corruption does not extend to the Executive nor the Central Bank.

References

- Resolution of the Council of Ministers no. 37/2021, of 6th of April: <https://dre.pt/dre/detalhe/resolucao-conselho-ministros/37-2021-160893669>
- Law: <https://dre.pt/dre/detalhe/lei/93-2021-176147929>; <https://eur-lex.europa.eu/legal-content/en/NIM/?uri=CELEX:32019L1937>
- WJP Rule of Law Index 2021: <https://worldjusticeproject.org/rule-of-law-index/country/2021/Portugal/Fundamental%20Rights/>
- Judicial Statistics: <https://estatisticas.justica.gov.pt/sites/siej/pt-pt/Paginas/Corrupcao.aspx>
- Transparency International - <https://www.transparency.org/en/cpi/2021/index/prt>

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 2021, the state of emergency was in force in Portugal from the beginning of the year until the end of April.

From the 1st of May onwards the Government issued several different restrictive measures on the basis of ordinary legislation (notably the Public Health Act and the Civil Protection

Act) and on the basis of different administrative emergency situations ("calamity", "alert" and "contingency").

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 (the right to civil disobedience provided by the Article 21 of the national constitution); (viii) freedom to teach and learn; (ix) data protection; (x) right to health in its negative dimension and (xi) right to freely develop one's personality.

The public debate on the proportionality of some measures imposed by the Government in response to the pandemic continued. Discussions have been most acute on measures adopted throughout the periods not covered by the state of emergency.

Several complaints on Covid-19 measures have reached the Ombudsman's Office, although less than in 2020. Complaints dealt either with delays in implementation or with insufficient and incorrect application of those measures. Most cases dealt with measures adopted by the Executive to support companies who have suspended or reduced their activity due to the pandemic (e.g., lay-off measures; support to the recovery of economic activities; and support to workers). Another set of complaints dealt with the subsidy applicable in cases of prophylactic confinement due to Covid-19. Compensation measures for support to families and children put in isolation or home-schooled also gave rise to several complaints. Lastly, subsidies due to health workers were also the object of several procedures.

In this context, the Portuguese Ombudsman has taken public action on the grant of the support to families' subsidy due to parents working from home having to take care of children under the age of 12 subjected to distance learning, in particular independent workers.

Additionally, the Ombudsman asked the Government to solve the situation of several undertakings waiting for the payment of the subsidy to the recovery of economic activity due to the delays in the articulation between the Social Security Institute and the Tax Administration. The Ombudsman has also acted before the Social Security Institute with regard to delays on payment of support measures to dependent and independent workers. Several meetings were held with between social security services and the teams of Ombudsman's Office in order to understand the difficulties at stake, point solutions and overcome delays.

Lastly, in the course of 2021 the Portuguese Ombudsman's Office concluded three sectorial studies (designated as "*Cadernos da Pandemia*" on issues raised by the pandemic: (i) the situation of the homeless; (ii) the implications of the pandemic in education; and (iii) the impact of the pandemic at the level of the rule of law. The first two "*cadernos*" are essentially empirical studies aiming at understanding the concrete consequences of the pandemic on, one hand, the life of the homeless and the response by public and private entities, and on the other hand, on children's right to education. The third study offers a comprehensive analysis of the legal basis for the adoption of exceptional measures to fight the pandemic under the Portuguese constitutional framework, and has motivated the creation of a dedicated working group referred to above entrusted with the task of preparing a new bill on sanitary emergencies still lacking in Portugal.

The pandemic has brought along new problems and has aggravated and made more visible pre-existent ones. The unbalance of powers between the Executive and the Legislator, noted specially by the Ombudsman in the rule of law booklet ("*caderno da pandemia: Estado de Direito*"), potentiated by the state of emergency and similar regimes, may have important consequences in the future at the level of the political and constitutional legal order.

In any case, it is still soon to anticipate the nature and range of consequences of the pandemic in Portugal and the measures adopted to fight it. Without prejudice, four notes can be left in this respect, thus far:

1. It is anticipated that **teleworking** becomes a more frequent and normal method of working in Portugal. New legislation on the issue has been adopted although it is soon to assess its full implications (Law no. 83/2021, of 6th December).
2. The pandemic has had significant consequences in the **health system**, felt particularly at the level of primary care.

In 2021, 55% of the total of 726 complaints regarding the national health service were directly related to COVID-19. On medical care beyond COVID-19, the number of complaints regarding the articulation between primary health care units and hospitals remained the same as in 2020, with a slight reduction comparing to the period before the pandemic (i.e., 2019). Complaints regarding medical care in hospitals were reduced to half the figure recorded in 2020 (65 this year, 32 in 2021). Occasionally, postponement of scheduled consultations for follow-up of pathologies and/or surgeries were the issue. The effects of the pandemic were especially noticeable at the level of access to primary health care, with a significant increase in complaints (64% compared to 2020). Complainants often invoked

problems of communication and contact with health centres, absence of a family doctor and the lack of in person consultations.

3. A new regime on **multipurpose medical certificates** has meanwhile been adopted but it continues to involve difficulties in its application.

Medical multipurpose certificates allow for access to certain social benefits. Before the pandemic, a few complaints about excessive delays in granting such certificates were received in the Ombudsman's Office (36 during 2019). After careful investigation, the Ombudsman concluded for the existence of a systemic and general issue. For this reason, in 2020, a recommendation was addressed to the Government, proposing the modification of the legal regime, allowing greater agility and speeding the response. With the pandemic, medical boards were suspended, as they were composed of public health doctors, fundamental elements in the follow-up of confirmed and suspected cases of COVID-19. Subsequently, this activity was partially resumed, with limited results. Therefore, a second recommendation was addressed to the Government, proposing emergency measures, particularly the automatic extension of certificates in revalidation and the creation of a simplified procedure for newly diagnosed cancer patients. These proposals were accepted, notably through Law no. 14/2021, of 6th of April. The application of the bill has however raised doubts, for example regarding patients treated in private medical services, the maximum age of the diagnosis and the need to request an evaluation under the normal regime. These issues were signalled to the Government. The Ombudsman continued to receive several complaints on this matter throughout 2020 (254 cases) and 2021 (300 cases).

Lastly, **financial support measures** adopted throughout the pandemic may end up having unfair consequences in the future. For instance, the exceptional financial support measures due to families may have a negative impact on the **contributive career** of its beneficiaries notably in terms of calculation of the amount of immediate subsidies (such as unemployment, sickness, parenthood) as well as mediate subsidies (pensions). The Ombudsman has called attention of the Government to the need to adjust the legal regime.

References

- Please refer to previous ENNHRI 2021 Rule of Law Report - <https://ennhri.org/rule-of-law-report-2021/>

See also Ombudsman's Requests here:

- <https://www.provedor-jus.pt/covid-19-provedora-de-justica-sugere-ao-governo-solucoes-para-pais-em-teletrabalho-com-dependentes-ou-filhos-menores-a-estudar-em-casa/>
- <https://www.provedor-jus.pt/documentos/Of%C3%ADcio%20insist%C3%A4ncia.%20Exclus%C3%B5es.%20Apoios%20Covid.%20SESS.pdf> ;
- <https://www.provedor-jus.pt/apoios-covid-19-provedora-de-justica-renova-alerta-para-exclusoes-injustificadas-de-protecao-social/>
- <https://www.provedor-jus.pt/covid-19-provedora-de-justica-alerta-o-governo-para-atrasos-na-atribuicao-de-apoios-as-empresas/>
- <https://www.provedor-jus.pt/covid-19-provedora-de-justica-insiste-junto-da-seguranca-social-para-que-sejam-pagos-os-apoios-extraordinarios-as-empresas/>
- Cadernos da Pandemia: <https://www.provedor-jus.pt/atividade/publicacoes/>
- Covid legislation has been compiled in an online section of the official journal: <https://dre.pt/legislacao-covid-19-areas-tematicas#1>
- Law no. 83/2021, of 6th of December - new legal regime on teleworking: <https://files.dre.pt/1s/2021/12/23500/0000200009.pdf>
- Law no. 14/2021, of 6th of April – new transitional regime for medical certificates for cancer patients: <https://dre.pt/dre/detalhe/lei/14-2021-160893668>

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

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, it has generally been coping well with the current arrangements. Only 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 - kept working from the headquarters.

Visiting activities of the National Preventive Mechanism have been taking place in person. Also, on-site visits following the submission of a complaint are allowed.

Romania

Romanian Institute for Human Rights

Impact of 2021 rule of law reporting

Follow-up initiatives by the Institution

Following the publication of the ENNHRI Rule of Law Report, the Romanian Institute for Human Rights (RIHR) held meetings with representatives of the Committee for Human Rights and of the Legal Committee of the Senate on the Report and Institute' contribution therein. The discussions focused on aspects relating to the status of the Institute and the legislative proposal on the merger of RIHR into the National Council for Combating Discrimination, which, at that time, was under debate in the Senate (1).

RIHR believes that the ENNHRI Report had a significant impact on the adoption of the two committees of a joint report for rejecting the project (2), which was followed by the rejection of the legislative proposal by the Senate on 8 November 2021 (3).

At the same time, the Institute received the support of the Senate Committee on Human Rights to draft a new legislative proposal to reform RIHR, strengthening its institutional capacity in accordance with the recommendations made by the Sub-Committee of Accreditation (GANHRI) to comply with the Paris Principles.

RIHR also mentions that the issues related to the status of the Institute and the rule of law report have been submitted to international and regional organisations (Submission to the CESCR for the List of Issues on the occasion of the Examination of the Sixth Periodic Report Submitted by Romania (4) and OSCE's research aimed at mapping the type of threats experienced by NHRIs in the OSCE region).

References

- (1) https://www.senat.ro/legis/lista.aspx?nr_cls=L701&an_cls=2020
- (2) <https://www.senat.ro/legis/PDF/2020/20L701CR.PDF>

(3) <https://www.senat.ro/legis/PDF/2020/20L701ARD.PDF>

(4) https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=INT%2fCESCR%2fICO%2fROU%2f46585&Lang=en

Independence and effectiveness of the NHRI

International accreditation status and SCA recommendations

Romania currently does not have an institution accredited as a National Human Rights Institution.

The Romanian Institute for Human Rights (RIHR) is a non-accredited associate member of ENNHRI. The Romanian Institute has a strong promotional mandate and has been addressing a wide range of human rights in Romania.

In 2020, both the Romanian Institute and the Romanian Ombudsman (which is not an ENNHRI member and is not accredited) applied for accreditation.

In 2021, a legislative proposal on the merger of the Romanian Institute for Human Rights into the National Council for Combating Discrimination was under debate in the Senate and was rejected by the Senate, as decision making chamber.

Regulatory framework

The RIHR has a legislative basis and has the mandate to contribute to access to justice for individuals, including through complaints handling, providing legal assistance to individuals and awareness-raising.

Although the mandate of the Institute does not include receiving petitions and carrying out investigations, the aim of the Institute is to ensure a better knowledge of human rights. In that sense, RIHR provides assistance and guidance to petitioners, taking the necessary steps in relation to public authorities/institutions in order to resolve correctly and efficiently any submitted petition. Moreover, RIHR offers guidance in accessing and filling in the application form to the European Court of Human Rights, as well as the way to refer the matter to the competent courts at national level.

The situation of the Romanian Institute for Human Rights, in terms of its independence, effectiveness, has significantly improved. The national regulatory framework applicable to the Romanian institution has changed since the 2021 report, given that the Senate rejected

the proposal on the merger of the Romanian Institute for Human Rights into the National Council for Combating Discrimination.

Once the legislative proposal on the merger of RIHR into the National Council for Combatting Discrimination was rejected, the procedure for appointing the members of the Institute's General Council was resumed (the General Council consists of representatives of parliamentary parties, civil society and academia). In this respect, the Institute now awaits for the validation of the proposals by the permanent bureaux of the two chambers of Parliament.

Nevertheless, the Romanian Institute regulatory framework should still be strengthened. There is a need to regulate a clearer mandate of the Institute, highlighting the specific functions of the RIHR, i.e. the promotion of human rights, training and research in the field of human rights, as well as different duties compared to other institutions with a mandate in the field of human rights in Romania (Ombudsman, NCCD and the Monitoring Council), while also taking into account the recommendations of different international organisations. (1) (2)

References

- (1) <https://rm.coe.int/16806db83b>
- (2) <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=25687&LangID=E>

Enabling and safe space

The relevant state authorities have good awareness of the RIHR's mandate, independence and its role.

Nevertheless, the Romanian Institute for Human Rights still does not have adequate access to information and to policy makers. Unfortunately, the RIHR is not involved in all stages of legislation and policy making with human rights implications.

The mandate provided by Law. 9/1991 does not allow the Institute to take up matters at its own initiative; it may only submit opinions at the request of Members of Parliament and Parliamentary Committees. To this end, the Institute's mandate and resources could be used more effectively given the expertise it can provide.

The addressees of the Romanian Institution's recommendations are not legally obliged to provide a timely and reasoned reply.

It is worth noting that in Romania measures necessary to protect and support the Romanian Institute for Human Rights, its head of institution and staff, against threats and harassment and any other form of intimidation (including SLAPP actions) are in place. This does not mean that there are special legal provisions for the head or the staff of the institution, as the general legal framework for contractual staff in public institutions is applied.

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

The Romanian Institution has taken action to improve its functioning in compliance with the Paris Principles and Recommendation 2021/1 of the Committee of Ministers of the Council of Europe on NHRIs. The Romanian Institute has engaged in carrying discussions with representatives of Senate committees regarding the amendment of the law establishing the Institute, supplementing the body of experts within the RIHR (filling of vacancies), ensuring the necessary resources to carry out the Institute's activities in relation to its tasks.

Human rights defenders and civil society space

Laws and practices negatively impacting on civil society space and/or on human rights defenders' activities

Considering the COVID-19 pandemic there were several measures in place, which limited the freedom of assembly given that the authorities restricted the number of participants to assemblies. For example, in August 2021 the maximum number of persons that could attend an assembly/march was 500 if the 14-day cumulative incidence in the county/town is less than or equal to 2/1000 of the population (1), however open-air performances, concerts, public and private festivals or other cultural events were allowed with the participation of no more than 75,000 spectators, with the condition of wearing of protective mask (2).

References

- (1) According to Government Decision no. 826 of 5 August 2021, annex 3, article 1.33
- (2) According to Government Decision no. 826 of 5 August 2021, annex 3, article 1.12; According to Government Decision no. 586 of 10 June 2021, Annex 3, article 1.27

NHRI's role in promoting and protecting civil society space and human rights defenders

Following the participation at the ENNHRI Academy, our institution has designed a training course for staff working with the Senate and Chamber of Deputies. The training course aimed to raise awareness of the participants on issues relating to human rights defenders and national human rights institutions. Thus, the objectives of the training course were: 1) increasing the effectiveness of the implementation and promotion of human rights at the national level; 2) raising awareness on the characteristics, mandate and modus operandi of key national human rights institutions at the national level; 3) developing an appropriate and adequate national regulatory framework for human rights defenders and strengthening the national regulatory framework for national human rights institutions. (1)

References

- <https://irido.ro/cursuri-formare.php>

Checks and balances

On 15 June 2021, the Activity Reports of the Romanian Ombudsman for 2018, 2019, and 2020 were rejected in a joint session of Parliament. Following the rejection vote, a request for the revocation of the Ombudsman was submitted on the same day, and on 16 June, in an emergency procedure, the revocation took place by Parliament's Resolution No. 36/16.06.2021.

By Decision no. 455 of 29 June 2021, the Constitutional Court found that "the Decision of the Romanian Parliament no. 36/2021 for the revocation of Ms Renate Weber from the office of the Ombudsman violates the provisions of Article 1(3) and (5) of the Constitution,

which enshrine the principle of the rule of law and the principle of legality and supremacy of the fundamental law, as well as the provisions of Article 9(2) of Law No 35/1997 [on the organisation and functioning of the Ombudsman]”.

In its analysis, Constitutional Court found that, contrary to the constitutional and legal norms in force, the submission to Parliament of the annual report on the annual activity of the institution does not place the institution of the Ombudsman under genuine parliamentary control, as it is rather an act of loyal cooperation, based on constitutional norms, between two independent public authorities.

At the same time, given that “the act of revocation, which constitutes the cause for the termination of the mandate of the Ombudsman, is unconstitutional” and that “it ceases to produce legal effects”, the Constitutional Court decided that from the date of publication of the decision in the Official Journal, the Ombudsman shall resume her capacity “and shall exercise the constitutional mandate for which she was appointed by Decision No 18/2019 of the Parliament of Romania.” (1)

References

- Decision no. 455 of 29 June 2021 on the referral for unconstitutionality of Romanian Parliament Decision np. 36/2021 for the revocation of Ms Renate Weber from the office of the Ombudsman: https://www.ccr.ro/wp-content/uploads/2021/07/Decizie_455_2021.pdf

Functioning of the justice system

A new draft law aimed at disbanding the Section for the Investigation of Offences in the Judiciary (1) has been drawn up by the Ministry of Justice (2). According to the explanatory memorandum the draft law was drawn up taking into consideration the recommendations of the Venice Commission and of the Court of Justice of the European Union. According to the text of the proposal, the power to prosecute offences committed by judges or prosecutors is granted, where appropriate, both to the central structure of the Public Prosecutor's Office (the Public Prosecutor's Office of the High Court of Cassation and Justice) and to its territorial structures (at the level of public prosecutors' offices of courts of appeal). „The appointment of prosecutors who will prosecute offences committed by judges and prosecutors (magistrates) will be done by the Superior Council of Magistracy, upon the proposal of the Prosecutor General of the Prosecutor's Office of the High Court

of Cassation and Justice (for offences committed by members of the Superior Council of Magistracy, judges of the High Court of Cassation and Justice and courts of appeal (including the Military Court of Appeal) and prosecutors of the Prosecutor's Office of the High Court of Cassation and Justice, prosecutors of courts of appeal and prosecutors of the Military Court of Appeal) or by public prosecutors of the public prosecutor's offices attached to the courts of appeal, for offences committed by judges of the courts, tribunals, military courts and prosecutors of the public prosecutor's offices attached to these courts. The prosecution of cases involving magistrates only by prosecutors specifically designated by the Plenum of the Superior Council of Magistracy and who meet certain conditions of seniority and professional experience constitutes an additional mechanism, which aims to ensure adequate protection of magistrates against possible pressure exerted on them and against abuses committed through arbitrary referrals/ denunciations."

However, the new proposal has received critiques as various magistrates' associations (3) state that this represents an "inadequate compromise, which could breach the CVM Decision and the Opinions of the Venice Commission", and, in their opinion, the only way to disband the Section for the Investigation of Offences in the Judiciary would be to restore the powers of specialised prosecutors' offices, such as National Anticorruption Directorate and the Directorate for Investigating Organised Crime and Terrorism, as proposed by the relevant European bodies.

In the 2021 Rule of Law Report, our institute mentioned a draft law proposed by the Ministry of Justice on the disbanding of the Section for the investigation of offences committed by the judiciary. That draft law is still under debate in the decision-making chamber, the Senate, as the Chamber of Deputies adopted it in March 2021. It should be noted that according to the explanatory memorandum of the new legislative proposal, the draft law proposed last year "is under debate in the Senate, as there is yet no support for the legislative solutions it provides."

What is more, in January, RIHR attended the public debate organised by the Ministry of Justice (4) on the new legislative proposal. Following the debates, the legislative proposal was amended and new provisions were included, especially referring to determining the professional experience and moral conduct of the prosecutors to be selected for handling offences involving magistrates. At the middle of February, the legislative proposal was sent to Parliament for adoption under the urgency procedure. Both the Superior Council of Magistracy and Legislative Council have issued positive opinions on this legislative proposal.

The Romanian Institute for Human Rights also stresses the need to improve the quality of the justice system. Actions need to be undertaken to ensure a simplified version of rules

and regulations so that any person (regardless of their level of education) can understand their rights and obligations. Bearing in mind the provisions of Directive 2012/13/EU of the European Parliament and the Council on the right to information in criminal proceedings, providing a simplified (plain) version of rights and obligations ensures the understanding of certain provisions of law/regulations.

According to their website (5), the association APADOR-CH has consulted several bodies in this matter in 2020, following a test simplification of the form on the rights of persons brought before the police. The consulted bodies answered that some of the documents are also written in a language that can be understood by suspects/defendants, while others embraced the proposal of consultations for simplifying the technical language.

Currently, there is a legislative proposal (6) in the Chamber of Deputies (decision making chamber) on this matter, Draft Law on the approval of Government Emergency Ordinance no.18/2016 for amending and supplementing Law no.286/2009 on the Criminal Code, Law no.135/2010 on the Code of Criminal Procedure, as well as for supplementing Article 31 paragraph (1) of Law no.304/2004 on judicial organization, which aims to implement the aforementioned Directive. It is important to mention that this legislative proposal is from 2016, and the Government submitted 3 different opinions (2017, 2018, 2020), all in favor of the adoption, however, so far the legislative proposal is still under scrutiny at the Committee for Legal Matters, Discipline, and Immunities (at the same time, it should be noted that the Emergency Ordinance is in force). However, it should be noted that, although the Directive provides that “[information concerning at least the following procedural rights] shall be given orally or in writing, in simple and accessible language, taking into account any particular needs of vulnerable suspects or vulnerable accused persons” (Article 3.2), the Text of the Ordinance only states that “the judicial authorities shall provide the suspect, accused or sentenced person with written information on his or her rights during the criminal proceedings or the procedure for the execution of the European arrest warrant. The information shall be given in Romanian, in the person's mother tongue or in a language which the person understands, as appropriate” and that the text of form will be adopted by judicial authorities. (According to Article IV (1) and (2) of the Emergency Ordinance).

References

- (1) The existence of this body was criticized by the European Commission and the Venice Commission.
- (2) <https://www.just.ro/proiect-de-lege-privind-desfiintarea-sectiei-pentru-investigarea-infractiunilor-din-justitie/>
- (3) <http://www.forumuljudecatorilor.ro/index.php/archives/6499>
- (4) <https://www.just.ro/informare-de-presa-cu-privire-la-publicarea-dezbaterilor-publice-organizate-de-ministerul-justitiei-referitoare-la-proiectul-de-lege-privind-desfiintarea-sijj-2/>
- (5) <https://apador.org/en/cat-de-greu-e-sa-simplifici-limbajul-juridic-in-romania/>
- (6) https://cdep.ro/pls/proiecte/upl_pck2015.proiect?cam=2&idp=15958

NHRI's recommendations to national and regional authorities

- Need to improve the quality of justice system by ensuring the accessible and 'easy to understand' publication of the of rules, regulations and rights for citizens.

Media freedom, pluralism and safety of journalists

The Romanian Institute for Human Rights assessed that the situation concerning media freedom, pluralism and safety of journalists in Romania has deteriorated this year.

The legislative framework has not changed much with regards to the media environment. However, there were a series of intimidations (1) and assaults on journalists (2), especially investigative journalists. Such a situation refers to two journalists who reported on irregularities related to public funds and tenders in a Bucharest district, which was followed by a criminal complaint submitted by the mayor. A known case of assault was the one suffered by investigation journalists who were documenting illegal lodging in Suceava county who were attacked and beaten by several persons. At the same time, a report coordinated by the Center for Independent Journalism (3) states that the number of lawsuits against journalists has risen.

References

- (1) <https://rsf.org/en/news/romania-open-letter-rsf-and-activewatch-denounce-judicial-pressures-investigative-journalists>
- (2) <https://europeanjournalists.org/blog/2021/09/21/romania-filmmakers-badly-beaten-while-shooting-documentary-on-illegal-logging/#:~:text=On%2016%20September%202021%2C%20journalist,in%20Suceava%20County%2C%20northeastern%20Romania.>
- (3) <https://cji.ro/wp-content/uploads/2021/07/Journalism-in-2021.-An-obstacle-race-with-fewer-and-fewer-winners.-Romania.pdf>

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

Emergency regimes and related measures

Following the measures taken by the authorities (which are similar to the measures taken in many EU countries) one negative impact is the fact that hate speech has risen (1). On social media, hate messages are directed both at vaccinated persons and unvaccinated persons (depending on the side one chooses) or various ethnic groups. These could be the effect of disinformation campaigns as well as a low level of understanding and information regarding to vaccines or education in general. At the same time, as people spend more time online the exposure to certain forms of hate speech could lead to a “normalisation” of hate.

With regards to the constitutional scrutiny of the Constitutional Court RIHR notes that in Decision no. 672/2021 the Romanian Constitutional Court analysed aspects on the separation of powers, as the Court admitted the referral for unconstitutionality of the provisions of the Decision of Romanian Parliament no. 5/2020 for the approval of the state of alert and the measures established by G.D. no. 394/2020 on the state of alert and measures to be applied during the state of alert to prevent and combat the effects of the COVID-19 pandemic (2).

With reference to Decision no. 457 of 25 June 2020, in which the Constitutional Court found unconstitutional the legal provisions on the competence of the Parliament to approve the state of emergency adopted by the Government, in full or with amendments

(3), the Court stressed that "Parliament, by approving/amending measures adopted by Government decisions, comes to combine legislative and executive functions, a situation incompatible with the principle of separation and balance of powers in the state, enshrined in Article 1(4) of the Constitution. Parliament's interference in a specific act of the Government, intended to implement the law, is tantamount to interference by the legislature in the secondary regulatory power for the implementation of laws, which belongs exclusively to the Government." The Court held that Decision no. 5/2020 of the Romanian Parliament for the approval of the state of alert and the measures established by Government Decision no. 394/2020 on the declaration of a state of alert and measures to be applied during the state of alert to prevent and combat the effects of the COVID-19 pandemic, which is based on a legal provision declared unconstitutional, is itself devoid of any constitutional basis (4). The Court holds that the unconstitutionality of Parliament's Decision no. 5/2020 has no consequence on Government Decision no. 394/2020 on the declaration of a state of alert and the measures to be applied during the state of alert to prevent and combat the effects of the COVID-19 pandemic, a normative act in its own right, adopted in execution of the provisions of Article 4(1) of Law no. 55/2020 and which continues to have legal effects in the form not modified by the provisions of the Decision of the Romanian Parliament no. 5/2020 (5).

Moreover, on 15 February 2022, Constitutional Court, within the framework of scrutiny of laws after their enactment, admitted an exception of unconstitutionality and found Government Emergency Ordinance no. 192/2020 for amending and supplementing Law no. 55/2020 on some measures to prevent and combat the effects of the COVID-19 pandemic, as well as for amending letter a) of art.7 of the Law no. 81/2018 on the regulation of teleworking unconstitutional, in its entirety. The court claimed that GEO no. 192/2020 was adopted in violation of constitutional provisions on the approval of draft legislation by the Legislative Council (6). The Court notes that, following this decision, the other provisions of Law no. 55/2020 and Law no. 81/2018 shall remain in force, as only provisions of GEO no. 192/2020 are to be eliminated. By GEO no. 192/2020 the Government amended articles of Law. 55/2020 concerning the mandatory wearing protecting masks, removing the phrase "in closed public spaces", which meant that masks became mandatory outdoors. The provisions of the GEO also amended Law. no. 81/2018 allowing employers to decide applying teleworking without the consent of the employee. The decision of the Constitutional Court shall enter into force once it is published in the Official Journal.

References

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- (2) https://www.ccr.ro/wp-content/uploads/2021/10/Decizie_672_2021-1.pdf
- (3) <https://legislatie.just.ro/Public/DetaliiDocument/227535>
- (4) Curtea Constituțională, Decision no. 672/2021, para. 32
https://www.ccr.ro/wp-content/uploads/2021/10/Decizie_672_2021-1.pdf
- (5) Ibidem, para. 33
- (6) <https://www.ccr.ro/wp-content/uploads/2022/02/Comunicat-de-presa-15-februarie-2022.pdf>

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

The crisis generated by the COVID-19 pandemic has caused adverse effects on the economy and social framework as a whole. A significant number of petitions submitted to the Institute concerned access to social housing, aspects on the right to receive pension etc. At the same time, poor socio-economic conditions have affected the labour market, with employers making unfair dismissals, delaying the payment of wages or maintaining a working climate violating human rights. With reference to maintaining a working climate in line with the protection and promotion of human rights, petitions requesting additional information on moral harassment in the workplace as regulated by Law No 167/2020 were submitted. At the same time, there have been complaints on abuses by employers concerning the modification of employment relationships in breach of legal conditions.

Acknowledging the disproportionate impact determined by the COVID-19 pandemic on vulnerable groups (children, women, persons with disabilities, detainees, migrants and refugees), the Institute considered the specificities of vulnerable groups when dealing with petitions concerning their rights. With regard to vulnerable groups, the petitions highlight some limitations of rights that are common to them such as: the right to physical and mental integrity, access to health services, the right to education, the right to dignity. At the same time, for each vulnerable category there are certain specific issues which are highlighted in petitions: the right to have a personal relationship with both parents (children), the right not to be subjected to any form of violence (women), the right to have

access to detention conditions respecting human dignity standards (persons in detention), the right to benefit from accessible public services (persons with disabilities), the right to benefit from legal forms of protection while on Romanian territory (migrants and refugees).

Actions taken by the NHRI to promote and protect rule of law and human rights in the crisis context

The introduction of the system of digital COVID-19 vaccination certificate, test and recovery certificates has generated, at the national level, a differentiation between citizens in terms of the possibility to (physically) access public authorities/institutions and certain retailers. In this context, in the petitions submitted to the Institute, individuals who opted not to vaccinate against the SARS-CoV-2 virus have invoked an unjustified different treatment comparing to vaccinated individuals. The Institute drafted an opinion on the *Impact of COVID-19 digital certificates on the realisation of human rights* (1). From RIHR's perspective "the implementation of digital certificate system is a measure that needs to be considered in a prudent and responsible manner, in accordance with the relevant international, European and national legal instruments and taking into account the exceptional nature of the pandemic situation, the main issue at stake in the implementation of the digital certificate system being to ensure that the essence of fundamental human rights and freedoms is maintained, subject to limitations appropriate in a pandemic situation".

The respect of the right to health has been analysed in relation to citizens' petitions, in relation to the lack of response from the health authorities to requests from citizens infected with the SARS-CoV-2 virus and the bureaucratic barriers that limit citizens' rights, and, in this regard, RIHR drafted opinions on: *Restriction of the freedom of movement - double quarantine for medical error* (2); *Legality of forcing patients to undergo COVID tests in private centres* (3).

Other opinions issued by the Institute in this period concerned:

- guaranteeing the right to education for children with disabilities and special educational needs (SEN) (4);
- the protection of the rights of persons with disabilities (5);
- admissibility of the employer's claim relating to the right to health (6);
- protection and promotion of the rights of refugees (7).

References

- (1) <https://irido.ro/pdv.php?ideseu=26>
- (2) <https://irido.ro/pdv.php?ideseu=22>
- (3) <https://irido.ro/pdv.php?ideseu=19>
- (4) <https://irido.ro/pdv.php?ideseu=23>
- (5) <https://irido.ro/pdv.php?ideseu=21>
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Slovakia

Slovak National Centre for Human Rights

Impact of 2021 rule of law reporting

Follow-up by State authorities

There have been no follow-up actions or initiatives from the state authorities as regards the 2021 ENNHRI rule of law report. Besides media and civil society organizations reporting on the publication and findings of the European Commission's rule of law report on Slovakia, only selected state authorities have considered the findings of the report. Amongst these, for example, the Ministry of Justice of the Slovak Republic ("Ministry of Justice") informed about the results of the report of the European Commission's rule of law report on Slovakia in a press release. This, however, largely focussed on the positive aspects highlighted in the report, while devoting little attention to challenges identified.

In terms of general efforts to foster a rule of law culture, a specific working group on restoring trust in the rule of law began functioning in September 2021. The working group was created by the Security Council of the Slovak Republic, following worrying developments within the law enforcement system. The aim of the working group is to prepare draft amendments to improve the functioning of the courts, police and the prosecutors' office. The working group consists of representatives from relevant ministries, as well as representatives of the Prime Minister of the Slovak Republic, Slovak Information Service, National Security Authority, Specialized Criminal Court of the Slovak Republic, Council of Prosecutors of the Slovak Republic, Office of the Prosecutor General as well as the Judicial Council of the Slovak Republic. Nonetheless, in early January 2022, the Prime Minister informed of the suspension of the working group due to the prioritization of the fight against the COVID-19 pandemic. As claimed by the Prime Minister, the working group has so far prepared 17 measures and some of these have already been implemented, including the election of the President of the Police Force the Slovak Republic. However, the materials are not available for public.

In addition, the Ministry of Foreign and European Affairs of the Slovak Republic ("Ministry of Foreign and European Affairs") has organized in 2021 a first international high-level

conference on the promotion of human rights and democracy in the world at the Ministry of Foreign Affairs. The conference offered the opportunity to present the newly adopted "Concept of promoting human rights and democracy in the world", by which Slovakia commits to provide third countries with guidance for the value-based driven policy, including commitments regarding the rule of law, democracy and human rights, in its external action. In direct connection with the newly adopted Concept, the Minister of Foreign and European Affairs have appointed Peter Burian as the first human rights ambassador, to be also part of the wider network of European Human Rights Ambassadors.

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Impact on the Institution's work

Monitoring and reporting on the state of rule of law in Slovakia and its fundamental pillars have become part of the strategic areas in which the Centre is actively carrying out its activities within its mandate. These activities include engaging with different national, regional or international stakeholders as well as actively seeking opportunities for cooperation and building partnerships. For example, at the national level, the Centre started a closer cooperation with the Office of the Plenipotentiary for the Development of the Civil Society, which is currently conducting a national project on monitoring the participatory law and policy making of public administration. At the international level, the Centre designed a proposal for a small rule of law project and in 2021 and was awarded a grant by the Dutch Ministry of Foreign Affairs to conduct and carry out a project in cooperation with the Center for International Legal Cooperation and Transparency International Slovakia, with the aim to create an online tracking tool which would allow various stakeholders to permanently monitor the state of the rule of law on national level, as well as foster the exchange of good practices.

References

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- For more information about the ongoing projects, please see: <http://www.snslp.sk/en/projects/current-projects/>

Follow-up initiatives by the Institution

Besides the activities mentioned above, the Centre has also actively engaged in specific follow-up initiatives based on the 2021 rule of law report. The Centre has participated in a technical meeting with the representatives from the European Commission, discussing the specific issues as reported by the Centre in its 2021 rule of law report, as well as further elaborating on specific topics of concern. The Centre has also engaged in awareness raising initiatives, including its participation in numerous roundtables and discussions organized by national as well as international stakeholders. For example, in September 2021, it participated together with the selected representatives from civil society organizations and other relevant national actors, including representatives of the Swedish Riksdag and the Swedish Embassy, at a roundtable organized by the Swedish Embassy in cooperation with the European Commission's Representation in Slovakia. Furthermore, in September 2021, it also participated in a discussion with the representatives of Venice Commission concerning the Ministry of Justice's request for opinion on questions regarding the organization of the legal profession in Slovakia and the role of the recently created Supreme Administrative Court in the disciplinary proceedings against barristers.

Within its other monitoring and reporting activities, the Centre has also focused on addressing the challenges in the area of functioning of the justice system and the safety of journalists and media freedom in its Individual submission of mid-term review of the fulfilment of recommendations from the third cycle of the Universal Periodic Review of the United Nations' Human Rights Council by the Slovak Republic, as well as presentation of the findings to the interested embassies and civil society organizations.

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NHRI's Recommendations to National and European policy makers

The Centre recommends:

1. To European policy makers to actively engage with state authorities to support the independent monitoring of the state of rule of law as carried out by the Centre.
2. To state authorities, including the Office of the Government of the Slovak Republic, to increase transparency and the participatory process in the creation of proposals of measures for improvement in the rule of law area, including in the context of the work of specific working groups established to work on selected areas related to the rule of law, and ensure engagement with the relevant stakeholders, including the representatives of the NHRI and relevant civil society organizations.
3. To state authorities, with respect to awareness raising activities concerning the European Rule of Law Mechanism, to also inform fully about the role of other institutions, including the NHRI and civil society organizations.

Independence and effectiveness of the NHRI

The Centre remains a NHRI accredited with B-Status. After the efforts in 2018/2019 to amend the establishing act of the Centre and ensure legislative compliance with the United Nations Principles on the Status of National Institutions ('Paris Principles'), there have been no efforts or legislative work to amend the law and strengthen the mandate and independence of the Centre in compliance with the Paris Principles.

International accreditation status and SCA recommendations

The Slovak National Human Rights Centre was accredited with B-status in March 2014 (1).

On that occasion, the SCA noted that the NHRI has a clear mandate to promote and protect human rights, but with an emphasis on equality and discrimination. Acknowledging that the NHRI interprets its mandate broadly to encompass all rights, the SCA encouraged the Centre to advocate for legislative changes giving them the power to: submit opinions, recommendations, proposals and reports on any human rights matter to the Government; promote and ensure harmonisation of national legislation, regulations and practices with international human rights instruments to which Slovakia is a party; create awareness of human rights norms through teaching, research and addressing public opinion; encourage ratification or access to international human rights instruments; and effectively investigate complaints of human rights violations.

The SCA noted that the administrative board, the decision-making body of the SNCHR, is made up of members selected by nine separate appointing authorities, each of which can define its own selection criteria. The SCA encouraged the Centre to advocate for the formalisation of a clear, transparent, and participatory selection and appointment process of decision-making body, in relevant laws, regulations or binding administrative guidelines.

The SCA took the view that the arrangements for the appointment of members did not ensure pluralism in the composition of the Administrative Board. It encouraged the Centre to ensure that its membership and staff is representative of the diverse segments of society.

Additionally, the SCA pointed out that the enabling legislation of the NHRI does not explicitly include provisions to protect the members from legal liability for the actions undertaken and decisions made in good faith in their official capacity.

Further, the SCA noted, that according to the enabling law, membership of the Administrative Board can be terminated by recall of the appointing authority. The SCA emphasized that dismissal should not be solely dependent on the discretion of appointing authorities. It encouraged the Centre to advocate for the formalisation of a dismissal process in which: dismissal is made in strict conformity with all procedural and substantive requirements prescribed by law; grounds for dismissal are clearly defined and appropriately confined only to actions adversely impacting the members' capacity to fulfil their mandate; and where appropriate, the legislation should specify the application of a particular ground must be supported by a decision of an independent body with appropriate jurisdiction.

The Slovak NHRI reports, on a positive note, that some issues raised by the SCA in 2014 have now been addressed. These include the fact that, at the time, one member of the Administrative Board, who also had voting rights on the Board, was a member of Parliament, which is now no longer the case. Similarly, concerns raised by the SCA regarding the adequacy of the Centre's funding have also been addressed, as the Centre has recently been financially strengthened: in particular, its budget was increased in 2021 and, for 2022, the Centre was allocated a subvention from the public budget in the amount of 944 287 Eur, including capital expenditures for modernization of the registry and IT systems.

References

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Regulatory framework

The Centre has no constitutional basis as it was established by Act of the Slovak National Council No. 308/1993 Coll. on the Establishment of Slovak National Centre for Human Rights, as amended.

The NHRI has the mandate to contribute to access to justice for individuals, including through complaints handling, providing legal assistance to individuals and awareness-raising.

The Centre, within its mandate acting as the equality body in the Slovak Republic pursuant to Act No. 365/2004 Coll. on Equal Treatment in Certain Areas and on Protection from Discrimination as amended (the Anti-Discrimination Act) can, however, represent individuals in civil litigation in anti-discrimination disputes.

The national regulatory framework applicable to the institution has not changed since the 2021 report.

The Centre believes its regulatory framework would need to be strengthened. Besides greater inclusion of the Centre in the participatory processes, the legislative and institutional framework should focus be amended to enhance the mandate of the Centre in submitting its opinions, comments and recommendations on both legislative and non-legislative initiatives to relevant state entities. In this regard, the legislative and institutional framework should also be strengthened to provide for greater obligations and

commitments from the relevant state authorities to address the Centre's opinions and recommendations. A mechanism ensuring that state authorities consider the Centre's annual report on human rights and recommendations included should be established. In addition, the powers of the Centre to conduct independent investigations, concerning the area of non-discrimination and human rights violations should be enhanced. Independence shall be strengthened through changes in the appointment procedure of members of the Administrative Board and the election procedure of Executive Director should be more open. The legislation should also provide safeguards to financial independence.

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- Principles relating to the Status of National Institutions (The Paris Principles), adopted by the United Nations General Assembly resolution 48/134 of 20 December 1993

Enabling and safe space

The relevant state authorities have good awareness of the NHRIs' mandate, independence and role.

However, the NHRI does not have adequate access to information and to policy makers and is not systematically involved in all stages of legislation and policy making with human rights implications. Indeed, the competence of the Centre to participate in all stages of legislation and policy making is limited. As concerns the participation in commenting proposed legislative or other policy documents, the Centre can only participate in the interdepartmental commentary procedure as part of general public, as it

is not an obligatory commenting entity. In particular instances, it can be stated that there is a lack of willingness to engage in consultation from the side of state authorities in the process of law-making or policy-making. Nonetheless, there remain positive examples of good practices, involving the Centre in the creation of strategic documents, such as the cooperation between the Ministry of Foreign and European Affairs with the Centre in the drafting and creation of the first National Action Plan on Business and Human Rights or active engagement of the Centre by the Office of the Plenipotentiary of the Government of the Slovak Republic for Roma Communities in preparation of action plans to the Strategy of Roma Equality, Inclusion and Participation by 2030. However, as was already highlighted by the Centre in its 2021 rule of law report, there is a need for more systematic involvement of the Centre in the legislative and non-legislative processes.

The addressees of the NHRI's recommendations are not legally obliged to provide a timely and reasoned reply and there are no state measures and no legislative grounds requiring public or private entities to respond to the NHRI's recommendations.

The continuous threats and targeting of human rights defenders, including NHRIs, result in threats to fundamental rights and the pillars of a functioning democratic society, including freedom of expression and access to reliable and impartial information, which is closely related to public participation. In Slovakia, there is no individual regime, provisions or immunities for the protection of members of the NHRI for criminal and civil liability for official actions and decisions undertaken in good faith. For more information specifically on SLAPP actions, please see below the section on civic space and human rights defenders.

References

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

The Centre continues its efforts to enhance its effectiveness and compliance with the Paris Principles and Recommendation 2021/1 of the Committee of Ministers of the Council of Europe on NHRIs. In 2021, for example, the Centre has adopted an internal methodology

for monitoring and participating in legislative processes in order to enhance the effectiveness and formalize the participation in legislative processes and evaluate their success. Hence, despite the fact that the Centre does not have an explicit mandate, it is trying to strengthen its activities in this area internally.

In addition, the need to strengthen the independence, effectiveness and compliance with the Paris Principles is also part of the reporting activities of the Centre. For example, in 2021, the need to enhance the compliance of the Centre with the Paris Principles was explicitly addressed in its Individual submission on mid-term review of the fulfilment of recommendation from the third cycle of the Universal Periodic Review of the UN Human Rights Council by the Slovak Republic submitted in November 2021.

References

- Slovak National Centre for Human Rights, 'Individual submission of the Slovak National Centre for Human Rights (UPR mid-term)', available at: <http://www.snslp.sk/wp-content/uploads/UPR-Mid-term-Report-3rd-cycle.pdf>

NHRI's recommendations to national and regional authorities

The Centre recommends:

1. To the Government of the Slovak Republic to establish the Centre as an obligatory commenting entity to legislative proposals through amendment of relevant legislation.
2. To the Ministry of Justice of the Slovak Republic to enhance the efforts to increase full compliance of the Centre with the Paris Principles and to include the Centre in discussions on the possible legislative amendments of the legal and institutional framework of the Centre, including Act of the Slovak National Council No. 308/1993 Coll. on the Establishment of the Slovak National Centre for Human Rights.
3. To the Ministry of Justice of the Slovak Republic to enhance the independence and effectiveness of the Centre by placing more emphasis on the general obligation of relevant entities to cooperate with the Centre in all areas of its mandate, including an explicit mandate of the Centre to request response from the relevant state entities to the Centre's opinions and recommendations.

Human rights defenders and civil society space

The situation regarding the promotion and protection of civil society space and human rights defenders remains challenging. While the Centre has previously reported on the issue of halt on funding for projects for selected civil society organizations working on and advocating for the rights of minorities. The grant schemes and regulations remain inaccessible to organizations working on issues, including the protection of LGBTIQ+ or gender equality. In addition, the rhetoric employed by selected public figures remain alarming, with increasing use of hate speech directed against members of vulnerable groups as well as human rights defenders or civil society organizations working in this field.

Laws and practices negatively impacting on civil society space and/or on human rights defenders' activities

The disbursement of funding through public grant schemes continues to benefit only selected organizations, excluding organizations working on issues related to gender equality and LGBTIQ+ rights. Negative attitudes and perceptions of civil society organizations and human rights defenders working on these issues therefore also remained an issue in 2021.

The shrinking democratic space has been also highlighted by the rhetoric employed by the public authorities, who often engage in verbal attacks on human rights defenders and civil society organizations working with sensitive issues, such as gender equality or the rights of vulnerable groups.

In 2021, there have been repetitive attempts to amend the legislation concerning sexual and reproductive health of women, which impacted also the work and the environment in which civil societies and human rights defenders work. The Council of Europe Commissioner for Human Rights, Dunja Mijatović, addressed multiple letters to the Members of the National Council of the Slovak Republic, where she expressed concern about these repeated attempts and their compliance with international human rights obligations. On that occasion, she also underlined that these repeated attempts create "an increasingly hostile environment" for Slovak human rights defenders working on the issues of gender equality and sexual and reproductive health and rights. The Centre followed with concern developments regarding such proposals and the related legislative process in the National Council of the Slovak Republic. In September 2021, it called upon the Members of the National Council of the Slovak Republic not to vote for such proposal and as a follow up, on 13 October issued and addressed the expert opinion on the amendments to the deputies of committees in the National Council of the Slovak Republic

authorized to discuss the amendments, asking them not to support them in committee and plenary. In its opinion, the Center analyzes the controversial provisions of the draft law in terms of their compliance with human rights and the principle of equal treatment.

References

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Access to and involvement of civil society actors in law and policy making

As regards the involvement of civil society actors in law and policy making, challenges remain in terms of participatory processes and consultation of wider public, including the representatives of relevant civil society organization, when adopting important reforms. While there have been no legislative changes restricting or regulating the access to and involvement of civil society actors, examples of lack of their involvement continue also in 2021. For example, despite the announcements of the Ministry of Finance of the Slovak Republic that the Recovery and Resilience Plan of the Slovak Republic will be discussed at several roundtables and implemented in close cooperation with civil society organizations, several civil society organizations criticized the lack of involvement of key partners and called on the Government to discuss further steps and participation of relevant civil society organizations. Moreover, it is a common practice that important laws or legislative amendments are submitted directly through the parliament (as proposals of members of the parliaments and not government proposals) where the space for the civil society to participate is limited as compared to the legislative procedure regulating governmental proposals that need to pass through the interdepartmental commentary procedure.

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Threats and attacks, including strategic litigation against public participation (SLAPPs)

The Centre has recently carried out a research focused particularly on civil society organizations and human rights defenders active in the field of environment protection. In 2021, it mapped the experience of threats and bullying or other restriction of rights of human rights defenders and civil society organizations in this field. The aim of the mapping was to obtain basic information on whether such cases occur, in what form and whether human rights defenders and civil society organizations turn to public authorities in order to stop such actions. The mapping included collection of data through a questionnaire with the aim to explore detailed characteristics of the experience of threats or bullying, e.g. threatening subjects, method of threat or bullying, strategies of solution and protection against such conduct. Within this activity, the Centre received information on 11 cases that respondents considered threat or bullying. The most common form of threat and restriction of rights was the different ways of harassment and slander of individuals or their families by the parties involved, but also threats and the use of various administrative acts as a form of harassment (complaints, criminal reports). Such action came from entities whose interests may be affected by the work of defenders. As reported,

in most cases human rights defenders seek to defend themselves by legal means and address various public authorities. However, according to the findings, opportunities to defend their rights are perceived rather negatively. According to the findings of this activity, the civil society organizations have confirmed that they have some experience with various forms of restrictions on the exercise of their rights under the Aarhus Convention. However, as the Centre has noted, no judicial or criminal statistics are collected on this phenomenon, and no academic research into the rights of human rights defenders in this field was carried out to date.

As regards legal harassment and SLAPPs, there are various legal instruments potentially used and abused in Slovakia to bring cases against human rights defenders, including NHRIs. In the area of civil liability, the most common instrument relied on is Section 13 of Act of the Federal Assembly of the Czech and Slovak Federal Republic No. 40/1994 Coll. Civil Code, as amended (“Civil Code”) ensuring the protection of reputation of a natural person and Section 19b(3) of the Civil Code, ensuring the protection of reputation of legal persons. As regards criminal liability, in general, the Criminal Code sets out several provisions often used to initiate criminal proceedings against human rights defenders. These include, for example, false accusation under Section 345, endangering confidential and classified information under Section 353, slander under Section 373, or violation of the confidentiality of spoken conversation and other personal expressions. When it comes to civil proceedings, these are usually directed against the media publishers while journalists or human rights defenders rather face criminal proceedings.

For more information, please see the section on media freedom, pluralism and safety of journalists.

NHRI’s role in promoting and protecting civil society space and human rights defenders

Besides the Centre’s regular monitoring and reporting activities, including the annual rule of law report and the targeted research mentioned above on environmental defenders, the Centre continues to submit its individual reports also to the UN human rights mechanisms, including the Individual submissions on the fulfilment of recommendations from the review cycles of the Universal Periodic Review of the UN Human Rights Council. In November 2021, the Centre submitted its Individual submission on mid-term review of the fulfilment of recommendation from the third cycle of the Universal Periodic Review of the UN Human Rights Council by the Slovak Republic. In its individual submission, the Centre also focused on addressing and evaluating the fulfilment of recommendations concerning the promotion and protection of enabling civic space, especially regarding the shrinking space

for civil society organizations working on issues of vulnerable groups, including LGBTIQ+ or organizations working on sexual and reproductive rights.

References

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NHRI's recommendations to national and regional authorities

The Centre recommends:

1. To focus on complementing legislative measures aimed at increasing the support and safety of journalists and human rights defenders, as well as civil society organizations with the adoption of additional measures focusing on raising awareness and knowledge on the work of human rights defenders, as well as better monitoring cases of threats.
2. To Ministry of Labour, Social Affairs and Family of the Slovak Republic and other national authorities administering grant schemes for civil societies to ensure that funding for civil society organizations available from grant schemes administered nationally are equally available to all civil society organizations irrespective whether they work on sensitive issues.
3. To the Government of the Slovak Republic to implement the relevant international and regional human rights standards on the protection of human rights defenders.

Checks and balances

Despite the number of reforms introduced, challenges remain in the area of checks and balances. In particular, it must be highlighted that the alarming signal of numerous amendments to the Constitution do not contribute to the stability of the legal order and question the system of checks and balances, increasing the power of legislative and executive.

Procedure to dismiss members of the Judicial Council

The Centre has previously reported on the reform of the judiciary and amendments to the Constitution of the Slovak Republic adopted in December 2020 posing challenges to the

functioning of the justice system as well as the system of checks and balances. One of the challenges include the explicit possibility to dismiss members of the Judicial Council of the Slovak Republic at any time before the expiry of their tenure by their appointing authority (Article 141a(2) of the Constitution of the Slovak Republic ("Constitution")). The provision does not require the dismissal to be founded on specific criteria prescribed by law, on the contrary, it may be motivated by a lack of trust. Such mechanism is not in conformity with the European standards concerning the judicial independence. Members of the Judicial Council should be granted sufficient guarantees for their independence and impartiality in relation to the legislature and the executive, including the way they can be dismissed. Tenure of members of Judicial Council shall be secure and not subject to arbitrary termination. Only in case of serious misconduct or neglect of duty may a member be dismissed, while the law should provide precise grounds, procedure and competences.

Accelerated legislative processes

Accelerated legislative procedures continued to threaten the system of checks and balances in 2021. A number of legislative proposals have undergone accelerated legislative procedures in response to the COVID-19 pandemic, as part of measures directly related to the COVID-19 pandemic, but also irrespective of the pandemic emergency. Although already in use before the pandemic, experts argue the practice is becoming more common and is often being misused. Such procedures bypass the opportunity for public debate and scrutiny over important matters, and have exposed the possibility to use accelerated legislative procedure even to change the Constitution. According to the statistics of the National Council of the Slovak Republic ("Parliament"), in 2021, the Parliament has enacted 167 acts, out of which 27 were enacted in an accelerated legislative procedure. In March 2021, the President vetoed a law on motorway vignettes as it did not meet the conditions for an accelerated legislative procedure.

Some Members of Parliament also recognized the use of accelerated legislative procedures as problematic, including for the lack of coordination between ministries. Additionally, a new amendment is currently being prepared under the Rules of Procedure of the National Council that would change the rules for accelerated legislative procedures. The proposed changes would lead to a more extended legislative process, but also to the easing of the conditions under which an accelerated legislative procedure can be initiated. As of 18 January 2022, no draft of the proposed legislation is yet available.

Implementation of judgments of supranational courts

As regards the implementation of judgments of supranational courts, namely the European Court of Human Rights, according to the Committee of Ministers of the Council of Europe,

the judgment of 1 September 2020 in the case of *R.R. and R.D. v. Slovakia* remains under enhanced supervision by the Committee of Ministers. The case concerned a violation of Articles 3 and 14 due to police ill-treatment and excessive use of force in a police operation carried out on a street in a Roma community, and the subsequent lack of proper investigation into the alleged discrimination in the planning of such operation. In June 2021, the Slovak Government published an “Apology of the Government of the Slovak Republic for the manner of intervention of the police forces in the case of *Moldava nad Bodvou* in 2013”.

References

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Trust amongst citizens and between citizens and the public administration

The level of trust of citizens in the state authorities remains constantly low, even after the planned and introduced reforms in many relevant areas. For example, according to the Flash Eurobarometer survey of September 2021, 66 % of Slovak respondents think that things are going in the wrong direction in their country. This is above the EU average of 48 %. Slovak respondents were also slightly more concerned about the impact of the COVID-19 pandemic on the financial situation of their household than the EU average. With regards to the way the Slovak government has handled the COVID-19 vaccination strategy, Slovak respondents showed the lowest rates of satisfaction in the EU (24 % compared to

the 50 % EU average). Satisfaction rates with the EU's handling of the COVID-19 vaccination strategy were also lowest among the EU countries (40 % compared to the 49 % EU average).

At the beginning of the pandemic in Slovakia, the Institute for Sociology and Institute for Research in Social Communication of the Slovak Academy of Sciences, MNForce Public Opinion Agency and Seesame Communication Agency, began to conduct online-based surveys. Their purpose was to document the changing views of the population on a variety of important topics, including trust in public institutions. According to their findings, the trust in public institutions has significantly decreased since the pandemic began. From the 4 institutions mentioned in the survey, the government has the lowest trust. It has witnessed the largest decrease with 45,2% of people having trust in it in the first survey from April 2020, to only 10% in December 2021. Trust in other public institutions, including the President, Healthcare and Science institutions, waned as well.

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NHRIs as part of the system of checks and balances

Alerting on concerns posed by amendments to the Constitution of the Slovak Republic

The Centre has highlighted the challenges posed by the newly adopted amendments to the Constitution in its 2021 rule of law report. Among other initiatives, the Centre focused on analyzing the selected problematic issues and in 2021 published a Legal Analysis of the Constitutional Amendments, with the aim to analyze the particularities of the Constitutional Act No. 422/2020 Coll., namely its hypothetical impacts on the enjoyment of human rights and fundamental freedoms. In particular, the analysis focused the new amendment (Article 124(5) of the Constitution), which explicitly excludes the possibility of the Constitutional Court of the Slovak Republic to assess the compliance of constitutional acts with the Constitution. Considering that constitutional acts may be enacted by the approval of three-fifths of the Members of Parliament, the removal of the reviewability of constitutional acts by the Constitutional Court was perceived as a threat to the principle of checks and balances on the part of other powers in the State. According to the findings of the Centre, preventive analysis of the proposal to amend the Constitution in terms of the possible effects of these changes on the exercise of human rights and fundamental freedoms should necessarily precede the introduction of such an explicit limitation of the competences of the Constitutional Court. Taking into consideration the low degree of rigidity of the Constitution and the high number of amendments, the reduction of the control mechanism, which is not offset by the strengthening of stabilization mechanisms, appears challenging with a potential negative impact on human rights standards. The power of control and competence of the Constitutional Court in relation to assessing the compliance of constitutional acts with the Constitution was an important guarantee of protection of constitutionality. In the Centre's view, compensating the Constitutional Court's deprived powers by other review mechanisms would be more adequate.

Alerting on concerns posed by accelerated legislative procedures

The Centre has previously highlighted the issue of using accelerated legislative procedures in its 2021 rule of law report. Addressing this issue, the Centre monitored and analyzed new sources of law introduced in 2020 in its Report on the Observance of Human Rights Including the Principle of Equal Treatment in the Slovak Republic for the Year 2020, published in April 2021. According to the findings of the Centre, during 2020, the Slovak legal system expanded by a total of 453 new sources of law published in the Collection of Laws, including 2 constitutional acts, as well as 124 acts. Out of these 124 acts, almost half of the acts were introduced in accelerated legislative proceedings.

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NHRI's recommendations to national and regional authorities

The Centre recommends:

1. To the Ministry of Justice of the Slovak Republic and other relevant authorities to conduct preventive analysis of the proposals to amend the Constitution of the Slovak Republic in terms of the possible effects of these changes on the exercise of human rights and fundamental freedoms before the introduction of provisions restricting the powers of selected authorities affecting the system of checks and balances.
2. To the Government of the Slovak Republic and the National Council of the Slovak Republic to improve the participatory process, including enhancement and greater attention paid to consultations of wider pool and more systematic inclusion of relevant stakeholders, including the NHRI, in the creation and drafting of legislation and policy documents.
3. To the National Council of the Slovak Republic to refrain from constant, rapid and arbitrary amendments of the Constitution of the Slovak Republic, which might create instability of the legal order and pose challenges in the system of checks and balances.

Functioning of the justice system

The Ministry of Justice continued its efforts to advance on a number of specific reforms focusing on enhancing the functioning of the justice system. Such reforms included, among others, numerous and repetitive amendments of the Slovak Criminal Code and Criminal Procedure Code, introducing new crimes, such as dangerous electronic harassment, or the amendment of the conditions and length of pre-trial detention; the unification of disciplinary proceedings for a number of professions and the adoption of the Disciplinary Rules of Procedure; the significant strengthening of the rights and support for the victims of crime, or the numerous proposals for a new judicial court map. However, challenges remain in a number of areas, related not only to the design and implementation of such reforms and proposals, but also the potential effect of such reforms on the enjoyment of the fundamental rights and freedoms of individuals. This was for example, the case for the restriction of the competence of the Constitutional Court of the Slovak Republic to review to compliance of constitutional acts with the Constitution of the Slovak Republic, which was part of the amendments to the Constitution adopted in December 2020, already mentioned in last year's report, and on which the Centre recently published a brief legal opinion (see below, in the section on Checks and balances) . In addition, as shown by number of monitoring mechanisms, for example, the Eurobarometer, the level of trust of public in the justice system continuously remains alarmingly low.

Supreme Administrative Court

In 2020, Constitutional Act No. 422/2020 Coll. amending the Constitution of the Slovak Republic created the Supreme Administrative Court of the Slovak Republic ("SAC") as part of the larger reforms of the judiciary in Slovakia. In May 2021, the President of Slovakia appointed the head of the SAC. The SAC began functioning on 1 August 2021 and its aim is to protect people from the possible arbitrariness of state authorities. According to Article 142 of the Constitution, the SAC has a general jurisdiction in the field of administrative justice to review important decisions of state authorities and institutions, as well as the power to decide on the constitutionality and legality of elections to local self-governing bodies, and the dissolution or suspension of a political party or movement. In addition, it also acts as a disciplinary court for judges, prosecutors and in cases stipulated by law, for other professions as well, including for example, notaries.

As concerns the disciplinary proceedings, in November 2021, the Parliament approved the proposal of the Ministry of Justice for the new disciplinary rules of procedure for the SAC, which aims to regulate and unify the procedural rules of disciplinary proceedings in cases of judges, prosecutors, notaries and court bailiffs before the SAC. According to the new

rules, the composition of the Disciplinary Boards guarantees the necessary transparency of the disciplinary proceedings and significantly strengthens the representativeness and legitimacy of the members of the Disciplinary Board. The Disciplinary Board consists of the President of the Disciplinary Board, two Judges and two Associate Judges, which are randomly selected from the database according to the membership of the person in the profession.

The rights of Victims of Crime

In July 2021, the legislative amendment of Act No. 274/2017 Coll. on Victims of Crimes, as amended, came into effect, significantly strengthening the rights of victims of crime in a number of areas, including simplifying their access to compensation already at the beginning of the criminal prosecution and not after its lawful end. In addition, the new amendment extends the circle of victims of violent crimes to include also surviving relatives who lived with the deceased in the same household at the time of death if the violent crime caused death and to the victims of crime of torture of a close and entrusted person, the crime of enforced disappearance which caused non-pecuniary damage.

Judicial Court Map

The Centre has previously reported about the proposal to reform the court map as introduced by the Ministry of Justice. In 2021, the Minister of Justice continued her efforts to reform the judicial court map and submitted further options for such a new court map. The Judicial Court Map is the first reform supported by the Recovery and Resilience Plan in the field of justice. According to the Ministry of Justice, the new reform aims at creation of specialization of judges, faster and better court decisions and better working conditions for judges and court staff. However, neither of those versions received much support, whether it was within the political discourse or wider public, but most importantly it was highly criticized by the relevant judicial associations or other legal professions. Nonetheless, in January 2022, the Government of the Slovak Republic enacted the proposed reform of the court map.

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Role of the NHRI in contributing to the effective functioning of the justice system

In June 2021, the Minister of Justice requested an opinion from the Venice Commission on two questions concerning the role of SAC in disciplinary proceedings against lawyers and concerning the organization of the legal profession in Slovakia. While the Centre highlights the efforts of the Ministry of Justice to seek guidance and consult parts of proposals for potential future reform process, namely their compatibility with the principles of rule of law and democracy, it must also be stated, as also highlighted by the representatives of the Venice Commission in their Opinion, that without presenting a specific legislative proposal for such a reform, it made it difficult for the Commission to receive appropriate feedback from national stakeholders and did not allow the Commission to assess such proposed

reform in the broader context. The Centre took active part in the meeting and consultation with the experts from the Venice Commission organized in September 2021.

In July 2021, the Centre organized a working meeting with experts and relevant stakeholders on the issue of the new crime of dangerous electronic harassment. As the Centre actively organizes a number of educational activities for children as well as adults on the issue of cyberbullying and security of social networks, the Centre wanted to gather insights from relevant stakeholder and discuss about the risks in the online environment, taking measures to eliminate these risks and the importance of behaving responsibly. The Centre welcomed the introduction of such a new criminal offence and the opportunity to discuss with professionals on this very sensitive issue.

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NHRI's recommendations to national and regional authorities

The Centre recommends

- To the Ministry of Justice of the Slovak Republic and other relevant stakeholders to continue their efforts in seeking guidance from relevant regional advisory bodies on the compliance of proposed amendments and reforms with the European standards.
- To the Ministry of Justice of the Slovak Republic to ensure that the proposed reforms for legislative and non-legislative measures are drafted and created in a transparent way with effective participatory processes, including consultations of

relevant national stakeholders, such as NHRI, civil society organizations, academics and independent experts, as well as are preceded by an impact assessment.

- To the Ministry of Justice of the Slovak Republic to ensure that the comments of the relevant national stakeholders on the proposed reforms are fully and transparently addressed.

Media freedom, pluralism and safety of journalists

The rise in hostility and violence against journalist remains concerning, especially in connection with the COVID-19 pandemic as well as the anti-corruption framework. For example, in July 2021, journalists were attacked and insulted during a demonstration against new COVID-19 rules in front of the Parliament in Bratislava.

Freedom of media and safety of journalists

According to the 2021 World Press Freedom Index published by Reporters Without Borders evaluating the freedom of media, Slovakia ranks 35 out of 180 in the world ranking, decreasing its position as compared to 2020.

As regards criminal investigations against journalists, according to the Council of Europe's Platform to promote the protection of journalism and safety of journalists, there have been several alerts relating to the safety of journalists and freedom of media in Slovakia also in 2021. In September 2021, two journalists were charged with revealing the identity of a former intelligence agent, who acted as a secret witness in the investigation into the murder of investigative journalist Ján Kuciak and his fiancée. In September 2021, the Bratislava Prosecutor's Office ordered the police to press charges, which came just weeks before the expiration of statutory time limit on the original criminal complaint filed by the secret witness in 2018, which was initially rejected by the police. The journalists were charged with revealing confidential information pursuant to Section 353 of Act No. 300/2005 Coll. Criminal Code, as amended ("Criminal Code"). The charges were met with widespread public outrage. After the Prosecutor General instructed to review the charges' legality and grounds, the Regional Prosecutor's Office in Bratislava overturned the decision, dismissing the charges.

The Ministry of Culture of the Slovak Republic ("Ministry of Culture") has previously reported to be 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. As of December 2021, no legislative proposals have been presented yet. Nonetheless, the Ministry of Culture has introduced a package of media laws, which, among others, are intended to increase the transparency of media financing

and the transparency of the ownership. All media will have to register in the public sector partners and publish all donors who donate more than 1200 Eur during the year.

The Media Legislative Package contains various laws, including Media Act, Authors Act and Publication Act. The Media Act introduces various rights and duties for audiovisual media. Among other amendments, it requires media to disclose their owners, introduces new advertisement rules and offers better protection for underage viewers. As of January 2022, the Act was passed to the second reading in the Parliament. The Authors Act intends to help authors, by for instance introducing a bestseller clause, support research and restrict technological giants. The Act was enacted by the Parliament on 16 February 2022.

Freedom of Information Act

The Ministry of Justice has proposed amendments to the Freedom of Information Act, with the stated intention to bring more transparency to the public sector. The Act is divided into two parts. The first one is based on requests included in the Political Manifesto, such as expanding the obligations arising from the Freedom of Information Act on state-owned companies and their subsidiary companies. The second part is based on Directive 2019/1024 ("EU Open Data Directive"). The Act is considered a very sensitive topic and many expressed concerns about this amendment. Civil society organizations including Via Iuris, Transparency International Slovakia and the Fair-Play Alliance criticised the Act for being too narrow, arguing that a more comprehensive reform is needed to address all the issues people face when trying to access public interest information. Civil society actors put forward 22 suggestions to achieve this aim, looking at the most problematic procedures and practices of authorities when dealing with requests for information.

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Role of the NHRI in promoting and safeguarding an enabling environment for media and freedom of expression

Within its monitoring and reporting activities, the Centre focused in great detail on existing challenges and the implementation of related recommendations in the area of freedom of media and safety of journalists in its Individual submission on mid-term review of the fulfilment of recommendation from the third cycle of the Universal Periodic Review of the UN Human Rights Council by the Slovak Republic submitted in November 2021. The submission highlighted the alarming threats that remain regarding the safety of journalists,

as well as the overuse of criminal procedures and measures regarding the reporting of journalists.

In November 2021, the Centre organized a roundtable with representatives of the media and experts as well as staff members of the Centre on the issue of improving the public debate on human rights violations and discrimination. According to the outcomes of the discussion, the sensitization of certain facts and news on media often leads to the stigmatization of vulnerable groups and thus contributes to further polarization of society. On the contrary, their overuse contributes to a decline in public trust in institutions and mechanisms designed to protect rights.

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NHRI's recommendations to national and regional authorities

The Centre recommends:

1. To the Ministry of Culture of the Slovak Republic to complete, without undue delay, the work on the preparation and enactment of a constitutional act on increasing the safety of journalists, as well as enlarge the participatory process of the creation of the constitutional act.
2. To all public figures to refrain from legislative harassment practices such as using strategic lawsuits against public participation or cases of defamation of journalists.
3. To law enforcement authorities to refrain from practices using criminal procedures with the aim to detract journalists from reporting and promptly, impartially, independently and effectively investigate all crimes against journalists and to state authorities to take an active role in prevention of attacks against journalists

Corruption

As also highlighted by the previous rule of law report, the country is making progress in combating corruption. The establishment of a Whistle blower Protection Office, the Office for the management of seized property, or the proposed Amendment of the Criminal Code are examples of this. However, there are still remaining issues as well as recommendations from international and regional monitoring or advisory bodies which need to be implemented. This was clear from the Compliance report of the fifth evaluation round by GRECO which drew attention to the fact that the country satisfactorily implemented only 2 out of 21 of its recommendations. Many problems remain to address corruption risks of top executive officials or law enforcement agencies. The data from the Transparency International 2021 Corruption Perceptions Index have shown an increase in score, however it is still low compared to the EU average.

Anti-corruption framework

Slovakia scored 52/100 in the latest Transparency International 2021 Corruption Perceptions Index, increasing its position compared with the last year's ranking (49/100). It was ranked 56th globally (60th in 2020). According to the data of the Transparency International Global Corruption Barometer EU 2021, 19% of Slovaks believe that corruption increased in the previous 12 months. This is the same percentage as Luxembourg and the third lowest number in the EU. On the other hand, 81% of Slovaks think corruption in their government is a big problem (EU average is 62%). However, 61% of people believe their government is doing well in tackling corruption (EU Average 43%).

Statistics on corruption

The number of corruption offenses increased in 2020, compared to 2019. According to the statistics provided by the Office of the Special Prosecution, in 2020, 189 persons were prosecuted for corruption offences or suspected thereof, which is an increase of 50 compared to 2019. 124 persons were indicted, compared to 83 in 2019; 34 persons concluded plea bargain agreements in 2020, compared to 44 in 2019, and 118 persons were convicted. Multiple charges were brought against people in cases of corruption in public finances management, corruption of high-ranking civil servants and corruption in the judiciary.

Whistle blowers Protection Act

As mentioned in the last report, the Act No. 54/2019 Coll. On the Protection of Persons Reporting on Anti-social Activities, enabled the creation of the Whistle blower Protection Office. The National Council elected the Office's first head in February 2021. The office has been fully functioning since 1 September 2021. Among other roles, it provides assistance

and legal advice to people who report actions, which are negatively affecting society. On the 100-day anniversary of the Office, the Office's head communicated that to that day, 111 people had asked for assistance; the office had received 45 reports, more than a half of which had been linked to serious breaches of various laws; at that moment it was dealing with 22 cases and had already protected 4 persons from being fired or suffering unfair sanctions from the employer.

Office for the management of seized property

A new law, Act No. 312/2020 Coll. on the Enforcement of the Decision on Freezing of Assets and Management of Frozen Assets, established a new Office for the Management of Seized Property. The Office has been in operation since 1 August 2021. It is viewed as an important asset in the fight against corruption since it manages properties seized during criminal and tax fraud proceedings or during the process of proving the origins of assets and during impositions of international sanctions. In December 2021, the head of the Office informed that the Office was already managing multiple seized assets. These included 35 cars, 18 houses, 23 flats, 79 premises and 25 weapons.

Amendment of the Criminal Code

The new amendment to the Criminal Code proposed by the Ministry of Justice in December 2021 expands the scope of corruption offences as currently formulated in the Criminal Code, so that such provisions could in practice become applicable to any corruption cases. Among other amendments, it will increase the limit of material damage from 266 Eur to 500 Eur, as this number has not changed since 2005. A new category of material damage, damage of extraordinary large scale, with a threshold amounting at least to 1 000 000 Eur, will be introduced. Moreover, provisions to punish corruption in the framework of elections will be tightened, both by expanding their scope and increasing the sanctions. The Ministry of Justice proposed the new law to come into force on 1 June 2022. In addition, the proposal for the amendment of the Criminal Code was under the Interdepartmental Commentary procedure until 21 December 2021 and the results of the procedure are being evaluated.

Compliance report of the fifth evaluation round by the Group of States against Corruption (GRECO)

GRECO, in the new Compliance report examined the compliance of the Slovak Republic with its recommendations issued in the 2019 Evaluation Report. The country failed to implement 16 out of 21 recommendations, while 3 were considered partly and 2 satisfactorily implemented. GRECO welcomed that a revised National Anti-Corruption Programme was being prepared, which according to Slovak authorities should address

many of its recommendations. However, because the Programme was still in preparation, most of the recommendation concerning top executive functions were not met. This included setting rules to govern contacts between lobbyists and top executive officials; adoption of a code of conduct for top executive officials in order to provide clear guidance regarding conflicts of interests; subjecting state secretaries to integrity checks or establishing stricter rules, such as guidance and the obligation of reporting them, on gifts for top executive officials; as well as strengthening the system of asset declaration for persons with top executive functions. GRECO found that more progress was made in the area of law enforcement agencies. GRECO highlighted the adopted Action Plan for the Fight against Corruption in the Police Force which aims to eliminate corruption risks within set timeframes. Therefore, for instance, it considered that the recommendation to establish and determine concrete measure for an anti-corruption strategy within the Police Force was met. The revision of the Code of Conduct for Police Members was also being prepared, which was considered a positive development; however, GRECO could not conclude whether it would meet the recommendations. Multiple recommendations remain unimplemented as regards corruption risks within the Police Force. These include the strengthening of the security check system, adopting rules to limit risks of conflicts of interests when police officers leave to work in other sectors or strengthening the control system of assets of police officers.

The area of anti-corruption framework remains one of the areas in which the Centre is monitoring and reporting on the challenges as well as improvements within the European Rule of Law Mechanism, as well as it remains part of its activities and engagement with other international and national stakeholders.

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NHRI's recommendations to national and regional authorities

The Centre recommends:

1. To the Government of the Slovak Republic to take active steps to implement recommendations from international and regional organizations and bodies, including GRECO and engage relevant stakeholder, including the NHRI and civil society organizations in the process.
2. To public figures to present good practices and results achieved when informing the public with the aim to increase the trust of public in state authorities and creating a culture of zero-tolerance towards corruption.

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

In 2021, COVID-19 pandemic continued to have disproportionate negative impact on the vulnerable sectors of society, including Roma. The rather high number of resolutions that included restrictions on freedom of movement, which at times amended the rules in a timeline of only a few days, created confusion and uncertainty of rules and restrictions in the general public, causing also challenges of enforcing them in practice.

Emergency regimes and related measures

In 2021, there were several extended periods in the duration of the state of emergency related to COVID-19 pandemic. The first period of state of emergency lasted from 1 October 2020, until 14 May 2021, being prolonged several times. The second state of emergency was declared by the Government of the Slovak Republic Resolution No.

428/2021 Coll., starting from 25 November 2021 for a period of 90 days, and was in force until 23 February 2022.

As in the previous year, the Government enacted a number of restrictions on freedom of movement and residence and freedom of peaceful assembly. The restrictions to freedom of movement were often connected to a curfew (e.g. from 5:00 a.m.- 01:00 a.m. or from 20:00 p.m.- 05:00 a.m.), with a number of exceptions (e.g. way to and from work, shopping for food and essentials, pharmacy, COVID-19 testing, doctor's visit or individual sporting/nature walks). The rather high number of resolutions that included restrictions on freedom of movement (e.g. a total of 14 in the period of 1 January – 14 May 2021), which at times amended the rules in a timeline of only a few days, created confusion and uncertainty of actual rules and restrictions in the general public, causing also challenges in their practical enforcement. This also concerned rules and regulations affecting the functioning of shops, cultural centers, ski and recreation amenities or long distance public transport. Regarding the latter, in December 2021, the Government ordered that only vaccinated, recovered or tested passenger were allowed to use long-distance buses and express trains. However, the responsibility over the matter was unclear, ensuing in disputes between the Ministry of Transport and Construction of the Slovak Republic and the Public Health Authority of the Slovak Republic. This resulted in people's uncertainty over rules whether they would be able to get to work, home or school.

Freedom of assembly continued to be restricted at times also in 2021 as part of regulations aimed to curb the spread of the COVID-19 pandemic. Lasting from 13 October 2020 until 14 May 2021 and again from 25 November 2021 until 12 January 2022, peaceful assembly of more than 6 persons, excluding persons living in the same household, was prohibited.

In 2021, the Constitutional Court of the Slovak Republic also reviewed some of the measures adopted in connection with the COVID-19 pandemic. According to the finding of the Constitutional Court published on 31 December 2021, the use of state quarantine (outside of household, e.g. in a medical or other designated facility) is deemed unconstitutional as an inadmissible interference with personal liberty. The Constitutional Court decided on the motion of the Public Defender of Rights on violation of fundamental rights and freedoms during a pandemic. Secondly, the Court also decided on the powers of the Ministry of Health of the Slovak Republic and hygienists to enact pandemic measures.

The Constitutional Court stated that any restriction of fundamental rights must be clearly defined in law. In case of a broadly conceived power of the Ministry of Health and state and regional health authorities to take various anti-pandemic measures, this condition was not met. The Court did not decide on other regulations, such as obligations to wear a face

mask in public or on the requirement to provide a proof of vaccination, recovery or testing when entering various facilities. In December 2021, the Government however committed the Ministry of Health and Ministry of Justice to prepare a legal analysis of the possibility to introduce compulsory vaccination against COVID-19. The Constitutional Court also accepted a proposal of a group of 30 Members of Parliament to make a decision over the constitutionality of the provision of the legislative amendment (Act No. 304/2021) to the Act No. 355/2007 Coll. on the protection, promotion and development of public health and on the amendment of certain laws, as amended. The contested provision introduced a possibility to deny entry of people without the certificate of vaccination, recovery or negative test against COVID-19 into premises where people gather or to mass events.

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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 pandemic continued to have a disproportionate negative impact on the vulnerable sectors of the population in 2021. Despite certain efforts of the state, discrimination of Roma remains alarming and the COVID-19 pandemic further exacerbated the marginalization of Roma communities. With regards to the right to education, the Centre highlighted that the COVID-19 pandemic has brought new challenges not only in terms of access to education but also greatly exacerbated existing inequalities, especially for pupils from vulnerable populations.

In addition, children continued to be affected by several suspensions of in-person education in 2021, as part of the restrictions to curb the spread of the pandemic. In particular, despite positive measures from the state, including provision of education materials, webinars or guidance for distance learning, the physical closure of schools continued to impact the access to education of students from low socio-economic background, including Roma students. Organization for Economic Cooperation and

Development ("OECD") also reported that the COVID-19 crisis may have exacerbated significant equity concerns in Slovakia. As the impact of the socio-economic background in Slovakia on student performance is the highest in the OECD (particularly negatively affecting Roma pupils), Roma pupils may lack behind further due to the pandemic.

With regards to the right to health, some healthcare procedures, including surgeries, continued to be postponed also in 2021, especially during the third pandemic wave in Autumn 2021. As reported by the media and healthcare providers, the postponement of some procedures was due to the increasing number of COVID-19 patients in hospitals, combined with the lack of personnel, including nurses and anesthesiologists that were moved to care for COVID-19 patients.

Although not as pervasive as in 2020, Slovakia remained the only country in the EU in the second wave of the pandemic, in which entire Roma communities continued to be quarantined, such as in the town of Sačurov. The Centre as well as the Public Defender of Rights repeatedly contested the inadequacy and lack of sufficient justification of the measures regulating the isolation of Roma communities.

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Efforts by state authorities to mitigate challenges

According to the OECD, the impact of the COVID-19 pandemic crisis on the Slovak economy has been severe. After the rebound of the economic activity in the second half of 2020, the recovery pace has slowed. In the third quarter of 2021, the country's GDP remained about 1.5% below its pre-pandemic level. OECD further reported that the authorities took quick and effective measures to protect vulnerable households and provided extra spending to reinforce the capacity of the healthcare sector, job retention schemes and support to self-employed workers to save jobs and limit household income declines. The COVID-19 crisis was however particularly hard for small firms, which may further aggravate the difference between small domestic firms and highly productive large, mostly foreign-owned firms.

The Government continued to provide several financial recovery schemes, including to employers or self-employed persons that had to close or limit their operation due to the pandemic-related health regulations. Other support measures included insurance deferrals for employers and self-employed persons and support schemes for tourism industry.

In December 2021, the Government also approved a proposal of the Ministry of Health to provide a bonus remuneration (of 350 Euro or 300 Euro after taxation) to all healthcare professionals. However, not all people working in medical facilities (such as ambulance drivers and medical support staff) are included.

The Recovery Plan of the Slovak Republic (hereinafter referred to as “NRRP”) also includes opportunities to improve the situation in certain aspects of the rule of law in Slovakia. It follows up the ongoing priorities of the Government with respect to the reform of the justice system and fight against corruption, supporting them with funding from the Recovery Fund. As part of post-COVID 19 recovery, the NRRP includes the reform of a justice system as well as fight against corruption and money laundering, security and protection of population. The reform of judicial map is defined as one of the key reforms under NRRP together with improving the effectiveness of fight against corruption and money laundering (reform of the National Criminal Agency). Most of the reforms proposed in NRRP are to be implemented already by the end of the year 2021 or first half of 2022 under the Component 15 and 16.

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Actions taken by the NHRI to promote and protect rule of law and human rights in the crisis context

The Centre, within its mandate as an NHRI and equality body, continued to closely monitor the adopted measures in relation to the COVID-19 pandemic and evaluate their impact on the protection of human rights. For instance, the Centre monitored to what extent have health care facilities and doctors limited their services to urgent care only. The Centre also organized an online public consultation with organizations providing services to persons experiencing homelessness and low-threshold community centers.

In June 2021, the Centre submitted its Alternative Report on the Implementation of the European Social Charter reflecting on the 11th national report of the Slovak Republic on the implementation of the European Social Charter, as well as the 2017 Conclusions of the European Committee for Social Rights Relating to Articles from Thematic Group – Health, Social Security and Social Protection concerning the Slovak Republic. The submission reports on various measures with regards to first two waves of the COVID-19 pandemic, including on right to health of older persons, and access to pensions.

In September 2021, the Centre met with the Advisory Committee on the Framework Convention for the Protection of National Minorities during their delegation visit to Slovakia in the context of the country's fifth reporting cycle. In its intervention, the Centre recalled the persisting problems, especially in the area of discrimination and unequal treatment of persons belonging to national minorities in the exercise of their rights, especially economic, social and cultural rights. The Centre also presented its conclusions and recommendations, as published in the 2020 Human Rights Report, which largely assess the impact of the COVID-19 pandemic on vulnerable groups, including members of national minorities. The Centre also monitored and analyzed hate speech and extremist crimes, including cases of hate speech against healthcare workers during the COVID-19 pandemic. The Center monitored cases of hate speech, protests and verbal or physical attacks against nurses, doctors, epidemiologists or public persons supporting different COVID-19 pandemic measures, such as vaccination.

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

As in 2020, due to the state measures in force to curb the spread of the COVID-19 pandemic, at times the Centre remained closed for personal visits/complaints. Other options for filing in a complaint (e.g. telephone, email) continued to be provided at all times during 2021.

NHRI's recommendations to national and regional authorities

The Centre recommends:

1. To the Government of the Slovak Republic and relevant state authorities, when adopting measures to fight against COVID-19 to ensure their accessibility and clarity to general public.
2. To the Government of the Slovak Republic to create compensatory instruments that minimize the economic impacts of restrictions on fundamental rights and freedoms adopted in connection with the COVID-19 pandemic on vulnerable groups and increase support from the already existing instruments.

3. To the Ministry of Education, Science, Research and Sports of the Slovak Republic, without undue delay, in cooperation with the Centre and interested stakeholders and representatives of vulnerable groups, to prepare a study on the negative impacts of measures in response to COVID-19 on children and to draw up a plan to mitigate negative long-term effects, including on mental health of children.

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

The state authorities fail to actively take steps to protect the rights of certain vulnerable groups, in particular to protect the rights of LGBTIQ+ persons. In addition to the lack of political will, throughout 2021, there have been legislative proposals aimed to further stigmatize LGBTIQ+ persons and restrict their rights. In October 2021, five proposals were submitted to the Parliament aiming to: i) introduce constitutional definition of gender identity as a permanent characteristic defined by sex of a person at birth and constitutional definition of parenthood as parents being a father-man and a mother-woman; ii) prohibit informing about non-heterosexual sexuality, gender transitioning and gender dysphoria at schools; iii) introduce State obligation to protect gender identity of a child defined by sex at birth, prohibit advertisement or any other promotion of gender dysphoria or homosexuality and informing about homosexuality or gender dysphoria within educational process; remove the possibility to change a name and surname of a person upon gender transitioning; v) prohibit displaying a rainbow flag at the office of the Public Defender of Rights by defining in law which flags and symbols can be displayed. While the first four proposals did not pass in the first reading and the last one was withdrawn, the proposals themselves create a hostile environment for LGBTIQ+ communities and organizations promoting and protecting their rights. As reported by the media, the hostile environments include also the negative trend in rise in hate speech against these communities and civil society organizations working in the area of promoting and protecting the rights of these communities.

Slovenia

The Human Rights Ombudsman of the Republic of Slovenia

Impact of 2021 rule of law reporting

Follow-up by State authorities

There was an intensive public debate focusing mainly on two aspects addressed in the European Commission's 2021 rule of law report on Slovenia. These concern a delay of the Government's nomination of two European Delegated Prosecutors to the European Public Prosecutors Office (EPPO) and the Government's withholding of state funding of Slovenian Press Agency (STA) for the performance of its public service function.

Between 13 and 15 October 2021 the European Parliament's Committee on Civil Liberties, Justice and Home Affairs (LIBE) organized an ad-hoc Fact-Finding Mission on the state of the rule of law to Slovenia, led by the Dutch MEP Sophie in 't Veld (1). The Slovenian Human Rights Ombudsman Mr. Peter Svetina responded to the invitation and met with the members of the European Parliament (2), who conducted interviews in Slovenia with the representatives of national authorities, independent institutions, civil society, various experts and the media to examine the situation regarding the rule of law, freedom of the media and the fight against corruption. The EP's Mission Report of 17 November 2021 (3) was critical on several aspects of their visit and findings.

Furthermore, on 16 December 2021 the European Parliament adopted a Resolution on fundamental rights and the rule of law in Slovenia, raising in particular the delayed nomination of EPPO prosecutors (4). In the resolution, MEP expresses, inter alia, deep concern "about the level of public debate, climate of hostility, distrust and deep polarization in Slovenia, which has eroded trust in public bodies and between them". On EPPO, the resolution welcomed, after a delay of six months, the appointment of the two Delegated Prosecutors from Slovenia to the EPPO College on 24 November 2021. The Parliament also called on the Government to resume state funding and to ensure regular payments to the STA in full accordance with national law, while guaranteeing the Agency's editorial independence.

References

- (1) See: <https://www.europarl.europa.eu/news/sl/press-room/20211011IPR14622/poslanci-evropskega-parlamenta-zakljucili-prvi-obisk>
- (2) See: <https://www.varuh-rs.si/en/news/news/the-ombudsman-met-representatives-of-the-ep-fact-finding-mission/>
- (3) See the report on: https://www.europarl.europa.eu/doceo/document/LIBE-CR-699255_EN.pdf
- (4) European Parliament resolution of 16 December 2021 on fundamental rights and the rule of law in Slovenia, in particular the delayed nomination of EPPO prosecutors (2021/2978(RSP)) , available at: https://www.europarl.europa.eu/doceo/document/TA-9-2021-0512_EN.html

Impact on the Institution's work

The 2021 rule of law report has, in addition to informing the current rule of law debates in Slovenia, as explained above, influenced the work of our institution enhancing the engagement of the Ombudsman with European institutions (the Commission and European Parliament) on rule of law related topics (1).

References

- (1) See for example: <https://www.varuh-rs.si/en/news/news/the-ombudsman-met-representatives-of-the-ep-fact-finding-mission/> and <https://www.varuh-rs.si/sporocila-za-javnost/novica/varuh-svetina-v-bruslju-na-razpravi-o-svobodi-medijev-in-vladavini-prava-v-sloveniji/>

Independence and effectiveness of the NHRI

International accreditation status and SCA recommendations

The Human Rights Ombudsman of the Republic of Slovenia (hereinafter: the Ombudsman) was re-accredited with A-status in December 2020.

Among the recommendations (1), the SCA encouraged the Slovenian NHRI to advocate for the formalization and application of a selection and appointment process that includes requirements to broadly advertise vacancies, maximise the number of potential candidates from a wide range of societal group and educational qualifications, promote broad consultation and participation, and assess applicants based on pre-determined, objective and publicly available criteria. The Slovenian NHRI reported that, in practice, the call for applications is made public and that there is consultation with representative of political parties.

The SCA encouraged the Slovenian NHRI to advocate for the funding necessary to effectively carry out the full breadth of its mandate. The SCA also encouraged the NHRI to advocate for appropriate modifications to applicable administrative procedures to ensure that its independence and financial autonomy is guaranteed. In this respect, it is worth mentioning that, on 10 December 2020, the Constitutional Court adopted the decision that certain provisions of the Public Finance Act, as much as they pertain to the National Council, Constitutional Court, Human Rights Ombudsman, and Court of Audit, are inconsistent with the Constitution (decision No. U-I-474/18 of 10 December 2020, Official Gazette of the Republic of Slovenia, no. 195/2020) (2). The Constitutional Court prescribed a deadline for its implementation, which expired on 23 December 2021. However, the Parliament has so far not adopted the needed amendments to the Public Finance Act nor has the Government proposed any changes to it. The mentioned Constitutional Court decision applies also to the Ombudsman, which is at the same time an A-Status National Human Rights Institution (NHRI).

Finally, while the SCA acknowledged that the Slovenian NHRI interprets its mandate broadly and carries out activities encouraging the state to ratify or accede to international human rights instruments, it encouraged the Ombudsman to advocate for legislative amendments to make this mandate explicit.

References

- (1) Global Alliance of National Human Rights Institutions (GANHRI), Report and Recommendations of the Virtual Session of the Sub-Committee on Accreditation (SCA), 7-18 December 2020, 2.5 Slovenia Human Rights Ombudsman of the Republic of Slovenia (the Ombudsman), pp. 22-24. Available at: <https://ganhri.org/wp-content/uploads/2021/01/SCA-Report-December-2020-24012021-En.pdf>

(2) Official Gazette of the Republic of Slovenia, No, 196/2020 of 23 December 2020. See: <https://www.uradni-list.si/glasilo-uradni-list-rs/vsebina/2020-01-3501/> and <https://www.us-rs.si/odlocba-ustavnega-sodisca-st-u-i-474-18-z-dne-15-12-2020/>

Regulatory framework

The Ombudsman has a constitutional basis and the national regulatory framework applicable to the institution has not changed since the 2021 report.

The Ombudsman has the mandate to contribute to access to justice for individuals, including through complaints handling and awareness-raising. The Ombudsman can also, if he deems that a regulation or general act issued for the exercise of public authority inadmissibly interferes with human rights or fundamental freedoms, initiate the procedure for the review of the constitutionality or legality of regulations or general acts issued for the exercise of public authority before the Constitutional Court. The ombudsman can equally lodge constitutional complaints with the consent of the person whose human rights or fundamental freedoms he is protecting in the individual case.

The Ombudsman engaged in some strategic litigation initiatives in the field of the protection of migrants' rights and acted as *amicus curiae* in various court cases.

The Human Rights Ombudsman is of the view that the regulatory framework governing its functioning should be strengthened.

The Ombudsman made several recommendations to the Parliament and the Government in order to improve its functioning in compliance with the Paris Principles and Recommendations 2021/1 of the CM of the Council of Europe on NHRIs:

1. The Ombudsman in recommendation No. 1 (2020) of its 2020 Annual Report recommended to the Ministry of Justice and the Government of the Republic of Slovenia to prepare in collaboration with the Ombudsman, and the National Assembly to adopt the suitable legislative amendments, the purpose of which is to strengthen the position of the Ombudsman as the national institution for human rights with Status A according to the Paris Principles about the position and operation of national institutions for human rights (1993) in accordance with the recommendations of the Accreditation Committee (SCA) of the Global Alliance of National Human Rights Institutions (GANHRI) for Slovenia from December 2020 (1).

2. The Ombudsman in recommendation No. 2 (2020) of its 2020 Annual Report recommended to the Ministry of Justice and the Government of the Republic of Slovenia that in collaboration with the Ombudsman they prepare and the National Assembly adopt appropriate legislative amendments that will reflect international standards, as are defined in the Principles on the Protection and Promotion of the Ombudsman Institution (the Venice Principles) from 2019, which were adopted by the European Commission for Democracy through Law (the Venice Commission) of the Council of Europe, and in the Resolution (A/RES/75/186) on the role of the Ombudsman and the mediator in the promotion and protection of human rights from 16 December 2020 (2).
3. The Ombudsman also recommended in its recommendation No 8 (2020) to the National Assembly (and to the Government, which usually proposes the amendments of the acts to the Parliament) to implement the Constitutional Court decision of 10 December 2020 on the unconstitutionality of Public Finance Act related to financing autonomy of the Ombudsman and three other independent state institutions within the given deadline (3).

However, the above mentioned recommendations have so far not been implemented by relevant authorities.

References

- (1) See: Annual Report of the Human Rights Ombudsman of the Republic of Slovenia for 2020, EN, at page 51, available at: https://www.varuh-rs.si/fileadmin/user_upload/pdf/lp/LP_2020/Annual_Report_2020.pdf
- (2) Ibidem, at page 54.
- (3) See Annual Report for 2020 (in Slovene), at page 75, also available at: : https://www.varuh-rs.si/fileadmin/user_upload/pdf/lp/LP_2020/Letno_porocilo2020_-_pop.pdf

Enabling and safe space

In general, relevant state authorities have good awareness of the Ombudsman's NHRI mandate, independence and role.

However, some concerns have emerged in concrete cases or when dealing with particular topics. To address this issue, the heads of four independent institutions in the Republic of Slovenia – the Human Rights Ombudsman of the Republic of Slovenia, The Court of Auditors, Commission for the Prevention of Corruption and the Information Commissioner – issued a joint public statement in June 2021 in which they noted with great concern that their institutions had been subjected to political pressures, which were reflected in direct and often coordinated attacks through the media and social networks. The full substance of the statement is available on the websites of the four institutions. (1)

The Ombudsman has adequate access to information and to policy makers and is generally involved in all stages of legislation and policy making with human rights implications.

The addressees of the Ombudsman's proposals, opinions, criticisms or recommendations are legally obliged to provide a timely and reasoned reply under Article 7 of the Human Rights Ombudsman Act (hereinafter: the Act). According to Article 6 of the Act State authorities, local community authorities and holders of public authority (hereinafter: authorities) should provide all information within their competence, regardless of the level of confidentiality, to the Ombudsman at their request, and facilitate the implementation of an investigation. Further Article 34 of the same Act provides that all state authorities shall be obliged to provide suitable assistance to the Ombudsman in the implementation of any investigation and provide suitable help if so requested. Article 35 and 36 are also relevant in this regard. The latter provides that all officials and public employees referred to in Article 6 of this Act shall respond to the Ombudsman's request to participate in an investigation and to provide explanations. However, despite such legal obligations, there are still delays by the authorities in responding to Ombudsman's investigations and recommendations. Such attitude has been strongly criticized on several occasions by the Ombudsman when presenting his Annual reports in the Parliament.

According to Article 46 of the Act, at the Ombudsman's request, the President of the National Assembly, the Prime Minister or ministers may also be obliged to meet with the Ombudsman within 48 hours. However, the Ombudsman has used such a possibility only in exceptional circumstances.

Article 59 of the Act further provides that the failure by the responsible official to submit the Ombudsman the materials requested pursuant to Articles 6 and 36 recalled above constitutes a minor offence which may be the object of a sanction. The Ombudsman itself may decide in such cases whether the conduct constitutes a minor offence and impose fines. However, in practice, the Ombudsman has never used these powers so far.

The recalled legal obligations to respond to the recommendations and requests of the Ombudsman, even when respected, do not however necessarily ensure the actual implementation of the Ombudsman's recommendations. The Ombudsman included in his Annual Report for 2020 128 new recommendations (2) and highlighted in addition another 156 relevant past recommendations that remain either fully or partly unfulfilled. Since the Ombudsman's recommendations are not legally binding, the Ombudsman notes that a large number of recommendations still remain fully or partially non-implemented. It is worrying that 11 of Ombudsman's new recommendations and additional 14 from previous years have been simply rejected by the Government (or respective Ministries) due to disagreement. Ombudsman is also particularly concerned that as many as 8 out of 11 rejected recommendations relate to the rights of people with disabilities and other vulnerable groups. In addition to the mentioned recommendations, the Ombudsman, acting in the capacity of National Prevention Mechanism (NPM) made 329 recommendations to various institutions in 2020. The responses from the relevant institutions are generally good. However, the NPM expects a faster response to the given recommendations, as only half of them were implemented by the time the annual report was prepared.

As regards measures to protect and support the NHRI, heads of institution and staff against threats and harassment and any other forms of intimidation, such measures are in general to be considered sufficient. Nonetheless, an issue arose on the occasion of the re-appointment of the Deputy-Ombudsman, whose mandate expires on 29 March 2022: the Deputy-Ombudsman's reappointment was in fact rejected on 26 October 2021 due to the obstruction of the opposition, despite having full support by most of the parliamentary parties. The Ombudsman immediately reiterated her proposal as fully supporting the Deputy-Ombudsman's re-appointment in office. The Deputy-Ombudsman was eventually re-appointed in a second voting session in the National Assembly, on 16 December 2021.

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- (2) For a compilation of the recommendations in Slovene see: [https://www.varuh-rs.si/fileadmin/user_upload/pdf/lp/LP_2020/LP20 - povzetek porocila.pdf](https://www.varuh-rs.si/fileadmin/user_upload/pdf/lp/LP_2020/LP20_-_povzetek_porocila.pdf)

NHRI's recommendations to national and regional authorities

The Ombudsman's key recommendations to national and regional authorities on how to strengthen the independence and effectiveness of the Ombudsman are the following:

1. To implement the Constitutional Court decision No. U-I-474/18 of 10 December 2020 on the unconstitutionality of Public Finance Act related to financing autonomy of the Ombudsman as soon as possible.
2. To adopt legislative amendments in collaboration with the Ombudsman on the position and operation of the NHRI in accordance with the recommendations of the Accreditation Committee (SCA) of the Global Alliance of National Human Rights Institutions (GANHRI) for Slovenia from December 2020.
3. To adopt legislative amendments that would reflect international standards, as are defined in the Principles on the Protection and Promotion of the Ombudsman Institution (the Venice Principles) from 2019, adopted by the Venice Commission of the Council of Europe, and in the Resolution (A/RES/75/186) on the role of the Ombudsman and the mediator in the promotion and protection of human rights from 16 December 2020.

Human rights defenders and civil society space

The Ombudsman noticed a regression in the environment for human rights defenders and civil society space, now considered worrying. In particular, during the COVID-19 epidemic, the Ombudsman found cases of laws, measures and practices that could negatively affect civic space and reduce human rights defender's activities, as also confirmed by the Constitutional Court. The Ombudsman has also continued to pay attention to restrictions on the freedom of assembly and the right to peaceful protest and the cases of alleged abuse of laws or of process laws, including strategic lawsuits against public participation (SLAPPs).

Laws and practices negatively impacting on civil society space and/or on human rights defenders' activities

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 also continues to pay attention to the measures restricting freedom of assembly and the right to peaceful protest.

On 17 June 2021 the Constitutional Court adopted the Decision No. U-I-50/21 in which it assessed the proportionality of multiple provisions of the ordinances issued by the Government during the COVID-19 epidemic in the parts which completely prohibited public protests between 27 February and 17 March and between 1 April and 18 April 2021, and then limited public protests to up to ten participants between 18 March and 31 March, as well as between 23 April and 14 May 2021. As regards both measures (the prohibition of public protests and limiting the number of participants to a maximum of ten persons), the Court established that due to their length and effects these measures severely interfered with the right of peaceful assembly. The Constitutional Court explained that the two measures were adopted in order to prevent the spread of a communicable disease, which is a constitutionally admissible objective for limiting the mentioned human right. In this respect, it stressed that when balancing the right to health and life, on the one hand, and the right of peaceful assembly and public meeting, on the other, the two rights are in opposition, and they both enjoy a high level of constitutional protection. The Constitutional Court then decided that the mentioned two measures were not necessary because in comparative law it exists a whole set of measures by which it is possible to prevent the spread of communicable diseases at public protests and which interfere to a lesser extent with the right of peaceful assembly and public meeting than the complete prohibition of public protests or the limitation thereof to a maximum of ten people. The Court also observed that, prior to the entry into force of the challenged measures, the Government had not ascertained whether the objective of ensuring public health could be attained by such milder measures for limiting public protests. Therefore, the Court considered that, in the adoption of these measures, the Government had not taken into consideration the positive duty of the state to ensure to a reasonable degree, in view of the circumstances, the exercise of the right of peaceful assembly, as well as the duty to cooperate with organisers of public protests. Since the mentioned ordinances had in the meantime ceased to be in force, the Constitutional Court merely established that they were inconsistent with the Constitution in the part wherein they prohibited all public protests or limited them to a maximum of ten participants. (1)

References

- (1) See: Official Gazette RS, No. 60/2021 and Official Gazette RS, No. 119/2021, also available at: <https://www.us-rs.si/decision/?lang=en&q=U-I-50%2F21&caseId=&df=&dt=&af=&at=&pri=1&vd=&vo=&vv=&vs=&ui=&va=&page=1&sort=&order=&id=116659>

Access to and involvement of civil society actors in law and policy making

As indicated in 2021 rule of law report, 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 affecting the length of procedures, 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 still under the review of the Constitutional Court (2). The Ombudsman made a recommendation No. 15 (covid-199 in its Annual Report for 2020 (3). The Ombudsman warns against the discrepancy between the ZIUZEOP-A (Official Gazette of the RS, no. 80/20) with the constitution and the Aarhus Convention regarding the appropriate and efficient collaboration of the public in all administrative and judicial proceedings that have or could have any influence on the environment. The Ombudsman discussed points b, d, e, f, and g of Article 105 of the Act Determining the Intervention Measures to Contain the COVID-19 Epidemic and Mitigate its Consequences for Citizens and the Economy (ZIUZEOP-A). Relating to the initiatives received and at its own thorough professional discretion, the Ombudsman identified a number of irregularities and constitutional contentiousness. Therefore, it addressed to the MOP an extensive opinion including a proposition for the elimination of the identified irregularities. The Ministry of Spatial Planning (MOP) did not accept the Ombudsman's proposition. The Ombudsman took into account the fact that the Constitutional Court of the RS with decision no. U-I-184/20-27 from 2. 7. 2020 accepted for consideration the initiative to launch proceedings to assess the constitutionality of the disputed intervention legislation and withheld the implementation of Article 2 of the ZIUZEOP until the final decision, continue to follow the procedure before the Constitutional Court of the RS. Upon the final decision of the Constitutional Court, the Ombudsman will decide potential further action. Further activities of the MOP in the preparation of legislative amendments (ZON, ZVO-1) indicate an alarming trend of complete exclusion of the non-governmental sector from the proceedings, the result of which could have an impact on the environment (4).

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>
- (2) See: <https://www.varuh-rs.si/sporocila-za-javnost/novica/mop-ni-uposteval-varuha-naj-s-spremembo-42-clena-ziuzeop-a-znova-zagotovi-sodelovanje-javnosti-v-ok/>
- (3) See: https://www.varuh-rs.si/fileadmin/user_upload/pdf/lp/LP_2020/Letno_porocilo2020_-_pop.pdf , at pages 590-591
- (4) See: https://www.varuh-rs.si/fileadmin/user_upload/pdf/lp/LP_2020/Annual_Report_2020.pdf , at page 339.

Threats and attacks, including strategic litigation against public participation (SLAPPs)

The Ombudsman follows cases of alleged abuse of laws or of process laws, including strategic lawsuits against public participation (SLAPPs), to intimidate civil society organisations, rights defenders and other actors, such as journalists, speaking out on matters of public interest.

For example, media reported that in January 2022 one of the protestors of the so-called Friday's anti-government protests was the object of a lawsuit for allegedly organizing a protest against the Government of the Prime Minister Janez Janša. The Ministry of the Interior has accused him of causing around 2,255 euros in costs to the Police who guarded the rally in October 2020. The protestor disputes that he was an organizer of the protest. The ministry, represented by the State Attorney's Office, claims that the protestor organized an unregistered rally in the Centre of Ljubljana on October 2, 2020, which means that the police have higher costs of protecting events than if the rally had been reported. Among other things, Police claims that they had to bring eighty police officers to

the streets instead of twenty because they did not know how many people would gather at the rally (1).

References

- (1) See: <https://www.delo.si/novice/slovenija/jenull-prejel-tozbo-zaradi-domnevne-organizacije-protesta/>; <https://www.rtv slo.si/slovenija/vlozena-prva-tozba-zoper-domnevnega-organizatorja-protestov/605789>; <https://www.24ur.com/novice/slovenija/jenull-prejel-tozbo-zaradi-domnevne-organizacije-protesta.html>; <https://n1info.si/novice/slovenija/drzavno-odvetnistvo-klonilo-pod-hojsovimi-pritiski-in-vlozilo-prvo-tozbo/>

NHRI's role in promoting and protecting civil society space and human rights defenders

A good practice example is the 2021 Ombudsman's National Report on the Human Rights Situation of Migrants at the Borders (1), which was prepared in the context of the ENNHRI project, which aimed to improve the promotion and protection of the human rights of migrants at the borders through various activities of European NHRIs, such as capacity building, advocacy, communication and reporting (2).

The report covers the Ombudsman's work in the field of migration over the last three years. It presents findings and recommendations addressed to the Ministry of the Interior on the basis of investigations into police procedures conducted in relation to migrants at different locations. The report includes the findings of the Ombudsman's visits to the two border police stations of Črnomelj and Metlika (June 2018), the findings of an investigation concerning a border incident that included a visit to the border police station of Ilirska Bistrica (October 2019), the findings of the investigation conducted at the Centre for Foreigners in Postojna (31 July and 3 September 2020) and the NPM's visit to the Asylum Centre in Ljubljana (2018), where the Ombudsman documented the living conditions of migrants. Every group performing a visit is composed of representatives of the Ombudsman and selected non-governmental organisations collaborating with the Ombudsman in the implementation of the NPM tasks.

The report also contains information on the Ombudsman's written submissions made to the national courts in cases concerning migrants, including the constitutional complaint he initiated in the case of a migrant returned to the Croatian authorities at the border crossing point on the basis of the bilateral agreement between Croatia and Slovenia, and

the amicus curiae opinion that he delivered to the Administrative Court of the Republic of Slovenia regarding a case of chain returns from Slovenia through Croatia to Bosnia and Herzegovina. The report also highlights recent changes to Slovenian legislation on migration and asylum, which may affect the rights of migrants and asylum seekers in the country.

References

- (1) See: <https://www.varuh-rs.si/en/news/news/in-the-context-of-the-ennhri-project-the-ombudsman-draws-up-a-national-report-on-the-human-rights-s/>
- (2) See: <https://ennhri.org/news-and-blog/ennhris-regional-report-examines-the-human-rights-of-migrants-at-borders/>

NHRI's recommendations to national and regional authorities

The Ombudsman's key recommendations to national and regional authorities on how to better protect and support civil society actors, including human rights defenders in Slovenia are the following:

- (1) The Ministry of the Interior should implement the Ombudsman's recommendations included in its 2021 National Report on the Human Rights Situation of Migrants at the Borders, made on the basis of investigations into police procedures conducted in relation to migrants at different locations.
- (2) The Authorities should refrain from any activity, which could cause an abuse of laws or of process laws, including strategic lawsuits against public participation (SLAPPs), to intimidate civil society organisations, rights defenders and other actors, such as journalists, speaking out on matters of public interest.

Checks and balances

The Ombudsman has noticed worrying developments deteriorating the health of the national checks and balances system over the past year. In particular, the Ombudsman observed a growing number of the Constitutional Court decisions which are not executed by relevant authorities, as well as a growing number of recommendations of the Ombudsman and other independent bodies which remain unimplemented. There are also expressions of disrespect towards the decisions and actions of the independent state institutions, which role is conduct checks and balances.

The Ombudsman presented its 26th Annual Report to the National Assembly in October 2021 (1). The National Assembly adopted the report on 26 October 2021 and recommended to all relevant institutions and officials to implement all Ombudsman's recommendations as well as all recommendations of the National Prevention Mechanism. However, the Ombudsman is concerned about poor and slow implementation of his recommendations by relevant authorities as well as about the attitude of some politicians not taking the Ombudsman's position and recommendations seriously.

As mentioned above, the Ombudsman proposed in his Annual Report for 2020 128 new recommendations to improve the work of various bodies, legislation and implementation of human rights standards in legislation and in practice (2). In addition, the Ombudsman highlighted another 156 relevant past recommendations that remain either fully or partly unfulfilled. The Ombudsman has repeatedly called on the competent authorities to take into serious account the need for ensuring the implementation of all recommendations and to remedy concrete violations for the benefit of the individuals. Although the Ombudsman's recommendations are not legally binding, their implementation is an indicator of the extent to which relevant authorities are actually committed to strengthening respect for human rights and fundamental freedoms.

In 2021, too, the Government has prepared a response report (3) that replies to all Ombudsman's recommendations. The Ombudsman notes that a large number of recommendations remain fully or partially non-implemented. It is worrying that 11 of Ombudsman's new recommendations and additional 14 from previous years have been rejected by the Government (or respective Ministries) due to disagreement. The Ombudsman is also particularly concerned that as many as 8 out of 11 rejected recommendations relate to the rights of people with disabilities and other vulnerable groups.

In addition to the mentioned recommendations, the Ombudsman, acting in the capacity of National Prevention Mechanism (NPM) made 329 recommendations to various institutions. The responses from the relevant institutions are generally good. The NPM expects a faster response to the given recommendations, as only half of them were implemented by the time the annual report was prepared.

The Ombudsman also recalls that it was worrying that a number of unexecuted judgments of the Constitutional Court of the Republic of Slovenia increased during last year. At the end of 2020, there were already 18 unfulfilled so-called declaratory judgments, while at the end of 2019, there were 13 such judgments. For example, it is unacceptable that the decision of the Constitutional Court regarding the established unconstitutionality in the Infectious Diseases Act has not yet been implemented, even though the deadline has

expired already at the end of August 2020, and that the Constitutional Court confirmed the violations on several occasions. Also, the Decision of the Constitutional Court Nos. U-I-477/18-19 and Up-93/18-37 of 23. 5. 2019, based on the Ombudsman's request for constitutional review, regarding the unconstitutionality of the Mental Health Act, remains unimplemented since several years.

References

- (1) See: https://www.varuh-rs.si/fileadmin/user_upload/pdf/lp/LP_2020/Letno_porocilo2020_-_pop.pdf
A shorter version of the Annual Report is also available in English:
https://www.varuh-rs.si/fileadmin/user_upload/pdf/lp/LP_2020/Annual_Report_2020.pdf
- (2) For a compilation of the recommendations in Slovene see: https://www.varuh-rs.si/fileadmin/user_upload/pdf/lp/LP_2020/LP20_-_povzetek_porocila.pdf
- (3) See in Slovene: https://www.varuh-rs.si/fileadmin/user_upload/pdf/lp_-_odzivna_porocila_vlade/Odzivno_porocilo_Vlade_na_LP_VCP_in_LP_DPM_za_leteto_2020.pdf

Trust amongst citizens and between citizens and the public administration

The Ombudsman considers that state authorities do not sufficiently foster trust amongst citizens and between citizens and the public administration. This is reflected in the low level of public debate and a too frequent disrespect by public authorities of final rulings of courts, including Constitutional Court decisions, as well as recommendations of the Ombudsman and other independent state bodies. Any public criticism is highly politicized and understood as a political tactic to weaken the Government; therefore, little constructive dialogue is possible among the authorities and checks and balances institutions.

As outlined already in the Ombudsman's rule of law report in 2021, the Ombudsman alerted public authorities on several occasions regarding the lack of disaggregated data in Slovenia (1). An EU study (2) has indeed shown that equality data collection in Slovenia is critically weak, far most EU member states. The collection of 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 (3). In this regard, the Ombudsman made recommendation within the Third Cycle of the Universal Periodic Review (4) as well as in its last Annual Report to the National Assembly (5).

References

- (1) See ENNHRI, Rule of Law Report 2021, Slovenia, Checks and Balances: [http://ennhri.org/rule-of-law-report-2021/slovenia/#Independence and effectiveness of the NHRIs](http://ennhri.org/rule-of-law-report-2021/slovenia/#Independence%20and%20effectiveness%20of%20the%20NHRIs)
- (2) 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)
- (3) CAT/C/SVN/CO/3 of June 2011, CRC/C/SVN/CO/3-4, of July 2013, E/C.12/SVN/CO/2 of December 2014, CERD/C/SVN/CO/8-11 of January 2016, CRPD/C/SVN/CO/1 of April 2018 and A/HRC/40/64/Add.1 of January 2019
- (4) <https://www.varuh-rs.si/nc/en/about-us/organisational-units-and-hro-council/center-for-human-rights/levi-meni/universal-periodic-review-upr/>
- (5) https://www.varuhrs.si/fileadmin/user_upload/pdf/lp/LP_2019/Annual_Report_2019.pdf (1 March 2020)

NHRIs as part of the system of checks and balances

The Human Rights Ombudsman regularly engages in monitoring authorities' accountability and making recommendations to improve effective checks on the executive and public authorities. A recent example is the 2021 Ombudsman's National Report on the Human Rights Situation of Migrants at the Borders, mentioned above.

NHRI's recommendations to national and regional authorities

The Ombudsman's key recommendations to national and regional authorities on how to strengthen the system of checks and balances, including the role of NHRIs within such system are the following:

1. The responsible authorities should take concrete steps, including a timeline, to implement recommendations made by the Human Rights Ombudsman, other independent state institutions as well as relevant international human rights bodies.
2. The responsible authorities should ensure effective implementation of decisions of the Constitutional Court and of the European Court of Human Rights against Slovenia as a priority and within a determined deadline. The Ombudsman in this regard recommends to the Government that following the example of the mechanism it established to implement the judgments of the European the Court of Human Rights, it establishes a mechanism to provide expert support for the implementation of declaratory decisions of the Constitutional Court and to inform public on the status of implemented decisions in a transparent manner, including regarding the ongoing activities of the competent authorities for their realization.
3. The competent authorities should adopt adequate legislation in order to enable and ensure systematic collection of disaggregated data as per protected personal grounds in all areas of social life with the aim to accurately determine the situation and trends regarding (in)equality in society and to promote equal treatment and equal opportunities when observing applicable national and international standards on personal data protection.

Functioning of the justice system

There are several ongoing issues, which call for the improvement of the justice system in Slovenia, as illustrated in last year's rule of law report. The Ombudsman continued to engage on several key challenges, as illustrated above, but in 2021 no major changes occurred. The EC Justice Scoreboard 2021 also shows no major divergences in the operation of the Slovenian justice system with respect to the previous year.

Role of the NHRI in contributing to the effective functioning of the justice system

The Ombudsman took several actions to monitor and help make progress in addressing issues affecting the functioning and effectiveness of the justice system, including written initiatives, opinions and proposals to relevant authorities to recommendations made in its Annual Report to the Parliament (1).

The Ombudsman has, in particular, recommended to the authorities to prepare - upon proposal of the Slovenian Bar Association (OZS) – a draft of the necessary changes or amendments to the current legislation (including the necessary changes and amendments to tax legislation) to increase the availability of pro bono legal aid. Although the necessary changes in this area have not yet taken place, it is encouraging that the OZS continues the

»day of pro bono legal aid«, in which attorneys provide free legal advice to those who need it.

The Ombudsman also continued to engage on the inappropriate regulation concerning the provision of the Crime Victim Compensation Act (ZOZKD), which determines the right to a special state compensation for victims of acts of violence and their relatives for acts committed on the territory of the Republic of Slovenia. Article 5 of this act determines as a formal condition for the awarding of the compensation that the victim has to be a citizen of the Republic of Slovenia or any other member state of the European Union. Therefore, victims who are citizens of other countries do not have the right to this state compensation. However, the interpretation of the Explanatory Report to the Istanbul Convention in Article 30 stipulates the right to state compensation for both nationals and non-nationals, since numerous victims of violence are not citizens of the country on the territory of which a criminal offence was committed.² This deficiency was also warned against by the Group of Experts on Action against Trafficking in Human Beings with the Council of Europe (GRETA) and appealed to the Slovenian bodies to include all victims of human trafficking in the ZOZKD, regardless of their citizenship.

In its work last year, the Ombudsman once again noticed the critical lack of court experts in family matters. Hence, the Ombudsman again calls on all competent institutions in the country to finally eliminate this serious problem, since it is the permanent task of courts. In cases of child advocacy, the Ombudsman finds that the lack of court experts in family matters can lead to violations of children's rights and thus recommends to the Government of the Republic of Slovenia and the Medical Chamber of Slovenia to do whatever is necessary to eliminate this unbearable situation in the shortest possible time.

The Ombudsman also participated with comments in the process of preparing the draft Act Amending the Criminal Procedure Act (ZKP-O). This amendment to the Act also implemented Directive (EU) 2016/800 of the European Parliament and of the Council of 11 May 2016 on procedural guarantees for children suspected or accused in criminal proceedings (Directive (EU) 2016/800), which sets out minimum procedural guarantees. According to the original plans, this directive should be transposed into the legal order of the Republic of Slovenia by an Act that will deal with juvenile offenders. Therefore, we would like to issue another reminder that it is high time that the criminal law for minors, announced by Criminal Code (KZ-1) at the time of its entry into force, came into force; also, the deadline for transposing the directive into internal legal order expired on 11 June 2019.

References

- (1) See: https://www.varuh-rs.si/fileadmin/user_upload/pdf/lp/LP_2020/Annual_Report_2020.pdf

NHRI's recommendations to national and regional authorities

The Ombudsman's key recommendations to national and regional authorities on how to improve the independence, quality and efficiency of the justice system in Slovenia are the following:

1. To adopt additional measures to contribute to or assist in providing various forms of free legal aid outside the framework provided by the Legal Aid Act.
2. To adopt an amendment to the Crime Victim Compensation Act (ZOZKD), which would determine the right to state compensation also for persons who are not citizens of the Republic of Slovenia and other EU countries.
3. To do everything necessary to ensure a sufficient number of judicial experts in family matters (especial in the fields like clinical psychology or child psychology), because a lack of such judicial experts may lead to violation of children's rights.

Media freedom, pluralism and safety of journalists

The Human Rights Ombudsman has noticed a deterioration of media freedom, pluralism and safety of journalists in Slovenia, assessing the overall environment as currently worrying. The European Parliament also adopted on 16 December 2021 a dedicated resolution on the rule of law in Slovenia, mentioned above, which raises, among others, issues relating to media freedom, pluralism and safety of journalists. (1)

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 in May 2021 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 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. An English summary of conclusions is available

at pages 9-10 of the analysis. (2). The Ombudsman made also a public presentation of the analysis in June 2021 (3).

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 Reporters without borders ranked Slovenia at the 36th place in 2021, which is 4 places lower than in 2020 (4).

In the above-mentioned resolution of the European Parliament of 16 December 2021, the European Parliament expresses its deep concern “about the level of public debate, climate of hostility, distrust and deep polarisation in Slovenia, which has eroded trust in public bodies and between them”.

The European Parliament also called on the Government to resume state funding and to make these payments regularly and in full accordance with national law, while guaranteeing the Slovenian Press Agency’s (STA) editorial independence. On 8 November 2021 the new Director of STA and director of the Governmental Communication Office signed the agreement on the STA’s public service for 2021 (5), however there have been concerns raised on the future financing and editorial independence of the STA (6).

The mentioned resolution also addresses the issues of media ownership and smear campaigns, slander, criminal investigations, as well as strategic lawsuits against public participation (SLAPPs) brought by prominent public figures and politicians, including members of the Government.

References

- (1) European Parliament resolution of 16 December 2021 on fundamental rights and the rule of law in Slovenia, in particular the delayed nomination of EPPO prosecutors (2021/2978(RSP)) , available at:
https://www.europarl.europa.eu/doceo/document/TA-9-2021-0512_EN.html
- (2) See: https://www.varuhrs.si/fileadmin/user_upload/pdf/Razne_publicacije/Sovrazni_govor_knjizica2.pdf
- (3) See: <https://www.varuh-rs.si/sporocila-za-javnost/novica/analiza-kazenskopravnega-pregona-sovraznega-govora-v-sloveniji-in-razprava/>

- (4) See: <https://rsf.org/en/slovenia>
- (5) See: <https://www.sta.si/2963984/kadunc-in-urbanija-podpisala-pogodbo-o-opravljanju-javne-sluzbe-za-letos> and <https://english.sta.si/2964066/sta-signs-deal-on-public-service-with-ukom-valid-until-end-of-the-year>
- (6) See for example: <https://www.sta.si/2964027/dns-in-sindikato-novinarjev-s-previdnostjo-spremljata-podpis-pogodbe-med-sta-in-ukomom>

Role of the NHRI in promoting and safeguarding an enabling environment for media and freedom of expression

The Ombudsman made in the past a recommendation on the effective enforcement of the provision concerning the prohibition of spreading hatred in the media (Article 8 of the Mass Media Act), and proposed that the Ministry of Culture does everything possible within its power to identify the appropriate approach to protect public interest (inspection and minor offence supervision); to adopt measures to eliminate irregularities (e.g. immediate removal of unauthorized content); and to determine sanctions for the media that fail to curb the spread of hate speech (recommendation No. 64 (2019) and No. 14 (2018) (1). The Ombudsman however notes that these recommendations have not yet been implemented and that is also not clear whether and when relevant action would be considered by the Ministry of Culture (2).

References

- (1) See: https://www.varuh-rs.si/fileadmin/user_upload/pdf/lp/LP_2019/Annual_Report_2019.pdf , at pages 154 and 155
- (2) See: https://www.varuh-rs.si/fileadmin/user_upload/pdf/lp/LP_2020/Letno_porocilo2020_-_pop.pdf , at page 263.

NHRI's recommendations to national and regional authorities

The Ombudsman's key recommendation to national and regional authorities on how to better ensure media freedom, pluralism and the safety of journalists in Slovenia is the following:

1. The Ministry of Culture should do everything possible within its power regarding the realisation of the provision on the prohibition of spreading hatred in the media (Article 8 of the Mass Media Act) to determine 1. the manner of protecting public interest (inspection and minor offence supervision); 2. measures to eliminate irregularities (e.g. immediate removal of unauthorised content); and 3. sanctions for the media that allow the publication of hate speech.

Corruption

The Ombudsman notes a deterioration of the level and perception of corruption in Slovenia, now considered as worrying.

It is to be noted that the responsible independent institution for combating corruption in Slovenia is the Commission for the Prevention of Corruption (1), not the Ombudsman.

The Ombudsman, nonetheless, has remarked that the non-governmental organization Transparency International (TI) downgraded Slovenia to the 41st place on the Transparency International Corruption Perceptions Index for 2021, with a 57 points score (where score 0 means high state corruption and score 100 indicates absence of corruption). Compared to last year, Slovenia lost 3 points, slipped six places down and further deviated from the EU average ranking (the average score of EU Member States being 64) and the OECD (the average score of OECD Member States being 67) (2).

It further needs to be noted that no visible progress has been so far made regarding the implementation of the 2019 EU Whistle blowers Protection Directive.

References

- Commission for the Prevention of the Corruption of the Republic of Slovenia, see: <https://www.kpk-rs.si/en/>
- See: <https://www.transparency.si/oznaka/raziskave-in-indeksi/> and <https://www.transparency.si/novica/cpi-2021-slovenija-najslabse-po-letu-2013/>

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

The Ombudsman noted an increasingly worrying impact of measures taken in response to COVID-19 on the national rule of law environment and on human rights protection.

Emergency regimes and related measures

Over the last year and a half, the Ombudsman has often drawn attention to the problem of governing by decrees (and ordinances), as an appropriate and concrete legal basis is needed when it comes to restricting human rights and fundamental freedoms. The Government should, according to the Slovenian Constitution, submit human rights restrictions to the assessment of the legislature. The Ombudsman expects that the work of the authorities in this area improve and does not give rise to a new regular “unconstitutional” practice (1). In addition, it is worrying that the Ombudsman’s opinions and recommendations in relation to the Covid-19 measures, and even more Constitutional Court decisions in relation to the covid-19 measures, which also address human rights concerns, are to a large degree not respected and taken seriously by the Government and the Parliament.

Indeed, the Constitutional Court decided on more occasions that certain measures adopted through acts and ordinances in relation to COVID-19 measures are unconstitutional, such as several provisions of Article 39 of the Communicable Diseases Act (ZNB) (see Constitutional Court decisions U-I-79/20-24 of 13. 5. 2021 (1) and U-I-155/20-24 of 7. 10. 2021 (2)), Article 104 of Act Determining Temporary Measures to Mitigate and Remedy the Consequences of COVID-19 (U-I-8/21-34 of 16. 9. 2021) (3), Article 10a Ordinance on the method of meeting the condition of morbidity, vaccination and testing to curb the spread of SARS-CoV-2 virus infections (U-I-210/21-25 of 29. 11. 2021) (4), and several provisions of other ordinances (Constitutional Court decisions No. U-I-445/20-22, U-I-473/20-22 of 16. 9. 2021 (5)).

Even before such decisions, the Ombudsman had often warned the Government and Ministries that the legal basis in the Communicable Diseases Act was insufficient, which was later confirmed by the Constitutional Court. In addition, the Ombudsman also proposed at several occasions, including in recommendations 12 (covid-19) and 13 (covid-19) (6), submitted in the Ombudsman’s Annual Report for the year 2020, that the Government submits for the adoption of the National Assembly needed amendments to the Communicable Diseases Act (ZNB), which would ensure better protection of human rights, by clearly stating to what extent and under what conditions the Government may restrict relevant human rights in the event of another outbreak of Covid-19 or another

communicable disease. In the Ombudsman's view, such safeguards should be designed in such a way that it is clear to the average citizen from the wording of the article what restrictions they may face and which of their human rights could be affected in the event of an epidemic. In addition, as regards comprehensive restrictions of many human rights and affecting citizens and residents throughout the country indistinctly, as set out in the Ordinance, the Ombudsman also alerted on the necessity that the restrictions are (possibly retroactively, when that is appropriate) confirmed by the National Assembly, as human rights are at the foundations of the Slovenian Constitution, and their regulation is primarily reserved to the legislative branch of the government. This (with some exceptions) is indeed the case even in the event of war and the state of emergency under Article 16 of the Slovenian Constitution, so an emergency situation triggered by an epidemic should make no exception. For the same reason, the Ombudsman is also reluctant to accept that the power to restrict freedom of movement is delegated to mayors or municipalities.

Nonetheless, the Government and the Parliament failed to implement the recommendations of the Ombudsman and of the mentioned decisions of the Constitutional Court within the given deadline. Nor the Government (or the Parliament) led any genuine consultations to address the issue of unconstitutionality of COVID-19 measures and to amend these unconstitutional practices. To the opposite, the Government and the Parliament have continued adopting new measures based on unconstitutional legal grounds.

It also needs to be mentioned that although on 15 June 2021 the Government declared the epidemic over in Slovenia, several restrictive human rights measures are still in place and several Covid-19 related ordinances or acts have been adopted or amended since then.

References

- (1) See: https://www.varuh-rs.si/kaj-delamo/varovanje-pravic-podrocjih/omejitev-osebne-svobode/levi-meni/novica/?tx_news_pi1%5Bnews%5D=6288&cHash=cf17260e2b8db0b2179af350c2ad8fb2

See also:

- (2) <https://www.us-rs.si/odlocba-ustavnega-sodisca-st-u-i-79-20-z-dne-13-5-2021/>
- (3) <https://www.us-rs.si/odlocba-ustavnega-sodisca-st-u-i-155-20-z-dne-7-10-2021/>
- (4) <https://www.uradni-list.si/glasilo-uradni-list-rs/vsebina?urlurid=20213279>
and <https://www.us-rs.si/odlocba-ustavnega-sodisca-st-u-i-8-21-z-dne16-9-2021/>
- (5) <https://www.iusinfo.si/download/razno/u-i-210-21-odlocba.pdf>
- (6) <https://www.us-rs.si/odlocba-ustavnega-sodisca-st-u-i-445-20-u-i-473-20-z-dne-16-9-2021/>
- (7) https://www.varuhrs.si/fileadmin/user_upload/pdf/lp/LP_2020/Letno_porocilo_2020_-_pop.pdf, at p. 552

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

The Ombudsman and his Council proposed that the authorities assess the COVID-19 measures to make sure they are compatible with human rights standards and the principles of proportionality and necessity, and to appoint focal points in the Government and at the ministries for this purpose. The authorities so far did not accept and implement such a proposal; however, the exchange of views is ongoing.

Efforts by state authorities to mitigate challenges

The Government promptly acted to ensure proper management of the situation and mitigate any long-term harmful consequences for the economy and the population, with swift and strategic intervention measures to help the population and the economy. Most of these measures were adopted through so-called packages of anti-Corona measures, which were adopted through an ordinary legislative procedure by the National Assembly.

References

- <https://www.gov.si teme/koronavirus-sars-cov-2/odpravljanje-posledic-epidemije/>

Actions taken by the NHRI to promote and protect rule of law and human rights in the crisis context

The Ombudsman addressed the Parliament and made its assessment of the human rights situation, including concerning COVID-19 measures and human rights (1). Since the beginning of the epidemic the Ombudsman's institution addressed more than 50 different inquiries to the Government or its President. The Ombudsman also addressed more than 900 opinions, proposals, inquiries and calls to various Ministries.

References

- (1) https://www.varuh-rs.si/index.php?id=1320&L=6%C2%A0&tx_news_pi1%5Bnews%5D=6288&tx_news_pi1%5Baction%5D=detail&tx_news_pi1%5Bcontroller%5D=News&cHash=cf17260e2b8db0b2179af350c2ad8fb2

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

The environment in which the Ombudsman operates has been affected since 2020 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 has instead make itself 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) and in 2021 the number of all cases was even a bit higher than in 2020. During 2021 the Ombudsman received over 1400 individual complaints regarding the COVID-19 measure, while in 2020 over 1000.

Despite the COVID-19 situation, the National Prevention Mechanism (NPM), which operates as an organizational unit of the Ombudsman, continued with the visits of places of deprivation of liberty under its mandate and made 60 visits of various places of deprivation of liberty in 2021. The NPM also addressed some other general issues relevant to persons deprived of their liberty.

NHRI's recommendations to national and regional authorities

The Ombudsman's key recommendations to national and regional authorities on how to mitigate the impact of COVID-19 and of measures taken to address it on rule of law and human rights protection, and how to ensure an inclusive recovery, in Slovenia, are the following:

1. The Government and the Parliament should as a matter of urgency enforce the Constitutional Court decisions and Ombudsman's recommendations regarding the needed changes to the Communicable Diseases Act (ZNB), including concerning its impact on human rights and fundamental freedoms limitations, if needed, and the parliamentary review of such measures.
2. The Government and the Parliament should refrain from including other COVID-19 unrelated issues, especially on shrinking civic society space, to the legislations addressing covid-19 measures.

Spain

Ombudsman of Spain

Impact of 2021 rule of law reporting

Follow-up by State authorities

The Spanish authorities analyse and, where appropriate, adopt decisions concerning issues raised in reports prepared by international human rights institutions and networks, such as the UN, ENNHRI or FRA. The same is done in relation to the reports and actions of the Ombudsman.

For example, the new IV Open Government Plan, launched in 2021, establishes renewed commitments in relation to public participation, transparency, accountability and public integrity.

The General Council of the Judiciary has continued this year with the "Educate in Justice" programme. It is aimed at secondary school students and its objective is to enhance the knowledge of students on the functioning of the judicial system in Spain, with special emphasis on aspects such as gender violence and the criminal responsibility of minors. As part of the program, the judges give talks to the students and mock trials are carried out with the help of the teachers.

References

- (1) https://transparencia.gob.es/transparencia/dam/jcr:d306cd62-cc0f-40a1-9be8-fe24e10d/IVPlanGobiernoAbierto-ES_2020-2024.pdf
- (2) <https://www.poderjudicial.es/cgpj/es/Temas/Educacion-en-Justicia/>

Impact on the Institution's work

The Ombudsman of Spain values highly ENNHRI's reports because they provide information relevant to work carried out by the institution, specifically on topics such as the realisation of economic, social and cultural rights or the protection of people with disabilities, among other issues.

Follow-up initiatives by the Institution

The Ombudsman of Spain has referenced the ENNHRI Rule of Law report in its other documents.

Independence and effectiveness of the NHRI

International accreditation status and SCA recommendations

The Spanish NHRI was last reaccredited with A-status in May 2018 (1). The Sub-Committee on Accreditation (SCA) welcomed the actions the Spanish NHRI took to implement its previous recommendation.

Regarding selection and appointment, the SCA took the view that the selection process enshrined in the Law was not sufficiently broad and transparent in that it did not require the advertisement of vacancies, nor specified the process for achieving broad consultation and/or participation in the application, screening, selection and appointment process of the Defensor. It encouraged the NHRI to advocate for changes in this regard.

Moreover, the SCA encouraged the Spanish NHRI to ensure the ongoing and effective fulfilment of its mandate by guaranteeing staff security of tenure, which could be achieved through an amendment to the law that explicitly provides for such security of tenure regardless of the election of a new Defensor. The SCA also recommended that there is a limitation in the enabling law to a re-election of only one additional term, as the legislation is currently silent on the number of times an individual can be re-elected.

While acknowledging that, in practice, the Spanish NHRI leadership and staff are reflective of the principles of pluralism and diversity, the SCA continued to encourage the institution to advocate for the inclusion in its enabling law of a requirement to ensure that its composition is broadly reflective of all of the segments of Spanish society.

The SCA further acknowledged that, at the time, the Spanish NHRI reported that it was not able to fully participate in all periodic reviews of Spain as a result of resource limitations. The SCA also noted the NHRI's view that it had not been allocated with sufficient funding to create new programs or strengthen existing ones. The SCA emphasized that, where an NHRI has been mandated with additional responsibilities, it must be provided with the adequate funding to effectively fulfil these duties. The SCA encouraged the Spanish NHRI to continue to advocate for the provision of adequate funding.

References

- (1) <https://www.ohchr.org/Documents/Countries/NHRI/GANHRI/SCA%20Report%20May%202018-Eng.pdf>

Regulatory framework

The national regulatory framework applicable to the NHRI has not changed over the past year and it is at adequate level.

The institution of the Ombudsman of Spain has a constitutional basis. Its creation and mission are included in article 54 of the Magna Carta. The NHRI's mandate to contribute to access to justice for individuals is based on the functions of complaints-handling and awareness-raising. The Spanish NHRI also controls the "administration of the Administration of justice" - meaning the functions within the Administration of Justice, that are of a non-jurisdictional nature which refer, therefore, to the management of general affairs and the staff at its service. Furthermore, the NHRI has power to lodge before the Constitutional Court the appeals of unconstitutionality and protection, which usually have strategic features.

Enabling and safe space

State authorities, regional and local authorities, as well as many public bodies through their relations with the Ombudsman of Spain have demonstrated to have good awareness of the NHRIs' mandate, independence and role.

The Ombudsman has adequate access to information and to policy makers in relation to policy making with human rights implications. However, information and policy makers are accessed on the initiative of the NHRI. The Ombudsman does not usually participate formally in the processes of drafting laws and other regulations.

However, in its resolutions the institution frequently requests normative modifications of precepts that may affect the exercise of fundamental rights of citizens or that directly violate them. In the latter case, if necessary, the Ombudsman files the corresponding appeal of unconstitutionality.

In summary, the NHRI has ex-post and not ex-ante control in policymaking.

What is more, public authorities are obliged to give timely and reasoned responses to the requests made by the Ombudsman in the NHRI's resolutions.

Furthermore, it is worth noting that it is illegal for an authority or public official in Spain to obstruct the investigation of the Ombudsman, the Court of Accounts or equivalent bodies of the Autonomous Communities by refusing or unduly delaying the sending of the reports that they request or hindering their access to the files or administrative documentation necessary. Such actions are punished as crime of disobedience under Article 502.2 of the current Spanish Penal Code with the penalty being suspension of employment or public office for a period of six months to two years,

In addition to the protection established in the Penal Code mentioned above, Organic Law 3/1981, of April 6, on the Ombudsman, regulates a broad framework of protection for the head of the institution and his deputies so that they can exercise their function with absolute independence from the different public authorities.

Article 6.1 of the aforementioned Organic Law establishes that “the Ombudsman shall not be subject to any binding terms of reference whatsoever. He shall not receive instructions from any authority. He shall perform his duties independently and according to his own criteria”. And paragraph 2 reads that “The Ombudsman shall enjoy immunity. He may not be arrested, subjected to disciplinary proceeding, fined, prosecuted or judged on account of opinions he may express or acts he may commit in performing the duties of his office”.

References

- <https://www.defensordelpueblo.es/en/wp-content/uploads/sites/2/2015/06/LOIngles.pdf>

Human rights defenders and civil society space

The Ombudsman of Spain notes that the fundamental rights protection system in Spain works well.

Laws and practices negatively impacting on civil society space and/or on human rights defenders' activities

Not significant cases, except a few specific issues which have been successfully protected by Courts.

One of such cases concerned José Palazon, a Children's Rights Defender in Melilla who was sued by the Education Counsellor on the grounds of attack to his honour. The judge declares Mr. Palazon to be a Human Rights Defender also taking into consideration that the Ombudsman had investigated the facts that lead to Mr. Palazon's declarations.

References

- <https://www.elperiodico.com/es/sociedad/20180108/consejero-melilla-denunciara-prodein-acusacion-6538700>

NHRI's role in promoting and protecting civil society space and human rights defenders

The Spanish Ombudsman has participated in the Latin American federation of Ombudsman (FIO) report on Human Rights defenders, which includes many recommendations to the governments (in general). The report is due to be released soon.

NHRI's recommendations to national and regional authorities

The NHRI recommends the modification of some aspects of Organic Law 4/2015, of March 30, on the protection of citizen security. The issue that is the subject of intense public debate and the Government of the Nation and several parliamentary groups have expressed their willingness to modify it.

In the 2019 annual report the Spanish Ombudsman recommended, in relation to the Citizens' Security Law, "to have an action protocol on the use of force, providing clear and accurate instructions to police officers on how and in what circumstances they should use both force and regulatory weapons and antiriot equipment, in order to reinforce legal certainty amongst agents and citizens.

References

- Defensor del Pueblo, Executive Summary - 2019 Annual Report
https://www.defensordelpueblo.es/en/wp-content/uploads/sites/2/2020/06/2019-Summary_Annual_Report.pdf
- Defensor del Pueblo, 2019 Annual Report (in Spanish)
<https://www.defensordelpueblo.es/informe-anual/informe-anual-2019/>

Checks and balances

The ombudsman's work on Human Rights is adequately supported both by the Parliament of the nation and by all institutions.

Likewise, the work of the Ombudsman is adequately reflected in the media as well as on social networks. The annual reports of the Ombudsman are presented both before the Joint Congress and Senate Committee on relations with the institution, as well as in plenary sessions of both Chambers.

In addition, the promotion of the work of the Institution has been reinforced with the introduction of the role of a director of communication. The aim is to raise the profile and media presence of the Institution so that its work and mission are better known and recognized among the wider society.

Despite the effects produced by the pandemic, the NHRI judges the system of checks and balances as functioning in a balanced way. Various important requests on the topic made by the Ombudsman in its resolutions have been addressed.

On the topic of the implementation of judgments of national or supranational courts, the NHRI notes f. ex. the reluctance of the Government of Catalonia to apply a judgment of the Spanish Supreme Court on the declaration of Castilian as a "vehicular" language, in different areas of education on its territory. Reluctance has also been noted among some bodies of administration to apply UN Treaty Bodies rulings in particular cases. The Spanish Administration is reluctant to give them legal validity and make them effective, despite the fact that there are already Supreme Court rulings granting this value. The Ombudsman has advocated recognition of the effectiveness of these resolutions, which seek to remedy serious violations of human rights, since Spain has agreed to abide by these resolutions by signing international treaties.

References

- https://www.publico.es/politica/abogacia-desoye-onu-niega-indemnizar-victima-torturas-policiales.html?utm_source=twitter&utm_medium=social&utm_campaign=web
- [Dirección del Servicio Jurídico del Estado, Anales de la Abogacía General del Estado 2020](#)

Trust amongst citizens and between citizens and the public administration

State authorities try to foster a broad level of trust in the public regarding the activity of public administrations and their constitutional bodies, by applying, among other initiatives, formulas of transparency in their management, and promoting regulations that allow their control.

According to the Law of Transparency and Good Governance 1/2013, the application of transparency extends throughout the public administration but also applies to political parties and business and trade union organisations, expressly including the Royal Household - the first in Europe to do so within the text of a law on transparency - and those private entities that receive significant public funding.

The chapter on good governance introduces legal obligations for those in high office, and classifies three forms of infringement: conflicts of interest; economic-budgetary management; and offences of a disciplinary nature.

However, debates on social networks sometimes unveil criticism over the work of certain administrative or constitutional bodies, which may affect their credibility.

Likewise, in the political debate, criticism arises with relative frequency which affects citizens' trust in the public powers.

References

- Law of Transparency and Good Governance 1/2013
https://transparencia.gob.es/transparencia/transparencia_Home/index/MasInformacion/Ley-de-Transparencia.html

NHRIs as part of the system of checks and balances

The Ombudsman of Spain advises public powers on the modification of practices, and even regulations, that affect the exercise of fundamental rights. Some examples from the past year include:

- The abolition of mechanical restraints for young people in Detention Centres for Minor Offenders (CIMIS).

The suspension of the visitation regime for those accused of gender violence.

- These first two cases have been reflected in the Organic Law for the Comprehensive Protection of Children and Adolescents against Violence.

- The modification of the Immigration Regulations, on the legal regime of unaccompanied foreign minors, which has allowed them to improve their documentation (residence and work permits) and guarantee them all the rights that correspond to them, once they have reached adulthood.

According to the Ombudsman of Spain the realisation of economic, social and cultural rights (health, education, pensions, etc) reveals to be more complicated as it requires resources, mainly human and economic, which are lacking.

References

- <https://www.defensordelpueblo.es/resoluciones/suspension-del-regimen-de-visitas-para-imputados-por-violencia-de-genero/>
- <https://www.defensordelpueblo.es/resoluciones/abolicion-de-la-sujecion-mecanica-en-los-centros-de-internamiento-para-menores-infractores/>
- <https://www.defensordelpueblo.es/resoluciones/residencia-de-los-ex-menores-tutelados-que-han-accedido-a-la-mayoria-de-edad-sin-haber-obtenido-la-pertinente-autorizacion/>

NHRI's recommendations to national and regional authorities

The Ombudsman of Spain recommends to the authorities to provide more prompt and more solidly motivated answers to queries raised by the NHRI.

Functioning of the justice system

The Spanish Ombudsman states that the lack of renewal of the Judicial Power Council is very worrying. The Council of the Judiciary has been acting in office since December 2018. It is up to the Parliament to appoint all its members by qualified majority of 3/5. Since 2018, when the negotiations between the main political parties reached an impasse, no significant progress has been made towards reaching an agreement, despite numerous calls, including from the EU, for its renewal.

As in so many other areas, the pandemic generated by COVID affected the proper functioning of the administration of justice and caused delays in the processing of procedures and in the holding of trials. After adopting extraordinary measures to deal with this situation, it has been reasonably normalized. In this regard, the Spanish Ombudsman recommended the President of the Spanish Council of the Judiciary to improve the

monitoring and inspection of the courts whose incumbents have prolonged leave due to illness, or become incapacitated, so that response times can be improved in the measures of reinforcement and/or substitution, to avoid delays.

A different issue are the underlying problems of the administration of justice, which have been present for a long time, in terms of expanding its professional staff and providing material means which allow it to speed up its activity and which are expected to improve in the short term and medium term, with the increase in budget allocations.

A new statute for lawyers has been approved, emphasizing their independence. It highlights the independence of lawyers and establishes new provisions regarding professional secrecy. It was adopted on March 2, 2021. The General Council of Lawyers participated in the legislative process.

In addition, on March 9, 2021, a Royal Decree on free legal assistance was approved, reinforcing the pre-existing system.

Various legislative reforms, especially those of a procedural nature, have been gradually improving the functioning of the administration of justice, but have not solved the problem of delays in judicial processes yet. This situation has been caused by many factors, the most important being the one mentioned above, an inadequate endowment of personal and material means.

Role of the NHRI in contributing to the effective functioning of the justice system

According to the Ombudsman, daily life problems have become excessively judicialized, which has led to increased litigation in Spain. On this topic,, the Ombudsman has advised all public institutions and administrations that have responsibilities in the Administration of Justice or in the so-called "administration of the Administration of Justice", to adopt measures in order to achieve an equitable distribution of the workload of courts and tribunals in order to improve the speed of their action.

Access to justice is adequately guaranteed in the Spanish legal system. The capacities of the Ombudsman in relation to facilitating access to justice are limited. Article 17 of the Spanish organic law reads that: "The Ombudsman shall not investigate individually any complaints that are pending judicial decision, and he shall suspend any investigation already commenced if a claim or appeal is lodged by the person concerned before the ordinary courts or the Constitutional Court".

References

- <https://www.defensordelpueblo.es/en/wp-content/uploads/sites/2/2015/06/LOIngles.pdf>

NHRI's recommendations to national and regional authorities

The Ombudsman recommends to adopt measures in order to achieve an equitable distribution of the workload of courts and tribunals to improve the speed of their action

Media freedom, pluralism and safety of journalists

The Ombudsman of Spain states that there are no problems in Spain concerning the exercise of freedom of expression in its different manifestations, covered by the Constitution. Besides, traditional plurality of Media has been complemented by digital tools and social networks where citizens can freely express their opinions.

The Ombudsman's human rights monitoring led to the conclusion, though, that the Organic Law 4/2015 of 30 March on the protection of Citizen Security, provoked protests from civil society since its promulgation.

The Ombudsman has 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 annual reports of the Ombudsman in recent years have gathered its performance concerning this issue.

In its annual reports the Ombudsman in recent years have advocated for the reform of some aspects of this Law, seeking the right balance between security and freedom. The recommendation concerning journalists is that the violation of article 36.23 does not hinder freedom of expression and the right to information.

This year, however, the Ombudsman has still received complaints about the right of access to public information, not by journalists but by general public. The position of the Ombudsman has been to ask the administrations to comply with the resolutions of the Transparency and Good Governance Council, and consequently to send the interested party the information whose access has been authorized by said body as soon as possible. Nowadays, a clear political will to reform this law is acknowledged, which will hopefully soon be carried out.

References

- <https://www.defensordelpueblo.es/resoluciones/solicitud-de-acceso-a-una-informacion-municipal/>

Corruption

The regulations in force in Spain to avoid cases of corruption in the public sphere are wide and varied. In such event when this type of phenomenon occurs, there is adequate legislation to prosecute and punish them.

In addition, the judicial procedures on corruption cases, as well as the judicial resolutions that derive from them, are subject to extensive informative monitoring by the media, which guarantees their knowledge by the citizens.

During COVID, investigations were initiated with several public entities, on the accreditation of the requirements of solvency, capacity and social adaptation to the object of the contract within the framework of the contracting carried out by the urgency procedure.

The Ombudsman indicated that emergency contracting (i.e in the fight against pandemic), does not exempt the contracting authority from carrying out actions to verify the capacity to contract and the solvency of the awardees.

It was also inquired about compliance with the requirements of transparency in this exceptional situation.

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

Emergency regimes and related measures

While the fight against the pandemic has been improving, especially with the mass vaccination of citizens, the adoption of restrictive measures of rights has been notably limited.

In Spain, at this time, there is no general regime of an exceptional nature to combat the pandemic, which could temporarily limit the exercise of fundamental rights.

However, certain restrictive measures of a local nature are applied on a timely basis in the fight against the pandemic, prior to their assessment and approval by judges and courts (in some territories).

A different issue is the intense debate in the European sphere about the scope of the COVID passport system in its territory, which raises various controversies.

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

It is still early to make a complete and precise balance of the serious economic, political and social impact suffered by the pandemic in Spain and in the rest of the world. That is why it is not surprising that society experiences this situation with anxiety about the present and uneasiness about the future.

Two crises, almost successive, have hit us: the financial one in 2008 and the Covid one in 2020, separated by just three years of partial recovery, and they have caused devastating damage.

With the pandemic, everything was done from a significant margin of uncertainty: there was no experience, there was no background and even science was hesitant.

An enthusiastic scientific research has been carried out in the struggle to find a quick and stable way out of the pandemic. But this is very laborious; It requires time, dedication, resources and success.

Vaccines have started the way to end up defeating the virus. This generates understandable optimism, but we must be cautious and not relax our behaviour in the fight against the pandemic that still persists.

Citizens are afraid and uncertain, individually and socially, about the future.

Public services are overflowing and social protection networks are straining in the face of massive demands for survival, since it is obvious that this crisis is not being the same for everyone.

The pandemic has had serious effects on our lives, but above all it has greatly affected those who were already in a vulnerable situation.

The policies used to fight the economic crisis in the first half of the last decade, based on cutbacks in the welfare state, on spending control and on meeting deficit targets, impoverished the population in the most precarious situation.

In addition to the precarious jobs that already exist, the increase in unemployment, the cessation of activity or the loss of employment has now been added.

The digital gap and housing differences have also become more visible.

Women, who already suffered a higher risk of poverty than men before the coronavirus crisis, have seen it increase. Having children or being a single-parent family increases the risk of severe poverty.

In the past months, we have been able to see long lines of people looking for food in front of social aid organizations.

In short, all these factors have been added to the previous delicate situation, which was already being experienced by people in the most vulnerable situations, which is why it is now essential to focus on them.

Although there is still no exact and complete data to quantify the impact of the virus on poverty, some indicators show notable increases in it.

References

- <https://www.foessa.es/blog/foessa-presenta-la-primera-radiografia-social-completa-de-la-crisis-de-la-covid-19-en-toda-espana/>

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

The Ombudsman has not experienced any hurdles to carry out its tasks during the pandemic.

What is more, comparing the statistical data of the last yearly report, there is a noticeable increase in the Spanish NHRI's activity.

References

- <https://www.defensordelpueblo.es>

Efforts by state authorities to mitigate challenges

Many measures to tackle COVID related problems were adopted in many fields (health, education, social services, etc). The National Government has compiled them all on its web page.

It is true that now, both in Spain and in Europe, the policies that are being applied are clearly different from those of the previous economic crisis. They are characterized by their expansive and protective cut.

This is proven in Spain by the numerous measures adopted by the Government and Parliament, such as the introduction of ERTes (Temporary Employment Regulation), the implementation of the Minimum Vital Income, the different aids for SMEs and workers or the limitation of evictions and cuts in basic services such as electricity, among others, which are helping to alleviate the effects of Covid, especially on the most vulnerable people.

But to combat the risk of poverty and exclusion, the public authorities must persevere in a continuous attention to the neediest groups. It is very necessary to continue implementing measures that shield public services such as education or health and reinforce social protection, as they are essential to alleviate the effects of the crisis we are experiencing and prevent anyone from being left behind.

In conclusion, we must take advantage of this moment to continue adopting measures from the point of view of social justice and fundamental rights.

References

- <https://www.lamoncloa.gob.es/covid-19/Paginas/medidas.aspx>

Actions taken by the NHRI to promote and protect rule of law and human rights in the crisis context

All Spanish Ombudsman activities related to protection of human rights during the Covid-19 crisis are gathered in the monographic report "Actions in the context of the COVID pandemic", published and presented before the Parliament" (1).

Furthermore, the Ombudsman released a report on "Migration in Canary Islands" (2), focusing on specific problems related with the pandemic concerning the attention to irregular migrants arriving massively to the Canary Islands during the pandemic.

References

- (1) https://www.defensordelpueblo.es/wp-content/uploads/2020/12/Documento_COVID-19.pdf
- (2) https://www.defensordelpueblo.es/en/wp-content/uploads/sites/2/2021/04/INFORME_Canarias-EN.pdf

NHRI's recommendations to national and regional authorities

The Ombudsman recommends to resume of several train communications which were stopped by COVID situation.

The Ombudsman also recommends to improve the COVID passport use.

References

- More Ombudsman's recommendations are presented in the Chapter 30 of the report "Actions in the context of the COVID pandemic"
https://www.defensordelpueblo.es/wp-content/uploads/2020/12/Documento_COVID-19.pdf

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

The increase of poverty, notably in the most vulnerable groups which was reinforced by the pandemic.

References

- <https://www.defensordelpueblo.es>

NHRI's recommendations to national and regional authorities

All of them are included in the annual and monographic reports prepared by the Ombudsman, which are promptly sent to Parliament and are fully accessible on its institutional website.

References

- <https://www.defensordelpueblo.es/informes/>

Sweden

Independence and effectiveness of the NHRI

International accreditation status and SCA recommendations

A new institution, the Swedish Institute for Human Rights, was created and commenced operations on 1 January 2022. This institution is not yet accredited, but it has been established with reference to the UN Paris Principles. ENNHRI provided comments on the legislative proposal to establish the Institute and stands ready to give further support towards its accreditation (1). The Institute has also been invited by ENNHRI to join the network.

Another institution, the Swedish Equality Ombudsman was a member of ENNHRI until December 2021. It was accredited with B-status by the Sub-Committee on Accreditation (SCA) in May 2011 (2). The SCA noted that the institution'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.

References

- (1) <http://ennhri.org/wp-content/uploads/2019/09/Comments-on-Consultation-on-the-Proposal-for-the-Establishment-of-an-NHRI-in-Sweden.pdf>
- (2) [https://www.ohchr.org/Documents/Countries/NHRI/GANHRI/SCA%20REPORT%20MAY%202011%20-%20FINAL%20\(with%20annexes\).pdf](https://www.ohchr.org/Documents/Countries/NHRI/GANHRI/SCA%20REPORT%20MAY%202011%20-%20FINAL%20(with%20annexes).pdf)

ANNEX I – Reporting questionnaire

Topic	Questions
<p>Impact of 2021 ENNHRI rule of law report</p>	<ul style="list-style-type: none"> ○ 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 2021 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.)? ○ How has the 2021 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)? ○ If you have taken any specific follow-up initiatives based on the 2021 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 and their impact/feedback from state authorities and/or the wider public and include below, where available, public recordings, reports or other promotional materials. 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). ○ Would you have any recommendations (max. three) to national and/or European policy makers on how to

	<p>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>Thematic self-assessment: put an "x" under the category that gives the best overall picture of how you judge (i) the situation last year and (ii) the situation this year. Please also add brief comments explaining these ratings/developments/progress in the past year.</p>					
		Critical	Worrying	Balanced	Pleasing	Excellent
	Situation last year					
	Situation this year					
	<p>Why? <i>Please explain your ratings above briefly. (max 500 characters)</i></p>					
<p>○ NHRI regulatory framework:</p> <p>The NHRI has a constitutional basis: yes/ no</p> <p>The NHRI has the mandate to contribute to access to justice for individuals, including through:</p> <ul style="list-style-type: none"> • Complaints handling: yes/ no • Strategic litigation before courts: yes/ no • Providing legal assistance to individuals: yes/ no • Awareness-raising: yes/ no • Other-please explain: <p>Has the national regulatory framework applicable to your institution changed since the 2021 report? Yes/ no. If yes, please explain how.</p> <p>Should the NHRI regulatory framework be strengthened? yes/ no. If yes, please explain how.</p>						

- NHRI enabling and safe space:

Do the relevant state authorities have good awareness of the NHRIs' mandate, independence and role of the NHRI? Yes / no. If no, please explain what should be improved.

Does the NHRI have adequate access to information and to policy makers and is it involved in all stages of legislation and policy making with human rights implications: yes/ no. If no, please explain what should be improved.

Are the addressees of the NHRI's recommendations legally obliged to provide a timely and reasoned reply? Yes/ No. Please explain if there are any state measures or practices in place to ensure timely and reasoned response to NHRI's recommendations, and whether they are effective.

Are measures necessary to protect and support the NHRI, heads of institution and staff against threats and harassment and any other forms of intimidation (including SLAPP actions) in place. Yes / no? If no, please explain what should be addressed.

- Has your institution taken any action to address the issues raised and / or to improve its functioning in compliance with the Paris Principles and Recommendation 2021/1 of the Committee of Ministers of the Council of Europe on NHRIs? Do you have any suggestions for follow-up, including through ENNHRI?
- What are your key recommendations (max. three) to national and/ or regional authorities on how to strengthen the independence and effectiveness of your institution? (please consider in context of your responses to sub-questions above on the regulatory framework and 'enabling and safe environment' for your NHRI, as well as the SCA's recommendations and the Council of Europe Committee of Ministers' 2021/1 Recommendation on NHRIs).

**Human rights
defenders and
civil society space**

Thematic self-assessment: put an “x” under the category that gives the best overall picture of how you judge (i) the situation last year and (ii) the situation this year. Please also add brief comments explaining these ratings/developments/progress in the past year.

	Critical	Worrying	Balanced	Pleasing	Excellent
Situation last year					
Situation this year					
Why? <i>Please explain your ratings above briefly. (max 500 characters)</i>					

- Has your institution’s human rights monitoring and reporting found any evidence of laws, measures or practices that could negatively impact on civil society 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)?
- Has your institution’s human rights monitoring and reporting found any serious shortcomings in national laws and practices regulating access to and involvement of civil society actors in law and policy making?
- Has your institution’s human rights monitoring and reporting found any evidence of the abuse of laws or of process laws, including strategic lawsuits against public

	<p>participation (SLAPPs), to intimidate civil society organisations, rights defenders and other actors, such as journalists, speaking out on matters of public interest?</p> <ul style="list-style-type: none"> ○ Can you briefly describe the initiatives taken by your institution to promote and protect civil society 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 international and regional mechanism in support of human rights defenders and civil society? ○ What are your key recommendations (max. three) to national and regional authorities on how to better protect and support civil society actors, including human rights defenders, in your country and across the region? 																								
Checks and balances	<p>Thematic self-assessment: put an “x” under the category that gives the best overall picture of how you judge (i) the situation last year and (ii) the situation this year. Please also add brief comments explaining these ratings/developments/progress in the past year.</p> <table border="1"> <thead> <tr> <th></th><th>Critical</th><th>Worrying</th><th>Balance d</th><th>Pleasing</th><th>Excellent</th></tr> </thead> <tbody> <tr> <td>Situation last year</td><td></td><td></td><td></td><td></td><td></td></tr> <tr> <td>Situation this year</td><td></td><td></td><td></td><td></td><td></td></tr> <tr> <td>Why? <i>Please explain your ratings above briefly.</i></td><td colspan="5"></td></tr> </tbody> </table>		Critical	Worrying	Balance d	Pleasing	Excellent	Situation last year						Situation this year						Why? <i>Please explain your ratings above briefly.</i>					
		Critical	Worrying	Balance d	Pleasing	Excellent																			
	Situation last year																								
	Situation this year																								
Why? <i>Please explain your ratings above briefly.</i>																									

(max 500
characters)

- Has your human rights monitoring and reporting found any evidence of laws, processes and practices that:
 1. erode the separation of powers (including, for example, increased executive powers or insufficient parliamentary oversight);
 2. 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);
 3. limit access to information from state authorities and to public documents;
 4. reduce the accountability of state authorities (including, for example, the lack of effective judicial or constitutional review on state laws, measures or practices);
 5. 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);
 6. impair the independence and effectiveness of independent institutions (other than NHRIs);
 7. impact on the fairness of the electoral process.
- 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?
- 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 legislative and policy

	<p>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)?</p> <ul style="list-style-type: none"> ○ What are your key recommendations (max. three) to national and regional authorities on how to strengthen the system of checks and balances, including the role of NHRIs within such system, in your country and across the region? 																								
Functioning of justice systems	<p>Thematic self-assessment: put an "x" under the category that gives the best overall picture of how you judge (i) the situation last year and (ii) the situation this year. Please also add brief comments explaining these ratings/developments/progress in the past year.</p> <table border="1"> <thead> <tr> <th></th><th>Critical</th><th>Worrying</th><th>Balanced</th><th>Pleasing</th><th>Excellent</th></tr> </thead> <tbody> <tr> <td>Situation last year</td><td></td><td></td><td></td><td></td><td></td></tr> <tr> <td>Situation this year</td><td></td><td></td><td></td><td></td><td></td></tr> <tr> <td>Why? <i>Please explain your ratings above briefly. (max 500 characters)</i></td><td colspan="5"></td></tr> </tbody> </table>		Critical	Worrying	Balanced	Pleasing	Excellent	Situation last year						Situation this year						Why? <i>Please explain your ratings above briefly. (max 500 characters)</i>					
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	Situation last year																								
	Situation this year																								
	Why? <i>Please explain your ratings above briefly. (max 500 characters)</i>																								
	<ul style="list-style-type: none"> ○ 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 																								

	<p>courts, access to legal aid, respect for fair trial standards, execution of judgments)?</p> <ul style="list-style-type: none"> ○ 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). ○ What are your key recommendations (max. three) to national and regional authorities on how to improve the independence, quality and efficiency of the justice system in your country and across the region? 																								
<p>Media freedom, pluralism and safety of journalists</p>	<p>Thematic self-assessment: put an "x" under the category that gives the best overall picture of how you judge (i) the situation last year and (ii) the situation this year. Please also add brief comments explaining these ratings/developments/progress in the past year.</p> <table border="1" data-bbox="496 1234 1386 1743"> <thead> <tr> <th></th> <th>Critical</th> <th>Worrying</th> <th>Balanced</th> <th>Pleasing</th> <th>Excellent</th> </tr> </thead> <tbody> <tr> <td>Situation last year</td> <td></td> <td></td> <td></td> <td></td> <td></td> </tr> <tr> <td>Situation this year</td> <td></td> <td></td> <td></td> <td></td> <td></td> </tr> <tr> <td>Why? <i>Please explain your ratings above briefly. (max 500 characters)</i></td> <td colspan="5"></td> </tr> </tbody> </table> <ul style="list-style-type: none"> ○ Has your human rights monitoring and reporting found any evidence of laws, measures or practices that could 		Critical	Worrying	Balanced	Pleasing	Excellent	Situation last year						Situation this year						Why? <i>Please explain your ratings above briefly. (max 500 characters)</i>					
	Critical	Worrying	Balanced	Pleasing	Excellent																				
Situation last year																									
Situation this year																									
Why? <i>Please explain your ratings above briefly. (max 500 characters)</i>																									

	<p>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 public, protection of journalist sources, independence and effectiveness of media regulatory bodies, transparency of media ownership, disinformation).</p> <ul style="list-style-type: none"> ○ 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). ○ What are your key recommendations (max. three) to national and regional authorities on how to better ensure media freedom, pluralism and the safety of journalists in your country and across the region? 												
Corruption	<p>Thematic self-assessment: put an "x" under the category that gives the best overall picture of how you judge (i) the situation last year and (ii) the situation this year. Please also add brief comments explaining these ratings/developments/progress in the past year.</p> <table border="1"> <tr> <td></td><td>Critical</td><td>Worrying</td><td>Balanced</td><td>Pleasing</td><td>Excellent</td></tr> <tr> <td>Situation last year</td><td></td><td></td><td></td><td></td><td></td></tr> </table>		Critical	Worrying	Balanced	Pleasing	Excellent	Situation last year					
	Critical	Worrying	Balanced	Pleasing	Excellent								
Situation last year													

	Situation this year					
	Why? <i>Please explain your ratings above briefly. (max 500 characters)</i>					
	<ul style="list-style-type: none"> ○ 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 whistle blowers, conflicts of interest, procurement rules and their implementation, respect for the principles of good administration)? ○ 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). ○ What are your key recommendations (max. three) to national and regional authorities on how to improve the anti-corruption framework in your country and across the region? 					
COVID 19 measures	Thematic self-assessment: put an "x" under the category that gives the best overall picture of how you judge (i) the situation last year and (ii) the situation this year. Please also add brief comments explaining these ratings/developments/progress in the past year.					
		Critical	Worrying	Balanced	Pleasant	Excellent

	Situation last year					
	Situation this year					
	Why? <i>Please explain your ratings above briefly. (max 500 characters)</i>					

- To what extent have the emergency regimes and related measures taken to address the COVID-19 outbreak phased out in your country (eg use of fast-track and accelerated la-making procedures, limitations on public consultations and democratic participation, suspension of elections, suspension of court activity, restrictions to freedom of movement and assembly, restrictions to the work of associations including service provision, restrictions on the right to family life, tracing, surveillance and other measures affecting privacy, restrictions affecting the right to information and the right to freedom of expression)?
- Which medium and 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 (eg weakened parliamentary oversight, disruption of the checks and balances system, negative implications for the functioning of justice systems, measures affecting human rights that are not or no longer legitimate or proportionate to the threats posed, exacerbation of social exclusion, impact on vulnerable sectors of the population, negative implications for the enjoyment of socio-economic rights)?
- Are you aware of any good practices set in place by state authorities aimed at mitigating these challenges,

	<p>including through the use of emergency and recovery funding?</p> <ul style="list-style-type: none"> ○ Has your institution taken any further 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). ○ To what extent do the challenges due to COVID-19 still affect your NHRI's functioning and effectiveness? More specifically, were you able to carry out/resume visits and inspections to different institutions (including as National Preventive Mechanism, if relevant)? ○ What are your key recommendations (max. three) to national and regional authorities on how to mitigate the impact of COVID-19 and of measures taken to address it on rule of law and human rights protection, and how to ensure an inclusive recovery, in your country and across the region?
Other relevant areas	<ul style="list-style-type: none"> ○ Are there any pressing challenges in the field of human rights that you came across in your work, or any other 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)? ○ What are your key recommendations (max. three) to national and regional authorities on how to strengthen the human rights protection framework in your country

and across the region, in the light of their impact on the national rule of law environment?

ANNEX II – List and contacts of contributing NHRIs

Country	NHRI	Contact (name)	Contact (email)
Austria	Austrian Ombudsman Board	Uhl Aniko	aniko.uhl@volksanwaltschaft.gv.at
Belgium	FIRM-IFDH	Martien Schotsmans	msch@firm-ifdh.be
	Unia	Emilie Van den Broeck Marissa Fella	emilie.vandenbroeck@Unia.be marisa.fella@unia.be
	Myria	Koen Dewulf Mathieu Beys	Koen.Dewulf@Myria.be mathieu.beys@myria.be
	Combat Poverty Service	Henk Van Hootegeem	henk.vanhootegeem@cntr.be
Bulgaria	Ombudsman of the Republic of Bulgaria	Diana Kovatcheva Katia Hristova-Valtcheva	k.hristova@ombudsman.bg
Croatia	Ombudswoman Institution of the Republic of Croatia	Tatjana Vlašić	tatjana.vlasic@ombudsman.hr
Cyprus	Commissioner for Administration and the Protection of Human Rights	George Kakotas Kyriacos Kyriacou	gkakotas@ombudsman.gov.cy kkyriakou@ombudsman.gov.cy
Czech Republic	Public Defender of Rights of the Czech Republic	Zuzana Jarabinská	jarabinska@ochrance.cz
Denmark	The Danish Institute for Human Rights	Lise Garkier Hendriksen	lgh@Humanrights.dk
Estonia	Office of the Chancellor of Justice	Liiri Oja	liiri.oja@oiguskantsler.ee
Finland	Finnish Human Rights Centre Parliamentary Ombudsman	Sirpa Rautio	Sirpa.Rautio@ihmisoikeuskeskus.fi
France	National Consultative Commission on Human Rights	Michel Tabbal Cécile Riou	michel.tabbal@cncdh.fr cecile.riou@cncdh.fr
Germany	German Institute for Human Rights	Rosa Öektem	oecktem@dimr.de
Greece	Greek National Commission for Human Rights	Roxani Fragkou	roxani.fragkou@nchr.gr info@nchr.gr
Hungary	Office of the Commissioner for Fundamental Rights	Milan Magyar	magyar.milan@ajbh.hu hungarian.ombudsman@ajbh.hu
Ireland	Irish Human Rights and Equality Commission	Laurence Bond	Laurence.Bond@ihrec.ie

Latvia	Ombudsman's Office of the Republic of Latvia	Evita Berķe	evita.berke@tiesibsargs.lv
Luxembourg	National Human Rights Commission of Luxembourg	Fabienne Rossler	fabienne.rossler@ccdh.lu
Netherlands	The Netherlands Institute for Human Rights	John Morijn	j.morijn@mensenrechten.nl
Poland	Office of the Commissioner for Human Rights	Mirosław Wróblewski	m.wroblewski@brpo.gov.pl
Portugal	Provedor de Justiça	Patrícia Fragoso Martins	pfmartins@provedor-jus.pt
Romania	Romanian Institute for Human Rights	Marius Mocanu Andreea Moroianu	marius.mocanu@irdo.ro andreea.moroianu@irdo.ro
Slovakia	Slovak National Centre for Human Rights	Lilla Ozorakova	ozorakova@snslp.sk
Slovenia	Human Rights Ombudsman of the Republic of Slovenia	Simona Drenik Bavdek	simona.drenik-bavdek@varuh-rs.si info@varuh-rs.si
Spain	Defensor del Pueblo	Carmen Comas-Mata	Carmen.Comas-Mata@defensordelpueblo.es

