

State of the rule of law in Europe

Reports from National Human Rights Institutions

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Executive summary

NHRIs, ENNHRI and Rule of Law

As State-mandated bodies, independent of government, with a broad human rights remit, national human rights institutions (NHRIs) are a key player in the protection and the promotion of human rights, democracy and the rule of law.

The rule of law and human rights are interlinked and mutually reinforcing principles: a strong regime of rule of law is vital to the protection of human rights, and the rule of law can only be fully realised in an environment that protects human rights.

The involvement of NHRIs in European rule of law monitoring mechanisms has a clear value added in terms of helping policy makers get to a more comprehensive and informed assessment of the situation in each country. In turn, the active engagement of NHRIs has the potential to lead to enhanced impacts of follow up action intended to drive progress in the national and regional rule of law and human rights environment.

By including rule of law and democracy among the priorities for their regional cooperation, members of the European Network of National Human Rights Institutions (ENNHRI) have acknowledged this potential and committed to develop a strategic engagement in European rule of law mechanisms. At the core of such engagement lies a united approach meant to enhance coherence and consistency while allowing to reflect the differences in NHRIs' national environments and regional processes relevant to each country across ENNHRI's membership.

NHRIs' contribution to rule of law reporting is one key aspect of such strategic engagement. Information on the extent to which NHRIs are able to independently and effectively fulfil their mandate is internationally recognized as an important rule of law indicator. Furthermore, reporting by NHRIs on the human rights situation on the ground – one of the core elements of their legal mandate – contributes to reflect a more accurate picture of the rule of law environment in which NHRIs operate. On this basis, NHRIs committed to develop national rule of law reports, based on a common reporting structure including consideration of NHRIs as rule of law indicator.

This ENNHRI report compiles national rule of law reports drafted by its members across wider Europe. These reports reflect each institution's perspectives on the state of the rule of

law in their country, based on their human rights monitoring and reporting functions and having regard to their mandate and their national strategic priorities. The report also gives account of the independence and effectiveness of each NHRI where ENNHRI has a member – and of progress made towards its establishment, in those countries where such an institution has not yet been established.

Key Findings

The trends which emerge from these reports point to a number of challenges related to the rule of law environment across wider Europe, including:

- Common issues affecting the independence and effectiveness of NHRIs, including a lack of adequate resources and insufficient consultation and cooperation with NHRIs;
- Restrictions on civil society space, in particular in the form of limited access to funding, regulatory measures having a disproportionate impact on the rights and freedoms of human rights defenders and civil society organisations, limitations to freedom of assembly and instances of threats, harassment and smear campaigns targeting human rights defenders;
- Pressure on democratic checks and balances, such as the use of special or accelerated legislative procedures, limited consultation and impact assessments, in particular on human rights, deficiencies of judicial control including non-execution of judgments as well as limitations affecting the electoral systems;
- Shortcomings impacting on the independence, quality and efficiency of justice systems, including delays in delivering justice, appointment of judges, obstacles to the enforcement of judgments and inadequate legal aid systems, which affect particularly the enjoyment by vulnerable groups of their right to access to justice;
- Threats to media pluralism, including attacks and hate speech targeting journalists and media actors and government's interference in media independence;
- Obstacles to eradicating corruption.

Given the relevance to the rule of law of many of the measures recently taken by governments to respond to the COVID-19 outbreak, the report also offers an overview of the most significant impacts identified by ENNHRI members in relation to such measures in their countries. Concerns shared among NHRIs in this regard include the way measures are adopted in the context of the state of emergency; the lack of clarity and predictability of measures impacting on the enjoyment of fundamental rights; the situation of vulnerable groups (including the elderly, persons with disabilities, children, women, persons deprived

of liberty, national and ethnic minorities as well as migrants and asylum seekers); and the severe restrictions to a number of fundamental rights and freedoms such as access to justice, the right to health, the right to information, freedom of assembly, privacy and the right to family life.

These findings highlight the importance of a regular and comprehensive monitoring of the rule of law environment at regional level and the urgency to make sure that identified challenges are addressed promptly and effectively at national and, where appropriate, international and regional (EU, Council of Europe) level.

The report also draws attention to the importance of making the establishment of and support to fully independent and effective NHRIs across the region a priority at European and national level: not only to ensure a more comprehensive and consistent collection of information on the state of human rights, rule of law and democracy across wider Europe; but also as a means to strengthen the system of checks and balances that enables the effective protection and promotion of those standards and values.

Next Steps

Looking ahead, NHRIs' rule of law reporting intends to contribute substantively to making concrete progress to advance the rule of law, democracy and human rights across the region. Indeed, this report, and the sub-regional reports compiled on its basis, are not the end but rather the very first step of NHRIs' engagement in European rule of law mechanisms. Building on this work, all ENNHRI members will be able to engage in different processes at international, regional and national level in order to inform, based on their institutional role and their understanding of the situation on the ground, the identification and implementation of the appropriate follow-up measures in their countries. They will also be well placed to further contribute to the active promotion of a value-based culture, helping to grow grassroots support for democracy, rule of law and human rights among public authorities as well as citizens.

These efforts will also feed into other key areas of ENNHRI's work, including as regards the promotion and support to human rights defenders and democratic space, also in connection to NHRIs' role in the implementation of the Council of Europe Recommendation on the need to strengthen the protection and promotion of civil society space in Europe.

In addition, the information collected on the impact of COVID-19 will inform ENNHRI's future actions to support NHRIs in this area.

In this framework, ENNHRI will continue to act as a regional focal point and provide continued support to its members' engagement to secure its sustainability and enhance its impact. It will keep on investing to secure the establishment and effective functioning of NHRIs across the region, build up NHRIs' expertise and capacity, and ensure support to NHRIs under threat. Several needs, opportunities and recommendations to strengthen this approach are identified in the section on 'Strengthening NHRIs through regional cooperation'. ENNHRI stands ready to further engage with international and regional actors to further the advancement of rule of law, democracy and human rights in wider Europe.

Introduction

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 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 in the region. ENNHRI is one of four regional NHRI networks, which together form GANHRI, the Global Alliance of NHRIs.

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

While the specific mandate of each NHRI may vary, the general role of NHRIs is to promote and protect human rights, including civil, political, economic, social and cultural rights, and address discrimination in all its forms. Given the breadth of their mandate, each NHRI selects strategic priorities for their work, based on objective criteria related to 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**. This accreditation is performed by GANHRI's Sub-Committee on Accreditation (SCA), supported by the UN's Human Rights Office, and involves reviewing 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](#).

NHRIs and the rule of law

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. European NHRIs are already working in this area and have chosen 'democracy and rule of law' to be one of ENNHRI's priorities in its Strategic Plan 2018-21. This is reflected, for example, in ENNHRI's [Regional Action Plan on Promoting and Protecting Human Rights Defenders and Democratic Space](#).

Three key considerations lie at the core of NHRIs reporting to and participation in rule of law monitoring initiatives:

- The international recognition of **NHRIs as a rule of law indicator**, based on the need for independent institutions (see SDG 16), which is tested through the standards set by the UN Paris Principles for their formal and functional independence, pluralism, accountability and effectiveness.
- NHRIs' unique position, based on their broad human rights mandate and taking into account their accreditation status, to **provide information** that can help international and European actors to get a more accurate picture of the national rule of law environment. In this respect, monitoring and reporting on the situation of human rights in their country is an obligation under the Paris Principles and a central function of all NHRIs - NHRIs accredited as fully independent and effective (A-status NHRIs) being given independent reporting rights before the UN Human Rights Council, Treaty Bodies and other UN mechanisms.
- NHRIs' engagement in rule of law mechanisms forms an integral part of their mandate to promote and protect human rights. By contributing to a more comprehensive and accurate assessment of the situation in each country, and recommending action needed to address challenges, NHRIs' engagement within their strategic priorities can help to **enhance the impact** of existing frameworks and related initiatives, and thus achieve **better promotion and protection of human rights, rule of law and democracy**.

Similarly, regional mechanisms' awareness of NHRI reporting and recommendations in relation to rule of law can lead to enhanced follow-up to those recommendations, through multilateral or independent processes at regional level.

Relevance of a united approach to rule of law reporting across the region

The contribution to European rule of law, democracy and human rights monitoring and enforcement frameworks has been identified since 2018 as one of the key thematic priorities for regional cooperation by ENNHRI members. Recent developments at European level confirmed the added value and the existence of key opportunities for the engagement in European rule of law monitoring initiatives.

On this basis, ENNHRI's members committed to engage with a **united approach** to rule of law reporting. They engaged, in particular, in developing **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 have been collated and are published by ENNHRI as one **comprehensive regional report**.

In addition, sub-regional reports have also been compiled to feed in different consultation processes as relevant for NHRIs across ENNHRI's membership (EU, Enlargement/Western Balkans, Eastern Partnership and other geographic areas).

Such a united approach reflects the spirit of **cooperation and solidarity** that underlies 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 **timely and consistent reporting** of ENNHRI in the different European rule of law monitoring processes as relevant to EU Member States, Enlargement/Western Balkans, Eastern Partnership and other countries - 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.

Scope of this report

The present report brings together the **country rule of law reports** developed by ENNHRI members and offers an **overview of trends** 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 country where ENNHRI has a member, as well as countries where ENNHRI is supporting the establishment of an institution which may apply for accreditation as an NHRI, or in contact with existing

national bodies to exchange on the lack of NHRI in the country.¹ This is meant to inform considerations in relation to NHRIs as rule of law indicators.

This report covers **40 countries** out of the 43 countries where ENNHRI has a member, and information on the process to establish an NHRI in eight other countries. In view of the ongoing process to establish an institution in compliance with the UN Paris Principles, the Swedish Equality Ombudsman (B-status NHRI) abstained from contributing to this reporting process. The ENNHRI members from Turkey and Liechtenstein, both non-accredited institutions, have not contribute to this rule of law reporting process, due to lack of capacity. Contributing ENNHRI members thus include all the 27 A-status NHRIs across wider Europe, 8 B-status NHRIs and 5 non-accredited institutions.² The list of contributing NHRIs is included in the overview table at the end of this section.

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 key guiding principles and features underlying the agreed methodology are outlined below.

In this respect, it is important to bear in mind that 2020 marks the first year of development and implementation of the common approach to NHRIs' reporting and participation to European rule of law mechanisms. A challenging endeavour in itself, NHRIs' reporting engagement has this year been also affected by the difficulties posed on NHRIs' capacity and resources by the public health emergency related to the outbreak of the COVID-19 pandemic.

¹ This is the case, in particular, for Andorra, Belarus, Iceland, Italy, Malta, Monaco, San Marino and Switzerland.

² Note that three Belgian institutions (one B-status accredited NHRI, and two non-accredited institutions) have contributed collectively to the Belgian national report; the three A-status NHRIs from the UK (from Great Britain, Scotland and Northern Ireland) have submitted each a report covering their territorial mandate. In the system of international accreditation, A-status NHRIs are considered fully in compliance with the UN Paris Principles and B-status partially. No status ENNHRI members committed to working towards becoming accredited institutions. 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.

ENNHRI will evaluate the common reporting structure and guiding principles through member-wide consultation at the end of the reporting cycle. This will ensure learning from experience and adaptation of the common methodology as appropriate, and will allow the identification of potential follow-up actions in the future. The evaluation will take into account the sustainability, effectiveness and impacts of the common approach at international and national level, as well as the development of European rule of law processes.

A common reporting structure

ENNHRI developed 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 related questionnaire is included as Annex I to this report.

Taking into account the priority areas and indicators identified by European institutions and bodies for the different rule of law mechanisms, the common reporting structure contains information provided by European NHRIs in relation to:

- the **NHRI as indicator of rule of law**, in particular in terms of changes in the regulatory framework and/or significant changes in the NHRI's environment relevant for the independent and effective fulfilment of its mandate;
- **country-specific human rights reporting** by NHRIs with relevance to the rule of law, in particular in terms of any evidence of problematic laws, measures or practices in five thematic areas:
 - human rights defenders and civil society space;
 - checks and balances;
 - functioning of justice systems;
 - media pluralism;
 - corruption.

The questionnaire sent to NHRIs also included an open-ended question allowing NHRIs to report on any other area or issue not covered under the areas identified in the common reporting structure but relevant for the specific country situation.

In addition, the common reporting structure features an **in-focus section on measures taken at national level in response to the COVID-19 outbreak**, as regards their impact on the rule of law as well as the challenges posed to the NHRI's functioning – also building on ENNHRI's [statement](#) and on its [collection](#) of members' positions.

In filling the questionnaire, each NHRI was **free to report on what it deemed appropriate**, also on the basis of the NHRI's mandate, capacity, and national context. Each country report therefore 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.

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

Building on NHRIs' existing functions and expertise

As a means to ensure consistency and sustainability, 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 requested that the Secretariat 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 undertook the following tasks in relation to the analysis and processing of the country information by NHRIs:

- **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 remaining in any case responsible for the information and data provided therein;
- **Highlighting emerging trends**, through analysis and processing of the information included in the country reports received;

- Provision of information on the **accreditation status and on the latest report of the international accreditation committee with recommendations to improve compliance with the Paris Principles in each country report**, in connection to the recognition of NHRIs as rule of law indicator.

Looking ahead: seeking concrete impacts and follow-up

This report is a starting point for ENNHRI's ongoing engagement with international and regional actors on rule of law, seeking to achieve positive change for fundamental rights, rule of law and democracy across wider Europe.

Paris Principles-compliant NHRIs across wider Europe

The independent and effective functioning of an NHRI in each country is an indicator of the respect for rule of law. Accordingly, this report includes information on the establishment and international accreditation of an NHRI in compliance with the Paris Principles in each country across the region. It also compiles information submitted by NHRIs as regards developments and challenges affecting the legal framework governing their institutions and the enabling environment in which they function. Indeed, shortcomings affecting the formal and functional independence and effectiveness of NHRIs have an impact on the ability of NHRIs to effectively fulfil their mandate and therefore play their role as part of checks and balances safeguarding the rule of law framework.

One of ENNHRI's core objectives is to support its members with accreditation – before, during and after the accreditation process. The number of NHRIs accredited by reference to the UN Paris Principles has risen significantly in Europe since the establishment of the ENNHRI Secretariat in 2015 – this number has increased by 42%, from 26 to 37 countries in Europe with an accredited NHRI. Among these, there was an increase of 40% in the number of European countries with an "A-status" NHRI (fully compliant with the Paris Principles), from 20 to 28 A-status NHRIs in European countries.

ENNHRI underlines that the establishment of an NHRI in compliance with the Paris Principles in all countries across wider Europe, as well as the support to their effective functioning, should be regarded as a priority at European and national level also with a

view to ensuring comprehensive and consistent collection of information on the state of fundamental rights, rule of law and democracy in Europe.³

Ongoing Engagement and Follow-up Measures

While this report is based on ongoing monitoring and reporting of NHRIs and their advice to state authorities, important added value can be created by international and regional actors, in particular at EU and Council of Europe level, through the use of this country-specific information in follow-up actions. While ENNHRI functions as focal point for engagement on rule of law of NHRIs at regional level, we encourage all relevant international and regional actors to engage with NHRIs directly in country-specific procedures and follow-up actions on rule of law.⁴ Indeed, through their national mandate and their understanding of the situation on the ground, NHRIs will be well placed to contribute to the identification and implementation of appropriate follow-up measures in their countries, including the active promotion of a culture of understanding and respect for fundamental rights, rule of law and democracy.

Some indications of important follow-up actions can already be identified in this initial report of NHRIs on the rule of law. Importantly, international and regional actors, in particular at EU and Council of Europe level, should actively explore and implement a variety of actions to support NHRIs when facing threats.⁵ When doing so, account can be taken of [ENNHRI's Guidelines](#) on support to NHRIs under threat, which include guarantees of confidentiality and clarify that public support is only appropriate at request of the NHRI concerned.

³ The role of NHRIs in this regard has already been acknowledged by different regional actors in a variety of documents. See, for example, the 2019 [Council Conclusions](#) on the Charter, the 2019 [Commission Annual Report](#) on the Application of the EU Charter, the 2019 [Parliament Resolution](#) for a regulation on the protection of the Union's budget in case of generalised deficiencies as regards the rule of law in MSs and the 2016 [Parliament Resolution](#) on the EU mechanism on democracy, the rule of law and fundamental rights, and CoE Committee of Ministers [Recommendation \(2018\)11](#) on the need to strengthen the protection and promotion of civil society space in Europe.

⁴ Contact points for each NHRI that provided a national report for this collation are included in Annex II.

⁵ Existing mechanisms to prevent, monitor and address intimidation and reprisals can serve as source of inspiration, including the UN Secretary-General mechanism against reprisals or the EU's Protect Defender programme.

Synergies across Mechanisms and across ENNHRI's Work

While the current report feeds into engagement of ENNHRI and its members in rule of law related process at the UN, EU and Council of Europe, the further development of synergies between the various processes will be of particular relevance. As a network connecting all European NHRIs, ENNHRI will continue to play a key role in further developing actions in support of NHRIs' engagement in regional rule of law processes for creating change at national level. Depending on available capacity, ENNHRI could for example develop guidelines for NHRIs on rule of law, and tailored capacity-building activities.

The current rule of law reporting process will also feed into other key areas of ENNHRI's work. This includes further actions on implementation of fundamental rights in connection with regional instruments and in particular the European Convention on Human Rights and the EU Charter on Fundamental Rights.

The information collected will also inform ENNHRI's work on the promotion and [support to human rights defenders and democratic space](#), which includes support to NHRIs in using their powers to contribute to the implementation of the Council of Europe Recommendation on the need [to strengthen the protection and promotion of civil society space in Europe](#).

In addition, NHRIs' rule of law reporting will be considered within ENNHRI's current [work on NHRI monitoring of the human rights of migrants at borders](#), which takes into account rule of law and human rights accountability.

In-focus section: NHRIs response to COVID-19 pandemic

The report includes rich information on the human rights and rule of law implications of the COVID-19 pandemic and associated public health measures. NHRIs have provided an overview for each country of the core concerns in relation to human rights violations, based on monitoring and complaints received.

They have also commented on the processes used in introduce emergency measures, and underlined any concerns on rule of law and human rights, such as for transparency, participation and accountability. In relation to both the pandemic and the associated measures, NHRIs have underlined disproportionate impacts on certain groups.

In addition to the human rights impacts, NHRIs have reported on additional challenges for NHRIs to operate in the COVID-19 context, and shown creative working methods and practices to ensure that they continue to fulfil their mandates. NHRIs are adapting to the

current challenges by, for instance, “remote” human rights monitoring in cooperation with civil society, increased use of telephone hotlines and ‘virtual’ complaints handling, and continued engagement with state authorities.

As part of the data collection, ENNHRI has consulted NHRIs on the kind of support they would need to promote and protect human rights and in particular the rule of law on national level. Overall, NHRIs stress regional cooperation – through ENNHRI – as crucial for strengthening their national and regional engagement in this area.

ENNHRI has supported NHRIs through providing a platform for exchange of practices, through a dedicated webpage, a private data collection portal, and several web-meetings in relation to COVID-19 impacts on human rights, with attention to NHRIs’ legal functions, and also their work on migration, economic and social rights, communicating human rights, disability and older persons.

European NHRIs also came together, under the auspices of ENNHRI, to release two statements on human rights implications of COVID-19 and economic recovery.

ENNHRI is reviewing the information provided by members on COVID-19 to ensure that any support provided is relevant, useful and impactful. For example, an aide mémoire for NHRIs in addressing emergency measures is being developed with ODIHR. The information is also being provided directly to other mechanisms (Council of Europe, UN bodies) to create efficiencies for NHRIs, who already have increased work in the COVID-19 context, as well as multiple requests to report to international bodies.

ENNHRI will continue to support members in this pressing area, and mainstream attention to the human rights implications of COVID-19 through its mission of strengthening, supporting and connecting NHRIs to promote and protect human rights. Specific attention will be paid to ENNHRI’s thematic priorities of democracy and rule of law (human rights defenders), migration, and economic and social rights.

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

| Country | ENNHRI Member | NHR establishment /accreditation status | Information provided on national situation per topic | | | | | | |
|---------|---------------------------------------|-----------------------------------------------------------------------------|------------------------------------------------------|------------------------------|---------------------|-----------------|-----------------|------------|----------|
| | | | NHRI Independence & effectiveness | HRDs and civil society space | Checks and balances | Justice systems | Media pluralism | Corruption | COVID-19 |
| 1 | Albania | People's Advocate of Albania | A status | ✓ | ✓ | ✓ | ✓ | ✓ | ✓ |
| 2 | Andorra | No NHRI | No NHRI | | | | | | |
| 3 | Armenia | Human Rights Defender of the Republic of Armenia | A status | ✓ | ✓ | ✓ | ✓ | ✓ | ✓ |
| 4 | Austria | Austrian Ombudsman Board | B status | ✓ | | | ✓ | ✓ | ✓ |
| 5 | Azerbaijan | Azerbaijan Ombudsman Institute | B status | ✓ | ✓ | ✓ | ✓ | ✓ | ✓ |
| 6 | Belarus | No NHRI | No NHRI | | | | | | |
| 7 | Belgium <i>Collective response</i> | Interfederal Centre for Equal Opportunities and Opposition to Racism (Unia) | B status | | | | | | |
| | | Belgian Federal Migration Centre (Myria) | No status | ✓ | ✓ | ✓ | ✓ | | ✓ |
| | | The Combat Poverty, Insecurity and Social Exclusion Service | No status | | | | | | |
| 8 | Bosnia and Herzegovina | Human Rights Ombudsman of Bosnia and Herzegovina | A status | ✓ | ✓ | ✓ | ✓ | | ✓ |
| 9 | Bulgaria | Ombudsman of the Republic of Bulgaria | A status | ✓ | ✓ | ✓ | ✓ | ✓ | ✓ |
| 10 | Croatia | Ombudswoman of the Republic of Croatia | A status | ✓ | ✓ | ✓ | ✓ | ✓ | ✓ |

| | | | Information provided on national situation per topic | | | | | | | |
|---------|----------------|----------------------------------------------------------------------------------------------|------------------------------------------------------|------------------------------|---------------------|-----------------|-----------------|------------|----------|---|
| Country | ENNHRI Member | NHRI establishment /accreditation status | NHRI Independence & effectiveness | HRDs and civil society space | Checks and balances | Justice systems | Media pluralism | Corruption | COVID-19 | |
| 11 | Cyprus | Office of the Commissioner for Administration and the Protection of Human Rights (Ombudsman) | B status (applying) | ✓ | | ✓ | ✓ | | ✓ | ✓ |
| 12 | Czech Republic | Public Defender of Rights | No status | | | | | | | ✓ |
| 13 | Denmark | The Danish Institute for Human Rights | A status | | | ✓ | ✓ | | | ✓ |
| 14 | Estonia | Office of the Chancellor for Justice | No status (applying) | ✓ | | ✓ | | | ✓ | ✓ |
| 15 | Finland | Finnish Human Rights Centre Parliamentary Ombudsman | A status | ✓ | ✓ | ✓ | ✓ | ✓ | ✓ | ✓ |
| 16 | France | French National Consultative Commission on Human Rights | A status | ✓ | ✓ | ✓ | ✓ | ✓ | ✓ | ✓ |
| 17 | Georgia | Public Defender (Ombudsman) of Georgia | A status | ✓ | ✓ | ✓ | ✓ | ✓ | | ✓ |
| 18 | Germany | German Institute for Human Rights | A status | | ✓ | ✓ | ✓ | | | ✓ |
| 19 | Great Britain | Equality and Human Rights Commission | A status | ✓ | | ✓ | ✓ | | | ✓ |
| 20 | Greece | Greek National Commission for Human Rights | A status | ✓ | ✓ | ✓ | ✓ | ✓ | | ✓ |
| 21 | Hungary | Office of the Commissioner for Fundamental Rights | A status (deferred) | ✓ | | ✓ | ✓ | ✓ | ✓ | ✓ |
| 22 | Iceland | No NHRI | No NHRI | | | | | | | |
| 23 | Ireland | Irish Human Rights and Equality Commission | A status | | ✓ | ✓ | ✓ | | | ✓ |
| 24 | Italy | No NHRI | No NHRI | | | | | | | |

| 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 |
| 25 | Kosovo⁶ | Ombudsperson Institution of Kosovo | No status | ✓ | ✓ | ✓ | ✓ | ✓ | ✓ |
| 26 | Latvia | Ombudsman's Office of the Republic of Latvia | A status | | | | | | ✓ |
| 27 | Liechtenstein | Liechtenstein Human Rights Association | No status | | | No submission | | | |
| 28 | Lithuania | The Seimas Ombudsmen's Office of the Republic of Lithuania | A status | ✓ | ✓ | ✓ | ✓ | ✓ | ✓ |
| 29 | Luxembourg | National Human Rights Commission of Luxembourg | A status | ✓ | ✓ | ✓ | ✓ | ✓ | ✓ |
| 30 | Malta | <i>No NHRI</i> | <i>No NHRI</i> | | | | | | |
| 31 | Moldova | People's Advocate Office | A status | | ✓ | ✓ | ✓ | ✓ | ✓ |
| 32 | Monaco | <i>No NHRI</i> | <i>No NHRI</i> | | | | | | |
| 33 | Montenegro | Protector of Human Rights and Freedoms of Montenegro | B status | ✓ | ✓ | ✓ | ✓ | | ✓ |
| 34 | Netherlands | The Netherlands Institute for Human Rights | A status | | ✓ | ✓ | | | ✓ |
| 35 | North Macedonia | Ombudsman | B status | ✓ | ✓ | ✓ | ✓ | | ✓ |
| 36 | Northern Ireland | Northern Ireland Human Rights Commission | A status | ✓ | | | ✓ | ✓ | ✓ |

⁶ This designation is without prejudice to positions on status, and is in line with UNSC 1244 and the ICJ Opinion on the Kosovo Declaration of Independence.

| | | | Information provided on national situation per topic | | | | | | | |
|---------|--------------------|---------------------------------------------------------|------------------------------------------------------|------------------------------|---------------------|-----------------|-----------------|------------|----------|--|
| Country | ENNHRI Member | NHRI establishment /accreditation status | NHRI Independence & effectiveness | HRDs and civil society space | Checks and balances | Justice systems | Media pluralism | Corruption | COVID-19 | |
| 37 | Norway | Norwegian National Human Rights Institution | A status | ✓ | ✓ | | ✓ | ✓ | ✓ | |
| 38 | Poland | Office of the Commissioner for Human Rights | A status | ✓ | ✓ | ✓ | ✓ | ✓ | ✓ | |
| 39 | Portugal | Portuguese Ombudsman | A status | ✓ | ✓ | ✓ | ✓ | ✓ | ✓ | |
| 40 | Romania | Romanian Institute for Human Rights | No status (applying) | ✓ | ✓ | ✓ | ✓ | ✓ | ✓ | |
| 41 | Russian Federation | Commissioner for Human Rights of the Russian Federation | A status | ✓ | ✓ | ✓ | ✓ | | ✓ | |
| 42 | San Marino | No NHRI | No NHRI | | | | | | | |
| 43 | Scotland | Scottish Human Rights Commission | A status | ✓ | | ✓ | ✓ | | ✓ | |
| 44 | Serbia | Protector of Citizens of the Republic of Serbia | A status | ✓ | ✓ | ✓ | ✓ | | ✓ | |
| 45 | Slovakia | Slovak National Centre for Human Rights | B status | ✓ | ✓ | | ✓ | | ✓ | |
| 46 | Slovenia | Human Rights Ombudsman of the Republic of Slovenia | B status (applying) | ✓ | ✓ | ✓ | ✓ | ✓ | ✓ | |
| 47 | Spain | Ombudsman of Spain | A status | ✓ | | | | ✓ | ✓ | |
| 48 | Sweden | The Swedish Equality Ombudsman | B status | | | No submission | | | | |
| 49 | Switzerland | No NHRI | No NHRI | | | | | | | |
| 50 | Turkey | Human Rights and Equality Institution of Turkey | No status | | | No submission | | | | |
| 51 | Ukraine | Ukrainian Parliament Commissioner for Human Rights | A status | ✓ | ✓ | ✓ | ✓ | ✓ | ✓ | |

Overview of trends and challenges

Independence and effectiveness of NHRIs

ENNHRI's members currently report both positive and negative developments as regards regulatory frameworks and other changes impacting on the independent and effective fulfilment of their mandate as NHRIs.

A positive trend is visible concerning the **establishment of NHRIs** in compliance with the Paris Principles. Since the establishment of the ENNHRI Secretariat in 2015, the number of newly accredited NHRIs in Europe has increased from 26 to 37 (+42.3%), and the number of A-status NHRIs has increased from 20 to 28 (+40%). Four European states currently have NHRIs seeking accreditation review for A status in 2020.

In some European countries where there is no NHRI, steps have been taken towards establishing one. In others, establishing initiatives are non-existent or have stalled.

In Italy, despite several legislative initiatives, there is still no clear pathway to establish an NHRI. In Belgium, a law has been adopted to establish an NHRI, but the new institution is not in operation yet. In Sweden, a legislative proposal and public consultation on the establishment of an NHRI took place, but progress has stalled. Similarly, a consultation to establish an NHRI took place in Iceland, without further progress. In Andorra, Monaco and San Marino, existing national bodies perform some tasks related to human rights but are not internationally accredited as NHRIs.

Positive developments on the NHRI regulatory frameworks have been recorded in some countries with A-status NHRIs (including Lithuania, Ukraine and Russia), B-status NHRIs (including Cyprus, Montenegro, North Macedonia and Slovenia), as well as in countries without accredited institution (Estonia and Kosovo*). B-status NHRIs in Cyprus and Slovenia are seeking accreditation, as well as the non-accredited institutions in Estonia and Romania. ENNHRI members in Slovenia and Estonia are awaiting their accreditation which has been delayed, due to COVID-19, while institutions in Romania and Cyprus recently applied for accreditation. In Azerbaijan, amendments to the legal framework are being adopted to address SCA recommendations.

NHRIs in Austria, Croatia, Georgia, Hungary, Kosovo*, Lithuania, North-Macedonia and Slovenia report having been granted **new responsibilities**. In Austria, Kosovo*, Lithuania

and Slovenia, this reflects progress towards a **strengthened mandate** of the NHRI to promote and protect human rights in line with the UN Paris Principles. In Croatia and Hungary, the new responsibilities concern **specific new mandates** for the implementation of new rules on **whistle-blowers protection**. In Hungary, an additional mandate has also been accorded on addressing police-complaints, while in North Macedonia, the institution received additional mandates concerning monitoring rights of persons with disabilities and human trafficking.

Progress in further reinforcing the NHRIs' mandate is also reported in Albania, Armenia, Georgia, North Macedonia and Russia. This concerned, in particular, changes in the regulatory framework aimed at improving the institution's effectiveness and independence (in North Macedonia and Russia), a strengthened mandate as regards **non-discrimination** (in Georgia, and expected also later this year in Armenia) and as regards **rights promotion** (in Albania and North Macedonia). The NHRI in Armenia also reports a notable increase in its efficiency. By contrast, the NHRI in Northern Ireland gives account of a recent judicial interpretation of its mandate, which determined the loss of the NHRI's ability to bring cases to court in its own name. The NHRI in Bosnia and Herzegovina reports that proposals to enhance its functional and financial independence do not receive the necessary support in parliament.

The NHRI in Hungary reports an **increase of budget** for the salaries of staff. The NHRIs in Finland and Luxembourg also report an increase in staff. The NHRI in Ukraine reports an increase in budget for its function as National Preventive Mechanism (NPM). On the contrary, other NHRIs point to the **lack of adequate resources**: this is the case, in particular, for the NHRIs in Albania, Georgia, Great Britain, Kosovo*, Northern Ireland, Poland; and for the NHRI in Croatia, where the new tasks did not entail additional resources being granted. Also, in Slovenia and Cyprus, the lack of resources, in particular to cover staff costs, is still a concern despite some recent improvements.

Some NHRIs report **problematic practices by the authorities impacting on the NHRI's functioning**.

The NHRI in Poland reports being constantly subject to heavy **criticism and pressure** from the government. The NHRI in Georgia also points to attempts to discredit and interfere with its work, also through the violation of its confidentiality prerogatives, while the NHRI in Moldova relates heavy criticism and **lack of cooperation** on the side of public authorities in particular during the pandemic emergency. In Albania, the NHRI refers to the overall political and economic climate, as well as challenges affecting the constitutional framework, as obstacles in carrying out its functions. The NHRI also complains about the lack of debate

by parliament of its reports. In line with its [policy on NHRIs under threat](#), ENNHRI has at the request of the NHRIs in Poland, Georgia and Moldova undertaken public action in support of the institutions, flagging to relevant state authorities the need to respect the independence and effective functioning of their NHRIs, in line with the Paris Principles.⁷

Other NHRIs report about more specific challenges: in Croatia, the NHRI reports **limited access** to information and restraints in visits as regards in particular the situation of irregular migrants; in Slovenia, the NHRI points at **administrative requirements** on budget approval making it difficult to implement the NHRI's budget in a timely manner. The NHRI in Cyprus reports an **investigation into the NHRI's leadership**, opened on unclear grounds by the prosecutor general. The NHRIs in Belgium and Greece reported threats against their leadership.

Concerns are raised by the NHRI in Greece over the **lack of consultation** of the NHRI in an important reform directly impacting on the NHRI functioning, in particular as regards changes in its composition. NHRIs in Greece, Hungary, Poland and Slovenia report not being provided with draft laws by the competent authorities, thus being hindered from exercising their mandate to advise on human rights compliance.

Finally, NHRIs in Great Britain and Scotland raise concerns over the possible **impact of Brexit** on the framework for protection of human rights in the United Kingdom.

Human rights defenders and civil society space

NHRIs enable democratic space and support human rights defenders, working actively with civil society as part of the implementation of their mandate to promote and protect human rights at national level. Various NHRIs in their contributions pointed to **successful examples of cooperation** with civil society organizations (see in particular reports on Azerbaijan, Finland, France, Greece, Kosovo*, Lithuania, Montenegro and North Macedonia).

Challenges related to the enabling framework for human rights defenders and civil society organisations are reported by most of the NHRIs contributing to the report (28 out of 40 countries reported upon).

⁷ More information on ENNHRI's public outreach in support of the NHRIs in [Poland](#), [Georgia](#) and [Moldova](#) on the ENNHRI website.

As regards the **general framework**, The NHRI in Croatia points at the general lack of progress by the government towards a strategy to support a strong and free civic space, despite its recommendations. The NHRI in Moldova regrets the lack of adoption of a law on human rights defenders, while it reported the recent adoption of a law on NGOs in line with international standards on freedom of association. In Armenia, the NHRI reports its efforts in making sure that the new law on non-governmental organizations is in line with fundamental rights and freedoms including as regards privacy, freedom of association and access to funding. The NHRI in Kosovo* reports of cases of arbitrary suspension of the work of non-governmental organizations, while mentioning the new legal framework on freedom of association as a positive development which may lead to some progress in this area.

Issues related to **access to funding** for civil society organisations are reported by NHRIs in Belgium, Croatia, Norway, Poland, Portugal and Slovakia– the latter pointing in particular at discriminatory disbursement of state funding by the authorities. The NHRI in Scotland also points to challenges in maintaining civil society organizations' independence considering the existing funding landscape, where civil society mostly rely on state funding. On the same point, **positive developments** are reported by the NHRI in Finland where the government increased funding for civil society organisations.

Problematic issues in relation to the **regulatory framework** likely to have a chilling effect on the free exercise by civil society organisations of their advocacy functions are highlighted by NHRIs in France (as regards the criminalisation of humanitarian assistance to migrants); in Germany (as regards the revocation of public benefit status, and related tax benefits, to organisations); in Ireland (as regards the application to civil society organisations of rules on political campaigning); and in Romania (as regards the application to civil society organisations of rules on combating money laundering and terrorist financing).

Efforts to ensure respect of **freedom of association and privacy** are raised by the NHRI in Armenia, which successfully obtained modification of a draft law on non-governmental organizations (NGOs) to avoid NGOs being required to make public in their annual reports personal data of the organization's members, governing bodies, staff and volunteers. The NHRI in Luxembourg also raises concern in relation to registration requirements applicable to civil society organisations, in particular as regards respect of privacy, as well as on the impact on freedom of expression and freedom of information of a legislative proposal on national security.

Issues as regards **freedom of assembly** are raised by many NHRIs. In Albania, the NHRI report how criminal provisions are being used to restrict the exercise of freedom of assembly and raises concern over the disproportionate use of force by law enforcement authorities when policing public gatherings. In Belgium, France and Poland, the NHRIs draws attention to the excessively strict application of rules on freedom of assembly, whereas the NHRI in the Netherlands points to the potential for misapplication of relevant rules by mayors. The NHRI in Ukraine refers to the lack of a legal framework regulating the exercise of the freedom of assembly, while the NHRI in Russia refers to its efforts in advocating for more transparency in the procedure for the authorization of peaceful protests. The NHRI in Bosnia and Herzegovina just published a special report on freedom of assembly, which checks the degree of compliance of domestic legislation with international standards, identifies an array of challenges (including undue restrictions and excessive use of force), and develops recommendations on how to address these challenges for relevant state authorities.

Serious limitations on **access to information** by public authorities are reported by NHRIs in Bosnia and Herzegovina, Kosovo*, Moldova and Ukraine. The NHRIs in Bosnia and Herzegovina, Moldova and Ukraine relate in particular about the impact these shortcomings have on the ability of journalists to carry out their work. The NHRI in Norway points to a negative trend as regards civil society organisations' view on their **participation and consultation** in decision-making processes.

As regards an enabling environment, instances of **legal harassment against human rights defenders** are reported by NHRIs in Belgium, Luxembourg and Ukraine. NHRIs also raise concerns about **threats and hate speech, including online, against human rights defenders and activists**. This is raised as a general issue in Norway, while other NHRIs reported a high level of attacks in particular against those advocating for women's rights (Bulgaria, Finland, Georgia and Netherlands), LGBTI people rights (Georgia, Serbia) and for the rights of ethnic minorities (Netherlands). In Georgia, the NHRI describes as weak efforts by public authorities to protect human rights defenders from attacks. The NHRI in Georgia, as well as the NHRI in Greece, also report about episodes of **violent attacks** against human rights defenders in the country.

The NHRIs in Georgia, Moldova and Poland also point with concern to **smear campaigns** including from political figures targeting human rights defenders and civil society organisations. Some positive progress is reported, in Belgium, concerning the implementation of hate speech laws to prosecute online harassment against human rights

defenders, while the NHRI in Moldova highlights that no progress was made on a law in this area.

Checks and balances

As regards other checks and balances, a number of NHRIs' contributions concern aspects related to the **process of preparing and enacting laws**.

In this respect, the NHRI in Poland describes the process as generally distorted, also pointing at the lack of a genuine constitutional review of laws. ENNHRI's member in Kosovo* raises concern about the lack of proper functioning of the parliament and a limited accountability of the executive power. ENNHRI's member in Romania raises concerns over the **delegation of powers** to the executive to regulate through ordonnances; similarly the NHRI in Scotland points to the increased use of delegated powers, with limited parliamentary oversight, as a consequence of Brexit.

Another issue which emerges is the **lack of consultation and impact assessment on human rights**: in Croatia and Moldova this is raised by the NHRIs as a general issue, while ENNHRI members in Estonia, Germany and Lithuania highlight the problem in particular in relation to data collection and surveillance measures by public authorities. In Denmark, Finland and France, NHRIs link this to the use of accelerated legislative procedures – particularly concerning for the French NHRI in relation to measures to combat terrorism, and the Danish NHRI in relation to the removal of citizenship of foreign fighters.

In this regard, various NHRIs refer to **the role NHRIs play as part of the system of checks and balances** including within the process of preparing and enacting laws. Examples of how the NHRI prompted the constitutional review of legislation and/or made recommendations to the national legislator to ensure human rights compliance are provided for Azerbaijan, Bulgaria, Hungary, Lithuania and Portugal. At the same time, other NHRIs point at practices by the authorities **making it difficult** for them to exercise this function: it is the case of Luxembourg, where the NHRI highlights the issue of the non-publication of draft regulatory acts; and of Greece, where the NHRI complains about the failure by the authorities to share draft legislation with the NHRI.

The **lack of proper consultation**, including of the NHRI, is further raised in various contributions both in general (in Hungary, Poland, Slovenia and also in Finland, where the NHRI reports concerns by civil society organisations) or by reference to specific acts (the constitutional reform in Luxembourg, measures adopted to combat terrorism in Belgium and an act affecting the Ombudsman in Slovenia).

Challenges relevant to the **separation of powers** are also raised in NHRIs' contributions. These include the concern raised by the NHRI in Poland as to the separation of powers being **substantially disrupted**, including through a lack of access to information, insufficient judicial oversight (lack of independence or use of disciplinary measures against the judiciary), and insufficient political accountability.

A number of NHRIs refers to important **shortcomings of the justice system** as threats to the checks and balances (see also further below). The NHRIs in Albania and North Macedonia point at severe deficiencies in the functioning of their justice systems, including, in Albania, the Constitutional and Supreme Courts and, in North Macedonia, the whole administrative court system.

The widespread non-execution of judgments is raised as a serious challenge to the rule of law by NHRIs in Albania, Azerbaijan, Bosnia and Herzegovina, Kosovo*, Moldova, Serbia and Ukraine. Reports of the non-execution of judgments from the European Court of Human Rights are also provided in the NHRIs' contributions received on Albania, Belgium, France, Greece, Slovenia, Ukraine, while the NHRI in Bulgaria points at some progress being made. Furthermore, in Albania, the NHRI points to a dysfunctional system for the vetting and appointment of judges, while the NHRI in Georgia draws attention to the unfairness of the appointment procedure of supreme court judges.

NHRIs also report inappropriate **interferences of one power over (an)other(s)**: in Armenia, concerning a government's attempt to cause disruptions in the functioning of the justice system; in Belgium, as regards the government's respect of the legislative and judiciary functions, with particular reference to the allocation of resources to the judiciary; and in Luxembourg, concerning the respect by the judiciary and the prosecution service of the parliament's inquiry functions, in connection to police's data collection practices. The NHRI in Slovenia further refers to rules applicable to the approval by the government of the NHRI's budget as a practice affecting the separation of powers.

Accountability of public authorities and public officials is raised as an issue in various NHRIs' reports. The NHRI in Ireland draws attention to certain practices and measures showing limited transparency and accountability of state bodies in particular on human rights related issues. The NHRI in Azerbaijan generally refers to the lack of accountability of public officials, while ENNHRI's member in Kosovo* raises issues as regards the regulation of public officials' employment framework. Also related to state bodies' accountability are the issue of **use of force and measures of physical restraint by law enforcement** on suspects and accused in Lithuania and on journalists in Ukraine and the wide powers enjoyed by law enforcement authorities for home searches in relation to certain crimes in

Denmark. The NHRI in Montenegro points to cases of **maladministration**, while highlighting, together with a number of other NHRIs, the role played by the NHRI in resolving individual complaints (see in particular reports on Armenia, Bosnia and Herzegovina, Kosovo*, Estonia, Montenegro, Serbia and Ukraine).

Elections are also identified by NHRIs as an area for attention in the framework of checks and balances. The NHRI in Poland looks with concern at the organisation of presidential elections amidst the COVID-19 pandemic, questioning the possibility of a free and fair election. The NHRI in Luxembourg draws attention to **restrictions to participation** in national elections (where nationality requirements preclude 50% of the population), while the NHRI in Great Britain points at restrictions on the right to vote for prisoners. ENNHRI members in Bulgaria and Estonia raise concern over the impact of **limited accessibility and reasonable accommodation** on the right to vote of persons with disabilities. Other concerns raised in relation to the electoral framework by ENNHRI member in Estonia concern **rules on donations** applicable to political parties and elections' **media coverage**.

Functioning of justice systems

Generalised deficiencies affecting all aspects and levels of the judiciary are reported in Albania, including due to the lack of transparency and independence of the Judicial Appointment Council and the inadequate transitional evaluation of judges and prosecutors, which negatively impacts on the general functioning of the justice system in the country.

Serious concerns are also raised by the NHRI in Poland, which points to several developments resulting in a severe infringement of the principle of independence and impartiality at all levels of the judiciary.

The external and internal **independence** of the courts is also mentioned as a general issue by the NHRI in Armenia, which also refers to the low level of public trust in judges and court decisions. In Georgia, the NHRI points to the unfairness of the appointment procedure in particular for supreme court judges .

The **systemic non-execution of judgments** is raised by NHRIs in Azerbaijan, Bosnia and Herzegovina, Kosovo*, Moldova, Serbia and Ukraine as a serious challenge to the quality and efficiency of justice. The NHRIs in Bosnia and Herzegovina and in Kosovo* draw attention to the impact of the non-execution of judgments on the right to an effective remedy in civil and administrative cases. The NHRI in Serbia explains how the issue affects vulnerable groups, for example in relation to the non-execution of decisions on child custody.

As concerns the efficiency of justice systems, the **length of proceedings and delays in delivering justice** are highlighted in NHRIs' contributions from Albania, Armenia, Bosnia and Herzegovina, Cyprus, Georgia, Kosovo*, Moldova, Montenegro, North Macedonia, Portugal, Serbia, Slovenia and Ukraine. The NHRI in Norway also raises this issue, linking it to the lack of sufficient resources within the judicial system. Some positive progress on steps to address the unreasonable length of proceedings is reported in Kosovo*, where, following recommendation of ENNHRI's member, the national Judicial Council committed to ensure that cases returned for re-adjudication be treated with priority over new claims.

The quality of justice is also impacted by shortcomings affecting the **impartiality of courts and professionalism of judges**, as reported by NHRIs in Bosnia and Herzegovina (lack of impartiality, inconsistency of court practice, illegality of judgments), Georgia (lack of certainty, use of inadmissible evidence and poor motivation of judgments), Kosovo* (lack of impartiality), Azerbaijan and Moldova (lack of accountability for judges' misconduct). The NHRI in Northern Ireland raises concern about the repeated extension of provision for non-jury trials, originally meant to be an exceptional measure.

NHRIs also report challenges related to **transparency of justice**, and in particular: the non-recording of hearings in Moldova, the poor information about pre-trial investigations in Ukraine, and the lack of publication of judgments in Luxembourg. The NHRI in Bulgaria noted concerns in relation to the access of individuals to e-justice tools.

Various NHRIs variably point at **limitations, unequal access and inadequacy of the legal aid system**: it is the case for Albania, Belgium, Croatia, Finland, France, Great Britain, Greece, Ireland, Luxembourg, Moldova, Netherlands, Portugal, Scotland, Serbia and Slovenia. Issues are also raised in this respect with specific reference to the criminal justice process in Bosnia and Herzegovina, Georgia and Ukraine (see further below). The level of **litigation fees** is also mentioned by NHRIs' contributions on Belgium and the Netherlands as affecting access to justice – the same issue being raised by the NHRI as regards Georgia, in particular as regards the absence of any exemption for disadvantaged groups.

Measures and practices impacting on access to justice for groups in a vulnerable situation also emerge as a concern in a number of NHRIs' contributions. The reported issues relate in particular to: fair trial standards and access to judicial review procedures for migrants in Belgium, Finland, France, Great Britain and Portugal; in Ireland, child friendly justice and access to justice for Irish Travellers; criminal juvenile justice in Georgia; access to judicial review for persons subject to a declaration of incapacity in Lithuania; and the failure to provide effective redress for victims of racist violence and police ill-treatment in

Germany. The NHRI in Luxembourg also pointed to issues related to the respect of privacy for victims of crime, in particular victims of domestic violence and trafficking.

NHRIs also point to **challenges in access to justice in relation to specific areas of law**: the NHRI in Denmark points to the lack of judicial review against administrative acts in the field of the fight against terrorism, while the NHRI in Germany and Romania refer in particular to data collection and surveillance for the purpose of national security.

Several NHRIs raise concern as regards respect of the right to an effective remedy and to a fair trial within the **criminal justice process**. The NHRI in France points with concern to the shortcomings of a recent reform on the rights of suspects, accused and victims in criminal proceedings, while the NHRI in Georgia raises specific concerns as regards the respect of the right to translation. ENNHRI's members in Romania, Serbia and Ukraine express concern over obstacles to access to justice for **persons deprived of liberty** – the latter in particular concerning access to legal assistance. The NHRI in Lithuania and Russia raise concern over the authorities' practice of handcuffing and keeping suspects and accused in cells while in courtrooms, in relation to the respect of **presumption of innocence** of suspects and accused. Furthermore, ENNHRI's member in Romania also refers to delays in implementing EU rules on **procedural rights of suspects and accused**, while the NHRI in Russia points to deficiencies as regards the respect of the **rights of victims of crime**.

In terms of **positive developments**, the contribution on Belgium gives account of the recent introduction under national law of the possibility to submit collective actions. In Azerbaijan, the NHRI reports about a number of initiatives to enhance the efficiency of the justice system including through the use of mediation, e-justice tools and the creation of new specialised courts. The NHRI in Austria also points to the creation of an administrative courts' system as a positive development. Furthermore, the NHRI in Bulgaria provides examples of how interpretative judgments can help clarify the courts' case-law.

Media pluralism and freedom of expression

Most of the issues raised by NHRIs in their contributions as regards media pluralism and freedom of expression concern **independence and safety of journalists and other media actors**. NHRIs in Armenia, Bosnia and Herzegovina, France, Greece, Montenegro, Serbia, Slovakia and Ukraine report episodes of **violent physical attacks** against journalists, mainly perpetrated by law enforcement authorities. NHRIs in Bosnia and Herzegovina, Finland, France, Moldova, Montenegro, Serbia, Slovakia, Slovenia and Ukraine also point at **threats, intimidation and hate speech** against journalists being rather widespread. In this context, NHRIs question the adequacy of the protection provided by the authorities against such

attacks: specific examples of inadequate investigations into violent episodes are given by NHRIs in Georgia and Slovakia. As a positive practice, the NHRI in Serbia reports about cooperation with the association of journalists to ensure better recording of cases of threats and attacks. Safety of journalists was also the subject of a recent special report of ENNHRI's member in Kosovo*.

A number of NHRIs provide examples of **legal harassment** of journalists in their countries, including Belgium, Bulgaria, Croatia, Georgia, Northern Ireland, Portugal, Russia, Slovakia and Ukraine. The NHRIs in Moldova and Poland report about **defamatory campaigns** against independent media.

Concerns are also raised as regards **independence**. The NHRI in Serbia reports about generalised pressure and interference of public authorities on media actors, while the NHRIs in Bosnia and Herzegovina and Georgia point to attempts to **interfere in the editorial policy** of independent media. ENNHRI's member in Romania raises concern over the **inadequacy of the legal framework** regulating their status as a threat to journalists' independence. In the same line, the NHRI in Montenegro points to self-regulation, uniform rules of conduct and professional responsibility as tools to enhance independence of media actors. NHRIs in France, Slovakia and Slovenia reported concerns about **pressure for journalists to reveal their sources**, and a similar issue was addressed through a court case in Finland.

Some NHRIs also point at recent **legislation likely to impact on the exercise of freedom of expression**, in particular in Albania, France, Luxembourg and Slovakia. In this respect, **positive developments** are also reported by the NHRI in Greece, as regards the **protection of media against defamation lawsuits**; and by the NHRI in Norway, as regards the creation of a freedom of speech commission and a new law on editorial independence and media liability, on which the NHRI actively engaged.

Challenges on **access to information** by journalists are reported by NHRIs in Bosnia and Herzegovina, Moldavia and Ukraine.

Furthermore, certain NHRIs point at issues related to **transparency of media ownership and government's interference**: in particular, the NHRIs in Luxembourg, Lithuania and Poland pointed out that the **independence of public service media** has been questioned in their countries , while the NHRI in Finland and Moldova points to excessive **media concentration** and the NHRI in Croatia mentions **challenges in access to state funding** for non-profit media.

Media ethics is also highlighted as a concern in a number of NHRIs' submissions. NHRIs in Bulgaria and Slovenia also point at **hate speech**, in particular in the media, as a reason for concern. The NHRI in Azerbaijan raises concern, more generally, on media attitudes towards minorities, unethical reporting and fake news. Targeted media training were conducted by the NHRIs on these issues in Azerbaijan as well as Armenia.

Corruption

Corruption issues are reported by the NHRI in Bulgaria with particular regards to cases of **maladministration**. Concerns are also raised by the NHRI in Finland, in particular with regards to restrictions to access to information, public procurement, trading in influence and the issue of revolving doors. In Moldova, the NHRI points in particular to cases of corruption within the health sector.

In relation to **issues affecting the legal framework for the fight against corruption**, the NHRI in Poland reported the lack of effective investigations due to the lack of independence of the prosecution service in Poland, and the ENNHRI member in Romania reported the lack of effective sanctions and the insufficient specialisation of competent bodies in Romania.

At the same time, other NHRIs report on **some progress** in this area. The NHRIs in Armenia and Portugal point to improvements in the overall framework for the fight against corruption. Progress is also reported in a number of contributions as regards legislative measures to protect whistle-blowers (in Croatia, Cyprus, France, Hungary and Lithuania). The implementation of legislation on whistle-blower protection is, on the contrary, reported as challenging in certain countries such as Bulgaria and Moldova. It is noted, moreover, that some NHRIs, such as in Croatia, have been afforded this mandate without a corresponding increase in resources.

A number of submissions highlight **the role of NHRIs in implementing the anti-corruption framework**, uncovering cases of corruption and prompting investigations (see in particular reports on Albania, Armenia, Austria, Azerbaijan, Bulgaria, Estonia, Finland, France).

In-focus section on the impact of measures adopted to face the COVID-19 outbreak

NHRIs were invited to report on the most significant impacts of measures adopted to face the COVID-19 outbreak.

A number of NHRIs draw attention to the **way such measures are adopted**. These include ENNHRI members in Belgium, France, Germany, Kosovo*, Poland, Romania, and Slovenia, which variably raise concern over the **use of accelerated legislative procedures**, the **weakened control by parliament and courts** and **limited consultation**. Also, the NHRI in Northern Ireland highlights the duration of emergency measures, while the NHRI in France raises concern over the suspension of the constitutional review of laws in such a situation. At the same time, NHRIs in Germany, Moldova and Slovenia underline the ongoing exercise by their constitutional tribunals of their **constitutional review** functions. Similarly, ENNHRI's member in Kosovo* reports about a decision of the constitutional tribunal declaring the measures to fight the pandemic unconstitutional.

ENNHRI's members in Germany, Luxembourg, Moldova, Romania and Poland raise concern over the **lack of clarity and predictability** of measures adopted, in particular for the latter those impacting on access to justice and the functioning of courts and provisions on sanctions. ENNHRI's members in Albania, Latvia and Romania also refer to the government's notification on the use of the **derogation clause** provided in Article 15 of the European Convention on Human Rights. Furthermore, submissions provided on Albania, Belgium, Romania and Slovenia point at a **lack of transparency and consultation** and **limited access to information** – the latter point being also raised by the NHRIs in Bosnia and Herzegovina (in particular as regards access to information by journalists), Kosovo* (where information on the crisis and measures adopted were only published in one of the country's official languages), Luxembourg (where draft regulations have not been published) and Norway (lack of sufficient information on the assessments made in drafting the regulations).

As it concerns the **impact** of the adopted measures, in particular confinement rules, the **situation of certain groups in a vulnerable situation** emerges as a concern in many NHRIs' contributions, and in particular:

- people living in **quarantine zones** (Armenia, Kosovo*, Georgia);
- **migrants, asylum seekers and refugees** (as reported in Azerbaijan, Albania, Belgium, Croatia, Cyprus, Finland, Germany, Luxembourg and Northern Ireland);

- **detainees** (as reported in Albania, Armenia, Azerbaijan, Belgium, Croatia, Cyprus, Finland, Hungary, Kosovo*, Latvia, Lithuania, Moldova, Montenegro, North Macedonia, Russia, Scotland and Serbia);
- **national and ethnic minorities** (Albania, Georgia), including **Roma** (as reported in Albania, Croatia, Hungary, Serbia, Slovenia, Slovakia and Ukraine);
- **persons living in poverty and homeless people** (as reported in Armenia, Belgium, Croatia, Finland, France, Georgia, Germany, Latvia, Northern Ireland, Romania, Slovenia and Ukraine);
- **women, including in relation to domestic violence** (Albania, Bosnia and Herzegovina, Georgia, Germany, Kosovo*, the Netherlands, Northern Ireland, Romania, Russia and Ukraine);
- **persons with disabilities** (Azerbaijan, Belgium, Bosnia and Herzegovina, Bulgaria, Cyprus, Finland, Great Britain, Ireland, the Netherlands, North Macedonia, Montenegro, Romania, Russia, Scotland, Slovenia and Ukraine);
- **LGBTI people**, including in relation to domestic violence (Georgia);
- **children and the youth**, including in relation to the right to education, the right to family life and domestic violence (as reported in Albania, Azerbaijan, Bosnia and Herzegovina, Bulgaria, Belgium, France, Germany, Great Britain, Hungary, Kosovo*, North Macedonia, Moldova, Montenegro, Northern Ireland, Romania, Russia, Slovenia and Ukraine).

The measures' impact on the **enjoyment of specific rights and freedoms** and the related need of mitigation measures and safeguards is also covered by several NHRIs' contributions, including:

- the **right to liberty** (Armenia, in relation to the strict confinement);
- free movement and the **right to enter and/or return to the national territory** (Albania, Russia, Ukraine);
- **access to justice** (see contributions on Bulgaria, Croatia, France, Great Britain, Luxembourg, Moldova, Norway, Scotland and Serbia);
- the **right to health** (see report on Czech Republic, Finland, Slovakia, Ukraine);
- the **right to work and protection of workers**, as well as the right to **social security and social assistance** (see reports on Bosnia and Herzegovina, Great Britain, Latvia, Montenegro, Russia and Ukraine);
- the **right to private and family life** (see different issues reported as regards the Czech Republic, Hungary, Kosovo*, Latvia and Serbia);

- the **rights of the elderly**, including in connection with the right to social care, the right to health and domestic violence (Bosnia and Herzegovina, Finland, Romania and Russia);
- **privacy and data protection**, generally (Kosovo*, Moldova, Montenegro, Scotland) but also particularly in relation to mobile tracking apps (see reports on Croatia, Denmark, Luxembourg, Norway, Poland and Slovakia);
- the **right to information** (Albania, Moldova, Norway, Romania) and **freedom of expression and of the media** (Armenia, Montenegro);
- **accessibility of information and reasonable accommodation** for persons with disabilities (see issues raised by NHRIs in particular in Albania, Bosnia and Herzegovina, Cyprus, Great Britain, Ireland, the Netherlands and Slovenia);
- **freedom of religion** (Montenegro).

Some NHRIs also draw attention to the **impact on civil society and rights groups**, including due to obstacles in **access to funding** (Croatia, Great Britain), restrictions to **freedom of assembly** (Albania, Croatia, Estonia, Moldova, Northern Ireland) as well as on **community cohesion** (Luxembourg).

Submissions show **NHRIs' instrumental role** in providing information and monitoring the situation of persons in quarantine, hospitals and care homes in several countries (see in particular information on action taken provided by NHRIs in Albania, Armenia, Azerbaijan, Belgium, Bosnia and Herzegovina, Cyprus, Finland, Hungary, Kosovo*, Georgia, Montenegro, Northern Ireland, Norway, Scotland, Serbia and Ukraine).

NHRIs were also invited to share **challenges to their institutions' functioning** due to the COVID-19 emergency.

The NHRI in Moldova reports being subject to criticism and to suffer from lack of cooperation on the side of the authorities. Other NHRIs' contributions on this point show that overall NHRIs managed to adapt well to the challenging circumstances while teleworking, in particular to ensure **continuity of work and the possibility to receive individual complaints** (see in particular the measures, including telephone hotlines, adopted by ENNHRI members in Albania, Bulgaria, Cyprus, Czech Republic, Denmark, Greece, Lithuania, Montenegro, Portugal, Russia Slovakia, Slovenia and Spain). Some NHRIs reported an increased in complaints (Armenia, Bulgaria, Estonia, Montenegro, Russia and Slovenia), others a decrease (the Netherlands and, initially, North Macedonia – where the NHRI addressed the issue by investing in a public awareness raising campaign about the services offered by the institution).

At the same time, many NHRIs report difficulties in carrying out their investigation and **monitoring** work due to confinement measures - specific issues were raised on this aspect in Austria, Belgium, Bosnia and Herzegovina, Bulgaria, Cyprus, Czech Republic, Luxembourg and the Netherlands, Scotland, Serbia and Ukraine. Although some NHRIs have to suspend monitoring of places of detention as National Preventive Mechanisms (NPM), many continue with remote monitoring.

Support through regional cooperation

Dedicated **support to NHRI establishment, accreditation and follow-up** should be strengthened, focused especially on promoting NHRI compliance with the UN Paris Principles. As an example, the Slovenian NHRI highlights the value of a regional approach when for instance COVID-19 related measures that undermine to a certain extent the status, financial independence and autonomy of the institution occur. While, the NHRI from Cyprus highlights the need for a regional network, in concertation with European Institutions, to intervene in cases where the independence of a NHRI is under threat. A strong NHRI, compliant with the Paris Principles, is an indicator for the rule of law in any given country.

More **capacity building** - through trainings and the NHRI academy (organised by ENNHRI and the OSCE Office for Democratic Institutions and Human Rights (ODIHR)) – is needed to **reinforce NHRIs in their role of promoting and protecting human rights**, and to foster professional development of NHRI staff. To provide one example linking the rule of law and COVID-19 responses: the NHRI from Belgium specifically mentioned its eagerness to learn more about the state of emergency (and similar) measures, their legal frameworks and the checks and balances in different European countries, combined with an overview of the power of control of the different international mechanisms (for example, Venice Commission, Council of Europe, Treaty Bodies and special rapporteurs).

Exchanging information and practices more frequently and efficiently, will result in stronger NHRIs and **strengthen their capacity to be a vector for promoting a rule of law culture**. Regional mechanisms for the protection of human rights should to a greater extent support direct, bilateral cooperation between NHRIs in the field of exchange of experience, and good practices, according to the NHRI from Bosnia and Herzegovina. While the NHRI from Great Britain stressed the importance of collating and sharing good practices and challenges experienced by NHRIs in responding to COVID-19.

Several ENNHRI members, and most notably the Croatian NHRI, underline the inclusion of **NHRIs as a relevant source of information when addressing human rights situation in**

a country by regional mechanisms, including the EU, and incorporating the NHRI enabling environment as one of the benchmarks for assessing human rights and rule of law situation in that country. The NHRI from Ukraine is confident that the development and implementation of common mechanisms among NHRIs will advance the promotion and protection of human rights in Europe.

At the same time the Hungarian NHRI stated that it relies on networks like **ENNHRI to coordinate and channel information to relevant European institutions** observing national measures and legislation. Facilitated NHRI engagement in relevant European rule of law mechanisms will more likely have a positive impact on the respect for human rights and rule of law in each country and in the region(s) as a whole.

Capacity development and monitoring exercises, as part of the multifaceted mandate of NHRIs, will result in **more effective contribution by NHRIs in upholding the rule of law at national level** and calling national governments to account for the implementation of human rights and fundamental freedoms. This aspect was particularly highlighted by the Luxembourg NHRI, while also adding that common positions are extremely valuable as it allows NHRIs to have a louder voice on the national level.

National and regional stakeholders' awareness of NHRIs and Paris Principles has to be strengthened, as well as the opportunities offered by NHRIs to civil society/human rights defenders and individuals, is insufficient. This impacts on state actors' cooperation and follow-up to NHRI recommendations, reinforced by input from regional and international mechanisms. At the same time, **human rights communication** should be strengthened to promote human rights and rule of law.

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

Country reports

Albania

People's Advocate of Albania

Independence and effectiveness of the NHRIs

International accreditation status and SCA recommendations

The Albanian NHRI was reaccredited with A status in October 2014. The SCA encouraged the NHRI to continue advocating for a more transparent and merits-based selection and appointment process. While noting the expansion of the NHRI's mandate, the SCA recommended adequate funding to be provided to allow the institution to carry out its extended mandate.

The Albanian NHRI was due for accreditation in March 2020, but the session was postponed due to the COVID-19 outbreak.

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

The Impact on the Albanian People's Advocate of the Political Situation and the lack of functioning of Constitutional Court and Supreme Court

The role of the People's Advocate as envisioned in its enabling legislation, is to directly and indirectly influence all decision processes in the society that affect the freedoms provided by the Constitution and other normative Acts of the Republic of Albania, as well as the generally recognized principles and norms of international law. This provision ensures that the People's Advocate must be the national focal point and expertise centre for the human rights and freedoms of everyone, with close connections to and cooperation with all state structures, business structures and civil society structures. The strategic ambition of the People's Advocate is to become the key human rights actor of a well-functioning national human rights system in Albania as described in the role of the People's Advocate.

This strategic ambition has encountered various obstacles due to the ongoing political conflicts, the lack of functioning of Constitutional Court and Supreme Court, the country

difficult social and economic situation, and the inadequate financial and human resources of People's Advocate institution that has hampered its work as the national human rights institution.

The People's Advocate institution has requested an increased attention and awareness of its role from the government and the parliament in order to secure increased support, in terms of both financial and human resources, to be able to better fulfil its role, but the several proposals made to ensure that the People's Advocate can properly carry out all of its functions have not been properly addressed.

The need to increase the budget and human resources

As a Status "A" national human rights institution with a wide mandate, the People's Advocate has to enjoy constant support via a good financial and human infrastructure which provides the realization of the objectives in total compliance with the Paris Principles and also with the principles determined by the Venice Commission.

Since 2014 the People's Advocate institution has been allocated another range of duties and human and financial resources are needed to ensure their implementation. This is an obligation which derives from the resolution of the Assembly of the Republic of Albania as well as from recommendations of the European Commission against Racism and Intolerance (ECRI) which foresee that each new mandate is accompanied with extra financial support.

From August 2019, the People's Advocate institution has entered the process of the re-accreditation of the "A" status, where some of the evaluation criteria are related to the financial support from the state's budget and how much this budget can cover the needs of the institution to fully realize its mandate. This is because the Paris Principles and also the principles established by the Venice Commission underline the fact that financing granted to the national human rights institution has to reasonably ensure the gradual and progressive realization of its functions with a view to facilitate the realization of its mandate.

Funding from external sources (donors), cannot replace the financial support coming from the state's budget, because it is the responsibility of the latter to secure the minimal budget for the activity of the NHRI so that it can be allowed for it to function normally to fulfil its mandate. All the international organisations reports (the European Commission reports, the report of the Under-Accreditation Committee, year 2014 and the recommendations in the framework of the Universal Periodical Revision (UPR), year 2019) separately and jointly, in

their evaluation continue to emphasize the fact that the independent institution of the People's Advocate has limited financial and human resources to exercise fully its mandate and that increased support is needed.

Despite all the above, the budget of the institution for this year (2020) is projected to decrease further, due to the situation created by COVID-19.

Changes in the national regulatory framework applicable to the NHRI change since the last review by the SCA

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

References

- The law "On the People's Advocate" No.8454, dated 04.02.1999, supplemented by the law no. 8600, dated 10.04.2000, amended by the law no. 9398, dated 12.05.2005, added to and as amended by the law 155/2014, dated 27.11.2014, "ON THE PEOPLE'S ADVOCATE"
<https://www.avokatipopullit.gov.al/en/article/legislation>

Human rights defenders and civil society space

Restrictions on the right to assembly/protest

In 2019, the People's Advocate Institution has monitored 31 protests organised by various entities (opposition political parties, civil society, students, various categories of citizens, etc.), some of which have ended up with physical confrontations. The People's Advocate, through parallel working groups, has been monitoring closely the situation on the ground, in order to immediately verify the cases when there were evidences of possible illegal actions committed by state authorities. The People's Advocate has maintained its

institutional stance in several cases, for example on the use of tear gas by the police during several assemblies considering it disproportionate, preventing the citizens from exercising the right to peaceful assembly. Also, The People's Advocate Institution has ascertained and condemned the unacceptable acts of restriction by the part of the Police, for journalists or other free media employees, to exercise their duty.

In cases where violations of the rights of citizens have been ascertained, the People's Advocate has made the relevant recommendations addressed to the competent bodies for taking the necessary criminal or administrative measures. In July 2019, the Parliament amended the Criminal Code by adding a new article (Article 293 - Prevention of the circulation of vehicles - "Obstruction or prohibition, in every single way, of the circulation of vehicles, railway, by water or air, is punished by paying a fine or serving the sentence up to three years"), which in some cases has been used to restrict freedom of assembly. The People's Advocate has assessed that the right of citizens to assembly cannot be unjustifiably restricted by the authorities charged by law in order to ensure their well-being and has recommended to the State Police to take fair measures and appropriate implementation of the legislation on assembly, in order not to stop or restrict the organization or participation of citizens in peaceful assembly, respecting and protecting basic human rights and freedoms, both that freedom of assembly and that of free movement.

Limitations on the right to freedom of expression

The People's Advocate Institution, in accomplishment of its constitutional mission, has been giving opinions regarding the exercise of freedom of expression and hate speech. Among others, the People's Advocate has published a Legal Opinion addressed to the Committee on Legal Affairs, Public Administration and Human Rights in the Albanian Parliament, where were highlighted a number of issues of law no. 91/2019 "On some changes and additions to the law 97/2013" On audio-visual media in the Republic of Albania ". These legal changes were also part of the discussions during the Annual Conference of The People's Advocate Institution, organised on December 18, 2019. (Note: more details on this topic will be informed in point 6 "Media Pluralism").

To date, the most recent development on this regard is the draft opinion no 980 / 2020 presented to the authorities by The Venice Commission on May 28th, opposing the laws of the "Anti-Defamation Package" proposed by the Albanian government. These assessments follow the initiative of the Council of Europe to send opinion laws to the Venice Commission, at a time when the assembly has decided to return the President's decree on the proposed laws. In the draft opinion dated May 28, the Commission evaluates the

improvements made, but notes the criticism of international experts on the effects these laws will have on freedom of expression.

Among other the Venice Commission has assessed that the Audiovisual Media Authority with the approval of the "anti-defamation package" receives great administrative powers for online media and the independence of the AMA body according to them is worrying. "The main principle is that an institution that oversees the media should be independent and impartial. This should be reflected especially in the way their members are appointed. All members of the AMA have a clear political affiliation, with members nominated by the ruling party / coalition who have the majority in this body, " the Venice Commission said in a statement.

References

- December 18, 2019 Avokati I Popullit shpreh shqetësim mbi ndryshimet e propozuara ligjore lidhur me Shërbimet Mediatike në Shqipëri (People's Advocate Expresses Concerns About Proposed Legal Changes Related to Media Services in Albania)
<https://www.avokatipopullit.gov.al/sq/articles-layout-1/media/news/this-article-is-available-only-in-albanian-248/>
- December 20, 2019 U zhvillua me sukses Konferenca Vjetore e Avokatit të Popullit në Shqipëri (Held successfully the Annual Conference of the People's Advocate in Albania)
<https://www.avokatipopullit.gov.al/sq/articles-layout-1/media/news/this-article-is-available-only-in-albanian-250/>
- May 28th, 2020: Komisioni i Venecias- Thirrje qeverisë të rishikojë "paketën anti-shpifje" (Venice Commission- Calls on government to review "anti-defamation package")
<https://citizens-channel.com/2020/06/05/komisioni-i-venecias-thirrje-qeverise-te-rishikoje-paketen-anti-shpifje/> <https://issuu.com/citizenschannel/docs/cdl2020004-e.pdf>

Checks and balances

The justice reform and improper functioning of the judicial system

The Justice Reform was given special focus within the work of the People's Advocate Institution, not only because of the legal obligations set out in the legislation, but also because of the importance that this reform has and which is directly related to the observance of human rights in the country.

The non-functioning of the Constitutional Court and the minimal functioning of the Supreme Court due to the vetting process of the Justice Reform are a major problem that

directly affects the democracy situation in the country and that brings a significant deterioration in the level of guaranteeing the implementation of human rights in the country. It is clear now that to achieve this reform according to the constitutional and legal provisions, in addition to the political will (in the sense of supporting the parliament), there is a need for greater human resources than those currently made available. The People's Advocate has raised these issues in all meetings covering these topics, demanding that this is dealt with as a priority by both the executive and the legislative powers.

Non-execution of decisions of the European Court of Human Rights

The People's Advocate has also monitored and examined issues related to the non-execution of final court decisions which were delivered by Courts in the Republic of Albania, or the European Court of Human Rights, where there have been identified problems that violate the principle of due process (as a result of non-execution of executive titles, within a reasonable time, by the authorities charged by law with their implementation). This remains an important issue for the Albanian state, as it is related to the strengthening and development of a respectable judicial system by all. The prolongation of the execution, the "questioning" of justice given by the courts, affects the loss of trust in the state. For the improvement of this situation, the Omdudsman has intervened on a case-by-case basis through proposals/recommendations for amendments to legal and sub-legal acts related to the implementation of executive titles in the civil, administrative or criminal field.

Failure to review the special reports of the People's Advocate by the Parliament

According to the Law "On the People's Advocate", one of the most important tools that the People's Advocate has at its disposal is the Special Report to the Parliament. Despite the fact that the People's Advocate has drafted several special reports, only one of them has been discussed on plenary session by Parliament (special report on the rights of LGBTI in Albania deposited on September 5, 2012).

References

- Annual Report 2019 "On the activity of the Albanian Ombudsman's Institution"
<https://www.avokatipopullit.gov.al/media/manager/website/reports/Raporti%20Vjetor%202019%20-%20Avokati%20i%20Popullit.pdf>

Functioning of justice systems

The People's Advocate has identified several problems in relation to the functioning of justice systems.

Failure to provide legal aid

The People's Advocate has identified problems in the judicial bodies, that are mainly related to the violation of the right to a due legal process, and more specifically to the failure to provide primary and secondary legal aid, pursuant to the law "On the legal aid guaranteed by the State", as well as procrastination of court proceedings (in particular overdue deadlines by the Administrative Court of Appeal and the High Court).

Regarding the implementation of no. 111/2017 "On legal aid guaranteed by the State", the People's Advocate conducted administrative investigations and followed all the steps taken by the responsible institutions, for the approval of bylaws, as well as for the establishment of structures provided by law. Failure to comply with legal obligations by the responsible bodies, in order to fill the sub-legal vacuum and create, within the legal deadlines, the relevant structure to provide free legal aid, has brought to lack of representation through a free of charge lawyer for certain issues, making thus access to justice impossible for people in need.

Delays in court proceedings

Due to the process of the vetting in the justice system (lack of appointments of new judges and prosecutors in the vacant positions as a result of this process), and the failure over years to fill the vacancies in the Supreme Court, delays in court proceedings have become a worrying problem. We have recommended that the resolution of this issue should be a priority, as it is directly linked to the protection of human rights, especially to the right of a fair trial within a reasonable time. The fact of high quantitative workload of administrative judges, especially in the Administrative Court of Appeal, is another factor that creates delays in the review of cases, which also requires intervention as these delays are harming citizens.

Observation of the work of the Judicial Appointments Council (JAC)

In the framework of the constitutional amendments of 2016, the specific mandate of the observation of the work of the Judicial Appointments Council was given to the People's Advocate, detailed by law no. 115/2016 "On governance institutions of the justice system". The first task in this process is related to monitoring the drawing of lots for the election of

members of the Judicial Appointments Council, where in the respective reports drafted for the draws of December 2017 and December 2018 a series of concerns were raised. One of the main concerns was the non-implementation of the criteria of the law to make the lists of candidates, submitted by the proposing bodies and without any explanation; while for some bodies and categories represented, more limited criteria were applied.

The first issue during 2019 was presented with the process of drafting the Rules of Procedure of JAC, as the JAC tried to limit the legal competencies of the institution of the People's Advocate. More specifically, the JAC adopted a regulation in which it introduced the concept of "Advisory Chamber" in the meetings of this administrative body (which was not foreseen in any law), which has limited the legal competencies of the People's Advocate, to guarantee and maintain transparency in its entirety of JAC's activity. Also, in the regulation (in its final version), the possibility of the People's Advocate to give opinions to the Council was limited only in relation to any procedural violation, during the procedure of verification of candidates and not in relation to the substance of the case, or the issue submitted for discussion by the rapporteurs. Assessing the above provision contrary to the competencies given to the People's Advocate, our institution filed a lawsuit in the Administrative Court of Appeal in Tirana, with the object of repealing some of the articles in three of the regulations approved by JAC, process who is currently on trial. Throughout 2019, the People's Advocate pointed to other problems, such as:

- Non-disclosure of minutes of JAC meetings (the disclosure and publication of minutes of meetings of this body was delayed by 11 months, while the chairman of JAC refused to make these minutes available to our institution);
- the fact that the Chairman of JAC sent to appointing bodies the final lists of the candidates for the vacancies in the Constitutional Court many days after the meeting for their ranking ended and with a difference for the two institutions (after 15 days to the President of the Republic and after 21 days to the Parliament of the Republic of Albania), which greatly reduced the choice of candidates. For this action the President of the Republic filed a criminal complaint against the Chairman of JAC, accusing him of abuse of office and taking powers. The Venice Commission also engaged on this issue by sending a team of experts to Albania (who also met with our institution which informed them about the problems identified), but has not yet presented its final opinion.
- Irregularities in sending of meeting materials by JAC for our institution and other guests (incomplete materials, the deadline for their preliminary submission was not respected); no timely publication of materials on the website; non-suspension of the process of reviewing candidates who had not completed the transitional re-evaluation process; incomplete

procedures followed by JAC, to verify the fulfilment of certain criteria by the candidates; etc.

The People's Advocate also found that JAC significantly exceeded the deadlines provided in laws no. 8577/2000 "On the organization and functioning of the Constitutional Court in the Republic of Albania" and no. 115/2016 "On governance institutions of the justice system", for the review of candidates for vacancies in the Constitutional Court, but in our opinion, this issue has to do with the short legal deadlines provided by the legislator and not with the performance of JAC during 2019.

On the activity of the Judicial Appointments Council during 2019 (including in detail all the issues mentioned above, which significantly limited the possibility of the People's Advocate to exercise the duties assigned by the Constitution and the law, and potentially have limited the possibility of candidates to have equal treatment), the People's Advocate has prepared a special report.

- Judicial Appointments Council, Report of December 2017
<https://www.avokatipopullit.gov.al/media/manager/website/reports/Raporti%20KED%202017.pdf>
- Judicial Appointments Council, Report of December 2018,
<https://www.avokatipopullit.gov.al/media/manager/website/reports/Raporti%20KED%202018%20.pdf>

Monitoring of the vetting process

The People's Advocate institution has followed with special attention the implementation of justice reform as a whole, with a special focus on the establishment of the institutions for the transitional re-evaluation of judges and prosecutors and the functioning of these institutions. In this context, we have followed and monitored with special attention the hearings held by the Independent Qualification Commission (KPK), the Appeal Chamber (KPA), as well as the complaints filed by the Institution of Public Commissioner. Our findings (mainly on the work of the KPK) include the following:

- The pace at which the transitional reassessment process is taking place is not sufficient for its completion within the legal deadline set out in the Constitution (Article 179 / b) and Law 84 / 2016 "On the Transitional Re-evaluation of Judges in the Republic of Albania" (Article 70/1);

- Transparency in the conduct of hearings has been partially satisfactory, as in some cases there have been reservations about the recognition of facts and circumstances by the public, or on the assessment or not of certain evidence and facts;
- In many cases, the reporting has not been clear and does not reflect all the facts and circumstances that have led to certain decisions, thus reducing their transparency for the public;
- Evaluation of evidence is unequal for subjects of re-evaluation (the application of multiple standards, in the evaluation of evidence of the same type, or of the same facts, or circumstances);
- Difficulties or inability of some of the subjects to submit information concerning past occurrences/events (in relation to a timeframe of over 20 years ago), due to the unavailability of documents even in the archives of state institutions (eg because the deadline for their preservation has passed). In such cases, the obligation of the burden of proof goes beyond the real possibilities for the subjects to submit information.

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- <https://www.avokatipopullit.gov.al/en/articles-layout-1/media/justice-reform/materialet-pr-reformn-n-drejtsi-480/#>

Media pluralism

In 2019, the Albanian government took the initiative to draft some legal amendments, mainly related to the activity of online portals. The law no. 91/2019 "On some changes and additions to the law 97/2013" On audio-visual media in the Republic of Albania "aimed at regulating the activity of online portals through a legal framework, in order to achieve a balance between access to online content services, consumer protection and competition, while guaranteeing human rights, respecting copyright, achieving a professional, free and independent journalism, as well as respecting and guaranteeing the right to privacy, and not allowing broadcasts that incite intolerance, hate speech and violence in society. As a national human rights institution in the Republic of Albania, the Ombudsman considers that there should be a well-structured balance in the relationship between the fundamental rights and freedoms of individuals on the one hand, and media freedom on the other.

In the opinion of journalists and civil society, this draft law was considered as restrictive of freedom of expression. The initial project was sent for consideration to international institutions active in this field (CoE and OSCE). Despite the changes made to the original draft, a number of problems still remained. The People's Advocate Institution also engaged in this process, taking an active part in some of the roundtables and eventually presenting a legal opinion to the Law Commission in Parliament. Its opinion highlighted the following issues:

- The administrative procedure for the process of complaints and reviews does not provide guarantees for an objective and impartial decision-making, in accordance with the obligation to respect the freedom of the media to freely express. Inserting the administrative body such as the Audio-visual Media Authority (AMA) close to judicial powers does not provide sufficient constitutional guarantees for the impartiality of this institution. (The AMA Board is elected on the basis of the proposals of the political parties and since its establishment until today, it has turned out to have not created the trust of the mass media, for the exercise of the role it has played in this field.)
- The Complaints Council (the decision-making structure at the end of the review of complaints towards e-service operators) and the AMA Board itself do not guarantee the necessary impartiality to address such a delicate issue as the boundary between freedom of the media and freedom of expressions. We consider that self-regulation should be the way fake news issues should be addressed.
- Sanctions on fines provided by law are too high and their application will put operators providing electronic publishing services in unequal positions. We consider that the application of sanctions should ensure compliance with the principle of proportionality, taking into account not only the capacity of capital (size) of electronic publishing service providers, but also the violation committed by operators, in order to impose sanctions in accordance with the capacities of the providers of electronic publishing services, as well as with the importance or consequences of the violation committed.
- There was insufficient transparency and lack of consultation in the review of this law.

Despite the critical opinions given by local actors (institutions such as ours, civil society organizations, etc.), but also by international organisations which our country is part of (see in particular the [public statement](#) expressed by the Commissioner for Human Rights of the Council of Europe, Dunja Mijatovic, recommending to abandon the draft law), most of the recommendations were not taken into account. For these reasons, the President of the

Republic of Albania decided to refer back the law for reconsideration to the Albanian Parliament.

Regarding this law, the European Commission requested the opinion of the Venice Commission, which sent a mission to Albania on February 10th-11th 2020. The People's Advocate Institution had a meeting with the representatives of the Venice Commission where, among other things, expressed the opinion on the possible negative implications that some of the articles of this law may have for human rights. The opinion of the Venice Commission is expected to be considered at its June 2020 session.

The People's Advocate believes that it is essential that the Parliament duly takes into account the arguments put forward so far as regards this draft law (by our institution, civil society, the President, as well as statements by international institutions expressed so far) as well as the upcoming opinion of the Venice Commission.

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- Commissioner urges Albania's Parliament to review bills which restrict freedom of expression, <https://www.coe.int/en/web/commissioner/-/commissioner-urges-albania-s-parliament-to-review-bills-which-restrict-freedom-of-expression>
- December 18, 2019 Avokati i Popullit shpreh shqetësim mbi ndryshimet e propozuara ligjore lidhur me Shërbimet Mediatike në Shqipëri (People's Advocate Expresses Concerns On Proposed Legal Changes Related to Media Services in Albania) <https://www.avokatipopullit.gov.al/sq/articles-layout-1/media/news/this-article-is-available-only-in-albanian-248/>

Corruption

The People's Advocate Institution does not have as its direct object of work the fight against corruption, but when such cases are found, we do act. In 2019, during an administrative investigation in connection with "Non-compliance with the right to property", the People's Advocate identified acts potentially integrating criminal offences committed by employees of state institutions, as well as reasonable suspicion of corrupt practices. In these conditions, The People's Advocate Institution recommended to the Prosecution body, the initiation of investigations regarding the activity of three state institutions, for the criminal offense of "Abuse of power", as well as for other criminal offences, which may result during the investigation of this process, referring to the legal violations found by the administrative investigation.

References

- Annual Report 2019 “On the activity of the Albanian Ombudsman’s Institution”
<https://www.avokatipopullit.gov.al/media/manager/website/reports/Raporti%20Vjetor%202019%20-%20Avokati%20i%20Popullit.pdf> page 108

In-focus section on COVID-19 measures

Most significant impacts of measures taken in response to the COVID-19 outbreak on the rule of law in the country

After the declaration of the state of the worldwide pandemic on March 11, 2020, by the World Health Organization, Albania took measures for the general cessation of social and economic activities. These measures concerned the closure of schools; prohibition of public and non-public activities; prohibition of mass gatherings in closed or open places; restriction or prohibition of movements by public transport; restriction of movements within the country, termination of court proceedings, etc. The imposition of restrictions on the exercise of certain rights during the period of pandemic, aims to preserve the life and health of citizens, their awareness and obligation not to engage in activities that pose a risk to the spread of the disease. These rules also include the right of the state health authorities to identify citizens who could potentially be carriers of the disease and undertaking the necessary health checks on them, but all the restrictions, or actions of the state authorities, in all cases must be made in respect of human rights. In order to exercise the constitutional duty entrusted to The People’s Advocate Institution, we are aware that human rights cannot be secondary even in a pandemic situation.

Proactive actions of The People’s Advocate Institution and its role in promoting the highest standards of human rights and freedoms during COVID-19

(1) Statements of the People’s Advocate Institution

In the framework of its proactive role, as a promoter of the highest standards of human rights and freedoms in the country, The People’s Advocate Institution undertook a series of actions to raise awareness of the Albanian people and state institutions in relation to the impact of measures adopted in response to the COVID-19 emergency:

- 9th March: The People’s Advocate Institution appealed for a practical plan of action in the context of the coronavirus situation in Albania;

- 18th March: The People's Advocate Institution supported the restrictive measures and at the same time appealed for responsibility from state authorities;
- 19th March: Published on its website an information on human rights issues during the COVID-19 pandemic situation;
- 20th March: The People's Advocate Institution appealed for the need to focus on the protection of children's rights in a pandemic situation;
- 20th March: The People's Advocate Institution appealed on the problems that are created by frequent changes in measures against Pandemic;
- 24th March: The People's Advocate Institution appealed for the strengthening of social solidarity, in addition to social distancing;
- 25th March: The People's Advocate Institution appealed for attention to Albanian citizens left outside the country's territory;
- 26th March: The People's Advocate Institution appealed for measures to ensure normal living, within the conditions of self-isolation, for the Roma and Egyptian community;
- 29th March: The People's Advocate Institution appealed against the publishing of the identities of those affected by coronavirus;
- 6th April: The People's Advocate Institution issued recommendation made by the People's Advocate on the Albanians abroad in need of return;
- 6th April: The People's Advocate Institution appealed against the blocking of the Albanians at the borders as a violation of human rights;
- 6th April: The People's Advocate Institution appealed against holding of the Albanian immigrants held in Kapshtica (border with Greece);
- 7th April : The People's Advocate Institution appealed for the risk of intensifying violence against women in the conditions of isolation imposed by COVID-19;
- 8th April : The People's Advocate Institution appealed for more social inclusion and equality for the Roma community on their international day;
- 10th April: The People's Advocate Institution appealed for special care for the civil society sector in this difficult period.
- 15th April: The People's Advocate Institution appealed on the threats to human rights that would bring the proposed changes to the Criminal Code;
- 16th April: The People's Advocate Institution appealed against Legal Initiatives for Amendments to the Criminal Code and imprisonment as an excessive measure against citizens;
- 17th April: The People's Advocate Institution appealed on the threats to human rights that would bring the proposed changes to the Criminal Code;

- 18th April: The People's Advocate Institution appealed for the respecting of the fundamental rights of returnees from emigration;
- 20th April: The People's Advocate Institution appealed for appropriate measures to be taken in Albania compared in the global context;
- 23rd April: The People's Advocate Institution appealed for adequate information about the current situation in the penitentiaries;
- 23rd April: The People's Advocate Institution appealed for Constructive cooperation and transparency of state bodies as of particular importance on during the COVID-19 pandemic situation;
- 28th April: The People's Advocate Institution appealed on the threats to human rights that would bring the proposed changes to the Criminal Code;
- 6th May: The People's Advocate Institution appealed for a functioning legal system in Albania;
- 10th May: The People's Advocate Institution appealed for a functioning legal system in Albania and presented institutional opinion on the temporary withdrawal from the Convention on Human Rights;
- 12th May: The People's Advocate Institution appealed for respecting the rights to peacefully protest during emergency situations;
- 17th May: The People's Advocate Institution appealed for respecting the rights to peacefully protest during emergency situations in reply to illegal actions taken by state with regard to the demolition of the National theatre;
- 17th May: The People's Advocate Institution appealed for respecting the rights of the arrested protestant with a special focus on the right to health while at the police stations;
- 18th May: The People's Advocate Institution appealed for legal actions from the state with regards to the disturbing situation created by the demolition of the National Theatre;
- 19th May: The People's Advocate Institution appealed for a path to normality while the situation evolved from a health crisis to a political one;
- 25th May: The People's Advocate Institution appealed for the de-freezing of the Justice reform;
- 1st June: The People's Advocate Institution appealed for Police accountability;
- 5th June: The People's Advocate Institution appealed for special attention to address the rights of abused women and children.

References

- <https://www.avokatipopullit.gov.al/sq/categories-and-detail/media/multimedia>
- <https://www.facebook.com/avokatipopullit/>

(2) Dissemination of Declarations by International Institutions

Meanwhile for the awareness of state institutions and the recognition of compliance with international standards, The People's Advocate Institution translated and published on the official website of the institution, a series of statements of international institutions, as follows:

- 18th March: Statement of UN Experts: "States should not abuse with the emergency measures against COVID-19 to suppress human rights";
- 21st March: Principles of the Council of Europe "On the treatment of persons in countries deprived of their liberty".
- 3rd April, CoE Commissioner for Human Rights Dunja Mijatovic Statement: Press freedom must not be undermined by measures to counter disinformation about COVID-19;
- 6th April, CoE: COVID-19 pandemic: urgent steps are needed to protect the rights of prisoners in Europe;
- 15th April, UN High Commissioner for Human Rights Michelle Bachelet calls on States to taking action to increase the health response while acknowledging migrants and minority communities' contributions to the fight against the pandemic and the importance of health and education in building stronger and more resilient societies;
- 17th April, European Court of Human Rights on the Protection of Human Rights In COVID-19 Situation;
- 22nd April, CoE Commissioner for Human Rights Dunja Mijatovic Annual Activity Report 2019;
- 30th April, UN High Commissioner for Human Rights Michelle Bachelet calls on States to ensure that human rights are not violated under the pretext of the need to take extraordinary measures;
- 6th May, CoE: European NPM Newsletter (6th);
- 8th May, ENNHRI: The EU must put economic and social rights at the heart of its economic response to COVID-19;
- 18th May IOI: Board of Directors adopts COVID-19 Resolution;

- 8th June APT: Guidance on monitoring places of deprivation of liberty during COVID-19.

References

- <https://www.avokatipopullit.gov.al/sq/index/home>
- <https://www.facebook.com/avokatipopullit/>

Findings and recommendations of The People's Advocate Institution

During the practical implementation of the set restrictions, the People's Advocate institution has identified the following problems:

(1) Timely disclosure of normative acts and right to information

Regarding the normative acts (legal or sub-legal), which imposed restrictions, our institution found that there were delayed publication (both on the official website of the relevant state institution and in the Official Journal), and that in some cases acts were not even published at all. The lack of publication of these acts hinders citizens from obtaining complete and accurate information about the measures taken and the restrictions made by the responsible authorities in the country, and makes their legal power arguable that is why The People's Advocate Institution assessed that the level of transparency should be increased. Also, The People's Advocate recommended that in addition to publishing acts, citizens should be given the opportunity to contact the institutions that provide services, whether by telephone or electronically, especially in this period of confinement.

The People's Advocate Institution reminded the state authorities that they are responsible for disseminating information in a simple and understandable language and that information should be available to national minorities as well as people with disabilities. It is also very important that the information is understandable to children, as UNICEF has advised in recent publications.

On the above issue, on March 31, a recommendation was sent to the Ministry of Health and Social Protection, to take immediate measures to reflect on the official website of the bylaws issued for measures taken in accordance with the law no. 15/2016 "On the prevention and control of infections and infectious diseases" and normative acts of the Council of Ministers, in the framework of taking special administrative measures during the duration of the pandemic caused by COVID-19.

(2) Obstacles faced by citizens to obtain authorization to move with vehicles for work or health emergencies

After the imposition of measures in the context of pandemic, Albanian citizens who had to move with vehicles for work or health emergencies experienced difficulties because due to the high number of applications, most applicants not only did not receive the required authorization, but also did not receive any response from this structure. Also, the two telephone numbers available to the public to get information about this problem, from the verifications made turned out to be busy all the time.

For the above issue, on March 31, a recommendation was sent to the General Directorate of State Police, to take the necessary measures to decentralize the competence to issue authorisations for the movement of vehicles, or to increase the staff in the Traffic Police Directorate that was responsible for this service.

(3) Transportation of citizens from the border entrance to their homes

After the imposition of the measures due to the pandemic, Albanian citizens who entered through the land border crossing points and especially to those who returned from Greece and Northern Macedonia to Albania experienced difficulties. After entering the territory of our country, they had medical examinations for COVID-19 infection and after being advised to stay self-isolation in quarantine for 14 days, they remained at the border, because there were no means of transport (neither public nor private) for them to go to their houses. On the above issue, on March 31, a recommendation was sent to the General Directorate of State Police, to take the necessary measures to allow or provide transport service at all border crossings, especially with Greece and Northern Macedonia, in order to enable the movement and transportation in their houses, of the Albanian citizens who came from these countries during that period of time.

(4) Denial of the right to enter the territory to Albanian citizens blocked by the Albanian police, on the land border with the Greek and the Montenegro state

With the suspension of flights, the Albanian state made possible that a number of about 2000 citizens were repatriated, from the places where they had remained trapped (at the end of March 2020), a welcomed decision by our institution.

Meanwhile, about a week later (the first week of April 2020), through an unpublished act, it was decided not to allow Albanian citizens to enter the territory of their state, even though they had reached the land borders by means of their personal expenses. More concretely,

the Joint Order no. 240, dated 07.04.2020, of the Minister of Health and Social Protection and the Minister of Interior, "On the self-assembly of Albanian citizens who want to enter the territory of the Republic of Albania from all Land Border Points", which is a sub-legal act normative, until the drafting of the Peoples Advocate Recommendation on 28.04.2020, has not been published in the Official Gazette no. 76, dated 27.04.2020. Thru its recommendation, the People Advocate urged the authorities to:

- Take the necessary measures for the immediate publication in the Official Gazette of the Joint Order no. 240, dated 07.04.2020, of the Minister of Health and Social Protection and the Minister of Interior "On the self-assembly of Albanian citizens who want to enter the territory of the Republic of Albania from all Land Border Points".
- Take measures to guarantee (if no such thing has been done so far) the right of citizens to complain about the quarantine measures and the inclusion of this right in the acts that communicate such a binding measure.
- Take immediate measures for the reflection on the official pages of Ministry of Health and Social Protection as well as the Ministry of Interior of the sub-legal act cited above for the measures taken pursuant to law no. 15/2016, as amended, in the context of taking special administrative measures during the duration of the COVID-19 infection period.

As the Albanian citizens might be left out without means of subsistence as a result of the measures taken by other states against the situation created by COVID-19 (no work, no food, no home), our institution insisted that this situation be resolved as soon as possible and in no case may they be deprived of their right to shelter in their country. The Albanian government after several days of hesitation, allowed these citizens to enter the Albanian territory, provided that they could not go to their homes, but would stay in quarantine (in hotels designated by the state, but at the citizens own expenses). This situation again created different kinds of problems, since some did not have the necessary financial means, while others complained that they could not have other necessary services (medical visits, purchase of medicines, etc., because the hotels where they were staying were guarded by the armed forces (police and army), which did not allow them to leave the quarantine.) Regarding the above issue, on April 5, a recommendation was sent to the Inter-Ministerial Committee of Civil Emergencies and the General Directorate of State Police and to the attention of the Parliament and the President of the Republic of Albania.

(5) Declaration on the temporary suspension of the application of certain articles of the European Convention on Human Rights

With the verbal note of the Permanent Mission of the Republic of Albania to the Council of Europe, dated March 31, 2020, the Albanian State, in accordance with Article 15/3 of the ECHR, has fully informed the Secretary General of the Council of Europe of the derogation from certain rights provided by the articles of the Covenant, due to the state of the epidemic, concretely: the right to respect private and family life (Article 8 of the ECHR), freedom of rally and organization (Article 11 of the ECHR), protection of wealth (Article 1 of the ECHR Additional Protocol), the right of education (Article 2 of the ECHR Additional Protocol), freedom of movement (Article 2 of the ECHR Protocol No. 4).

From the verifications of our institution, it results that the communication of this verbal note has not been given the appropriate publicity (eg publication in the Official Journal, on the website of the Ministry for Europe and Foreign Affairs, or shared to the media).

(6) Temporary release of detainees

The proposal of the Minister of Justice, at the end of March 2020, the Council of Ministers approved the temporary release (suspension for 3 months) of about 600 persons deprived of their liberty, who were serving their sentences in re-education institutions, in order to protect their health due to the risk that may come from COVID-19 pandemic.

(7) Declaration of a state of natural disaster

With the decision no. 243, dated 24.3.2020, the Council of Ministers, decided to declare the state of natural disaster, while on April 21st, 2020 the Council of Ministers has asked the Parliament to give consent for the extension of the state of natural disaster for another two months, which was approved on April 23rd.

(8) Changes in the Criminal Code

One of the measures taken by the government in the context of pandemic was the introduction of a number of amendments to the Criminal Code. This changes did not take into the account the Council of Europe guidance to governments on respecting human rights, democracy, and the rule of law during the COVID-19 crisis, where it was noted that in the current state of emergency it is advisable not to continue the process of reform and that states should minimize the legislative activity to the extent necessary to address the situation in which the state finds itself.

The changes proposed disregarded among other the constitutional obligation of Article 170, point 5, which explicitly stipulates that under the conditions requiring extraordinary measures, none of these laws on emergency measures should be altered. Furthermore, summary reports of the draft laws, foreseen that proposals had no financial effect. In fact, in our opinion they have financial effects because the toughening of criminal policy and increasing the sentence and / or imposing a minimum sentence for some types of offences implies, in an initial phase until there is a proper awareness of potential offenders of the new provisions, the imposition of lengthy prison terms on offenders with an extra cost to the Ministry of Justice and the General Directorate of Prisons.

The People's Advocate found some of these amendments problematic and therefore notified its opposition to the Committee of Laws in the Assembly (April 14th). The proposals for amendments to the draft law "On an amendment to the law no. 7895, dated 27.1.1995, "Criminal Code of the Republic of Albania ", as amended", were treated by us in three respects: first, as an extraordinary measure which cannot be changed during the duration of the situation itself, secondly as an act in violation of the legislative procedure, and thirdly as an aggravation and disproportionate criminal policy:

- Any legislative and / or executive activity during the state of emergency should be subject to the principle of legitimacy and proportionality. The principle of legitimacy is a principle that goes beyond the possibility of decision-making or the possibility of enforcing the law and for this sufficient jurisprudence and doctrinal thought.
- Attempts to add provisions to the Criminal Code, moreover with extreme sentencing measures, do not come into coherence either with the situation or with the circle of persons that the legal provisions should protect. As an example, the measures of punishment proposed in Article 242/2 "Violation of quarantine rules for the prevention of the spread of infectious diseases" are so severe that they exceed the measure of punishment that has been determined for serious criminal offenses, grievous bodily harm, violent theft or negligent homicide, etc.
- The Ombudsman is of the opinion that, as a rule, acts of a permanent nature cannot be produced in an extraordinary situation. In no democratic country can there be fundamental reforms in the legal system during situations that require extraordinary measures, except in cases where they are absolutely necessary.

References

- April 14, 2020 Mendim për projektligjin “Për një ndryshim në ligjin nr. 7895, datë 27.1.1995, “Kodi Penal i Republikës së Shqipërisë”, të ndryshuar”. (Opinion on the draft law “On an amendment to law no. 7895, dated 27.1.1995, “Criminal Code of the Republic of Albania”, as amended).
https://www.avokatipopullit.gov.al/media/manager/website/reports/Mendim%20p%C3%ABr%20projektligjin_d40LwTY.pdf
- April 30 Avokati i Popullit kërkon publikimin e vendimeve për lehtësimin e hyrjes së shtetasve shqiptarë në pikat kufitare (People's Advocate Requests Publication of Decisions on Facilitating Entry of Albanian Citizens at Border Points)
<https://www.avokatipopullit.gov.al/sq/articles-layout-1/media/news/this-article-is-available-only-in-albanian-472/>

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

After the imposition of measures in the framework of pandemics, it is foreseen to reduce the budget of the institution.

An expression of solidarity with those affected by the difficult economic situation, the Council of Ministers decided that for the next three months, the cabinet would receive only ½ of payment, while the other ½ would be transferred to the fund that will be used for the economic package, which will be donated to citizens who are economically affected by the COVID-19 situation. They also invited other senior officials to join the initiative, and the People's Advocate was one of them.

Following the imposition of containment measures in the context of pandemics, the institution of The People's Advocate Institution took the following measures:

- The People's Advocate staff, embraced teleworking on full working hours, and “on the call groups” 24/7. In necessity of work at office, the staff members are required to respect the rules of personal hygiene and social distancing. Daily reports of work done are presented in accordance to the chain of hierarchy by all staff. Virtual conference calls are made periodically within each Section, Cabinet, Ombudsman and Commissioners, Ombudsman and several working groups, etc.
- The People Reception Office was closed and the communication with the people was made possible through other means like e-mail, telephone, post and the application for smart phones (on March 11 on the website it was published: Notice that the complaints should be sent only through official mail or e-mail). The

announcement published on the website of the institution "On the continuity of work in the institution of The People's Advocate Institution during the measures within COVID-19" gives information on all the ways of the contact with the institution.

- Inspections in places of deprivation of liberty, or other state institutions were suspended, and reporting was agreed upon request. As a result of these measures, so far there are no employees of our institution affected by COVID-19.

References

- Vazhdimësia e punës në Institucionin e Avokatit të Popullit gjatë masave në kuadër të COVID-19 (Continuity of work in the Institution of the People's Advocate during COVID-19). <https://www.avokatipopullit.gov.al/sq/articles-layout-1/home/news/this-article-is-available-only-in-albanian-420/>

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

Throughout 2019, Albania experienced an increased number of arrivals of irregular foreigners entering through the southern and south-eastern border with Greece, mainly aiming to continue further towards Montenegro, with final destination the European Union countries. The increase in the inflow of irregular foreigners was accompanied by an increase in asylum applications in Albanian territory, and the necessity for properly addressing priority needs for protection, assistance and services, especially for the most vulnerable groups, such as women and children, people with special needs, or persons with health problems.

The Albanian People's Advocate Institution in its role as the National Mechanism for the Prevention of Torture, continued the ongoing implementation of the joint UNHCR-AP project "Refugees and Asylum Seekers in Southeast European Countries". In close cooperation with the UNHCR central and local office of Gjirokastra, the representatives of the Albanian People's Advocate Institution in three cross-border areas, attentively monitored the process of identification of irregular foreigners carried on by the employees of the immigration sector at the Border Police. The experts enjoyed full monitoring access during the entire process of transportation, interviewing and accommodation. During the monitoring, the experts contacted hundreds of irregular foreigners and made sure for them to be informed on their rights. Furthermore, the experts coordinated the cooperation with

the structures in charge of offering humanitarian and medical assistance, in order to ensure that the immediate needs for food, clothing and medical assistance of the irregular migrants were properly met.

The People's Advocate experts have worked for the quality improvement of various elements in the mechanism of protection of migrants, by identifying several gaps in the asylum system. One of the challenges the system faces is the lack of translators for rare languages (as one person from the migrant group serves as improvised English translator for the rest of the group) and such language barriers affect the identification process and selection. This and other identified problems were presented to the authorities and were followed-up in compliance with the relevant instructions in order to create and maintain a stand for the implementation of international standards and best practices in the migration field.

Andorra

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

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

Armenia

Human Rights Defender of the Republic of Armenia

Independence and effectiveness of the NHRIs

International accreditation status and SCA recommendations

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

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

The last SCA review of the Armenian National Human Rights Institution took place in March 2019. Following the review, the national regulatory framework on the Human Rights Defender (the Defender) has not been changed.

The Defender continues to have a number of institutional and financial guarantees, provided by the Constitution of Armenia and the Constitutional Law on the Human Rights Defender securing the Defender's independence and effective performance of its functions. Immunity of the Defender, criminal liability for hindering the activities of the Defender, administrative liability for not responding to the Defender's request or not providing the requested materials, annual state funding for the Defender not less than the amount provided the year before are among these guarantees.

The Defender's activities include 2 fundamental directions: human rights protection mainly by investigating and resolving complaints, as well as monitoring activities; and human rights promotion through contributing to the improvement of legislation, human rights education and awareness raising, breaking stereotypes and in general supporting the improvement of the human rights system and strengthening the rule of law in the country. Moreover, the Constitutional Law provides, inter alia, three conventional mandates to the

Defender: (1) National Preventive Mechanism (NPM) provided for by the Optional Protocol, (2) independent monitoring mechanism under the UN Convention on the Rights of the Child and (3) independent monitoring mechanism under the UN Convention on the Rights of Persons with Disabilities. Furthermore, the draft Law on Ensuring Equality that is planned to be adopted later this year designates the Defender to become an equality body.

Taking into account the legislative changes on the mandate following the constitutional amendment of 2015 in Armenia, a series of activities aimed at enhancing awareness about the role and mandate of HRDO as redress mechanism among society at large, especially among civil society and media representatives have been conducted. The new legislative provisions (e.g. educational mandate, financial and institutional guarantees), as well as the conducted capacity-building and awareness-raising activities enhanced operational effectiveness and institutional influence of the Human Rights Defender's Institution throughout the country.

As of 31 December 2018, the operation efficiency rate of the Human Rights Defender's Office (HRDO) has approximately increased five times. In 2018 visits to representatives of child care and protection institutions has increased 11 times, visits to penitentiary institutions has doubled, etc. Meanwhile, in 2019, the number of complaints addressed to the Defender increased by 22% or by 2386 complaints, reaching 13,140 (in comparison in 2018 the HRDO received 10,754 complaints). In 2019, the number of cases that were positively resolved were also increased, reaching 1,593.

References

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- RA Constitutional Law on the Human Rights Defender https://www.ombuds.am/en_us/site/AboutConstitution/79
- https://www.ombuds.am/en_us/site/ViewNews/694
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Human rights defenders and civil society space

In 2018, the State Revenue Committee of Armenia prepared a draft on making amendment to the Law of the Republic of Armenia on Non-Governmental Organizations. According to the draft it was envisaged that all NGOs are obliged to publicize the content of their annual report, including information about their financial activities, projects, number of employees and etc. The draft was presented for the Defender's opinion.

In his opinion, the Defender raised a number of concerns and made relevant recommendations.

Firstly, the Defender emphasized that necessary legal tools for the state about NGOs accountability are important, however, in a democratic society, civil society organizations must have the necessary autonomy and independence of activities while carrying out their activities and oversight over state. According to the 103 paragraph of the OSCE/ODIHR and Venice Commission Guidelines on Freedom of Association any restriction must be prescribed by law, necessary in a democratic society and in the interests of national security or public safety, public order, the protection of public health or morals or the protection of the rights and freedoms of others. Restrictions on access to resources that reduce the ability of associations to pursue their goals and activities may constitute an interference with the right to freedom of association. It should be noted that the justification of the draft did not specify which of the above-mentioned grounds was taken into account so that all non-governmental organizations were required to publicize their report.

The Defender also referred to the Recommendation CM/Rec (2007)14 of the CoE Committee of Ministers to member states on the legal status of non-governmental organisations in Europe, which states that NGOs which have been granted any form of public support can be required to make known the proportion of their funds used for fundraising and administration. Thus, the Defender recommended to apply less stringent requirements for those NGOs who have not received any form of public support.

Another issue with the draft was that the NGOs should publicize information on the names of employees and volunteers, including the names and surnames of the members of the organization, persons in the management bodies and staff, if they used the organization's funds during the reporting year. The Defender referred to the paragraph 167 of the OSCE/ODIHR and Venice Commission Guidelines on Freedom of Association, which states that associations should not be under a general obligation to disclose the names and addresses of its members, since this would be incompatible with both their right to freedom of association and the right to respect for private life. Among other national and

international legal provision, the Defender also referred to the Paragraph 64 of the Explanatory Memorandum to Recommendation CM/Rec (2007) 14 of the Committee of Ministers to member states on the Legal Status of Non-Governmental Organisations in Europe, which states that Obligations to report should be tempered by other obligations relating to the right to life and security of beneficiaries and to respect for private life and to confidentiality. In particular, a donor's desire to remain anonymous should be respected. The Defender recommended to make relevant changes in order not to publicize personal data included in the organization's report, such as the names and surnames of the organization's members, governing bodies, staff and volunteers.

It should be noted that the Defender's recommendations were accepted by the State Revenue Committee and the draft law was adopted with relevant changes addressing the concerns raised in the Defender's opinion.

References

- <https://www.osce.org/odihr/132371?download=true>
- https://search.coe.int/cm/Pages/result_details.aspx?ObjectID=09000016805d534d

Checks and balances

After the protests and democratic developments that took place in Armenia from April to May 2018, reforming judiciary system was one of the priorities in the new Government's agenda.

On 20 May 2019, the Prime Minister of Armenia Mr. Nikol Pashinyan, in a Facebook post, has called for people to block the entrances and exits of all courthouses in the country. Immediately after the call, the Defender made a statement, noting that State power shall be exercised in conformity with the Constitution and the laws, based on the separation and balance of the legislative, executive and judicial powers. Thus, any interference in the activities of the courts in the Republic of Armenia and their administration of justice is prohibited. The courts are to guarantee the country's legal security and the stability of the legal system, ensuring the uninterrupted protection of human rights. Through their daily activities, the courts are obliged to ensure the exercise of fair trial and other rights. However, the Defender added, that indeed, there are certain issues that remain concerning in the judicial system, such as external and internal independence of the courts, low level of public trust in judges and court decisions, etc.

References

- Statement of the Defender <https://www.ombuds.am/am/site/ViewNews/779> (Available in Armenian)

Functioning of justice systems

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

One of the main issues in the judicial system is undue delays of the court hearings. The courts have a particular obligation to ensure that all parties to a court proceeding make all the necessary efforts to avoid undue delays of case examination. However, violations of reasonable time requirement become widespread in our country. Court proceedings take months and even years. Issues requiring court's assessment are also delayed causing problems for individuals. This is mainly justified by the overloaded court system, which is an unacceptable justification.

The Human Rights Defender records that the state should organize legal systems in a way that enables the courts to guarantee the right to obtain a final decision within a reasonable time. In order to comply with this requirement, states may initiate different mechanisms, such as increasing the number of judges, setting a time limit for particular cases, etc. However, if the state allows the judicial proceeding to go beyond the reasonable time clause, without developing the aforementioned mechanisms, then the state is ultimately responsible for the delay.

Even if we take into consideration that the procedures affecting reasonable time requirement depends on the parties, their attitude does not dispense the court from their obligation to consider the case within a reasonable time. This is required by the Article 6 (1) of the Convention and therefore by the European Court of Human Rights. Everyone should have effective remedies for restoring that violated right and the state, in its turn, should create all necessary legal mechanisms for that.

Thus, the Defender summarized the complaints concerning examination of cases within reasonable time in the courts and applied to the Constitutional Court, as well as published an ad hoc report with regard to this issue.

References

- https://www.ombuds.am/en_us/site/ViewNews/1051
- https://www.ombuds.am/en_us/site/ViewNews/1057
- https://www.ombuds.am/en_us/site/ViewNews/1043
- Ad Hoc Report of the Human Rights Defender on the lack of mechanisms to restore a right to judicial hearing within a reasonable time
<https://ombuds.am/images/files/e722139fe25348c1076dae0df9496c55.pdf> (available in Armenian)

Media pluralism

The respect for journalists' professional activities is under the Defender's primary attention, highlighting that the state is responsible for guaranteeing the rights and ensuring safety of journalists, especially during mass rallies and events of public concern. It has a duty both to refrain from manifestations of ill-treatment by state bodies or public officials and, as a positive obligation, to create safe working conditions, as well as conduct effective investigation of violence.

During the April 2018 events, a number of cases of violence against journalists took place. In some cases, they were accompanied by damaging journalists' equipment, which proves that they were targeted and the infringements against them were aimed at hindering their activities. These are illegal interventions in journalistic freedom and proper legal assessment should be provided to every such act. Hence, the HRD stresses the importance of initiating criminal proceedings by law enforcement bodies regarding every such case as a guarantee of the principle of inevitability of criminal responsibility.

In 2018, the HRD has published legal standards for journalists while requesting information containing personal data and the corresponding obligations of state bodies in this regard (e.g. how to reply to the journalistic inquiries?). The purpose of this publication aims at further strengthening the collaboration between journalists and state bodies.

Moreover, the HRDO periodically organizes capacity-building activities for journalists and mass media representatives on national and international standards on hate speech,

freedom of opinion and expression, right to private life, constitutional mandate of the HRD, rights redress mechanisms etc. It is important to note, that during the trainings, the journalist and mass media representatives were urged to remove from their accounts any comment containing hate speech or insulting speech.

Corruption

The Defender, as a protector of human rights, aspires to eliminate the root causes of human rights violations, changes the attitude towards bribery, primarily within the judiciary and prosecution, but also in the society. In this respect, the mandate of the Defender is broad and covers the prevention of corruption as well (e.g. drafting proposals for legislative amendments, raising awareness of the population on their rights when dealing with the courts, etc.).

The realization of efficient anticorruption actions entails cooperation between multiple actors, including the Human Rights Defender. According to the reforms in the field, it is planned not to have a universal anticorruption body in Armenia. The Government has formed a commission to prevent corruption while another body with legal authority to investigate and prosecute the corrupt activities together with the corruption court will be set up in 2021.

In an effort to further ensure effective implementation of anticorruption policies in Armenia, the Government has adopted a decision on establishing the Anticorruption Council of Armenia. In their capacities as members of the Council, the Defender participates in the elaboration of anticorruption policy and its implementation measures.

In-focus section on COVID-19 measures

Most significant impacts of measures taken in response to the COVID-19 outbreak on the rule of law in the country

On 16 March 2020, the Armenian Government approved the Decree “On declaring state of emergency in the Republic of Armenia” in response to the outbreak of the novel coronavirus (COVID-19) in the world and in Armenia, as well as the declaration by the Head of WHO on the recognition of the spread of this disease as a pandemic. Further, the RA Government decision on Declaring State of Emergency in the Republic of Armenia was amended several times, and extended the restrictions imposed by the decision till May 14, 2020.

Since the first COVID-19 case has been reported in the Republic of Armenia, a working group on the COVID-19 and state of emergency within the HRDO was established. The aim of the WG is to operatively and rapidly response to the emergency calls received through the hot line. Hence, the Office continues to work in a 24/7 regime. Moreover, a specialized working group on domestic violence prevention issues was established as well.

It should be emphasized that these days the number of applications, complaints and inquiries addressed to the Defender is significantly higher than in ordinary circumstances. Complaints mostly relate to issues on: (1) entering and leaving Armenia; (2) salaries; (3) human rights in closed institutions (penitentiary institutions, psychiatric establishments, etc.); (4) lack of possibility to pay for utilities (water, gas and electricity) due to isolation or self-isolation, restoration of interrupted supplies, etc.

All the legal initiative and amendments related to the COVID-19 pandemic were sent to the Human Rights Defender's legal opinion taking into account its independent mandate and role in protection of human rights and prevention of torture. One of the main observations of the Defender concerns the legal status of isolation. In particular, it underlined that the isolation of a certain person based on the instruction of the state authority (not a general call of the Government addressed to the population based on the well-known principle "stay home") must be as deprivation of liberty, rather than restriction of freedom of movement.

Another comment related to disproportional restriction on the freedom of media allowing publishing only information provided by state authorities. This clause was further removed inter alia based on the observations of the Defender. However, the Minister of Justice underlined that this restriction may be recovered if there will be any abuses by media representatives. Therefore, the Office of the Human Rights Defender is conducting monitoring of media in the respective perspective, in order to present grounded arguments on suggestions of restrictions if there will be any.

As for the draft legal acts with regard to COVID-19 and State of Emergency, the Human Rights Defender raised a number of issues related to the interconnection of freedom of movement and deprivation of liberty. In particular, it was highlighted, that:

- legal grounds for any restriction related to the deprivation of liberty should be regulated by the law adopted by the Parliament;
- grounds for the deprivation of liberty should be also precisely regulated, according to the RA Constitution and well-known international documents ratified by Armenia (e.g. ECHR);

- procedure for the deprivation of liberty should be prescribed by law, as directly required by the Constitution;
- application of minimum rights and guarantees under Article 27 of the RA Constitution and Article 5 of the ECHR should be prescribed by law ensured in practice.

Another important direction of the work of the Human Rights Defender is the public awareness raising in the context of the COVID-19 and state of emergency. For that purpose, frequently asking question (FAQ) guide was published in Armenian and most common languages among foreigners, living in Armenia.

References

- The statement of the Human Rights Defender on the Coronavirus disease (COVID-19) https://www.ombuds.am/en_us/site/ViewNews/1081
- The Human Rights Defender is involved in the Commission for Coordination of Activities to Prevent the Spread of Coronavirus https://www.ombuds.am/en_us/site/ViewNews/1080
- The Human Rights Defender on the Coronavirus disease (COVID-19) https://www.ombuds.am/en_us/site/ViewNews/1095
- The Human Rights Defender's Office calls to address applications and complaints to the Defender online https://www.ombuds.am/en_us/site/ViewNews/1096
- The Human Rights Defender has published a guide on frequently asked questions conditioned by the State of Emergency https://www.ombuds.am/en_us/site/ViewNews/1134; https://www.ombuds.am/en_us/site/ViewNews/1131
- In the State of Emergency, the Human Rights Defender works 24-hours a day https://www.ombuds.am/en_us/site/ViewNews/1128
- Legal position of the Human Rights Defender on draft laws restricting the privacy of correspondence and other rights https://www.ombuds.am/en_us/site/ViewNews/1137
- The Human Rights Defender translated the statement of principles of the Council of Europe anti-torture Committee (CPT) into Armenian https://www.ombuds.am/en_us/site/ViewNews/1145
- The Human Rights Defender monitors the situation with regard to domestic violence during the State of Emergency https://www.ombuds.am/en_us/site/ViewNews/1146
- A working group on domestic violence prevention issues was established at the Human Rights Defender's Office https://www.ombuds.am/en_us/site/ViewNews/1153
- Protective equipment and disinfectants have been obtained for the Office of the Human Rights Defender https://www.ombuds.am/en_us/site/ViewNews/1152
- In the state of emergency, calls to the hotline of the Human Rights Defender increased 4 times https://www.ombuds.am/en_us/site/ViewNews/1167

- Other press releases, statements and success stories in the context of COVID-19 are available on the official website of the Human Rights Defender - https://www.ombuds.am/en_us/site/news

Austria

Austrian Ombudsman Board (AOB)

Independence and effectiveness of the NHRI

International accreditation status and SCA recommendations

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

Changes in the national regulatory framework applicable to the NHRI change since the last review by the SCA

Since the last Re-accreditation in 2011 the Federal Constitution of Austria was amended and, since July 2012, the AOB has also been responsible by order of the Federal Constitution for protecting and promoting compliance with human rights as part of the UN mandate. Since then, the AOB along with its commissions has been monitoring all institutions in which liberty is being or may be deprived or restricted (as National Protection Mechanism (NPM) under the Optional Protocol to the UN Convention against Torture (OPCAT)). It also examines the institutions and programmes for people with disabilities according to Art. 16.3 of the UN Convention on the Rights of Persons with Disabilities (CRPD), as well as the exercise by the administration of direct authority and the use of force, particularly during deportations and demonstrations.

At the same time, a Human Rights Council was set up by the Federal Constitution to advise the AOB. Half of the members of the Human Rights Advisory Council consist of representatives of NGOs, which guarantees a continuous cooperation with Civil Society Organisations and NGOs.

The latest amendment to the mandate of the AOB occurred when the National Council unanimously resolved to entrust the AOB with the compensation for victims of abuse in children's homes. Since July 2017, there has thus been an independent Pension Commission at the AOB, which acts as an umbrella organisation according to the Pensions for Victims of Children's Homes Act. This Act stipulates that those affected receive a monthly pension as soon as they reach the regular pensionable age or retirement. The

Pension Commission is chaired by one of the three members of the AOB and also includes representatives of organisations for the support of victims.

References

- AOB legal framework:
 - Federal Constitution of Austria, Chapter VIII, Article 148a., Ombudsman Board and Art. 148h; Federal Ombudsman Act, § 7 (3), § 11. (1) and § 15. (1)
- Pension Commission:
 - AOB Annual Report 2017, p.20
 - Legal provision: § 15 Pensions for Victims of Children's Homes Act

Functioning of justice systems

With the establishment of administrative courts in Austria in 2014 the legal protection for people living in Austria was actually extended.

No evidence was found of systemic issues affecting the functioning of justice systems and its constitutional guarantees.

Corruption

Concerning whistleblowing, there is no specific act on the protection of whistle-blowers in Austria.

As regards the AOB, the institution can start investigations on its own initiative. In addition, guarantees exist to ensure respect of privacy and data protection within the functions of the AOB, including as regards personal data of complainants and the secrecy of correspondence between inmates and the AOB, which cannot be the object of control by eg. prison management.

In-focus section on COVID-19 measures

Most significant impacts of measures taken in response to the COVID-19 outbreak on the rule of law in the country

With the beginning of the first ministerial decisions (Erlässe), a multitude of emergency measures both on federal as well as regional level was adopted relating to nearly all aspects of life.

All these acts and regulations had an immediate impact on fundamental rights, such as the right to private life, free movement etc., because the right to life and right to health was, and still is, given priority.

As AOB, we were informed about all these measures immediately and checked them for their proportionality. In this regard, special importance was and is given to the fact that all measures were and are adopted for a finite time only (no unlimited timeframes).

There is no lack of access to court in Austria. Overall, the access was in fact made easier, because deadlines relevant for access to remedies (such as appeals) were extended. The independent judges could continue with those cases it deemed urgent. In the meantime, the courts are back on track for normal handling of cases.

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

AOB manages to uphold the delivery of services to citizens.

Although access to institutions (e.g hospitals) has become more difficult, the benefit of the AOB is that as Ombudsman Board we still receive individual complaints and therefore know about the immediate effects the measures have on the individuals. Exercising this ex-post control will also prove valuable to inform the preventive work of the AOB.

Azerbaijan

Azerbaijan Ombudsman Institute

Independence and effectiveness of the NHRI

International accreditation status and SCA recommendations

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

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

Safeguards for the functioning of the HRCA are provided by Article 5 of the Constitutional Law on the Commissioner for Human Rights (Ombudsman) (hereinafter-Constitutional Law). Article 19 of the Constitutional Law ensures the independent activities of the HRCA, thus, Article 19.2 stipulates that, "The annual expenditure allocated for financing the work of the Commissioner may not be reduced in relation to the previous financial year."

The Commissioner for Human Rights (Ombudsman), Sabina Aliyeva, presented the annual report on the activities of the Commissioner on protection and promotion of human rights (HRCA) in the country for 2019, on April 24, 2020, before the Parliament. The Parliament approved the report. The HRCA raised many issues during her speech before the Parliament including issues related to the rule of law such as the non-execution of the court judgments. The Annual Report will soon be available in English on the official site of the Ombudsman Institution.

Changes in the national regulatory framework applicable to the NHRI change since the last review by the SCA

This should be noted that a new Commissioner for Human Rights (Ombudsman) of the Republic of Azerbaijan was elected by the Parliament on 29th of November 2019. At present, the Ombudsman Institution develops new amendments to Constitutional law, which also cover the SCA recommendations.

Human rights defenders and civil society space

Human rights defenders are active in the country as members of civil society and the HRCA closely cooperates with them in different directions. For instance, in 2019, the HRCA joined regional project on “Strengthening access to justice through non-judiciary redress mechanisms for victims of discrimination, hate crime and hate speech in Eastern Partnership countries”, which is funded by the EU and implemented by the CoE. In the framework of the project, the HRCA actively cooperates with human rights defenders, NGOs and local communities. As such the HRCA jointly with the above-mentioned international organizations organized a training seminar in Guba district where lot of national minorities live. In this seminar, the staff of the Ombudsman Institution, representatives of the EU and CoE, as well as representatives of the NGOs and local communities enjoyed the opportunity to share their views and thoughts on joint cooperation with regard combating discrimination.[1] The HRCA is in will to continue this cooperation with the members of civil society and learn their concerns in certain fields.[2]

References

- (1) <http://www.ombudsman.gov.az/en/view/news/1705/a-training-seminar-on-anti-discrimination-was-held-in-guba>
- (2) https://twitter.com/az_ombudsman/status/1263881305441386498

Checks and balances

The HRCA receives appeals on maladministration and non-execution of judgments, and sends due recommendations to the relevant state bodies. According to the HRCA’s Annual Report for 2019, the appeals addressed to the HRCA in relation to the right to administrative and judicial guarantees of the rights and freedoms, were mainly about dissatisfaction with judgments, biased review of the case, failure to send or delayed delivery of summons to the parties, failure to give or due time delivery of copies of judgments, failure to notify one of the parties to the case regarding the submission of appeals and cassations complaints and procrastination.

During the year of 2019 the HRCA also received many appeals related to the non-execution of judgments that raises concerns about non-implementation of judgments or remaining them unimplemented for a long time, procrastination, and violations of ethical conducts by the executive officers against citizens. The HRCA considers it as a serious problem raised

this issue in the Annual Report. The HRCA noted in the report that the failure of some executive officers to take responsibility of their duties, their non-professional attitude to the fulfillment of their duties and failure to timely implement the statutory measures has led to serious problems and complaints in execution of judgments. The HRCA notes in the annual reports that the executive officers should not stay out of responsibility in such cases and necessary measures against the executive officers that fail to manage their duties, display unprofessionalism and indifference, breach the ethical conduct rules should be taken. The HRCA notes in the Annual Report for 2019 that with the appropriate interventions of the HRCA, several judgments about demands for other claims have been solved.

The HRCA also notes that, with the purpose of preventing infringements of human rights by executive officers, drafting and applying new conceptual approaches and efficient mechanisms to ensure respect of rules and procedures, as well as strengthening mechanisms of control and discipline in the execution field, would serve to increase accountability and prevent the aforementioned violations. This would require, in particular, sanctioning executive officers breaking ethical conduct rules or failing to show professionalism and commitment towards their duties.

As regards drafting and enacting legislation, the HRCA actively participates in improvement of the national legislation by analysing complaints. The HRCA notes in the Annual Report for 2019 that over the past few years, significant improvements have been achieved in terms of advancing national legislation, expanding the opportunities for national economic development and a state budget, solution of social problems of the marginalized groups of the population, including those with special needs. The HRCA recommends to use this opportunity and ratify a few of articles of the European Social Charter (Revised), including Article 10 on the right to vocational training, Article 15 on the right of persons with disabilities to independence, social integration and participation in the life of the community, Article 19 on the right of migrant workers and their families to protection and assistance; and Article 23 on the right of elderly persons to social protection. [1]

References

- (1) Annual Report of the Commissioner for Human Rights (Ombudsman) of the Republic of Azerbaijan for 2019

Functioning of justice systems

According to the national legislation everyone is guaranteed administrative and judicial protection of his/her rights and freedoms. Every person has the right to an unbiased approach to and consideration of his/her case within reasonable time and to be heard during administrative and judicial proceedings.

The steps taken for improvement of the judicial structure and system, gradual elimination of the shortcomings, application of innovations and development of e-justice have a positive impact on facilitating by the access to judiciary in Azerbaijan.

The Decree "On Deepening of the Reforms in the Judicial-Legal System" signed by the country President in April, 2019, played an important role in further improvement of the access to justice, increase efficiency and transparency in judicial proceedings, fully and timely execution of judgments, and strengthening the measures for elimination of procrastination and other similar negative cases.

According to relevant Decree, in July 2019, Commercial Courts were established and from January 2020, started to function in Azerbaijan. These courts provide effective and prompt resolution to problems by handling commercial disputes. Therefore, this is advisable to carry out judicial and legal reforms in order to effectively and urgently settle the business-related human rights disputes.

The Ombudsman continued to cooperate with the judicial power, including the Constitutional Court of Azerbaijan in the field of protection of the right to administrative and judicial guarantees of the rights and freedoms of citizens.

The HRCA also promotes the use of mediation in disputes and in some cases, it was used in resolving the complaints addressed to the HRCA. As noted in the Annual Report of HRCA for 2019 some complaints related to disputes between teachers and pupils have been examined and solved through mediation.

The HRCA continues to cooperate with judicial power, including the Constitutional Court in protection of the right to administrative and judicial guarantees of the rights and freedoms of persons. According to the Constitutional Law, the HRCA submits inquiry to the Constitutional Court to check the constitutionality of the national normative acts.

The Commissioner does not investigate a complaint if that is being examined within court proceedings under Article 11.1.4 of the Constitutional Law.

The HRCA reflects the issues related to the judicial problems in the annual reports. In the annual report for 2018, the HRCA noted that "...the execution process of court decisions, allowing bureaucracy and rudeness, showing indifferent, sometimes biased attitude towards executive activity, unreasonably delaying the execution of court decisions, as well as not fulfilling the authorities to the extent prescribed by law, unlawful actions and deficiencies by some of the executive officers do not allow the solution of problem along with influencing negatively to the effectiveness and reputation of administration of justice." [1]

References

(1) <http://www.ombudsman.gov.az/en/view/pages/59/>

Media pluralism

The issue of media and protection of journalists' independence has always been in the focus of the HRCA.

At the same time, the problem of unprofessionalism and combating spreading fake news in the society also remains an ongoing concern. The HRCA addresses this issue regularly and conducts awareness raising activities with the representatives of the mass media. In the annual report, the HRCA notes that the use information that displays violence, especially the "visible" content about the children and women, which in many cases includes unconfirmed news in media, mass media and social networks, is unacceptable.

It is worth to mention that the amendments were made to the "Guidelines on journalists' professional behavior in Azerbaijan". Also new obligations were determined for following the principle of gender equality in the course of journalistic activity on the basis of the CoE project on "Gender equality and freedom of media", which the HRCA also took part in. Within the framework of the project that continued in 2019, several awareness-raising trainings were conducted in Baku city and regions with the participation of representatives of mass media on ensuring freedom of speech and press, gender equality in press, professional legal culture of journalists, and a staff member of the Ombudsman Office participated as the trainee-expert in these trainings.[1]

References

- (1) Annual Report of the Commissioner for Human Rights (Ombudsman) of the Republic of Azerbaijan for 2018: <http://www.ombudsman.gov.az/en/view/pages/59/>

Corruption

The activity of the HRCA also covers the issues related to combating corruption. Expanding public control plays an important role in ensuring the legality and transparency in all spheres of socio-economic life. The Commissioner actively cooperates with the members of civil society, NGOs and media, conducts public awareness events to raise the literacy in the society for combating corruption, which leads to human rights abuses as a result of business activities.

It is obvious that effective mechanisms for fighting against corruption play significant role in free entrepreneurship. In order to take constant measures for prevention of fabricated hindrances to the development of the entrepreneurship and needless interference, the Commissioner forwarded the corruption related complaints to the Prosecutor General's Office.

The HRCA met with the representatives of different bodies, including GRECO (the Group of States against Corruption) and discussed the perspectives of cooperation on combating corruption and also had a cooperation with Anti-Corruption General Directorate with the Prosecutor General, as well as with NGOs, particularly with Transparency Azerbaijan, Coalition Against Corruption, Information and Cooperation Network of NGOs against Corruption etc.

For the effective prevention of abuse of the duties and combating corruption it would be useful to study international experience on corporate social responsibility and look into the possibilities to apply the followings at the national level; to inform entrepreneurs on human rights; to report periodically on the situation about compliance with human rights by enterprises, also to develop and implement mechanisms on requesting information from them if necessary.

As a National Human Rights Institution, the HRCA submitted written statements to the UN Human Rights Council. One of the statements of the HRCA was related to the business and human rights. In the HRCA's statement submitted to the 32nd session of UN Human Rights

Council the recommendation on, inter alia, "Realization of activity in elimination of corruption cases" [1] took place. There were also other recommendations related to elimination of human rights abuse such as "Promotion of joint cooperation of business structures with the civil society institutions, mobilization of human resources" and "Promotion of acceptance of collective agreement in business structures".

References

- (1) Written submission by the Azerbaijan: Human Rights Commissioner (Ombudsman) "The role of Azerbaijan NHRI in the field of business and human rights". The 32nd session of the UN Human Rights Council, June 6, 2016.

In-focus section on COVID-19 measures

Most significant impacts of measures taken in response to the COVID-19 outbreak on the rule of law in the country

Since the declaration of a special quarantine regime on March 24, 2020, in Azerbaijan, the Government takes all necessary emergency measures to prevent the outbreak of COVID-19 in the country. Therefore, the Government of Azerbaijan declared one-month lockdown and social distancing at the national level, which was later prolonged until 4th of May, 2020, by the Operational Headquarters under the Cabinet of Ministers [1] to avoid the possible complications in the future at this challenging time.

However, appropriate emergency measures are being taken to respond the COVID-19 in the country. In order to cover the country's own needs with regard to protective equipment infection control (such as medical masks, gloves and disinfectants), a new factory was exploited to produce medical masks and other necessary protective means.

As stated earlier, measures are being implemented in regard to the prevention of the spread of COVID-19 in order to protect people's health and security in the country. The social isolation rules and the special quarantine regime have been applied and the activities have been limited for this purpose. In the framework of these measures, also the opportunity has been created for the implementation of court proceedings related to civil cases and commercial disputes by means of "Electronic court" information system. In order to protect the safety of citizens and ensure the judicial protection of their rights in the current pandemic, recently, with the application of this software, several court proceedings

were held in the form of videoconferences, in an online regime, and final decisions were issued. As well as 260 convicts were released on parole.

During the special quarantine regime, the HRCA issued a general public call and special statements on protection of the rights of people with disabilities, migrants, children addressed to the relevant governmental bodies, public and business sectors. Special newsletters on the activities of the HRCA were also shared with the relevant international organizations and network of the Ombudsmen.

The vulnerable groups of population are under the high risk during the quarantine regime. Provision of their urgent needs and protection of their rights are principal during such challenging times. Since the beginning of a special quarantine regime due to COVID-19 pandemic, the HRCA issued calls addressed to the governmental bodies and private sector. Amid the activities taken in response to this pandemic, she put forward her specific recommendations and suggestions concerning the ensuring the rights of persons with disabilities [2], migrants [3], children [4], and the rights of population groups in detention and other places [5], which persons cannot leave on their own will, during this special quarantine regime.

The HRCA recommended providing conditional release of the prisoners with disabilities considering the situation regarding COVID-19 infection and appealed to the Ministry of Justice for submitting documents of such prisoners to the court, broadcasting TV programs in an accessible formats (with tiflo and sign language interpretation), as well as online promotional programs and producing booklets in Braille on this topic in order to ensure access for PWDs, including persons with visual impairment and hearing loss to decisions, recommendations and suggestions taken for fight coronavirus infection and guidance on prevention of the infection.

In the framework of combating new COVID19 pandemic the activities on combating the virus continues in Azerbaijan. By the country President's decree on pardoning dated 6 April, 2020, 176 convicts were released from prison and sent into the quarantine. The decision on pardoning was given by taking into consideration the appeals of the convicts over the age of 65 who need special care because of their age and state of health due to the spread of coronavirus infection. 10 convicts were released by the motion of the Ombudsman submitted in accordance with Article 1.7 of the Constitutional Law on the Commissioner for Human Rights (Ombudsman) of the Republic of Azerbaijan.

Due to the outbreak of COVID-19, in order to monitor the impact of preventive measures against the spread of the virus in the country, the members of the National Preventive

Group of the Ombudsman of Azerbaijan conducted monitoring in some facilities of the Penitentiary Service of the Ministry of Justice of the Republic of Azerbaijan as well as in the center of detention place for administrative arrests of the Ministry of Internal Affairs of the Republic of Azerbaijan.

Furthermore, the HRCA also pays attention to ensuring the rights of detainees, taking into account their psychological situation in the context of the growing pandemic and recommends all competent bodies to follow the rules for the effective protection of their rights as provided in instructions of the Operational Headquarters under the Cabinet of Ministers, UN COVID-19 Guidance, in Advice of OPCAT Subcommittee on Prevention of Torture (SPT) and in Principles of the CoE Anti-torture Committee. NHRI published the CoE Principles about COVID-19 in Azerbaijani on its Facebook page to further disseminate them among the public and translated UN COVID-19 Guidance into Azerbaijani language [6]. It also released a video clip identified by the hashtag "Stay home and be healthy" calling people to follow the rule of social distancing and placed that on its official Facebook page.[7]

References

- (1) <https://cabmin.gov.az/az/article/815/>
- (2) Message of the Commissioner for Human Rights (Ombudsman) of the Republic of Azerbaijan to the state and local self-governing institutions, officials, and other offices, enterprises, organizations and business entities regarding the protection of the rights of persons with disabilities due to the coronavirus (COVID-19) infection outbreak
- (3) <http://ombudsman.gov.az/az/view/news/1758/azerbaycan-respublikasinin-insan-huquqlari-uzre-muvekkilinin-ombudsmanin-koronavirus-COVID-19-infeksiyasinin-yayilmasi-ile-elaqedar-elilliyi-olan-shexslerin-huquqlarinin-mudafiesi-ile-bagli-dovlet-ve->
- (4) Information on the measures carried out by the Commissioner for Human Rights (Ombudsman) of the Republic of Azerbaijan for effective protection of the rights of migrants due to the outbreak of coronavirus (COVID-19) infection
- (5) Information on the activities carried out by the Commissioner for Human Rights (Ombudsman) of the Republic of Azerbaijan in the field of child rights protection during the ongoing outbreak of COVID-19 infection in the country
- (6) <https://www.facebook.com/ombudsman.az/>
- (7) <https://www.facebook.com/ombudsman.az/videos/1148719708797564/#Evdəqal#Sağlamol#Bizbirlikdəgüclüyük>

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

In order to prevent spread of the COVID-19 according the rules and instruction of the Operational Headquarters under the Cabinet of Ministers, the Ombudsman Office temporarily suspended the in presence reception of people in the central office as well as in the regional offices. Taking this into account the head of the facility was recommended to address the application of the detainees to the Ombudsman without any delay by post.

Despite the fact that the HRCA has temporarily suspended the in presence reception of citizens because of the COVID-19 outbreak, complaints and applications are received via e-mail, telephone, fax and in an online form; each appeal is responded with the sense of urgency. The HRCA also receives appeals through Institution's Facebook page and Twitter.

The HRCA conducted online meetings with the Ombudsmen of other countries for exchanging views and experiences on combating the virus. The staff of the Institution also took part in different online meetings organized by ENNHRI and CoE, and actively discussed the current challenges in the period of pandemic and the solutions to cope with them.

Belarus

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

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

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

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Belgium

Interfederal Centre for Equal Opportunities and Opposition to Racism (Unia), Belgian Federal Migration Centre (Myria) and The Combat Poverty, Insecurity and Social Exclusion Service

Independence and effectiveness of the NHRIs

International accreditation status and SCA recommendations

Unia was [accredited](#) with B-status in May 2018. During its accreditation, the SCA noted that the mandate provided to Unia is limited and does not cover the full range of human rights. Unia has a strong mandate to combat racism and discrimination, including as part of its function as the National Monitoring Mechanism under the UN Convention on the Rights of Persons with Disabilities.

Myria and the Interfederal Combat Poverty Service are not accredited, due to their restricted human rights mandate. However, the three institutions (Unia, Myria and the Combat Poverty Service) work collaboratively to promote and protect human rights in Belgium.

Myria and Unia are both legal successors of the former Centre for equal opportunities and opposition to racism. They have agreed on a protocol for co-reporting on the UN human rights instruments. This protocol was submitted in the accreditation process, that led to the recognition of Unia as a NHRI with a B status.

Legislation to establish a new Federal Belgian NHRI was approved in 2019 (with a mandate limited to federal matters only, which is an [important limitation](#) in view of the Paris Principles). Despite steps in this direction, a new NHRI has not yet been operational.

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

Elections took place in May 2019. Governments were rapidly created in the different regions and communities but not at federal level. This situation leads to difficulties in defining new human rights strategies and policies at federal level.

In March 2020, due to the COVID-19 crisis, a federal government of emergency, with a limited program and duration was created.

This situation delays the adoption of the long-awaited National Action Plan against Racism and of the new National Plan against homophobia and transphobia. Setting up an interfederal National Human Rights Institution is also impossible in the current context.

Belgium has still not established a type A NHRI. In the meantime, the effectiveness and equal enjoyment of the human rights for persons residing in Belgium are ensured through organisations that have either a partial mandate, partial geographical competence or relative independence.

In 2019, a law creating a Federal Institute for the Protection and Promotion of Human Rights was passed. The ambition was to lay the foundations for an A status NHRI. However, the competence of this Institute would be limited to federal matters and does not cover subjects such as education, health, transport, housing, assistance to persons, culture, the environment, etc. In order for this Institute to truly become an A status NHRI, with a broad mandate covering the whole of Belgium and all levels of power, a cooperation agreement should be concluded between the federal state and the federated entities.

Belgium does have a B status NHRI (Unia) which is competent in the field of anti-discrimination and has been designated as an independent mechanism for the promotion, protection and monitoring of the implementation of the Convention on the Rights of Persons with Disabilities. Unia is competent throughout Belgian territory and for all levels of government. Flanders, making reference to the creation of the Federal Institute for the Protection and Promotion of Human Rights, has announced to withdraw from the cooperation agreement as of March 2023 and to create its own anti-discrimination institution. This will impact Unia financially and structurally. While nothing guarantees that an A-status NHRI will be effective by March 2023, the withdrawal will have a negative impact on the effectiveness of the fight against discrimination in Belgium, creating confusion and unclarity for the citizens.

The former Secretary of State for asylum and migration also tweeted about the future NHRI on the 18th February 2018 : *"Dat beweer ik helemaal niet. De raad van State doet dat heb er geen mensenrechten instituut vr nodig. En al zeker geen met Keytsman ah hoofd."* [I'm not saying that at all. The Council of State does that. Don't need a human rights institution for it. And certainly not with Keytsman at the head.]. Mrs Els Keytsman is the current director of Unia.

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Human rights defenders and civil society space

Funding cuts to civil society is reported in Flanders, where the government took the decision in 2019 to withdraw financial support previously granted to different civil society organisations, including organisations active in the defence of the rights of minorities.

As regards **freedom of assembly and freedom of expression**, a case is worth reporting concerning a court action initiated by police authorities against a human rights group (the Ligue des droits humains (LDH)). In an exhibition co-organised by LDH, images were shown of police interventions carried out in the public space against migrants, social movements and organised citizens, with the aim of illustrating and debating the attacks on the freedom of demonstration and expression suffered by certain social movements, activists and journalists. The exhibition organisers have been summoned to court by the Brussels-Capital-Ixelles police zone and four of its members. The police officers considered that their right to privacy and image had been violated, as well as their right to honour and reputation, because they appeared recognizable in photos showing them in the performance of their duties. The Brussels Court of First Instance ruled in October 2019 that there was no reason to prohibit the dissemination of unblurred images of police officers in the performance of their duties.

Cases of **harassment against human rights defenders** can also be reported. Els Keytsman, director of Unia, was one of the victims of online harassment by an individual known by the pseudonym "Fidelio". This person was also the author of racist comments on the Internet. He was convicted by the criminal court in June 2019. Unia was a civil plaintiff in the case.

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Checks and balances

An issue which can be reported in connection to the **respect by the government of the legislative and judiciary functions** concerns the refusal by the executive to implement a decision of the legislator concerning the resources to allocate to the judiciary, in particular on the number of magistrates needed to ensure proper functioning of the courts. This refusal was condemned in March 2020 by the Court of First Instance of Brussels, at the request of the French and German speaking bars. According to the Court, "the executive power can neither restrict nor extend the scope of these laws, nor, therefore, modify the number of jobs taken over from the legal frameworks". The Court also warned that "the executive power cannot replace the legislative power with its own assessment of the human needs necessary for the proper functioning of justice".

In the aftermath of the terrorist attacks of 2016, many measures were adopted without any **consultation of rights holders**. A report about the measures adopted after the terrorist attacks was issued in 2017 by Unia.

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Functioning of justice systems

Issues can be reported concerning **access to legal aid and legal assistance**. A law adopted in 2016 had the effect of making access to free legal aid more difficult. Before the modification of the law, there was an irrefutable presumption according to which certain categories of beneficiaries whose status supposes a low income (e.g. persons who receive a replacement income or an integration income from the state) would be automatically granted almost free legal assistance by a lawyer for the whole duration of the procedure. Following the reform, this presumption has become refutable, which creates additional conditions and controls as well as an increased administrative burden for both the applicant and the lawyer - even if these are categories of persons whose income is below the set threshold which is itself below the poverty risk line. The way income is calculated also poses problems: for example, for persons who are not members of the same household but who are registered at the same address (cohabitants), all incomes are taken into account and added together, even if they are simply flatmates. As a result, cohabitants can be excluded in full or in part from second line legal assistance despite having very low financial means.

Requiring checks on livelihood for persons whose status supposes a low income for the purpose of granting free legal aid is in the opinion of the Combat Poverty Service contrary to the automatic granting of rights. Myria has also been informed of several cases of people who couldn't file an appeal in due time, due to the difficulty in finding a specialized lawyers to appoint under the legal aid system (given that lawyers' participation in the legal aid scheme is on a voluntary basis and is overall not convenient for them in terms of administrative burden and economic return). In addition, litigation fees have been considerably increased between 2012 and 2017, with a raise of different fees linked to the procedures and the introduction of VAT taxes for lawyers and bailiffs, making access to justice more costly for everyone.

These concerns are rejected as unfounded by the government, that considers that the access to legal aid and justice in general is better than before. Unia, Myria and the Combat Poverty Service reported the situation to the Human Rights Committee and the Committee on Economic Social and Cultural Rights in the shadow reports to the Committees. Our Institutions are also members with observer status of the Plateforme Justice pour Tous.

Furthermore, **discriminatory practices** can be reported which impact on the exercise of the right to an effective remedy by minority groups. In particular, the lack of information about access to legal assistance to migrants and foreigners in a language they understand

has an impact on the rights of vulnerable groups such as undocumented migrants or transit migrants, including when they face police misconduct. Undocumented migrants' right to access to justice is also negatively impacted by the risk of setting off immigration control and expulsion procedures, due to the failure to make a clear distinction between the authorities in charge of implementing immigration control and those tasked with providing public services, including justice, as the European Commission against racism and intolerance (ECRI) pointed out in its latest report on Belgium. As a result, Myria observes that many undocumented migrants fear to report even serious acts to the police (including domestic violence).

Belgium has also failed to implement the judgement of 18 September 2018 by the European Court of Human Rights in the case *Lachiri v. Belgium*, where the Court held that the exclusion of Ms. Lachiri from the courtroom of a case in which she was a civil party, on the sole ground that she wore a headscarf covering her hair out of religious conviction, constituted a violation of her right to religious freedom under article 9 of the European Convention on Human Rights. The exclusion was based on the interpretation given to an ancient law which provides that litigants must uncover their heads in court.

The government's **failure to execute judgments** can be raised in relation to a case where state authorities were condemned by the Brussels Court of Appeal for the refusal to deliver visa to a Syrian family in 2016. The Appeal Court request the Belgian state to deliver the visa but the authorities refused to execute the judgment. Although the European Court of Human Rights has recently considered the appeal introduced in this matter inadmissible (case no 3599/18, *M.N. and other v Belgium*), this type of situation illustrates issues concerning the respect of the right to a fair trial.

In terms of positive developments as regards access to justice, the Belgian legislator introduced in 2019 the possibility to bring forward a **judicial action of collective interest**. The new rules allow legal entities who defend human rights and fundamental freedoms as recognized by the Constitution and international human rights instruments binding Belgium - for example, organisations combating poverty – to file a collective complaint. The action of collective interests was the result of a judgment by the Constitutional Court and several notes of advice to the legislator. One such note of advice was made by the Combat Poverty Service.

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Media pluralism

In June 2018, three journalists from French-speaking Belgian radio and television (RTBF) were **arrested** while covering a demonstration. The demonstration was taking place in front of the closed centre 127bis, a place of detention for migrants. The three journalists were released without charges a few hours later.

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In-focus section on COVID-19 measures

Most significant impacts of measures taken in response to the COVID-19 outbreak on the rule of law in the country

There are different regional parliaments in Belgium and the measures adopted have therefore differed from one region to another. Special powers have been voted by all

Parliaments, including at the federal level. Special powers enable the executive to take a large number of measures whose impact on fundamental rights is important. The measures taken so far are time-limited. However, some groups are more impacted by the measures taken and it will be necessary to analyse their proportionality.

It is too early to conclusively assess the most significant impacts of the measures taken on the rule of law and the proportionality of these measures to the threats posed. However, a certain **lack of transparency in the implementation of the measures** can be observed. Young people seem to be subject to more stringent control: most fines for violating containment measures have been imposed on people aged 20 to 30. These controls may add up to difficult socioeconomic conditions: very small accommodation, poor evaluations of schooling outcomes, ordinary policing. The impact on other vulnerable groups such as people in detention also seems particularly serious: detainees have complained about the failure to ensure social distancing, lack of medical follow-up, lack of protective equipment, difficult access to a lawyer, lack of flexibility in reporting deadlines for appeals.

Many measures have been adopted with a clear **lack of rights holders' consultation**. Unia has been monitoring the situation, including individual cases (through the individual complaints received) as well as the media and a legislation observatory set in place in this context. Structural problems are identified and tackled as soon as possible. A report will be issued in the coming months.

Unia's disability department has also launched a special consultation on COVID-19's impact on disabled people for civil society organisations.

Myria visited the closed immigration detention centre of Merksplas from which several complaints came during April 2020.

The Combat Poverty Service made an overview of the COVID-19 measures relating to situations of poverty and insecurity and made a special note as SDG-voice in the context of "to leave no one behind". Recently, the Flemish government has set up a taskforce "vulnerable households". To this end, the Combat Poverty Service supports involving the relevant stakeholders.

Unia, Myria and the Combat Poverty Service jointly made a note about protective measures respecting fundamental rights. Future action will also be undertaken as a result of further cooperation between Unia, Myria and the Combat Poverty Service, and in cooperation with the official taskforce units in Belgium.

More recently, in May 2020, new laws aiming at perpetuating some of the measures adopted by the Ministry of Justice during the crisis were proposed in the Parliament. This was done without proper consultation and before any evaluation of the impact of those measures. Emergency was invoked to limit as much as possible the time allocated (3 days) to the High Council of Justice to analyse the proposal. This led to multiple reactions from civil society.

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

The main challenge is **access to information**. There is a lack of clarity when it comes to the structure of the different taskforces and centres of decision created within the Belgian government following the COVID-19 outbreak. This entails important challenges in identifying relevant points of contact for our different areas of work. Civil society being strongly impacted as well, the information flow is slower which doesn't allow Unia to gather the necessary information in a timely manner.

Another challenge encountered is related to the balance between fundamental rights. Due to widespread public fear, there is a tendency to implement health measures that disproportionately restrict other fundamental rights (freedom of movement, right to education, right to private and family life in particular for people living in institutions, etc.).

Telephone hotlines and e-mail communications are maintained despite reduced capacity due to confinement measures and teleworking requirements.

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Bosnia and Herzegovina

Human Rights Ombudsmen of Bosnia and Herzegovina

Independence and effectiveness of the NHRIs

International accreditation status and SCA recommendations

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

Developments relevant for the independent and effective fulfilment of the NHRI's mandate

The Ombudsman Institution seeks, through its work, to ensure functional and financial independence in accordance with the Paris Principles. In this sense, in recent years, certain activities have been undertaken and legislative solutions proposed to raise this independence to the required level, but such solutions have not received the necessary support in the Parliament of Bosnia and Herzegovina (BiH). The process of European integration of BiH should be used in order to regulate the mandate and functioning of an independent human rights institution completely independently of other authorities.

In 2019 the Ombudspersons identified a number of strategic priorities, including the promotion and protection of the right to freedom of peaceful assembly, free access to information, issues related to migration, situation and status of social welfare centers. In these areas the following special reports were prepared:

- Special Report on the Right to Freedom of Peaceful Assembly - available at: https://www.ombudsmen.gov.ba/documents/obmudsmen_doc2020022808504462eng.pdf
- Special Report on the Right to Freedom of Peaceful Assembly - available at: https://www.ombudsmen.gov.ba/documents/obmudsmen_doc2020020515415139eng.pdf
- Special Report „Prohibition of Physical Punishment of Children in Bosnia and Herzegovina“ - available at:

https://www.ombudsmen.gov.ba/documents/obmudsmen_doc2019120514261316eng.pdf

- Special Report on the Situation and Challenges Facing the Social Welfare Centers in Bosnia and Herzegovina - available at:
https://www.ombudsmen.gov.ba/documents/obmudsmen_doc2019112015101009eng.pdf
- Special Report on the Situation in the Detention Premises in Some Police Administrations in Bosnia and Herzegovina - available at:
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- Special Report on the Situation on the Field of Migrations in Bosnia and Herzegovina - available at:
https://www.ombudsmen.gov.ba/documents/obmudsmen_doc2019010713545979eng.pdf

Changes in the national regulatory framework applicable to the NHRI change since the last review by the SCA

No significant changes took place in the environment in which the Institution of Human Rights Ombudsman of BiH operates when it comes to the legislative framework.

The adoption of the amendments to the Law on Human Rights Ombudsman of BiH has been in parliamentary procedure for almost four years. At the session of the House of Representatives of the BiH Parliamentary Assembly held on 26 February 2020, this proposal was not accepted. In the meanwhile, the work of the BiH Parliamentary Assembly and the BiH Council of Ministers has halted due to the pandemic, and it is unclear what will happen next.

Human rights defenders and civil society space

Analysis of the registered complaints shows that the level of enjoyment of the right of access to information in BiH is not at the level required by international standards. Indeed, the right to free access information is considered to be a basic prerequisite for building a democratic society, and an effective system of exercising and protecting the right to access to information reflects the accountability and transparency of the authorities. In the area of access to information, since 2015, the Institution has recorded an increase in the number of complaints, which may be the result of several factors, namely: more frequent violations of the right of access to information by the public authorities in Bosnia and Herzegovina, increased awareness of citizens on the mechanisms of protection of the right to free access

to information, but also the result of the activities of the Ombudsman, as a body supervising the implementation of legislation governing the free access to information in Bosnia and Herzegovina.

The role of the media in the promotion of the mentioned legislation cannot be neglected, especially considering the fact that, due to the lack of specific media laws, the media themselves very often use freedom of information legislation as a tool for obtaining important information for public reporting purposes. The most common reasons for addressing the Ombudsman are the failure to reach a decision on received request for information within the statutory time limit, failure to provide information on legal remedy available, the inability to use the remedy, and the refusal to access information that citizens consider to be available.

Another issue that should be particularly highlighted is the freedom of assembly, which is a right guaranteed by the Constitution of Bosnia and Herzegovina, the Constitution of the Republika Srpska, the Constitution of the Federation of Bosnia and Herzegovina, the Statute of the Brčko District of Bosnia and Herzegovina, and laws on public assembly at the cantonal level (10 in total, including the Zenica - Doboj Canton, where the process of adoption of the law is ongoing), at the level of the Brčko District of Bosnia and Herzegovina and at the level of Republika Srpska. The exercise of this right imposes on the competent authorities a positive obligation to take measures to ensure the peaceful enjoyment of the right, which includes, above all, protection and assistance. Restrictions are possible and permissible, if they are prescribed by law and necessary in a democratic society to protect public safety, to prevent disorder or crime, to protect health or morals, or to protect the rights and freedoms of others.

In practice, any restriction on freedom of assembly must correspond with the objective for which the restriction is established and the competent authority should always strive to use a more lenient restriction, if such lesser measure can enable the achievement of the set objective. The competent authority, in accordance with the principles of good administration, must justify the decision to restrict the freedom of assembly and provide access to a remedy that not only should be available but also effective.

In this regard, in pursuance of one of their strategic goals in the protection and promotion of fundamental human rights, the Ombudsman decided to prepare a Special Report on the Right to Freedom of Peaceful Assembly in 2019 (1). This Special Report was published in February 2020. The aim of the report is to determine the situation in the field of freedom of assembly in Bosnia and Herzegovina, including checking the degree of compliance of domestic legislation with international standards, as well as to point out the challenges

facing public assembly organizers on one side and police and security agencies on other side meet during the organization and holding of public gatherings, and to formulate the recommendations of the Ombudsman which will be sent to the competent authorities with the aim of improving the situation in this area.

The reports illustrates a number of identified challenges, including:

- restrictions regarding the place, time and manner of holding public gatherings,
- general prohibitions regarding the use of public space,
- restrictions on how to hold peaceful assemblies,
- prioritizing public transport over freedom of peaceful assembly,
- requiring permission to hold a public gathering,
- shifting responsibilities to organizers for maintaining order and security,
- excessive use of force in interrupting a public gathering,
- non-recognition of spontaneous gatherings.

On that basis, the report includes recommendations by the Ombudsman to the competent authorities in order to improve the situation in this field. Recommendations include the need for the legislative powers to amend and strengthen the legal framework regulating the definition and exercise of the freedom of assembly, establishing clear, simplified and rapid authorization procedures reflecting a presumption in favor of the exercise of this freedom; the need for a revision of the sanctions regime, in particular to ensure proportionality; the importance of ensuring fair policing of assemblies and educate law enforcement authorities to that effect. The Ombudspersons remind of the first ever Pride event in Sarajevo which was held on 8 September 2019 under the slogan: "Coming out". The public gathering which consisted in a parade on the move went well with no single incident reported, for which both the organizers and the security bodies policing the event should be praised.

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Checks and balances

Since many years the Ombudspersons in their annual reports (1) continuously point to the issue of non-enforcement of final and binding court decisions, especially in cases where decisions involve the payment of damages or other forms of compensation from the public budget. The Ombudspersons have particularly expressed their concerns over the fact that even after the completion of the court proceedings, the citizens need to wait for years to get the awarded compensation. Complaints related to the lack of enforcement of court decisions mainly relate to:

- Situations where the respondent party is a municipality, canton or entity. The enforcement of court decisions entailing payment of damages or other payments is possibly only from budget lines earmarked for such purposes. In situations of continuous budgetary restrictions, funds for the above purposes are subject to permanent budgetary cuts;
- complaints of citizens entitled to indemnification in cases against the Republika Srpska and the Federation of BiH, where the payment of the amounts due is governed by provisions of the Law on Establishment and Method of Payment of Internal Obligations of FBiH and the Law on Establishment and Method of Payment of Internal Debt of RS. In their complaints citizens express their dissatisfaction with payment in bonds, delays and other issues;
- complaints about the impossibility to get compensation for insolvency of companies in which the person used to work.

Non-enforcement of court decisions, in addition to violation of the right to efficient legal remedy, also constitutes the grave violation of the right to property guaranteed under Protocol 1 to European Convention.

As already mentioned the Ombudspersons regularly inform the Presidency of Bosnia and Herzegovina, the House of Representatives and the House of Peoples of the Parliament of Bosnia and Herzegovina, the Parliament of the Federation of Bosnia and Herzegovina and the National Assembly of Republika Srpska on this issue in their annual reports. In addition to that, acting on citizens' complaints, depending on the circumstances of the complaint, the Ombudspersons, if they find a violation of rights, issue their recommendations to the competent authorities, in order to eliminate these violations.

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Functioning of justice systems

The Ombudsman's Department for the Monitoring of Justice and Administration in 2019 received 851 complaints. It issued 26 recommendations, five of which were fully implemented, in respect of other five some cooperation with the respondent party was established, three were not implemented, and in 13 cases the designated responsible authority did not provide feedback on the recommendation.

The analysis of 504 complaints related to the judiciary submitted to the Ombudsman shows that the citizens address the Ombudsman for the following reasons:

- inappropriate length of court proceedings - 101 complaints,
- inefficiency in the enforcement of court decisions - 56 complaints,
- 20 complaints related to the work of judges and 12 complaints related to other rights linked to the court proceedings (violation of the principle of impartiality, non-adoption of rulings within the legal deadlines and in legally prescribed manner, inconsistency of court practice).

As mentioned above, the Ombudspersons also continuously receive complaints related to the issue of non-enforcement or aggravated enforcement of final court decisions. Problems arise in particular in cases where the respondent party is a municipality, canton or entity in which cases payment of damages or other payments is possible only from budget lines earmarked for such purposes in the amounts determined by a public authority in question's budget for the particular budget year.

In 2019 the Ombudsman registered 5 complaints related to free legal aid, but issued no recommendations in this regard.

Media pluralism

Freedom of information is a right recognized by the Constitution of Bosnia and Herzegovina, the Constitution of the Republika Srpska and the Constitution of the Federation of Bosnia and Herzegovina. Through their work, journalists inform and make the public familiar about the actions of all actors of public life within a society. In this way, they contribute to the opening of discussions and create the opportunity for all actors to express their views on current events and phenomena in society. Full realization of the journalists' role in society is possible only if their status is regulated, and if they have their rights guaranteed, primarily the right to safety and dignity.

In 2019 the Ombudsman registered 8 complaints concerning the media and freedom of information. The analysis of the registered complaints shows that they relate to the changes of management in public media outlets. The complainants also point to efforts by certain political factors to interfere with the established editorial policies. Ombudspersons are concerned that the right to safety is not being fully exercised, since one case of threats to journalists and one case of attack on journalists have been registered.

In this regard Ombudspersons remind that in 2017 they issued their Special Report on the Status and Cases of Threats against Journalists in Bosnia and Herzegovina (1). As one of the most important recommendations of this report, issued to the Ministry of Justice of RS, Ministry of Justice of FBiH and the Judicial Commission of Brčko District to consider the possibility to define an attack against a journalist as a criminal offence in criminal codes or as a serious criminal offence of attacks against an official person on duty and to consider the possibility to define an attack against a journalist as a separate public safety offence in public safety laws. So far these recommendations were not incorporated into the appropriate amendments to the mentioned legislation.

References

- (1) https://ombudsmen.gov.ba/documents/ombudsmen_doc2017082415202346bos.pdf

In-focus section on COVID-19 measures

Most significant impacts of measures taken in response to the COVID-19 outbreak on the rule of law in the country

On 31 March 2020 the Ombudspersons issued their *Recommendations regarding the protection of human rights of vulnerable categories* (1) in which they pointed to the need for increased human rights monitoring and taking more effective measures in relation to the vulnerable groups of citizens at risk (the elderly, people with disabilities, children, single parents), and persons who, due to chronic diseases, autoimmune diseases and/or other health problems belong to the group of citizens exposed to risk.

Responsible bodies were recommended to do the following:

- To maintain an increased amount of responsibility toward the vulnerable categories of citizens,
- To take appropriate measures such as the organization of working process in manner enabling the protection of persons with disabilities.
- To enable maintaining the contacts between the children and their parents with whom they do not live in divorced marriages irrespective of the applicable ban on movement for those below 18 and like,
- To ensure an increased monitoring of those older than 65 to provide them with necessary food and medicines and other relevant items,
- To make the most important recommendations and information available in sign language.

On 3 April the Ombudspersons published a press release titled ENOC and the rights of the child in light of COVID-19 pandemic (2) whereby they informed the public that the European Network of Ombudsmen for Children paid special attention to the rights of the child in the new situation caused by the outbreak of the COVID-19 pandemic, namely the rights to education, health, information and the right to protection against violence and abuse. It has also been made fully accessible to the public, and Ombudspersons emphasized that they will continue to insist on sensitivity and special consideration of the competent national institutions when it comes to children.

On 7 April 2020 the Ombudspersons issued their recommendation to the Federation of BiH Civil Protection Headquarters, Republika Srpska Emergency Management Headquarters, Brčko District Crisis Headquarters, and Civil Protection headquarters at cantonal level: Una-Sana Canton, Tuzla Canton, Bosnia - Podrinje Canton, Central Bosnia Canton, Herzegovina

- Neretva Canton, West Herzegovina Canton, Sarajevo Canton and Canton 10 for action by those in charge because of the increased risk of domestic violence due to isolation measures to combat the COVID-19 pandemic (3). Measures of social distancing and the recommendation to stay home increase the risk of domestic violence. Stress of potential financial losses, home confinement, additional obligations imposed on family members and reduced access to all types of services have a particularly negative impact on women, children and the elderly.

The Ombudspersons recommended authorities to:

- work to raise awareness of the impact of social distancing and confinement on women, children and the elderly at risk of domestic and domestic violence,
- establish special services for persons at risk of domestic violence, and persons exposed to domestic violence by creating additional telephone lines and creating opportunities for online reporting of domestic violence and continuously inform the public about the same,
- ensure that, regardless of the situation caused by the COVID-19 pandemic, all those responsible for receiving a report on domestic violence act promptly and without delay.

On the same day, Ombudspersons issued a press release regarding the Council of Europe Subcommittee on the Prevention of Torture against Member States and the national prevention mechanisms related to the COVID-19 pandemic, which noted that the Subcommittee on the Prevention of Torture (SPT) had advised the Member States and national preventive mechanisms which primarily address the measures to be taken by the authorities in relation to all places of detention, including detention facilities, immigration detention, closed refugee camps, psychiatric hospitals and other medical services, as well as those in official quarantine sites, to take measures that normally fall within the mandate of an NPM, and also published the text of the SPT guidance on COVID-19 (4).

On 14 April 2020 the Ombudspersons issued a press release regarding the spread of COVID-19 virus (Corona) (5) inviting the citizens to ensuring stricter adherence to the guidance of the relevant authorities and institutions and to reduce movements to what strictly necessary.

An appeal was also made to those responsible for taking care of the private sector, to ensure that employees, who cannot be held responsible for the current constraints, receive full pay and ensure that their employers do not reduce employees' pay or withhold their salaries and other benefits.

On 15 April 2020 a recommendation (6) was made to the Federal Civil Protection Headquarters of the Federation of BiH, Republic Emergency Headquarters of Republika Srpska, Crisis Headquarters of Brčko District of BiH and civil protection headquarters at cantonal level: Una-Sana Canton, Tuzla Canton, Bosnia - Podrinje Canton, Central Bosnia Canton, Herzegovina - Neretva Canton, West Herzegovina Canton, Sarajevo Canton and Canton 10 . The recommendation urged these authorities to ensure that all decision made are published in public newspapers and their web sites in a fully understandable and simple way, comprehensible to all citizens in order to prevent different interpretations.

On 30 April, the Ombudsperson issued a recommendation (7) calling to enable the greatest involvement possible of journalists and media workers at press conferences, following a complaint by a journalists' organisation. On 3 June, the Ombudsmen also issued an opinion (8) highlighting COVID-19 effects on employment rights for journalists and media workers.

On 5 May, the Ombudsman issued recommendations (9) urging authorities at all levels of government to take additional measures to protect child's rights to education and to protection from violence and neglect.

References

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- (2) <https://www.ombudsmen.gov.ba/Novost.aspx?newsid=1514&lang=HR>
- (3) <https://ombudsmen.gov.ba/Novost.aspx?newsid=1516&lang=HR>
- (4) <https://www.ombudsmen.gov.ba/Novost.aspx?newsid=1515&lang=HR>
- (5) <https://www.ombudsmen.gov.ba/Novost.aspx?newsid=1509&lang=HR>
- (6) <https://www.ombudsmen.gov.ba/Novost.aspx?newsid=1518&lang=BS>
- (7) <https://www.ombudsmen.gov.ba/Novost.aspx?newsid=1523&lang=BS>
- (8) <https://www.ombudsmen.gov.ba/Novost.aspx?newsid=1540&lang=BS>,
- (9) <https://www.ombudsmen.gov.ba/Novost.aspx?newsid=1524&lang=BS>

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

In order to prevent and protect the health of the citizens and the staff of the Ombudsman, in accordance with the recommendations of the competent authorities regarding the measures for the prevention of Coronavirus, the Ombudspersons urged the citizens to strictly adhere to the instructions issued by the competent authorities and institutions and to reduce the movement to the minimum necessary (1).

Work in all the offices of the Ombudsman was organized on a daily basis, and employees continued their work from home in a limited capacity. During the state of emergency, citizens are invited to contact the Institution by mail, e-mail, or telephone during the on-call duty every working day from 9 a.m. to 1p.m.

It resulted in the following:

- reduced capacity to monitor potential human rights violations,
- reduction in scope of services provided to citizens,
- reduced scope of work on processing the complaints of citizens.

References

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Bulgaria

Ombudsman of the Republic of Bulgaria

Independence and effectiveness of the NHRI

International accreditation status and SCA recommendations

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

No significant changes as regards the enabling environment are to be reported since March 2019, when the Ombudsman of Bulgaria was accredited A Status under the Paris Principles.

The Ombudsman is an independent constitutional authority and its status is set out in the Constitution (Article 91a), as well in the special Ombudsman Act and the Rules of Procedure, both adopted by the National Assembly. The institution is legally mandated to promote and protect human rights – latest amendments of the Ombudsman Act as of March 2018 provide for a comprehensive set of rules on the role, functions, powers, appointment mechanism and terms of office, funding and accountability of the NHRI. The Rules of Procedure of the Ombudsman Institution explicitly include the rule of law among the guiding principles for his/her work.

The Ombudsman's legally assigned mandate includes, without any limitation, all violations of the rights of citizens, that is, economic, social, cultural, political and civil rights plus the rights that are set in the EU Charter of Fundamental Rights as related to EU membership. In 2019 the institution has examined 13 762 complaints of citizens for violations of their rights. The ombudsman is also vested with the power to examine existing and draft legislation and make recommendations to ensure human rights compliance – in 2019 Ombudsman has issued 13 legislative initiatives and opinions, addressed 5 referrals to the Constitutional Court and 4 requests for interpretative rulings to the two supreme courts in Bulgaria. The ombudsman of Bulgaria has also the mandate to inspect and examine public premises, documents, equipment and assets – in 2019 were organized 55 inspection visits that ended

with a set of recommendations to public authorities. In 2019 alone the Ombudsman institution reached 96% of its recommendations being implemented by public authorities. The Ombudsman is also vested with the responsibility to conduct assessments of domestic compliance with and reporting on international human rights obligations – since March 2019 the institution submitted parallel or shadow reports to EU and UN monitoring bodies on several issues. The Ombudsman is also monitoring the implementation of recommendations originating from international human rights monitoring bodies and devotes a special part within its Annual report on the findings and the recommendations thereof.

The Ombudsman's institution as a public defender does not receive any instructions from Parliament, the Government or any other authority or institution, and his or her work is public. The Ombudsman's immunity is equal to that of members of parliament and thus it guarantees his or her independence.

References

- Constitution of the Republic of Bulgaria - <https://www.parliament.bg/en/const>
- Ombudsman Act - Chapter 3 "Legal Capacity"/www.ombudsman.bg/pictures/Ombudsman%20Act%20EN.pdf
- Rules of Procedure of the Ombudsman - <https://www.ombudsman.bg/pictures/Rules%20of%20Procedure%20of%20the%20Ombudsman%20EN.pdf>
- Summary of the 2019 Annual Report of the Ombudsman of Bulgaria - [https://www.ombudsman.bg/pictures/SUMMARY_%202020%20_ENG\(1\).pdf](https://www.ombudsman.bg/pictures/SUMMARY_%202020%20_ENG(1).pdf)

Human rights defenders and civil society space

Worrying trends affecting **freedom of expression and civic space** in Bulgaria has emerged around the ratification of the Istanbul Convention. Over the last two years the issue has caused social tensions and manifestations of **hatred and threats to non-governmental organisations** working on gender equality and women rights, which have been portrayed as a form of evil that is funded by outside forces seeking to destroy Bulgarian society. This tense opposition got further escalation during pre-election periods. In several instances, the Ombudsman institution has opposed all practices of instilling fear and hatred of non-governmental organisations that assist women and children affected by violence.

The need of better guarantees for **freedom of association** and prevention of potential breaches to **freedom of thought, conscience and religion** remains a concern and is the object of monitoring by the Ombudsman institution under the scrutiny of the proper execution of the European Court of Human Rights judgments and the Council of Europe's Committee of Ministers recommendations.

In 2019 the Ombudsman and medical specialists put forward to the National Assembly a **Bill on Professional Organisations** which offers a possibility to set up professional organisations of regulated medical professions in healthcare which will protect the rights and interests of their members to the fullest extent possible.

References

- 2019 Annual Report of the Ombudsman of Bulgaria (Bulgarian only, pp. 231 - 257) - https://www.ombudsman.bg/pictures/file/REPORT-BG%20mart_2020.pdf
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Checks and balances

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

In 2019, following consultation and discussion with the Consultative Constitutional Council with the Ombudsman, the Public Advocate submitted five requests to the Constitutional Court to establish the **anti-constitutionality of legislative provisions violating the citizens' rights and freedoms**. On two of them the Constitutional court has confirmed a violation of the Constitution– the first one is related to imposing limitations on the right of people who have retired to be hired in public administration as civil servants, and the second one refers to the disproportionate increase of taxes for administrative cases brought to courts for review that would limit the rights of citizens for fair trial.

Protection and participation of right holders is a central part of the Ombudsman's work – in 2019 after a consultation with different civil society and professional organisations, the Ombudsman sent 13 proposals for legislative amendments, opinions and recommendations.

The Ombudsman institution has recalled in its 2019 Annual report the persistent problems related to the **proper implementation of citizens' electoral rights**– the public advocate has issued an opinion on legislative proposals that had the potential to deprive Bulgarian citizens with disabilities from their right to vote on the ground of inconsistent administrative procedures.

References

- Constitution of the Republic of Bulgaria - <https://www.parliament.bg/en/const>
- 2019 Annual Report of the Ombudsman of Bulgaria (Bulgarian only, pp. 231 - 257) - https://www.ombudsman.bg/pictures/file/REPORT-BG%20mart_2020.pdf
- Summary of the 2019 Annual Report of the Ombudsman of Bulgaria - [https://www.ombudsman.bg/pictures/SUMMARY_%202020%20_ENG\(1\).pdf](https://www.ombudsman.bg/pictures/SUMMARY_%202020%20_ENG(1).pdf)

Functioning of justice systems

While the Ombudsman's powers do not include monitoring of justice administration by the courts, the prosecutor's offices and the investigation services, the Ombudsman of the Republic of Bulgaria has some instruments to provide for the improvement of trial standards as he/she is free to approach the Supreme Court of Cassation and/or the Supreme Administrative Court to seek interpretative decisions or interpretative rulings.

In 2019, two referrals were made to the Supreme Court of Cassation for interpretative judgments and the Supreme Administrative Court initiated two interpretative cases upon the Ombudsman's requests. The Supreme Court of Cassation was approached with requests to **streamline the diverse case-law** related to the right of property and the right of citizens to submit claims against the actions of a private enforcement Agent. The Supreme Administrative Court issued interpretative judgments with respect to the rights of unaccompanied minors and to inequitable treatment of owners with regard to the taxes they owe on real estate.

In many cases, citizens turn to the Ombudsman during pending judicial proceedings or after their completion (in 2019 those represented 2% of all complaints filed for

Ombudsman examination). Although it is inadmissible for the Ombudsman to review such complaints, they demonstrate the existence of **numerous and repeated allegations of violations and concerns from citizens as regards the administration of justice**, as equally shown by the cases on this matter referred to the European Court of Human Rights.

A major persisting problem is the improvement of access to justice through the effective implementation of **e-justice tools** – the first package of laws, introducing the e-justice system in Bulgaria has been initiated back in 2012, it was adopted and came into force in 2016, but at present only magistrates have use of the electronic facilities, while ordinary citizens cannot take advantage of such services. The negative impact of such delay in introducing all functionalities of the e-justice became evident in the context of the present COVID-19 crisis, whereby courts stopped their work for three weeks.

As regards Bulgaria's **progress in 2019 to execute ECtHR judgments** being monitored by the Council of Europe Committee of Ministers, the following main conclusions can be drawn: the total number of judgments subject to execution being monitored by the Committee of Ministers declined significantly. The statistics show that, as of 31 December 2019, the total number of ECHR judgments at the stage of execution stood at 169 which is a decrease by 20% in comparison to the data as of 31 December 2018 and 31 December 2017 when the ECHR judgments which had not been executed were respectively 208 and 207. Despite the said positive trends, Bulgaria continues to be on the list of the top ten states with the greatest number of judgments in an enhanced supervision procedure by the Committee of Ministers.

References

- Rules of Procedure of the Ombudsman - <https://www.ombudsman.bg/pictures/Rules%20of%20Procedure%20of%20the%20Ombudsman%20EN.pdf>
- Summary of the 2019 Annual Report of the Ombudsman of Bulgaria - [https://www.ombudsman.bg/pictures/SUMMARY_%202020%20_ENG\(1\).pdf](https://www.ombudsman.bg/pictures/SUMMARY_%202020%20_ENG(1).pdf)

Media pluralism

Freedom of expression and media pluralism are fundamental rights granted to Bulgarian citizens pursuant to the Constitution (Art. 38 to 41).

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 competencies to deal either with the issues related to media pluralism (the Council for electronic media) or with some infringements of the freedom of expression, i.e. hate speech, (the Commission for Protection against Discrimination). Nevertheless, the Ombudsman is constantly advocating the freedom of expression as a fundamental right. Latest statements of the Ombudsman against **hate speech** include specific recommendations to public authorities to put more effective instruments for monitoring and reporting hate speech crimes.

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– 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

- Council for electronic media - www.cem.bg/
- 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 Organisation for Security and Cooperation in Europe.
- Bozhkov v. Bulgaria case - <https://hudoc.exec.coe.int/eng#%7B%22EXECIdentifier%22:%5B%222004-1909%22%5D%22%7D>
- Speeches of the Ombudsman
<https://www.ombudsman.bg/news/5211?page=10#middleWrapper>
- Statement of the Ombudsman
<https://www.ombudsman.bg/news/5287?page=4#middleWrapper>

Corruption

During 2019 the Ombudsman institution received 7 **complaints** (out of a total of 12 926 complaints and signals received) that were related to suspected corruption practices. Nevertheless, during the same year, the Ombudsman institution registered 1,118 complaints in relation to the right to good governance and good administration – an increase by 35.5% in comparison to 2018.

In 319 cases, the Ombudsman gave recommendations and proposals to administrative authorities and the majority of them were taken into account. In 238 cases, a solution was found through mediation between citizens and the administration.

The **protection of whistle blowers** is still a deficit in Bulgarian law. The Ombudsman has invited state authorities to consider with special attention the need for addressing this gap. A special focus should be put on prohibition of retaliation and support measures including comprehensive and independent information and advice, which is easily accessible to the public and free of charge, on procedures and remedies available, on protection against retaliation, and on the rights of the person concerned. In a statement the Ombudsman has underlined the need for timely and effective transposition of the Directive (EU) 2019/1937 of the European Parliament and of the Council of 23 October 2019 on the protection of persons who report breaches of Union law.

References

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

In-focus section on COVID-19 measures

Most significant impacts of measures taken in response to the COVID-19 outbreak on the rule of law in the country

On 13 March 2020, the parliament declared a state of emergency for a period of one month, authorising the government to adopt all necessary measures to address the COVID-19 pandemic. The parliament passed special legislation and adopted amendments to existing laws as well. All measures adopted by the government are time-limited and

meant to be in force until the state of emergency is revoked. The Ombudsman has raised several issues related to the need for a better protection of fundamental rights in the state of emergency.

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

Access to courts has been initially suspended for three weeks (between 13 March until 4 April) upon decision of the Supreme Judicial Council, thus depriving citizens of their right of access to justice, before an amendment of the special legislation reduced the limitations only regarding some civil law issues. Cases such as those on undertaking victim protection measures and child protection measures are not affected by suspension. The Ombudsman nonetheless sent to the parliament an opinion on the need for statutory extensions and suspensions of time limits, related to judiciary procedural regulations during the state of emergency.

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

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

With the establishment of the state of emergency and the need for distance working, the Ombudsman of the Republic of Bulgaria organised free of charge access to the mobile contacts of all experts, working in the institution, thus providing for a total of 35 **hot-lines for citizen's concerns**. This approach resulted in an increase by 10% of complaints received and services delivered to citizens during the emergency period as compared to the same period one year earlier.

The most important challenge remains the **reduced on the spot monitoring** capacity of the Ombudsman acting as National Preventive Mechanism.

References

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Croatia

Ombudswoman of the Republic of Croatia

Independence and effectiveness of the NHRI

International accreditation status and SCA recommendations

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

Developments relevant for the independent and effective fulfilment of the NHRI's mandate

There are two significant changes which took place in 2019 which are relevant for the independent and effective fulfilment of our NHRI mandate.

Firstly, a new responsibility was added to the Ombudswoman's mandate with **no additional resources**. with the entry into force of the Law on the Protection of Reporters of Irregularities (Whistle-blowers) on 1 July 2019, the Ombudswoman was granted the mandate of the competent body for external reporting of irregularities (i.e. protection of whistle-blowers). The Ombudswoman continued to work on this complex mandate with the same resources and number of employees. Hence, the Sub Committee on Accreditation, in its Report in May 2019, noted that to function effectively, an NHRI must be provided with an appropriate level of funding in order to guarantee its independence and its ability to freely determine its priorities and activities. Where an NHRI has been designated with additional responsibilities by the State, additional financial resources should be provided to enable it to assume the responsibilities of discharging these functions.

Even though additional funds for employment of new staff were foreseen in the budget for 2020, due to COVID-19 pandemic, and subsequent budgetary cuts in the public sector, it will not be possible to go ahead with this.

Secondly, as of June 2018, the Ministry of Interior continues to deny immediate **access to cases and data** on the treatment of irregular migrants in police stations. The Ombudswoman is, in the performance of the NPM mandate, authorized under Articles 4, 19 and 20 of the OPCAT and Article 3 and 5 of the Law on NPM to visit places where there are or could be detained persons unannounced and freely access information about their treatment. However, contrary to these legal provisions, a prior notice was expected by the police in order to carry out this mandate. This practice was reported to the Croatian Parliament on several occasions, and in 2019 Annual Report Ombudswoman issued a recommendation to the Ministry of Interior to ensure unannounced and free access to data on irregular migrants to the staff of the Office of the Ombudsman and the National preventive in line with provisions of the OPCAT, Law on National Preventive Mechanism and the Ombudsman Act.

Changes in the national regulatory framework applicable to the NHRI change since the last review by the SCA

As reported above, the Ombudswoman was tasked with a new responsibility in relation to the protection of whistleblowers.

References

- <https://www.ombudsman.hr/hr/izvjesca-puckog-pravobranitelja/>
- <https://nhri.ohchr.org/EN/AboutUs/GANHRIAccreditation/Documents/SCA%20Report%20March%202019%20-%20EN%20.pdf>

Human rights defenders and civil society space

In relation to civil society space, the Ombudswoman has been monitoring and reporting to the Croatian Parliament on the obstacles civil society organisations face.

In 2019, the **National Strategy** for the Creation of Enabling Environment for Civil Society Development 2017-2021 was still not adopted, although the public consultation ended in September 2017. Hence, the Ombudswoman reiterated its recommendation to the Government, to adopt a new National Strategy.

In relation to CSOs **access to financial resources**, the National Foundation for Civil Society Development produced a publication "Contribution of Active Citizens" based on the regional consultations with over 400 CSO, in which CSOs stated that funding priorities are

not aligned with the needs on the ground and that there are almost no tenders aimed at advocating for and monitoring human rights policies. CSOs also warn that state bodies are late in publishing tenders. The Forum for Freedom in Education (NGO) conducted a research on the experiences of beneficiaries of the European Social Fund, which showed that CSOs point to delays in the implementation of tenders, that evaluations take long and that they are faced with institutions not being able to meet the deadlines for reimbursement of funds and uneven work of implementing bodies. For this reason, the Ombudswoman recommended to the Government to adopt a new National Programme of Protection and Promotion of Human Rights; which will include an aim on importance of creating enabling environment for human rights CSOs.

References

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Checks and balances

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 1,031 consultations that took place in 2019 there was a slightly fewer (271) number of NGOs participating, compared to 2018. Through this platform 19,543 comments were received, of which 22% were unanswered by authorities, which unfortunately does not contribute to building of citizens' trust into the work of administration. Additionally, in 2019 the Government sent into procedure 222 laws and 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.

References

- <https://www.ombudsman.hr/hr/izvjesca-puckog-pravobranitelja/>

Functioning of justice systems

During 2019, the number of complaints received by the Ombudswoman regarding judiciary decreased by 22.06% compared to 2018. Looking at the content of complaints, 38% referred to dissatisfaction with the work of the courts, a significant decrease to 2018 (of 33.86%). In addition, complaints pointed to inconsistency of case law, as well as insufficiently reasoned court decisions that did not remove doubts about their arbitrariness. Furthermore, complaints on the manner in which judges conduct proceedings and made decisions show growing distrust in their legality and fear of corruption. In 2019, the Ombudsman received 6.49% more complaints relating to the work of the State Attorney's Office, mostly due to lack of communication with citizens in reference to their charges.

This shows that in spite of data which indicate improvements, **trust of citizens in the judiciary** is still low. Hence, it is necessary to develop systematic communication of courts with the public. In this light, development of the Strategic Plan of the Ministry of Justice 2020-2022, which includes development of communication tools to promote transparency of the justice system is a positive step, which was one of the Ombudswoman's recommendations in the 2017 Report.

Another important challenge is the **lack of efficiency of the free legal aid (FLA) system**, which Ombudswoman has been pointing at for years. Due to insufficient financial resources for providers of free legal aid and poor information provisions, the system does not ensure its basic purpose - equality before the law. In 2019, 50% more complaints in this regard were received as compared to 2018, due to the (non) realization of FLA, difficulties in hiring a lawyer and the lengthy decision making on secondary FLA claims.

Despite recommendations on the need for more availability of information on FLA, it can only be found on the websites of Ministry of Justice and providers. However, many potential users of FLA do not use Internet as their primary source of information, so they need to be more intensely informed through media and leaflets available in public institutions.

In addition, difficulties remain in financing of primary FLA providers due to inadequate financial allocation system. This situation is difficult for beneficiaries of FLA, especially because NGOs and legal clinics provide more than 80% of primary FLA. Therefore, it is necessary to devise a more effective framework for allocating funding to providers, for example through multi-year program funding, which has been Ombudswoman's consistent recommendation.

References

- <https://www.ombudsman.hr/hr/izvjesca-puckog-pravobranitelja/>

Media pluralism

In 2019, Croatian Journalists' Association pointed to an **increased number of lawsuits against journalists and the media**. These lawsuits had the effect of intimidating journalists and preventing them from reporting on prominent individuals and social problems, or giving their view and critique of events important to society. According to them, in 2019 a total of 1,160 court cases were initiated against journalists and publishers of 18 media outlets while Croatian Radio Television Broadcaster filed 33 lawsuits against publishers and journalists in the first quarter of 2019, with a total dispute value of their claims of 2.17 million.

That the claims against publishers and journalists are often too high was recognized by the ECHR, and later the Constitutional Court, particularly in cases in which judges initiated court proceedings claiming amounts of 50 or more thousand HRK, because articles criticized their judgments or questioned the manner in which judges were elected and the quality of their work. Judges claimed that this represents defamation, insult, violates their dignity and reputation, and is causing them mental pain. The defendants considered that such actions, particularly in cases when judges initiating claims come from high courts, put them in an unequal position in the proceedings, that there is a misuse of procedural guarantees and that claims are excessive, thus having a dissuasive impact on journalists and journalism more widely.

In the context of **media freedom**, with the end of 2019 Article 148 of the Criminal Code (the criminal act of embarrassment) is no longer in force, with the explanation that the injured parties will have sufficient legal protection through retained criminal offences of insult and (intentional) defamation, as well as in civil proceedings. This is partially an answer to the repeated demands of the public and the Croatian Journalists' Association, which have been seeking its abolition since 2014. However, in practice, this institute did not constitute a particular threat to freedom of expression because, in practice the criminal offence of (international) defamation is more frequently used.

Media diversity and pluralism is also influenced by the fact that since 2016 non-profit media have solely relied on funding under the Fund for the Encouragement of Pluralism

and Diversity of Electronic Media provided by the Agency for Electronic Media (AEM) of three million HRK. Since there is no institutional funding available for non-profit media and funds from the AEM are not sufficient, non-profit media continued to collect donations through crowdfunding campaigns. The allocation of HRK 30 million secured by the ESF programme "Community Media", which was ensured already in 2015, would help resolve this problem. However, in 2019 the Ministry of Culture opened a tender for only half of allocated funds, and by the end of the year the evaluation of the application has still not finished. Ministry noted that the tender is taking place in two phases, each of the amount of HRK 15 million as a new Law on Electronic Media is being drafted which should include the definition of non-profit media.

References

- <https://www.ombudsman.hr/hr/izvjesca-puckog-pravobranitelja/>

Corruption

With the entry into force of the Law on the **Protection of Reporters of Irregularities (Whistle-Blowers)** on 1 July 2019, the Ombudswoman was granted the mandate of the competent body for external reporting of irregularities. Protection of reporters of irregularity (whistle-blowers) implies the possibility of reporting through one of the channels (internal, external and public disclosure) in the procedures provided for therein, judicial protection, compensation for damages and protection of identity and confidentiality. In that regard, complaints can be sent to Ombudswoman when certain preconditions are met, in particular that internal reporting channel is not in force or that it cannot effectively protect the identity of the complainant as well as the confidentiality of information, or the complainant has not been (duly) informed about the actions taken upon his complaint or no actions have been taken, or that a person no longer works with the employer or that there is immediate danger to life, health, safety, damage of large scale or destruction of evidence.

Complaints received and a number of inquiries coming from different institutions, employers, attorneys and citizens about the interpretation and application of the Law, especially about its scope, definition of irregularities, who and how can report irregularity and how to establish internal reporting systems, indicate that the adoption of Law was not sufficiently accompanied by promotional activities to clarify specific rights and obligations. Consequently, the Ombudswoman took part in the training on its application, in order to

explain our powers and mandate, while the interpretation of provisions of the Law, will be given by judicial authorities.

In order to encourage citizens to report irregularities as much as possible, which is one of the primary objectives of the Law, it is necessary to restore and justify trust in institutions. For this, further establishment of good cooperation with authorities acting on the content of the complaints needs to be established, and sufficient capacity of the Office of the Ombudswoman needs to be ensured in order to effectively and timely protect the rights of complainants, without weakening other mandates.

Finally, since the Law has been in force for only six months in 2019, it is not possible to assess the achievement of its objectives or the effectiveness of the envisaged forms of protection. Internal reporting systems were mostly not established (as employers were given 6 months to do so) and the procedures stemming from the complaints Ombudswoman received are still ongoing. There is no information if any court proceedings were completed to protect the rights of whistle-blowers.

References

- <https://www.ombudsman.hr/hr/izvjesca-puckog-pravobranitelja/>

In-focus section on COVID-19 measures

Most significant impacts of measures taken in response to the COVID-19 outbreak on the rule of law in the country

In the context of COVID-19, the government gradually introduced a number of measures the Ombudswoman continues to closely monitor.

Some of the measures include:

- citizens were advised to stay at home and limit their movement to the necessary extent.
- restriction on leaving the place of residence.
- limiting of social gatherings, work in commerce, services and the holding of sports and cultural events by suspension of social gatherings for more than 5 persons; of all cultural activities; work of cafes, bars and restaurants (except delivery), as well as of services that include direct contact with clients (hairdressers, beauticians, barbers,

- pedicures, massage parlours, saunas, swimming pools); suspension of all organized sports activities and contests; of all workshops and courses; of religious gatherings.
- Suspension of public transportation, train and bus stations being closed.
- temporary prohibition or restriction of all border crossings.

Some of the key discussions relating to the protection of human rights referred to:

- The authority to adopt measures – they were adopted by the National Civil Protection Headquarters which at the beginning of pandemic had made decisions that have restricted human rights **without having explicit legal mandate**, but with recent amendments to the Law on the Protection of the Population from Infectious Diseases this was corrected, and their position was strengthened;
- Whether when restricting rights and freedoms, the Government should activate state of emergency, that is, call upon Article 17 of the Constitution (during a state of war or any clear and present danger to the independence and unity of the Republic of Croatia or in the event of any natural disaster, restrictions should be decided upon by the qualified majority in the Parliament); or decision making should remain within the scope of n Article 16 (restrictions need to be regulated by law and proportionate to the nature of event);
- Protection of **privacy and data protection** – the government proposed amendments to the Electronic Communications Act, to be able to monitor citizens' movements. The Ombudswoman warned that the proposal lacked explicitly defined and clear criteria, which would ensure that the measure is implemented only on precisely defined categories of citizens, for example, those who have been officially ordered self-isolation by the competent authorities, and who would need to be properly informed about it, the beginning and the duration of the measure, with an explicit prohibition on retroactivity; moreover, the monitoring mechanism was not envisaged, as well as there was no time limit within which the collected data would be stored.

Additionally, particular attention was given to monitoring the situation regarding access to justice as due to coronavirus pandemic and the devastating earthquake that struck Zagreb in March, work of many institutions, including judiciary, has been significantly hindered, as well as to the measures taken to protect **rights of persons in vulnerable situations**, in particular prisoners, those living in poverty, migrants, older persons, Roma and homeless.

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

For the Ombudswoman, the situation has been even more severely impacted due to the earthquake in Zagreb on March 22nd. Namely, the Office's headquarters were severely damaged and can no longer be used for safety reasons. Consequently, in order to ensure continued availability to all persons in need of our support, after working through regional offices in Split, Rijeka and Osijek and by virtual means for two months, the Offices has been provided with premises in Zagreb, which unfortunately still do not meet the needs of the institution and cannot accommodate all the staff. We continue to receive complaints by phone or email, or in person, while part of the staff continues to telework ensuring an effective workflow.

Also, due to COVID-19 measures, the Office acting as NPM has temporarily suspended its visits to places of detention. However, monitoring of the situation by collecting data from relevant authorities regarding preventive measures for protection of persons deprived of liberty and employees in the prison system; migrants' irregular crossings and in reception/detention centres as well as of older persons in long term care, continues. The Ombudswoman has organized a meeting with the Croatian Institute of Public Health and are waiting for their recommendations on how to organize visits.

Additionally, the government has adopted a number of measures aimed at entrepreneurs and economic recovery. However, civil society organisations were not included, which can impact their future activities. Being key partners in promotion and protection of human rights, we continue monitoring the situation and collecting information on challenges CSO's face in their work.

Finally, even though additional funds for employment of new staff were foreseen in the budget for 2020, due to COVID-19 pandemic, and subsequent budgetary cuts in the public sector, it will not be possible to go ahead with it, as there is a ban on all new employments in the public sector.

References

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- www.ombudsman.hr
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Cyprus

Commissioner for Administration (Ombudsman)

Independence and effectiveness of the NHRI

International accreditation status and SCA recommendations

The Cypriot NHRI was first [accredited](#) with B status in November 2015.

In its review, the SCA made certain recommendations and observations on the appointment of the Ombudsman, the allocation of resources to the NHRI and the management of its budget.

The Cypriot NHRI's comments on independence and effectiveness, cited below, touch upon the relevant recommendations/observations of SCA.

Developments relevant for the independent and effective fulfilment of the NHRI's mandate

In relation to the **reinforcement of our Institution's personnel**, which directly affects our "effectiveness", the Commissioner has achieved 4 new staff positions, that are expected to start working in the next few months. Also, 3 more positions have been approved in 2019 that will be filled with the new procedure. However, given the broad expansion of the Office's mandate, and in order to carry out her functions even more effectively and timely, the Commissioner has requested and achieved further reinforcement of her staff (3 more) for 2020.

Recently our Institution faced a challenge which, we believe, was at the core of our ability to exercise our competences in an independent manner. Specifically, the Auditor General of the Republic of Cyprus attempted to **investigate the way the Commissioner is exercising her powers to assign, delegate and oversee the work** performed by our Institution and its Officers. In view of the Commissioner's refusal to allow such an investigation to take place, because of the independence of the Institution, the Auditor General referred the matter to the Attorney General and asked him to prosecute the Commissioner.

The Commissioner informed, in writing, the International Ombudsman Institute (IOI) about the issue that arose and the fact that her independence was under threat. This led to the issuance of a Statement by the IOI, which supported the Commissioner's position on

the matter and expressed the opinion that the Auditor General's stance was not compatible with the "Principles on the Protection and Promotion of the Ombudsman Institution", (The Venice Principles), adopted by the Venice Commission in March 2019. The IOI sent its opinion in writing to the President of the Republic, the President of the Parliament and the Attorney General. Eventually, the Attorney General agreed with the IOI's opinion and stopped the procedure.

Regarding the **selection and appointment of the Commissioner**, - an issue which extends to independence of our Institution and was raised by the Sub-Committee on Accreditation of GANHRI - we feel that the fact should be noted that both the executive and the legislative powers participate in the existing procedure. Specifically, the Commissioner is appointed by the President of the Republic, at the suggestion of the Council of Ministers, and with the prior agreement/approval of the majority of the House of Representatives. The independence of the Commissioner's appointment is further enhanced by the fact that Cyprus has a Presidential Democracy (not a Parliamentary Democracy) and the ruling political party does not have majority in Parliament. So, it is necessary for other political parties to approve the Commissioner before the appointment.

Changes in the national regulatory framework applicable to the NHRI change since the last review by the SCA

The **procedures for appointing the staff** of our Organisation were, until recently, the same as the procedures followed for the appointment of the staff of other public authorities, (eg. applicants took the same general examinations).

However, the Commissioner has recently achieved to change the procedure (approved by both the Council of Ministers and the Parliament) and, henceforth, the procedure for appointing our staff will be specific for positions in our Office. With the new procedure the applicants will be excluded from the general examinations applicable for other public authorities, and will, instead, be required to take specialized exams, that will be organized by the Commissioner. The final selection of any new staff will be made by the Public Service Commission, from the pool of applicants who succeed in the exams, after consultation with the Ombudsman and upon her recommendation.

References

- IOI Website: subject : "CYPRUS | Attorney-general refers to 'Venice Principles' to support Cypriot Ombudswoman over administrative audit." <https://www.theioi.org/ioi-news/current-news/attorney-general-refers-to-venice-principles-to-support-cypriot-ombudswoman-over-administrative-audit>

Checks and balances

The Organisation has not found any evidence of laws, processes or practices that erode the separation of powers, participation of rights holders, and the accountability of State authorities.

Recently, legislative measures to control the spread of COVID-19 were introduced in an "expeditious" (or accelerated) manner, but this can be regarded as necessary in view of the circumstances.

References

- Information regarding the legislative and administrative measures taken in Cyprus in view of the pandemic, can be found, in detail, in a relevant page in the Ministry of Health's website: <https://www.pio.gov.cy/coronavirus/en/>

Functioning of justice systems

Even though the Organisation has no mandate to intervene on the operation of the Courts, we would like to mention the fact that, some problematic aspects/challenges of the judicial system in Cyprus have been highlighted on a number of international Reports. Special reference is made to the **delays observed in the completion of court proceedings** and the **backlog of cases** pending before Courts.

References

- <https://rm.coe.int/fourth-evaluation-round-corruption-prevention-in-respect-of-members-of/16808d267b>
- https://www.cyprusbarassociation.org/files/publications/Functional_Review_of_Courts_System_of_Cyprus_IPA_Ireland_-_Final_Report.pdf

Corruption

Regarding corruption, we would like to note that:

- A “National Anti-Corruption Strategy” has been approved by the Council of Ministers in November 2017;
- A draft bill which provides for the establishment of an “Independent Body against Corruption” and the protection of whistle-blowers, is pending for discussion before the Committee for Legal Affairs of the House of Representatives. Our Institution is engaged in the process of finalizing the Bill and the Commissioner has prepared a relevant Note to the competent parliamentary Committee with comments/recommendations.

In-focus section on COVID-19 measures

Most significant impacts of measures taken in response to the COVID-19 outbreak on the rule of law in the country

In response to the COVID-19 outbreak, several emergency measures have been taken in Cyprus which affected rights of citizens, like: restrictions in movement both inland and internationally (repatriations), prohibition of gatherings, and closure of businesses.

So far, the measures taken have been legally-based and time-limited (eg. the decrees issued by the Minister of health provide the specific time frame that they are in effect). Also, citizens have the right to challenge these measures at Court (see relevant reference below).

Despite the above, we share the many concerns that ENNHRI raised in the relevant Statement issued on 23 April 2020, that “measures cannot have any **discriminatory impacts**” and that “**situations of vulnerability** must be addressed. In view of this, we have already made the following 3 interventions:

- On March 26th, 2020, we sent a letter/statement to the Ministry of Justice and Public Order, the Ministry of Health and the Ministry of Labour, Welfare and Social Insurance, with a list of guidelines and specific recommendations, in accordance with the CPT’s Statement of Principles relating to the treatment of **persons deprived of their liberty** in the context of the coronavirus disease (COVID-19) pandemic and requested that these ministries adhere to them. Following the letter/statement, the Ministry of Justice proceeded with the amendment of the relevant Law and as a result, a number of detainees received early release from the

Nicosia Central Prison. A number of detainees were also placed under the Open Prison Scheme, while others started serving the remainder of their sentence at home, under electronic monitoring (bracelet);

- On April 3rd, 2020 we issued a Statement regarding the **access of persons with disabilities to information on the coronavirus pandemic**. The Statement was also forwarded to the relevant ministries, that oversee psychiatric institutions and social care homes;
- On April 9th, 2020, the Commissioner conducted a visit to the Temporary Reception and Accommodation Centre for **asylum seekers**, to observe how the measures to contain the spread of COVID-19 were being implemented and how the fundamental rights of the persons residing there were safeguarded under these circumstances. In the framework of the visit, The visit, was conducted in cooperation with the staff of the Centre, who provided all requested information. Furthermore, confidential interviews were conducted with residents at the Centre. A relevant Report was issued on April 23rd, 2020 and has been forwarded to the Minister of Interior, the Minister of Justice and Public Order, the Minister of Health and the Minister of Labour, Welfare and Social Insurance with recommendations on strengthening the protection of the residents;
- Lastly, following a written communication with the Director of Immigration department, two aliens who were arrested under the alien's legislation were, in view of the COVID-19 situation, released from custody, under specific terms.

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

Firstly, it's important to note that on April 29th, in an address to the nation, the President of the Republic has announced a timetable/program for the gradual easing of the restrictive measures that were adopted to contain the COVID-19 pandemic. The easing of measures will start from May 4th 2020 onwards.

Regardless of the above development, in view of the outbreak of COVID -19 in Cyprus, instructions were issued by the Ministry of Health in March 15th regarding the operation of Public Authorities. Based on these instructions, our Institution started, since then, to operate with a limited number of safety/emergency staff in our premises, rotating per week or per day, depending on duties. All other staff has been working from home. (Note: according to the easing of the measures announce by the President, from May 4th, public authorities resume normal operation, with the exception of certain categories of public employees – specifically: people with specified medical problems and parents of young children).

As expected, during the time period in which the restriction measures applied, our **monitoring capacity** as a NHRI was, to a degree, reduced. However, we were still able to make, during this challenging period, important interventions for the protection and respect of human rights in a number of cases/issues.

In order to maintain operational continuity «in the COVID-19 context» we issued a public announcement with which we encouraged the public to use **alternative methods to submit a complaint** using either electronic submission, by fax, via our website or by post. Furthermore, we urged the public to contact our Office through specific phone numbers for any further information that they required.

References

- Detailed Information regarding the legislative and administrative measures taken in Cyprus in view of the pandemic, can be found in Relevant Page in the Ministry of Health's website : <https://www.pio.gov.cy/coronavirus/en/>
- Court Case regarding recourse to Court on the restriction to repatriation by a Cypriot student in the UK: <https://www.financialmirror.com/2020/04/02/COVID19-cypriot-students-take-legal-action-over-repatriation/>
- <https://in-cyprus.philenews.com/court-rejects-student-challenge-to-repatriation-rules/>
- Links to our website where the COVID-19 related interventions of the Commissioner are published:
- [http://www.ombudsman.gov.cy/ombudsman/ombudsman.nsf/All/4D78C79481321A4AC225855700301B99/\\$file/NPM.pdf?OpenElement](http://www.ombudsman.gov.cy/ombudsman/ombudsman.nsf/All/4D78C79481321A4AC225855700301B99/$file/NPM.pdf?OpenElement)
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- Information on the Cyprus news Agency website on the gradual easing of measures:
- <http://www.cna.org.cy/WebNews-en.aspx?a=8623b28898b94f10851cc5fa7f8c0560>

Czech Republic

Public Defender of Rights

Independence and effectiveness of the Institution

International accreditation status

The Public Defender of Rights of the Czech Republic is a non-accredited associate member of ENNHRI. The Defender can handle complaints, give legal advice, write legislative recommendations and conduct independent inquiries. Moreover, the Defender has received the mandate of Equality Body, National Monitoring Mechanism (NMM) under the UN CRPD, as the National Preventive Mechanism (NPM) under the UN CAT forced returns, and as monitor of forced returns (under the EU Return Directive).

ENNHRI has supported the steps taken by the Public Defender to strengthen its mandate in compliance with the UN Paris Principles and stands ready to assist the institution in applying for international accreditation.

In-focus section on COVID-19 measures

Most significant impacts of measures taken in response to the COVID-19 outbreak on the rule of law in the country

While our mandate does not allow us to perform a full and comprehensive monitoring of the COVID-19 measures and their implications from a rule of law perspective, we have an overview of some examples and aspects of the implications of the COVID-19 measures on the rights of people in the Czech Republic. We collect the information mainly from the complaints we receive regarding various problems the complainants face due to the measures and restrictions taken.

It is also important to notice that the COVID-19 measures are changing relatively quickly as the situation develops. Therefore, it sometimes happens that the measures or other issues resulting from the current situation objected by the complainants are changed or repealed before we manage to process the official action.

There are three main issues we dealt with which are worthy to mention in this regard.

One issue concerns **consumers rights**. It was reported that many travel agencies request their clients to pay the rest of the tours' prices they booked before the state of emergency

although the tours cannot take place. Travel agencies offer the clients vouchers of the same amount for the next year as the compensation. For many clients paying the rest of the price is very challenging, even unaffordable under the current circumstances (the incomes of many families decreased due to the COVID-19 measures). Although the issue does not fall within the ombudsman's competence (we cannot inquire into the private agencies), the Public Defender of Rights wrote a letter to the Minister of Regional Development and asked her for information whether the Ministry will take steps to protect not only the interests of the travel agencies (there are several measures intended to help the businesses which face difficulties due to the COVID-19 measures) but also the interests of their clients. In this regard, the Defender proposed that the clients would not be asked to pay the rest of the tours' prices with the departure between May and July/August and would receive the vouchers only for the deposit payments they already made.

Second, we dealt with complaints related to the **right to private and family life** in particular as regards the prohibition of the presence of fathers (or other close relatives) during childbirth. According to the opinion of the government, the ban was justified because it was imposed in order to protect the health of the hospitals' personnel. The complainants however considered the ban disproportionate and claimed that their rights were unlawfully violated. In a letter addressed to the Minister of Health, the Defender asked for more information about the restriction and whether the Ministry plans to change the restriction in the light of the recent developments of the situation. The ban was repealed on 16 April and replaced by the amended one (there is no clear indication that it happened as a consequence of the Defenders action, the ban itself was subject to a very lively public debate and criticism of certain Human Rights Defenders and a part of the public). Still, under the current conditions the presence of a father (or other person living in the same household as the mother) during the childbirth is possible only if the childbirth takes place in a separate room, the third person has a mask and his/her temperature is not higher than 37°C.

Third, we dealt with complaints on **free movement**, concerning the situation of persons who have to cross the state borders on the everyday basis due to their work, family relations etc. As the state borders were closed due to the COVID-19 restrictions, the cross-border workers found themselves in a very difficult situation. The Defender was monitoring the situation and prepared a letter addressed to the government requesting several measures to be repealed. In the meantime, the measures in question were repealed by the government. Therefore, no further action was needed.

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

The most important challenges we face in connection with COVID-19 outbreak (and the restrictive measures taken) are:

- to cope with the extended home office for almost all lawyers in the office and to ensure the safety of those employees who cannot work from their homes because their tasks do not allow the home office (we especially had to adopt very quick IT solutions etc.);
- the National Preventive Mechanism cannot perform monitoring visits in places where people are limited in their freedoms;
- we still handle complaints as usual but currently it is not possible to personally visit the authorities and do the inquiry on the place;
- for some time it was not possible to file a complaint personally in our office (however, there were other available options how to file a complaint); currently the possibility to lodge a complaint personally in our office has been restored.

First of all, we had to introduce the extended home office option for all lawyers. This also requested our IT Department to find suitable IT solutions as soon as possible (which was successful). We also set safety rules for those employees how for any reason had to come to the office personally (mostly the administrative staff and the management). All employees have to cover their mouth and nose by a mask (with exception of those who sit alone in their office). The disinfection of the office increased and the disinfection gels and soaps have been placed around the whole office.

On the daily basis, we frequently work through video conferences and, of course, e-mails.

To enable the complainants to lodge their complaints in person again, we had to install glass partitions in the rooms where our lawyers meet with the complainants. We also increased disinfection of such places and introduced other practical safety measures.

The contact between all colleagues has been decreased to the necessary minimum. Our IT Department also installed devices into several offices in order to make video conferences easier.

References

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Denmark

Danish Institute for Human Rights

Independence and effectiveness of the NHRI

International accreditation status and SCA recommendations

The Danish NHRI was [re-accredited with A status in October 2018](#). The SCA noted that the NHRI had taken steps to amend its bylaws to ensure a broad, transparent and uniform selection process. It encouraged the NHRI to continue to interpret its protection mandate in a broad manner and to conduct a range of actions, including monitoring, enquiring, investigating, and reporting. The SCA also encouraged the NHRI to provide greater precision in its bylaws or in another binding administrative guideline on the scope of the grounds of dismissal of members of the board of directors, to ensure security of tenure.

Checks and balances

Expedited legislative processes:

In Denmark, expedited legislative processes take place app. 1-2 times a year. An act on administratively stripping persons identified as “foreign fighters” in Syria from their Danish citizenship (if they have dual citizenship) was hastened through in October 2019 and included a shortened 7-day public consultation. The bill was presented, heard three times and adopted by Parliament in three days, thereby deviating from ordinary parliamentary procedure requiring 30 days of consideration from presentation to final vote. The Danish Institute for Human Rights criticised the expedited procedure and found that the bill caused grave misgivings in terms of human rights and rule of law principles, including that an administrative decision on revoking citizenship is not automatically being tried in court. The bill was, nevertheless, adopted.

In 2020, expedited legislative processes have taken place in response to the coronavirus/COVID-19-crisis, creating the legal basis for various increased executive powers, incl. restrictions on freedom of assembly, personal freedom, respect for personal and private life etc. (see below under the COVID-19-item)

Lack of judicial review/increased executive powers:

The act mentioned above also restricts access to justice/inflicts on the possibility of judicial review in cases of revocation of citizenship of certain persons (persons identified as “foreign fighters”), in which the person has a four weeks deadline to try an administrative revocation decision before the courts, even if the administrative decision was taken without prior consultation with the person, e.g. because the person is abroad and not checking his/her official electronic mailbox. The Danish Institute for Human Rights finds that there is a significant risk that the time limit can result in that a person can be left with no real possibility of challenging the decision of revocation/stripping of his/her Danish citizenship at the time, when he/she gains knowledge of the decision.

Another two examples are increased powers to the police in terms of **getting access to private homes without a court order**:

Since 1 January 2020, the police have been able to search the home of some sex offenders and remove objects, e.g. computers, from their homes without first obtaining a court order. The legislative amendment also expands the list of places the courts can prohibit convicted sex offenders from visiting. The Danish Institute for Human Rights assesses that the far-reaching powers granted to the police and the consequent interference in the right to privacy exceed what is necessary for supervising convicted sex offenders.

In June 2020, the parliament has adopted similar legislation concerning individuals convicted of terror-related crimes. The Danish Institute for Human Rights assesses that the proposed legislation can result in legal uncertainty with a risk of the supervision being arbitrary.

References

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Functioning of justice systems

See examples above which also impact on effective judicial protection.

In-focus section on COVID-19 measures

Most significant impacts of measures taken in response to the COVID-19 outbreak on the rule of law in the country

In 2020, restrictions have been set in place in Denmark and Greenland impeding the freedom to assembly as well as other human rights limitations in order to limit the spread of the new coronavirus (COVID-19).

Denmark:

- Restrictions on freedom of assembly (from 18 March to 8 June 2020 max. 10 persons could assemble). As of 9 June 2020, this was changed to max. 50 persons – the ban does not apply to private homes or to demonstrations)

- Restrictions on movement (police can temporarily forbid people to gather in popular public spaces if too many assemble in the same spot)
- Access to coercively isolate, treat, vaccinate individuals or submit them to hospital.
- Authorities can submit companies (e.g. phone companies etc.) to give access to relevant data when necessary in order to avoid spread of COVID-19.
- An official app was launched 18 June 2020 in order to help break chains of infection. The app is voluntary to use and uses anonymous data, generated via combined Apple/Google bluetooth solution. The authorities do not have access to data. The app relies on a person to insert an alert if he/she is tested COVID-19-positive. The app will then warn people having been in close contact with the person (<1m) for more than 15 min. during the days, when the person is thought to have been a disease carrier.
- Tightened punishment for COVID-19-related crimes.
- Increased access to expel foreigners for COVID-19-related crimes.
- The borders were closed for inbound travel to Denmark from 14 March 2020 until 14 June. Only Danish citizens can enter the country. Foreign nationals can enter if entry has a legitimate purpose and they show no symptoms of COVID-19. As of 15 June 2020, the borders are open to tourist travel for persons with residence in Germany, Norway and Iceland. The borders are expected to open further by 27 June 2020 to tourist travel for residents in EU/Schengen.

Greenland:

- As of April 2020 : Recommendation (not ban) as to avoid assembling more than 100 persons.
- All flight traffic to Greenland is cancelled by the Greenlandic authorities, so far until 1 June 2020. Only necessary inbound travel was allowed and needed authorisation from Greenlandic authorities. Necessary travel were SAR-operations, medical evacuations, transport in order to uphold critical functions in society etc. People travelling from Greenland (which was allowed from 4 May 2020) could only re-enter under conditions described above. This includes Danish/Greenlandic citizens. As of 1 June inbound travel to Greenland is allowed for 600 persons/week. Conditions apply (negative COVID-19 test, home-isolation for five days after arrival followed by new negative test).
- During 28 March-30 April 2020, all traffic to/from Nuuk was forbidden, excluding critical operations, medical evacuations etc. in order to prevent the spread of COVID-19 from Nuuk (confirmed cases) to other parts of Greenland (no confirmed cases).

- During 18 March-8 April 2020: Temporary bans in Nuuk included bans of assemblies of more than 10 people, closing of shops/malls/restaurants/bars/sport facilities etc, excluding grocery shops. Travel ban as described above (was prolonged after the 8 April).
- During 28 March-15 April 2020: Ban on sale of alcohol in Nuuk.
- The restrictions are generally either time-limited, some apply for three months, others until early 2021, or subject to revision later in 2020.

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

As an independent state-funded Danish institution, the Danish Institute for Human Rights follow directives and recommendations from the Danish government and health authorities. All staff members in Denmark worked from home from 14 March to 14 June and we suspended all travel activities and physical meetings. Online consultations and meetings effective and frequent.

We are in daily contact and dialogue with our local representations around the world to make sure that we follow local recommendations and regulations, and that our staff and partners are not exposed to risk or will put others to risk as a result of our activities.

References

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Estonia

Chancellor of Justice

Independence and effectiveness of the NHRI

International accreditation status and changes in the national regulatory framework

The Chancellor for Justice of Estonia is a non-accredited associate member of ENNHRI. In January 2019, new legislation on the institution came into force, which broadened its mandate to allow it to act as the NHRI in Estonia. The Chancellor of Justice has a broad and strong mandate, including as the National Preventive Mechanism (NPM) under UN CAT, the National Monitoring Mechanism (NMM) under the UN CRPD, and it also performs the functions as the Ombudsperson for Children.

The Chancellor of Justice recently applied for accreditation and was up for undergoing the process in March 2020. However, the accreditation session was postponed due to the outbreak of COVID-19.

Checks and balances

Political parties and the Political Parties Act

In 2018/2019 the Chancellor had to assess several shortcomings in the Political Parties Act that the Political Parties Financing Surveillance Committee has had to deal with in its work. One of the shortcomings in the Act concerns **sanctions laid down for political parties for accepting a prohibited donation**, which in the Chancellor's assessment are not clear, implementable or effective. This is contrary to the principle of legal clarity. The Chancellor contacted the Minister of Justice with a request to initiate amendment of the Political Parties Act.

The Political Parties Financing Surveillance Committee asked for the Chancellor's opinion as to **restrictions on office and activities by members of the Committee**. The Chancellor found that the Political Parties Act does not prohibit appointing a person connected with a political party, including a member of the board or of the audit committee of a political party, to be a member of the PPFSC. Persons otherwise connected with a political party, for example an attorney providing services to a political party, may also serve as members of the PPFSC. In the interests of independence of the Committee, such restrictions should be considered, but the decision can be made by the Riigikogu.

Since elections in 2019 took place for the Riigikogu as well as for the European Parliament, many election-related issues were raised. The Chancellor was asked to check whether the **Estonian electronic voting system meets the requirements for democratic voting**. The Estonian Constitution stipulates that elections must be free, uniform, general, direct, and secret (§ 60). These principles must also be respected in the case of electronic voting. For this, electronic voting must comply with the following conditions: a voter's identity and eligibility to vote is established, each voter has one vote, a voter is able to vote freely, secrecy of the vote is ensured, the vote cast is counted, and the results of voting and elections are correctly established. In brief: the system must ensure an honest result and, in the interests of credibility, monitoring and verifying it must be possible. The Chancellor explained that the system of electronic voting in Estonia complies with the constitutional principles set for elections. Individual verifiability of a vote is not an end in itself. This is also not possible when voting by paper ballot. In order to reduce the risk of selling votes, Estonia uses a system of combined control in electronic voting. Certainly, the technical solution (including verifiability) for electronic voting needs continuous critical assessment and development. Also important are maximum transparency and clear explanation of the system for the public.

Several people asked the Chancellor whether **secrecy of voting is indeed ensured in Estonia**. The Chancellor explained that the procedure for electronic voting (§ 484 Riigikogu Election Act) meets the principle of secrecy of elections (§ 60(1) Constitution). Secrecy of voting is intended to ensure freedom of election. On the one hand, secrecy of voting means anonymity of the vote and, on the other hand, privacy of voting. In the case of electronic voting, the anonymity of a vote is ensured through encryption of the e-vote. To ensure privacy of voting, a so-called virtual polling booth has been created, meaning that a voter may also change their vote when voting electronically.

One individual contacted the Chancellor doubting whether it was lawful that during advance voting outside the polling division of the voter's residence a person is given two envelopes, one of which has the voter's personal identification code written on it. The Chancellor affirmed that a voter's identity is not linked to their choice through that envelope. The outer envelopes with the personal identification code and the inner envelopes with the ballot paper are not opened at the same time. Noting a voter's data on the outer envelope is necessary because that way the polling division committee of the voter's residence can verify that the voter has not voted several times.

During the last election, confusion arose from the **new Population Register Act**. This resulted in a situation where some people could not vote due to absence of their residence data. That is, at the beginning of 2019 earlier residence data changed at the request of the owner of a dwelling and recorded in the register to a level of accuracy stating the city, city district or rural municipality or settlement unit became invalid. As voter lists are drawn up on the basis of the population register data, people who had not renewed their data were excluded from the list of voters. The Chancellor explained that during an election a person's residence can be registered through a simplified procedure; based on a notice of residence submitted during the election a person's address is entered in the population register immediately, and if necessary also to the level of accuracy of a city, city district or rural municipality. After that the person is also entered on the list of voters.

The **prohibition on political outdoor advertising** during the active campaign stage caused confusion because of the very close temporal proximity of elections for the Riigikogu and for the European Parliament. The Chancellor was asked to assess the opinion of the Police and Border Guard Board according to which outdoor advertising of the European Parliament election was also banned during the Riigikogu election. The Chancellor found that the opinion was not contrary to the law. Those running in the Riigikogu election cannot circumvent the prohibition on outdoor advertising that way. If an advertisement presents an independent candidate, a political party or a person standing as a candidate on a political party list running in the Riigikogu election, or their logo or distinctive mark and programme, this cannot be substantively distinguished from advertising in the Riigikogu election.

Therefore, it should be regarded as advertising for the Riigikogu election even if the advertising has an additional purpose. Since the restriction on outdoor political advertising does not fulfil aims set beforehand and restricts the rights of candidates to introduce themselves, the Chancellor repeated the proposal to abolish the restriction in her written report to the Riigikogu. The Chancellor also asked the Riigikogu to abolish the prohibition on active campaigning on election day (except in or close to polling divisions), as this no longer corresponds to the current situation. Ever more people use the opportunity to vote before election day and it is also very difficult if not impossible to control dissemination of advertising in social media on election day. By the time of drawing up the annual report, the Government had approved the proposals prepared by the Ministry of Justice to abolish the restriction on outdoor political advertising and the prohibition on campaigning on election day.

Prior to the 2019 Riigikogu election, the Richness of Life Party contested a provision in the arrangement established by the Board of the Estonian Public Broadcasting (ERR), on the basis of which the ERR gives **preference for participation in election debates on its main channel** (i.e. ETV) to political parties submitting a full list, i.e. including 125 candidates. The Richness of Life Party claimed in its complaint that since the election legislation in force in Estonia does not recognise the concept of a “full list” the ERR has also no right to distinguish between political parties based on such a parameter or discriminate against any of the political parties. The Chancellor replied to the Richness of Life Party that the ERR has the right and under the Estonian Public Broadcasting Act also the obligation to establish rules for covering election campaigns on its channels. In doing so, all political parties and independent candidates should be ensured an opportunity to present their views on ERR channels before the election.

The ERR also has the obligation to ensure the journalistic content and wide audience appeal of campaign programmes (including debates). Thus, in the specific case, the ERR violated neither the Constitution nor the law. However, the Chancellor conceded that the ERR should be consistent and predictable in its rules on covering campaigns and should not change the rules. By establishing the requirement of a “full list” for participation in some election debates, the ERR indirectly directs political parties to expand their lists. Since a deposit is payable for every candidate, which, in the event of failure to exceed the election threshold is non-refundable to political parties (or to independent candidates), this entails a considerable financial risk for political parties not represented in the Riigikogu (and not receiving support from the state budget) as well as smaller political parties.

The Chancellor recommended that the Riigikogu should consider whether **the requirement of a deposit** imposed on political parties participating in the Riigikogu election is justified. Establishing the requirement of a deposit was motivated by the wish to avoid fragmenting the political landscape while seeing strong, stable and economically well-off political parties as participants in the political process. It was also considered important that votes are not dispersed between the candidates of too many political parties in elections and that an excessive proportion of votes not remain below the election threshold. The election threshold functions effectively as a measure to avoid fragmentation of the Riigikogu and the consequent risk of internal political instability. However, a uniform amount of deposit is financially more burdensome on new and smaller political parties which, inter alia, do not receive support from the state budget. This results in an unequal situation before elections and may therefore diminish the desire of smaller and new political parties to run in elections.

The Chancellor also drew attention in her report to the difference in the number of mandates distributed in electoral districts and recommended that the Riigikogu should consider changing electoral districts so as to equalise their size based on the number of voters. The Riigikogu could also consider the possibility to rephrase § 6 of the Riigikogu Election Act and, as of the 2023 Riigikogu election, assign the duty of forming electoral districts to an independent institution, such as the National Electoral Committee. Such a decision would curb the effect of current politics and political party preferences on the organisation of elections and would facilitate implementing changes.

Public information

The Chancellor's Office analysed information provided by cities and rural municipalities on their websites about social services which local authorities are required by law to organise for their residents. Information must be sufficient, accessible and understandable, and diverse modes of providing information should be used. An individual who is not aware of their rights cannot exercise them (memorandums to [Tartu City Government](#), [Maardu Town Government](#), [Tartu Rural Municipality Government](#)).

Public access to municipal council sessions means that everyone may, on the spot, observe voting on agenda items of interest to them. A decision by a municipal council chair to remove from a council session people observing a debate on a public agenda item is not compatible with the principle of public access to local government activities and municipal council sessions. That decision also fails to respect the requirements for exercise of the margin of appreciation and contravenes the Constitution (§ 34 – freedom of movement, including the right of stay; § 44(1) – right to free access to information disseminated for public use).

[The Chancellor drew](#) the attention of the chair of Saarde Rural Municipality Council and municipal councillors to the need to duly respect the rights of visitors at a municipal council session.

Participation of rights-holders: accessibility

Access to elections

In 2019, two elections were held in Estonia: elections for the Riigikogu and for the European Parliament. In this connection, the Chancellor addressed rural municipal and city council chairs and rural municipal and city government mayors with a request to designate as polling stations only those buildings which are accessible to all voters. In cooperation with

the national election service and the Estonian Chamber of Disabled People, information needed by voters with special needs was made more accessible and is now easier to find. Information needed by voters with special needs was added to the elections website at www.valimised.ee. Voters with special mobility needs could use the map application of polling divisions which enables a person to easily find the location of their polling station and obtain information about access to it. The map application showed whether the polling station was accessible independently in a wheelchair and, for example, also with a baby carriage. Since not all polling stations were accessible, during the Riigikogu election the Chancellor repeated her call before the European Parliament election. On the European Parliament election day, the Chancellor's advisers visited polling stations. It was found that alongside easily accessible polling stations there were still stations which voters with special mobility needs could not access independently. Although in the case of elections persons with special mobility needs may decide to vote online or request a ballot box to be delivered to their home, those solutions should not be forced on them. Everyone is entitled to vote at a polling station. In order to ensure that persons with disabilities can independently access all polling stations during the next election, the Chancellor made a proposal to the Riigikogu to lay down the requirement of accessibility of polling stations in election legislation.

Access to e-services

At the beginning of 2019 the Estonian Information System Authority introduced new ID card software Digidoc4, but it turned out that the new version failed to function with screen readers used by visually impaired persons. However, when working with a computer and IT tools visually impaired persons use screen readers that read out the text to them. These people lost the opportunity to safely give digital signatures and verify their validity. Visually impaired people contacted the Chancellor for assistance. For many people with disabilities, e-government means a convenient opportunity to independently communicate with the state and fulfil their duties. With the help of the ID card, they can carry out banking transactions, order food, books and commodities from an e-shop for delivery to their home, enter into contracts, operate as members of the board of an association, etc. However, if something happens with the electronic identity of these people (forgetting the password, the card getting locked, software renewal that is no longer interoperable with the screen reader, etc.), they also lose independent access to the state and the services offered by it. The Chancellor resolved problems related to Digidoc4 in cooperation with the Information System Authority and the Estonian Chamber of Disabled People. The Chancellor's Office asked the Minister of Information about resolving the problems of Digidoc4 as well as more generally about all IT developments and new e-services.

Transparency, data collection

On 12 November 2018, the Draft Implementing Act of the Personal Data Protection Act failed at the final vote in the Riigikogu. The Chancellor had previously drawn the attention of the Riigikogu Constitutional Committee to the fact that between parliamentary readings amendments concerning the Imprisonment Act had been added to the draft without substantive debate and approval (see pages 74–82 of the Draft Act) that would have granted the prison service an unlimited right to collect and retain personal data.

Opposition to that intention was also expressed by the Minister of Education and Research in her letter to the Minister of Justice. According to the Draft Act, the prison service would have obtained an unlimited and unsupervised right to collect and retain data on all people (and, in turn, on people connected with them) who either directly or indirectly provide services to prisons or have to apply for authorisation to enter a prison zone. This would have entailed unjustified and uncontrolled interference with the privacy of an unidentified number of people. Persons concerned would have included, for example, teachers, medical staff, ministers of religion, lawyers and consular workers visiting a prison for work-related duties, as well as their next of kin.

In the Chancellor's opinion, the intended legislative amendments contravened several constitutional principles, including the duty to ensure protection of people's private and family life (§ 26). Certainly, those fulfilling the functions of a public authority in prison should be reliable. This ensures attainment of the aims of imprisonment and security in prison. However, this does not mean that the prison could begin to arbitrarily collect and retain personal data in cases and to an extent not clearly defined, under the mere pretext of ensuring prison security. The prison service can employ other and even more effective measures (e.g. a search) to ensure security in prison.

The Chancellor also criticised the manner whereby an extensive package of amendments is submitted to the responsible Riigikogu committee immediately before the second reading of the Draft Act. That way, members of the committee and factions are deprived of the opportunity to thoroughly consider the legality and necessity of the added rules. Government representatives who brought the amendments to the Riigikogu committee thus also circumvented all the rules of procedure agreed by the Government for dealing with draft legislation (e.g. approvals, constitutionality check, impact analysis). Such aberrant law-making is not compatible with the nature of a democratic state governed by the rule of law. The Draft Implementing Act of the Personal Data Protection Act was passed by the Riigikogu on 20 February 2019 without amendments to the Imprisonment Act.

The Chancellor was contacted by an individual who had served a sentence imposed for a crime committed in the past and whose punishment data in the criminal records database had been expunged. Despite this, the person's criminal past was displayed on the homepage of the Internal Security Service, thus also making it available through search engines. The Chancellor asked the Internal Security Service to assess whether publication of personalised court judgments on its website was compatible with the general principles arising from Article 5 of the General Data Protection Regulation (including lawfulness, intended purpose) and to decide whether and to what extent disclosure of someone's punishment data is justified after punishment has expired. The Internal Security Service removed the person's full name from its homepage.

Good administrative practice

The Chancellor has had to reprimand the [Ministry of Justice](#) and the [Ministry of Social Affairs](#), which had failed to reply to several memorandums and requests for explanation by the deadline.

Põhja-Sakala Rural Municipal Government failed to register a request for an explanation and sought to justify its refusal to reply on the basis that the request lacked a digital signature. However, no legal act stipulates that only documents signed digitally or manually are to be registered. In this case, the rural municipal government was requested to provide information on the draft development plan drawn up by the municipal government, so that no legal basis existed to demand a signature.

The Chancellor has received letters about problems with information exchange between information systems as well as glitches in using information systems. In the European Union, Estonia stands at the forefront in terms of electronic public procurement in all tender procedures. Approximately 10 000 public tenders a year are organised in Estonia with a total value of 2.3 billion euros. In 2018, an amendment to the Public Procurement Act entered into force establishing the requirement that all information exchange in relation to a public tender between the contracting entity and the economic operator (including submission of tenders) must take place electronically, unless otherwise laid down by law. The amendment was based on a presumption that the electronic public procurement register is sufficiently functional, user-friendly and convenient. The Chancellor was contacted by an architect's office which had failed to submit a tender because due to a technical glitch they did not manage to send their competition project to the public procurement register. When trying to upload their work to the public procurement register, the architect's office encountered a technical malfunction related to a temporal restriction on performing operations. The restriction resulted in a situation that if the file could not be

uploaded within 60 seconds the operation was discontinued. Unfortunately, this meant that users of a slower internet connection could not submit their tender.

The Chancellor analysed the incident and ascertained that the public procurement register could indeed not accept files forwarded through a slow data communication channel. Regrettably, this information did not reach the tenderer, so that the architect's office did not succeed in submitting a competition project completed as a result of several months of work. Since the automatic error message did not contain a possible reason for the upload failure and the help desk did not explain this as a possible problem, the principles of good administrative practice were violated. The manager of the public procurement register must ensure that a tenderer is informed of all technical requirements, including those related to submission of documents, and in the event of a technical failure would also receive information about the reasons for failure and possibilities to rectify it.

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Corruption

Regulatory framework

The Chancellor submitted a Memorandum to the Riigikogu Constitutional Committee with a proposal to amend the laws so as to be better able to combat and prevent corruption in local government bodies. On 23 January 2019, the Riigikogu adopted Act (574 SE) amending the Local Government Organisation Act and other related Acts. This legalised some of the proposals by the Chancellor of Justice, the most important of these being the idea to empower the prosecutor's office to claim pecuniary damage caused by a criminal offence from a person convicted of corruption if the local authority itself does not file a claim to that effect against the criminal.

Consequences for political parties accepting a prohibited donation

The Political Parties Financing Surveillance Committee (PPFSC) asked the Chancellor whether default interest applicable (at the daily rate of 0.85% of the overdue amount) for delay in transferring a prohibited donation to the state budget was compatible with the Constitution.

The Chancellor found that this rate of default interest was not unconstitutional. In order to prevent political corruption and ensure fair and democratic competition, it is particularly important that the financing of political parties should be transparent and the rules intended for ensuring this be respected. Consequences of violations should be sufficiently harsh as to make political parties resist the temptation of a prohibited donation. Measures applicable to a violation may only be established and changed by the Riigikogu. When analysing the issue of default interest, the Chancellor found that the sanctions laid down under the Political Parties Act for making a prohibited donation cannot be unequivocally understood and cannot be effectively implemented. Compliance with the rules has, to a large extent, been left to the conscience of political parties. On that basis, the Chancellor sent a memorandum to the Ministry of Justice recommending that precepts issued by the PPFSC for return – or transfer to the state budget – of a prohibited donation should be compulsorily enforceable. The Chancellor also recommended harmonisation of coercive measures, including considering transfer of a prohibited donation to the state budget instead of returning it; specifying the conditions and procedure for reducing a state budget allocation in the event of violation of the rules, and expanding the rights of the PPFSC to request information from third persons. The Minister of Justice found that the initiative for resolving these problems should come from the Riigikogu.

In-focus section on COVID-19 measures

Most significant impacts of measures taken in response to the COVID-19 outbreak on the rule of law in the country

The Estonian Government declared an emergency state on March 12, 2020.

Quick legislative processes have not followed the usual good practices (e.g involving all interest groups, doing full impact analysis etc), but the Chancellor did not find evidence of unconstitutional practices.

Potentially unconstitutional provisions included in some draft bills have been fortunately taken out after consultations. The Chancellor has been participating in consultations and providing opinions in this respect. The Chancellor's head attends the government's cabinet meetings.

Cooperation and consultations with NGOs and human rights advisory bodies is more difficult due to confinement measures, but flow of communications is ensured in particular to report issues on the ground.

There is no evidence that access to justice has been restricted or derogations imposed to fair trial guarantees and court proceeding regulations. Indeed, if possible and lawful the courts are using more written proceedings and online solutions. If possible, the judge postpones a hearing. Those court proceedings that require physical contact are being done following the hygiene rules (e.g in the biggest court rooms to allow distance between people, court rooms are regularly being disinfected etc).

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

The emergency situation has not impacted the independence or the effective fulfilment of the mandate of the Chancellor of Justice (while some impact on consultation and cooperation, as mentioned above), also thanks to e-government tools and digitalisation of many services which allow effective remote work.

The Chancellor of Justice has however been facing an increase of individual submissions and **workload**.

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Finland

Finnish NHRI (Human Rights Centre and its Delegation and Parliamentary Ombudsman)

Independence and effectiveness of the NHRI

International accreditation status and SCA recommendations

In October 2019, the Finnish NHRI was re-accredited with A status. While the SCA understands that the government bill establishing three components as the NHRI (the Human Rights Centre, Parliamentary Ombudsman and Human Rights Delegation) is a source of law in Finland, it encourages the FNHRI to continue to advocate for legislative amendments to further clarify this. The SCA encouraged the NHRI to continue to advocate for the funding necessary to ensure that it can effectively carry out its mandates. The SCA considers it preferable for the Human Rights Centre to also have the ability to table its reports in Parliament for discussion, as is the case for the reports of the Parliamentary Ombudsman.

Developments relevant for the independent and effective fulfilment of the NHRI's mandate

There were no changes in the operating environment (except for COVID-19) or the regulatory framework since the last review by the SCA. However, there are some positive developments concerning the Finnish NHRI. There was a significant budget increase granted by the Parliament for the Finnish NHRI in 2020. The budget was increased to enable six (6) permanent posts to be established, two (2) for the Human Rights Centre (HRC) and four (4) for the Parliamentary Ombudsman. These posts were earmarked mainly for monitoring and promoting the rights of older persons. While the increase as such is positive, it is problematic from the point of view of independence that funding is earmarked and that the Finnish NHRI can't freely decide for which activities funds are used.

Another development relates to the division of labour (defined in a law) of the Parliamentary Ombudsman and the Chancellor of Justice, both supreme guardians of legality and fundamental and human rights in Finland with identical mandates stipulated in the Constitution. A working group set up by the Ministry of Justice to make a proposal on how to clarify and develop the division of labour between the two institutions issued its

report in June 2019. For the Parliamentary Ombudsman e.g. its tasks originating from international treaties are proposed to be taken into account when dividing the tasks. This will have an effect of strengthening the Parliamentary Ombudsman and the Finnish NHRI as it is the Finnish NHRI as a whole that has been designated as the monitoring mechanism based on UN CRPD 33(2). Both institutions are supportive of the reform generally and were participating in the working group. The Constitutional Committee of the Parliament has repeatedly (since 2014) called for the clarification of the tasks. This reform will bring more clarity into the rather complicated architecture of Finnish human rights bodies and their statutory competences.

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- Annual reports of both the Parliamentary Ombudsman and the Chancellor of Justice.
- Reports of the Constitutional Committee based on the annual reports of the Parliamentary Ombudsman and the Chancellor of Justice (since 2014 -).
- Links available upon request. Information available mainly in Finnish and Swedish.

Human rights defenders and civil society space

The situation as regards civil society space and human rights defenders is generally very good. There is a tradition of respecting non-governmental organisations (NGOs) by the Government and civil society organisations (CSOs) are often consulted and included in various advisory bodies, programs and processes. The environment is enabling and the legislative framework provides for the rights to assembly, association etc. The current Government has increased funding for NGOs working on human rights, peace, environment, democracy and the rule of law.

Despite this generally good situation, there are also some negative developments and trends. We have monitored an **increase of (mainly verbal) attacks (mainly) in the social media** by movements or persons opposing human rights, often the rights of migrants and refugees, LGBTI-rights and rights of minorities and indigenous people (Sami) and rights of women and equality. They are mainly non-State actors, but often seem well organised. Some **populist politicians** are also making derogatory statements in the social media, but this has also happened in the plenary session of Parliament. Investigations have been started by the State Prosecutor against members of the Parliament. This requires the

permission of the Parliament. These concern alleged crimes of incitement to violence and hate.

Hate speech on social media appears to bear a **strong gender dimension**. We have observed that female journalists, human rights defenders, politicians, NGO activists tend to be attacked more than their male counterparts and often in sexually explicit manner. There are orchestrated hate campaigns against those who work on human rights, including civil servants. The targeting has even included judges and civil servants working for independent human rights bodies. The Government has plans to strengthen legislation against targeting.

The HRC has monitored the developments carefully and supports the work of the CSOs in various ways, also by providing grants for their monitoring and reporting activities. The HRC is very active in social media providing information and opinions in support of human rights.

References

Sources are mainly media and social media, some reports and research and can be provided at request. Information is mainly available in Finnish and Swedish.

Checks and balances

The Finnish NHRI is closely monitoring how the mechanisms for checks and balances work and how the principles of rule of law, democracy and fundamental and human rights are respected. The Parliamentary Ombudsman has a strong constitutional mandate in this regard.

To assist the HRC in its monitoring and reporting, we have constitutional, criminal law and human rights law experts as well as supervisory authorities included in our Human Rights Delegation (our pluralistically composed advisory body). Overall, the system works well, also during the current crisis. There is a strong historic tradition for the respect of the principle of legality. The Parliamentary Ombudsman (part of the Finnish NHRI) is one of the main guarantors of it as a supreme guardian of legality for the acts of the public administration. There are strong constitutional guarantees for the separation of powers in the Constitution.

There is a **pluralist constitutional review** of legislative processes to ensure compliance with fundamental rights and human rights. There are both ex-ante controls (during the drafting of the Bills and in the Parliamentary process) as well as controls after the legislation has entered into force. The national courts have a role to play as well in accordance with the article 106 of the Constitution. The courts may not need to apply provisions of law they deem to be “manifestly” in conflict with the Constitution. The “manifestly” qualification sets the bar high for the use of this article and as a result the role of the courts has been rather limited.

The **Parliament** can exercise sufficient oversight generally, but there have been some instances in the last years where the authorities (ministries) have not provided sufficient information for the parliamentary committees. The Constitutional Committee has started an inquiry concerning the obligation of the government authorities to provide all the necessary information for the Parliament very recently (in April 2020). The Parliament is not satisfied that it has always received the information it deems necessary for its legislative work.

There is a culture of consultation and modern e-Consulting tools have been developed as well as guidance and tools for legislative drafting. There is an obligation to ensure participation in relation to some groups (the indigenous Sami, persons with disabilities). There is, however, some criticism by CSOs and special groups that the **consultations appear sometimes formalistic or come too late**.

The Finnish NHRI and in particular the Parliamentary Ombudsman provides comments on legislative processes to ensure that laws are compliant with human rights and fundamental rights requirements. The Finnish NHRI is regularly invited to comment, but can also do it on its own initiative. The HRC is included in many governmental working groups as an independent expert on human rights. The HRC comments on draft legislation, especially in its thematic priority areas and on structural issues with impact on human rights.

One of the problems we have observed has been **expedited legislative processes**, which have led to **lack of human rights impact assessments** (and other impacts, financial, social, environmental). Last year the HRC and its Delegation issued a report with recommendations i.a to improve the HR impact assessments in legislative processes aimed at the new Government as it was writing its program after the elections in April 2019. It is evident that the Ministry of Justice has made better law making one of its key priorities and resources and expertise has been increased at the Ministry. The Chancellor of Justice has also increased his reviews of draft legislation and regularly checks them against international human rights standards at an early stage.

The role of the Parliament's **Constitutional Committee** is crucial in the ex-ante control of the compliance of draft legislation with the Constitution. The system continues to function well. Despite the fact that the Committee is composed of members of the Parliament, it has worked mainly by consensus and in keeping with the Constitution and its established practice. The work is supported by competent civil servants and experts are always heard.

No system is without its weaknesses, however, and should the politics change in Finland so that those in power (elected) would not have respect for the rule of law, democratic rules and the constitutional and human rights rights, the system of checks and balances could become weaker or even be sidelined. In an extreme case, a hostile takeover of the Constitutional Committee and the highest Courts would be possible as for some laws to be enacted only a simple majority is required (number of judges in the Supreme Court for example).

The prevailing view continues to be that there is no need for a Constitutional Court in Finland and that the current system serves us well. One of the arguments is that even a Court could be captured as has been seen in some European countries.

During the current corona-crisis and after the declaration of the state of emergency by the Government and the President, the Parliament has continued to exercise its strong legislative oversight role with the Constitutional Committee being at the centre stage. The Parliament has the right to review and either reject or approve the decrees that the Government proposes to implement the Emergency Powers Act.

The conclusion is that our system of checks and balances has served us well even during the time of crisis. There are, however, also views that some more checks and balances might be required, for example a qualified majority for enacting certain laws. There is also a general agreement that some legislative reforms will be necessary once the crisis is over. The Emergency Powers Act has not been entirely suitable for the crisis caused by the pandemic.

References

There are numerous academic articles on the constitutional checks and balances in Finland. It is a topic that is constantly discussed. Main sources can be provided at request.

Functioning of justice systems

Overall, the justice system functions well and its independence is guaranteed. Some reforms in recent years have **strengthened its independence**, such as the establishment of an Agency for National Courts Administration in 2019. In terms of efficiency of the justice system, the length of proceedings continues to be a problem.

A **legal aid** funded by the Government is in place, but does not apply to all kinds of cases and stages of the proceedings. In the last few years, the right to legal aid for **asylum seekers** has been limited by law. The fee provided for the lawyers assisting in these cases in the courts has been very low practically making it not possible for competent lawyers to take up asylum cases. This has also reportedly led to neglect and abuse by fraudulent and incompetent legal advisors with consequences for access to justice. The Finnish NHRI, both the Ombudsman and the HRC, have taken up these issue repeatedly with the authorities. Studies commissioned on the subject have confirmed the need to improve the legal aid for asylum seekers, but so far only the fees have been slightly increased by the Ministry of Justice.

The awareness of the courts on the **rights of persons with disabilities** and the CRPD Convention appears to be limited. There is both anecdotal and case-based evidence pointing to that direction. More research and training is required on this.

Media pluralism

The HRC monitors media pluralism and freedom of speech by following relevant sources, including media and media organisations.

According to World Press Freedom Index 2020, the legal, institutional and structural basis for free media and free journalism in Finland remained intact throughout the year 2019. Unfortunately, meanwhile the abuse of the freedom of speech in the social media in the form of hate speech, stalking and targeting of journalists, with the purpose of silencing them, has increased.

References

- <https://rsf.org/en/finland>

Journalist's right not to reveal the sources

In 2019, Finland's Supreme Court gave an important preliminary ruling / a precedent in Finnish law on the case concerned journalist's privilege. Supreme Court ruled on December 20 that police could not use electronic equipment seized from a journalist's home as part of their preliminary investigation into how the journalist (from Helsingin Sanomat newspaper) got classified material about the country's intelligence capabilities. The Defence Forces had asked police to investigate the case in 2017, and as part of its investigation, police searched journalist's home. During the search, officers took computers, phone, notebooks and USB memory sticks.

The Supreme Court points out in its ruling that "The European Court of Human Rights has consistently emphasized the role of the media in a democratic society". Journalist's right not to reveal the sources is based on Constitution 12 §, European Convention on Human Rights article 10, and UN Convention on Civil and Political Rights article 19. The Union of Journalists in Finland and other media actors praised the decision and highlighted the importance to protect journalist's sources of information.

References

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Hate speech, harassment, and journalists' protection

Increasing hate speech against journalists and its impact on media has been a major concern during recent years, also in Finland. The Union of Journalists in Finland (UFJ) and the union's newspaper, Journalisti, conducted a survey in 2016 for its members to find out how many of them had been threatened because of their work. Out of the 1,400 who answered the survey, one-sixth reported having received some form of threat. Some 40 percent said the threats were related to articles dealing with immigration and asylum. According to the UFJ survey, 14 percent of the female journalists surveyed reported threats of sexual violence. No male journalist reported receiving such threats. Around 5 percent of both genders reported receiving death threats.

Some efforts have been taken against hate speech and help journalist to handle the attacks against them. Since 2017, the Ministry of Justice has coordinated the Against Hate project aimed at stepping up efforts to combat hate crime and hate speech. The project focused

on improving reporting of hate crimes and the operating capacity of the authorities. The project has produced, e.g., material for journalists targeted by hate campaigns.

In addition to hate speech, there is also other alarming phenomenon in regarding to **harassment against journalists**. The ongoing research project at the University of Tampere (2016–2020) focuses on external interference, threats and harassment experienced by Finnish journalists. The main objective of the study is to measure the frequency and methods of external interference in Finnish context and to analyse journalists' personal experiences and views of the phenomenon. The preliminary findings indicate that low-level interference in everyday journalistic practices and mediated verbal abuse are the most frequent types of external interference.

While severe interference is rare, results show that the perceived risk of interference causes concern and self-censorship among the respondents. About 14 percent of journalists told that they have changed the content of their work due to experienced pressure, and some 44 percent used consciously certain methods and actions to tackle the interference. Judicial pressure seems to be used occasionally, with 35 percent of respondents having been threatened with court cases and 25 percent with lawsuits for damages at least once during the reference period.

The results are in line with previous Nordic and European studies, and underline how external interference may have detrimental effects on journalistic autonomy also in countries with strong legal, institutional and cultural safeguards of press freedom. The Union of Journalists in Finland (UFJ) has proposed in its statement in 2019 that these cases should not be complainant offences, and threats against journalist should be aggravating factor for the punishment.

References

- <https://oikeusministerio.fi/en/project?tunnus=OM005:00/2018>
- <https://journalistiliitto.fi/wp-content/uploads/2019/06/Journalists-and-hate-speech.pdf>

Access to information and public documents

A recent media study (Hiltunen, 2018) revealed that nearly half (48%) of the journalists had experienced **withholding or obstruction of access to public information**. Also other studies have shown problems in government authorities' ability and willingness to provide public documents when requested, despite the Finnish Act on the Openness of Government Activities ensuring broad access to all material not specifically labelled restricted. This is noteworthy considering that in The Worlds of Journalism Study (WJS, 2018) survey, 40 percent of Finnish journalists regarded access to official information as either "very" or "extremely" important to their work.

Media ownership, pluralism, transparency of media ownership and government interference

Regarding media pluralism, one area of concern has been continuous **concentration in media ownership**. According to Centre for Media Pluralism and Media Freedom (Media Pluralism Monitor 2020), few companies dominate each media sector. In the TV broadcast sector, the four largest companies hold 92 percent of the audience and 97 percent of revenues. The four largest companies in the radio market hold 80 percent and 92 percent; and the four largest companies in the newspaper market hold 59 percent (audience) and 64 percent (revenue).

General competition legislation applies to media companies, but its means and scope are geared toward facilitating competition, not plurality. Some of Finland's largest media companies are active in two or more fields, and the four largest companies have 65 percent of the newspaper, television, radio, and online advertisement markets' revenues.

Finnish law does not prohibit this level of concentration, as long as it does not result in a situation that constricts effective competition. Finnish legislation does not set additional transparency requirements for media companies.

Media regulatory authorities and bodies

The Council for Mass Media (CMM) in Finland is a self-regulating committee established by publishers and journalists in the field of mass communication for the purpose of interpreting good professional practice and defending the freedom of speech and publication. The Council also addresses the methods by which journalists acquire their information. The Council does not exercise legal jurisdiction or public authority. The CMM

has adopted the Guidelines for Journalists, which are the main code of conduct for the profession.

Any person who considers that there has been a breach of good professional practice by the press, radio or television may bring this to the attention of the Council. The complaint process is free of any charge. If the Council believes that the media has breached good professional practice, it issues a notice, which the party in violation must publish within a short time span. If the media that has received the notice does not publish it, the notice will be otherwise made public.

The majority of the Finnish media have signed the Council's Basic Agreement, whereby the Council can directly handle any complaints that concern them. Under certain circumstances involving important principles, the Council can also independently initiate an investigation.

The CMM (2016) has acknowledged a rising trend in using their self-regulatory procedures to pressure and harass journalists. As a result, the Council has publicly declared that complaints made with these motives will be discarded outright. The CMM has suffered lack of resources as the amount of complaints have increased, and the Council has decreased the number of cases it takes into consideration. The critics of the CMM argue that it concentrates solely on individual cases instead of giving statements also on wider matters of principle regarding journalism.

References

- Council for Mass Media Guidelines for Journalists:
https://www.jsn.fi/en/guidelines_for_journalists/

Corruption

The Finnish NHRI, namely the Parliamentary Ombudsman deals with some aspects of corruption within its supervision of the right to good public administration. It can investigate complaints and take own initiatives relating to the right to good public administration, including access to public information. Issues relating to the conflict of interest also come up in this regard.

As explained in the section on media pluralism, the **right of access to public information** is protected by the Finnish Act on the Openness of Government Activities, but there are often problems relating to its practical implementation. As media and journalists are

instrumental in revealing malpractices and conflict of interests within public administration, this is a real problem.

Finland currently lacks a systematic and structural approach to the prevention of corruption. There have been cases of conflict of interest for example in the **procurement in the public sector**. Another area of concern is the question of **revolving doors**. In recent years, this has been in particular a concern within the health sector (due to major health care reform ongoing where people moved from public positions with information to the health care companies). There should be more clear regulations for situations when persons move between positions of public office to the private sector.

The findings of GRECO, the Council of Europe anti-corruption body in its report summarized their concerns, which included the conflict of interest and revolving doors as recurring problems in Finland and needing better regulation. Overall, the GRECO report is an accurate situational analysis of the type of issues we face in Finland despite its very high ratings in transparency and corruption indexes. Structural corruption and unethical conduct and corrupt practices do exist in Finland.

One more example is that certain types of corrupt practices relating to exports can fall through the cracks in the criminal law in Finland due to lack of evidence at the receiving country. Finland has made a reservation to the Council of Europe Convention on corruption and has not criminalized **trading in influence** (Art 12.). Having a specific crime of trading in influence in the criminal code could help with these types of cases to reach the conviction.

In-focus section on COVID-19 measures

Most significant impacts of measures taken in response to the COVID-19 outbreak on the rule of law in the country

The Finnish HRC has been monitoring and analyzing legislation and regulations passed during the states of emergency in Finland and has been involved in the discussions on the restrictions and their compliance with human rights. Particular focus is on **people in vulnerable situations**, such as **older persons** and **persons with disabilities**. The HRC has developed a designated website for COVID19.

The Office of the Parliamentary Ombudsman has received more than 100 complaints related to the state of emergency and the coronavirus pandemic. The Office has also begun working on several issues at its own initiative. The complaints have concerned all

branches of administration. Many of the complaints are related to **health care, social welfare and social insurance**. There have also been large numbers of complaints concerning **education** and the **supreme organs of the State**.

The Parliamentary Ombudsman has begun investigating two complaints concerning the restrictions on crossing the Uusimaa County border. The Ombudsman is also investigating a complaint in which a person with a disability was denied the possibility of receiving respirator treatment in advance (2480/2020) and one concerning the operations in a residential unit for people with disabilities during the coronavirus epidemic (2219/2020).

During the pandemic, there is a greater need for supervision in elderly care, but different means are now required to supervise these sites than at other times. Inspections mainly take place by telephone and videoconferences. The nursing staff play a key role in providing information. Relatives and elderly people are also being interviewed. The Deputy-Ombudsman is monitoring the ways in which municipalities implement oversight during the state of emergency, as well as the obligation of personnel to contact the Regional State Administrative Agency if any irregularities occur.

The Ombudsman has begun an investigation and requested information from the Finnish Immigration Service on how the coronavirus epidemic has been taken into consideration in detention units for foreigners and reception centres (2138/2020).

The Deputy-Ombudsman is investigating the actions that municipalities are taking during the state of emergency with regard to reducing homelessness and arranging social welfare and health care services for homeless people. Homeless people are in an even more difficult situation during the coronavirus pandemic.

Some of the pending complaints have already been resolved. For example, a complaint concerning contact with children taken into foster care (2130/2020) is available for viewing (in Finnish) at www.oikeusasiamies.fi.

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

The main challenge is that almost all staff work remotely, although by and large it works well.

The main substantive concern we have is lack of access to care homes, prisons, detention facilities due to the risk of infection. This is causing frustration and there are many reports of deaths in care homes also in Finland.

References

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France

French National Consultative Commission on Human Rights (CNCDH)

Independence and effectiveness of the NHRI

International accreditation status and SCA recommendations

The French NHRI was re-accredited with A status in March 2019. The SCA noted that the extension of the NHRI's mandate was not supported by the provision of a sufficient level of funding. Also, the SCA underlined the need for a clear limit to the members' term of mandate and an explicit broad protection mandate in the law. In this regard, the SCA welcomed the CNCDH's efforts in carrying out its protection mandate in practice. Finally, the SCA encouraged the NHRI to continue strengthening its cooperation with other national bodies.

Developments relevant for the independent and effective fulfilment of the NHRI's mandate

No significant changes took place in the environment in which the CNCDH operates. It however wishes to be more regularly consulted on any draft or proposal of legislative texts that could have an impact on human rights or IHL including during state of emergency.

Changes in the national regulatory framework applicable to the NHRI change since the last review by the SCA

No change has occurred in the regulatory framework applicable to the CNCDH since the last review by the SCA. The CNCDH is accredited with Status A and fully complies with the three key Paris Principles, independence, pluralism and vigilance. This accreditation offers the guarantee that the CNCDH is a credible and independent actor, which provides reliable and concrete information to the human rights international monitoring mechanisms and takes a critical look at the way France respects its international human rights and international humanitarian law's (IHL) obligations.

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. Furthermore, the CNCDH holds four specific mandates as independent national rapporteur: Fight against racism; Fight against trafficking in human beings; Implementation of the UN Guiding Principles on business and human rights; and more recently Fight against anti-LGBTI people hatred. It thus occupies a unique position in the French institutional landscape and contributes to strengthen the rule of law.

References

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Human rights defenders and civil society space

Several infringements on human rights (or risks thereof) having a negative impact on civil society space and/or reducing human rights defender's activities occurred these last few years.

The CNCDH attaches great importance to safeguarding, and, if needed, extending, a **public space for debate and expression of opinions**, which is essential for democracy and rule of law. It notes with concern that France is regularly condemned by the ECHR for violations of Article 10 of the European Convention.

The CNCDH provides public authorities with independent advice when it seems that legislative drafts and proposals (or practices) violate freedom of expression. It has for instance done so regarding the law adopted in 2018 to address **fake-news** in digital time during election campaigns and alerted about the risks for the freedom of expression, the freedom of the press and the right to information. Likewise, the CNCDH expressed concern about the law proposal to transpose the EU Directive on **trade secrets**, since several dispositions violate the right to information and freedom of expression and weaken journalists and whistleblowers. The CNCDH pushes for a **better protection of whistleblowers**, in particular because of the prior duty to notify the employer of an offence/act contrary to the public interest or the length of procedures to enjoy whistleblowers status.

The freedom of expression is however not absolute, as reminded the CNCDH in its *Opinion on the fight against online hate speech*, or regularly in its annual report on the fight against racism, xenophobia and anti-semitism.

The CNCDH is also concerned about significant restrictions of the **freedom of assembly and demonstration**, whereas demonstrations are inherent to democratic debate.

Particularly worrisome is the use of the normative framework of the state of emergency declared after the terrorist attacks in 2015 to prevent demonstrations of ecologists or trade unionists.

In the context of the “*gilets jaunes*” demonstrations, the CNCDH alerted French authorities, and European and international human rights organs, such as UN Special Procedures or the Commissioner for Human Rights of the Council of Europe, about violations of freedom of assembly and violence committed against citizens and journalists in that context. Moreover, the CNCDH is concerned about the law adopted in 2019 to reinforce and guarantee public order during demonstrations. It alerted the Legislator, as well as the Constitutional Council, and denounced the extension of administrative police powers (preventive prohibition to demonstrate) and the creation of a new offence (concealment of the face during a demonstration and extension of additional penalties). Eventually, the first one was declared unconstitutional.

On another matter, despite positive developments in favor of the **help to migrants**, humanitarian assistance provided to them, especially at the border, can still be prosecuted.

Through its mandate as an NHRI, as well as its composition, the CNCDH contributes to the existence of a civil society space. It also provides a steady support to the activities of Human Rights defenders, amongst others through regular meetings with Human Rights defenders of other countries or the annual attribution of the Human Rights Prize “Liberty, Equality, Fraternity”.

References

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- Loi n°2018-670 du 30 juillet 2018 *relative à la protection du secret des affaires*;
- Loi n°2019-290 du 10 avril 2019 *visant à renforcer et garantir le maintien de l'ordre public lors des manifestations*;
- CNCDH, Communiqué de presse du 25 mai 2018, *Lutte contre les fake news : des risques pour la liberté d'expression et le droit à l'information*;
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- CNCDH, Communiqué de presse du 10 janvier 2019, *Quand la logique sécuritaire heurte la liberté fondamentale de manifester*;
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- CNCDH, *La solidarité n'est pas un délit*, Communiqué de presse du 18 mai 2017;
- CNCDH, *Prix des droits de l'homme de la République française « Liberté, égalité, fraternité »*, Edition 2019, 10 décembre 2019;

Checks and balances

The system of the Fifth Republic is characterized by a strong role vested in the President of the Republic and the Government. They possess broad powers under the Constitution, reinforced in practice when presidential and parliamentary majorities are aligned which corresponds to the regular functioning of the political institutions. As a result, the President conducts in practice the national political agenda, with the Government lead by Prime Minister, and can count on a strong majority within the National Assembly. The executive thus remains predominant, which weakens the Parliament's role to make laws and to monitor the Government's action. This is still the case despite several constitutional

revisions aiming at strengthening the Parliament's powers, such as the large-scale reform of 2008.

With a strong majority within the National Assembly, the Government uses certain powers allowing it to ensure its predominance in the legislative process as the **accelerated legislative procedure**. A significant number of laws, **even large-scale reforms**, were adopted following the accelerated procedure, such as the Asylum and Immigration Law (2018), the Law of the Justice reform (2019) and more recently the draft bill on pension reform. The CNCDH deplored on many occasions the frequent use of this procedure regarding many bills, outside any emergency requirement, in several areas that have direct impact on public freedoms and human rights. This process **restricts significantly the parliamentary debate**, essential in a democracy.

More specifically, the lack of parliamentary control is prominent within the framework of the **fight against terrorism**. Several measures adopted in this context give significant powers to the executive. Despite the creation of a monitoring mechanism by the law of strengthening international security and the fight against terrorism, it does not grant the parliamentarians with enough prerogatives to exercise sufficient control, as required by a strong rule of law. In addition to its opinions adopted on this issue, the CNCDH held events to alert on the abuses in the context of terrorism. For instance, a seminar, co-organised by the CNCDH, was held on November 2019 on the impact of counter-terrorism policies on human rights.

The CNCDH monitors and regularly reports on the **execution and implementation of the ECHR's judgments**. A considerable number of judgments condemned France for the conditions of detention of prisoners and prison overcrowding. This year, the ECHR condemned the French State in the case JMB et autres (in which a third party-intervention was submitted by the CNCDH) for inhuman and degrading treatment and lack of effective remedy at the national level. Despite a decision already adopted in 2015 in this sense (Yengo), national authorities have not yet taken adequate measure to comply with the judgments of the Court to improve prisons conditions. For example, no effective measures were taken to resolve the overcrowding and there is a lack of legal provisions allowing prisoners to seize the judge to prevent the violation of human dignity. The CNCDH is vigilant to alert the Government and Parliament on that matter and to provide independent information to the Committee of Ministers.

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Functioning of justice systems

The last significant justice reform was undertaken by the **Law of March 23rd 2019**; part of a movement of rationalization initiated a few years ago that endangers fundamental human rights, in particular **access to justice and courts**, yet essential to the rule of law. The CNCDH alerted the parliamentarians that the budgetary and political policy choices made would compromise access to a high-quality system of justice.

In **criminal matters**, access to an independent judge is undermined for both the victim and the perpetrator, in particular by the shortening of procedural timeframe ; the proliferation of rapid methods to bring cases before courts ; the increase of offences that can be tried by a single judge, thus undermining the principle of collegiality, essential for the

independence and impartiality of the judiciary ; or by the extension of the use of videoconferencing. Also concerning is the strengthening of the role of the public prosecutor (whose status does not meet Article 6 ECHR's requirements) and of investigative powers, which marginalizes judges, at the expense of the rights of the defense and the adversarial principle. Moreover, the objective to promote sentence adjustment to reduce prison overcrowding is unlikely to be achieved without the extension of the judge's role and the granting of more resources.

In **civil matters**, the simplification of procedures was accompanied by a decline in access to the courts, particularly for vulnerable persons, with the removal of certain local courts or because digital referral does not take the digital divide into account. The generalization of compulsory legal representation should have considered **access to legal aid and its cost**. Finally, the increasing use of **pre-trial amicable settlement methods** should be accompanied by the appropriate support, especially for persons in need.

Regarding the ongoing reform of the **juvenile criminal justice system**, the CNCDH expressed the opinion that the hardening of the criminal arsenal was not justified. The reform seeks to speed up procedures, without enough emphasis put on the importance of education, which should take priority over repression. The CNCDH issued several recommendations, including to ensure a specialized justice to respect the best interests of the child and expressed concern about the numbers of minors deprived of their liberty.

In a study about human rights in the **overseas territories**, the CNCDH stressed the difficulties faced by citizens to have access to resources to defend their rights, which impedes their access to law and justice. The lack of interpreters, law professionals and jurisdictions as well as their congestion are particularly worrisome.

The CNCDH also pays special attention to **asylum and migrants rights reforms** and considers that significant modifications of asylum procedure brought by the Law of September 10th 2018 violate the asylum seekers' rights. This is the case, amongst others, with the development of accelerated proceedings, the reduction of the time to appeal before the National Court for Right of Asylum and the modification of the time-limit to apply for legal aid; which has an effect on the right to an effective remedy.

References

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Media pluralism

The press and the media in France are generally free. However, journalists are exposed to different threats preventing them from the normal exercise of their professional activities and inform the public. **Acts of violence committed by police forces against journalists** have increased considerably over the past year. This violence reached high levels especially during the coverage of the Yellow Vest protests (Gilets Jaunes) and the demonstrations on France's pensions reform. During those demonstrations, a number of journalists have been severely injured due to the excessive use of force by law enforcement officers (hand fractures, broken ribs and facial injuries). Moreover, cases of intimidation of journalists have even been reported.

Pressure and intimidations against journalists to reveal their sources were also reported. Several journalists have been summoned by French intelligence service in connection with their work. Most of these cases are related to investigations led by journalists on sensitive political subjects involving homeland security or national defense. For instance, in 2019, the General Directorate for Internal Security (DGSI) questioned and summoned journalists from Le Monde and Disclose because of articles on France's arms export to Saudi Arabia and United Arab Emirates or in the context of the Benalla affair.

On another note, a law was adopted in 2018 to address **fake-news** in digital time during election campaigns. The CNCDH recognized the legitimacy of preventing and fighting

against attempts to manipulate public opinion during election period. However, the institution alerted on the lack of definition of the term “fake news” and criticized the new proceedings for interim relief (procédure de référé) that could be subject to political instrumentalization during election campaigns. Furthermore, prerogatives of the French Media Regulatory Authority (Conseil supérieur de l’audiovisuel– CSA) have considerably increased. Thereupon, the scope of the administrative police powers thus entrusted to the CSA is potentially dangerous and threatens to undermine many aspects of media pluralism.

The CNCDH is very committed to press pluralism and freedom of journalists. For instance, the institution welcomed a delegation of six journalists from Pakistan. A meeting was held on February 6 with the members of the CNCDH to discuss the human rights situation, media freedom and pluralism in both countries. At this moment, an opinion on freedom of press is currently under discussion at the CNCDH.

References

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Corruption

Corruption jeopardizes democracy, threatens the pre-eminence of the rule of law, disrupts the legislative process, the principles of legality and legal certainty, introduces a part of arbitrary in the decision process and has devastating impact on human rights. The CNCDH regularly addresses this issue.

In the context of **moralization of public life** following cases of suspicion related to laundering of tax fraud by high political representatives, the CNCDH for instance called for strong symbolic measures to ensure the probity of public life in 2013. It addressed several recommendations, related to the creation of a public financial prosecutor, the lifting of the tax administration’s monopoly to initiate criminal proceedings and encouraged for more transparency regarding the elected representatives’ estate, as the Government introduced several draft laws in that context. Since then, a public financial prosecutor was created and the tax administration’s monopoly partially lifted. Regarding more specifically the CNCDH, its members have to establish declarations of assets and interests for ethical and exemplarity purposes since 2016.

More recently, the CNCDH welcomed the adoption of the **Law on transparency, fight against corruption and modernization of economic life** since it strengthens the French legislative arsenal in that field and creates a general framework for the **protection of whistleblowers**. Before its adoption, it however suggested several amendments. For instance, the French Anti-Corruption Agency (AFA), attached to the Ministry of Justice and the Ministry of Budget, falls short of the UN Convention against corruption requirements and the GRECO's recommendations regarding independence, and should have the status of independent administrative authority.

The CNCDH also addressed recommendations to broaden the definition of interest representatives that try to influence public decision, or to guarantee more equity and transparency in lobbying activities. The effective protection of whistleblowers contributes to reinforce transparency and democratic responsibility since the freedom of expression and the right to seek and receive information are essential to the functioning of a genuine democracy. This law represents an important progress in that direction, but seems insufficient to ensure effective protection of whistleblowers. The CNCDH is currently working on the evaluation of its implementation, in the context of the transposition by France of EU whistleblower Directive 2019/1937, and will formulate propositions in order to improve it.

It may also be noted that the CNCDH plays a role in promoting and evaluating the fight against corruption by public and private businesses in its role as national independent rapporteur on **business and human rights**, as well as on **human trafficking**. Its first report on the implementation of the United Nations Guiding Principles on Business and Human Rights will soon be adopted.

The fight against corruption and, more globally, the promotion of the rule of law and confidence in institutions, is part of the **Sustainable Development Goals** that the CNCDH promotes, for instance in the context of business and human rights or in its publications underlying the links between development, environment and human rights.

References

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- CNCDH, *Entreprises et droits de l'homme : avis sur les enjeux de l'application par la France des Principes directeurs des Nations Unies*, 24 octobre 2013;
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- CNCDH, *Avis sur le droit à un environnement sain dans les Outre-mer*, 17 octobre 2017;
- CNCDH, *La lutte contre la traite et l'exploitation des êtres humains*, 2015

In-focus section on COVID-19 measures

Most significant impacts of measures taken in response to the COVID-19 outbreak on the rule of law in the country

A **State of Health Emergency (SHE)** was established on March 2020 to deal with the health crisis caused by the COVID-19 pandemic. This regime constitutes an exceptional measure within the French legal system and increases notably the power of the executive branch, on one hand, the prerogatives of the Prime Minister and the Minister of Health and, on the other, the competences assigned to the prefects. In this context, these authorities can take a series of measures to limit public freedoms. Moreover, the Government can take measures by ordinance that can directly affect a whole series of fundamental rights in vast and varied fields, especially economic and social rights.

As a result, this regime significantly alters the balance of power. The **role of the Parliament is considerably reduced** as the organ is mainly informed by the Government on the measures taken under the SHE. Its control is thereby drastically weakened as it can

intervene only to extend the SHE one month after its declaration by the Council of Ministers.

Moreover, the CNCDH considers that the **reduction of judicial review**, which is an essential component of the rule of law, is very alarming given the extent of the measures taken in the framework of the SHE. The institution especially deplores the adoption of the organic law that **suspends the constitutional review of laws** through priority preliminary ruling on constitutionality. Also, an ordinance adopted during this state of emergency closes some administrative courts, whose control is essential due to the extended powers of the executive branch. Moreover, the judicial activity has considerably been reduced, whereas the right to have access to justice is a pillar of the rule of law and justice an essential public service.

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

Despite the lockdown, the CNCDH continues to fulfil its control and advisory missions in the field of human rights. The institution has been particularly active since the beginning of the declaration of the SHE. One of the first activities was the **establishment of an observatory on the SHE and the lockdown**. Its role is to control and monitor the application and the implementation of measures having an impact on human rights, to identify the violations of these rights and public freedoms and to provide recommendations to public authorities. To date, the Observatory issued four letters, including on child welfare, housing and persons living in poverty. The CNCDH follows the situation in the field thanks to its members and especially focuses on the most vulnerable people. Furthermore, the institution adopted three opinions related to the respect of human rights within the framework of the SHE: access to justice, digital tracking and rule of law. Finally, the CNCDH alerted national authorities at the highest level of risks of human rights violations in the context of the COVID-19 outbreak. The President of the CNCDH sent two letters to the Prime Minister concerning the bill establishing the SHU and the one extending it.

References

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- CNCDH, *Observations du président de la CNCDH sur le projet de loi sur l'état d'urgence sanitaire*, 19 mars 2020;
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- CNCDH, *Avis sur le suivi numérique des personnes*, 28 avril 2020;
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- CNCDH, Lettre n° 2 de l'Observatoire parue le 15 avril 2020 - la protection de l'enfance;
- CNCDH, Lettre n° 3 de l'Observatoire parue le 21 avril 2020 - le logement;
- CNCDH, Lettre n° 4 de l'Observatoire parue le 24 avril 2020 - les personnes en situation de pauvreté.

Georgia

Public Defender (Ombudsman) of Georgia

Independence and effectiveness of the NHRIs

International accreditation status and SCA recommendations

The Georgian NHRI was [reaccredited](#) with A status in October 2018. The SCA encouraged the NHRI to continue to advocate for amendments for a more transparent and broader selection and appoint process of the Public Defender. It also raised the need for the NHRI to be provided with sufficient funding to carry out its multiple mandates effectively.

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

Since 2015, the Public Defender's Office (hereinafter PDO) has been repeatedly emphasizing the need of strengthening the Public Defender's mandate as equality body. In response, in May 2019, under the Organic Law on the Public Defender of Georgia, the entities of private law became subject to the same legal regulation as public entities. In particular, the law obligated the legal entities of natural and private law to provide the Public Defender with information necessary for the examination of alleged discrimination. At the same time, the Public Defender has been empowered to apply to courts against the private legal entity or the association of entities, like public agencies, with the request to comply with the Public Defender's recommendation. In addition, the deadline for applying to the court concerning alleged discrimination increased from three months to a year.

As to the environment in which PDO operates, it should be noted that on 21 January 2020, the Public Defender (Ombudsman) presented its special report to the Georgian Parliament's Committee on Human Rights and Civil Integration to raise its concerns that some prison administrations were allowing systems of "informal governance" by inmates, resulting in risk of violence and ill-treatment. During this parliamentary hearing, and as a response to these findings, the Minister of Justice discredited the report and questioned the professionalism of the Public Defender's Office.

The Minister of Justice also exposed two video recordings of meetings between the Georgian Public Defender's representatives and prisoners, and the same videos were published on the social media of the Ministry of Justice, without any regard to privacy or confidentiality safeguards. Days later, penitentiary staff notified the media and announced

online and on social media the names of prisoners with whom the Ombudsperson had met. It is noteworthy that the Organic Law of Georgia on the Public Defender of Georgia prohibits any kind of video-audio surveillance of a meeting between the Public Defender's representatives and prisoners by the Ministry of Justice.

As the video footage depicting the meeting between one of the representatives of the Public Defender and an inmate shows no unlawful action and as the purpose of archiving the video is not clear either, the Public Defender believes that archiving videos without legitimate purpose and retaining them for a long time evidently represents violation of the norms of the Organic Law of Georgia on the Public Defender. In addition, the disclosure of identifiable video footage of two representatives of the Public Defender violated the requirements of the Law of Georgia on Personal Data Protection.

These unfortunate developments clearly demonstrate attempted Interference with and influence on the Public Defender's Activities.

References

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- Public Defender Addresses State Inspector to Study Lawfulness of Actions of Minister of Justice - <https://bit.ly/3aq7bK0>
- Public Defender's Special Statement on Attempted Interference with and Influence on Public Defender's Activities - <https://bit.ly/2RXHnhZ>
- ENNHRI Statement in Support of the Georgian Public Defender (Ombudsman) - <https://bit.ly/2Kl8lqa>
- Public Defender Responds to Fining of Ministry of Justice and Special Penitentiary Service - <https://bit.ly/3anDXLW>

Human rights defenders and civil society space

The Public Defender of Georgia drew attention to the challenges faced by the human rights defenders working in non-governmental organizations or independently in various countries, including within Europe as well as to the recent developments in Georgia. The Public Defender decided to dedicate a separate chapter to such an important topic in her annual report of 2018 and 2019. (1)

In recent years, a number of statements were made by high ranking officials to discredit non-governmental organizations and their managers working on topics necessary for the

democratic development of Georgia, such as prevention of corruption, protection of human rights, monitoring of proper functioning of state institutions and elections. This was accompanied by a large-scale smear campaign, in particular on social networks, against chairpersons of non-governmental organizations. Eka Gigauri, Executive Director of Transparency International Georgia, for example, has pointed to the likelihood of involvement of the ruling political party in the attacks⁽²⁾. Defamatory and insulting posts are spread on social media, in particular on Facebook, by a number of individuals and groups, although these come from seemingly fake accounts preventing the identification of specific individuals. Despite the diversity of the authors, the posts are very similar in content and a large part of them seem to be sponsored. In April 2020 Facebook removed 511 Pages, 101 Facebook accounts, and 122 Groups, and 56 Instagram accounts for engaging in coordinated inauthentic behaviour in Georgia. ⁽³⁾

It should also be noted that women and those LGBT+ rights defenders who self-identify with the LGBT+ community are under increased risk of violence. The analysis of the cases examined by the PDO shows that cyber-threats and cyber-bullying are the major forms of violence. The response of law-enforcement agencies to these crimes is not effective and fails to respond to the scale of the problem. According to the information supplied by the Prosecutor's Office of Georgia, in 2018-2019, criminal prosecution was instituted against 4 persons for alleged crimes committed against human rights defenders.

The Public Defender's Office has examined cases involving alleged violence against women and LGBT+ rights defenders. One case involved physical assault, cyber-attack and threats in relation to an LGBT+ rights activist on the International Day against Homophobia and Transphobia at an anti-homophobic rally. In another case, there were cyber-threats against an activist who openly criticized voicing anti-homophobic messages by a public figure. The Public Defender also examined a case against a woman human rights defender who received cyber-threats because she had recorded and posted educational videos on sexual and reproductive health and rights.

The Public Defender of Georgia addressed these cases with a statement and expressed concern that this worrying trend threatens the democratic development processes in the country. At the same time, the Public Defender called upon the authorities to be guided with internationally recognized democratic standards for the protection of human rights defenders.

In 2019, following the request from Public Defender, representatives of PDO participated in a three-day intensive training conducted by the OSCE / ODIHR. During the training, international human rights standards were discussed, as well as effective monitoring and

reporting methods. In addition, taking into account the existing challenges in terms of the proper protection of human rights defenders, PDO developed a guiding document that analyses the international standards of the notion of human rights defender; highlights the basic obligations imposed on governments for their protection; defines the role and functions (including the Marrakesh Declaration) of NHRIs and with that in mind, prescribes the measures, which PDO will implement for the purpose of creating a safe and supportive environment for human rights defenders.

References

- (1) The Situation in Human Rights and Freedoms in Georgia 2018 - <https://bit.ly/2VFoLUU> p.120; p.141; The Situation in Human Rights and Freedoms in Georgia 2019 - <https://bit.ly/2Koa9o0> p.250
- (2) Available at: <https://bit.ly/2tRPPTw> .
- (3) Available at: <https://about.fb.com/news/2020/05/april-cib-report/>

Checks and balances

The PDO within its mandate observed all stages of the selection of Supreme Court judicial candidates and actively participated in the hearings of the selected 20 candidates at the Parliament of Georgia. During this process the main focus of the Public Defender's monitoring concerned the respect of procedural rules, the practical application of the principles and safeguards enshrined in domestic laws and compliance of the process with international standards.

In particular, the observation of the selection process of Supreme Court judges in the High Council of Justice (hereinafter HCJ) by the Public Defender identified many problems that had an essential impact on the fairness of the process, including: arbitrariness of decision-making in the High Council of Justice, lack of safeguards to avoid conflicts of interest, lack of transparency and full publicity of the process, absence of the opportunity of appealing against the decisions made by the Council.

Furthermore, PDO requested the OSCE Office for Democratic Institutions and Human Rights (hereinafter ODIHR) to issue opinion on the controversial draft amendments relating to the appointment of Supreme Court judges of Georgia. In its opinion ODIHR confirmed PDO's concerns and noted that the modalities for the HCJ to select candidates by secret ballot undermines the merits-based selection system and should be replaced by a procedure whereby the HCJ would adopt a summary of majority justification for the

ranking of candidates and their nomination in light of the clearly defined selection criteria. Moreover, the Draft Amendments should specifically regulate the issue of conflict of interest in the context of nomination of candidates to Supreme Court judgeship by the HCJ. Finally, unsuccessful candidates should have the possibility to challenge the HCJ decision before a judicial body.

The Public Defender issued 13 public statements concerning the flaws in the selection process; dedicated sub-chapter to this topic in the Parliamentary Report of Public Defender of Georgia; voiced concerns on the irregularities in the procedure of the appointment of judges at the plenary session of the Parliament of Georgia; studied a plethora of materials to shed light on qualifications of candidates and published special Monitoring Report on the Selection of Supreme Court Judicial candidates by the High Council of Justice of Georgia.

On 1 November 2019, Public Defender filed a constitutional lawsuit with the Constitutional Court of Georgia and requested that the rule of selection of Supreme Court judicial candidates by the High Council of Justice be declared unconstitutional. In the constitutional complaint PDO asserts that the regulations in force fail to ensure that the most competent, conscientious and impartial candidates are selected for the office of judge of the Supreme Court of Georgia thus violating the principle of fair trial.

References

- Public Defender of Georgia's Monitoring Report on the Selection of Supreme Court Judicial Candidates by the High Council of Justice of Georgia - <https://bit.ly/3akM0sU>
- Opinion on draft amendments relating to the appointment of Supreme Court judges of Georgia, OSCE/ODIHR, April 17, 2019, Warsaw. - <https://bit.ly/2VrUkmj>
- The report of ODIHR on the First Phase of the Nomination and Appointment of Supreme Court Judges in Georgia: <https://bit.ly/2PYzxUX>

Functioning of justice systems

The right to a fair trial, which incorporates numerous components, was violated in various aspects in recent years and systemic and individual problems were identified by PDO: delay in examination of cases; sentences adopted in violation of the principle of legal certainty; the use of inadmissible evidence; shortcomings related to the direct examination of evidence due to the breach of the principle of the court composition and denial of the right to a fair trial in the examination of administrative violations.

The legislation in force does not provide for the possibility of exemption from court fees for socially disadvantaged convicts placed in a penitentiary institution, which, according to the Public Defender, is contrary to the right to have access to the court. As a result of the activities of the PDO, specific cases have been revealed which are proceeding in violation of the principle of legality.

Moreover, the analysis of applications filed with the Office of the Public Defender of Georgia shows that in separate district courts, translators were unable to provide appropriate services to the accused. They could not translate perfectly, which prevented the accused from receiving information in a language he could understand.

There are also challenges with juvenile justice system. The current legislation does not provide for free legal assistance to juvenile witnesses involved in criminal proceedings. Besides the fact that the legislation directly provides for the obligation to specialize the psychologists (procedural representatives) involved in criminal justice, the agency responsible for specialization is not currently designated.

The Public Defender's Office has received numerous applications concerning illegality and lack of reasoning of judgments.

Considering PDO's mandate, the Office often resorts to the amicus curiae procedure and submits briefs to the courts.

Apart from the respect of fair trial standards, the Public Defender of Georgia is concerned about institutional problems of the judiciary since they are closely related to human rights. In particular, as illustrated above, the Public Defender independently observed the selection of Supreme Court judges in the High Council of Justice of Georgia, based on which a special report was prepared. In the report, it is indicated that independence of the judiciary still represents a significant challenge in Georgia.

References

- The Situation in Human Rights and Freedoms in Georgia 2019 - <https://bit.ly/2Koa9o0>
- Monitoring Report on the Selection of Supreme Court Judicial Candidates by the High Council of Justice of Georgia 2019 - <https://bit.ly/2M0RrDo>

Media pluralism

In 2019, as in the previous years, existence of a free and pluralistic media environment remained problematic. Pressing questions arose regarding the attempt to change the critical editorial policy of Adjara TV and Rustavi 2 broadcasting. Last year was marked by the number of criminal proceedings initiated towards the owners of the TV stations that are independent from the government, which raises questions about attempts to interference in the work of critical media in the country.

In particular, the PDO intervened in criminal proceedings brought against Nika Gvaramia, the former General Director of Rustavi 2 Broadcasting Company Ltd. and the founder of the newly established channel – Mtavari Arkhi. The Public Defender started to study the case on her own initiative on August 29, 2019; the Office has fully analysed the criminal case materials submitted by the defence.

On 4 November 2019, the Public Defender filed an amicus curiae brief with the competent Tbilisi City Court in connection with the criminal case stating that the charges filed by the Prosecutor's Office against Nika Gvaramia do not contain enough obvious signs for imposing criminal liability, the Court should consider the issue in depth and assess whether the disputed action is truly a crime or whether it should be discussed in the context of corporate law. It is indicated in the amicus curiae brief that the Court should consider the circumstances of the case and present a reasoned opinion, since the resolution of circumstances surrounding the charges against Nika Gvaramia directly affects both the protection of individual's rights and freedoms and development of further practice of the court.

In addition, the unfortunate trend of legislative initiatives aimed at restricting freedom of expression is still problematic. The Public Defender called on the government and asserted in her parliamentary report that the proposed legislative changes will create the possibility of interfering in the content of media programs, which will have negative impact on the high standard of freedom of expression in the country.

In addition, it should be noted that after almost three years of disappearance of Azerbaijani journalist Afgan Mukhtarli from the central part of Tbilisi and the whole set of investigative actions that were carried out, the investigation has not brought about any concrete result yet. The Public Defender has been closely monitoring the developments around this case through the years and has periodically requested from the investigative agency information about the progress in this investigation.

References

- The Situation in Human Rights and Freedoms in Georgia 2019 - <https://bit.ly/2Koa9o0>
- Amicus Curiae Brief in connection with Nika Gvaramia's Case - <https://bit.ly/3cDRX5B>

In-focus section on COVID-19 measures

Most significant impacts of measures taken in response to the COVID-19 outbreak on the rule of law in the country

On March 21, 2020 the Parliament convened the extraordinary Plenary Session to authorize the Presidential Decree over State of Emergency throughout the country. State of Emergency was declared throughout country initially until 21st April, though later this term was prolonged twice. At the time of reporting the state of emergency has been prolonged until 22nd May. According to the decree, a number of rights defined by the constitution of Georgia are restricted by the term of emergency on the territory of Georgia.

PDO studies the situation in quarantine spaces which have been created for the mandatory placement of people in order to prevent the spread of novel coronavirus. As of today, more than 5,000 people are in the quarantine zone. Within the framework of the National Preventive Mechanism, PDO studies conditions in the quarantine spaces, provision of health care services, standards of human rights, and needs of vulnerable groups and implementation of other important guarantees in practice.

In connection with the imposition of the special quarantine regime in response to the spread of the coronavirus in the municipalities of Bolnisi and Marneuli, the Public Defender's Office of Georgia and its Kvemo Kartli office provide consultations and legal assistance to the residents of these municipalities including ethnic minorities for 24 hours, including in ethnic minority languages: the Azerbaijani and Armenian languages. The Public Defender's Office is in constant contact with the interagency council – the body responsible for the management of issues related to pandemic, local authorities, state agencies, organizations working in the region and the local population. Due to the lack of information in the Azerbaijani language, the population does not have detailed information on the imposed rules, disease prevention or the measures to be taken by them. PDO plays referral functions and helps local population to reach relevant state bodies and receive public services.

Public Defender issued a statement on Issues relating to Violence against Women and Domestic Violence stating that the prevention of and effective response to violence against women and domestic violence in a timely manner should be a priority for the State during the state of emergency. In the statement Public Defender also highlighted the measures that should be taken in order to respond to the increased risks of domestic violence against women and LGBT+ persons.

Moreover, PDO evaluated the situation at the checkpoints set up for the quarantine purposes in Marneuli, Rustavi and Mtskheta. Representatives of the Public Defender's Office visited the checkpoints and monitored the procedures carried out by the military towards citizens at the checkpoints.

PDO also responded to the issue of provision of shelter to people living on the streets during the state of emergency, as well as for the necessity of smooth delivery of medical services to persons enrolled in state programmes on tuberculosis, hepatitis C, dialysis and kidney transplantation.

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

From March 13 to date representatives of PDO have visited 60 prisoners. The Public Defender's hotline functions on usual basis and is available for 24 hours as before the COVID-19 outbreak.

Germany

German Institute for Human Rights

Independence and effectiveness of the NHRI

International accreditation status and SCA recommendations

In November 2015, the German NHRI was [re-accredited with A status](#). Among its recommendations, the SCA encouraged the NHRI to advocate for the formalization of a clear, transparent and participatory selection and appointment process for the GIHR's Board of Trustees and flagged out that government representatives and members of parliament should not be members of, nor participate in that body. 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.

Human rights defenders and civil society space

A judgment by the Federal Tax Court of January 2019 has narrowed civil society space through a **restrictive interpretation of the statutory criteria for 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 jeopardized. Many other organisations expect to be affected sooner or later by administrative decisions applying the judgment. The GIHR has been in close contact with the civil society coalition on the issue.

References

- For further details, please see <https://www.zivilgesellschaft-ist-gemeinnuetzig.de/> (in German only).

Checks and balances

Two issues can be reported which are linked to checks and balances.

The first is the **insufficient control of arms exports**. The German Government promotes a restrictive policy of arms exports and its internal guidelines on arms exports control prohibit arms exports in the event of armed internal conflicts and where there are reasonable grounds to suspect abuse for internal repression or persistent and systematic human rights violations. They also prohibit exports to countries involved in or threatening to become involved in armed conflicts, or where there is a threat of an outbreak of armed conflict or where existing tensions and conflicts would be triggered, maintained or aggravated by the export. However, in practice the application of these internal guidelines remains deficient and weapons are exported to countries involved in armed conflicts. The GIHR has repeatedly argued for stricter controls of arms exports, in particular by means of a law that would formally bind the Government and not only through internal guidelines. A formal legal basis should also include the duty to provide a reasoned explanation to Parliament. This in turn would enable an informed political discussion on arms exports as a means of security policy providing more overall legitimacy to the policies and decisions involved. The Institute also advocates for more European coherence in regulating arms exports, instead of the current race to the bottom.

In the area of legal protection against covert **surveillance**, as well as intelligence oversight, problems remain particularly in the context of international intelligence cooperation which has become significantly more opaque due to the legalisation and de facto establishment of automated data exchange via joint intelligence databases, such as the European Counter Terrorism Group, which largely elude control by national supervisory bodies, thus, making access to legal protection against intelligence measures almost impossible. Also, oversight of automated access by intelligence agencies to various databases, such as the Central Register of Foreign Nationals, has become more difficult, as the logging of such access is now decentralized. Accordingly, 16 data protection commissioners are in charge of handling oversight instead of the Federal Commissioner.

References

- On arms export: Report of the GIHR to the Federal Parliament on the Development of the Human Rights Situation in Germany 2018 ([German full text](#), [English executive summary](#)) and 2019 (follow-up report, [German full text](#), [English executive summary](#)).

Functioning of justice systems

International human rights bodies have been recommending for more than two decades that Germany establish **independent complaint bodies for investigating alleged human rights violations by members of the police force**. However, little has been done to establish such independent mechanisms vested with enough resources and broad mandates in each of the 16 Länder. So far, only Rhineland-Palatinate, Baden-Württemberg and Schleswig-Holstein have established independent complaint bodies. In general, the deficits of effective prosecution of police violence nonetheless remain since the established bodies' mandates resemble those of ombudspersons and, thus, lack investigation powers. The GIHR has published two studies on this topic.

Another area where delivery of fair and effective justice meets with considerable obstacles is **racist violence**. The terror acts of the right-wing NSU terror group showed that the police and judiciary in Germany did not sufficiently recognise racist violence. The judicial process as well as several parliamentary committees of inquiry, both on the federal and *Länder* level, uncovered huge structural problems and a widespread institutional racism. The reports published by the committees of inquiry recommended structural reforms of security and law enforcement agencies to improve the effective combating of racist crime.

References

- On complaints bodies for alleged police violence:
 - Nach den Morden in Hanau - Menschenrechtliche Verpflichtungen zum Schutz vor und zur effektiven Strafverfolgung von rassistischer und rechtsextremer Gewalt umsetzen, Position paper, 2020, https://www.institut-fuer-menschenrechte.de/fileadmin/user_upload/Publikationen/Stellungnahmen/Stellungnahme_Nach_den_Morden_in_Hanau.pdf
 - On racist violence: GIHR, [Werden die Empfehlungen des NSU-Untersuchungsausschusses des Bundestags tatsächlich umgesetzt?](#), Position paper 2017.
- On complaints bodies for alleged police violence:
 - [Eric Töpfer / Tobias Peter, Unabhängige Polizeibeschwerdestellen. Was kann Deutschland von anderen europäischen Staaten lernen?](#), GIHR Analysis 2017
 - [Eric Töpfer, Unabhängige Polizei-Beschwerdestellen - Eckpunkte für ihre Ausgestaltung](#), GIHR Policy Paper No. 27, 2014.
- On racist violence:
 - [GIHR, Werden die Empfehlungen des NSU-Untersuchungsausschusses des Bundestags tatsächlich umgesetzt?](#), Position paper 2017.

In-focus section on COVID-19 measures

Most significant impacts of measures taken in response to the COVID-19 outbreak on the rule of law in the country

The German Institute for Human Rights acknowledges the effort made by the federal and Länder governments to adopt proportionate measures, which is particularly evidenced by the **transparency** on the reasons for taking specific measures and on the uncertainties underlying the prognoses as well as by the **time-limitations** of the measures taken, which permit and oblige the governments to review the measures taken and their impact. The GIHR also notes that there is a growing awareness of the impact that contact restrictions have and will have on all human rights – civil and political rights as well as economic and social rights. According to polls the majority of the population supports those measures so far. With the increasing discussions on softening the restrictions, this majority is shrinking.

While the concerns of **persons in vulnerable situations** have been raised since the first measures were taken, they have not been systematically integrated into the balancing considerations. For example, states (Länder) have extended the prohibition of visits to persons in long-term care institutions without making it a priority at the same time that these institutions receive protective gear or are supported in strengthening electronic communication for the persons concerned. At the same time, it can be observed that there is an increasing awareness that the right of women and children to be protected against domestic violence and children's right to education must be respected, and that there are concomitant reactions by governments. No comparable broad awareness and government reactions can however be observed with respect to homeless persons and asylum seekers in accommodation centres.

The legal community has been vocal in raising concerns that the hastiness and speed with which laws and regulations have been passed, has resulted in **ambiguous and unclear wording** leading to difficulties in implementation and policing **of the regulations** due to diverging interpretations by individual state agents and state bodies. State governments have concretized the regulations by public explanations as well as by amending the regulations. In particular, concerns have been raised as to whether the *Infektionsschutzgesetz* (Law on Infection Protection) provides a sufficiently clear legal basis for the measures taken, in particular those restricting human rights of persons who are not infected or suspected of being contagious. Moreover, under the amended law, the *Länder*(states) governments are empowered to enact regulations in this respect. Under German constitutional law, such a delegation of powers to the executive must be

sufficiently clear as to content, purpose, and extent. The legal debate as to whether the amended Law on Infection Protection meets this standard is ongoing.

Since the enactment of relevant regulations, courts have upheld a large number of the implementation measures and regulations. However, some **courts**, including the Federal Constitutional Court, have begun to grant interim relief against regulations that are overly broad, especially if they contain an across-the-board prohibition (e.g. of religious services or demonstrations) and do not provide for exceptions in cases where protective measures (physical distance, hygiene, masks) are taken.

The German Institute for Human Rights continues to monitor the situation. We have published a position paper on how human rights must guide policy measures as well as a position paper on the rights of older persons in the Corona pandemic, and a position paper on the right to health of persons with disabilities in the Corona pandemic. The GIHR will continue to produce more detailed reports on various human rights issues, in particular how COVID-19 measures impact the most vulnerable in our society.

References

- GIHR Statement "[Corona Crisis: Human Rights Must Guide the Political Response](#)"; further press releases and statements on the rights of homeless persons, older persons, persons with disabilities, children, and refugees' rights are available [here](#) (mostly in German)

Great Britain

Equality and Human Rights Commission

Independence and effectiveness of the NHRIs

International accreditation status and SCA recommendations

The SCA reaccredited the NHRI with A status in November 2015. The SCA recommended amendments in the NHRI legislation to ensure an independent and objective dismissal process for Commissioners, as well as ensuring the NHRI receives sufficient funding and operates independently from the State. Finally, the SCA recommended the establishment of an explicit process providing for the circulation, discussion and consideration by the legislature of the NHRI's reports.

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

Reduction in budget

The Commission has been subject to cuts to its budget since 2010, although it has prioritised its resources to significantly increase its enforcement activity in recent years. The Commission continues to closely monitor and manage spend against its allocated budget to ensure that resources are fully optimised. In addition, the Commission is actively engaging with Government to build a strong evidence base for the forthcoming spending review, developing positions and gathering evidence on the need for a sufficient and sustainable budget so that we can fulfil our statutory mandate.

Timeliness of appointments

The Commission's Chair and Commissioners are public appointments made by the Minister for Women and Equalities. The term of office of the Wales Commissioner ended on 31 May 2019 and the position is currently vacant. The UK Government process to appoint a new Wales Commissioner is ongoing and the Commission is encouraging Government to conduct a timely recruitment process.

Changes in the national regulatory framework applicable to the NHRI change since the last review by the SCA

Brexit

The Commission continues to work with governments, parliamentarians and other stakeholders to ensure no loss of protection enshrined in anti-discrimination legislation after Brexit based on the principles of no regression of existing rights and protections.

Changes to equalities legislation

- Additional responsibilities – for example, from 2017 any organisation that has 250 or more employees has been required publish and report specific figures about their gender pay gap in accordance with the Gender Pay Gap Regulations. In 2018/19 our enforcement work secured a 100% compliance rate for businesses believed to be in scope.
- New duties – for example, in Scotland, a socio-economic duty was introduced in April 2017 requiring public bodies such as local authorities, the police and the National Health Service to 'when making decisions of a strategic nature about how to exercise its functions, have due regard to the desirability of exercising them in a way that is designed to reduce the inequalities of outcome which result from socio-economic disadvantage.' Scotland is the only part of Great Britain where this clause is in force and we are the regulator for this duty.

Checks and balances

Challenges are identified and recommendations made by the Commission with regards to the right to participation in public life, including: prisoner voting, diversity of representation and intimidation of parliamentary candidates - see the Commission's shadow report to the UN Human Rights Committee (pages 72-76).

References

- Shadow Report submitted to the UN in March in relation to the UK's compliance with the International Covenant on Civil and Political Rights:
<https://www.equalityhumanrights.com/en/publication-download/civil-and-political-rights-great-britain-submission-un>

Functioning of justice systems

Challenges are identified and recommendations made by the Commission with regards the right to effective remedy and fair trial, in particular: legal aid reforms; court reform and modernisation; fast-track rules in immigration detention; and procedures for identifying and determining statelessness - see the Commission's shadow report to the UN Human Rights Committee (pages 29-33).

References

- Shadow Report submitted to the UN in March in relation to the UK's compliance with the International Covenant on Civil and Political Rights:
<https://www.equalityhumanrights.com/en/publication-download/civil-and-political-rights-great-britain-submission-un>

In-focus section on COVID-19 measures

Most significant impacts of measures taken in response to the COVID-19 outbreak on the rule of law in the country

The Coronavirus Act 2020 brings into force, among other things, the following:

- Social distancing restrictions and provisions to mitigate the spread of COVID-19. The Commission has emphasised the importance of considering carefully the specific implications the restrictions could have on groups who are already disadvantaged; and highlighted that human rights provide a clear and practical framework to help determine how to impose restrictions that are proportionate and effective. It has emphasised that Government should ensure that statutory reports to Parliament required by the Coronavirus Act 2020 address the impact of the legislation on equality and human rights and reflect the views and experiences of groups sharing protected characteristics. These reports should assess the use of emergency legislative powers and monitor the protected characteristics of those affected.
- Relaxation of crucial safeguards on detention set out in the Mental Health Act. This includes reducing the number of doctors needed to approve detention, extending or removing time limits and reducing oversight for forced treatment. These provisions could exacerbate existing problems in the use of the Mental Health Act (which the Government has previously recognised and committed to reform) and lead to inappropriate and prolonged detentions of disabled people and could

particularly affect Black men, who are already subject to higher rates of detention. Moreover, more people with learning disabilities and/or autism, especially children with special educational needs and disabilities, could be admitted to inpatient units and held in restrictive settings. Reduced independent monitoring and restrictions on family visits heighten these risks. The Commission has urged Government not to implement the emergency provisions relating to the Mental Health Act unless strictly necessary and only for as long as is essential. Use of these powers must be recorded and monitored to ensure they are proportionate, including the justification for use and data on protected characteristics.

Other concerns relating to rule of law include:

- Increased use of digital technology in the justice system is being adopted to minimise the spread of the coronavirus – court proceedings are increasingly taking place by video or phone. The Commission’s inquiry into the criminal justice system has shown that people who have a learning disability or are experiencing mental ill health can find it difficult to participate fully in proceedings using the courtroom video and audio links now being expanded. Moreover, the impact of remote hearings on justice outcomes has not been fully evaluated and their implications are not fully understood. There may be unintended equality implications associated with video hearings given the disproportionate representation of people sharing particular protected characteristics in the criminal justice system. The Commission has produced an interim report to emphasise that appropriate adjustments must be put in place to maintain the ability to access a fair trial. It will publish the full inquiry report in June 2020.
- Changes to mental health tribunals in response to the pandemic are in force in England and Wales, and could make it significantly harder for people to challenge their detention and treatment. Fewer tribunal panel members are needed to make a decision, pre-hearing assessments are waived, and decisions can sometimes be made without a hearing. The Commission has said Government should monitor the temporary changes to mental health tribunal rules, and ensure tribunals are recording the justification for use and data on location and protected characteristics.
- The pandemic, and responses to it, present particular challenges for equality and human rights at a time when many of the organisations which hold the Government to account, such as Parliament, civil society and the media, have reduced capacity. The Commission has welcomed the Government’s pledge to provide £750m to the charity sector. However, with the National Council for Voluntary Organisations estimating charities stand to lose £4bn in twelve weeks, it is concerned that smaller

charities providing vital services, including advice services, are ill-placed to weather the storm. The Commission has said that Government must monitor support for civil society organisations and ensure they have the resources necessary; including smaller organisations on the frontline; and that Government should take proactive steps to increase the involvement of civil society organisations representing protected characteristic groups in policy-making related to the pandemic.

The Commission has:

- Written to the UK Prime Minister (19.3.20) about the human rights and equality considerations in responding to the coronavirus pandemic.
- Briefed parliamentarians (23.3.20) in response to the UK Government's emergency legislation to address the coronavirus crisis in the UK (Coronavirus Bill 2019-21).
- Engaged with various parliamentary select committee inquiries into different aspects of the impact of the pandemic, including evidence to the Home Affairs Select Committee Inquiry (21.4.20) and written and oral evidence to the Women and Equalities Select Committee Inquiry (written evidence published 19.4.20, oral evidence 20.4.20)
- Written a briefing (31.3.20) for the Scottish Parliament in advance of its plans to devise COVID-19 emergency legislation.
- Suspended enforcement action under the Gender Pay Gap reporting regulations for employers who fail to report their gender pay gap for 2019/20. This is in recognition that they will be dealing with the impact of COVID-19.
- Suspended enforcement activities in relation to the Public Sector Equality Duties in England, Scotland and Wales during 2020.
- Engaged with the British Retail Consortium (21.4.20) to highlight concerns that disabled and clinically vulnerable people must still be able to access and buy food and essential items in shops as part of any special measures introduced by retailers during the coronavirus crisis.
- Written to the British Medical Association (23.4.20) to highlight our concerns around its ethical guidance during the coronavirus outbreak (specifically in relation to older and disabled people) to remind them that the protected characteristics of patients should not influence medical decisions by doctors and health professionals about who should/should not receive treatment for coronavirus.
- Written to the Prime Minister concerning the importance of providing British Sign Language interpretation for the Government's daily briefings on the pandemic.
 - Published guidance clarifying reasonable adjustments related to working from

- home, and on pregnancy/maternity equalities issues arising from redundancy, furlough, and working from home.
- Published our interim report on the UK's criminal justice system – which highlights the negative impact of the use of digital technology in the justice system on certain disabled people.

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

The Commission has taken measures to continue the fulfilment of its mandate in the COVID-19 context. It has made the following assumptions which may need to be revised as more information becomes available:

- Coronavirus will have an impact on staff, through ill health, isolation and caring responsibilities
- The Commission expects staff activity to reduce by around 25% during the first half of the financial year.
- The impact on stakeholders, government, international partners will be similar (e.g. courts shutting, Departments refocusing their work)

The Commission has reviewed the work plans for each of its aims to prioritise key activities which it will continue to deliver such as work on the Human Rights Tracker, and to pause a significant number of activities in order for it to develop a new programme of responsive work to tackle the COVID-19 crisis.

In deciding what to prioritise it considered whether the work: has key deadlines; is critical to the Commission's reputation as an NHRI and NEB; will have a significant impact (in terms of reach, scale etc); or whether delaying the activity would be the 'right thing to do' in order to allow others to prioritise the national response to the virus outbreak in Great Britain.

The following is a short summary of the work which the Commission is planning in response to COVID-19, although this will be flexible to emerging priorities.

- Core: The Commission is responding to Inquiries being held by the Women and Equalities Select Committee and the Joint Committee on Human Rights into the UK Government responses to coronavirus, and will actively influence the review points of the emergency legislation, and are similarly influencing the Scottish and Welsh Governments. It is initiating a joint research project with Government Equality Office to ensure the impact of the Government's response to coronavirus on those with protected characteristics is properly understood. It is actively engaged with the

Public Health England Inquiry into the disproportionate impact of coronavirus on black, Asian and ethnic minority people.

- **Work:** The Commission has engaged key partners such as the Advisory Conciliation and Arbitration Service (ACAS), the Chartered Institute of Personnel and Development (CIPD) and the Trade Union Congress (TUC) on ensuring that employees have appropriate protections during the pandemic. It is engaged with business umbrella groups to drive compliance with its recently published guidance clarifying reasonable adjustments related to working from home, and on pregnancy/maternity equalities issues arising from redundancy, furlough, and working from home. It will respond to the Business, Energy, Innovation and Skills parliamentary Select Committee inquiry, and work on the Employment Bill.
- **Access to Justice:** The Commission's criminal justice inquiry shows that people who have a learning disability or are experiencing mental ill health can find it difficult to participate fully in courtroom proceedings using the video and audio links now being expanded. It released an interim report to ensure the government considers reasonable adjustments in this area.
- **Education:** It will respond to the Select Committee coronavirus inquiry, and advise the Children's Commissioner on ensuring children's rights are safeguarded. It has engaged Ofqual on equality considerations in moving to predicted grades, and is engaged with the Department for Education to ensure that children with special educational needs receive sufficient support during school closure.
- **Institutions:** The Commission will work with stakeholders to influence the UK Government's agenda for example the relaxation of Mental Health Act detention safeguards, and where necessary take legal action. It is considering the impact on prisons and immigration detention (including through the Immigration Bill) through active legal cases relating to at-risk prisoners.
- **Transport:** The Commission is working with the Department for Transport and other stakeholders to ensure that disabled people continue to enjoy the right to assistance and accessible transport during this crisis.

References

- All published material relating to our response to the coronavirus pandemic is available on our website at: <https://www.equalityhumanrights.com/en/our-work/our-response-coronavirus-COVID-19-pandemic>

Greece

Greek National Commission for Human Rights (GNCHR)

Independence and effectiveness of the NHRI

International accreditation status and SCA recommendations

The Greek NHRI was [reaccredited](#) with A-status in March 2017. During the latest accreditation session, the SCA recommended more clarity regarding the selection and appointment process of the Commission's members. The SCA also encouraged the NHRI to continue to advocate for an adequate level of funding to fully carry out its mandate.

Changes in the national regulatory framework applicable to the NHRI change since the last review by the SCA

Two major legislative changes took place since the last SCA review.

First, article 38 of Greek Law no. 4465/2017 introduced certain positive changes but also some negative restrictions to the GNCHR's legal officers' employment status. Whereas legal officers could previously renew their 3-year contract indefinitely, provided of course that the GNCHR agreed to it, the 2017 Law unilaterally, i.e. without any previous consultation with the GNCHR and without any justification, introduced a two-times renewal limit, also applying to the legal officers in office.

The **second** major change took place when Greek Law no. 4606/19 was passed. The 2019 Law introduced some significant changes, particularly regarding the composition of the GNCHR. The GNCHR was not consulted during this process, leading to the resignation of the previous GNCHR President, Mr Georgios Stavropoulos, a situation that attracted publicity and the intervention of ENNHRI. There has been, in particular, an unbalanced addition to the GNCHR Plenary of 5 members from the LGBTQI+ community, and 2 more members, in addition to the already existing member, representing the Roma community, in violation of any principle of equality towards other human rights actors-members of the GNCHR having only one vote. The legislative process proceeded without any public consultation, while the previous Government never informed the GNCHR of this process, and despite the contrary unanimous decision of its Plenary, dated 27.11.2018 and its Declaration, dated 28.3.2019, by which the GNCHR requested the immediate withdrawal of the provisions violating the GNCHR's independence. The GNCHR is currently preparing and

will soon be proposing to the Greek Legislator a new legal framework in order to offset the above mentioned negative changes.

References

- GNCHR Statement:
http://www.nchr.gr/images/English_Site/NEWS/Announcement%20of%20the%20GNCHR%20Presidents%20Resignation.pdf.

Human rights defenders and civil society space

The GNCHR monitors very closely the situation regarding the 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 46 non-governmental organisations and civil society actors, who acknowledge and jointly pursue combating racist violence, as well as all racially-motivated acts on the grounds of race, colour, religion, descent, national or ethnic origin, sexual orientation, gender identity, sex characteristics and disability.

The GNCHR intervenes whenever it considers that there is a shrinking danger for the civil society space (e.g. in 2.11.2017 the GNCHR intervened and condemned the **attack against, and injury of the human rights defender and old member of the GNCHR** Ms Anastasia Tsoukala, whereas in 19.3.2018 the GNCHR issued a statement for the **protection of the freedom of expression**, following the vandalism of a sculpture in Athens and the attacks against employees and actors of the performance of the Acropolis Theater).

Checks and balances

There are issues to be reported concerning the **exercise by the GNCHR of its role in the system of check and balances**, in particular when legislation is enacted.

The GNCHR has repeatedly and publicly criticized the fact that it does not receive the Greek draft laws in advance, and thus it normally does not have sufficient time to comment upon the provisions in detail. This impacts 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). Moreover, the time allowed for public consultation is also normally very short.

The GNCHR has recently prepared a detailed report regarding the implementation in Greece of the ECtHR decision *Chowdury and others v. Greece* (30.3.2017). Given the seriousness of this case, the GNCHR also made use of the Rule 9 of the Rules of the Committee of Ministers for the supervision of execution of judgements.

References

- GNCHR Report: ECtHR, *Chowdury and Others v. Greece*: Recommendations for the full compliance of the Greek State, available at:
http://www.nchr.gr/images/English_Site/TRAFFICKING/GNCHR%20Recommendations%20on%20the%20Manolada%20case.pdf

Functioning of justice systems

The GNCHR has monitored and reported on issues concerning the functioning of justice systems as well as the principle of fair trial in great detail.

By way of example, the GNCHR issued a statement in 30.1.2017 applauding the decisions of Areios Pagos, which is the Supreme Civil and Penal Court of Greece, regarding the non-extradition of the eight Turkish military officers who applied for asylum in Greece following the coup d'état in Turkey.

The GNCHR has also contributed by means of submitting to the Greek authorities and subsequently publishing a series of observations to draft laws potentially restricting access to justice. Indicatively, we could refer to: a) the GNCHR Observations on the Draft Law of the Ministry of Justice, Transparency and Human Rights on «Providing Legal Assistance to Individuals» (July 2016) and b) the GNCHR Observations on the Draft Law of the Ministry of Justice, Transparency and Human Rights «Fees and charges of remedies and procedural acts and court fees» (July 2016).

References

- GNCHR Statement:
http://www.nchr.gr/images/English_Site/DIKAIHDIKH/GNCHR_Areios_Pagos.pdf
- GNCHR
Observations:http://www.nchr.gr/images/pdf/apofaseis/dikaih_dikh/NomikiVoithia_2016.pdf
- GNCHR Observations: http://www.nchr.gr/images/pdf/apofaseis/dikaih_dikh/Paravola2016.pdf

Media pluralism

The GNCHR has been following quite closely issues as the freedom of speech, the freedom of expression and the promotion and protection of a pluralist media environment.

It has particularly referred to **acts of violence against journalists** during the period of the financial crisis in the UPR and its alternative reports to the Treaty Bodies.

On a positive note, it has also commented upon a Greek Draft Law that introduced some **positive changes to the defamation and compensation regime relating to the media**.

References

- GNCHR Comments on the Greek Draft Law can be found here:
http://www.nchr.gr/images/pdf/apofaseis/diakriseis/EEDA_SN_Sumfwno%20Sumbiwshs_askhs_h%20dikaioamatvn%20kl.pdf

Corruption

The GNCHR has not yet had the opportunity to deal with the broader theme of corruption and its impact on human rights, however it plans to engage with this issue very soon, particularly in light of its new HRIA methodology.

In-focus section on COVID-19 measures

Most significant impacts of measures taken in response to the COVID-19 outbreak on the rule of law in the country

The GNCHR monitors closely the Greek Government's series of measures in response to the COVID—19 pandemic (Acts of Legislative Content, Joint Ministerial Decisions and

Circulars that aim to concretize the above provisions), given that they affect directly the enjoyment of human rights in Greece. So far, the measures are generally considered to be necessary and proportional to the aim pursued. That said, the GNCHR remains vigilant in this unprecedented context.

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

Naturally, the GNCHR faces significant challenges due to COVID-19. For instance, it has postponed some planned visits to migrant and refugee reception and accommodation centres to a later date. That said, the GNCHR deals with the challenge quite effectively. Its personnel works from home and Plenary meetings take place online very frequently (e.g. only in April there have been 3 online Plenary meetings).

Hungary

Commissioner for Fundamental Rights

Independence and effectiveness of the NHRI

International accreditation status and SCA recommendations

The Hungarian NHRI was [accredited](#) with A status in October 2014. In October 2018, the SCA [decided to defer](#) its decision on the accreditation of the NHRI.

Developments relevant for the independent and effective fulfilment of the NHRI's mandate

The Government has provided new, modern, state-of-the-art **premises** to the Office of the CFR: the CFR is about to move to its new premises this year, presumably in June.

In recent years, the CFR has faced the devaluation of the staff's salaries: the base salary (a sum defined in Act CXCIX of 2011 on Public Servants, and which provides a basis of calculation for the salaries of public servants) has not increased since 2008, thus the salaries of our staff have lost their value considerably over the past 10 years. As of May 2020, however, a new law entering into force regarding the **status and remuneration of the CFR's staff** (Act CVII of 2019) will remedy this problem, providing for a substantial, 30% average pay rise.

Changes in the national regulatory framework applicable to the NHRI change since the last review by the SCA

As of 1 January 2014, Act CVI of 2011 on the Commissioner for Fundamental Rights (CFR Act) and Act CLXV of 2013 on Complaints and Public Interest Disclosures have defined new responsibilities for the Commissioner for Fundamental Rights (CFR) concerning the handling of public interest disclosures. The aim of the new legislation is to support whistleblowers, protect and process their personal data in a closed system if necessary, and provide effective protection for them.

As of 1 January 2015, the CFR acts as National Preventive Mechanism under the Optional Protocol to the UN Convention against Torture (OPCAT). Chapter III/A of the CFR Act provides for detailed procedural rules for this mandate.

Further responsibilities were added to CFR's mandate in 2020: Pursuant to Section 145 of Act CIX of 2019 adopted by the Parliament, the CFR took over the responsibilities of the Independent Police Complaints Board as of 27 February 2020. The procedure on police complaints is conducted by the Ombudsman on the basis of Section 39/F-L of Act CXI of 2011 on the Commissioner for Fundamental Rights, which, similarly to the earlier procedure of the Board, is not an administrative procedure. The reports to be prepared as a result of the Ombudsman's inquiries into police complaints will be followed by an administrative procedure conducted by the police. It is possible to request legal remedy against the decision made as a result of such procedure according to the Rules of Procedure for Judicial Review of Administrative Decisions.

Checks and balances

In accordance with Section 2(2) of 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. Whenever the CFR finds that a draft is not in line with constitutional or international human rights standards or lacks the necessary consultation with civil and professional organisations, he draws the legislator's attention to these shortcomings. While it is in the Hungarian NHRI's legal mandate to give its opinion on different legislative drafts, our experience in the past years had been that Ministries often failed to send such drafts to the NHRIs for our opinion. However, there seems to be a development in this respect, where in the half year the CFR seems to receive more legislative drafts for its comments. Due to the speeding up of all phases of the process of adoption of legislations, in those cases when we do receive a draft, the deadline for the submittal of opinion is often very short. The yearly reports submitted by the Ombudsman to the Parliament regularly raises attention to these problems.

Functioning of justice systems

The **role and structure of the National Judicial Council (NJC)** has been under debate during 2019 because of the two sharply contrasting views on the constitutional operation of the NJC which resulted in an uncertainty in interpretation that jeopardized legal certainty. In accordance with the principle of the separation of powers, as well as constitutional requirements of judicial independence, the competence of the NHRI does not extend to the examination of the judicial practice of the courts. Therefore, the Commissioner was not

in the position to assess whether the operation of the NJC, which qualifies as a judicial self-governing organ, could be regarded as lawful or not. Consequently, the Commissioner proposed that the provisions of the Fundamental Law of Hungary be interpreted by the Constitutional Court. Therefore, in March 2019, the CFR proposed that the Constitutional Court interpret constitutional provisions on the role and structure of the NJC of the Fundamental Law of Hungary [Paragraphs (5) and (6) of Article 25] to resolve such constitutional law issue concerning the operation of the NJC. In this case, the specific constitutional law issue that could be inquired into in the context of Constitutional Court proceedings was caused by the fact that, according to a signal from the NJC President, some uncertainty of interpretation emerged in relation to the operation of the NJC which jeopardized legal certainty, and in lack of relevant positive statutory provisions, it could be resolved only through the abstract interpretation of the relevant provisions of the Fundamental Law of Hungary. The case is currently pending before the Constitutional Court.

Another concern can be raised as regards the **execution of a national court's judgment** related to the respect of fundamental rights which has been in the focus of debate in Hungary. The reference is to a court ruling ordering for the compensation for school segregation of Roma in Gyöngyöspata. In February 2020 the government refused to pay almost HUF 100 million (EUR 300.000) in compensation, stating it would only pay in kind, that is, by education and training. The deputy ombudsman responsible for the protection of national minorities has launched an inquiry to review the follow-up to the Gyöngyöspata report issued in connection with the previous Ombudsman's inquiry and the implementation of the decisions made in the report. The deputy ombudsman expressed concern regarding recent developments in the case, namely the debates on the rulings on the compensations and the "rising public tension".

Media pluralism

The CFR has no information about insufficient protection of journalists', inadequacy of resources, or inadequate investigations on attacks on journalists.

As regards **access to information**, and in particular **public interest disclosures**, the CFR ensures – through his Office – the operation of an electronic system for disclosing and recording public interest information, also in case of the above mentioned situation. At present, public interest disclosures can only be made through the electronic system (i.e. on the platform established for this purpose on the Office's website, www.ajbh.hu), due to remote working arrangements during the COVID-19 emergency. The person ("the

whistleblower”) disclosing the information may follow the dossier relating to his/her disclosure request on the webpage, and may query the status of his/her case (this option/function is available only in Hungarian). In addition to that, the brief excerpt of the disclosure (the so-called “public excerpt”), without personal data, is publicly accessible.

References

- Act CXI of 2011 on the Commissioner for Fundamental Rights (CFR Act, Hungarian acronym: Ajbt.)
- Act CLXV of 2013 on Complaints and Public Interest Disclosures (CPID Act, Hungarian acronym: Pkbt.)

Corruption

The National Service for Protection is the organisation performing internal crime prevention and detection duties with nationwide competence according to Act XXXIV of 1994 on the Police. The Service’s general goal is to fight against corruption and organised crime.

A system is in place to ensure the **protection of whistle-blowers in Hungary in relation to disclosure of public interest information**, which ensures in the opinion of the CFR a satisfactory level of protection. The system, relying on an electronic software operated by the CFR, relies on the following key principles:

- Anonymity
The whistle blower may request that his/her submission be treated anonymously. In this case, the acting body may only access the excerpted version of the public interest disclosure, and any data that would reveal the identity of the whistleblower are removed. Thus, the whistleblower’s identity remains hidden, so that he/she would not suffer any disadvantage because of his/her disclosure.
- CFR inquiry into the practice of the acting bodies (CFR Act)
After the inquiry of the public interest disclosure, the whistle blower may submit a petition requesting the CFR to remedy a perceived misbehaviour if the acting body found his/her disclosure unsubstantiated, or the whistleblower does not agree with the result of the inquiry, or the acting body did not fully examine his/her disclosure. The CFR can take the following measures:
 - It may contact the relevant acting body,

- it may request the body to provide information or submit the documents of the case,
- It may arrange a personal hearing,
- It may perform an on-site inquiry

If, based on his/her inquiry, the Commissioner finds irregularities, he/she may make recommendations for remedying them in the case of those involved, or their superior body.

- Safeguards for whistleblowers considered to be at risk
According to the CPID Act, with the exception of the actions referred to in Section 3(4) (see 1.2.3.), any action taken as a result of a public interest disclosure which may cause a disadvantage to the whistleblower shall be unlawful even if it were otherwise lawful. A whistleblower is considered to be at risk, except in the case referred to in Section 3(4), if the disadvantages threatening him/her as a result of the public interest disclosure he/she has made are likely to seriously endanger his/her life circumstances, except in the case referred to in Section 3(4). Any whistleblower who is a natural person is entitled to legal aid and assistance provided in order to ensure the protection of whistleblowers, as defined in the relevant law, if he/she is likely to be at risk.
The state provides whistleblowers the aid and assistance defined in Act LXXX of 2003 on Legal Aid, under the conditions defined in the same act.
In addition, according to Section 206/A of Act II of 2012 on regulatory offences, offence procedures and the system for registering regulatory offences, any person who causes disadvantage to the whistleblower commits an offence (Persecution of the whistleblower). It is the duty and competence of the police to investigate alleged offences.

In-focus section on COVID-19 measures

Most significant impacts of measures taken in response to the COVID-19 outbreak on the rule of law in the country

The first cases of the pandemic in Hungary were announced on 4 March. On 11 March, the government declared a state of danger. According to Article 53 of the Fundamental Law of Hungary, in a state of emergency, the government may adopt decrees by means of which it may suspend the application of certain acts, derogate from the provisions of acts and take other extraordinary measures. (It should be highlighted that it is the government that may end the state of emergency as well.) These decrees shall remain in force for fifteen

days, unless the government, on the basis of authorisation by the Parliament, extends those decrees.

A **new law** on the containment of coronavirus (hereinafter referred to as the Coronavirus Law) was enacted which allows the government to make these extensions under the control of the Parliament. Under Section 2 of this new law (Act XII of 2020 on the containment of coronavirus), during this period the Government may, in order to guarantee that life, health, person, property and rights of the citizens are protected, and to guarantee the stability of the national economy, by means of a decree, suspend the application of certain Acts, derogate from the provisions of Acts and take other extraordinary measures.

Also added as a restriction, the Government may exercise its power only for the purpose of preventing, controlling and eliminating the human epidemic, and preventing and averting its harmful effects, to the extent necessary and proportionate to the objective pursued. According to Section 4 the Government also shall regularly provide information on the measures taken to eliminate the state of danger until the measures are in effect at the sessions of the Parliament or, in the absence thereof, to the Speaker of the Parliament and the leaders of the parliamentary groups.

The Parliament, on the basis of Article 53(3) of the Fundamental Law, authorises the Government to extend the applicability of the government decrees adopted in the state of danger until the end of the period of state of danger, but this authorisation is not unlimited. The Parliament may withdraw the general authorisation before the end of the period of state of danger [Para. (2) Section 3].

The Coronavirus Law also modified Act C of 2012 on the Criminal Code. Section 337 of the Criminal Code shall be replaced by the following provision: "(1) A person who, at a site of public danger and in front of a large audience, states or disseminates any untrue fact or any misrepresented true fact with regard to the public danger that is capable of causing disturbance or unrest in a larger group of persons at the site of public danger is guilty of a felony and shall be punished by imprisonment for up to three years. (2) A person who, during the period of a special legal order and in front of a large audience, states or disseminates any untrue fact or any misrepresented true fact that is capable of hindering or preventing the efficiency of protection is guilty of a felony and shall be punished by imprisonment for one to five years."

A constantly growing collection of guidelines and professional information materials related to COVID-19 have been gathered and published on the CFR website.

The Commissioner and his deputies issued a statement raising attention to the needs of especially **vulnerable persons** in the present circumstances.

The Deputy Commissioner for the protection of national minorities also issued a statement raising attention to the special vulnerability and needs of the **Roma population** in the present situation.

The Commissioner has issued a statement raising attention on the need for state authorities to **monitor child abuses** even during the COVID-19 situation.

The Commissioner ordered a **comprehensive inquiry in retirement homes**. Moreover, he paid a personal visit to some residential institutions: child protection facilities, care homes for people living with disabilities, and penitentiary institutions.

With a view to the **enforcement of patients' rights**, the Commissioner issued a statement regarding the evacuation of in-patient beds ordered in hospitals.

As the NPM, the CFR continues to fulfil his mandate during the COVID-19 crisis, bearing in mind the principle of "do no harm". The CFR has requested information from the Operational Group responsible for the containment of the coronavirus infection, the Hungarian Prison Service Headquarters, the National Police Headquarters, the Ministry of Human Capacities, the Hungarian Directorate-General for Social Affairs and Child Protection concerning the special procedures they have established in relation to the COVID-19 crisis. The CFR inquired also about the technical conditions for ensuring confidential remote communication between persons deprived of their liberty and the staff members of the NPM. The CFR requested the authorities to designate a contact person to be available on short notice and to provide information about the setting up of new and temporary places of detention, such as home quarantines. Furthermore, observing the SPT Advice (CAT/OP/9) on compulsory quarantine for coronavirus, the CFR has visited several home quarantines.

To date the CFR has visited the following places of detention, strategically important police or military centres and border crossing points:

- 14 April, Ipolyság-Parassapuszta Border Crossing Point
- 14 April, Hungarian National Police Headquarters
- 15 April, Záhony-Čop Border Crossing Point
- 15 April, Sátoraljaújhely Strict and Medium Regime Prison
- 15 April, Sátoraljaújhely Border Crossing Point

- 16 April, Kiskunhalas National Prison and Mobile Epidemic Hospital
- 16 April, Tompa-Kelebia Border Crossing Point
- 17 April, Szentendre Police Station and home quarantines
- 17 April, Center of the COVID-19 Operational Group
- 22 April, Bezerédj-Castle Therapy Foundation's Special Home for Children in Szedres
- 22 April, 86th Military Air Base of the Hungarian Army in Szolnok
- 23 April, Letenye Border Crossing Point
- 23 April, Fertőrákos Border Crossing Point
- 23 April, Home for Mentally Disabled Persons in Kéthely
- 23 April, Hegyeshalom Border Crossing Point
- 24 April, two group home units of the Veszprém County Children's Home Center
- 29 April, Nagykanizsa Reformatory of the Ministry of Human Capacities.

The measures necessary to fight the coronavirus outbreak during the state of danger have inevitable **implications for detainees**.

Due to the prohibition of leave and restrictions of visits of relatives in the penitentiary system, the detainees' right to communicate has been restricted. The restriction was compensated by the possibility of extended telephone conversations (partly financed by the institutions), and communicating via Skype. The use of Skype is promoted with the help of a user guide among the detainees and their relatives so that they would get acquainted with online communication forms instead of personal contacts.

The detainees' right to work and right to education are also restricted as they may not work outside or participate in trainings. However, such restrictions do not exceed the necessary extent and are proportional to the aim to fight the outbreak.

Measures taken in response to the COVID-19 have not restricted the CFR's right and capacity to carry out OPCAT visits. In fact, the Commissioner for Fundamental Rights so far carried out OPCAT visits in two detention facilities and a house quarantine. Visits will follow in other facilities as well.

In order to prevent the spread of COVID-19, all visits to hospitals and social care homes are prohibited as of 8 March 2020, followed by the prohibition of visits in child care institutions and in juvenile reformatories as of 17 March 2020. No restriction may affect the patients' dignity. A final farewell is an exception to the prohibition of visits, but the necessary protection shall be ensured also in the event of such visits.

Due to the danger of infection, the CFR, acting as National Preventive Mechanism (NPM) considers the means for **visiting closed hospitals and social care homes** in a way as to avoid the possibility of infection of healthy residents or the nursing personnel from outside. The NPM contacted the Minister of Interior as Head of the Operational Group responsible for handling the coronavirus outbreak in Hungary, and asked him for information regarding data on quarantines and the situation of people affected by such measures. The NPM requested information from the Ministry of Human Capacities, the Social and Child Care Authority, the National Healthcare Services Center, the Head of the Hungarian Prison Service Headquarters, and the Hungarian Police Headquarters in order to become acquainted with the circumstances of the infected persons, as well as with the measures for the protection of the residents and detainees living in institutions under their supervision. The NPM has asked the Nagymágocs Castle Home of the Gesztenyeliget Care Center in Csongrád County, where some elderly persons have become infected with the coronavirus, to give information on the situation of the patients and the protective measures.

The Deputy Commissioner for the Protection of the Future Generations (FGO) issued a statement in early April calling the attention of the public to certain measures related to the **right to a healthy environment**, especially clean air amidst the COVID-19 pandemic. As respiratory symptoms are linked to COVID-19 infections, it is of utmost importance to change certain practices harmful to air quality, especially (i) the burning of green garden waste and (ii) the inappropriate heating practices arising from the burning of household and other types of waste. Both practices result in emission of pollutants that pose a danger to the human respiratory system and can result in more aggravated COVID-19 symptoms. Therefore the FGO has asked the government and local municipalities to take steps to ban such harmful practices and effectively enforce these bans while making sure that people in vulnerable situations are provided adequate materials for heating their homes (wood). Besides being electronically published, this document has also been sent directly to the relevant Ministries by the FGO.

As regards **housing**, the CFR initiated ex officio the extension of the wintertime suspension of evictions during the coronavirus emergency period. The Government decided that the suspension of evictions should remain in place during the period of the state of danger.

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

Due to the lockdown, the CFR has **temporarily suspended personal client service**. However, client service is operating via phone. Working visits to counties – normally organized twice a year – are suspended in order to minimize personal contacts.

Following a decision of the Commissioner, the deadlines given for specific state authorities for giving a response to our requests that are not urgent and that are not regarding COVID-19 have been prolonged.

Following a decision of the Secretary General, the Office's staff is working from home, with full salary.

References

- Government Decree No. 90/2020 (IV.5.) on the modification of certain rules on the prison service with regard to the state of emergency
- Skype felhasználási útmutató fogvatartottak hozzátartozói részére
- <https://bv.gov.hu/hu/intezetek/bvszervezet/hirek/3619>
- <https://bv.gov.hu/hu/node/3592>
- Decision No. 13305-8/2020/EÜIG of the National Health Centre
- Decision No. 13305-16/2020/EÜIG of the National Health Centre
- Decision No. 13305-19/2020/EÜIG of the National Health Centre
- https://hvg.hu/itthon/20200329_Koronavirus_Pozitiv_a_tesztje_egy_idosotthon_tobb_lakojanak_is_Csongradban
- <https://www.ajbh.hu/en/veszelyhelyzeti-informaciok>

Iceland

At present, Iceland does not have a National Human Rights Institution. In 2019, the Icelandic government opened a public consultation on the establishment of an NHRI. The results of the consultation, alongside a bill drafted by the Ministry of Interior in 2016, are to serve as basis for next steps in the establishment of an NHRI. The government has affirmed at several occasions its intention to establish an NHRI, but no concrete steps have been reported since.

ENNHRI stands ready to support the Icelandic government with advice in the further process of establishing an NHRI in compliance with the Paris Principles.

References

- Link to the public consultation: [https://samradsgatt.island.is/oll-mal/\\$Cases/Details/?id=1335](https://samradsgatt.island.is/oll-mal/$Cases/Details/?id=1335)

Ireland

Irish Human Rights and Equality Commission (IHREC)

Independence and effectiveness of the NHRI

International accreditation status and SCA recommendations

The Irish NHRI was [accredited](#) with A status in November 2015. In its recommendations, the SCA encouraged the NHRI to advocate for adequate funding while safeguarding its financial independence.

Human rights defenders and civil society space

In January 2019, the Commission published a policy statement on the Electoral Acts and Civil Society Space in Ireland (2). It outlined concerns that the definition of the terms 'political purposes' and 'third party' in the relevant legislation are overly broad and include a range of Irish civil society organisations (CSOs), and therefore put **constraints on the advocacy functions of CSOs**.

They may be required to comply with the strict requirements of the legislation, which impacts on their ability to carry out their work and seek funding. The Commission stated it's of the view that the work of CSOs in Ireland, and their sources of funding, should continue to be clearly regulated and subject to high standards of scrutiny, transparency and accountability, but that such regulatory measures should avoid placing undue restrictions on wider civil society activity engaging in legitimate advocacy aiming to influence political decision making and policy making, including with regard to human rights and equality issues.

References

- Housing and Planning and Development Bill 2019 (available at: https://www.housing.gov.ie/sites/default/files/public-consultation/files/2019_1030_general_scheme_hpd_bill.pdf)
- IHREC, Policy Statement on the Electoral Acts and Civil Society Space in Ireland, January 2019, (available at <https://www.ihrec.ie/app/uploads/2019/01/Policy-Statement-on-Civil-Society-and-the-Electoral-Acts-F-11012019.pdf>)
- IHREC, Ireland and the Convention on the Elimination of Racial Discrimination, November 2019, (available at https://www.ihrec.ie/app/uploads/2019/11/IHREC_CERD_UN_Submission_Oct_19.pdf)

Checks and balances

Concerning **right to information and accountability of state bodies**, January 2019, the Commission noted in its submission to the Committee Against Torture that the government has decided against publishing two independent reports that were critical of state bodies on the basis of legal advice which is not publicly available for scrutiny.⁽¹⁾

The Commission also noted concern in that submission regarding proposed legislation, the Retention of Records Bill 2019, which would impinge on the rights of survivors of industrial and reformatory schools. The Retention of Records Bill 2019 proposes that, on the dissolution of the Commission to Inquire into Child Abuse, the Residential Institutions Redress Board and the Residential Institutions Redress Review Committee, their records will be deposited in the National Archives where they will be withheld from public inspection for a period of 75 years. These records will include administrative records of the institutions, survivors' personal records, and all relevant documents created by State representatives and the aforementioned bodies. The Commission is concerned that, if enacted, the legislation would significantly weaken survivors' rights to their personal information, contrary to international and European human rights norms. It may also inhibit potential future legal redress, frustrate the nation's recognition of its history of institutional abuse, and run contrary to principles of **transparency and accountability**. ⁽²⁾

References

- (1) IHREC, Submission to the UN Committee against Torture on the List of Issues for the Third Examination of Ireland, January 2020, at pp. 12, 29 (available at: <https://www.ihrec.ie/app/uploads/2020/01/Submission-to-the-UN-Committee-against-Torture-on-the-List-of-Issues-for-the-Third-Examination-of-Ireland.pdf>)
- (2) IHREC, Submission to the UN Committee against Torture on the List of Issues for the Third Examination of Ireland, January 2020, at pp. 26 (available at: <https://www.ihrec.ie/app/uploads/2020/01/Submission-to-the-UN-Committee-against-Torture-on-the-List-of-Issues-for-the-Third-Examination-of-Ireland.pdf>)

Functioning of justice systems

The Commission has raised concerns regarding the **functioning of the wardship jurisdiction** and was recently involved in a case concerning the fairness of procedures in such cases, in its capacity as *amicus curiae*.⁽¹⁾ The case *AC v Cork University Hospital* concerned the detention of a woman with dementia in a hospital because the hospital deemed it was in her best interest and the absence of fair procedures in the application to make her a ward of court. In October 2019, the Supreme Court ruled that the High Court did not follow fair procedures in making the woman a ward of court and emphasised the need for the person to be involved in decisions, which impact directly upon them stating “it is essential that the voice of the individual be heard in the process”. The Court raised specific concerns about the absence of legal aid in cases such as these to ensure the person’s interests are protected.

In November 2019, in the shadow report on the Convention on the Elimination of Racial Discrimination, the Commission raised concerns over the fact that civil **legal aid** is not available to cases involving social welfare appeals, housing issues, and employment and equality cases.⁽²⁾ Further, the legal aid scheme does not extend to eviction proceedings, which has a disproportionate impact on Irish Travellers, an indigenous minority ethnic group.

The Commission was also involved, as *amicus curiae*, in a Supreme Court case relating to the **European Arrest Warrants system and the right to a fair trial**. In November 2019, the Supreme Court held that systemic deficiencies in a particular system, where far reaching, could by themselves amount to a sufficient breach of the essence of the right to a fair trial. It held that while the systemic changes in Poland were viewed as serious and grave, they

could not themselves be sufficient to cross the threshold of a real risk of breaching his right to a fair trial.(3)

In July 2019, the Commission welcomed the ratification of the Istanbul Convention, but noted concerns regarding access to justice in that context, including the **lack of provision for children to make applications for protection and safety orders** in their own right, delays in accessing court-ordered expert reports; and the lack of accredited training, regulations or quality assurance mechanisms in place for legal interpretation services.(4)

In July 2019, the Commission also welcomed the decision of Mr Justice Iarfhlaith O'Neill, that survivors of child sexual abuse in National Schools cannot be excluded from the **State's ex gratia payment scheme** because they have not established a 'prior complaint' against their abuser. Mr Justice O'Neill found the State's requirement of a 'prior complaint' for an applicant to the ex gratia scheme to be eligible for a payment is incompatible with *O'Keeffe v Ireland* and Article 13 of the ECHR. The Commission called for the Government to overhaul its ex gratia scheme to ensure effective remedy to those who are being denied justice by State inaction.(5)

References

- (1) AC v Cork University Hospital[2019] IESC 73, at p. 149. See also IHREC (2019) Commission Welcomes Supreme Court Ruling Clarifying Individual's Rights and Protections in Ward of Court Case(available at: <https://www.ihrec.ie/commission-welcomes-supreme-court-ruling-clarifying-individuals-rights-and-protections-in-ward-of-court-case/>)
- (2) IHREC, Ireland and the Convention on the Elimination of Racial Discrimination, November 2019, at p. 142, (available at https://www.ihrec.ie/app/uploads/2019/11/IHREC_CERD_UN_Submission_Oct_19.pdf)
- (3) IHREC, Human Rights and Equality Commission Welcomes Clarity Set Out in Significant Right to Fair Trial Case, 12 Nov 2019 (available at: <https://www.ihrec.ie/human-rights-and-equality-commission-welcomes-clarity-set-out-in-significant-right-to-fair-trial-case/>)
- (4) IHREC, Statement on the ratification of the Council of Europe Convention on preventing and combating violence against women and domestic violence, July 2019, p. 8 (available at: <https://www.ihrec.ie/app/uploads/2019/06/Statement-on-Ratification-of-CoE-Convention-on-Preventing-and-Combating-Violence-Against-Women-and-Domestic-Violence.pdf>)
- (5) IHREC, Irish Human Rights and Equality Commission welcomes Mr Justice Iarfhlaith O'Neill's interpretation of Louise O'Keeffe's Strasbourg judgment as too restrictive, 8 July 2019 (available at: <https://www.ihrec.ie/irish-human-rights-and-equality-commission-welcomes-mr-justice-iarfhlaith-oneills-interpretation-of-louise-okeeffes-strasbourg-judgment-as-too-restrictive/>)

In-focus section on COVID-19 measures

Most significant impacts of measures taken in response to the COVID-19 outbreak on the rule of law in the country

So far, in response to COVID-19 outbreak, the government has passed two pieces of legislation. The Health (Preservation and Protection and other Emergency Measures in the Public Interest) Act 2020 gives the power to the Minister for Health to regulate for restrictions on travelling and mass gatherings, and gives powers to medical officers and police to detain persons for failing to self isolate. The Act creates new criminal offences for refusing to self-isolate, with punishment of a €2,500 fine or a 6 month prison sentence, or both. The new powers within this Act are time limited.

The second piece of legislation is the Emergency Measures in the Public Interest (COVID-19) Act 2020. Among other things, this Act puts a moratorium on evictions and rent increases, and amends the Mental Health Act 2001. These amendments include provisions to allow for remote hearings of the mental health tribunals for assessments of an order to detain someone, to permit written submissions rather than oral, reduces the required number of people sitting on the tribunals from three to one, and allows for the period for review by a Tribunal to be extended by up to 28 days.

In a letter to the Taoiseach (Prime Minister), the Commission recognised that it can be necessary to take exceptional measures to safeguard the health of the community and the lives of individuals and emphasised that such measures must be necessary, proportionate and non-discriminatory, and their implementation must be informed by human rights and equality principles (1).

The Commission discussed issues relating to COVID-19 and disability with its statutory Disability Advisory Committee.

References

- (1) IHREC, Letter to An Taoiseach in relation to the COVID-19 Pandemic, 25 March 2020 (available at: <https://www.ihrec.ie/app/uploads/2020/03/IHREC-Letter-to-An-Taoiseach-March-2020.pdf>)

Italy

Relevant developments towards the establishment of a National Human Rights Institution

Despite several initiatives over many years, a National Human Rights Institution has not yet been established in Italy. Other state bodies, such as the National Authority (Garante nazionale) for the rights of persons deprived of liberty, carry out important human rights work in the country. However, they do not have a broad human rights mandate and do not fulfil other criteria under the UN Paris Principles to be considered an NHRI.

In November 2019, at the occasion of the Universal Periodic Review (UPR) of Italy, delegations from over 40 countries [included](#) in their recommendations the establishment of an NHRI in Italy, in compliance with the UN Paris Principles. As a result, the Italian government reaffirmed its commitment to establish an NHRI. There is currently a legislative proposal being debated before the competent Parliamentary Committee. Multiple actors, including ENNHRI, have been calling for the establishment of an Italian NHRI in compliance with the UN Paris Principles.

In January 2019, ENNHRI [addressed](#) the Italian Chamber of Deputies to underline the importance of establishing an NHRI in Italy and how it would differ from other existing national mechanisms. This message was reiterated later that year during a [roundtable](#) in Italy, organized by ENNHRI with Amnesty International, which brought together representatives from Italian civil society, European NHRIs and regional organisations.

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 government and legislature. The establishment of an NHRI in Italy, in compliance with the UN Paris Principles, will contribute to greater promotion and protection of human rights in Italy.

Kosovo*

*Ombudsperson Institution of Kosovo**

Independence and effectiveness of the NHRIs

International accreditation status and SCA recommendations

Due to the specific international standing of Kosovo*, the Ombudsperson Institution is unable to seek accreditation before GANHRI's Sub-Committee on Accreditation, organized under auspices of UN OHCHR. The Institution is a non-accredited, associate member of ENNHRI. It has worked for the promotion and protection of a wide range of human rights issues in Kosovo*.

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

The Ombudsperson Institution of Kosovo* was established in year 2000. The Constitution of the Republic of Kosovo*, provides the Ombudsperson Institution as a constitutional category and as an independent institution with the mandate to monitor, protect and promote the rights and freedoms of individuals from unlawful or improper acts or failures to act by public authorities.

Through the years, this institution faced a lot of challenges, both in terms of lack of awareness on the mandate of the institution by and negligence from the authorities for matters raised by the Ombudsperson within its independent mandate, but also with limited resources, adequate office spaces, budget etc. However, our institution in partnership with a lot of other international institutions and organisations based in Kosovo*, with the aim to be in full compliance with Paris Principles on National Human Rights Institutions, has worked very hard to change the legislation upon which the Ombudsperson Institution operated. This was achieved on 2015, when three basic new human rights laws entered into force: Law on the Ombudsperson, Law for Protection from Discrimination and Law on Gender Equality, which vested new mandates and additional competences to the Ombudsperson Institution of Kosovo*.

The new Law on the Ombudsperson was drafted having in mind the best international standards on the national human rights institutions and can be considered a model legal framework for other similar institutions. It has strengthened the role of this institution, adding provisions that guarantee organisational, administrative and financial

independence. Furthermore, this law has extended functional immunity not only for the Ombudsperson and his deputies, but to its entire staff. All authorities are obliged to respond to the Ombudsperson on his requests on conducting investigations, as well as provide adequate support according to his/her request, and furthermore the government and the municipalities are obliged to provide space or offices suitable for work in public ownership in order to enable effective performance of the functions and responsibilities of the Ombudsperson Institution of Kosovo* (OIK) and most importantly guarantees financial independence. In particular, Article 35 of this law provides that "Regardless of the provisions of other Laws, the Ombudsperson Institution prepares its annual budget proposal and submits it for approval to the Assembly of the Republic of Kosovo*, which cannot be shorter than previous year approved budget. Budget may be shortened only by the approval of the Ombudsperson."

This human rights law package aims at increasing the efficiency of the procedure by which the Ombudsperson deals with complaints, setting forth a faster decision making with regards to the assessment of the admissibility criteria (10 days, compared to 30 days provided in the previous law), the establishment of the National Torture Prevention Mechanism (NTPM), the extension of the scope of the mandate of the Equality Body to deal with cases of discrimination relating to the behaviour not only of public authorities but also private actors, penalties for non-cooperation with the Ombudsman, initiation of proceedings by the Ombudsman, representation by the Ombudsman in his capacity as Amicus Curiae in court proceedings dealing with human rights, issues of equality and protection from discrimination, etc.

Since the start of implementation of this new legislation, all the challenges related to independence and functionality of the institution seem now overcome. We experience a better cooperation with all the authorities: the huge increase in the implementation rate of our recommendations can be considered as an indicator of such increased cooperation.

The Ombudsperson has increased the public trust in the institution. This was indicated in the Country Report from the European Commission and also in the Balkan Barometer for 2017 and 2018 of the Regional Cooperation Council which ranked the Ombudsperson Institution of the Republic of Kosovo* as the most trustworthy from institutions listed in the country and in the region, which marks another notable success of OIK's role in promotion and protection of human rights in the country.

Changes in the national regulatory framework applicable to the NHRI change since the last review by the SCA

The Ombudsperson Institution of Kosovo* every year is invited and participates in all the meetings and conferences organized from the Global Alliance of National Human Rights Institutions (GANHRI, former ICC) with the status of an observer. On 14th November 2012, we addressed a formal request for accreditation; however, the Sub-Committee on Accreditation has responded that GANHRI statute allows membership and accreditation only to the countries that are member of United Nations. Therefore, as the Republic of Kosovo* is still not a member of the United Nations, due to this political barrier, the Ombudsperson Institution continues to be only an observer in this organisation.

At the same time, we are happy to report that the interaction and participation in GANHRI meetings has been a good opportunity to prepare ourselves to respond to future requirements when the Ombudsperson Institution of Kosovo* will be ready for the accreditation process.

References

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Human rights defenders and civil society space

The Ombudsperson Institution of Kosovo* has an excellent cooperation with civil society organizations and considers them as a good partner in working together for the advancement of the respect for human rights in Kosovo*. Therefore, a lot of mutual activities on different matters of human rights has been organized through the years.

Freedom of association

In March 2019, the Law no. 06 / L - 043 on Freedom of Association in Non-Governmental Organizations has entered into force by abrogating earlier law of 2011. Actually, the law was adopted in 2018 by the Assembly of Kosovo*, but some provisions of the law were found to

limit and even endanger the organizational sector of NGOs. Upon NGOs' response and the President's assessment, the Law was sent back to the Assembly for review and the remarks were taken in consideration. The new law, as such, represents a good opportunity for the development of the non-governmental sector in Kosovo*.

When it comes to civil society space, the Ombudsperson Institution has raised its voice in different occasions in making for them a better working environment. In 2018, we even published a report with recommendation on the freedom of association, which was based on two complaints regarding the suspension of the activity of nongovernmental organizations, based on a request from the competent security body. In this report, the Ombudsperson considered that the suspension of the activities of NGOs solely on the basis of suspicions that their activity does not comply with the legal and constitutional order of the Republic of Kosovo* and with international law, without any proper investigation by the prosecuting authorities, represents a direct interference with the freedom of association and poses a risk that the state may, at any time, interfere on the activities of any other NGO.

The right of access to public documents

The right of access to public documents is guaranteed by the Constitution of Republic of Kosovo* and other relevant international instruments directly applicable in Kosovo*. In addition, the Law on Access to Public Documents that entered into force in July 2019, guarantees the right of every person, without discrimination on any grounds, to access public documents produced, received, maintained or controlled by public institutions, as well as the right to re-use the public sector documents. The competence of the Ombudsperson in this regard is to assist citizens in realisation of their right for access to public documents.

During the year 2019, the trend of increasing the number of complaints submitted to the Ombudsperson regarding allegation of denial of the right of access to public documents has continued. During 2019 there were 106 complaints filed within the Ombudsperson Institution, of which 99 were initiated for investigation. Out of 99 investigated complaints that were filed for violation of the right of access to public documents, 73 were filed from NGOs and the media, while 26 from natural persons.

Our investigations on these complaints revealed that there is a lack of classification of documents, lack of capacities of responsible officials in addressing requests for access to public documents, and lack of will of law enforcement institutions, which results in the violation of the right of access to public documents. Although the response of the

institutions confirming the receipt of the request is often quick and within the legal deadlines, the decision to grant or refuse the request is often not taken within the deadlines set by law, despite the importance of prompt delivery of information/documents. Furthermore, public institutions often fail to provide a law-based justification for not allowing/restricting access. The Ombudsperson emphasized to the authorities the necessity, in accordance with applicable legal provisions, to classify the documents as soon as the information is produced, as this is the only manner for avoiding arbitrary decisions on restriction or denial of access and would facilitate the process of handling requests for access to public documents addressed to institutions.

References

- Annual Report 2018: <https://www.oik-rks.org/en/2019/04/08/annual-report-20188/>
- Annual Report 2019: <https://www.oik-rks.org/en/2020/04/02/godisnji-izvestaj-2019/>

Checks and balances

Separation of powers/constitutional review

The Ombudsperson Institution during its mandate of monitoring human rights compliance with Constitution and other international standards has found evidence of practices that erode the separation of powers, as it is the case with the Law on Public Official and the Law on Salaries in the Public Sector, which we sent for review in the Constitutional Law of the Republic of Kosovo* and also required the imposition of interim measures in both laws, in order to avoid the irreparable damage that could be caused by the application of these laws, in particular the Law on Salaries.

The Law on Public Officials grants the Government of the Republic of Kosovo* the competence to establish the legal basis for the employment of public officials in the institutions of the Republic of Kosovo*. This also concerns public officials in independent institutions, including the Ombudsperson Institution, and other entities in the public sector, without taking into account the specificities of the constitutional status of such entities. The Ombudsperson considered that the Law on Public Officials did not take into account the fact that different entities in the public sector have their organisational, functional and activity issues specifically regulated, in accordance with the Constitution of the Republic of Kosovo* and their organic laws.

The Law on Salaries in Public Sector, inter alia, determines the salary and reward system for public officials, who are paid by the state budget and the rules for determining the salaries of publicly owned enterprises" employees in Kosovo*. The Ombudsperson considered that this law and Annex one (1) of this law have failed to convey the constitutional spirit in terms of separation of powers, equality before the law, and the guarantee of property rights. Furthermore, the Ombudsperson considered that it is incompatible with the principles of the rule of law, due to deficiencies in terms of its clarity, accuracy and predictability. The Ombudsperson has received more than 40 complaints from various public sector entities filed against the Law on Public Sector Salaries, including complaints from health, education, police and civil service employees' unions.

Parliamentary functionality and oversight function

The Assembly of Kosovo* during the review and adoption of laws in 2019 has adopted 29 laws. The Ombudsperson considers that the small number of adoption of laws is a result of the irregular functioning of the Assembly, which during 2019 held a relatively large number of extraordinary sessions which were considered an obstacle to the proper functioning of the Assembly. The Ombudsperson noted that at the moment of dissolution of the Assembly, on 22 August 2019, 53 draft laws remained in the process of review and adoption. Proceeding of such a small number of laws is an indication that the Assembly of Kosovo* has not been able to properly exercise its constitutional function with regard to adopting laws. It is worth mentioning that during last year, none of the laws adopted by the Assembly of Kosovo* represented legislation of vital interest.

Increased executive powers

The number of recommendations that the Ombudsperson has addressed to the Government and its stakeholders is 41, out of which only 9 have been implemented so far, while others either have not been implemented or are pending implementation. The accountability of the Government towards human rights issues remains low. Moreover, many of the issues presented by the Ombudsperson for the reporting period of the previous year (2018), regarding executive power have remained unaddressed by the relevant authorities, but they also have not been reviewed by the Assembly of the Republic of Kosovo*, although it has been submitted within the deadline.

References

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Functioning of justice systems

When it comes to judicial system, the Ombudsperson Institution has a limited mandate. It may only make general recommendations on the functioning of the judicial system, without interfering in legal cases and legal proceedings being conducted before the courts, except in cases related to allegations on the administration of justice, namely delays in court proceedings, and in the execution of judicial decisions.

Based on the number of complaints submitted to the OIK during 2019, citizens continue to face delays of several years regarding adjudication as well as non-enforcement of final court decisions which in turn affect the realisation of their rights. Moreover, the Ombudsperson notes that citizens perceive that judges lack impartiality during the adjudication of their cases. Due to the above mentioned, the Ombudsperson has received requests to monitor court hearings.

Delay of judicial proceedings

As in previous years, the Ombudsperson continues to receive complaints against courts regarding delays in court proceedings. Complaints are mainly related to procedural delay regarding disputes of civil, property or employment relationship nature. This comes as a result of the large number of old cases pending and the presentation of new cases.

The Ombudsperson observed that when it comes to procedural delays, particularly in cases that bounce from one instance to another during the review process or in situations when cases are returned for retrial, the tendency of the courts is to calculate the period of deliberation from the day when the case was referred to that court, which is not in compliance with the ECtHR case law. Another factor contributing to prolonged judicial procedures before courts is the registration of cases returned for re-trial with a new number, which in fact does not represent the accurate timeframe when the lawsuit was initiated before the Court and causing new delays, thereby resulting in the case not being addressed within a reasonable time-limit. In this regard, the Ombudsperson in 2018 recommended the Kosovo* Judicial Council (KJC) to stipulate with an internal act that cases returned for re-adjudication should be treated with priority over new claims. This

recommendation has received positive feedback from the KJC and is the way to its implementation.

Non-execution of court decisions

The Ombudsperson has received a considerable number of complaints during 2019 with regard to the non-execution of court decisions. The number of executions for civil cases at the national level remains low, which is of concern for the Ombudsperson. The Ombudsperson has drawn attention of the relevant authorities with several reports with recommendation that the enforcement of final decisions is part to the right to a fair and impartial trial which obliges them to take the necessary measures for the implementation of this right.

However, the number of complaints submitted to the Ombudsperson indicates that citizens have still huge difficulties in exercising and protecting their rights especially in the first instance proceedings before the Basic Court in Prishtina - Department for Administrative Matters. They are related to inefficiency of this court in administrative disputes. The investigations indicate that this court, when reviewing administrative disputes, in addition to delaying cases, does not decide on the substance of the case, but only on procedural violations, returning the case for decision-making to the administrative body, while administrative bodies during review mainly render rejecting decisions and the case ends in court again. This situation is concerning for the Ombudsperson as citizens are deprived of their right to effective remedies.

References

- Report of the Ombudsperson of Republic of Kosovo in relation to the registration with a new number of cases returned for retrial by a higher-instance court, at: <https://www.oik-rks.org/en/2018/11/29/complaint-no-4452018-recommendation-report-of-the-ombudsperson-of-republic-of-kosovo-in-relation-to-the-registration-with-a-new-number-of-cases-returned-for-retrial-by-a-higher-instance-court/>
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Media pluralism

During 2019, there were no complaints filed within the Ombudsperson Institution regarding the insufficient protection or attacks on journalists. The complaints filed within the

Ombudsperson institution by the media and journalists were mostly with regard to the access to public documents.

However, in the end of 2017, the Ombudsperson Institution have published an own initiative report with recommendations in relation to the freedom of media and safety of journalists. This report was initiated as a response to concerns about violation of freedom of expression, with an emphasis on media and safety of journalists in Kosovo* and about the challenges and problems in this field, especially the lack of judiciary efficiency for addressing such cases. Based on the analysis and findings, the Ombudsperson provided recommendation to the relevant authorities to take necessary measures to ensure the freedom of media and the safety of journalists.

References

- Report Ex. Officio in relation to the freedom of expression (media) and safety of journalists: <https://www.oik-rks.org/en/2017/11/02/report-ex-officio-in-relation-to-the-freedom-of-expression-media-and-safety-of-journalists/>

In-focus section on COVID-19 measures

Most significant impacts of measures taken in response to the COVID-19 outbreak on the rule of law in the country

There is no evidence for new laws adopted during the COVID-19 pandemic which could disproportionately interfere with human rights. However, a number of processes and practices can be reported on that could have interfered with human rights and eventually with separation of powers.

(1) On 23 March 2020, Kosovo* Government has issued the Decision No. 01/15 announcing the measures to combat and to prevent COVID-19, which included the imposition of curfews and the prohibition of public and private gatherings.

The President of the Republic of Kosovo* addressed the Constitutional Court requesting its constitutional assessment of the above mentioned Decision No. 01/15, alleging that this decision violates freedom of movement and freedom of gathering. The Constitutional Court asked the Ombudsperson Institution to give comments on the President's referral to the Constitutional Court. The Ombudsperson in his comments provided that, according to the Constitution and international instruments for human rights, which are directly applicable in the Republic of Kosovo*, states have the right to limit some of the human

rights. In this case, the right to life and public safety prevailed the freedom of movement and freedom of public gatherings. In principle, the Ombudsperson states the content of the decision seems to be sensible and even necessary in times of a pandemic as declared by the World Health Organization (WHO). However, the Ombudsperson stated that there might be a problem with the necessity and proportionality of the restriction of private gatherings, as this heavily interferes with Art.8 ECHR - protection of private life.

The Constitutional Court, on 6 April 2020 published the Judgement KO54/20 ruling that the Government Decision No. 01/15 is not compatible with the Constitution and declared the decision invalid. However, the Constitutional Court postponed the execution of its judgment until 14 of April 2020, considering the seriousness of the situation caused by COVID-19, in order to leave time for the Government to adjust the measures in accordance with the Constitution. Moreover, the Court requested from the Assembly to notify the Court of all steps taken by the Assembly of the Republic of Kosovo* following the publication of Judgment KO54/20. A few weeks later the Constitutional Court stated that it did not receive a response from Assembly. In this regard, the Court initially emphasized that the Assembly is obliged to determine the most appropriate mechanisms and authorisations, either through the amendment of existing applicable legislation or through the adoption of a new law, so that the relevant authorities, including the Ministry of Health, respectively the Government, take necessary measures to combat and prevent COVID-19 pandemics, in accordance with the Constitution and Judgment KO54 /20.

2) On 14 April 2020, the Ministry of Health issued 38 decisions for each municipality introducing measures for each municipality. The stricter curfew was imposed and some of the municipalities were put on quarantine. A group of 30 Members of the Assembly, referred three of these decisions for constitutional review. The Constitutional Court asked for the Ombudsperson for comments. The Ombudsperson sent the comments to the Constitutional Court, referring to his previous comments on the case referred to the Court by the President, with a comparative analysis of the other national institutions working on human rights, international organizations, international human rights NGOs and their positions towards the human rights situation created by COVID-19. The Ombudsperson stated that there is a lack of parliamentary oversight on Government's work.

The Constitutional Court, on 5 May 2020 on the above-mentioned constitutional complaint, declaring it partially unconstitutional. The Constitutional Court stated that:

The Ministry of Health has acted in accordance with the authorisations specified in the Law no. 02/L-109 on Prevention and Fighting against Infectious Diseases in the right to freedom of movement of citizens of the three municipalities. However, the Court, ruled that

administrative fines and relevant sanctions, imposed by the Ministry of Health are not compatible with the Constitution and Article 2 of Protocol No. 4 of the ECHR. The Court reasoned that administrative fines imposed by these three contested Decisions are not "defined by law" and, consequently, were declared unconstitutional.

The court, on the other hand, ruled that Decision on declaring the whole municipality as "quarantine zone", is not in accordance the Constitution and Article 2 of Protocol No. 4 of the ECHR. The Court found that the Ministry of Health has exceeded the competencies set out through Law no. 02/L-109 on Prevention and Fighting against Infectious Diseases, and consequently "interventions" in the right to freedom of movement, through the quarantine of the entire municipality are not "defined by law". The court clarified that according to the Law no. 02/L-109 on Prevention and Fighting against Infectious Diseases the "quarantine" may be ordered by the Ministry of Health, following the recommendation of the Public Health Institution, only for natural persons who are proven or suspected to have been in direct contact with sick persons or suspected of contagious disease.

(3) When it comes to the lack of parliamentary oversight the Ombudsperson appeared in front of the Assembly Committee for Human Rights, Gender Equality, Missing Persons and Petitions to discuss about latest developments and asked the Assembly to assume its constitutional role in overseeing the Government's work.

(4) On 2 April 2020, the Ombudsperson addressed a letter with recommendation to the Ministry of Infrastructure and Environment with regard to the protection of privacy of the citizens returning from other countries, through the flights organized by the Government of the Republic of Kosovo*, which were photographed in the lobby of the airport after their arrival, without obtaining their consent or disclosing the reason for the photo. Of concern was the publication of their photos on the Facebook page of the Ministry of Infrastructure, without any measure which would make it impossible to identify them.

Therefore, the Ombudsperson, in order to protect the rights of these citizens, and in particular the right to privacy and to avoid unintentional omissions in the administration of the process, recommended the ministry to duly inform the citizens for the purpose of the photograph and on the occasion of the publication of the photos, to protect the identity of the citizens.

The Ministry, after this letter with recommendation, removed the photos from their official website which would enable the identification of returned citizens and changed its practice accordingly.

(5) On 4 April 2020, the Ombudsperson through a public statement requests from media not to publish names of the persons in the quarantine. In this statement, the Ombudsperson emphasized that it sees with great concern publication of some news by portals which have published lists with tables containing names and surnames, as well as other information, concerning persons who have been ordered to be isolated in quarantine, due to coronavirus.

The Ombudsperson addressed portals with the request to remove this type of news so that they are not re-published by other portals. At the same time the Ombudsperson requested from media and journalists to do more for protection of personal data of persons in self-isolation, quarantine, those hospitalized and diagnosed with COVID-19, apart those given by person's consent.

Media has playing a major role in these circumstances by placing journalists at the front line in order to disseminate accurate information to the public. Media have also their own liabilities to accomplish according to the Code of Ethics and other self-regulation documents. The Ombudsperson put emphases on the latest recommendations of the Press Council of Kosovo* (PCK) for all media regarding their reporting on the situation with COVID-19.

(6) On 15 April 2020, the Ombudsperson Institution of the Republic of Kosovo addressed a letter with recommendations to the Ministry of Health and National Institute of Public Health, which was based on a complaint lodged from a journalist with regard to the publication of their public announcements on their official websites not in accordance with the Constitution and the Law on the Use of Languages. These announcements were being published only in Albanian Language, although by Constitution and Law, the Serbian Language is also an official language in the Republic of Kosovo. The above mentioned authorities, has immediately taken measures according to our recommendation and published all of the future announcements in both languages.

(7) On 23 April 2020, the Ombudsperson of the Republic of Kosovo has addressed an opinion to the relevant authorities related to the requests for release of certain categories of prisoners at the time of global Coronavirus (COVID-19) pandemic.

This Opinion is based on the complaints of some prisoners who addressed the Ombudsperson with the request for early release or parole based on the situation in the country after the outbreak of COVID-19 infection cases, which was declared a global pandemic by the World Health Organization (WHO). WHO required undertaking of severe

measures from states governments in order to prevent spreading of COVID-19. Such measures have been taken by the Government of the Republic of Kosovo as well.

The Ombudsperson Institution in this opinion has reinstated the relevant international standards in the matter raised in the complaint received and called on the authorities to implement them.

(8). On 29 April 2020, the Ombudsperson issued a press statement related to the domestic violence during COVID-19 pandemics. The institution, has been notified on the increase of reported number of domestic violence cases. According to official data obtained from Kosovo Police, in March 2019, the number of reported cases was 124, while 169 cases were reported during March 2020. It is obvious that the number of reported cases of domestic violence has increased by 36% compared to the same period last year.

While health emergency caused slowdown of courts' functioning and postponement of non-urgent court hearings, safety of the victim and her children should remain a primary concern for law enforcement institutions as well as judicial authorities for immediate actions, prevention and protection. Accordingly, state institutions remain committed to their liabilities to provide victims with appropriate and immediate protection from the risk of violence.

The Ombudsperson draw attention on state's obligation towards international human rights standards, to exercise due diligence to prevent, investigate, punish and ensure compensation for acts of violence, pursuant to their obligations under the European Convention on Human Rights and Fundamental Freedoms.

In a situation of increased number of cases of violence, risk assessment and management for victims of violence remain essential. Attention also should be paid to the need for financial support on which many women will depend after being relocated to a shelter for victims of violence.

(9) Complaints

From March – June 2020, all Kosovo citizens arriving from abroad were placed in quarantine for 14 days. The Ombudsperson opened Ex Officio investigations based on the allegations that people placed in quarantine were discriminated regarding issuing decisions for certain persons to leave the quarantine. In the same period, we received additional complaints through the NPM from the sentenced prisoners, who asked for their sentence to be suspended due to COVID-19.

(10) Public appearances

During this period the Ombudsperson and other staff members of the institution has been invited in a lot of interviews in TV and radio related to COVID-19 pandemic measures and their impact on human rights. Such activities will continue in the future as well.

(11) On 1 June 2020, the Ombudsperson Institution, resumed its work with full capacity in the central office in Prishtina and regional offices around Kosovo. Most of the restriction measures imposed by the Government of the Republic of Kosovo are now lifted.

References

- Constitutional review of Decision No. 01/15 of the Government of the Republic of Kosovo, of 23 March 2020: <http://www.kuvendikosoves.org/shq/lajmi/nga-mbledhja-e-komisionit-per-te-drejtat-e-nj-24824/>
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Most important challenges due to COVID-19 for the NHRI's functioning

The most important challenges due to COVID-19 for the Ombudsperson Institution of Kosovo* relate to the need for the Institution to function with only part of the essential staff at the office, while others working from home. This determined an overload to the staff who had to prepare the Institution's reactions to public authorities, media and citizens on the several human rights issues raised in connection to the emergency measures decided by the government, including before the Constitutional Courts.

Despite this, the Kosovo* National Protection Mechanism (NPM), based on the principle "do no harm", had to suspend its monitoring activities to all places of deprivation of liberty until next decision. However, it continued its online monitoring through permanent contacts with relevant authorities on the situation of persons deprived of their liberty. Also, all persons deprived of their liberty, including those at administrative detention centres, asylum reception centres, social and psychiatric care centres, as well as quarantines, had the possibility to contact the NPM through phone number at their disposal every day, including weekends. But, being unable to contact directly persons deprived of their liberty was and still is one of the main challenges to conduct our NPM mission. Nonetheless, the authorities in the Republic of Kosovo* continue to provide to NPM full access and cooperation.

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

Latvia

Ombudsman's Office of the Republic of Latvia

Independence and effectiveness of the NHRI

International accreditation status and SCA recommendations

The Latvian NHRI was [accredited](#) with A status in March 2015. During its assessment, the SCA encouraged the NHRI to advocate for further guarantees to ensure the tenure of the members of the decision-making body of the NHRI, the protection of the Ombudsman from undue interference from the Parliament, and sufficient funding for the NHRI to carry out its growing mandate.

In-focus section on COVID-19 measures

Most significant impacts of measures taken in response to the COVID-19 outbreak on the rule of law in the country

On 16 March 2020, the Latvian government, on its own initiative, informed the Council of Europe pursuant to the **derogation clause contained in Article 15 of the European Convention on Human Rights** that the restrictions adopted due to the state of emergency could potentially exceed the limits already allowed by the European Convention on Human Rights to ensure the legitimate aim of “public health”. The Ombudsman of the Republic of Latvia has provided an explanation to the public and politicians that the limitations allowed by the derogation clause contained in Article 15 of the Convention are to be interpreted narrowly, allowing for deviation from obligations, only to the extent that the extraordinary nature of the situation inevitably requires. This does not mean that the Latvian government, using the declared state of emergency, may disproportionately restrict the rights of the population in areas and in ways that are not inevitably necessary to ensure public health - to control the COVID-19 epidemic.

So far, the Ombudsman's Office has received many complaints about issues related to receiving the **downtime allowance**. To support employees and employers, the government has developed criteria for how employees working in companies affected by the COVID-19 pandemic emergency can receive a downtime allowance of 75% of their monthly income, up to a maximum of € 700. The Ombudsman has been very active in expressing opinions and this issue.

The Ombudsman has also expressed the opinion that the state, through local governments, in this emergency situation provides free lunches to those groups of the society that need it the most, or disadvantaged and low-income persons and large families. But the fact that lunches are not provided for those groups who are not among the **most vulnerable groups** does not constitute discrimination.

The ombudsman also focuses on **closed institutions**. In relation to them, the Ombudsman drew the government's attention to the observance of the COVID-19 restriction measures.

There have also been issues of respect for **legal equality** in an emergency.

There has also been public interest in caring for **children** and meeting children with parents they do not live with.

The ombudsman prepared more extensive material for the public on how not to fall into the trap of **human trafficking organizers and fraudsters** during an emergency crisis.

References

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Liechtenstein

Liechtenstein Human Rights Association

Independence and effectiveness of the NHRI

The Liechtenstein Human Rights Association is a non-accredited, associate member of ENNHRI since September 2019.

It was founded in December 2016 by 26 non-governmental organisations through the Liechtenstein Human Rights Association Act. It serves as an Ombuds body with a broad mandate to protect and promote human rights in Liechtenstein. The institution also acts as the Ombuds Office for Children and Young People.

ENNHRI will be supporting the Institution to seek accreditation by reference to the UN Paris Principles.

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Lithuania

Seimas Ombudsmen's Office

Independence and effectiveness of the NHRI

International accreditation status and SCA recommendations

The Lithuanian NHRI was [accredited](#) with A status in March 2017. The SCA acknowledged the cooperation of the NHRI with other Ombuds institutions in Lithuania, and encouraged the NHRI to continue, develop and formalise similar working relations with national bodies.

Changes in the national regulatory framework applicable to the NHRI change since the last review by the SCA

Since 23 March 2017, when the Seimas Ombudsmen's Office has become an accredited NHRI (Status "A"), the Seimas (Parliament) of the Republic of Lithuania adopted the Law (entered into force on 1 January 2018) amending Articles 3, 19 and 19(1) of the Law on the Seimas Ombudsmen no. VIII-950 and adding Article 19(2). These defined new areas of competence of the Seimas Ombudsmen in the exercise of the functions attributable to the National Human Rights Institution:

- In promoting the respect for human rights and freedoms and in cooperation with state and municipal institutions, agencies, civil society, social partners, international organisations on the issues of human rights and freedoms, the Seimas Ombudsmen's Office shall perform the following functions:
to carry out human rights monitoring in Lithuania and to prepare reports on the human rights situation;
- to perform dissemination of information on human rights and public education on human rights;
- to present assessment of the human rights situation in Lithuania to international organisations and to provide them with information in accordance with the obligations established in the international treaties of the Republic of Lithuania;
- to make proposals to state and municipal institutions and bodies on human rights issues;
- to seek harmonization of national legislation with the international obligations of the Republic of Lithuania in the field of human rights;
- initiate investigations into fundamental human rights issues.

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Human rights defenders and civil society space

The Seimas Ombudsmen's Office observes the situation regarding the civil society space and the protection of human rights defenders. In this regard, the SOO maintains a close relation with NGOs and CSOs, which includes both bilateral and multilateral meetings as well as consultations and joint initiatives.

For example in 2019 Seimas Ombudsmen on a regular basis met with public groups, representatives of international rights defenders organisations, members of Lithuanian Trade Union "Solidarity", representatives of other Ombudsmen institutions operating in Lithuania, various non-governmental organisations, representatives of the UN Refugee Agency (UNHCR), the National LGBT rights organisation, etc.

No particular violation of rights and freedoms of human rights defenders or civil society organisations, that could negatively affect their activities, were observed.

It also should be mentioned that in the report on the fulfilment of Lithuania's obligations in implementing the International Covenant on Civil and Political Rights, the Seimas Ombudsman has expressed his opinion on the protection of minors from the negative effects of public information in the field of LGBT rights.

The Shadow Report provided by the Seimas Ombudsman to the UN Human Rights Committee encompassed a number of parts, one of them - Provisions of the law constituting preconditions for discrimination, where the Seimas Ombudsman observed that legal acts of the Republic of Lithuania still contain valid questionable provisions that are potentially incompatible with the protection of human rights, which in some way restrict the rights of minorities:

Constitution of the Republic of Lithuania provides that marriage is concluded by free agreement between man and woman, and Article 4(2)(16) on the Law on the protection of

minors against adverse effects of public information provides that Information that promotes the concept of the formation of a marriage and a family different from that established in the Constitution of the Republic of Lithuania and the Civil Code of the Republic of Lithuania, is considered as information having the negative impact on minors. According to the data of the country's non-governmental organisations, this particular provision of the law often becomes the basis for the restriction of the freedom of expression of sexual minorities. In May 2015 the LGAA (National Association for the Protection of Lesbians, Gay, Bisexual, Transgender and Intersex persons (LGBT)) LGL addressed the National Broadcaster (LRT) on the possibility to broadcasting promotional videos of the Baltic Pride 2013 festival. On 4 July 2013 the LRT replied that these video clips could only be broadcast on a limited time basis and include age indices ("S" adult content) and "N-14" (inappropriate for persons under the age of 14). According to the LRT, these restrictions were necessary because of the aforementioned provision of the law protecting minors from the information that encourages the conception of the formation of marriage differ and from that enshrined in the Constitution of the Republic of Lithuania.

In this context it is worth noting that on 14 December 2017 the Draft law on the amendment of Articles 4 and 6 of the Law on the Protection of Minors against the Detrimental Effect of Public Information No. IX-1067 was registered by the Seimas Member D.Sakaliene, proposing to amend Article 4 (2)(16) by deleting the said discriminatory provision. However, there were no further actions taken.

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Checks and balances

In accordance with the Article 19(8) of the Law on the Seimas Ombudsmen, the Seimas Ombudsmen can recommend to the Seimas, state or municipal institutions and agencies to amend the laws or other statutory acts which restrict human rights and freedoms, thus exercising a **role in the system of checks and balances**. Below are a number of examples that illustrate the work of the Seimas Ombudsmen in this regard:

In February 2020, the Seimas Ombudsman acknowledged that the gaps left in the **regulation of intelligence** pose a particularly high risk of negatively affecting human rights, and therefore it is important to strengthen control over officials. As a consequence, the Seimas Ombudsman recommended the Prime Minister to initiate the amendment of the current Law on Intelligence by setting maximum terms for the application of intelligence methods, conditions for the deletion of information collected, and the possibility for individuals to effectively defend their rights in court.

In February 2020, the Seimas Ombudsman submitted an opinion to the Committee on Human Rights regarding **effective procedure for the application of mediation in family disputes**. In his observations on the changed procedure for the out-of-court settlement of disputes, the Seimas Ombudsman acknowledged the need to improve the provisions of the Law on Mediation, as the current procedural framework is not fully clear and the space in the regulatory procedure left for interpretation can have a particularly negative impact on victims of violence.

The Seimas Ombudsman repeatedly drew the attention of state institutions to the fact that the Compulsory Health Insurance Fund should cover all and not part of convicts, that **access to health care for prisoners** is a national responsibility and that detainees and convicts should be afforded the same quality of health care as the rest of the society. Finally, in January 2020, the Seimas Ombudsmen welcomed the interinstitutional agreement on Compulsory Health Insurance for convicted persons, which was approved by the Seimas. The President has signed Amendments to the Law on Health Insurance that extends the list of persons covered by the Compulsory Health Insurance.

In May 2019, the United Nations (UN) Committee on the Elimination of Racial Discrimination has issued recommendations to Lithuania on the implementation of the International Convention on the Elimination of All Forms of Racial Discrimination, which encouraged Lithuania to intensify its efforts in the integration and education of Roma, the strengthening of civil dialogue, the fight against hate speech, the adoption of the Law on National Minorities, the inclusion of refugees and migrants. The Seimas Ombudsmen's Office has submitted an alternative report which drew attention to the problems of **Roma integration** in the country, urged Lithuania to take adequate measures to combat the **hate speech** and advocated the adoption of the **Law on National Minorities**.

In April 2019, upon the initiative of the Seimas Ombudsman, representatives of state institutions and non-governmental organisations listened to activity results of the monitoring report of 2018 on implementation of **Social Integration of the Disabled and the UN Convention on the Rights of Persons with Disabilities**. Following the report, the

Department for the Affairs of the Disabled highlighted the main weaknesses in the implementation of the UN Convention on the Rights of Persons with Disabilities in the country.

References

- <http://www.lrski.lt/en/news/710-the-committee-on-the-elimination-of-racial-discrimination-recommends-ensuring-adequate-funding-for-the-national-human-rights-institution.html>
- <http://www.lrski.lt/images/Alternatyvi-ataskaita-CEDAW.pdf>

Functioning of justice systems

One issue of concern in the area of justice which the Seimas Ombudsmen would like to report on concerns the **inadequate implementation of the review procedure on declaration of incapacity**.

A recent study by the Seimas Ombudsmen revealed that after the ongoing review of the incapacity of individuals, there are still more than 1,600 incapacitated individuals in the country, whose rights have so far been unduly restricted. These particularly puzzling findings and other loopholes in the legal review procedure were presented by the Seimas Ombudsmen's Office in a report in which the Seimas Ombudsman commented on a particularly inefficient implementation of the incapacity review procedure.

While visiting incapacitated persons in places of deprivation of liberty, doubts arose over quality of implementation of the law, which stipulates that court judgments issued until 1 January 2016 regarding the declaration of persons to be incapacitated must be reviewed within two years. After noticing that the rights of the majority of persons in places of deprivation of liberty are still unreasonably restricted, the Seimas Ombudsman decided to find out what were the reasons for the inefficient implementation of the incapacity review procedure.

The investigation revealed that, in fact, only less than half of cases of incapacitated persons were reviewed within the set two-year deadline. The report also notes that caregivers of incapacitated persons were not adequately informed about the ongoing process and objectives of the incapacity review and that municipalities were not prepared to provide the information and assistance they needed at the time. Moreover, the municipalities themselves did not initiate the legal action procedure in the absence of the guardians' duty to apply to the court for review of incapacity. The investigation also revealed that data on

incapacitated persons is still processed differently in different municipalities, and the municipalities themselves explained that they had difficulties in obtaining data from the Center of Registers on incapacitated persons throughout the review period. The difficult access to data and the unclear procedure for review of incapacity, which remained for a year, were often cited as one of the main reasons for impeding the proper and timely implementation of the envisaged procedure.

Unfortunately, there is no uniform practise in the country for collecting, pooling and systematizing data on incapacitated individuals, and some municipalities do not collect such data at all. It also should be noted that the State, which delegated additional functions to municipalities during the period of incapacity review, did not foresee or allocate required additional funds, which had a particularly negative impact on the quality of the ongoing review procedure. The investigation also revealed that state-appointed attorneys often did not even visit incapacitated persons, did not meet with them, and the persons had to wait up to a year and a half for designated forensic psychiatrists.

The Seimas Ombudsman drew the attention of the Government and the Ministry of Social Security and Labour to the urgent need for a qualitative review of all court decisions declaring incapacitated persons up to now. It was noticed that during the procedure, the effective protection of the rights and freedoms of incapacitated persons was not ensured, but at the same time it resulted in excessive restrictions on their rights and freedoms.

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Media pluralism

The Seimas Ombudsmen's Office drafted and on 30 November 2018 expressed its position on "Freedom of expression by ensuring the **independence of the public broadcaster**". Without considering the particular proposals of the Ad-Hoc Investigation Commission of the Seimas, the Seimas Ombudsman spoke of the need to protect freedom of speech and expression guaranteed by the Constitution and the European Convention for the Protection of Human Rights and Fundamental Freedoms by ensuring the independence of the national broadcaster. In his position, the Seimas Ombudsman noted that Article 10 of the European Convention on Human Rights, which guarantees freedom of expression, includes, inter alia, freedom of the press, radio and television, as there is no democratic society

without free and abundant press. The Seimas Ombudsman also noted that the ECHR case *Manole and Others v. Moldova* stressed the importance of the independence of the statutory public service broadcasters from political and economic impact.

It should be noted that the role of the public broadcaster in democratic societies is exclusive, therefore the European Parliamentary Assembly, the EC Committee of Ministers not once has invited the Member States to establish the functions of the management and supervisory authorities over the public service broadcaster by law, defining the principles of accountability, appointment and dismissal of its members, thus not creating any preconditions to make political and/or economic impact on public service broadcaster. EC Member States should build on the measures and implement all the standards and principles set out in the various Recommendations of the Committee of Ministers on the independence of public service broadcasters, including, legal measures to ensure the editorial independence and institutionalization of the public service broadcaster's autonomy and avoiding its politicization.

Summarising, the Seimas Ombudsman emphasised that one should avoid such initiatives that would allow to exert political and/or economic influence on the public service broadcaster, thus breaching Provisions of Article 10 of the ECHR.

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- <https://en.delfi.lt/politics/seimas-ombudsman-calls-parliament-to-avoid-initiatives-limiting-independence-of-national-broadcaster.d?id=79874323>
- <http://www.lrski.lt/images/dokumentai/Concerning-National-Broadcasterpdf.pdf>

Corruption

The Seimas (Parliament) of the Republic of Lithuania has adopted a **Law on Whistleblowers**, which lays down the rights and duties of the persons reporting about the infringements in institutions, the grounds and forms of their legal protection as well as the measures of protection, provision of incentives and assistance to such persons for the purposes of creating favourable conditions for reporting about the infringements of the law which pose a threat to or violate the public interest, or for the purposes of prevention and detection of such infringements. The Seimas Ombudsmen's Office contributed to the development of this Law.

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In-focus section on COVID-19 measures

Most significant impacts of measures taken in response to the COVID-19 outbreak on the rule of law in the country

The Government of the Republic of Lithuania has proclaimed the emergency state on 13 March 2020, and it has been extended several times. In respect to the COVID-19 pandemic, the Government of the Republic of Lithuania also adopted a number of restrictive measures. While majority of them are fully acceptable from the human rights perspective, there are also measures that are extremely concerning.

The Seimas Ombudsmen uphold that the severe restrictions enforced by the Government and the measures taken to prevent the spread of the disease **affect the most vulnerable group of people deprived of their liberty**. For this reason the Seimas Ombudsman drew the attention of the Government of the Republic of Lithuania that any restrictions on human rights, even in an emergency, should be carried out imperatively in accordance with the rule of law, the Constitution, the laws applicable in Lithuania and following international obligations in the sphere of human rights. He also called for state and municipal agencies and institutions to follow the recommendations of the World Health Organisation, the SPT, specialists' epidemiologists, as well as the CPT principles for action to be taken in places of detention during the coronavirus (COVID-19) pandemic.

The Seimas Ombudsman also called for compliance with the requirements of legal acts regulating measures for the prevention and control of communicable diseases, according to which it is necessary to update emergency plans, constantly inform employees about the changing situation, reminding them what actions they should take to prevent the spread of the virus. It is also particularly important to comply with general hygiene requirements in order to avoid overcrowding of the residents', provide and prepare isolation rooms as well as to guarantee provision of the necessary hygiene and protection measures to the residents and the staff as well. Moreover, in guaranteeing preventive and control measures against the virus, the dignity of the residents must be respected and their rights secured.

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

Following the decisions of the Government of the Republic of Lithuania to prevent the spread of coronavirus (COVID-19), starting from 13 March 2020 until a separate notice, citizens are served at the Seimas Ombudsmen's Office only remotely. Currently the citizens can launch a complaint or apply for information by regular post, electronic means or by telephone. The Seimas Ombudsmen's Office, as a National Human Rights Institution, continues investigation of complaints, launching of investigations on the Seimas Ombudsmen's own initiative, writing reports, filling questionnaires and in spite of the fact that monitoring of places of detention became challenging to implement, the Seimas Ombudsmen's Office, as an NPM, makes every effort to fulfil its preventive mandate. The Seimas Ombudsmen are determined to continue visits to places of detention during the pandemic to ensure that restrictive measures applied by the authorities do not result in human right violations.

However, all planned seminars, conferences and trainings are postponed due to the closure of all schools and "home office" arrangements in most companies and public authorities as well as social distance requirements.

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

The Seimas Ombudsman conducted an investigation on the alleged **excessive display of power by officers through the use of physical force** against non-opposing persons and the public display of special measures used against them as this issue has raised considerable public concern.

The Seimas Ombudsman identified the emerging practice of denying the **presumption of innocence** when suspects or accused persons are presented as guilty in court or in public, disproportionately using means of **physical restraint**. In his report, the Seimas Ombudsman notes that the Constitutional Court has emphasized that the presumption of innocence is one of the most important guarantees of implementation of justice in a democratic state under the rule of law. Moreover, it is an integral guarantee of human rights and freedoms. The Seimas Ombudsman drew the attention of the Minister of Justice to the exceptional need to ensure proper implementation of the presumption of innocence in order to prevent suspects and accused persons from being shown at court or in public as guilty by publicly using means of physical restraint against them.

The report also pointed out that international human rights standards recommend that officers record and report on the use of coercion in their activities; however, the findings show that there is still a problem of non-use, misuse, and non-availability of technical video recorders at a time when officers are using violence against individuals. According to the Seimas Ombudsman, such practice of law enforcement officers creates preconditions for the risk of human rights violations.

In his report, the Seimas Ombudsman also paid great attention to the provisions of the Convoy Rules that were interpreted differently during the practice of officers, when conveying detainees the officers used handcuffs, physical and psychological violence even in those cases where the detainee did not oppose or raise danger and complied with lawful instructions or demands of the officer. It was highlighted in the report, that physical force can only be applied after warning of the intention to use it and allowing a person to fulfil the legitimate requirements of an officer. The Seimas Ombudsman drew the attention of the Minister of Justice and the Minister of the Interior Affairs to the need to change the Convoy Rules so as to ensure that the officers, in exercising their right to use special measures, do not exceed their powers and act in accordance with the rule of law.

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Luxembourg

Consultative Commission on Human Rights (CCDH)

Independence and effectiveness of the NHRI

International accreditation status and SCA recommendations

The Luxembourgish NHRI was [reaccredited](#) with A status in November 2015. The SCA encouraged the NHRI to advocate for an independent and sufficient funding that allows for remunerated full-time members in the NHRI's decision-making body. Moreover, the SCA encouraged initiatives to result in the NHRI's annual report being tabled and debated by Parliament. The SCA commended the CCDH for continuing to produce reports and recommendations, despite the fact that consultation of the NHRI on draft legislation was not systematic.

Developments relevant for the independent and effective fulfilment of the NHRI's mandate

The mission of the National Rapporteur on trafficking in human beings (appointment in April 2014) takes up a large part of work of the CCDH. Nonetheless, the increase in secretariat staff from 3 to 5 (in 2017 and 2020) has allowed the CCDH to carry out all of its tasks and to address new issues on its own initiative.

Human rights defenders and civil society space

As regards the enabling framework for civil society organisations, various NGOs have raised concerns about **respect of privacy standards with regards to existing rules on registration** of non-profit organisations. All non-profit organisations have to be registered and listed in the Luxembourgish Trade and Companies Register. A law from 1928 lists the documents that have to be submitted upon registration, including inter alia a list with the names, addresses and nationalities of the members of the association and specifically foresees that any person interested can have access to this information. This poses a problem in terms of the right to the protection of the private life and personal data of individuals as well as their safety, as anyone can access the aforementioned document on the Luxembourg Business Register website. A legislative proposal amending the law from 1928 has been introduced in 2009 and then again in 2018, but so far, no changes have been voted by Parliament.

Furthermore, in a recently published opinion, the CCDH found that **freedom of expression and access to information** was negatively impacted by a legislative proposal on the national security authority. While this proposal aimed at adapting the national legislation to European and international confidentiality standards, inter alia by introducing criminal sanctions, it did not provide any exceptions for press and whistle blowers (see further below on media pluralism). The CCDH issued an opinion and recommendations to the government in order to ensure a human rights compliant revision of the draft legislation on the national security authority.

Issues concerning the **right to participation** can be reported in particular in the area of business and human rights (BHR), on which the Ministry for Foreign Affairs put in place a working group composed of government, civil society, private sector and national human rights defender representatives. While the CCDH welcomes the creation of this group, it found that the position of civil society and the CCDH is often disregarded or silenced. At the same time, the government is publicly claiming that the decisions of the group are based on a consensus. The CCDH issued a position paper on this matter in order to address the disregard by the working group of civil society's positions. Moreover, it attended the meetings of the BHR working group and issued recommendations. The President of the CCDH also voiced his concerns in numerous press interviews.

Cases of **harassment of activists and human rights defenders** have also been reported. These include the case of a young musician who was sued by right-wing politicians, because of critical views he expressed towards them in a song. While he was acquitted in first instance as well as in the appeal trial, the public prosecution office has been criticised for supporting the claims in the court of first instance and for launching an appeal against the first acquittal, even though it then abandoned its initial stance.

There have also been reports that a company located in Luxembourg has sued human rights defenders because of their claims of alleged human rights violations committed by such company in third countries. There are no mechanisms under Luxembourgish law or in the existing national action plan which protect human rights defenders from strategic lawsuits against public participation.

References

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- Information on NGO from Luxembourg being used for their denunciations of HR violations: <https://www.sosfaim.lu/en/annesetairapas/>
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Checks and balances

The CCDH has identified some instances and issues which may potentially threaten the separation of powers, limit the participation of rights holders and the accountability of State authorities.

One issue concerns the **relations between the judiciary and the public prosecution service** and can be illustrated by the following occurrence. In 2019, members of the Parliament addressed several parliamentary questions to the Police and public prosecution because of serious criticism over the lack of transparency and sufficient legal basis of their databases collecting personal data. In that occasion, the Procureur Général d'État and the President of the Cour supérieure de justice (Highest court of the judicial order in Luxembourg) addressed a common letter to the President of the Parliament criticising its members for the high number of questions asked on this matter. This was criticised among others by the Parliament as an attempt to limit its power.

Concerning **participation and consultation of rights holders** in decision making, the way the constitutional reform launched in 2009 to fundamentally reform and modernise the constitutional text from 1868 raises some concerns. This reform was supposed to culminate in a public referendum, allowing the Luxembourgish citizens to vote for or against the new text of the constitution. However, in November 2019, it was announced that the

fundamental reform, and therefore also the referendum, would be abandoned and the text of the constitution would be amended incrementally over the next years, depriving the citizens of this extraordinary chance for political participation.

Other systemic problems related to participation are worth mentioning.

One is that, as the CCDH has pointed out for some years, the drafts of grand-ducal **regulations, contrary to legislative proposals, are not published**. While in theory, the CCDH can elaborate its opinions on its own initiative or at the Government's request on any regulatory act, it has never been asked by the government for advice on draft regulatory acts and has no access to those until the State Council publishes its opinion, together with the draft, on its website. The CCDH addressed this issue in a recent opinion. Furthermore, the president of the CCDH sent a letter to the Prime Minister in which he asked for the drafts to be made available to the public or at least for the CCDH to receive those directly or indirectly affecting human rights.

Another systemic problem concerns **participation in elections** and is related to the fact that national elections are only open to Luxembourgish nationals, thereby excluding almost half the population residing in Luxembourg from the exercise of the right to vote, thus severely limiting their political participation.

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Functioning of justice systems

Existing rules on **legal aid** limit in the CCDH's opinion the ability of certain categories of people to access justice. Currently, the financial eligibility for free legal aid is limited to a fixed threshold, which does not take into account for example debts or other expenses a person or family might have. This means that any person, whose income is above that threshold, even by 1 euro, loses entirely the right to free legal aid. This rigid model hinders the access to justice of all the persons whose income exceeds the current threshold, but who still do not have the sufficient financial resources to initiate a legal action or to defend themselves in court proceedings. The government is aware of this problem and has announced a reform of the current legal aid system, which would introduce a new model permitting one to benefit from partial legal aid and the amount would progressively decrease based on the financial resources.

In this context, the CCDH draws attention to the fact that the 2015 law on the reception of applicants for international protection provides for a right to free legal aid for asylum seekers only in relation to disputes concerning the reduction or withdrawal of reception conditions, which the CCDH considers to be a discrimination of asylum seekers and a limitation of their fundamental right of access to justice. The CCDH has raised this issue in various opinions and reports over the years.

Another issue impacting on the quality of the justice system is that for many years, there has been no comprehensive system in place when it comes to the **publication of judgments** by national courts. While the decisions by the administrative courts and the constitutional court have been regularly published, this has not been the case for the judicial courts. While this is slowly changing, all court decisions are still not widely available as the judicial authorities make a pre-selection of important decisions and/or publish summaries of decisions by the court of appeal, the court of cassation and the constitutional court.

Finally, the CCDH was informed of a practice by which national judges verify the identity, and thus also the address, of anyone appearing before the court. This leads to situations in which victims of domestic violence or trafficking of human beings have had to divulge their new address, or the address of the shelter they have been placed in, in front of the defendant, which can pose a great threat to their safety and disregard **victims' rights**. In its 2nd report on trafficking of human beings (THB) in Luxembourg, the CCDH, in its mandate as national rapporteur, addressed the issue of the safety of THB victims and the protection

of their personal data by the judicial authorities and insisted on the importance of raising the awareness of judges.

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Media pluralism

In its opinion on the draft legislation on the national security authority, the CCDH found that freedom of expression and access to information was negatively impacted. While this draft legislation aimed at adapting the national confidentiality legislation to European and international confidentiality standards, inter alia by introducing criminal sanctions for illegal leaks, it did not provide any exceptions for press and whistle-blowers. Journalists of the public service radio station (Radio 100,7), who discovered and informed Parliament of a detected vulnerability in their public database, were prosecuted and the offices of the Radio station were raided by the Police. In the end, public prosecution decided to stop the proceedings due to a lack of evidence. These proceedings however were criticised as they sent a strong negative signal to potential whistle-blowers/journalists to come forward with information relevant for the general public. The CCDH recommended amending the draft legislation on the National Security Authority and providing for sufficient protection for whistle-blowers, informants and journalists (see the section on human rights defenders and civil society space above).

There have also been discussions on pluralism and the independence of public service media (PSM) in Luxembourg. A peer-to-peer review on PSM assessed the management

practices of the Établissement de Radiodiffusion Socioculturelle du Grand-Duché de Luxembourg (ERSL). It found for instance that the fact that the Luxembourg government appoints the President and the eight members of ERS� Board of Directors, approves ERS�'s annual accounts and activity reports and sets the budget on a five-year basis, automatically makes ERS� politically dependent, with a risk of politicisation within its Board, even though the spirit of the governance rules is to represent the interests of the community in its broader sense. The Prime Minister responded and vowed to launch a broader debate, among others in Parliament. In February/March 2020, Radio 100,7 adopted a position with several recommendations. It must be noted that there is a draft legislation (avant-projet de loi) on revising the public financial aid for the press/media, which has been welcomed by the President of the Press Council of Luxembourg.

The CCDH found that the recent draft legislation on video surveillance may also have negative impacts on freedom of expression. In its opinion on this draft law, the CCDH voiced particular concerns about the lack of precision of certain provisions and highlighted the risk of a negative impact on journalists, whistle-blowers and informants associated to camera surveillance. The CCDH recommended that these risks should be taken into account by the authorities in charge of performing or supervising video surveillance and of authorising such systems, as well as the introduction of sufficient safeguards in the law.

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Corruption

Apart from some recent cases of public officials or employees who have been accused of embezzlement of public funds, there have been no major reports on corruption. In general, the CCDH hasn't found any particular evidence of state measures or practices relating to corruption, or significant inaction in response to alleged corruption.

In-focus section on COVID-19 measures

Most significant impacts of measures taken in response to the COVID-19 outbreak on the rule of law in the country

The government has declared a state of crisis during which it can take regulatory acts in all matters. This state, prolonged by the Parliament, cannot exceed 3 months. The Constitution requires that the measures taken must remain in line with the principles of proportionality, necessity and adequacy, and must not infringe upon the Constitution or international obligations. These regulatory acts will automatically cease to exist after the state of crisis ended.

According to the CCDH, the most significant impacts of measures adopted in response to the COVID-19 outbreak are the following.

Free movement of persons is largely restricted and pecuniary sanctions have been put in place. However, they lack precision and are open to interpretation. Authorities invite the population to denounce their neighbours and the persons infringing the law, which may fuel hostility among the population.

There have been reports indicating a rise in domestic violence. According to these reports, it is too early to say whether or not this rise is directly linked to the confinement measures. On 14th April 2020, a new helpline (7 days a week, from 12h00 to 20h00) has been put in place by NGOs supported by the government. It is also possible to contact the helpline by sending a text message.

According to some sources, freedom of expression, media freedom and access to information has been limited and is criticised by press associations. The government tends to control and restrict access to information (access of the press to hospitals, access to statistics, etc).

Moreover, these measures have a severe impact on asylum seekers and refugees. The CCDH has received reports that detention centres for asylum seekers have been emptied.

Half of the centres' population has been set free, without authorities having put in place adequate measures to provide for basic services such as housing. Moreover, there have been reports of residents being removed from reception centres because of alleged misbehaviour conflicting with internal rules (for example not respecting midnight curfew). Following criticism of civil society and the refusal of the Police to carry out these evictions, the public administration's policy changed. In some refugee centres, residents do not have access to internet because WIFI is limited to common areas which have been closed to prevent the spread of the virus. This also severely impacts the right to education of children since the education system currently exclusively relies on digital education.

Access to justice is also limited as a result of the fact that numerous court hearings and deadlines have been postponed. Lockdown is also having an impact on lawyers who voiced concerns about their subsistence - the Minister of Labour considers however they do not need further financial assistance.

There are rising data protection concerns regarding mobile applications or the tracking of mobile phones. The Prime Minister seems to be currently opposed to such methods.

The President of the CCDH addressed an open letter to the Prime minister regarding the potential impact on human rights of measures taken to face the COVID-19 pandemic. The CCDH is also collecting information on a daily basis regarding the measures taken and the potential risks for human rights.

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

The CCDH is subject to teleworking requirements which impact on its power to carry out investigations and receive individual complaints. This makes fulfilling its monitoring functions more difficult. Since most measures adopted in connection with the state of crisis are regulatory acts and draft regulatory acts are not published (see above under checks and balances), it is not possible to assess the justification/proportionality of these acts. Most external meetings have been postponed. The CCDH thus heavily relies on the information available from its own members, the press, civil society and the government. It remains in close contact with its own members, civil society and ENNHRI, and regularly holds videoconferences with its members.

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Malta

Relevant developments towards the establishment of an NHRI

On July 2019, the Equality Bill on Human Rights and Equality Commission was presented to the Maltese Parliament, which would establish an NHRI. The Bill is being discussed before the relevant Parliamentary Committees.

ENNHRI has supported the establishment of a Maltese NHRI and [advised](#) national actors in their efforts.

Moldova

People's Advocate Office

Independence and effectiveness of the NHRIs

International accreditation status and SCA recommendations

The Moldovan NHRI was [reaccredited](#) with A status in May 2018. The SCA encouraged the NHRI to continue advocating for amendments of its enabling law in order to include a transparent and participatory selection process and to require pluralism and diversity of the institution. Similarly, the SCA encouraged the NHRI to continue advocating for the provision of adequate funding to effectively carry out its mandate, including that as the NPM.

Human rights defenders and civil society space

An important step has recently been taken by Parliament in terms of establishing an enabling legal framework and conducive environment for civil society organisations.

After weeks of delay and harsh debates between Members of Parliament, on 11 June 2020, the bill on NGOs passed in final reading. The document was adopted after the Parliament's Legal Committee for appointments and immunities had considered almost 100 amendments on the draft submitted by civil society groups and lawmakers, as well as despite several attempts of the ruling party to impose limitations for NGOs' activity or even ban their participation in monitoring the election campaign and the elections.

The bill was drafted by a group of national experts, including representatives of civil society, in line with European and international standards on freedom of association. It has been pending in Parliament since the adoption in first reading in May 2018.

Meanwhile, the People's Advocate's initiative to adopt a law on Human Rights defenders proposed to the Ministry of Justice, was ignored by the authorities, despite to the fact they assured the UN Special Rapporteur Michel Forst such a law will be adopted in short time.

During the COVID-19 state of emergency, the PA proposed to the Commission for Emergency Situations to include in the composition of the Commission a notorious representative of civil society operating in the human rights field to provide consultancy on human rights decision-making. The proposal was not accepted.

The PA took a stand and condemned the attacks on the Equality Council, as an NHRI, by political forces. In December 2019, the Equality Council issued a decision stating that the installation of a crucifix in a state institution (Ministry of Internal Affairs), as well as the speech of the minister at the inauguration event are facts that incite discrimination on the ground of religion or beliefs. The Council decided that the offender would make a public apology and that the religious symbolism in the lobby of the institution would be removed, which would ensure the protection / safeguarding of the neutrality of the public service and the principle of secularism. The Council has been harshly criticized for its decision, including by state officials. Some online posts have been clearly denigrating the work of the Council, spreading ethnic and religious intolerance. The PA considered the debates in the public space as attacks on the institution and recalled that the Equality Council, as an NHRI, has the mission to monitor compliance with and implementation of international standards at national level, in particular in the field of non-discrimination and equality.

The Ombudsman also addressed the President of the Parliament requesting examination as a matter of priority of the package of laws on hate crimes and bias, which was voted in 2016 in the first reading. A series of issues related to imperfection of the national legal framework and lack of an effective mechanism for sanctioning the offences of incitement to violence and hatred have been raised, such as: the lack of a clear and common definition of hate speech; the Criminal Code does not criminalize incitement to violence; list of discrimination criteria is not comprehensive (the grounds of color, national or ethnic origin, language, citizenship, sexual orientation and gender identity are missing); threats, public insults and public defamation are not defined under the Criminal Code; crime statistics are not disaggregated by bias motivation; criminal law, as well as civil and administrative laws do not provide for aggravating circumstances in cases of homo/transphobic motivation. The members of parliament disregarded the PA's recommendations.

A worrying trend is to be reported in particular as regards journalists and media actors as human rights defenders – in this respect, see the information provided below under media pluralism and freedom of expression.

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Checks and balances

In general, draft laws and regulations, accompanied by explanatory notes, are published at any stage of the decision-making process on government portals, where they are accessible for public consultation, and on parliament's website. However, these consultations are often of a formal nature, and the practice of not meeting deadlines and urgently adopting projects, without holding genuine public consultations, continues. The People's Advocate is most often not consulted by state authorities. The People's Advocate monitors draft policy documents and draft laws relevant to human rights published on government portals and presents opinions on them to the competent authority. The People's Advocate recommended the Ministry of Justice, as well as the other competent authorities that judicial system professionals and academic experts be consulted on the draft legislation.

In the evaluation report published on 24 July 2019, the Group of States against Corruption (GRECO) considered as insufficient efforts to improve the transparency of the legislative process in Parliament. The institution recommended publication in a timely manner of draft laws and supporting documents, which would allow for meaningful public consultation and parliamentary debate on draft normative acts.

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Functioning of justice systems

In 2019, the right to a fair trial was the most frequently violated as invoked in the claims received by the Office of the People's Advocate (207 claims). A problem identified concerns the poor quality of the qualified state guaranteed legal aid, manifested through not informing the beneficiaries of the legal aid about procedural rights and obligations. As a result, potential beneficiaries miss the time-limit for appeal, being unable to defend his/her violated right.

Other issues identified relate to inactions of lawyers contracted by the National Council for State Guaranteed Legal Aid to provide legal aid services at the requests of beneficiaries to take any legal action, no-show of lawyers at court hearings or the low level of professional

training of lawyers. Following the submission of recommendations to the National Council for State Guaranteed Legal Aid, the People's Advocate was informed that the competent institution plans to develop new standards in the development of institutional capacities, as well the implementation of provisions of the Statute of the profession of lawyer.

Delay in examining the cases by the courts in the process of reorganizing the courts; failure to record the audio of court hearings are other violations identified. In this regard, the People's Advocate addressed the Superior Council of Magistracy (SCM) with the appropriate recommendations to ensure the realization of the right to a fair trial. Following these, the SCM submitted to courts a circular on the importance and obligation of compliance by court employees, as well as monitoring compliance with the provisions of the Regulation on digital audio recording of court hearings.

The PA identified situations in which the constitutive elements of the disciplinary misconduct of judges were met and notified the Disciplinary Board of the SCM, which rejected the notification. In the motivation of the rejection decision only the omissions of the clerk who resigned and left the judiciary were invoked, and the facts elucidated could not be put under the responsibility of the judge. The PA filed an appeal against the rejection decision that is under examination.

Delaying the enforcement of court decisions and their enforcement remain a problem. Failure to inform the participants of the enforcement procedure by the bailiffs about the measures taken and the procedural documents drawn up leads to the omission of the time-limit in which the participant can voluntarily pay the adjudicated amount, and as a result he/she has to pay additional enforcement expenses.

Imperfection of the legal framework, non-compliance with national legal provisions, but also with international commitments made in the field of human rights, the low level of professionalism in the judiciary, as well as the lack of public policies to strengthen the justice system lead to a failure to properly exercise the right to a fair trial.

The People's Advocate recommended continuing the efforts to reform the justice system, in order to ensure its accessibility, independence, efficiency, transparency and integrity. Since the expiration of the Justice Sector Reform Strategy in 2016, so far, the government failed to approve a new policy document.

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Media pluralism

In the last five years, the People's Advocate has consistently addressed, including in annual reports, issues related to freedom of expression and freedom of the press. This is because during this period (2015-2019) there was a decline in freedom of expression in the Republic of Moldova. The People's Advocate pointed out several issues related to freedom of the press, such as the imperfect legislative framework, monopolization and excessive concentration of the media, particularly in the broadcasting sector; control of media institutions by economic and political groups; the existence of cartel arrangements on the advertising market and the limited access of some media institutions to it; barriers to access to information; attacks and intimidation on journalists.

In recent years, media representatives have been the target of attacks and pressure from politicians or public figures. This was also stated by the UN Special Rapporteur on the situation of human rights defenders Michel Forst who, in his statement on the visit to the Republic of Moldova in 2018, referred to cases of intimidation, threats against media representatives, including on allegations of defamation and criminal charges, especially for investigative journalists. He expressed concern that „journalists are victims of defamation campaigns” and „face restrictions in accessing information”. Michel Forst called on the authorities to ensure that the media and NGOs have effective and prompt access to public information, including information on court hearings, particularly for socially and politically sensitive cases.

The People's Advocate (PA) has monitored the state of affairs in which the media operates and has intervened in several situations where journalists have been the target of attacks and intimidation.

The PA has considered threatening messages against journalists as particularly dangerous and unacceptable. Besides intimidating political opponents and journalists for criticism, such attacks incite to violence against individuals or groups of people, propagate certain stereotypes and generate hatred and division among people.

In a particular case, the People's Advocate requested from the Prosecutor General to examine the threatening statements of Ilan Shor, mayor of Orhei city, made against journalists and to take attitude appropriate to the gravity. Though an order for refusal to initiate criminal proceedings was issued on the ground that „the acts committed are not provided by the criminal law as a criminal offence”. The Prosecutor's Office rejected the PA's repeated request to investigate the persecution and intimidation of journalists, invoking that the allegations of the PA do not fall within the juridical-criminal construction of the respective article of the Criminal Code.

In addition, the People's Advocate took a stand and condemned the attacks on the press. In 2020 alone, the People's Advocate made public at least 5 statements on the freedom of the press. The latest dates back to May 5 and was made in connection with the unprecedented attacks on the press by the prime minister.

During the state of emergency caused by the COVID-19 pandemic, the People's Advocate addressed several demarches with the request to remove the obstacles for journalists' access to information of public interest.

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Corruption

Although the Law no 122/2018 on whistleblowers entered into force in November 2018, it is not yet functional, because the implementation mechanisms are missing and the existing legislative framework is not adjusted. So far, no person has officially obtained the status of whistleblower.

For a better understanding of the objectives and role of whistleblowers, as well as of the impact of its functioning, the People's Advocate as the authority responsible for whistleblowers' protection, carries out information campaigns within the Project "Curbing corruption by building sustainable integrity in the Republic of Moldova". In 2019 the elaboration of the training course "Whistleblowers" for civil servants, health workers and other categories of employees began.

Since the beginning of the COVID-19 outbreak, an increasing number of health workers have revealed information of public interest, in which they talked about the problems in the healthcare system, which must be solved, in order to fully ensure people's right to health and life. In the approach addressed to the Minister of Health, Labour and Social Protection, the Ombudsman expressed his concern about the information that has appeared in the public space such as the employees of the medical system, who have made disclosures about the quality and quantity of protective equipment, are subject to pressure from employers.

The People's Advocate stated that the authors of the disclosures have the status of whistleblowers and must benefit from all the guarantees of protection offered by law. The PA recalled that any act of intimidation, retaliation, persecution of whistleblowers entails administrative sanctions or, as the case may be, trigger criminal liability. The Ombudsman requested the immediate cessation of any form of retaliation against medical workers, the operative and efficient investigation of the disclosures regarding the quality of the medical devices and the taking of measures to provide the healthcare personnel with the necessary protective equipment.

On 5 May 2020, the People's Advocate in collaboration with the national anti-corruption body launched a video spot to inform and encourage the population to denounce illegal practices in the health system.

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In-focus section on COVID-19 measures

Most significant impacts of measures taken in response to the COVID-19 outbreak on the rule of law in the country

Since the declaration by Parliament, on 17 March 2020, of a state of emergency in response to COVID-19 pandemic, for a period of 60 days, the People's Advocates have continued to closely monitor the observance of human rights by state authorities, as provided for by the founding legislation.

The People's Advocate addressed several initiatives and recommendations to the Commission for Emergency Situations on some decisions of the Commission, actions/inactions of state institutions that he considered to seriously infringe the fundamental human rights and freedoms.

The People's Advocate presented Amicus Curiae to the Constitutional Court on the amendments made by the Parliament to Law no. 212/2004 on the state of emergency, siege and war in the context of establishing the state of national emergency due to COVID-19 pandemic. The People's Advocate has expressed reservations about the general wording that leaves room for interpretation and could lead to abuses by the competent authorities, which could undermine fundamental human rights and freedoms, the rule of law and democracy in the Republic of Moldova.

The Ombudsman also issued a set of recommendations to the Commission for Emergency Situations and national authorities in which he addressed a wide range of issues:

- restricting the right of access to justice;

- insufficient protection measures for prison staff and detainees;
- shortage of personal protection equipment for health workers;
- ensuring the right of persons and the media to have access to information during the pandemic;
- combating discrimination and hate speech against people infected with COVID-19;
- protection of whistleblowers with regard to the public disclosures of healthcare workers;
- personal data protection;
- reducing the minimum amount of the fine applied to individuals and establishing alternative penalties to the fine, respecting the principle of individualization and proportionality of sanctions, taking into account the vulnerable situation of the penalised individuals;
- problems faced by people living on the left bank of the Dniester;
- the socio-economic problems faced by the population living in localities under lockdown;
- respect for the right to health of other categories of patients than those infected with COVID-19;
- observance of the child's right to education etc.

Employees of the Office of the People's Advocate launched the campaign on social networks with the hashtag #IAmNotAVirusIAmHuman, aimed at combating discrimination and hate speech against persons suspected of being infected with COVID, infected with Coronavirus or cured of this infectious disease.

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

A challenge faced by the Office of the People's Advocate during the state of emergency established due to COVID-19 virus consisted mainly in poor cooperation with the Commission for Emergency Situations and state authorities, distortion of messages of the People's Advocate, criticism from high state representatives to which the institution has been subject for addressing issues sensitive from the human rights perspective.

Following the notifications received from citizens about the problems they face during the state of emergency, the alleged abuses by some public and private institutions, the People's Advocate and the People's Advocate for Child's Rights addressed a request to the Prime Minister, as the Chair of the Commission for Emergency Situations, in which they proposed the establishment of a mechanism for cooperation and exchange of information between the Office of the People's Advocate and the Commission, in order to ensure respect for human rights and freedoms in the state. In a context where international law in a state of emergency allows the restriction of certain fundamental human rights and freedoms, it is important to avoid derogations from these acceptable limits set by international standards and not to allow unjustified, disproportionate and discriminatory restrictions on human rights. The Commission did not accept the proposal.

References

- <http://ombudsman.md/en/news/comunicat-de-presa-15/>

Monaco

At present, there is no accredited NHRI in Monaco.

The *High Commissioner for the Protection of Rights, Liberties and for Mediation* is an Ombuds-type institution and may also issue guidance on matters relating to the protection of citizens' rights and freedoms, or on anti-discrimination matters, in cases referred to it by the administrative authorities.

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

References

- Link to relevant webpage of the High Commissioner for the Protection of Rights, Liberties and for Mediation: <https://hautcommissariat.mc/en/the-high-commissioner-at-a-glance>

Montenegro

Protector of Human Rights and Freedoms of Montenegro

Independence and effectiveness of the NHRIs

International accreditation status and SCA recommendations

The Montenegrin NHRI was first accredited with B status in May 2016. The SCA encouraged the NHRI to advocate for the formalization in its enabling law of an open, transparent and merit-based selection process to ensure pluralism and the selection of skilled staff. Similarly, the SCA encouraged the NHRI to keep advocating for the explicit inclusion of a promotional mandate and the responsibility to encourage the ratification or accession to international instruments. Finally, the SCA recommended the introduction of a legally-based power enabling the NHRI to independently determine its staffing structure, as well as the provision of adequate resources to allow the NHRI to independently manage its own budget, in line with its extended mandate.

Changes in the national regulatory framework applicable to the NHRI change since the last review by the SCA

The Protector of Human rights and Freedoms of Montenegro notes that there have been no changes in the normative framework in which the Institution operates since the Institution has been accredited with status B by GANHRI - May 2016. Activities on amendments to the law on prohibition of discrimination are currently underway.

On a positive note, increased transparency was registered in the procedure for the appointment of the of the Ombudsman in January 2019, with more than 30 human rights organisations being involved in the process.

References

- www.ombudsman.co.me
- <http://www.ombudsman.co.me/Propisi.html>

Human rights defenders and civil society space

We are dedicated to strengthening cooperation with all three branches of government, the civil sector and international organisations, the academic community, the media, as well as human rights defenders. We emphasize the importance of the role that civil society organisations play in democratic societies, and especially in young democracies where work continues to establish and accept the values of civil societies.

For the Ombudsman Institution there is no doubt that NGOs help the public administration system to function better, to provide better services, when it needs to be "awakened" and encouraged to take action. It is also part of our mission, which is why as stated above we consider ourselves natural partners with both civil society and the media.

Regarding good cooperation it is especially important for us when we receive complaints, information and instructions for action from them. In the past year, based on cooperation with NGOs and the media, we have identified and taken action on dozens of cases, including cases related to children's rights (social protection of families with children), the right to good administration and legal protection, the rights of persons deprived of their liberty, the rights of persons with disabilities, the work of state bodies, state administration and other organisations.

References

- www.ombudsman.co.me
- https://www.ombudsman.co.me/lzvjestaji_Zastitnika.html

Checks and balances

In the annual report on the work of Ombudsman we inform members of the Parliament of Montenegro and the interested public about the situation of human rights and freedoms in Montenegro which we based on collected data, analysis, observations, research, statistics and practice in handling complaints and monitoring recommendations for improvement.

During 2019 In work of Ombudsman institution we had 840 complaints and we maintained a high level of resolved cases, almost 95%. The average duration of the procedure was 71 days. Also, a significant number of appeals end up giving legal advice and consultations is not included in official statistics and is somehow unfairly left aside when evaluating results and effects. Total of 215 recommendations were given to the competent authorities.

There are certain weaknesses in the work of public administration that have a negative impact on the exercise of the rights of citizens and other entities the principle of legal security and equality of citizens before the law.

These weaknesses are most often manifested in the form of silence of the administration, non-compliance with legal deadlines, and the so-called "ping pong" decision making. Sometimes cases are returned to the first instance bodies several times, for decision-making. The first-instance body often does not eliminate the violations of rights pointed out by the second-instance body or issues an almost identical decision, or the second-instance public administration body does not act or partially acts according to the ruling of the Administrative Court of Montenegro.

References

- www.ombudsman.co.me

Functioning of justice systems

In 2019, we had 100 cases under examination concerning justice, of which seven (7) cases were from 2018 and they are completed. The proceedings were terminated in 96 cases.

Complaints about the work of regular courts are mostly related to the violation of the right to a trial within a reasonable time, mainly on first instance courts. Also, citizens complained about the long duration of the constitutional complaint procedure.

In the 2019, the courts achieved timeliness and efficiency in resolving cases and resolved more cases than the annual inflow.

It encourages an increase in the use of legal remedies to protect the right to a trial within a reasonable time, as well as the success of citizens in proceedings on control requests and lawsuits for fair satisfaction. The courts recognise the effectiveness of these remedies, so it is important to continue with the improvement of the system of protection of the right to a trial within a reasonable time and the right to effective access to justice, in accordance with the practice of European Court of Human Rights.

The Protector reminds that the unjustifiably long duration of the procedure creates legal uncertainty for the citizens and the obligation of the state is to provide an effective system of guarantees and respect for human rights in court proceedings at the national level.

References

- www.ombudsman.co.me

Media pluralism

Media encourages good governance, keeps vigilant responsible and competent bodies, services, institutions and other holders of public authority. The media on behalf of citizens ask, find out, point out and act in other ways in order to provide information of public importance. Only when the media are free to do work without pressure of any kind we can talk about full freedom of the press.

Although freedom of expression is not an absolute right, the safety of journalists must be absolute. What remains a cause for serious concern in Montenegro are individual cases of violation of the physical and mental integrity of journalists, with unresolved cases from an earlier period. This statement is rightly mentioned again and again by relevant subjects in domestic and international reports and assessments of the situation, because the issue of absolute security stands as a precondition for all other rights of journalists and public expectations to perform their mission professionally and comprehensively. As stated by professional associations, there is still dissatisfaction with the level of salaries, contracts, number of employees and working conditions. These problems are also expressed in local public broadcasters.

At the international conference of the Network of Equality Bodies, hosted by Montenegro Ombudsman (2019) within the panel Media and Equality Bodies - Natural Allies or Just a Source of Information in the Fight against Discrimination, the Institution stated that media are our natural allies, if we working in accordance with laws and codes as moral and ethical principles of the profession.

In the annual report for 2019, we state that the visible influence of politics on the media is concerning and clearly affects the way media content is being reported and edited. Against these challenges, the issue of unresolved self-regulation, non-acceptance of uniform rules of conduct and professional responsibility needs to be addressed.

References

- www.ombudsman.co.me
- https://www.ombudsman.co.me/lzvjestaji_Zastitnika.html

In-focus section on COVID-19 measures

Most significant impacts of measures taken in response to the COVID-19 outbreak on the rule of law in the country

During the emergency situation, the Institution of Montenegro Ombudsman was approached by citizens in relation to a variety of situations caused by the pandemic, as soon as the prevention and protection measures were introduced. The Ombudsman strived to react as soon as possible to the issues brought to its attention, in order to meet citizens' basic living needs, but also to protect the health of the population - as a fundamental public interest that prevailed during the pandemic. The Ombudsman pointed to the need to respect fundamental rights and freedoms, and especially the necessity and proportionality principles governing the possibility to introduce restrictions to such rights, in particular given that the government decided not to declare a state of emergency.

In the period March 16-June 2, we recorded 705 appeals from citizens (this number includes complaints, but also all other contacts with citizens - legal advice, consultation, information on the functioning of the public administration system, etc.). It is important to note that not all appeals referred to measures and other circumstances related to the epidemic caused by the COVID-19 virus. Based on these instances, as well as own initiative reactions to identified issues, we established and followed up to 128 cases. It is important to note that we treated as one collective instance 369 individual complaints by of students, who asked for the abolition of the graduation and professional examinations to be reported.

A notable case concerned a group of seafarers placed in quarantine in Vučje who addressed the Ombudsman with requests related to the improvement of accommodation and the authorization of limited stay in front of the facility, given the individual accommodation facilities' lack of an outdoor space. After a visit of the premise and individual interviews with the persons concerned by the Ombudsman Siniša Bjeković and member of the NCB, their requests were approved in accordance with current epidemiological measures and taking into account possible solutions.

We recorded more than 100 calls on the regular fixed telephony since the beginning of the coronavirus pandemic, while their number on mobile telephony is even higher. Citizens have complained about the termination of employment contracts and non-compliance maternity leave and maternity leave, as well as self-isolation measures in general, social conditions and the application of sanitary and health measures, complaints in the field of labour and civil service relations, general health care, property rights, status rights of citizens, protection of vulnerable groups, and other issues related to proceedings before authorities and public authorities. Perhaps the questions and demands of the citizens which the Ombudsman received during the pandemic are the best indicator of the fact that such difficult and complex situation not only poses challenges to public health but also to human rights.

During a pandemic, vulnerable groups are in special focus for us. This applies to children, the elderly people, people with disabilities, persons deprived of their liberty and those with limited mobility on various grounds. In the current situation, there have not been many complaints about quarantine conditions.

The Ombudsman discussed about the current situation with the head of the National Coordination Body and on that occasion, they exchanged information and agreed on accelerated communication to solve the problems pointed out by citizens. Also, contacts were made with the presidents of the municipalities of Pljevlja, Berane and Bijelo Polje and the capital Podgorica, who informed him about measures and actions undertaken within the competence of local government bodies and local self-government bodies, which are primarily aimed at vulnerable groups.

The Ombudsman as National Protection Mechanism (NPM) visited temporary quarantine facilities in different towns. Ombudsman representatives were accompanied in their visits by epidemiologists from the Institute of Public Health with the aim of monitoring implementation of all health and hygiene recommendations. In this regard, we may give a generally positive assessment of the current situation in this field.

The Ombudsman strongly condemned the publication of the list of coronavirus infected persons on social networks and warned that this situation must not lead to distrust in the data protection standards, calling for a quick, efficient and effective investigation into the matter.

The Ombudsman also issued a statement to the media relating to the respect of the right to freedom of expression, expressing reservations about rigid measures of a criminal law nature introduced to sanction those that disseminated false news through the media.

Examples from other countries showed that it is not just an issue which was raised in Montenegro. Criminal measures restricting freedom of expression are only acceptable as long as they are strictly necessary and proportionate to the protection of overriding public interests. There are reasons to consider the effects of such measures on several levels, especially in the crime of While causing panic and disorder can put public security and safety in peril, in particular in a situation of emergency, it is necessary for the courts to interpret and apply these restrictions in accordance with national and international standards protecting freedom of expression.

Similarly, when it comes to freedom of religion, limitations may be possible with a view to avoid the spread of the epidemic and thus protect the health of the population ; however, law enforcement authorities cannot conduct interventions in a way that would unduly violate human rights and freedoms.

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

During the COVID -19 pandemic emergency, the Institution of Ombudsman has continued to carry out its functions. In accordance with recommendation of on the protection of public health and the needs of citizens, we organized work in different ways. Employees are allowed to work from home and when the specifics of the job require it in accordance with recommended precautionary measures the Ombudsman's staff used institution premises.

Complaints are received electronically, by telecommunications and by regular mail. We also opened two additional mobile phone line. The Ombudsman and colleagues participated in several webinars with the aim of exchanging experiences and practices of countries during the COVID-19 pandemic with a focus on economic and social rights, vulnerable groups and monitoring the place of detention.

In addition to the additional telephone lines that were available to citizens outside of working hours, we increased even more our availability to the public by opening an account on the social network Instagram. Although the opening of the account was planned for later this year, we made an effort to establish the account as part of our response to the epidemic, as given that citizens spent much of their time online and on social media.

For the first 40 days of the epidemic, we published 36 pieces of information on the site. We remained open for communication with journalists, so the Protector was very present in the media through guest appearances on TV programs, phono statements and press releases. It was pointed out that, as time went on, journalists showed more and more interest in

dealing with the situation regarding issues related to the coronavirus pandemic from the angle of the impact on human rights and freedoms.

Our web site ombudsman and Instagram profile „ Ombudsman Crna Gora“ are being updated on daily basis to ensure transparency and to share information and activities related to our mandate. Also during the pandemic, the Ombudsman's network of “golden advisers” (children aged 11 to 18 from all over Montenegro) were active, sending various messages to their friends via Instagram profile.

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- <https://www.dan.co.me/?nivo=3&rubrika=Drustvo&clanak=741392>
- https://www.ombudsman.co.me/npm_articles.php
- <https://www.ombudsman.co.me/article.php?id=34408>
- Instagram profile: Zlatni savjetnici Ombudsmana

Netherlands

Netherlands Institute for Human Rights

Independence and effectiveness of the NHRI

International accreditation status and SCA recommendations

The Dutch NHRI was [accredited](#) with A status in March 2014. Among other recommendations, the SCA encouraged the NHRI to advocate for the formalisation of a clear, transparent and participatory selection and appointment process.

The NHRI was up for reaccreditation in March 2020, but the session was postponed due to the outbreak of COVID-19.

Human rights defenders and civil society space

As regards **freedom of assembly**, under the Dutch Public Assemblies Act (wet openbare manifestaties) planned assemblies need to be pre-notified to the public authorities. The intention for this is to be a procedural requirement, i.e. merely to allow public authorities to assess security risks, and make arrangements in time. Such assessment however has, on occasion, also involved mayors checking the actual substantive contents of the planned assembly with a view to fulfilling the procedural requirement and led to a practice where the content has played a role in decision-making. In a recent report the NHRI drew attention to the crucial importance of assemblies that are critical and non-majority in contents and called upon the government to make sure that the Public Assemblies Act ensures the full fulfilment of the right to assembly. This is an issue that is often brought up by international monitoring bodies too regarding the Netherlands, e.g. the Human Rights Committee in its recommendations of July 2019. Even if this risk from slippage of procedural requirements into substantive assessment was acknowledged by the Dutch government in recent evaluations of the relevant law, and ongoing discussions of the government with mayors stress this point, this remains a matter of attention for the Dutch NHRI as long as the system of pre-notification remains in place.

Another issue which may be reported which affects civic space and human rights defenders is the high level of discriminatory remarks online (and offline), which seems to target religious and ethnic minorities, and women – as well as intersectional groups. Persons who express themselves publicly on the rights of these groups (including human rights activists, like activists against Black Pete) are also targeted. This affects people's behaviour, including

by having a chilling effect on freedom of expression and participation in public debate (including in the media).

The annual report 2019 by the Dutch NHRI focuses on discriminatory behaviour in the public sphere (on the street, restaurants, online, in one's area of living, in public transport, etc.) and how this affects the enjoyment of fundamental rights of others (including freedom of expression, respect for private and family life, religious freedom, freedom of movement and of course the right to be free from discrimination). This research shows that this is a severe and persistent problem in the Netherlands, and has an important impact on the enjoyment of fundamental rights. Experiences with discriminatory behaviour sometimes result in people not feeling free to express themselves, or to avoid certain places at certain times, to dress differently (incl. religious dress). While the local and national authorities put in place a number of measures to address the issue, including the recent increase of the maximum penalty for hate speech and inciting discrimination and violence (increased from one to two years), more needs to be done. In the report the Dutch NHRI makes several recommendations on how to better protect the proper enjoyment of fundamental rights of everyone in the Netherlands.

References

- <https://mensenrechten.nl/nl/publicatie/38662> ("Zolang we het maar eens zijn: Nederlanders over de vrijheid van meningsuiting en demonstratievrijheid" - "As long as we all agree: the Dutch about freedom of expression and the freedom to demonstrate")
- <https://mensenrechten.nl/nl/publicatie/5ee058401e0fec037359c28b> ("Jaarlijkse rapportage Mensenrechten in Nederland: Veilig jezelf zijn in het openbaar" – "2019 Annual report: Being yourself in public without fear for your safety" [English summary available])

Functioning of justice systems

In 2018 in our annual report the focus was on access to justice.

We commented on the government's measures already taken, and plans to do so even more in the future, to economize on the **right to have free (or at subsidized rates) legal assistance**, for instance for asylum seekers. Other organisations have also criticized the government's intended revision of the system on subsidized legal assistance. This resulted amongst others in demonstrations by attorneys (especially in the social domain, such as asylum law) and the call on lawyers from the Dutch Society of Lawyers (Nederlandse Orde van Advocaten) to strike in January 2020. This pressured the government into temporarily

providing additional means for subsidized legal assistance. Nevertheless, it will continue with the implementation of the revision of the legal aid system.

We also warned in this report that the continuation of increase of **fees to start a procedure** will have negative consequences for several vulnerable persons and groups and might even result in an actual impossibility for them to have access to justice.

The government has a legal obligation to respond to our Institute's annual report within 60 days. It has thus far failed to do so.

References

- <https://mensenrechten.nl/nl/publicatie/5d14b882b55daa48dd78b888>(Jaarlijkse rapportage 2018: Toegang tot het Recht – “Annual Report 2018: Access to Justice”)
- <https://mensenrechten.nl/nl/publicatie/5dbaef86b55daa48dd78bd3a>(vervolg brief aan de Vaste Commissie voor Justitie en Veiligheid over gesubsidieerde rechtsbijstand – follow-up letter to “the Permanent Committee on Justice and Security about subsidized legal assistance”).
- <https://zoek.officielebekendmakingen.nl/kst-31753-190.pdf>(brief van de Minister van Rechtsbescherming aan de voorzitter van de Tweede Kamer over Rechtsbijstand – “letter of the Minister on Legal Protection to the chair of the Lower House of Parliament on Legal assistance”)

In-focus section on COVID-19 measures

Most significant impacts of measures taken in response to the COVID-19 outbreak on the rule of law in the country

As a result of COVID-19 restrictive measures have been put in place to limit the spread of the virus. These have taken the form of both government level measures (such as closure of schools, bars, restaurants) and guidance (such as restricting the number of persons in any gathering, and directives to keep 1.5 meter distance) and a generic model regulation to be adopted simultaneously at the local levels, where most of the relevant competences are laid down (both at the municipalities and the so-called Veiligheidsregio's – Security regions). In combined form these measures limit a wide array of human rights, such as the right to education, the right to housing, the right to property, free movement of persons and freedom of religion.

The NHRI has acted particularly with regard to two aspects of the COVID-19 measures. First, it was involved in pressuring the government to ensure that **critical crisis communication** would also involve a real-time sign language professional to ensure also those Dutch citizens who are deaf could follow instantly. The Dutch NHRI has furthermore emphasized the need for protection against domestic violence as part of the governments' approach on tackling COVID-19.

Secondly, at the request of the Minister of Health, the NHRI advised about proposals to use a **tracking app** to be installed on smartphones. Such an app would be intended to facilitate assisting health authorities in their law mandated research into the spread of infectious diseases and help them inform citizens who may have come into contact with others who turned out to be infected. In its advice the NHRI asked for attention for the user-friendliness of the app, its possible **discriminatory or stigmatizing effects** if its use by others than public authorities themselves would not be properly regulated and its **accessibility for persons with a disability or a chronic disease** (e.g. readability of the app for deaf people).

Currently, the Dutch government may be developing a new Act on Emergency measures, meant to assure (more) democratic legitimation for the measures mentioned above and the continuation of these measures for a (much) longer time than was expected at the beginning of the COVID-19 crisis. If this will result in a concrete proposition the NHRI intends to publish advice/comments. The NHRI also informs on the human rights aspects of the crisis by other means, like opinions and blogs on its website, academic channels, as well as social media.

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

COVID-19 has made **hearings in person** in equality cases temporarily impossible. There is currently an evaluation ongoing on how and under which conditions (some) hearings could be conducted through digital means.

Another important consequence of COVID-19 has been a **significant decrease in the number of citizens' notifications and complaints** that the NHRI receives.

North Macedonia

Ombudsman of North Macedonia

Independence and effectiveness of the NHRIs

International accreditation status and SCA recommendations

The NHRI in North Macedonia was first **accredited** with B status in 2011. The SCA observed that the law did not provide for a clear, transparent and participatory selection process and that pluralism could be enhanced. Moreover, while acknowledging the NHRI's promotional activities and relationship with international human rights actors, the SCA encouraged the NHRI to advocate for a wider mandate and further engaging with European NHRIs, as well as NGOs and CSOs.

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

Currently the country functions with a technical government for the purpose of organizing the early Parliamentary elections which were due to take place on April 12, 2020. However, due to the COVID-19 outbreak, the elections were postponed.

Our latest Annual Report has not detected significant changes that affect the independent and effective functioning of our institution.

Changes in the national regulatory framework applicable to the NHRI change since the last review by the SCA

A new law on the Ombudsman Office was adopted in 2016.

The new Law on the Ombudsman introduced several changes in respect to the functioning of the institution. The Law introduced a reference to the Ombudsman's function to ensure promotion of human rights (article 2 of the Law on the Ombudsman). The law further introduced changes to the manner of selecting the Ombudsman and his/her deputies (Article 5 of the Law on the Ombudsman), also providing that one of the deputies could be a professional with legal or other background (Article 6 of the Law on the Ombudsman). The law also introduced changes as regards the termination of the mandate of the Ombudsman (Article 9 of the Law on the Ombudsman).

In respect to the overall mandate of the Office, the law also introduced several new competences and mechanisms to improve the Ombudsman's effectiveness and independence.

These include the introduction of an Ombudsman-Civil Control Mechanism (Articles 11-b, c, d, e and f and article 31-c of the Law on the Ombudsman), and of the possibility to submit Amicus Curiae (Article 12, 30-b of the Law on the Ombudsman).

Article 25 of the Law on the Ombudsman further provides for a new manner of addressing public bodies (authorities within our competence) in case they do not comply with the recommendations, or object the work, of the Ombudsman. Article 30-a provides the Ombudsman with a power to submit a request to the Permanent Committee of Inquiry for Protection of the Freedoms and the Rights of the Citizen of the Assembly of the Republic of Macedonia for the purpose of investigating the cases and taking measures in cases of breach of the constitutional and legal rights of a larger number of citizens, minors and disabled persons.

With two different decisions adopted by the Government in 2018 and 2019, the Ombudsman was formally identified as a monitoring body for the implementation of the UN Convention on the rights of persons with disabilities (2018) and also as National Rapporteur on Trafficking in Human Beings and Illegal Migration (2019).

Finally, Article 34 of the law explicitly describes the obligations of public bodies towards the Ombudsman, while Article 36 concerns the obligations of the Government towards the Assembly in relation to the implementation of the Ombudsman's recommendations.

References

- 2019 Annual Report (In Macedonian language)
<http://ombudsman.mk/upload/Godisni%20izvestai/GI-2019/GI-2019.pdf>

Human rights defenders and civil society space

In its latest Annual Report, and also in its day to day work, the Ombudsman office has not detected evidence that negatively impact the civil society space or the human rights defenders. In multiple occasions the civil society sector is our ally and we work closely with them in order to jointly contribute towards strengthening the human rights in the country and be more vocal on some issues. The civil society organisations are our partners in the

implementation of the institution's several functions such as: National Preventive Mechanism, External Oversight Mechanism, Monitoring of the implementation of the UN Convention of rights of persons with disabilities, etc.

Checks and balances

The Ombudsman has not detected breaches of the system of checks and balances. However, challenges affect the functioning of the judiciary. Complaints in the field of judiciary, as reported in the latest Annual Report, were the most numerous: mostly citizens pointed out that they face significant difficulties in achieving their rights due to the long duration of the proceedings before the Administrative Court, the first instance courts, the courts of second instance, the Public Prosecutor's Office, the Judicial Council of North Macedonia, as well as the procedures for protection of the right to a trial within a reasonable time. The Ombudsman concluded that the Administrative Judiciary is still dysfunctional and fails to guarantee protection of citizens' rights and the rule of law (further below 'functioning of justice systems'). In 2019, a new Law on Administrative Disputes was adopted, the implementation of which begins in 2020 and it regulates the procedure before the Administrative Court and the Higher Administrative Court.

Functioning of justice systems

The excessive length of court proceedings and disregard for the principle of trial within a reasonable time, in particular by the administrative courts, remains the main reason for the big number of complaints in the area of judiciary. There is a need for a full reform of the administrative judiciary for ensuring the application of legal norms in favour of governance of law and the principle of justice and fairness, as well as full and effective respect for human rights. There is a need for amending the Law on administrative courts in the area of liability of the public authorities for the delivery of documents and data. Claims related to the protection of the right to trial within a reasonable time filed before the Supreme Court of the Republic of North Macedonia are not resolved within the stipulated deadlines; as a result, citizens suffer even further delays in the enforcement of their right to a trial within a reasonable time before such court which is legally mandated to decide on such claims.

In-focus section on COVID-19 measures

Most significant impacts of measures taken in response to the COVID-19 outbreak on the rule of law in the country

The Government of North Macedonia has imposed measures over the whole country in order to prevent the uncontrolled spread of COVID-19. The President of the country declared state of emergency for a second time, the first time on 18 March 2020 in duration of 30 days and re-declared it on 16 April for additional 30 days. In the meantime, the President declared twice in the row state of emergency in duration of 14 days, the third one on 16 of May and the forth one on 30th May for another 14 days.

Among the numerous measures declared by the Government was the curfew. There were many variations in the manner it was introduced. At the beginning it started at 21h in the evening and lasted until 5h in the morning but between 8th April and 22nd April 2020 the curfew hours were in between 16h until 05h during the week days, and between 16h on Fridays until 5h on Mondays during the weekends.

The longest hours of curfews were introduced for the Orthodox Easter weekend (Friday 16h-Tuesday 5h)- for more than 80 consecutive hours.

After Easter the hours were shortened (between 19h-5h). However, curfew was imposed for the whole duration for the 1st of May weekend (Friday-Monday) and Eid Bayram (between 11h Sunday and 5h Tuesday).

The curfew was annulled on 27th of May, however due to arising number of new COVID-19 infected persons, there are speculations of possibility to be re-introduced in the most affected regions.

The Ombudsman Office closely follows the situation with the human rights respect and the measures the Government takes. In three occasions the Ombudsman issued recommendations that particularly tackle the vulnerable categories of citizens (persons with disabilities and children), so as persons deprived of liberty.

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- http://ombudsman.mk/EN/news_and_events/241626/ombudsman's_recommendation_to_the_government_of_the_republic_of_north_macedonia_to_protect_.aspx
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Most important challenges due to COVID-19 for the NHRI's functioning

The Ombudsman Office performs its work online with officers on duty on a daily basis.

All visits, hereby including those to places of deprivation of liberty have been suspended during the pandemic. However, the citizens are free to submit complaints by email or phone call and their access to the Office in such way is unlimited.

Although the Ombudsman Office has amended its usual manner of work and diverted to online receipt of complaints and serving citizens, during the month of May, with the support of the USAID, the Office implemented a wide range of promotional campaign with particular focus on the newly acquired competences introduced with the Law on the Ombudsman since 2016. The immediate benefit of the campaign was the increased number of received complaints in May and the beginning of June in comparison to March and April when due to the amended manner of work people temporarily refrained from addressing the Office.

As of 1st of June the regular working hours in the office were resumed.

In addition, the Ombudsman Office has been closely monitoring all measures, ordinances and decrees that the Government adopts, especially since the country has a so called technical government in place since the parliament was dissolved in February due to the early parliamentary elections (scheduled for 12 April but postponed as a result of the COVID-19 pandemics).

Northern Ireland

Northern Ireland Human Rights Commission

Independence and effectiveness of the NHRIs

International accreditation status and SCA recommendations

The Northern Ireland NHRI was reaccredited with A status in May 2016. First, the SCA noted the NHRI's concerns on the limitation of its mandate with regards to its monitoring and investigative functions. Second, the SCA encouraged the NHRI to continue advocating for the formalization of an open, broad and transparent selection and appointment process, the appointment of full-time members with an appropriate term of office, as well as the explicit power to table and promote action on reports directly in the legislature.

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

In 2009/10, the NIHRC's cash budget was £1,702,000. The Commission's grant-in-aid budget for 2018/19 was £1,099,000 and this is decreased by a further £25,000 in 2019/20, when the budget is planned to be £1,074,000. The NIHRC continues to negotiate with the UK Government to enhance its budget to a level that meets its needs.

In June 2018, a judgment by the UK Supreme Court resulted in the NIHRC losing the ability to take a case of public interest in its own name (the judgement was delivered in the matter of an application by the NI Human Rights Commission for Judicial Review (NI) Reference by the Court of Appeal in NI pursuant to Paragraph 33 of Schedule 10 to the NI Act 1998 (Abortion) [2018] UKSC 27). This meant that the NIHRC could no longer lead the charge, but was limited to supporting a human rights case taken by an individual victim.

The NIHRC viewed the ability to take a case in its own name, without the need to rely on a victim, as an important part of its function to bring proceedings involving laws or practice relating to the protection of human rights. Additionally, it provided a safeguard for any known or potential victims – that their issue would be challenged in the public interest without the need to put them through immeasurable personal stress or exposure that can result from the legal process.

The NIHRC was politically supported in its views and, consequently, the required amendment to sections 71(2B) and 71(2C) of the Northern Ireland Act 1998 was included within Schedule 3 of the European Union (Withdrawal Agreement) Act 2020.

Functioning of justice systems

The Justice and Security (NI) Act 2007 makes provision for non-jury trials in NI. The provisions relating to non-jury trials are temporary and must be renewed every two years by way of an order approved in both Houses of Parliament for a period of two years. The relevant provisions have been extended on six occasions since their establishment in 2007. In 2019, the Secretary of State for NI, noting that the UK Government continued to assess the threat level from NI related terrorism in NI to be severe, once again extended the provisions until 31st July 2021.

Prior to the extension, the Secretary of State held a public consultation seeking views on the extension. The NIHRC expressed concerns about non-jury trials, initially introduced as temporary measures in 2007 becoming ‘normalised’ as a semi-permanent feature of NI’s criminal justice system. Particular concerns included the lack of clarity around the conditions whereby the use of non-jury trials will be discontinued; the lack of recording of the alternative juror protection measures considered by the Police Service NI and Public Prosecution Service NI; the lack of protection to ensure that a non-jury trial certificate is issued only where deemed necessary in the interests of justice for the trial to be conducted without a jury; and the lack of detailed data on the current use of non-jury trials. [1]

The procedure for issuing a non-jury trial certificate has been amended to reflect the fact that juror protection measures are considered before a certificate is issued (despite this not being a statutory requirement).

The Public Prosecution Service NI has rejected the recommendation to notify the defendant of its intention to issue a non-jury trial certificate, which was set out in the tenth report of the Independent Reviewer of the Justice and Security (NI) Act 2007, David Seymour. [2]

In 2017/18, there were thirteen applications for a declaration that a closed material procedures application may be made in procedures were lodged and five declarations were made during the reporting period. Six judgments were made, one of which was a closed judgment.

In its advice on the draft NI (Stormont House Agreement) Bill the NIHRC emphasised that the discretion of the Secretary of State to prevent disclosure of information within a family report should be used sparingly. The Commission also recommended a number of additional procedural safeguards be used to enhance the confidence of the family members of victims. [3]

References

- (1) NI Human Rights Commission, 'NIHRC Response to the Public Consultation: Non-Jury Trial Provisions'. Available at: <https://www.nihrc.org/publication/detail/nihrc-response-to-the-public-consultation-nonjury-trial-provisions>
- (2) David Seymour, 'Report of the Independent Reviewer Justice and Security (NI) Act 2007 - Tenth Report: 1st August 2016 - 31st July 2017' (NIO, 2018)
- (3) NI Human Rights Commission, 'Submission to NIO's Consultation on Addressing the Legacy of NI's Past' (NIHRC, 2018)

Media pluralism

In August 2018, journalists Barry McCaffery and Trevor Birney were arrested as part of an investigation into the suspected theft of confidential documents from the Police Ombudsman NI, relating to a police investigation into the 1994 murder of six men at Loughinisland, Co Down.[1]

Lawyers for Fine Point Films brought emergency proceedings to the Belfast High Court challenging the legality of the search warrant used by police. In May 2019, the NI High Court ruled that the search warrants issued were unlawful. The Police Service NI subsequently dropped the case against the two journalists.[2] The NIHRC reported on this situation in its Annual Statement 2019 and continues to monitor the issue.[3]

In April 2020, a journalist working for the Irish News was warned by the Police Service of Northern Ireland of a threat against them.[4] In May 2020, further threats were issued against journalists working for the Sunday Life and Sunday World.[5]

On 20 May 2020, an open letter was published by #StandUpforJournalism, which included the First and Deputy First Minister for Northern Ireland as signatories. The open letter calls "for the immediate withdrawal of all threats against journalists in Northern Ireland and for the freedom of press to be respected and protected".[6]

References

- (1) 'Loughinisland: Journalists arrested over documents investigation', BBC News, 31 August 2018.
- (2) 'Loughinisland: Police drop case against two journalists', BBC News, 3 June 2019.
- (3) NI Human Rights Commission, 'The 2019 Annual Statement' (NIHRC, 2019).
- (4) Gerry Moriarty, 'Threats against NI journalists broadly condemned', The Irish Times, 20 May 2020.
- (5) Gerry Moriarty, 'Threats against NI journalists broadly condemned', The Irish Times, 20 May 2020.
- (6) 'Stand Up for Journalism: Initiative condemning threats against NI reporters receives widespread support', Belfast Telegraph, 20 May 2020.

In-focus section on COVID-19 measures

Most significant impacts of measures taken in response to the COVID-19 outbreak on the rule of law in the country

The Coronavirus Act 2020 was enacted in March 2020 setting out a number of powers that can be used, if necessary, to address and stop the spread of COVID-19. Much of how these powers concern devolved matters and additional NI-specific legislation has been passed by the NI Assembly to determine how these powers can and should be utilised in a Northern Ireland context. In recent weeks, devolved regions (including Northern Ireland) guided by medical evidence have been more cautious in rolling back on the powers that have been utilised, than in England.

The Coronavirus Act 2020 and associated NI regulations enable:

- restriction of international and domestic travel;
- restriction of events, gatherings and use of premises;
- restriction of border operations;
- closures of schools and educational institutions;
- closures of childcare facilities;
- detainment of potentially infectious people;
- reduced safeguards in implementing mental health regulations;
- use of live video and audio links in court settings;
- extended retention of biometric material;
- postponement of elections;
- reduced safeguards regarding reviewing and placing children in care;

- reassignment of health and social care professionals from non-COVID related services; and
- restricted freedom of movement and assembly.

Human rights have flexibility built-in to enable governments to exercise discretion. This can be discretion to enhance or, to limit protections, except in cases of absolute rights. The Siracusa Principles clarify that any limitations on individuals' rights must respond to a pressing public or social need and be proportionate in pursuing that legitimate aim. Prevention of the spread of COVID-19 and to preserve the life and health of those affected or under threat of infection is a legitimate aim, as confirmed by the World Health Organisation. The Siracusa Principles outline that due regard shall be had to the international regulations of the World Health Organisation.

The NIHRC welcomes the introduction of a six-month Parliamentary review of the Coronavirus Act 2020 and the requirement on the Secretary of State to report every two months. The restrictions should last no longer than is absolutely necessary. However, the NIHRC is concerned that the emergency legislation applies for two years, with the ability to extend or to suspend/revive the powers resting with Ministers/devolved Departments. The NIHRC is also concerned should any of the limitation of rights set out in the measures could become the new normal.

Many people already disadvantaged are particularly impacted by the COVID-19 measures including those experiencing poverty, domestic violence, migrants, children, carers and those living in remote rural areas. While there will be a need to restore the economy and raise revenue, given the increase in public expenditure, this should be done in a way that does not penalise the already disadvantaged. Any policies to recover the substantial unplanned expenditure should ensure the best able to pay bear the greatest burden. As former UN Special Rapporteur on extreme poverty and human rights Philip Alston stated at a 2015 conference, "the regressive or progressive nature of a State's tax structure shapes the allocation of income and assets across the population, and thereby affects various types of inequality". [1]

A power that has had a significant impact on society as a whole in Northern Ireland has been restricting freedom of movement and assembly and introducing social distancing measures. Section 52 of the Coronavirus Act 2020 allows the Executive Office to take certain steps to prevent, protect against, delay or control transmission of coronavirus, or to facilitate deployment of medical or emergency personnel and resources. These steps include prohibiting or restricting events or gatherings in Northern Ireland, and closing or imposing restrictions on persons entering or remaining in premises. The police have

powers to enforce these provisions, including the ability to enter any premises and, if necessary, to use reasonable force. It is an offence to fail to comply with these restrictions, which can result in a conviction and fine. The Executive Office also has the power to pay compensation if these powers are misused or cause damage to a person or property. The Health Protection (Coronavirus Restrictions) Regulations (Northern Ireland) 2020 set out the detail of how this will be applied in Northern Ireland.

No more than two people may gather in a public place, except in defined circumstances, including where everyone is a member of the same household, for essential work purposes, to provide emergency assistance attend a funeral and participate in legal proceedings. In addition, no one should leave home except in specified circumstances including to obtain essential food and medical supplies, to seek medical assistance and access other essential services, to provide care or assistance including emergency assistance to a vulnerable person, to travel to work or provide voluntary or charitable services and to donate blood. It is also possible to attend a funeral, but who is allowed to go to a funeral is confined to family members and members of the household and in the absence of anybody else going, only then are friends permitted to attend.

The NIHRC has been monitoring the powers introduced and their implementation, advising the UK and NI governments of human rights concerns and how to address them. [2] The NIHRC has published briefings and provided evidence to the relevant Ministers, departmental officials and Parliamentary inquiries. The NIHRC has also engaged with other public bodies and civil society individuals on monitoring the impact of these powers. The NIHRC has also provided advice to individuals on the relevant human rights concerned through its information clinic.

References

- (1) Philip Alston, 'Tax Policy is Human Rights Policy: The Irish Debate', Keynote Address at Christian Aid Conference on The Human Rights Impact of Tax and Fiscal Policy in Dublin, 12 February 2015
- (2) NI Human Rights Commission, 'Briefing: Coronavirus Act 2020' (NIHRC, 2020); NI Human Rights Commission, 'Briefing: Coronavirus Measures Updates' (NIHRC, 2020); NI Human Rights Commission, 'Response to Joint Committee on Human Rights Inquiry into the Government's Response to COVID-19: Human Rights Implications' (NIHRC, 2020); NI Human Rights Commission, 'Response to Women and Equalities Committee Inquiry into the Government's Response to COVID-19: Human Rights Implications' (NIHRC, 2020)

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

In line with Government requirements and to ensure the safety of staff and the wider public, the NIHRC has had to close its physical offices. The NIHRC is continuing to operate remotely through email, phone and online facilities.

The public are able to continue to contact the NIHRC via email and phone, with each query dealt with as required.

The NIHRC is able to continue to advise government and engage with its stakeholders through conference facilities, email and, on the rare occasion, in socially distanced meetings (for example providing oral evidence to NI Assembly Committees)

The NIHRC has managed to maintain its monitoring capacity and to deliver its services without much disruption. The area most affected by the restrictions are our public events, which have all been cancelled for the foreseeable. The NIHRC continues to host replacement events through online platforms, where appropriate. The NIHRC also continues to keep the public informed of its activities through its website and social media.

Norway

Norwegian National Human Rights Institution

Independence and effectiveness of the NHRIs

International accreditation status and SCA recommendations

The Norwegian NHRI was [accredited](#) with A status in March 2017. The SCA acknowledged that, in practice, the selection and appointment process is conducted in an open and transparent manner. However, it called for the formalisation of a clear, transparent and participatory selection and appointment process for an NHRI's decision-making body in relevant legislation, regulations or binding administrative guidelines, as appropriate. The SCA also welcomed the engagement of the NHRI with other human rights actors while, at the same time, encouraged the NHRI to continue to develop and formalise such working relationships.

Changes in the national regulatory framework applicable to the NHRI change since the last review by the SCA

The regulatory framework applicable to the Norwegian National Human Rights Institution (Norges institusjon for menneskerettigheter - NIM) is set out in the NIM Act of 22 May 2015, which has remained unchanged since NIMs establishment.

References

- NIM Act of 22 May 2015 (NIM-loven), see <https://lovdata.no/dokument/NL/lov/2015-05-22-33>.

Human rights defenders and civil society space

In February-March 2019, NIM conducted a survey on human rights defenders in Norway in cooperation with the Norwegian NGO Forum on Human Rights. The questions in the survey were based on the provisions of the UN Declaration on Human Rights Defenders and covered issues such as violence, threats, harassment, discrimination, freedom of assembly and association, access to information, participation and the right to apply for and receive funding.

While the survey results indicate that there are generally good working conditions for human rights defenders in Norway, the following issues were identified:

- Human rights defenders are not always satisfied with participating in various consultation processes. They feel that the most meaningful consultations are with other NGOs and independent institutions, followed by state and local authorities, and finally the private sector.
- About half of the organisations are satisfied with their financial situation, while the other half considered their financial situation as unstable, deteriorating or critical.
- Some groups experience challenges related to threats and harassment, and some smaller interest organisations report experiencing violence. The respondents feel that most of these events take place on the internet and that private individuals are usually responsible.

NIM has published a report based on the results of our survey. The results indicate that human rights defenders in Norway are not subjected to the same types of pressures that human rights defenders experience in many other countries. Nevertheless, NIM believes that it is important to map the situation in Norway and identify possible challenges for Norwegian human rights defenders in their daily work.

We also hope that the report will raise awareness of these issues, particularly as a key challenge in conducting the survey was identifying actors that could be defined as "human rights defenders". There is a great diversity of people and organisations involved in human rights work in Norway, but little awareness or understanding of the international framework regarding human rights defenders. NIM has found that actors who obviously fall into this category often do not define themselves as human rights defenders in Norway.

References

- NIM Report on Human Rights Defenders in Norway (in Norwegian), see <https://www.nhri.no/2020/menneskerettighetsforsvarere-i-norge/>

Functioning of justice systems

In our Annual Reports from 2017 (p. 129) and 2018 (p. 30), NIM highlighted the issue of inadequate funding for the Norwegian courts and how this was leading to longer case processing times. In some cases, longer processing times may have amounted to violations of the right to a judicial decision within a reasonable time, which is recognised in both the Norwegian Constitution and the European Convention on Human Rights (ECHR).

In response to NIM's 2017 Annual Report, the Norwegian Parliament asked the Norwegian Government to ensure that the courts are organised and funded adequately so that cases can be decided in a timely manner as required by human rights law. In August 2017, a Courts Commission was appointed by royal decree to investigate the organisation and independence of the Norwegian courts.

In February 2018, the Courts Commission asked NIM for assistance in investigating the human rights framework applicable to the Norwegian courts. On 1 October 2018, NIM provided the Commission with a report entitled *The Human Rights Framework for the Independence of the Courts*, which discussed relevant legal requirements set out in the Constitution, the ECHR and the ICCPR, as well recommendations from international human rights bodies.

NIM emphasised the need for stability and predictability in the financing of the courts, recommending that funding should be based on objective and predictable criteria so as not to be affected by policy changes or discretionary decisions of other authorities. We also highlighted that the courts should have a sufficient number of judges and qualified support staff to enable them to work effectively. NIM's report does not assess whether the current organisation of the Norwegian judicial system is consistent with the human rights framework, as these are considerations for the Commission.

The Commission's interim report was released in October 2019 and the next report is due by September 2020. The interim report recommends, among other things, to expand the jurisdictions of the district courts and land courts, with the aim of promoting better utilisation of resources. A survey conducted by the Office of the Auditor General (Riksrevisjonen) in 2019 has again highlighted the issue of case processing times, noting that in some cases statutory deadlines are being violated.

References

- NIM Report on The Human Rights Framework for the Independence of the Courts (in Norwegian), see <https://www.nhri.no/2019/temarapport-2018-menneskerettslige-rammer-for-domstolenes-uavhengighet/>.
- NIM annual report 2017 (in Norwegian), p. 129, see <https://www.nhri.no/2018/arsmelding/>.
- NIM annual report 2018 (in Norwegian), p. 30, see <https://www.nhri.no/2019/nims-arlige-rapport-om-menneskerettighetene-til-stortinget-nims-arsmelding-2018/>

Media pluralism

NIM has not found evidence of laws, measures or practices in Norway that restrict a free and pluralist media environment. However, we have commented on some recent legislative and policy developments, with a view to further strengthening media pluralism in Norway.

For example, in 2018, the Norwegian Government released proposals for a new law on editorial independence and media liability for consultation. The main purpose of the legislation was to support the media's role in facilitating open and enlightened public discourse in accordance with Article 100 of the Norwegian Constitution.

NIM welcomed the new law on editorial independence and media liability, which was later adopted in 2019. During the hearing process, NIM made submissions recommending that the legislation should (a) allow for future developments in technology and digital media; (b) remove legal uncertainty, particularly in relation to the responsibility of online editors for user-generated content; (c) ensure protection of journalistic sources in accordance with the practice of the ECtHR and the Supreme Court of Norway; and (d) strive for a reasonable balance between freedom of expression and other considerations or rights. The Norwegian Government made several changes to the final law before it was adopted, incorporating suggestions made by NIM and others, such as our recommendation that the scope of the legislation not be construed too narrowly.

In December 2019, the Norwegian Government established a Freedom of Speech Commission to conduct a broad review on the position of freedom of expression in Norway today. NIM has also welcomed this announcement. A lot has changed in this area since the previous Freedom of Expression Commission delivered its investigation over 20 years ago, particularly in relation to new technologies and media platforms. The Commission's work will provide important insights on the complex balance between

freedom of expression, privacy and other human rights, and on the role of high-quality, independent journalism in facilitating open and enlightened public discourse.

References

- NIM Annual Report 2017 (in Norwegian), p. 36-40, see <https://www.nhri.no/2018/arsmelding/>.
- NIM Annual Report 2018 (in Norwegian), p. 52-58, see <https://www.nhri.no/2019/nims-arlige-rapport-om-menneskerettighetene-til-stortinget-nims-arsmelding-2018/>.
- NIM Annual Report 2019 (in Norwegian), p. 21, <https://www.nhri.no/2020/nims-arsmelding-til-stortinget-2019/>

In-focus section on COVID-19 measures

Most significant impacts of measures taken in response to the COVID-19 outbreak on the rule of law in the country

On 21 March 2020, the Norwegian Parliament unanimously adopted emergency legislation to assist in responding to the Coronavirus (COVID-19) pandemic. The Corona Act stipulates that the Government can, through the adoption of temporary regulations, supplement or derogate from over 60 laws as far as is necessary to safeguard the purpose of the Act. On 24 March 2020, the Parliament also amended their Rules of Procedure to ensure such regulations can be dealt with swiftly and effectively. Regulations can be repealed if parliamentary representatives, who together represent at least one third of the Parliament's members, state in writing that they do not support all or part of the regulations. The Corona Act also stipulates in Section 2 that any temporary regulations adopted must not contravene the Constitution, the Human Rights Act and Norway's obligations under international law.

NIM has emphasised the need for public authorities to publish information on the assessments they make as the basis of temporary regulations made pursuant to the Corona Act. While such regulations are now made publicly available for short hearings before they are adopted and sent to the Parliament, they are not always accompanied by detailed information on the assessments made in drafting the regulations. NIM believes this is an important part of building trust and confidence in the Government's response and ensuring that democratic principles remain in place during a time of crisis, without limiting the ability of the State to act swiftly in securing critical social functions.

NIM has made several hearing submissions regarding the temporary regulations made pursuant to the Corona Act. These regulations have covered issues such as measures to strengthen the efficiency of the judicial system, the enforcement of penalties in the criminal justice system, the child welfare response and the handling of residence permit cases during the COVID-19 pandemic.

We have also written letters to public authorities on issues such as the right to privacy and protection of personal data in connection with Norway's infection tracking app, visitation bans and social isolation in long-term care facilities, securing the rights of vulnerable groups and implementing adequate processes for public participation during the COVID-19 pandemic.

One of NIMs priorities during this crisis has been to raise public awareness of the human rights implications of the COVID-19 pandemic and to promote respectful and informed public debate. NIM has written several opinion pieces and has appeared in interviews regarding human rights and COVID-19. We have also launched a webinar series on our social media channels called "Human Rights in the Garden", which takes place outdoors with a four to five person panel, and addresses human rights issues during the COVID-19 pandemic.

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

Like all workplaces, NIM has faced some challenges in adjusting to the new infection control measures introduced by public authorities, but these have not significantly impacted our ability to fulfil our functions. Throughout the COVID-19 pandemic, NIM has continued our regular monitoring, advising and reporting work to protect and promote human rights in Norway. In addition to this, we have been monitoring legislative and other measures adopted in Norway in response to the COVID-19 pandemic.

References

- NIMs website, Human Rights and the Fight Against COVID-19 (in Norwegian), see <https://www.nhri.no/menneskerettighetene-og-kampen-mot-COVID-19/>.
- NIMs website, Our Work During the COVID-19 Pandemic (in English), see <https://www.nhri.no/en/nims-work-during-the-coronavirus-COVID-19-pandemic/>

Poland

Commissioner for Human Rights

Independence and effectiveness of the NHRI

International accreditation status and SCA recommendations

The Polish NHRI was [re-accredited](#) with A status in November 2017. The SCA encouraged the NHRI to advocate for amendments to its enabling legislation to require a pluralistic composition in its membership and staff, and for changes that would guarantee, for Deputy Commissioners and staff of the NHRI their protection from legal liability for actions undertaken in good faith in their official capacity. The SCA also underlined the need for the provision of adequate funding to enable the NHRI to effectively carry out its mandate.

Developments relevant for the independent and effective fulfilment of the NHRI's mandate

There have been no major changes in this respect within the national regulatory framework. Both the Constitution and the ordinary legislation ensure the Commissioner's independence from other state authorities. The Commissioner is not a government nominee, he is appointed by the bi-cameral Parliament, the nomination requires the consent of both the Sejm and the Senate. The legislation provides only for a limited accountability of the Commissioner to the Sejm. The Commissioner is obliged to present an annual information on his activities and the human rights situation in Poland. There are very limited grounds to dismiss the Commissioner before the expiry of his term of office. Apart from a voluntarily resignation, they are principally confined to medical reasons.

The political formation in power in Poland since 2015 remains disapproving of the Commissioner's work. The Commissioner is subject to **heavy criticism and pressure** from the ruling political majority and the pro-government media. The work of the Commissioner, his interventions, statements and opinions presented in the legislative process are frequently reported by the public media in a biased manner. For political reasons, the annual budget of the Commissioner's Office **does not safeguard the adequate funding**, corresponding to the scope of competences conferred on the Commissioner.

In this context, it is difficult for the Commissioner to carry out its duties and the impact of its work is very much restricted by the institutional and political environment in which it operates. Regional mechanisms such as the European Commission's monitoring on the rule

of law, may be further built on to have a greater influence on domestic developments in Poland. The Commissioner recognized a constant, supportive interest of European partners in Polish issues. The Commissioner will be appreciative for **further monitoring of the situation in Poland**, ensuring prompt legal and political reactions in cases of subsequent violations of the rule of law and the European standards, making clear statements, analyses and reports, organizing visits to Poland when possible, and meeting both Polish representatives and members of the civil society.

References

- Konstytucja Rzeczypospolitej Polskiej z dnia 2 kwietnia 1997 r., Dz.U. 1997, poz. 78, ze zm. (Constitution of the Republic of Poland od 2 April 1997, Official Journal 1997, No 78, Item 483)
- Ustawa z dnia 15 lipca 1987 r. o Rzeczniku Praw Obywatelskich, tekst jednolity: Dz.U. 2020, poz. 627 (Act of 15 July 1987 on the Commissioner of Human Rights, consolidated text: Official Journal 2020, Item 627)
- <https://www.rpo.gov.pl/pl/content/budzet-rpo-vii-kadencji-informacja>

Human rights defenders and civil society space

The ruling party has taken measures which indeed **restrict the capacity of NGOs and civil society to operate**. NGOs have **limited access to financial resources**, the available public financing is allocated by the government in a non-transparent and discretionary manner. The politicization of the public sphere also results in a reduction in funding from private actors.

The polarization of the media, and the pro-government stance taken by the public broadcasters limit NGOS' access to the public debate. The pro-government media, which embrace both the public media and some private media report in a manipulative manner on the work of those civil society activists and NGOs whose actions do not correspond to the ruling party ethical, ideological or political attitude. It particularly affects persons and organisations engaged in tolerance issues, LGBT problems and education on human sexuality. **Smear campaigns** by politicians and pro-government media affect a number of other social groups: judges, prosecutors, journalists, teachers, or medical staff.

They are instances **public assemblies** being *de facto* discouraged, e.g. by means of checking by the police of the identity of those involved. There is legislation in force allowing for the bringing a private law action to protect the good name (reputation) of the Republic of Poland or the Polish Nation. These provisions are of concern from the

perspective of the freedom of speech and could be used for political considerations; the action can be brought to court i.a. by a state body, the Institute of National Remembrance.

References

- <https://www.rpo.gov.pl/pl/content/rpo-o-wyzwaniach-dla-ngos>
- Ustawa z dnia 18 grudnia 1998 r. o Instytucie Pamięci Narodowej – Komisji Ścigania Zbrodni przeciwko Narodowi Polskiemu, tekst jednolity: Dz.U. 2019, poz. 1882 (Act of 18 December 1998 on the Institute of National Remembrance – the Commission for the Prosecution of Crimes against the Polish Nation; consolidated text: Official Journal 2019, Item 1882)

Checks and balances

The separation of powers has been **substantially disrupted**. The political authorities attempt to control the content of judicial decisions by taking **disciplinary and administrative measures against judges**. A number of cases concerning the Polish judiciary have been dealt with by the Court of Justice in the European Union, on the initiative of the courts themselves (references for a preliminary ruling) or of the European Commission (infringement proceedings). A case within the EU mechanism for the protection of Union values (Art. 7 TEU) is pending against Poland before the Council of the European Union.

Law-making in Poland has been distorted. Politically sensitive issues, including those relating to the justice system, are adopted without a proper legislative process and raise serious constitutional concerns. Legislation is often enacted in an unnecessarily expeditious manner, with no proper consultations and without taking into account critical opinions presented by numerous institutions and actors. In such cases, the rights of parliamentary opposition are frequently compromised. The ruling majority hinders the proper analyses of draft legislation, limits parliamentary debate, restricts the possibility of providing sufficient explanation for legislative amendments.

There is **no functioning genuine constitutional review**. The Constitutional Tribunal has been politicized; part of its composition has been established contrary to the Constitution as some members of the Tribunal were appointed to positions to which other judges were lawfully appointed before. Only persons associated with the ruling party are appointed to the Tribunal, including the prominent politicians, who have been actively participating in the introduction of unconstitutional changes in Poland. The Constitutional Tribunal is used instrumentally to validate unconstitutional legislation (e.g. the Act on the National Council

of the Judiciary) and to challenge the rulings of the Supreme Court and the Court of Justice of the European Union.

The political **accountability** as well as criminal responsibility of those in power have become illusory. A government-subordinate prosecutor's office does not take up or discontinue cases that are inconvenient for the ruling party.

Another key issue which relate to the very core of the democratic system of checks and balances and which emerged in recent weeks has been the **organisation of presidential elections**. The ruling majority, contrary to the clear medical reports and opinions, ignoring the threats to the health of voters and members of the electoral commissions, is determined to hold the elections at the original date by universal postal voting, amidst the COVID-19 pandemic, taking into account only its own political interest. There is currently no proper? nor proper legislation in place to hold elections that meet constitutional standards of universal, equal and direct elections, conducted by secret ballot. The freedom of assembly is de facto suspended, which makes electoral campaigning close to impossible. Conducting the elections in the current situation would **violate the right to free and fair elections**, threaten democracy in Poland, and undermine the democratic legitimacy of the person elected in such a defective electoral process.

The Commissioner has been constantly pointing out the above-mentioned problems in numbers submissions to national authorities, including letters to the executive bodies and opinions presented in the legislative process.

References

- Wojciech Sadurski, Poland's Constitutional Breakdown, Oxford 2019
- Laurent Pech, Patryk Wachowiec: 1460 Days Later: Rule of Law in Poland R.I.P. (Part I and II), <https://verfassungsblog.de/1460-days-later-rule-of-law-in-poland-r-i-p-part-i/>, <https://verfassungsblog.de/1460-days-later-rule-of-law-in-poland-r-i-p-part-ii/>
- Paweł Filipek, Challenges to the Rule of Law in the European Union: the Distressing Case of Poland; Revista do Instituto Brasileiro de Direitos Humanos, No 17/18 (2018)
- Concerning presidential elections: <https://www.rpo.gov.pl/pl/kategoria-tematyczna/wybory>

Functioning of justice systems

The **threat to judicial independence** is the most serious issue for the Polish judiciary. Since gaining power in autumn 2015, the ruling party have been taking legislative, administrative and de facto actions to take control over the judiciary and, at the same time, to disable effective judicial control over its own activities. The political leadership has placed the **Constitutional Tribunal** and the **National Council of the Judiciary** under its de facto control. The **Supreme Court** was partly taken over by way creation of two new chambers, fully staffed with new members, from those associated with or supported by the ruling party, and nominated by the new National Council of the Judiciary.

The **judges of ordinary courts** are under constant pressure. They are criticized for making judicial decisions that does not meet the expectations of the government, pro-government media are conducting negative campaigns against them, the regime of disciplinary responsibility is activated for political reasons, as well as some administrative measures are put into place, e.g. suspension of a judge, transfer to another judicial department, etc.

Judicial associations and the civil society regularly protest opposes measures taken against judges. A number of initiatives in this area have also been carried out by the Commissioner for Human Rights, who has presented numerous opinions in the legislative process, addressed interventions to the executive bodies, in particular to the Minister of Justice, requested explanations from the disciplinary officers for judges.

The undermining of the independence and impartiality of judges **infringes the very essence of the right to a fair trial** guaranteed by the Polish Constitution, Union law and the European Convention on Human Rights. Thus the **effective judicial protection is at risk** in Poland. The fair trial guarantees of access to an independent and impartial court established by law are the subject of cases considered or pending before the Supreme Court, the Court of Justice of the EU, the European Court of Human Rights. The Commissioner intervenes in these proceedings, in particular by submitting written observations.

References

- "Muzzle Law" – Ustawa z dnia 20 grudnia 2019 r. o zmianie ustawy – Prawo o ustroju sądów powszechnych, ustawy o Sądzie Najwyższym oraz niektórych innych ustaw, Dz.U. 2020, poz. 190

Media pluralism

Political authorities are trying to **control public access to information** and especially the extent of information available to journalists, e.g. by prohibiting judges from providing information in court building, or currently forbidding medical staff from informing about aspects of the COVID-19 epidemic.

Journalists of **government-friendly media are treated more favourably** than other journalists, e.g. as regards accreditation for certain political events, access to information, access to political leadership for comments and interviews.

The **public media** do not respect journalists' standards, present information selectively, in one-sided, unreliable manner, mix information with political commentary, constantly promote politicians of the ruling majority, and present the opposition in an negative way.

The pro-government media are running **defamatory campaigns** against some private media.

References

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- <https://www.rpo.gov.pl/pl/content/wprowadzone-procedury-w-sejmie-uniemozliwiaja-prace-sprawozdawcom>

Corruption

Poland scored 58/100 (annual increase by 2 points) and was ranked 41 among 180 countries in 2019 International Transparency index. The **prosecution's lack of independence** from the executive and political power makes it difficult to investigate and prosecute corruption, especially when the suspected person is linked to the ruling government. A recent example is the investigation into the organisation of the presidential elections during the pandemic and endangering the life and health of many people, initiated by Public Prosecutor Ewa Wrzosek. It was discontinued immediately by the superior prosecutor, only after 2 hours since its launching. The discontinuance was unsubstantiated and decided without any genuine investigative actions being taken in the

case (case no. PR 3 Ds. 589.2020, District Prosecutor's Office Warszawa-Mokotów). Another example is the case of prosecutor Mariusz Krasoń of the District Prosecution Office in Kraków. He was transferred to a different department and then suddenly seconded to the Wrocław District Prosecution Office in relation to him pointing to threats to the independence of the prosecutor's office and indicating the pressure exerted on prosecutors.

References

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In-focus section on COVID-19 measures

Most significant impacts of measures taken in response to the COVID-19 outbreak on the rule of law in the country

The Polish government has adopted **radical measures** to combat the threat of an epidemic, deeply interfering with individual rights and freedoms, including freedom of movement and home restrictions; temporary bans on staying in parks, entering forests, etc. Access to health care for other illnesses has been drastically reduced, access to physicians has been very difficult, numerous planned operations and medical procedures have been cancelled. In general, assembling is not allowed; freedom to religious worship is restricted; right to a fair trial within a reasonable time is limited; private and family life is interfered with; the protection of personal data becomes a problem when collecting information on geo-location of persons; access to education is restricted especially for children who do not have technical means to participate fully in on-line class activities. The Commissioner has made numerous interventions in this area. The lawfulness of some measures was called into question, e.g. the prohibition of movement except for urgent living needs, a complete prohibition of unaccompanied movement of persons under 18 years of age, or quarantine

for persons returning from abroad. No adequate legal basis was indicated for them. The procedure for their adoption was questionable, e.g. adopted by a body other than the one with the authority to do so, introduced at the last minute.

The restrictions are being frequently changed. Many of the measures introduced were drafted in vague and imprecise terms. Many of these can be considered excessive, too broad, unjustified by legitimate needs, disproportionate. They leave a large degree of discretion to the law enforcement officers.

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

The Office of the Commissioner has adapted to the state of the epidemic. About 80% of employees work from home, or on-line, fully performing their tasks. Indeed, citizens' access to the Ombudsman has been made to some extent more difficult, since electronic means of communication, especially e-mail, have become the main form of contact.

References

- <https://www.rpo.gov.pl/pl/kategoria-tematyczna/koronawirus-i-epidemia-w-polsce>

Portugal

Portuguese Ombudsman

Independence and effectiveness of the NHRI

International accreditation status and SCA recommendations

The Portuguese Ombudsman was last [reaccredited](#) with A status in November 2017. While acknowledging that the selection and appointment process is governed by the Parliament's rules of procedure, the SCA recommended the formalization of the process in relevant legislation. Also, the SCA encouraged the NHRI to advocate for the legal provision for an independent and objective dismissal process of the NHRI's deputies.

Developments relevant for the independent and effective fulfilment of the NHRI's mandate

No significant changes took place.

All guarantees of Independence are still in force.

According to the Constitution (Article 23 (3)) and the 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 does not incorporate 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 (MP), 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.

References

- Portuguese Republic Constitution
- Legal Statute of the Portuguese Ombudsman
- <http://www.provedor-jus.pt/?idc=81>

Human rights defenders and civil society space

The Portuguese Ombudsman considers that there are no laws, measures or practices that could negatively impact on civil society space and/or reduce human rights defenders' activities in Portugal.

After the establishment of democracy in Portugal, fundamental rights to freedom of expression (Art.37) , freedom of assembly and of association (Art. 46) , freedom of demonstration (Art. 45), and right to participate in public life (Art. 48) were enshrined as rights, freedoms and guarantees in the Constitution.

Civil society participation gained a strong dynamism in several areas through the foundation of unions and solidarity, humanitarian, cultural, sports and recreation associations. With the entry of Portugal into the then European Economic Community, there was an increase in the number of organisations, namely associations, foundations and cooperatives. In more recent years, Portuguese society has experienced the increase of social movements (organic and inorganic), although less expressive than in other countries.

Portugal has a deep-rooted democracy and it is safe to affirm that the political context doesn't present particular risks to the autonomy and security of NGO's operating in the country and for human rights defenders. However, regarding the economic context – being Portugal a peripheral economy within the EU, and, for that reason, more exposed to negative shifts that may occur in the region – the **availability of public and private funding and the reduced diversity of funding sources** represents a very important challenge for NGOs .

NGOs which are qualified as “cooperation and development NGOs”, are especially protected by the Portuguese Law, due to their recognized role in the design and implementation of social, cultural, environmental, civic and economic programs, namely in humanitarian assistance, emergency aid and protection and promotion of human rights. They have a special legal statute.

NGOs which are duly registered may be inspected by the government, namely in what regards the use of public funds and tax obligations. Specific legislation on associations representative of women, migrants, youth, persons with disabilities and involved in environmental protection was also enacted. This recognition is particularly evident in the relevance given to these associations in the establishment of national action plans and strategies that provide concrete measures to fulfil State’s responsibilities under the Constitution, international obligations and the law. Some of these plans set forth important tasks and measures for NGOs. There are several examples action plans that considerably rely on the participation of NGOs and in the work developed by human rights defenders in order to accomplish their goals.

Universities enjoy full academic autonomy and freedom of speech is fully protected by the Constitution.

In the Rule of Law Index 2019, Portugal scored 78% of civic participation, 81% of freedom of expression, 86 % of freedom of association. Limits of freedom of expression are enshrined in the Criminal Code, and are limited to hate crimes. As for freedom of association, the Constitution does not allow armed or military associations, nor racists or fascists organisations.

In State of Emergency any limitation of freedom of press must respect the proportionality principle and cannot evolve any form of censorship. Also, the freedom of association of political parties cannot, under any circumstance, be limited.

References

- Provedor de Justiça, "Impact on NGO activities, particularly humanitarian efforts targeting refugees and other migrants, of changing criminal law approaches or provisions in Council of Europe Member States", 2019, available at: http://www.provedor-jus.pt/site/public/archive/doc/Criminalisation_of_NGOs_Activities2.pdf
- Provedor de Justiça. "Questionnaire to Special Rapporteur on the situation of human rights defenders", 2018, available at: http://www.provedor-jus.pt/site/public/archive/doc/2018_Human_Rights_Defenders.pdf
- World Justice Project, Rule of Law Index, 2019, p. 124.
- State of Emergency Law, <https://dre.pt/application/conteudo/552035>

Checks and balances

The Portuguese Constitutional system provides a **strong and serious regime of checks and balances** between the several sovereign branches. The judiciary, through the Constitutional Court, controls the constitutionality of Law. The Government may respond politically before the Parliament. The Parliament may be dissolved by the President of the Republic when it is justified on the grounds of rule of law and the democratic principle, and the Council of State must always be heard. The same applies to the Governments destitution. The Government holds legislative powers (through Decree-Laws), but there are certain subjects there are reserved to the Parliament's legislative competence. The Constitutional Court may declare the constitutionality of governmental acts that have breached this division of competences.

The Portuguese Ombudsman has the competence to **request a constitutionality review of laws** – either enacted by the Parliament or by the Government. It may proceed to such requests either due to breach of a competence norm or legislative processes' norm, or because a certain law may be considered as substantially unconstitutional. The Ombudsman has indeed exercised this competence several times – namely because of substantial reasons (e.g., data protection law and principle of privacy).

Moreover, the Ombudsman has also the competence to make **recommendations to the Parliament**. This competence has been used lately, namely as regards possible amendments of laws, on the grounds on fundamental rights.

According to the Portuguese State of Emergency Law, during the declaration of a state of emergency, the Ombudsman remains fully in functions. The Ombudsman is, then,

particularly vigilant as regards any possible abuse of power due to the special scenario where the Executive branch's powers are strengthened.

In the Rule of Law Index, Portugal has the following scores on constraints on Government Powers:

- Limits by legislature – 84%
- Limits by Judiciary – 77%
- Independent Auditing – 76%
- Non-governmental checks – 81%
- Lawful transition of power – 93%

Its global "Rule of Law" rank is of 22/126.

References

- Portuguese Constitution
- Legal Statute of the Portuguese Ombudsman
- <http://www.provedor-jus.pt/?idc=81>
- Act on the State of Emergency: <https://dre.pt/application/conteudo/552035>
- Request to the Constitutional Court on data protection in the context of electronic communication systems - https://www.provedor-jus.pt/site/public/archive/doc/2019_08_26_Q_7746_2017_Tribunal_Constitucional.pdf
- World Justice Project, Rule of Law Index, 2019, p. 124.

Functioning of justice systems

The Ombudsman has competence to intervene in what concerns administration of Justice. This encompasses access to courts, legal aid, access to lawyers, delays on judicial procedures, etc. The Ombudsman does not intervene as *amicus curiae*, nor can it challenge or make any recommendation or suggestion the merits of judicial decisions.

During 2018, the Ombudsman received 488 **complaints** as regards administration of justice. Of these, 276 were related to **delays in justice**, mainly due to the judiciary (there were also complaints as regards Public Prosecution, Solicitors, Insolvency administration, Forensics Medicine). Citizens often complain also about **justice costs and denial of legal aid**.

Indeed, one of the more serious problems in Portugal is, as confirmed by the 2019 Rule of Law Index, 2019, **delays in the justice system**. In this context, Portugal was already convicted several times by the European Court of Human Rights for breaching Article 6 of the European Convention on Human Rights. The Ombudsman intervenes, in particular, in cases where there were no doubts as to the unreasonability of the justice delay.

As for the Rule of Law index 2019, Portuguese legal experts pointed out the following achievements as regards Courts' work:

- Accessibility and affordability – 69%
- No improper government influence – 78%
- No unreasonable delay – 42%
- Effective enforcement – 52%

Recently, the Ombudsman has been advocating for an **effective access to justice for migrants who are detained**. Lawyers who had to visit their clients in the detention centres located in the international area of the airport have to pay a fee of 11 euros. The Ombudsman considered that this practice would amount to a breach of the right to access to lawyer, and has developed a dialogue with the airport authority to overcome this obstacle. A solution however could not be found. The right to Justice is also severely impaired in the context of detention of migrants as regards access to Courts to ask for the judicial review of detention. Any deprivation of liberty that lasts for more than 48 hours has to be duly authorized by a judge. However, the practice in these airports is to simply inform the Court, by fax or email, on the detention. The Court authorizes this detention by the same means, without hearing the detainee. The Ombudsman has already claimed as well that this practice may go against the right to justice, namely before UN bodies.

References

- Portuguese Ombudsman Annual Report, 2019, http://www.provedor-jus.pt/site/public/archive/doc/Relat2018_0.pdf
- Alternative Report of The Portuguese Ombudsman on the Implementation of the Convention on the Rights of the Child in the Process of Review of the Fifth and Sixth Periodic Report of Portugal, 2018, http://www.provedor-jus.pt/site/public/archive/doc/Rel_Alternativo_CRC.pdf

Media pluralism

Freedom of Speech and of Press are fundamental liberties deeply guaranteed in the Portuguese Constitution. According to the Study on “Journalists without borders”, Portugal ranks the 10th place in the study 2020 World Press Freedom Index, among other 180 countries.

The Portuguese Ombudsman has not intervened in any case as regards freedom of press.

Freedom of expression is classified with an achievement of 81% in the Rule of Law index. Nonetheless Portugal has already been condemned several times by the European Court of Human Rights for sanctions applied for press publications on grounds of the **law on defamation**. The most recent ruling dated September 2019, where Strasbourg Court considered that the Portuguese authorities had not struck a fair balance between the right to freedom of speech and the right to private life.

Also in this context, the UN Human Rights Committee recommended, in 2020, to Portugal to consider decriminalizing defamation and, in any case, resorting to criminal law only in the most serious cases, bearing in mind that imprisonment is never an appropriate penalty for defamation.

References

- 2020 World Press Freedom Index, <https://rsf.org/en/2020-world-press-freedom-index-entering-decisive-decade-journalism-exacerbated-coronavirus>
- Human Rights Committee, Concluding observations on the fifth periodic report of Portugal, 2020, https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CCPR/C/PRT/CO/5&Lang=En
- ECtHR, Antunes Emídio v. Portugal and Soares Gomes da Cruz v. Portugal (applications nos. 75637/13 and 8114/14)

Corruption

The Ombudsman is part of the National Network for Open Administration, which belongs to the Open Government Partnership (OGP) - a multilateral initiative, formally launched on September 2011 by the Heads of State and Government of eight countries (South Africa, Brazil, United States of America, Philippines, Indonesia, Mexico, Norway and United Kingdom). The OGP aims to push forward for concrete commitments from governments to

promote transparency, empower citizens, fight corruption, and harness new technologies to strengthen participatory democracy. The Portuguese action plan features commitments related to improving citizen control over their data, open legislation, open administrative and environmental data and open contracting.

As for corruption, the Portuguese Ombudsman does not intervene, as this is a matter of criminal responsibility. In 2017, the Portuguese Courts convicted 112 person for having practiced this crime, whereas in 2018 the number of convictions was of 73.

According to the 2019 Rule of Law Index, the following scores were achieved as regards absence of corruption:

- In the executive branch – 66%
- In the judiciary – 88%
- In the police / military – 87%
- In the legislature – 48%

References

- World Justice Project, Rule of Law Index, 2019, p. 124.
- Open Government Partnership, <https://www.opengovpartnership.org/members/portugal/>

In-focus section on COVID-19 measures

Most significant impacts of measures taken in response to the COVID-19 outbreak on the rule of law in the country

On the 18th March 2020, the President of the Republic enacted the first state of emergency declaration. According to the Constitution, the State of Emergency has the maximum duration of 15 days, renewable.

Several fundamental rights were suspended, such as: a) the right to freely move and settle anywhere in the national territory; b) ownership and private economic initiative; c) rights of workers (who can be asked to work in different conditions and to different entities, as it is the case of health sector workers; e) exercise the right to strike insofar as it may compromise the functioning of critical infrastructures or health care units, as well as in economic sectors vital to the production, supply and supply of essential goods and services to the population; f) international circulation; g) right to assemble and demonstrate; h) freedom of worship, in its collective dimension and i) right of resistance. The second state

of emergency declaration added the suspension of the right to learn and teach, authorizing the necessary measures to prevent and combat the epidemic, including the prohibition or limitation of face-to-face classes, the imposition of distance learning by telematics, the postponement or extension of school periods, the adjustment of assessment. Data protection rights were also suspended by this second declaration, but in a very limited manner, as allowing that public authorities can determine that telecommunications operators send their customers written messages (SMS) with alerts from the Directorate-General for Health or other related to the fight against the epidemic.

The State of Emergency has, naturally, reinforced deeply the Executive's branch's powers. The Government has been very active, adopting rapidly several norms. Some of them would require, in normal times, approval by the Parliament. However, since they are aimed at applying the State of Emergency declaration, there is not an unconstitutionality problem. Moreover, the Government has been adopting several measures aimed at protecting the economy, workers and families.

The Ombudsman, as already mentioned, maintains its full activity during the State of Emergency. And it has been particularly vigilant. It has already issued **several recommendations**, namely as regards support to independent workers, or suspension of tax enforcement measures. It has also suggested the enlargement of the family-support work leave for the purpose of providing help to elderly ascendants. It was also one of the first authorities recommending some measures for relieving overcrowding of prisons. The Ombudsman also recommended to the National Health Authorities that quarantines should not be decided at regional level, but rather with national criteria, in order to guarantee the principle of equality.

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

On the 16th March, the Ombudsman Office's staff started to work from home. The transition was gradual and smooth, starting with the most vulnerable persons, followed by parents with children aged below 12 (after the schools' closure) and, finally, almost every worker. The Ombudsperson designated only a "task force" of very limited persons who still work from the Ombudsman Headquarters: besides the Ombudsperson herself, two members of the Cabinet, the two Deputy Ombudsmen, department coordinators, a public relations collaborator and two members of the accounting and staff departments.

All legal advisers that deal with complaints have remote access to their computers and, thus, to the IT program for complaints handling. Therefore, with some minor IT problems, the staff has been coping well with the new scheme. Staff is in permanent dialogue, so they

can share technical difficulties and good practices. As for phone calls, staff have forwarded all phone calls received in their office to their personal cell phones. Whenever they need to speak to the public entities or to complainants, they may call the Ombudsman Office, and the limited staff that remains therein may forward the call to the legal advisers, who may then, in case of need, talk to the complainants. The same is happening with the Hotlines, whose staff are also working from home. However, staff with young children report that it is difficult to have the same productivity while home-schooling children and without domestic help. This situation can be even more difficult when there is only one computer in the household and children need to assist to their classes through internet platforms.

Due to the public health crisis, the National Preventive Mechanism had to cease its monitoring activity. So, currently, visits to all places of deprivation of liberty are suspended. The NPM has been accompanying remotely (by phone, by email) the conditions of detention.

References

- First declaration of the state of emergency: <https://dre.pt/application/conteudo/130399862>
- Ombudsman Recommendation on prisons: <http://www.provedor-jus.pt/?idc=136&idi=1824>
- Ombudsman Suggestion on extension to lawyers and solicitors of support measures similar to those of self-employed workers: <http://www.provedor-jus.pt/?idc=32&idi=18245>
- Communication from the Ombudsman on quarantines decreed by regional bodies, <http://www.provedor-jus.pt/?idc=32&idi=18246>
- Note of the Ombudsman on exceptional and temporary justified absences motivated by family assistance <http://www.provedor-jus.pt/?idc=32&idi=18232>
- Ombudsman Suggestion on suspension of tax enforcements: <http://www.provedor-jus.pt/?idc=136&idi=18254>

Romania

Romanian Institute for Human Rights

Independence and effectiveness of the NHRI

International accreditation status and SCA recommendations

The Romanian Institute for Human Rights (RIHR) is a non-accredited associate member of ENNHRI. It had been previously accredited with C status, which is no longer a valid accreditation status. The Romanian Institute has a strong promotional mandate and has been addressing a wide range of human rights in Romania.

In 2020, the Romanian Ombudsman (which is not an ENNHRI member and is not accredited) and the Romanian Institute both applied for accreditation. The request for accreditation of both bodies is being processed by the SCA, in accordance with its Rules of Procedures.

Developments relevant for the independent and effective fulfilment of the NHRI's mandate

Law no. 9 of January 5, 2018, for the amendment and completion of Law no. 35/1997 on the organisation and functioning of the **Ombudsman institution**, published in the Official Journal no. 17 of January 8, 2018, and entered into force on January 11, 2018, has modified the framework of existing human rights institutions at the national level as the Ombudsman **extended its mandate** by introducing, in the text of Article 1, the following paragraph: "(1¹) The Ombudsman is a national institution for the promotion and protection of human rights, within the meaning of United Nations (UN) General Assembly Resolution 48/134 of 20 December 1993, through which the Principles of Paris were adopted."

Moreover, a new article 12¹ was introduced, providing that "The department for the defence, protection and promotion of the rights of the child is coordinated by a deputy of the Ombudsman, hereinafter referred to as the Ombudsman for Children".

Changes in the national regulatory framework applicable to the NHRI change since the last review by the SCA

Currently, a new bill amending Law no. 9/1991 on the establishment of the **Romanian Institute** for Human Rights (1) has **entered the legislative procedure** on February 24 in the Chamber of Deputies, as the first chamber notified. On April 23 it has received a

favourable opinion from the Committee for Human Rights, Cults and Minority Issues, and it was adopted by the Chamber of Deputies on April 30(2). Currently the bill is going through the legislative procedure in the Romanian Senate (3). The law is part of the category of organic laws, and, in this situation, the Romanian Senate is the decision-making chamber.

The bill considers the **clarification of the mandate and attributions of RIHR in relation to the recommendations received from SCA in 2011** and also in relation to the recommendations to the Romanian State from the UN mechanisms (4) to ensure that its national human rights institutions fully comply with the Paris Principles and from the Council of Europe Commissioner for Human Rights (5) including clarifications on the competencies of each of its institutions.

Among others, the bill provides at art. 2 (1) that "RIHR aims to promote and protect human rights, in accordance with the Paris Principles adopted by United Nations General Assembly Resolution A/Res/48 of December 20, 1993". Article 3 of the new bill also provides competences in coordinating training programmes in the field of human rights, providing opinions at the request of parliamentary committees on bills or other issues regarding human rights which are examined in the Parliament, conducting research on various aspects in the promotion and respect of human rights in Romania and at international level, according to art. 3. In the elaboration of this bill, the consultations carried out in 2018 between RIHR and the ENNHRI secretariat were also taken into account.

In the light of the mandate provided by Law no. 9/1991, RIHR can provide documentation, at the request of Parliament's committees, on human rights issues in bills and other issues examined in Parliament. During 2019 the Institute has not been notified by parliamentary committees on issues regarding bills or practices that could erode the separation of powers, participation of rights holders, and the accountability of State authorities. However, the Institute carried out its activity of following the legislative process and analysed regulations with an impact on human rights. This activity is the subject of a report on the progress of legislation in 2019, a report that will be published in May 2020. We present below regulations that drew our attention and have been analysed by the Institute.

References

- (1) http://www.cdep.ro/pls/proiecte/upl_pck.proiect?cam=2&idp=18371
- (2) [http://www.cdep.ro/pls/proiecte/docs/2020/cd.70_2020_\(v.2\).pdf](http://www.cdep.ro/pls/proiecte/docs/2020/cd.70_2020_(v.2).pdf)
- (3) https://senat.ro/legis/lista.aspx?nr_cls=L266&an_cls=2020
- (4) <http://docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=6QkG1d%2fPPRiCAqhKb7yhsgirNvmVtIWih6EAP3cRxa2fvnByGzSLQYiYaENfauBq7AHQ3e7Quu1cEM8SvLkTQrT1X%2bhjuSrAluCpVoy77fM%2baaWs0vvRddgzjRWx024e>
- (5) <https://rm.coe.int/16806db83b>

Human rights defenders and civil society space

The way Romania transposed EU **rules on combating money laundering and terrorist financing** could have an impact on civil society organisations.

Directive (EU) 2015/849 of the European Parliament and of the Council of 20 May 2015 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing, amending Regulation (EU) No 648/2012 of the European Parliament and of the Council, and repealing Directive 2005/60/EC of the European Parliament and of the Council and Commission Directive 2006/70/EC ((Text with EEA relevance) has been implemented at the national level by a set of regulations, the most recent being Law no. 129 of 11 July 2019 on the prevention and combat of money laundering and terrorist financing, as well as to amend and supplement some legal acts. (1)

Directive 2015/889 lays down in Art. 4(2) and 5(3) the possibility for Member States to extend the scope of the directive to prevent money laundering and/or terrorist financing.

By transposing this Directive, by Law no. 129/2019, the state adopted regulations which could lead to a misapplication of European rules. As an example, article 1, paragraph 1 of Law no. 129/2019 is limited to an illustrative, not an exact, list of entities that are subject to the legal provisions. (4)

At the same time, the provisions referring to real beneficiaries, within the meaning of Law no. 129/2019 (article 4) may lead to the possibility of a discretionary identification. The wording of article 4, paragraph 2, of the aforementioned law, which provides that “The concept of a real beneficiary includes at least”, may lead to the possibility to infinitely extend the range of real beneficiaries, as well as to the risk of being an impossible task for reporting entities.

The **inclusion of NGOs as reporting entities** although possible under the provisions of art. 5, paragraph 1, letter "i"(5), calls for the adoption of regulations that are necessary to ensure the link with the provisions of Government Ordinance no. 26/2000 on associations and foundations. The clarifications provided by Chapter XI - Provisions regarding the modification and completion of some normative acts, at article 53, are insufficient to fully correlate the two legal acts. If this is not the case, the provisions of Law no. **129/2019** would not be applicable to NGOs, in the absence of a coherent legal framework, as some organisations have already indicated (6).

References

- (1) Published in Romanian Official Journal no. 589 of 18 July 2019.
- (2) 1. Member States shall, in accordance with the risk-based approach, ensure that the scope of this Directive is extended in whole or in part to professions and to categories of undertakings, other than the obliged entities referred to in Article 2(1), which engage in activities which are particularly likely to be used for the purposes of money laundering or terrorist financing. 2. Where a Member State extends the scope of this Directive to professions or to categories of undertaking other than those referred to in Article 2(1), it shall inform the Commission thereof.
- (3) Member States may adopt or retain in force stricter provisions in the field covered by this Directive to prevent money laundering and terrorist financing, within the limits of Union law.
- (4) This law sets out the national framework for preventing and combating money laundering and terrorism financing, which includes, but is not limited to, the following categories of authorities and institutions (...)
- (5) "other entities and natural persons who market, as professionals, goods or provide services, insofar as they carry out cash transactions whose minimum limit represents the equivalent in lei of 10,000 euros, whether the transaction is executed through a single operation or through several operations that have a connection between them(...)"
- (6) <https://www.apador.org/ong-urile-intre-dizolvare-si-dosar-penal-din-cauza-unei-legi-ambigue/>

Checks and balances

According to the provisions of Article 61 (1) of the Romanian Constitution, the Romanian Parliament is the supreme representative body of the Romanian people and the sole legislative authority of the country. Through legislative delegation, provided by article 115, paragraphs 1-3, legislative power can be passed to the Government under certain limits and on certain fields, established by Parliament. The Parliament may adopt a special law to enable the Government to issue ordinances in fields outside the scope of organic laws. The enabling law shall compulsorily establish the field and the date up to which ordinances may

be issued. If the enabling law so requests, ordinances shall be submitted to Parliament for approval, according to the legislative procedure, until the expiry of the enabling time limit. Non-compliance with the term entails discontinuation of the effects of the ordinance.

A **special enabling law** was adopted in 2019 (Law no. 4/2019) by which the executive was invested with the power to issue ordinances in fields not regulated by organic laws such as public finances and economy, public administration and rural development, transport, European funds and health. According to the explanatory note of Law no. 4/2019, enabling the Government to issue ordinances in fields that do not fall in the scope of organic laws allow the Parliament to ensure the continuation of the legislative process in case of Parliamentary recess. Through legislative delegation, the Government is allowed to legislate for a limited time period and in fields expressly provided by the enabling law. The law was applied until 31 January 2019. In its annual report on the national legislative progress for the year 2019, RIHR draws attention to the fact that, to strengthen the attributions of the legislative power, **delegation should be applied with care in order to ensure the principle of the separation of powers**, which does not imply strict segregation of the powers of the state but balance and cooperation. Under these conditions, legislative delegation should be applied as an exception and for limited periods of time.

Functioning of justice systems

Access to justice as regards data collection and surveillance for national security purposes

One area where issues related to access to justice can be raised is **data collection and surveillance** for the purpose of protecting national security. According to art. 1(5) of the Constitution “In Romania, the observance of the Constitution, its supremacy and the laws shall be mandatory.” At the national level, in 2019, the provisions of article 22, par. d), of the Law no. 51/1991 on national security, republished in 2014 (1), were criticised. According to the provisions, “anyone who considers that their fundamental rights or freedoms were violated as a result of the activities specific to the collection of information carried out by intelligence bodies or by those with attributions in the field of national security may address, according to the law, the parliamentary committees or judicial bodies, as follows: [...] d) judicial bodies, by filing complaints and lodge appeals according to the Code of Criminal Procedure.

This provision contravenes the principle of accessibility considering that complaints and appeals provided by the Code of Criminal Procedure refer to certain situations, expressly provided by the Code and they do not refer to aspects on the activities specific to the

collection of information carried out by the intelligence bodies or by those with attributions in the field of national security.

Procedural rights of suspects and accused

Moreover, there are certain delays in transposing the following EU directives on **procedural rights of suspects and accused**, with an impact on access to justice:

- Directive (EU) 2016/343 of the European Parliament and of the Council of 9 March 2016 on the strengthening of certain aspects of the presumption of innocence and of the right to be present at the trial in criminal proceedings (transposition deadline: April 1st, 2018);
- Directive (EU) 2016/800 of the European Parliament and of the Council of 11 May 2016 on procedural safeguards for children who are suspects or accused persons in criminal proceedings (transposition deadline: 11 June 2019);
- Directive (EU) 2016/1919 of the European Parliament and of the Council of 26 October 2016 on legal aid for suspects and accused persons in criminal proceedings and for requested persons in European arrest warrant proceedings (transposition deadline: 25 May 2019).

Access to justice issues in the complaints received by RIHR

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.

4.5% of the written submissions received by the Institute in 2019 referred to aspects on the **access to justice**. The petitions regarding judgments of courts had as object the dissatisfaction of the petitioners regarding: adopted decisions, the way of fulfilling the duties by members of the judiciary and judicial staff, the correctness, independence and impartiality of the magistrates. In the case of petitions notifying acts regarding the poor activity of magistrates, they were forwarded to the competent authority. (2)

Persons deprived of liberty complained of inhumane conditions of detention, abusive behaviour of staff employed in detention centres, arbitrary decisions ordering the transfer from the detention unit where they were assigned to another detention unit, much further

away from the place of residence and family, the inappropriate treatment of detainees in hospitals in detention centres. Also, the persons serving a custodial sentence requested the Institute, pursuant to Law no. 544/2001 on free access to information of public interest, explanations on the requirements to be met in drafting applications to the European Court of Human Rights, as well as on the conditions of admissibility of the application to the European Court of Human Rights.

Both the convicted persons and free citizens submitted petitions to the Romanian Institute for Human Rights whose object consisted in requesting legal assistance and representation before the courts in pending cases. In the assessment of these petitions, in accordance with the mandate assigned by Law no. 9/1991, the Romanian Institute for Human Rights provided consultancy, informing the petitioners on the provisions of Law no. 51/1995 for the organisation and practice of the lawyer's profession.

With regards to the abuses committed by the public authorities in relation to the citizens, the cases of **defective investigation of some crimes or offences** by the local police units, as well as allegations made by litigants regarding **illegal acts committed by the authorities during the trials**, the Institute collaborated with the General Inspectorate of the Romanian Police and with the County Police Inspectorates, redirecting to them the petitions in which these issues were notified.

Starting from 2017, RIHR has created a working group aimed at **preventing and combating violence against women** and the implementation of the CEDAW Committee recommendations following the assessment of the Country Reports no. 7 and no. 8 (including women's access to justice, strengthening the capacities of judges, prosecutors, lawyers and police officers on the strict implementation of regulations incriminating violence against women). The Working Groups of 2017-2019 were attended by experts in various fields that intersect with the phenomenon of violence (police officers, judges, social workers, psychologists), representatives of the National Agency on Equal Opportunities for Women and Men, as well as NGO's working in this field (Women's Association in Romania - Împreună (Together), Romanian Rural Women's Association, ANAIS, SOLWODI - solidarity with women in distress, etc)

Trainings relevant to access to justice offered by the RIHR

During 2019, RIHR organised training sessions on various topics, bearing in mind the activity of law-enforcement authorities. Thus, at the Institute of Studies for Public Order a module on the "**Prevention of torture and inhuman or degrading treatment or punishment**" was held. The participants consisted of staff of Detention and Preventive

Arrest Centres. The course covered four topics: Introduction to Human Rights. Protection instruments, mechanisms and systems, in particular the European Convention on Human Rights. Inhuman or Degrading Treatment or Punishment. European Court of Human Rights case-law. The 8-hour module will be a part of the schedule of classes of the Institute of Studies for Public Order for year 2020, which aims to train 200 participants in 8 months.

Within the series of courses addressed to the staff of the Border Police, initiated as a collaboration with the specialists of the Romanian Institute for Human Rights and three structures of the Ministry of Internal Affairs - General Anticorruption Directorate, General Inspectorate for Immigration and Territorial Inspectorate of Border Police - the RIHR held the training course: **Human rights in the context of illegal immigration**, in three border police inspectorates: Timișoara, Giurgiu and Constanța - Coast Guard. The course included general issues related to the history of human rights, categories of rights, obligations of the authorities, police responsibilities in a democratic system, migrants' rights, analysis of public international law documents, as well as case studies.

The Romanian Institute for Human Rights organised **training courses for lawyers** of the Bucharest Bar Association (February 14 and 21, 2020) on the convergence of the provisions of the Convention for the Protection of Human Rights and Fundamental Freedoms and the Charter of Fundamental Rights of the European Union, as well as the convergence between judgements of the ECtHR and CJEU on cases concerning the protection of fundamental rights and freedoms. Also, during these courses, assessments were carried out on equality and non-discrimination in relation to specific cases. The provisions of the CEDAW Convention on equality and non-discrimination were also taken into account in the presentations.

References

- (1) Republished in the Romanian Official Journal no. 190 from March, 18, 2014
- (2) By virtue of art. 97, 100 and 101 of Law no. 303/2004, republished, regarding the status of judges and prosecutors, in case the magistrates violate the professional obligations in the relations with the litigants or commit disciplinary offenses, the Superior Council of Magistracy is notified.

Media pluralism

The national framework in the field of media could be improved to ensure the independence of journalists considering a **lack of regulations on the legal statute of journalists**. The National Audiovisual Council is the autonomous administrative authority under parliamentary control that guarantees the public interest in the field of audio-visual communication, regulated by Law no. 504/2002 (1). Law no. 504/2002 does not specifically regulate the legal status of journalists, respectively their rights and obligations that may be taken on and exercised in practising the journalism profession. An important step in this direction was the adoption, in October 2009, at the Convention of Media Organisation, of the Single Deontological Code establishing rules and principles for exercising the specific attributions of the profession. Considering the legal nature of the Convention of Media Organisation (an informal coalition consisting of journalists' and professional's associations in the media), the document is not mandatory from a legal point of view, as it is a programmatic document. The lack of regulations at the national level on the legal-professional status of journalists may affect, under certain circumstances, pluralism and freedom of the media.

References

(1) Published in the Romanian Official Journal no. 534 from July 22nd, 2002

Corruption

In order to prevent and combat corruption, it is necessary to establish and regulate, through appropriate legal instruments, specialised mechanisms to achieve this goal.

Starting from this legislative requirement, the provisions of Art. 87, paragraph 2 of Law no. 304/2004 on the organisation of the judiciary were the object of a request of review of constitutionality submitted in 2019 by the Romanian Ombudsman. In essence, the legal provisions of art. 87 (2) of Law. No. 304/2004 refer to **eligibility criteria for candidates for prosecutors of the National Anticorruption Directorate** (to be appointed within the national anti-corruption Directorate, prosecutors should have not been disciplinary sanctioned, should have a good professional training, unpaired moral character, at least 6 years of service as prosecutor or judge and declared to have been admitted following a competition organised by the Commission established for this purpose). The Romanian Ombudsman notes that the conditions that candidates must fulfil for the position of

prosecutor do not include, *expressis verbis*, being specialised in the area of corruption acts.⁽¹⁾

Another step taken at the national level to combat corruption within public administration and business environment was the adoption of Law. 59/2019 amending and supplementing Law. No. 161/2003 on certain measures to ensure transparency in the exercise of public office and standing and in the business environment, the prevention and sanctioning of corruption (2). Law no. 59/2019 introduces art. 77 which regulates, by referring to another provision, **conflicts of interests among presidents and vice-presidents of county councils or local and county councillors**: "*conflicts of interest for the presidents and vice-presidents of the county councils or the local and county councillors are provided in art. 46 of the Law on local public administration no. 215/2001, republished, with subsequent amendments and completions.*". Article 46 of the Law on local public administration no. 215/2001 provides two aspects: (1) a state of incompatibility (the local councillor who, either personally or through a spouse, in-laws or relatives up to and including the fourth degree, has a patrimonial interest in the matter submitted to the local council debates may not take part in the deliberation and adoption of decisions ...) and (2) the sanction corresponding to the incompatibility (the decisions adopted by the local council in violation of the provisions of par. (1) are null and void. The nullity is established by the administrative courts. The action can be lodged by any person concerned). The introduction, through Law. 59/2019, of the state of incompatibility as a category of corruption acts is a positive aspect in the process of preventing and combating corruption, the sanction is too mild; the efficiency of regulations in the field of justice is correlated to a rigorous sanctioning system.

References

- (1) http://www.avp.ro/exceptii2019/exceptia12_2019.pdf
- (2) Published in the Romanian Official Journal no. 268 of April 9, 2019

In-focus section on COVID-19 measures

Most significant impacts of measures taken in response to the COVID-19 outbreak on the rule of law in the country

In the context of the COVID-19 pandemic, national authorities have adopted a set of legislative and institutional measures to address the challenges affecting the functioning of society. Decree no. 195/2020, introduced the **state of emergency** at the national level, and

it established the conditions and limits of restriction of civil rights and freedoms specific to the most important sectors of activity (medical, educational, social, etc.). These measures were maintained by Decree no. 240/2020. The implementation of provisions in presidential decrees is done according to Government Emergency Ordinance no. 1/1999, amended and supplemented as well by Government Emergency Ordinance no. 34/2020.

The impact of the state of emergency at the national level on the rule of law can be observed through the regulations introduced in the field of justice. According to art. 63, para. (1), first thesis of Decree no. 240/2020, during the state of emergency, the court activities continue in cases of utmost urgency. The aim of the measure was to avoid the overburdening of courts; thus, it refers to limiting cases which are not urgent. During the state of emergency all procedural and prescription time limits have also been suspended by operation of law which implies a mitigation on the restriction of rights, if the measures are analysed as a whole. Moreover, from a procedural point of view, the rights to be examined by courts do not become obsolete.

The Emergency Ordinance no. 34/2020 and of Government Emergency Ordinance no. 1/1999 were contested in the Constitutional Court by the Romanian Ombudsman (1) regarding the lack of clarity and predictability of the provision on sanctions adopted to implement measures specific to the state of emergency. According to art. 1 of Emergency Ordinance no. 34/2020, art. 28 of Government Emergency Ordinance no. 1/1999 shall be modified as follows:

(1) Failure to comply with the provisions of art. 9 shall be considered contravention and shall be sanctioned with fine of 2.000 – 20.000 lei for natural persons and a fine of 10.000 – 70.000 lei for legal persons (...).

The military ordinances adopted for the purpose of instating immediate measures to prevent and combat the spread of COVID-19 establish disciplinary, civil, administrative or criminal sanctions **without indicating the acts which may lead to the application of such sanctions**. The use of the general wording “Failure to comply with the provisions of art..... shall be subject to disciplinary, civil, administrative or criminal liability” do not comply with the standards of clarity and predictability that must characterise any legal provision. It is necessary to define the acts that may result in specific sanctions.

Considering the lack of predictability of the legal provisions and the infringement of the principle of legal certainty, law-enforcement agents cannot act on the basis of objective criteria; in the activity of ascertaining disciplinary, civil, administrative or criminal offenses, law-enforcement agents have to resort to their own (subjective) criteria for interpretation

and implementation of the legislation - a fact that is likely to give rise to the discretionary implementation of legal provisions.

The Government could have provided more transparency regarding the measures adopted during the COVID-19 pandemic. The Government Emergency Ordinance no. 34/2020 amending and supplementing Government Emergency Ordinance no. 1/1999 on the state of siege and the state of emergency introduces art. 33(1) according to which *during the state of siege or state of emergency, the legal provisions regarding decision-making transparency and social dialogue do not apply in the case of bills establishing measures applicable during the state of siege or state of emergency or which are a consequence of the establishment of these states*. The principles of decision-making transparency and social dialogue are essential for monitoring the work of public institutions. Having regard to the issues raised in connection to the establishment of the state of emergency at the national level, as reflected above, the RIHR would consider appropriate the adoption at the European level of statements of principle to guide the state activity, in order to comply with the essential conditions of the rule of law.

The RIHR has issued a note regarding the impact of COVID-19 pandemic on human rights and freedoms. It states that national authorities should manage the crisis not only from a strategic and economic point of view but also with due regard for ensuring and protecting everybody's human rights. All measures taken by national authorities should be **legal, proportionate and temporary**. Moreover, special attention should be given to **vulnerable groups**, such as the elderly, women, children, people with disabilities and homeless persons. RIHR also underlines the need for **transparency**, official information and **tackling fake news**. (2)

RIHR received a **request from members of the Parliament (Chamber of Deputies) to submit a report** on the protection of human rights in the state of emergency caused by the pandemic.

The Press agency Mediafax also **requested RIHR to provide an opinion** on the restrictions of movement imposed on older persons which are considered a vulnerable category in the face of COVID-19 as well as on public debates on a potential isolation plan for the next 12 weeks of persons aged 65 years and above (isolation in their houses, relocation to a home or in an institution). RIHR highlighted the importance of respecting the **rights of older persons** according to art. 12 of ICESCR and art. 8 of ECHR. (3)

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

According to Law no. 9/1991, the Romanian Institute for Human Rights has a mandate in providing information, training, research and education for human rights. The main challenges faced during the COVID-19 pandemic by the Institute were mainly in the fields of training and education, which is usually done, as a direct interaction. In order to ensure continuity in these fields, online apps (zoom, Google classroom) have been used. Providing information was also affected in particular with regard to the relations with the public which, for reasons of safety and prevention of the spread of COVID-19 virus, is carried out in the emergency period by specific means such as written correspondence, electronic correspondence, telephone.

References

- (1) http://www.avpoporului.ro/exceptii2020/exceptia7_2020.pdf
- (2) Please consult RIHR's opinion at <http://www.irdo.ro/semnal.php?ideseu=62>
- (3) Please consult RIHR's opinion at <http://www.irdo.ro/pdv.php?ideseu=13>

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

It is also to be noted that, in the context of the state of emergency declared over the COVID-19 outbreak, Romania has sent a **notification to the Council of Europe regarding the activation of Article 15 of the European Convention on Human Rights**, thus initiating the procedure for derogation from the European Convention on Human Rights. Although invoking Article 15 does not lead to the suspension of the rights and freedoms provided by the Convention, the adopted measure should be analysed taking into account the principle of proportionality. (1)

References

- (1) <https://rm.coe.int/16809cee30>

Russian Federation

Commissioner for Human Rights of the Russian Federation

Independence and effectiveness of the NHRIs

International accreditation status and SCA recommendations

The Russian NHRI was last [reaccredited](#) with A status in October 2014. In October 2019, the SCA [decided](#) to defer the review of the Russian NHRI to its second session of 2020.

Changes in the national regulatory framework applicable to the NHRI change since the last review by the SCA

On March 18 2020, the Federal Law 48-FZ «On Human Rights Commissioners in the Constituent Entities of the Russian Federation» was adopted. The law is taking the institution of regional human rights commissioners to a new level of development, establishing equal opportunities for citizens in various regions of the Russian Federation to have access to mechanisms for the protection of rights and freedoms, and ensuring more effective guarantees for the protection of citizens' rights by regional human rights commissioners. The Law defines the procedure for the election of regional ombudsmen, the legal basis and the main fields of their activities, as well as provides guarantees for their independence and the powers to investigate citizens' complaints.

On 24 April 2020, the Federal laws №130-FZ «On the Amendment of Article 56 of the Code of Criminal Procedure of the Russian Federation» and Federal Law №131-FZ «On the Amendment of Article 69 of the Code of Civil Procedure of the Russian Federation» were adopted. The Laws introduced new clauses to prohibit interrogation of the High Commissioner for Human Rights in the Russian Federation and regional human rights commissioners without their consent on circumstances that have come to their attention in connection with the performance of their duties.

There are amendments to the Constitution of the Russian Federation to establish increased requirements for candidature for the position of the High Commissioner for Human Rights in the Russian Federation.[1]

The Commissioner for Human Rights in the Russian Federation and the commissioners for human rights in the constituent entities of the Russian Federation are provided with more power to participate in the screening of the members of the Public Monitoring

Commissions (PMC) by the Federal Law of 7 June 2017, 112-FZ «On Amendments to Article 10 of the Federal Law «On Public Monitoring of the Observance of Human Rights in Places of Forced Detention and on Assistance to Persons Held in Places of Detention», by the Law of 19 July 2018, 203-FZ «On Amendments to Article 18.1 of the Federal Law «On Detention of Suspects and Accused Persons», and by the Federal Law «On Public Monitoring of the Observance of Human Rights in Places of Forced Detention and on Assistance to Persons Held in Places of Detention».[2]

References

- (1) See Para. "e", part 1, Article 103 of the Constitution of the Russian Federation as amended by the Law of the Russian Federation of 14 March 2020 "On Introducing an Amendment to the Constitution of the Russian Federation" 1-FKZ "On Improving the Regulation of Certain Aspects of the Organization and Functioning of Public Authority".
- (2) See Parts 6 and 16, Article 10 of the Federal Law of June 10, 2008 «On Public Monitoring of the Observance of Human Rights in Places of Forced Detention and on Assistance to Persons Held in Places of Detention».

Human rights defenders and civil society space

In her annual reports for the years of 2018 and 2019 the High Commissioner for Human Rights in the Russian Federation, based on the results of the monitoring conducted by the Russian national human rights institution, pointed to the need to simplify and enhance the transparency of the procedure between the organizers and the authorities to agree upon organisation and holding of a public rally or any other public mass events. The High Commissioner proposed the participation of the Russian human rights commissioners in the constituent entities of the Russian Federation in the procedure as well as supplementing the relevant federal law with a provision allowing an organizer of a public event to submit a notice in the form of an electronic document.[1]

References

- (1) See Annual Reports on the Activities of the High Commissioner in the Russian Federation for the years of 2018 and 2019: http://ombudsmanrf.org/upload/files/docs/lib/doclad_2018.pdf, http://ombudsmanrf.org/upload/files/docs/lib/doc2019_fin_compressed.pdf

Checks and balances

The Commissioner would like to point to the following issues as relevant to the exercise of legislative and executive powers.

For several years, the Commissioner raised the issue of granting the executive authorities of the constituent entities of the Russian Federation the authority to execute state control (supervision) and draft protocols on administrative offenses in the field of providing an accessible environment for persons with disabilities. The Government of the Russian Federation launched a relevant legislative initiative, and on June 7, 2017, the President of the Russian Federation signed Federal Law No. 116-FZ "On Amending the Federal Law «On Social Protection of Persons with Disabilities in the Russian Federation»", which entered into force on January 1, 2018.

In 2016-2017 the Commissioner raised the issue at the domestic sites about the need to ratify the Council of Europe Convention on the Counterfeiting of Medical Products and Similar Crimes involving Threats to Public Health. The Commissioner notes with satisfaction that the corresponding Convention was ratified by Federal Law No. 439-FZ on December 29, 2017.

The Commissioner's annual reports have repeatedly indicated that placing defendants in cells in the courtroom is a violation of the principle of the presumption of innocence. Such practices should be prohibited. On this occasion, in 2019, during a visit to the ECHR, the Commissioner presented her comment on the implementation by Russia of the ECHR judgment to ban the placement of defendants in cells in the courtroom. Pursuant to this judgement, a group of deputies and senators introduced a bill that received the support of the Government of the Russian Federation and is under consideration by the State Duma.

On the initiative of the Commissioner, Federal Law No. 96-FZ "On Amending the Punishment Code of the Russian Federation" of April 1, 2020, establishing the right of a prisoner to transfer to a correctional institution located near the place of residence of the convicted person or his relatives, was adopted. This bill takes into account the interests of a significant number of citizens, their relatives and close ones.[1]

References

- (1) <http://publication.pravo.gov.ru/Document/View/0001202004010064>

Functioning of justice systems

In the Report on the Activities of the Commissioner for Human Rights in the Russian Federation for 2019, submitted to the President of the Russian Federation and the legislative body, the issue of the victim's right to access to justice was raised.

In the case of an unjustified refusal to initiate criminal proceedings, the person applying to law enforcement agencies is not able to obtain the punishment of the guilty person and compensation for the harm caused. As a result of the Commissioner's appeal to the prosecutor's office in 2019, 241 unjustified decisions to refuse to institute criminal proceedings were canceled.[1]

References

- (1) Annual Report 2019 of the High Commissioner for Human Rights in the Russian Federation.
http://ombudsmanrf.org/upload/files/docs/lib/doc2019_fin_compressed.pdf P.197

Media pluralism

It is clear that journalists today urgently need additional protection by the state and the law. This is evidenced by cases of obstruction of journalistic activities both in Russia and abroad.

At the legislative level, it seems necessary to consider the possibility of endowing the media representatives conducting journalistic investigations with procedural immunity. This measure could increase the security guarantees for the press and strengthen the right to freedom of thought and speech laid down by the Constitution of the Russian Federation.

International principles for protecting journalists also need a system reboot. Ethical standards, technically existing at the international level under the auspices of various organizations, are not actually enforceable today, since they do not imply liability for their violation. According to the Commissioner, international organizations should pay increased attention to this problem, monitor offenses against journalists over the past few years and, taking into account the analysis of the data obtained, develop new mechanisms for protecting media employees in the line of professional duty.

Today we expect more active action from the international community and would like them to respond with appropriate decisions.

On September 7, 2019 the editor-in-chief of RIA Novosti Ukraine news agency Vyshinsky returned to Moscow from jail in Ukraine. This was made possible, among other things, by joint efforts of the Russian Human Rights Commissioner and the Ukrainian Parliament Commissioner for Human Rights.[1]

The problem of protecting the rights of journalists in the framework of their professional activities remains relevant for Russia as well.

The Commissioner received an appeal about the criminal prosecution of Russian journalist Ivan Golunov, accused of drug trafficking. After the appeal of the Commissioner, an inspection was carried out and the case against the journalist was dismissed.[2]

References

- (1) http://rapsinews.com/judicial_news/20190909/303693321.html;
http://eng.ombudsmanrf.org/events/news/news_of_the_commissioner/view/meeting_of_russian_and_ukraine_ombudswomen
- (2) <https://ria.ru/20200123/1563782390.html>

In-focus section on COVID-19 measures

Most significant impacts of measures taken in response to the COVID-19 outbreak on the rule of law in the country

Restrictive measures inevitably affected the work of public authorities providing services to the population and complicated the lives of citizens. In this regard, the compensation and recovery measures that were introduced by the Russian state for citizens and organisations (interest-free loans, monthly benefits for citizens who have lost their jobs, families with children, etc.) played a major positive role for the observance of the rule of law during the pandemic. However, the need for assistance from the Commissioner was very high. From March 27 to June 4, 2020, the Commissioner's Help Line received 1,857 requests from citizens asking for help in the difficult life situation in which they found themselves during the pandemic.

The applicants reported that they had difficulty applying to the territorial employment centers for registration as unemployed. Citizens could not fulfill the requirements for the provision of the necessary documents, noted the incorrect operation of online services, and also found it impossible to find a job again in case of loss of job in compliance with

restrictive measures. In this regard, the Commissioner sent appeals to the leadership of the Federal Service for Labor and Employment with a request to take measures to overcome this situation.

Based on the analysis of complaints regarding unemployment status, the Ombudsman also asked the Minister of Labor and Social Protection of the Russian Federation to consider the adoption of additional measures to ensure the availability of federal social support for citizens who have lost their jobs and to improve the procedure for its provision by institutions providing employment services.

In most cases, officials quickly and skillfully took corrective measures. In connection with the peculiarities of work in remote regions of the country, problems arose associated with the organisation of necessary conditions for the implementation of restrictive measures.

It is necessary to note cases when citizens working on a rotational basis due to quarantine were not evacuated in a timely manner. They complained that the employer did not provide them with the necessary protective equipment and medical supplies.

In order to resolve this situation, the Commissioner promptly appealed to the Chairman of the Government of the Russian Federation, the Chairman of the Management Board of PJSC Gazprom and the Plenipotentiary of the President of the Russian Federation in the Far Eastern Federal District with a request to take measures to evacuate shift workers from this territory of the field, to introduce quarantine and provide the shift workers with the necessary protection and medical preparations. As a result, the situation was resolved, people were provided with protective equipment and delivered to their places of permanent residence.[1]

The Commissioner, in cooperation with her foreign ombudsman colleagues, resolved the situation that arose in connection with the introduction of restrictive measures in different states, which affected the procedure for crossing state borders. In April 2020, the Commissioner appealed to the Ombudsman of Azerbaijan with a request to assist in organizing the return to the territory of Azerbaijan of several hundred citizens of the Republic of Azerbaijan who had accumulated on the Russian-Azerbaijani section of the border due to the closure of the crossing from the Azerbaijani side. As a result of the joint actions of the two national human rights institutions, more than 200 Azerbaijani citizens were able to return to their homeland. In addition, thanks to the initiative of two ombudsmen, the authorities of Russia and Azerbaijan organized the return to the country of citizenship of 12 citizens of the Republic of Azerbaijan who were in temporary detention

centers for foreign citizens on the territory of the Russian Federation until decisions on administrative expulsion and deportation were executed.

The Commissioner, together with the Ministry of Foreign Affairs of the Russian Federation, participated in resolving the issue of the departure of Russian citizens from abroad. As a result of these actions, it was possible to assist in the return of Russian citizens from Thailand, Tanzania, the United Arab Emirates, South Africa, India and the United States. As a result, several thousand people were returned.[2]

A special area of work of the Commissioner during a pandemic was the protection of the rights of persons in prison and other vulnerable categories of citizens. In this regard, the Commissioner appealed to the Prosecutor General of the Russian Federation with proposals to reconsider approaches to the formation of the position of representatives of the prosecution authorities involved in the consideration by the courts of applications of the investigating authorities for the selection (extension) of a preventive measure in the form of detention for the accused (suspected) of non-violent crimes of small and medium severity, as well as minors, people with disabilities, women, people of retirement age, and in each case, evaluate it in accordance with the primary task of ensuring the human rights to life and health[3].

References

- (1) <https://59.ru/text/world/69241204/>
- (2) http://ombudsmanrf.org/news/novosti_upolnomochennogo/view/dejatelnost_upolnomochennogo_po_pravam_cheloveka_v_period_pandemii

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

The outbreak of the novel coronavirus (COVID-19) pandemic at the beginning of 2020 had a significant impact on all spheres of social, political and economic life in the Russian Federation and on the activities of the Russian national human rights institution.

The actors of the Russian human rights system have been obliged to take extraordinary steps to handle the challenges under the conditions of a regime of self-isolation and temporary restrictions on a suspension of work of enterprises taken by the Government of the Russian Federation and the authorities of the constituent entities of the Russian Federation to counter the spread of the disease, as well as extraordinary governmental

measures taken to support citizens and businesses financially, adopted to mitigate the social and economic shortcomings resulting from the imposed restrictive measures.

In particular, the High Commissioner for Human Rights in the Russian Federation, in cooperation with the regional human rights commissioners (who are often members of the regional headquarters to combat COVID-19) organized joint work on the prompt processing of citizens' complaints and the resolution of local crises related to coronavirus outbreak.

Since March 27, 2020 the Office of the High Commissioner has been operating a day-and-night telephone helpline. To ensure even more efficient dealing with citizens' complaints there has been established an online chat-room where the staff lawyers are able to process urgent petitions and immediately apply to the relevant authorities to take necessary actions to restore citizens' rights. If necessary, we still hold face-to-face interviews with applicants though in the video-conferencing format. The applicants are provided with legal consultations, assistance and advise whether in written or on a phone.

The realities of the restrictive measures have not interrupted the international cooperation. Thus, we regularly hold bilateral online meetings with foreign counterparts while in 29th April 2020 there was held a video-conference meeting of the Eurasian Ombudsman Alliance (EOA) with participation of the heads and representatives of 10 national human rights institutions of the Eurasian area.

Moreover, regular meetings with human rights commissioners in the constituent entities of the Russian Federation are held via videoconference (an online meeting of the Council of Commissioners for Human Rights in Russia was held on 29 April 2020).

On April 17, 2020, in connection with the applications lodged to the Russian Federal human rights institution, the High Commissioner for Human Rights in the Russian Federation inspected the Pre-trial Detention Centre №2 of the Russian Federation in Moscow.

The experience and results of the human rights protection work of the Russian national human rights institution under the conditions of the pandemic will be summarized in the High Commissioner's thematic report.

San Marino

At present, there is no accredited NHRI in San Marino.

In 2018, the UN Human Rights Committee recommended San Marino to establish an NHRI in conformity with the UN Paris Principles. At that occasion, San Marino informed that it did not envisage the establishment of an Ombudsman or NHRI in the country, due to its small size. It informed the Committee that some functions performed by Ombuds institution have been traditionally conferred upon the Captains Regent of the Republic of San Marino.

ENNHRI stands ready to provide the government of San Marino advice on how to strengthen existing national institutions, such as the Captains Regent in compliance with the Paris Principles.

References

- Information received from San Marino in follow-up of the UN Human Rights Committee concluding observations (11 July 2018):
<http://docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=6QkG1d%2fPPRiCAqhKb7yhsjwnBOt%2fBCL%2fEuWF7i7%2fLgEFnF1nfVayXy5CdMGR%2fXFPL804PUd11MzELVexGA6o1Xp2QyWYz%2bh9TRqPkCu64G1QnODaqqPjifYEng1xWbt%2f8q8F9ljpZLhEvttEcYMPQw%3d%3d>

Scotland

Scottish Human Rights Commission (SHRC)

Independence and effectiveness of the NHRIs

International accreditation status and SCA recommendations

The Scottish NHRI was last reaccredited with A status in March 2015. The SCA acknowledged the existence of good practices in the selection and appointment processes of the Chair and members of the NHRI and suggested to formalise such broad and transparent processes in the enabling law. The SCA also recommended to include in the NHRI's enabling law requirements for an independent and objective dismissal process. Finally, the SCA, while expressing appreciation for the NHRI's work, encouraged the NHRI to continue advocating for an appropriate provision of funding and for amendments to its enabling law to include a broader human rights mandate and ensure a free determination of the form and content of all the NHRI's reports.

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

Brexit has had an impact on the environment in which SHRC operates, and the loss of the protections contained in the EU Charter on Fundamental Rights will result in a reduction in the protection of substantive rights.

SHRC sits on the National Taskforce for Human Rights Leadership. The taskforce is working to establish a statutory framework for human rights that will incorporate international human rights into Scots law. This work is, in part, in response to the loss of rights protections caused by Brexit.

References

- EHRC published legal advice received from senior independent counsel Jason Coppel QC. <https://www.equalityhumanrights.com/sites/default/files/eu-withdrawal-bill-legal-advice-jason-coppel-qc.pdf>
- Discussion Paper on Brexit Colin Murray, Aoife O'Donoghue and Ben Warwick: http://www.nihrc.org/uploads/publications/Discussion_Paper_on_Brexit.pdf
- <https://www.gov.scot/groups/national-taskforce-for-human-rights-leadership/>

Human rights defenders and civil society space

SHRC has not carried out specific work in this area; however, we draw attention to calls for the third sector and civil society in Scotland to be appropriately and sustainably resourced, supported and trained.

The Scottish Council for Voluntary Organisations (SCVO) State of the Sector report 2020 indicates that of the £6.06bn Scottish civil society income, a third comes from the public sector who are often duty bearers. While it is welcome that duty bearers are funding core human rights work, it is important that there are procedural safeguards in place to ensure civil society are able to hold duty bearers to account and express their views freely.

References

- See, for example, submission of the Health and Social care Alliance Scotland (the ALLIANCE) to the Equalities and Human Rights Committee call for evidence on Human Rights and the Scottish Parliament, 16 March 2018. Available at: https://www.parliament.scot/S5_Equal_Opps/Submission_from_Health_and_Social_Care_Alliance_Scotland.pdf
- SCVO State of the Sector report 2020 available at: <https://scvo.org.uk/policy/sector-stats>

Checks and balances

Brexit legislation passed at UK level presents concerns around parliamentary scrutiny and oversight. The European Union (Withdrawal) Act 2018 gave Ministers wide delegated powers and what are known as Henry VII powers. Delegated powers allow Ministers to use 'delegated legislation', usually in the form of statutory instruments, to address issues that would otherwise need to be dealt with in primary legislation. Henry VII powers are clauses that enable Ministers to amend or repeal provisions in Acts of Parliament using secondary legislation. These powers are controversial as they can shift power to Ministers. There are concerns around legislative changes being made routinely by way of statutory instrument. Statutory Instruments progress very quickly, are difficult to track and they are subject to a much less parliamentary scrutiny. Brexit legislation affords powers to Ministers at both Westminster and devolved levels.

SHRC supported the drafting and launch of the Scotland Declaration on Human Rights, calling for human rights and equality to be at the heart of Scottish society following Brexit. The Declaration was signed by 170 civil society organisations across Scotland.

References

- <https://www.scottishhumanrights.com/other-issues/exiting-the-eu/>. See also resources produced by SULNE (Scottish Universities Legal network on Europe)'s position papers <https://sulne.ac.uk/position-papers/>
- <https://humanrightsdeclaration.scot/>

Functioning of justice systems

SHRC highlighted some concerns regarding the legal aid system in Scotland in its parallel report in relation to the UK's compliance with the International Covenant on Civil and Political Rights. Although the legal aid budget increased in 2018/19, the increase was allocated to administrative costs rather than legal aid itself. Independent research into Legal Aid firms also highlights some key concerns with the system, including poor rates of pay, "undue bureaucracy and extreme micromanagement performed by the Scottish Legal Aid Board".

References

- <https://www.lawscot.org.uk/media/10079/legal-aid-financial-health-report-february-2017.pdf>
- Scottish Government (2016), 'The Court Fees (Miscellaneous Amendments) (Scotland) Order 2016 Equality Impact Assessment'. Available at: <https://www.gov.scot/publications/court-fees-miscellaneous-amendments-scotland-order-2016-equality-impact-assessment/>

In-focus section on COVID-19 measures

Most significant impacts of measures taken in response to the COVID-19 outbreak on the rule of law in the country

The Coronavirus Act 2020 is in force and applies across the UK. The Equality and Human Rights Commission has provided an explanation of the measures contained in the UK Act.

In addition to the UK Act, two pieces of emergency legislation have been passed by the Scottish Government. Those are the Coronavirus (Scotland) Act 2020 and the Coronavirus (Scotland) (No. 2) Act 2020. The two pieces of legislation build on the UK Act. Both Scottish Acts are time limited and will expire on 30 September 2020; however there is the option to extend meaning the legislation can be in place for a maximum of 18 months.

SHRC has published a number of briefings and letters. The following are most relevant to rule of law:

- Briefings on emergency legislation highlighting the importance of all measures being time limited, linked specifically to the public health crisis, and subject to ongoing independent review and monitoring. (30 March 2020; 2 April 2020)
- Letter to the Cabinet Secretary for Justice as part of the UK National Preventive Mechanism (NPM) highlighting the vital importance of efforts to uphold the rights of people in detention and deprived of their liberty during the COVID-19 outbreak. (2 April 2020)
Statement welcoming Scottish Government announcement on prisoner release. (21 April 2020)
- Briefing on issues relating to the conduct of criminal trials during the outbreak. Scotland's criminal justice system requires jury trials for the most serious offences. (30 April 2020)
- Letter to Scottish Parliament Justice Committee expressing serious concerns about ongoing prison conditions (18 May 2020)
- Briefing on the human rights implications of digital contact tracing technology.

SHRC is participating in the following scrutiny/ oversight activity:

- Together with EHRC and CYPSC (Scotland's Children's Commissioner), called on Scottish Parliament's Equality and Human Rights Committee to hold an urgent inquiry into equality and human rights implications of COVID-19 measures. Committee announced long running inquiry.
- Member of Scottish Police Association independent advisory group looking at Police Scotland's use of new emergency powers. SHRC submitted human rights framework document.
- Member of the Mental Welfare Commission CV-19 Advisory Group regarding mental health measures.

References

- <https://www.scottishhumanrights.com/COVID-19/>

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

COVID-19 presents a number of challenges, most notably the potential to impact on staff through ill health and/or caring responsibilities.

SHRC ordinarily works with Her Majesty's Inspector for Prisons in Scotland (HMIPS) to support a human rights based approach to the inspection of prisons and assists HMIPS to undertake inspections to ensure that the human rights of prisoners are being respected. Due to COVID-19, HMIPS has taken the decision to suspend routine prison inspections and only liaison visits on a risk assessed, essential visit basis are maintained. HMIPS are developing a remote monitoring framework and SHRC remains in close contact with HMIPS during this time. SHRC's work on prisons and detention during this time is highlighted in response to question 7(a) above.

SHRC is co-chairing a review into deaths in custody in Scotland. The review has been delayed due to COVID-19; however, SHRC is progressing the initial human rights analysis needed to form the foundation for the review.

SHRC has developed an internal COVID-19 work plan to allow us to prioritise work in this area. On top of the information already provided, SHRC is developing a series of briefing papers on areas such as housing, social security and PPE. We are continuing to monitor legislative developments and provide appropriate scrutiny where necessary.

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

As mentioned in response to question 1, SHRC sits on the National Taskforce for Human Rights Leadership. The taskforce is working to establish a statutory framework for human rights that will incorporate international human rights into Scots law. This work is, in part, in response to the loss of rights protections caused by Brexit. SHRC has been calling for the incorporation of international treaties into Scots law for a number of years and there is a political commitment to continue this work. SHRC believes the current health crisis highlights the need for incorporation of economic and social rights into domestic law.

References

- <https://www.gov.scot/groups/national-taskforce-for-human-rights-leadership/>

Serbia

Protector of Citizens of the Republic of Serbia

Independence and effectiveness of the NHRIs

International accreditation status and SCA recommendations

The Serbian NHRI was reaccredited with A status in March 2015. The SCA encouraged the NHRI to advocate for the adoption, the formalisation and the implementation of a transparent and participatory selection and appointment process. Moreover, the SCA, while acknowledging the existence of good practices, recommended amendments to the law to ensure pluralism and more independence in the staff selection. Finally, the SCA has consistently encouraged raise the need for the NHRI to receive an adequate level of funding.

The Serbian NHRI was scheduled for accreditation in March 2020, but the session was postponed due to the outbreak of COVID-19.

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

The Protector of Citizens notes that there have been no changes significant to the independent and effective operation within the national human rights institution's mandate, and that there have been no changes in the normative framework applicable to this institution.

References

- The Law on the Protector of Citizens, Official Gazette of RS No. 79/05 and 54/07 available at: <https://ombudsman.rs/index.php/o-nama/normativni-okvir-za-rad/126-2008-04-21-07-39-21> (in Serbian) and <https://ombudsman.rs/index.php/o-nama/normativni-okvir-za-rad/643-2009-10-27-16-01-21> (in English).

Human rights defenders and civil society space

The Protector of Citizens identified progress regarding freedom of assembly of LGBTI persons. Pride Parade and Pride Week activities aimed at promoting the status of LGBTI population have been running smoothly for many years, with the Protector of Citizens supporting these activities by directly participating therein. However, police security for these activities is still needed, due to the continued risk of violence and hate speech targeting LGBTI population that is still exposed to discrimination and violence. In the Annual Reports, the Protector of Citizens recommends that the Government, Autonomous Provinces and Local Self-Government Units ensure the full exercise of LGBTI persons' rights regarding freedom of expression and peaceful assembly, protection of their physical and mental integrity, education, employment, healthcare, social protection, legal regulation of life communities and legal outcomes of gender change and gender identity, as well as continuous implementation of measures and activities to raise public awareness on the necessity to respect the LGBTI persons' rights.

Serbia has not made any progress in the area of freedom of speech and expression in the previous year. In this social life sphere, especially in the domain of media freedom, we have witnessed numerous violations of rights and threats to media freedoms. The position and status of journalists and media workers is jeopardised not only by their poor material status, but also by pressure, abusive and inappropriate relations, direct threats and physical attacks by public authorities, private actors as well as other media actors.

A particularly worrying trend was registered in 2019 as regards discreditation and verbal threats on journalists working on television and online media (see also below on media pluralism). To help better assess and address the situation, the Protector of Citizens has signed in May 2020 an Agreement with representatives of 7 media associations and three newspaper trade unions to establish a Platform for recording cases of security threats and pressure on journalists and other media stakeholders. The Platform was created with the aim of establishing a more efficient mechanism for protecting the safety of journalists, because accurate records of each individual security threat and any form of pressure on journalists and media workers will contribute to more effective action of competent state authorities in cases when journalist safety is threatened.

This assessment of the media situation in Serbia has been confirmed by international reports. In its six-month report, published in November 2019, the European Commission pointed out that Serbia needs to advance freedom of expression, as cases of threats,

intimidation and violence against journalists, as well as political and economic influences on the media, are concerning.

References

- Annual Report (2019) of the Protector of Citizens (in Serbian), available at: <https://www.ombudsman.rs/index.php/izvestaji/godisnji-izvestaji>
- Non paper on the current situation regarding Chapters 23 and 24 for Serbia, November 2019, available at: http://www.mei.gov.rs/upload/documents/eu_dokumenta/non_paper_23_24/non_paper_pg_23_24_19_sr.pdf

Checks and balances

The National Assembly has established a Commission for the Control of the Enforcement of Penal Sanctions which is tasked with observing the situation in the domain of enforcement of penal sanctions and proposing measures to rectify irregularities and measures to improve living conditions, treatment and protection of rights of persons deprived of liberty, while controlling the enforcement of penal sanctions and detention measures. According to the National Assembly's decision of 24 July 2018, new members of the Commission for the Control of the Enforcement of Penal Sanctions were elected; and two sessions were held in 2018 (in November and in December). No data suggests that this Committee has been in session during 2019 and this year.

Under its mandate to control the execution of criminal sanctions and remand, the Commission for Control of Execution of Criminal Sanctions is to review the state of play in the field of execution of criminal sanctions, propose measures to remedy irregularities and measures to improve the living conditions, treatment and protection of the rights of persons deprived of their liberty. The Commission shall submit a report on its work and the state of play in the field of execution of criminal sanctions to the National Assembly at least once a year, and by effective use of its mandate it would contribute to a more complete review of the state of play in the field and implementation of measures aimed at improving it.

The Protector of Citizens as an independent control institution and the National Preventive Mechanism (since 2011) shall act preventively, by visiting the facilities where persons deprived of their liberty are held or may be held, in order to deter state authorities and officials from any form ill-treatment, as well as to direct state authorities to create

accommodation and other living conditions in places of deprivation of liberty in line with applicable regulations and standards. These facilities, as the part of the system of mechanisms of external control of the work of executive bodies, and the actions of the judge for the execution of criminal sanctions, contribute to the improvement of the position and exercise of the rights of persons deprived of their liberty.

References

- Web page of the National Assembly of the Republic of Serbia:
<http://www.parlament.gov.rs/national-assembly.467.html>

Functioning of justice systems

Failure to execute judgments remains a problem that many citizens point to when addressing the Protector of Citizens. Although the Protector of Citizens is not mandated to control the courts' work, nor can it in any way interfere with court proceedings, in its annual reports this body highlights that non-execution of judgements has significant negative impacts on legal certainty and the rule of law, and particularly on the vulnerable groups' position. Numerous complaints in the area of child rights continue to call attention to the non-execution of judgements on entrusting child custody, that is, the judgements on the manner of regulating the parent – child personal relations.

In October 2019, the European Court of Human Rights pronounced a judgment holding the Republic of Serbia accountable for the applicant's inability to reunite with her children and to exercise parental rights, i.e. for violations of the right to family life. The adoption of this court judgment confirms the fact which the Protector of Citizens has pointed out for years in the annual reports - it is necessary to establish and ensure an effective system of adopting and executing court judgements concerning children's family-legal status, especially in situations of parental conflict and domestic violence.

The implementation of the Law on Free Legal Aid commenced on 1 October 2019, so it is not yet possible to analyse the effects of this Law's implementation. However, despite the repeated Recommendations issued by the Protector of Citizens, contained in the Protector of Citizens' previous annual reports, the Law on Free Legal Aid did not identify LGBTI persons, facing grave violations of rights in different spheres of life, as a vulnerable category of beneficiaries.

The National Preventive Mechanism, on its visits to an institution for the enforcement of penal sanctions, concluded that the institution was not adequately prepared for the procedure of providing free legal aid and that it did not have the specified free legal aid application forms. The National Preventive Mechanism has recommended to the Administration for Enforcement of Penal Sanctions that all persons deprived of their liberty in the institutions for the enforcement of penal sanctions should have adequate access to free legal aid and the rights stipulated by the Law on Free Legal Aid, as well as to forms for filing a free legal aid request.

A considerable number of citizens address the Protector of Citizens regarding the duration of court proceedings. Citizens who use legal remedies provided for by the Law on Organisation of Courts and the Court Rules of Procedure show dissatisfaction believing that the envisaged monitoring mechanisms are not effective nor efficient, since, frequently, in situations where the competent authorities have deemed their complaints founded, the measures taken do not result in expected effects. In this regard, citizens most often express dissatisfaction with following situation: their complaints, especially those concerning the proceedings duration, are deemed founded by the court president, they are informed that measures were taken to expedite the proceedings, but the proceedings status still remains unchanged.

References

- Annual Report (2019) of the Protector of Citizens (in Serbian), available at:
<https://www.ombudsman.rs/index.php/izvestaji/godisnji-izvestaji>
- Annual Reports of the Protector of Citizens available at:
<https://www.ombudsman.rs/index.php/izvestaji/godisnji-izvestaji>
- The Law on Free Legal Aid, Official Gazette RS, no. 87/18
- Case of Milovanović v. Serbia available at:
http://www.zastupnik.gov.rs/uploads/cr/presude/u-odnosu-na-rs/prikaz-presude-u-predmetu-milovanovic-protiv-srbije-broj-56065-10/milovanovic_p_56065_10ser.pdf (in Serbian)
- http://www.zastupnik.gov.rs/uploads/cr/presude/u-odnosu-na-rs/prikaz-presude-u-predmetu-milovanovic-protiv-srbije-broj-56065-10/milovanovic_p_56065_10eng.pdf (in English)
- The Law on Courts, Official Gazette RS no. 116/08, 104/09, 101/10, 31/11, 78/11, 101/11, 101/13, 106/15, 40/15, 13/16, 108/16, 113/17, 65/18, 87/18 and 88/18.
- Court Rules of Procedure, Official Gazette RS, 110/09, 70/11, 19/12, 89/13, 96/15, 104/15, 113/15, 39/16, 56/16, 77/16, 16/18, 78/18, 43/2019 and 93/19.

Media pluralism

Over the past year, the Protector of Citizens has repeatedly warned of more and more frequent and brutal attacks on the media, from attacks and threats on social networks, to preventing news crews from attending events and direct attacks on journalists and newsrooms, to one-day physical blockade of television building. Moreover, in the public statements, the Protector of Citizens reminded of both poor working conditions of media employees, working under unfavourable contracts and lack of developed mechanisms for journalists' safety protection, which does not contribute to strengthening media freedoms and forming responsible and independent media.

During previous year, journalists' associations reported different numerical data on attacks on journalists. The Independent Journalists' Association of Serbia (NUNS) recorded in its database 119 attacks on journalists, with pressure cases being dominant, as many as 80. The Journalists Association of Serbia (UNS) recorded 90 cases in its 2019 database in which journalists and media workers complained to the Association about attacks, pressures and threats, or these incidents were reported in the media. The Association also estimated that the number of attacks and pressures on journalists in 2019 increased compared to previous two years.

The Protector of Citizens has taken a step forward in promoting the freedom of media and rights of media workers by signing the Memorandum on establishing the "Platform for registering and monitoring cases of security threats and pressures issued to journalists and other media workers". The Platform aims to establish a more efficient mechanism of protection of journalists and increase the efficiency of relevant authorities. The Platform was signed jointly by representatives of media associations and journalist associations and unions, together with the Protector of Citizens who was the initiator of this initiative and who will continue to monitor the rights of journalists and issue periodic reports on the issue.

References

- Annual Report (2019) of the Protector of Citizens (in Serbian), available at:
- <https://www.ombudsman.rs/index.php/izvestaji/godisnji-izvestaji>
- Official website of the Independent Journalists' Association of Serbia, available at:
- <http://www.bazenuns.rs/srpski/napadi-na-novinare>
- Official website of Journalists' Association of Serbia, available at:
- <http://www.uns.org.rs/desk/UNS-news/93323/uns-prosle-godine-90-napada-na-novinare-i-medijske-radnike.html>

In-focus section on COVID-19 measures

Most significant impacts of measures taken in response to the COVID-19 outbreak on the rule of law in the country

On 15 March 2020, a state of emergency was introduced due to the COVID-19 epidemic, which limited a certain scope of human rights. State of emergency has ended on 6 May, while certain safety measures remain in place.

During this period, the Protector of Citizens has put serious effort to stay open and accessible to citizens. the Protector of Citizens has visited temporary hospitals, reception centre at the border with Hungary for accommodating persons who enter Serbia, places that accommodate persons deprived of liberty, places visited by homeless persons and other places and where needed, issued recommendations to relevant authorities to comply with respective human standards. The Protector of Citizens put a special focus on rights of people belonging to vulnerable groups.

The Protector of Citizens has launched control investigations on citizens' complaints concerning the movement of caregivers assisting the elderly who are at particularly high risk of serious health consequences in the event of contracting the coronavirus, and whose freedom of movement is therefore for the most part restricted. Owing to the Protector of Citizens' intervention, persons who care for and assist the elderly were enabled to obtain special movement permits during the period of total confinement. In addition, upon initiative of the Protector of Citizens, victims of violence seeking protection were also allowed to move during this time without being prosecuted.

Furthermore, upon learning that certain local self-government units refuse to consider requests for movement permits during the prohibition of movement for the purpose of visiting a child pursuant to court decision, the Protector of Citizens warned local self-

government units that a derogation from the guaranteed child rights to maintain personal relations with a parent with whom s/he does not live, pursuant to Article 64 and Article 202 of the Constitution of the Republic of Serbia in conjunction with Article 61 of the Family Law, is not allowed. The Protector of Citizens insisted that local self-government units, as well as all other competent state bodies, respect child rights and to consider parents' requests for movement permits submitted by those parents whose right to maintain personal relations was recognized by a final court decision. This initiative proved successful.

The Protector of Citizens monitored the respect of rights of those belonging to vulnerable groups and the availability of support services there are entitled to (service by personal assistants, personal companions of children and gerontology housewives for elderly). The Protector of Citizens addressed the respective authorities in cases when persons were being denied of any of the above listed services, that resulted in authorities taking appropriate actions.

The National Preventive Mechanism (NPM) introduced a special hotline and visited facilities where persons deprived of liberty are housed, in order to both act preventively on combatting and putting an end to torture and other cruel and inhuman treatment, and to oversee how measures to contain the spread of the coronavirus (COVID-19) are being implemented and how, in these circumstances, the exercise of the fundamental rights of persons deprived of their liberty is ensured. Letters, in which the NPM reiterated that the prohibition of torture and inhuman or degrading treatment or punishment is absolute and that protective measures taken by the state to contain COVID-19 must never result in any form of ill-treatment of persons deprived of liberty, were sent to all relevant administrative authorities.

A statement by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) of 20 March 2020 was forwarded to these bodies as well, outlining the principles related to the treatment of persons deprived of their liberty during the coronavirus pandemic. The CPT principles as well as the advice from the Subcommittee on the Prevention of Torture to Member States and National Preventive Mechanisms related to the coronavirus pandemic, adopted on 25 March 2020, are posted on the website of the National Preventive Mechanism and are available in both English and Serbian language.

Trials of persons accused of failing to comply with health measures during the epidemic are conducted using the Skype platform. In this respect, the Protector of Citizens issued an Opinion to the Ministry of Justice on the need to provide for electronic communication between the defence attorney and the defendant, without the presence of third parties,

with supervision only by watching and not listening, without limiting the duration of communication to 30 minutes, in order to create the necessary conditions for conducting a confidential conversation and preparing the defence of the defendant. The Protector of Citizens pointed to the necessity to observe the defendant's rights and to the fact that the Constitution of the Republic of Serbia stipulates that upon declaration of a state of emergency or war, derogations from human and minority rights guaranteed by the Constitution are allowed only to the necessary extent, but that the Constitution does not in any way permit derogations regarding the right to a fair trial.

In addition to the aforementioned activities concerning the citizens' movement, trials via electronic means of communication, prevention of torture and other cruel and inhuman treatment, the Protector of Citizens conducted a range of other activities. Among other things, the Protector of Citizens controlled the conditions of accommodation and treatment of persons in temporary COVID-19 hospitals. Owing to the intervention of the Protector of Citizens, faster testing for coronavirus of persons accommodated in temporary COVID-19 hospitals was ensured resulting in more adequate treatment or sooner discharge from hospitals of persons found not to be infected.

National preventive mechanism has issues a Thematic report "Application of CPT principles relating to the treatment of persons deprived of their liberty in the context of corona virus disease (COVID-19) pandemic".[1]

NPM has also visited institutions accommodating migrants, refugees and asylum seekers, in order to check their status, living conditions and the treatment they were receiving. In two reception centers NPM observed that the accommodation status was overloaded and issues recommendation to relevant authorities. NPM noted the increase of conflicts in one center and turned to the Ministry of Internal Affairs asking for constant presence of police officers, after which the police forces confirmed the Center is being protected by this authority.

The Protector of Citizens monitored the conditions in reception centres established for the accommodation, nutrition and medical care of nationals of the Republic of Serbia returning from abroad who do not have a registered address or registered place of residence, as well as for those persons who are deemed by border doctors to be medical i.e. sanitary risk.

As soon as the news about the appearance of the contagious disease COVID-19 appeared in gerontology centers, in several Homes for Care of Elderly and Diseased Seniors, family accommodation facilities, and reception centers for children and youth, the Protector of Citizens has initiated procedures regarding relevant institutions formed by the Republic of

Serbia, i.e. the local self-government units. While several procedures are pending, as the authorities have yet to respond to the Protector of Citizens' inquiry, in one case the Ministry of Labour, Employment, Veteran and Social Affairs has informed the Protector of Citizens that it has prohibited the work of the institution, because it failed to observe the instructions on implementing necessary measures in epidemiological situation caused by appearance of contagious disease COVID-19.

In addition, the Protector of Citizens has taken measures regarding local self-government units, with the aim of providing existential living conditions for Roma settlements residents - primarily drinking water and water for maintaining hygiene, food and sanitary packages. The Protector of Citizens noted that the fact that the majority Roma settlements residents, in nearly six hundred settlements existent in Serbia, do not have access to water and electricity is overlooked during the coronavirus epidemic. The Roma are among the most vulnerable groups due to a range of unsound living circumstances, ranging from poor hygiene and housing conditions to frequently non-existent sources of income. These existential problems, which they face on a daily basis, have been augmented since the outbreak of the coronavirus epidemic in Serbia, because very few of them are able to comply with protective measures. As many Roma families live below the poverty line, it is necessary to provide them with additional support from society and the state. The Protector of Citizens issued a Special report with recommendations for local self-governments "Roma settlement conditions during the state of emergency and application of safety measures due to corona virus pandemic".[2]

The Protector of Citizens introduced additional hotlines for information on COVID-19, one of them dedicated to those in need of psychological assistance, provided by a colleague, a professional psychologist.

References

- <https://ombudsman.rs/index.php/izvestaji/posebnii-izvestaji/6658-report-on-protector-of-citizens-activities-during-covid-19>
- <https://www.ombudsman.rs/attachments/article/6627/Report.pdf>
- <https://www.ombudsman.rs/index.php/izvestaji/posebnii-izvestaji/6608-19>

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

Responding to citizens' needs, the Protector of Citizens has organized the work seven days a week and introduced additional hotlines for communication with citizens. Since the declaration of COVID-19 epidemic, the Protector of Citizens has carried out a series of activities aimed at protecting human rights amid a state of emergency and coronavirus epidemic. The recommendations for authorities are included in the Special Report on the work of Protector of Citizens during corona virus pandemic.

References

- Protector of Citizens' official website, available at: <https://www.ombudsman.rs>

Slovakia

Slovak National Centre for Human Rights

Independence and effectiveness of the NHRI

International accreditation status and SCA recommendations

In March 2014, the Slovak NHRI was re-accredited with B-status. While recognising that the NHRI interprets its mandate broadly, the SCA found that the mandate has a strong emphasis on equality and non-discrimination, thus it encouraged the NHRI to advocate for legislative amendments that would clarify its mandate to promote and protect all human rights. The SCA also recommended further security of tenure of the decision-making body of the NHRI and the need to ensure it can operate with sufficient budget.

Developments relevant for the independent and effective fulfilment of the NHRI's mandate

There have not been any significant changes in the environment in which the Slovak NHRI operates that would be relevant for its independent and effective fulfilment of its mandate. Taking into consideration all shortcomings of the establishing law and financing of the Slovak NHRI, it operates independently and effectively to fulfil all its mandates to the fullest.

Changes in the national regulatory framework applicable to the NHRI change since the last review by the SCA

The national regulatory framework applicable to the NHRI has not been changed since the last review by the SCA. The Government of the Slovak Republic adopted a resolution by which, it has undertaken the obligation to draft and submit the laws to the National Council of the Slovak Republic that would bring the Slovak NHRI in compliance with the Paris Principles. The Government of the Slovak Republic has reinforced its intention to do so by accepting all recommendations of the relevant UN committees as well as recommendations received during the Universal Periodic Review in 2019 concerning strengthening the Slovak NHRI, and bringing it in compliance with the Paris Principles.

In 2018, the Ministry of Justice of the Slovak Republic as a ministry responsible for preparation of the law have issued two scenarios. In first, the Ministry of Justice of the Slovak Republic planned to transfer the NHRI mandate to the Public Defender of Rights. In

the second scenario, it planned to strengthen the existing establishing laws of the Slovak National Centre for Human Rights so it can apply for the re-accreditation with status A.

In the end, the Ministry of Justice of the Slovak Republic decided to develop and submit to the national parliament laws extending the existing NHRI mandate of the Slovak National Centre for Human Rights. To ensure that the laws are sufficient to bring the Slovak NHRI in compliance with the Paris Principles, the Slovak National Centre submitted the law proposals to the Office of the Democratic Institutions and Human Rights for review. The Office of the Democratic Institutions and Human Rights evaluated the law proposal and, in its statement, stressed that the law proposal is not sufficient to bring the Slovak NHRI in compliance with the Paris Principles and was concerned by several of its legal provisions. However, the legal proposals submitted to the National Council of the Slovak Republic have not been approved and the law failed to pass in June 2019.

Moreover, these proposals were highly criticised by non-governmental organisations and other stakeholders taking a part in the respective participatory process (inter-ministerial commenting procedure).

As of now, status quo is maintained. The Ministry of Justice has communicated the Centre its intention to re-open the process under the new government but any particular steps have been undertaken yet considering the new government has been formed in March 2020 and is now busy to address the current situation regarding COVID-19.

References

2018 Legislation Procedures (including the comments of non-governmental organisations and other stakeholders):

- <https://www.slov-lex.sk/legislativne-procesy/SK/LP/2018/234>
- <https://www.slov-lex.sk/legislativne-procesy/SK/LP/2018/656>
- <https://rokovania.gov.sk/RVL/Resolution/17482/1>

Human rights defenders and civil society space

The Slovak National Centre for Human Rights has found evidence of practice that restrict the governmental funding to certain civil society organisations based on protected discriminatory grounds, nepotism, and corruption.

In 2018 – 2019, there were multiple cases reported concerning **violation of principle of equal treatment and non-discrimination** regarding various sources of governmental funding under the Office of the Government of the Slovak Republic, Plenipotentiary of the Government of the Slovak Republic for National and Ethnic Minorities, Ministry of Culture of the Slovak Republic or Ministry of Education, Science, Research and Sport of the Slovak Republic. Majority of these funds were established to support civil society organisations, academia and other institutions or have been regularly to support such stakeholders (despite not being predominantly established for such purpose).

According to leading civil society organisations and media outlets, the Office of the Government of the Slovak Republic awarded the funding to media outlets and civil society organisations based on the political affiliation and in exchange for providing support during the parliamentary elections held on 29 February 2020. The Minority Culture Fund established by the Plenipotentiary of the Government of the Slovak Republic for National and Ethnic Minorities distributed funding among civil society organisations based on the nepotism. Even though projects submitted by the respective civil society organisations did not meet requirements of the call, the organisations were awarded funding. It was reported that this was due to being close to the established member of the selection committee.

At the Ministry of Culture of the Slovak Republic, the funds were distributed contrary to the principle of equal treatment. The minister of culture excluded civil society organisations representing LGBTI communities from providing funding, despite the recommendation of the selection committee to fund the proposed project.

Moreover, similar discrepancies were reported by civil society organisations and media regarding the Ministry of Education, Science, Research and Sport of the Slovak Republic that funding for promotion of science and research was distributed by the ministry contrary to the applicable laws. Approximately, seven applicants that received funding did not meet the legal requirements for being awarded the financial funds. According to the reports, these applicants have not been active in the field of science nor research. Plus, it was found out that these applicants are remarkably close to the political party, which nominated the Minister of Education.

The non-transparent and exclusive distribution of funds aiming at supporting civil society organisations has been persisting for many years now. In recent years, the situation has considerably worsened. This practice is caused mostly due to corruption, nepotism and the lack of laws regulating the transparency of operating these funds and programmes. In this regard, the Slovak National Centre for Human Rights have been closely monitoring the situation and provided legal aid to the civil society organisation representing LGBTI community that has been excluded from funding by the Ministry of Culture of the Slovak Republic.

Last but not least, a new amendments of Forest Act were passed in the parliament that are restricting **right of public and civil society organisation to access information** and take a part in a participative processes related to protection of environment as established in Aarhus Convention. As an example, the public cannot fully contribute and express an opinion on logging in forests or cannot participate when any measures concerning extraordinary situations in forests are adopted. The Slovak National Centre for Human Rights have been closely monitored this situation and reported on the matter in its annual report.

References

Office of the Government of the Slovak Republic:

- <https://www.aktuality.sk/clanok/731692/valovej-dal-pellegrini-30-000-eur-vasaryova-ktorej-zivena-oslavuje-150-rokov-nedostala-ani-cent/>
- <https://volby.transparency.sk/parlament2020/2020/02/12/slovenka-propaguje-pellegriniho-on-ju-predtym-stedro-obdaroval/>

Minority Culture Fund:

- <https://domov.sme.sk/c/20820857/mimovladky-kritizuju-pochybne-dotacie-pre-narodnostne-mensiny.html>
- <https://www.aktuality.sk/clanok/588928/statny-fond-sa-nevie-zbavit-richtera-necha-ho-dalej-rozdavat-dotacie/>
- <https://www.aktuality.sk/clanok/585234/velka-hostina-dotacie-rozdavali-brat-a-sestra-ziskal-aj-syn/>

Ministry of Culture of the Slovak Republic:

- <https://dennikn.sk/1469435/ministerka-kultury-zastavila-vsetky-granty-pre-lgbti-organizacie-napriek-odporucaniam-komisie/>
- <http://inakost.sk/vyhlasenie-k-ministerstvu-kultury/>

Ministry of Education, Science, Research and Sport of the Slovak Republic:

- <https://domov.sme.sk/c/22020746/ministerstvo-skolstva-rozdelovalo-dotacie-v-rozpore-so-zakonom.html>

Forest Act:

- <https://www.prezident.sk/article/prezidentka-vratila-zakon-o-lesoch-zakon-o-ochrane-prirody-podpisala/>

Media pluralism

Since the death of the journalist Jan Kuciak and his fiancée, there has been a vivid public debate on the **projection of journalists**. Unfortunately, the state failed to adopt any relevant laws or measures to protect journalist against attacks. The investigation of the death of Jan Kuciak has been closely monitored by multiple watchdogs and media. So far, given the process of investigation has been completed and the indictment was submitted to the court. There are four people charged with three capital murders and other related crimes. The criminal trial is not yet completed. However, due to the public pressure, the trial is ongoing even though majority of other trials and court proceedings have been postponed due to the emergency state in the Slovak Republic concerning COVID-19 pandemic. Moreover, the National Criminal Agency and the Police of the Slovak Republic have started to investigate corruption and other crimes that has been linked to the death of Jan Kuciak. As of today, 18 people have been investigated, out of which 13 people are judges.

Apart from this, **practices of some public authorities toward the journalists** are still of concern. It was reported that the Office for Personal Data Protection has been threatening journalists from the Czech Centre for Investigative Journalism. These journalists acquired and published an audio-visual tape picturing a man investigated by the Police Force of the Slovak Republic for murder of Jan Kuciak, corruption, and frauds - Marian Kočner. On the tape, Marian Kočner is talking to the ex-Attorney General about his criminal activities. The Office for Personal Data Protection threatened the Czech Centre for Investigative Journalism by extremely high fine if the source that provided the tape is not disclosed to the data protection authority. The situation has been closely monitored by the Public Defender of Rights who is of an opinion that the Office for Personal Data Protection breached the right to freedom of speech and right to information. It was reported that the director of the Office for Personal Data Protection has been close to Marian Kočner.

It also worth mentioning the recent amendments of press laws that introduced the **right of public authorities to answer to statements or facts concerning them disclosed to the public**. According to the new legal regulations, all public officials and authorities are entitled to reply to any information or articles published in media containing statements of fact about their persons. This right does not only belong to natural persons but also to legal persons. This introduces the obligation of respective media outlet to publish the response of the public official or the authority to challenged statements of fact. For this right to be triggered, it is necessary for the statement to be a true, incomplete or misleading factual claim concerning the honour, dignity or privacy of a natural person or the name or reputation of a legal person by reference to which a person can be accurately identified. This regulation was considered as a threat to the freedom of speech as well as freedom of press.

References

Office for Personal Data Protection

- <https://www.vop.gov.sk/ochrana-novin-rsky-ch-zdrojov-je-jedn-m-zo-z-kladn-ch-pilierov-slobody-prejavu>
- <https://www.tyzden.sk/politika/62398/urad-hrozi-investigativcom-pokutou-jeho-sefka-pracovala-pre-kocnera/>

Press Act

- <https://slovensko.hnonline.sk/2018125-caputova-podpisala-novelu-tlacoveho-zakona-politici-ziskaju-pravo-na-odpoved>

In-focus section on COVID-19 measures

Most significant impacts of measures taken in response to the COVID-19 outbreak on the rule of law in the country

The Government of the Slovak Republic has proclaimed the emergency state on 16 March 2020, and it has been extended several times. In respect the COVID-19 pandemic, the Government of the Slovak Republic also adopted several restrictive measures. While majority of them are fully acceptable as they contribute to human rights protection, there are also measures that are extremely concerning.

Firstly, the **right to health** in the context of right to provision of health care was restricted contrary to the Constitution of the Slovak Republic. According to the Constitution of the Slovak Republic, everyone shall have the right to protection of his or her health. The citizens shall have the right to free health care and medical equipment for disabilities since medical insurance under the terms to be laid down by a law. According to the Constitutional Act 227/2002 Coll. on the Security of the State in Time of War, State of War, State of Emergency, as amended does not allow for the right to health to be restricted. In this regard, the Government of the Slovak Republic and the National Council of the Slovak Republic has not adopted any relevant laws and measures that would endanger provision of healthcare. However, political leaders have multiple times urged the healthcare and outpatient facilities to prepare for the COVID-19 patients and to stop providing preventive care as well as carry out any planned surgeries and treatments.

Moreover, the Ministry of Health of the Slovak Republic instructed that urgent care should be provided, especially regarding accidents, oncology patients and deliveries. Unfortunately, this caused a tremendous impact on patient that do not require urgent care, however neglecting a preventive care can have serious consequences such as patients with rheumatics, diabetes, or cardiac problems. Moreover, patients requiring exchange of joints, especially hip joint are restricted from having a surgery. The majority of these patients are living in unbearable pain and their mobility is significantly reduced. However, the most questionable practice introduced by the health facilities in respect to COVID-19 pandemic was complete termination of providing abortion services to women without a health indication. These issues have to be read in the light of relevant data related to the spread of COVID-19 in Slovakia: as of 22 April 2020, there have been only 13 dead and 231 patients hospitalised with COVID-19 or with suspicion of COVID-19.

Moreover, the situation has been serious in respect to **Roma communities** and their quarantine. In the beginning of the mandate, the Government of the Slovak Republic has set requirements for quarantining towns and certain areas of towns (e.g. streets, communities). However, there have been mass testing and quarantining Roma communities regardless of the habitat (whether living in dwelling or integrated in cities) as they were proclaimed by the Prime Minister of the Slovak Republic as a ticking bomb. In the beginning, more than 6500 people in multiple locations were put to the quarantine due to 32 Roma tested positive for COVID-19. People who tested positive for COVID-19 were kept with healthy people even though, it was not possible to separate COVID-19 positive Roma from healthy inhabitants. It was reported that the Public Health Authority of the Slovak Republic refused to inform people who were tested about the results and other important information regarding the quarantine, their rights, and next steps. Serious issues

concerning supplying people in quarantine with food, basic medicines and other essentials were reported. The situation is even more concerning considering low-hygiene standards in Roma settlements, limited or no access to drinking water, lack of sanitation and overcrowding of dwellings.

Last but not least, the measures adopted under the COVID-19 emergency pose issues as regards **data protection and privacy**. Laws allowing the Government of the Slovak Republic to have access various data, including data on location sourced by mobile operators and telecommunication companies passed in the National Council of the Slovak Republic. Thanks to this legal regulation, the Government of the Slovak Republic and its bodies, including the Public Health Authority of the Slovak Republic have access to information about calls and messages sent among citizens and their location, so the citizens are monitored without their permission or knowledge.

The Slovak National Centre for Human Rights is closely monitoring the situation and will publish its complex findings in a form of a report in autumn 2020.

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

Up to date, there were no disruption to the functioning of the Slovak National Centre for Human Rights. All educational activities aiming at providing human rights education to pupils, students and adults were postponed due to the closure of all schools and "home office" arrangements in most companies and public authorities. In respect to research activities, the Slovak National Centre for Human Rights have postponed collection of data in the field as well as conducting focus groups. However, when possible, the Slovak National Centre for Human Rights deliver its services online or via phone. When it is not possible, clients are served as usual.

References

- <https://www.slov-lex.sk/-/vyhlasenie-nudzoveho-stavu?inheritRedirect=true&redirect=%2Fdomov>

Slovenia

Human Rights Ombudsman of the Republic of Slovenia

Independence and effectiveness of the NHRI

International accreditation status and SCA recommendations

The Slovenian NHRI was re-accredited with B status in March 2010. At that time, the SCA recommended the NHRI to advocate for legislative changes to grant it with strong promotional functions. The SCA also encouraged the NHRI to engage with international and regional human rights bodies, and to advocate for sufficient and adequate funding. Since then, the Slovenian NHRI took concrete steps to follow-up with the SCA recommendations. It was scheduled to be re-accredited in March 2020, but the SCA session was postponed due to the COVID-19 outbreak.

Developments relevant for the independent and effective fulfilment of the NHRI's mandate

The **number of the institution's employees** increased from 40 at the end of 2017 to 54 at the beginning of 2020 in order to implement a broader mandate of the Human Rights Ombudsman of the Republic of Slovenia (herein after: the Ombudsman) (1) and the **financial resources** were strengthened for the same reason and reach 3.150,000 EUR in 2020 (2), which is approximately 30% more than before the adoption of the amendments in 2017.

However, the Ministry of Finance usually sets a specific date in the year after which direct budget users, including the Ombudsman, **must obtain prior consent** from the Ministry of Finance for all procurement of goods and services, even though the commitments are in accordance with the adopted budget (this is also the case in current COVID-19 budget situation). This undermines the full independence of the Ombudsman, brings uncertainty into its operations and hinders implementation of activities in accordance with the adopted budget. Also, if the Government fails to reach an agreement with the Ombudsman, then the draft budget which is submitted for adoption to the Parliament is the budget proposed by the Government, while the Ombudsman's budget proposal is included only in the explanation of it.

Further, the **salaries** of the high officials of the Ombudsman have not been increased since the last accreditation review in 2010, even though the Salary System in the Public Sector Act

already in 2007 classified the functions of the Ombudsman, Deputy Ombudsmen and Secretary-General to lower salary categories than provided by the Human Rights Ombudsman Act.

Changes in the national regulatory framework applicable to the NHRI change since the last review by the SCA

There have been some important developments in the regulatory framework since last SCA review in 2010.

In September 2017, the Parliament adopted amendments to the Human Rights Ombudsman Act, which entered into force on 14 October 2017 (3). The main objective of the amendments was to provide an adequate legal basis in accordance with the Paris Principles, i.e. to **strengthen the mandate** of the Ombudsman with the aim to strengthen its general mandate, which includes the promotion and the protection of human rights, human rights education, research and analyses as well as to strengthen international cooperation and reporting. For this reason the Centre for Human Rights, a special internal organisational unit within the Ombudsman, and the Human Rights Ombudsman Council, an advisory body, were established by the Act. The aim of the Act was also to strengthen the plurality of the Ombudsman through the mentioned Council. The Ombudsman also promotes the signature, ratification or accession to human rights treaties to which Slovenia is not yet a party.

The new units of Ombudsman established by law have become operational. Human Rights Ombudsman Council was constituted in June 2018 and held several thematic meetings since then (4), while the Centre for Human Rights became operational in 2019 (5).

Regarding the **procedure for the selection of the Ombudsman** the President of the Republic in practice prescribed a new requirement (comparable to the selection of the Constitutional Court judges) that a candidate for the Ombudsman has a public presentation at the Office of the President before (s)he is proposed to the Parliament for appointment (with a two-third majority of all MPs).

References

- (1) <http://www.varuh-rs.si/o-instituciji/zaposleni/informator/> (28. 4. 2020)
- (2) https://www.gov.si/assets/ministrstva/MF/Proracun-direktorat/Drzavni-proracun/Sprejeti-proracun/Sprejeti-2020/Izpisi/SP2020_POS.pdf (28. 4. 2020), p. 1.
- (3) Official Gazette of the Republic of Slovenia, No. 54/17.
- (4) <http://www.varuh-rs.si/o-instituciji/podrocja-dela-varuha/svet-varuha-za-clovekove-pravice/> (28. 4. 2020)
- (5) <http://www.varuh-rs.si/o-instituciji/zaposleni/center-za-clovekove-pravice/> (28. 4. 2020)

Human rights defenders and civil society space

In the field of **freedom of association and freedom of assembly** (on COVID-19 restrictions see the relevant chapter below) the legislative framework, measures and practices are in general sufficient. The Ombudsman proposed, however, a legislative amendment, aiming to determine the body for management and decision-making in minor-offence proceedings in a case of violations of the legal provisions that the work of the disability organisations is public.

Regarding **freedom of expression**, the Ombudsman has repeatedly condemned the obvious expressions of the constitutionally forbidden (Article 63) incitement to inequality, intolerance and to violence, even though they could not be attributed to any state body, local self-government body or holder of public authority. In 2019 there was an important development in the criminal **case-law regarding hate speech**: on 4 July 2019, the Supreme Court of the Republic of Slovenia issued a judgment in the case of ref. no. I Ips 65803/2012 for a criminal offense under the first paragraph of Article 297 of the Criminal Code – Public incitement to hatred, violence, and intolerance (2). The significance of this judgment of the highest court in the country is in the interpretation of the legal requirement that the conduct has to be either carried out in a manner likely to disturb public order or is threatening, abusive or insulting. According to prior lower court judgment's interpretation, the conduct is only punishable when the public order is "concretely endangered" (also when the conduct is threatening, abusive, or insulting). The Supreme Court stated that the two conditions are set alternatively and not cumulatively and that in case of likeliness of public order disturbance, it is enough that endangerment is only abstract and not concrete.

It had been the Ombudsman's persistent recommendation that the National Assembly adopts a **parliamentary code of ethics** and creates tribunals that would respond to

individual cases of hate speech in politics worthy of public condemnation (3). The Code of Ethics for Members of the Parliament was adopted on 12 June 2020 (4)

References

- (1) Annual Report of the Human Rights Ombudsman of the Republic of Slovenia for 2018, recommendation no. 16(2018), available in Slovenian language at http://www.varuh-rs.si/fileadmin/user_upload/pdf/lp/LP_2018.pdf (28. 4. 2020).
- (2) Judgment ref. no. I Ips 65803/2012 of the Supreme Court of the Republic of Slovenia, adopted on 4 July 2019, is available in Slovenian language at <http://www.sodisce.si/vsrs/odlocitve/2015081111431656/>
- (3) Annual Report of the Human Rights Ombudsman of the Republic of Slovenia for 2018, pp. 103-104, available at http://www.varuh-rs.si/fileadmin/user_upload/pdf/lp/LP_2018_ENG.pdf.

Checks and balances

Over the years, the Ombudsman has also filed 32 requests for a **review of the constitutionality or legality of a regulation or a general act** issued to exercise public powers (1).

The Ombudsman evidences also some occasions of practice of a **lack of consultations**. For example, in November 2019 the Government and its Office for the Protection of Classified Information prepared a proposal of the Act Amending the Classified Information Act (2). The proposal abolished the direct access of Deputy-Ombudsmen to the classified information, while no prior consultations with the Ombudsman were made. The Ombudsman later disagreed with the proposed text; however, the Act was adopted by the Parliament in January 2020 regardless of the Ombudsman's written opposition (3).

The Ombudsman points out that the issues of the **adoption and the use of the Ombudsman's budget** (see the answer on independence and effectiveness of the NHRI) also erode to some extent a separation of powers: the assessment of the Ombudsman budget proposal should be instead by the Ministry of Finance done by the Parliament. Also, while the requirement, if needed, to obtain prior consent for all procurement of goods and services, even though the commitments are in accordance with the adopted budget after the specific date in the year, should be made by some other independent authority (i.e. the Court of Auditors) instead of the Minister of Finance. Such a requirement was also enforced during the COVID-19 epidemic.

References

- (1) Annual Report of the Human Rights Ombudsman of the Republic of Slovenia for 2018, page 12, available at http://www.varuh-rs.si/fileadmin/user_upload/pdf/lp/LP_2018_ENG.pdf (28. 4. 2020).
- (2) See: <https://www.dz-rs.si/wps/portal/Home/deloDZ/zakonodaja/izbranZakonAkt?uid=C1257A70003EE6A1C12584FE00613B3B&db=konzak&mandat=VIII&tip=doc> (28. 4. 2020).
- (3) Official Gazette of the Republic of Slovenia, No. 8/20

Functioning of justice systems

The Human Rights Ombudsman Act stipulates explicitly that the Ombudsman may not consider cases, which are subject to judicial or other legal proceedings unless an undue delay in the proceedings or evident abuse of authority is established (1). With regard to the judicial branch of power, operations of the Ombudsman may only extend to the point where they do not encroach on the independence of judges in their judicial work.

Although lengthy court proceedings are not considered as a systematic problem anymore, **slow decision making by the judiciary in some specific cases** is still reported as an issue. In its Annual Report for 2018 the Ombudsman noted a position taken by the Judicial Council that the productivity of courts is decreasing, particularly in (complex) cases in which the time expected for them to be resolved is longer. Creditors highlight lengthy bankruptcy proceedings and related procedures, although the law provides that courts and other state authorities must as a priority address cases in which a debtor in bankruptcy is involved as a party or whose outcome affects the course of bankruptcy proceedings. Particularly problematic is the lengthiness of certain judicial proceedings conducted to compensate the damage suffered by complainants in pre-trial proceedings due to slow judicial decision-making and in which parties should use legal remedies again to expedite judicial proceedings referred to in the Protection of Right to Trial without Undue Delay Act (2).

Free legal aid and the condition for its allocation are regulated by the Legal Aid Act, which entered into force in 2001. Such aid, whose purpose is to realise the right to judicial protection, is provided by district and labour courts, and the social and administrative court. Gaps in the field of free legal aid are filled by certain Slovenian municipalities and non-governmental organisations (e.g. the Botrstvo project – free legal aid managed by the Association of Friends of Youth Ljubljana Most, which is carried out in several towns), and free legal aid is also provided by certain attorneys according to the pro bono principle (3).

The Ombudsman regularly monitors the **execution of the judgments of the Constitutional Court and the European Court for Human Rights** in Slovenia. In its Annual Report for 2018 (4) and during 2019 UPR review (5) the Ombudsman highlighted the unacceptable fact that the Government of the Republic of Slovenia and the legislator do not respond promptly to the decisions of the Constitutional Court of the Republic of Slovenia and fail to draft suitable solutions before the expiry of the deadline for elimination of unconstitutionality. The Ombudsman noted with concern that 13 decisions of this court remain unimplemented (6). The Parliament as a legislator is responsible for eliminating the unconstitutionality in the legislation (with one exception, where the municipality should implement the decision); yet, it is the duty of the Government as the constitutionally appointed proposer of acts to draft legislative proposals on time and submit them to the legislative procedure. At the same time, however, the Ombudsman has welcomed the positive developments regarding the execution of judgments of the European Court of Human Rights by Slovenia, as the number of non-executed judgments has been reduced from 317 in 2016 to 13 at the end of 2019 (7).

References

- (1) Official Gazette of the Republic of Slovenia, No. 69/17, Article 24.
- (2) Annual Report of the Human Rights Ombudsman of the Republic of Slovenia for 2018, page 182, available at http://www.varuh-rs.si/fileadmin/user_upload/pdf/lp/LP_2018_ENG.pdf (28. 4. 2020).
- (3) Ibidem, page 184.
- (4) Annual Report of the Human Rights Ombudsman of the Republic of Slovenia for 2018, page 12, available at http://www.varuh-rs.si/fileadmin/user_upload/pdf/lp/LP_2018_ENG.pdf (28. 4. 2020).
- (5) Information paper UPR Pre-session for the 3rd cycle of the Universal Periodic Review of Slovenia 11 October 2019, available at: https://www.upr-info.org/sites/default/files/document/slovenia/session_34_-_november_2019/1_human_rights_ombudsman_of_the_republic_of_slovenia_nhri_additional_information.pdf (28. 4. 2020).
- (6) The Constitution Court of the Republic of Slovenia The Report on the Work in 2019, pp. 16-18, available in Slovenian language at: https://www.us-rs.si/media/usrs_letnoporocilo_2019.pdf (28. 4. 2020).
- (7) See: <https://www.gov.si/podrocja/pravna-drzava-in-pravosodje/izvrsevanje-priporocil-varuha-in-sodb-evropskega-sodisca-za-clovekove-pravice/> (28. 4. 2020).

Media pluralism

The situation in the field of freedom of expression (and media freedom) remains strongly linked to current social developments - both numerically and substantively. Often there are more or less direct expectations of the public that the Ombudsman should react to publicly expressed thoughts or statements, especially of politically exposed persons.

The Ombudsman also follows in general several debates on the issue of a **free and pluralistic media environment** in Slovenia. It needs to be noted at the outset that there is a diverse media space in Slovenia with public radio and television (RTVSLO) as well as several private radio and televisions, around 10 different daily newspapers, numerous weekly and monthly journals as well as online media and platforms. In Slovenia, in general the legislation and other measures ensure the plurality of the media space (1). However, there have been also some alerts, including at the Council of Europe Platform to promote the **protection and safety of journalists** regarding the situation in Slovenia (2), which includes claimed attacks on RTVSLO, the political interference in editorial autonomy of public broadcasters and threats against some Slovenian journalists, including police **pressure to reveal journalistic sources**. The Government (authorities) respond regularly to such claims (alerts) (3). A dialogue on media freedom in Slovenia remains important as media freedom is at the heart of democracy.

The Ombudsman recommended (4) that the Ministry of Culture, within the scope of its competences, make every effort to determine, with regard to the implementation of the norm on the prevention of the spread of the **hate speech in the media** (Article 8 of the Media Act): 1. a form of protection of public interest (inspections, minor offences control), 2. remedial actions (such as immediate removal of illegal content) and 3. sanctions for the media, which allow hate speech. This recommendation remains unrealized. At the end of 2018, the Ministry of Culture prepared a draft law on amendments to the Media Act, which included, inter alia, an appropriate amendment to the provision prohibiting the promotion of inequality and intolerance in the media (Article 8 of the Media Act) in accordance with the relevant the Ombudsman's recommendations, but this amendment has not yet been adopted.

References

- (1) <https://www.gov.si/podrocja/kultura/mediji/> (28. 4. 2020)
- (2) <https://www.coe.int/en/web/media-freedom/slovenia> (28. 4. 2020).
- (3) Ibidem.
- (4) Annual Report of the Human Rights Ombudsman of the Republic of Slovenia for 2018, recommendation no. 13(2018) and p. 107, available at http://www.varuh-rs.si/fileadmin/user_upload/pdf/lp/LP_2018.pdf (28. 4. 2020)

Corruption

In Slovenia, the responsible independent institution for combating corruption is the Commission for the Prevention of Corruption (1).

However, the Ombudsman follows the situation, which could have an impact on the field of human rights. In this regard, Ombudsman supports full implementation of the EU Directive 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 (2), as well as in general the adoption of a law on the **protection of whistle-blowers** in Slovenia.

References

- (1) Commission for the Prevention of the Corruption of the Republic of Slovenia, see: <https://www.kpk-rs.si/en/> (28. 4. 2020)
- (2) Official Journal of the European Union, L 305/17, 26.11.2019.

In-focus section on COVID-19 measures

Most significant impacts of measures taken in response to the COVID-19 outbreak on the rule of law in the country

It is too early to assess the most significant impacts of the measures taken on the rule of law and the proportionality of these measures to the threats posed. There are however, some trends, which may be acceptable and proportional in the epidemic situation; however, the practices should not be further continued once this situation ends.

The Government of the Republic of Slovenia proclaimed epidemic on 12 March 2020 (1), while state of emergency has not been proclaimed in Slovenia. Since then several

administrative (emergency) measures and intervention laws were adopted. So far there have been adopted more than 80 ministerial orders, governmental ordinances or decrees, their amendments and other general administrative acts adopted by various state authorities, which were published in the Official Gazettes of the Republic of Slovenia. These measures, whose impact on fundamental rights is important, were not based on special powers, which would enable the executive to take a large number of measures, but were rather and mostly based on different provisions the Communicable Diseases Act, or of the newly adopted intervention legislation or some other acts. So far, also, seven intervention (emergency) acts were adopted (through an expedited procedure) and entered into force (2), their amendments are already forthcoming. Most of the above-mentioned administrative measures were adopted and published on the same date, while entered into force on the next day (in practice within few hours). While such **accelerated procedures for enacting and modifying governmental orders and of general administrative acts** may be acceptable and proportional in this epidemic situation, such a practice should not continue after the end of pandemic situation. In this situation, it is of vital importance that the government has provided a prompt and effective information campaign aiming to inform the population on the adopted measures as broadly as possible. In such circumstances the Ombudsman established an Ombudsman Informant on adopted measures, which is regularly updated and published on his website (3).

There has been an initiative for a review of legality and constitutionality of the Governmental Ordinance on the temporary general prohibition of movement and public gathering in public places and areas in the Republic of Slovenia, which prohibited the movement outside the municipality of permanent or temporary residence, with some exceptions (i.e. work, care and assistance to the relative). The Constitutional Court temporarily suspended a part of the decree and ordered that the measure should be time-limited, i.e. the government need to evaluate its proportionality at least on seven-day basis (4). However due to the improvement of the epidemic situation the Government issued a new ordinance, which lifted the mentioned prohibition of movement as of 30 April 2020 (5). Further, it has been reported by the Slovenian Press Agency that the Constitution Court confirmed they have received also over **50 different initiatives for a review of constitutionality of other COVID-19 governmental decrees and intervention laws** (6).

The Ombudsman has also urged that it is of crucial importance that the **information** on the COVID-19 measures is made available to everybody, including to persons with disabilities (including deaf and blind), to persons, which have no access to the Internet or television, to national minorities, aliens etc. Most of the measures taken so far are time limited. The Ombudsman urged on several occasions that all measures taken should

respect human rights, be proportional to the threats posed and time limited. However, **some groups are more impacted** by the measures taken. The Ombudsman raised voice in this regard at various occasions, such as regarding the protection of children from families, which are in need of social assistance (including Roma children), especially because of distance learning (as schools are closed), and regarding the need to ensure equal rights to old people, especially those leaving in retirement homes (institutions), people with disabilities, persons deprived of liberty etc (7).

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

Regarding the service to citizens throughout the COVID-19 epidemic the Ombudsman was available to individuals by e-mail or toll-free telephone number. Individuals may have been able to obtain information related to the spread of the new coronavirus (COVID-19) or to be informed about their rights and measures taken. The experts have assisted citizens by directing or referring them to other competent institutions if needed or proceed to analyse problems in more detail and provide written answers. Since the proclamation of epidemic in Slovenia on 12 March 2020 there have been more than **300 initiatives (cases) per month referred to the Ombudsman regarding the impact of COVID-19 measures** on human rights, fundamental freedoms and human dignity.

Regarding the National Protection Mechanism (NPM) function of the Ombudsman, the Ombudsman has been actively engaged with relevant authorities and institutions as well as receives information directly from **persons deprived of liberty** on the situation in institutions, despite the fact that the NPM did not perform the on-site visits during the epidemic. The NPM has been evaluating different measures and has given concrete recommendations.

The measures to prevent the spread of COVID-19 were changing on a daily basis; therefore they have raised many issues with regard to the freedom of movement, non-discrimination, the right to dignity, physical and mental well-being, equal access to health services and equal access to education, the rights of children to have contacts with both parents, etc.. Therefore, the Ombudsman also established a **special COVID-19 website** (8), which includes various information on the adopted measures and legislation, on the opinions of the international organisations (including ENNHRI and GANHRI) regarding the human rights dimension of COVID-19 response, views and opinions of the Ombudsman and other relevant information.

References

- (1) Official Gazette of the Republic of Slovenia, No. 19/20 of 12 March 2020.
- (2) See: <http://www.varuh-rs.si/epidemija-COVID-19/pomembnejša-zakonodaja/> (28. 4. 2020).
- (3) Ombudsman's Informant (Varuhov informator), see in Slovenian language: <http://www.varuh-rs.si/koronavirus-epidemija/varuhov-informator-o-sprejetih-ukrepih/?L=> (28. 4. 2020).
- (4) A Conclusion of the Constitutional Court, No. U-I-83/20-10 of 16 April 2020, Official Gazette of the Republic of Slovenia, No. 58/20 of 24 April 2020, available in Slovenian language at: <https://www.uradni-list.si/glasilo-uradni-list-rs/vsebina/2020-01-0843/sklep-o-zadržanju-izvrševanja-7--clena-odloka-o-zacasni-splosni-prepovedi-gibanja-in-zbiranja-ljudi-na-javnih-mestih-in-povrsinah-v-republiki-sloveniji-ter-prepovedi-gibanja-izven-obcin-uradni-list-rs-st-3820-in-5120> (28. 4. 2020).
- (5) <https://www.gov.si/en/news/2020-04-29-14th-regular-session-of-the-republic-of-slovenia/> (7.5.2020)
- (6) Slovenian Press Agency (STA), available in Slovenian language at <https://www.sta.si/2754480/ustavno-sodisce-prejelo-vec-kot-50-pobud-za-oceno-ustavnosti-vladnih-aktov?q=ust,sod> (28. 4. 2020) and <https://www.iusinfo.si/medijsko-sredisce/dnevne-novice/262318> (28. 4. 2020).
- (7) Positions and Information of Ombudsman (Stališča in obvestila za javnost Varuha): available in Slovenian language at <http://www.varuh-rs.si/epidemija-COVID-19/stalisca-in-obvestila-za-javnosti-varuha/> (28. 4. 2020)
- (8) <http://www.varuh-rs.si/epidemija-COVID-19/> (28. 4. 2020)

Spain

Ombudsman of Spain

Independence and effectiveness of the NHRI

International accreditation status and SCA recommendations

The Spanish NHRI was re-accredited with A status in May 2018. The SCA encouraged the NHRI to advocate for amendments to the establishing law in order to ensure a limit to the Ombudsman's term of office, a pluralist staff composition and a broad and transparent selection process with the direct participation of civil society. The SCA acknowledged the NHRI's level of engagement with the international human rights system and encouraged the NHRI to continue advocating for the provision of adequate funding.

Developments relevant for the independent and effective fulfilment of the NHRI's mandate

According to article 6.1 of the Organic Law, the Defensor del Pueblo (NHRI) is an independent institution. The Defensor is not subject to any imperative mandate, nor receive instructions from any authority and exercises its functions independently. As such, the Defensor, in the exercise of its functions, does not receive instructions from any authority. It is only accountable before the Parliament (art. 3 of the Reglamento). The Deputies to the Defensor are accountable to the Defensor and to the Joint Commission composed of the Chamber of Deputies and the Senate for the relations with the Defensor (art. 3.2 of the Reglamento).

Conflicts of interest

According to article 7 of the Law, the Defensor's position is incompatible with: any other representative mandate; any political appointment or activity; maintaining an active service in any other public administration; being affiliated to a political party or having a managerial position in a political party or union, association or foundation or being employed by any of these; with any position in the judicial or fiscal careers; and with any other professional, liberal, trade or labour nature activity.

Immunity

According to article 6 of the Law, the Defensor, similarly to the Deputies, enjoys legal immunity in the exercise of its functions. The Defensor cannot be detained, investigated,

subjected to disciplinary measures, or legal proceedings due to his opinions or actions undertaken in the exercise of competences that are part of its functions. The Defensor will not be detained in the exercise of its functions, but only for a case of caught in the act. The decision of accusation, detention or trial is to be decided exclusively by the Penal Chamber of the Supreme Court.

The Ombudsman is also a Transparent Institution. The proclamation of the principle of publicity, which is characteristic of advanced democratic systems, seeks to abolish secrecy as a general rule of action for public powers, trying to make the exercise of power transparent.

In democracy, the legitimacy of power rests ultimately on the citizens themselves, as befits the popular sovereignty that our Constitution enshrines in its Article 1. For this reason, it makes sense to make the actions of the public powers known, seen and known by all.

On December 10, 2014, the Preliminary Titles, I and III of Law 19/2013, of December 9, on transparency, access to public information and good governance, came into force for the General State Administration. The Autonomous Communities and Local Entities had one more year, until December 10, 2015, to adapt to their obligations. These titles regulate the subjective scope of application, active advertising, the right of access to information and the Transparency Council. For its part, the provisions of Title II, relating to Good Governance, entered into force the day after the publication of the Law in the Official State Gazette, on December 10, 2013.

The most important aspects of Law 19/2013 are, first, the requirement for active publicity in institutional, organisational, legal, economic, budgetary and statistical matters, and, second, the recognition of the right of access to public information and creating a procedure for exercising it.

With the intention of advancing in this direction, the Institution of the Ombudsman published this transparency section on January 14, 2013, and since then it has been completed with all the contents that have been considered significant for general knowledge, more beyond those required by the aforementioned Law 19/2013, of December 9, on transparency, access to public information and good governance.

The Ombudsman also makes public in its site all the relevant investigations and complaints in real time.

Changes in the national regulatory framework applicable to the NHRI change since the last review by the SCA

RDL 10/2020 recognizes the autonomy of the Ombudsman to issue the necessary instructions and resolutions in relation to its internal organisation and operation, as an essential service during the state of alarm. (second additional provision)

References

- <https://www.boe.es/eli/es/rdl/2020/03/29/10/con>

Corruption

Progress was made on the state of corruption in Spain since the last decade, as many cases of corruption were brought before the courts which ensured independent review and impactful decisions.

References

- Data repository on corruption proceedings (General Council of the Judiciary)
<http://www.poderjudicial.es/cgpj/en/Subjects/Transparency/Data-repository-on-corruption-proceedings/General-Information/>

In-focus section on COVID-19 measures

Most significant impacts of measures taken in response to the COVID-19 outbreak on the rule of law in the country

The epidemic caused by COVID-19 represents a threat of such magnitude that the Government has been forced to decree the state of alarm throughout the country, for an initial period of fifteen days, through Royal Decree 463/2020, of 14 March, which has been extended by several Royal Decrees , until May 11th.

The Ombudsman, as high commissioner of the Cortes Generales for the protection of the rights and freedoms included in the First Title of the Constitution, must supervise the activity of public administrations, even before the declaration of states of alarm, exception or site.

This is because in these exceptional circumstances, the fundamental rights of citizens continue to be equally guaranteed, because democracy is not suspended however difficult the challenge may be.

While all the personnel of the health and emergency services are fighting to the maximum of their strength and capabilities to protect the right to life and to health, any restrictions to other fundamental rights and freedoms shall only be temporary and subject to the principles of necessity and proportionality.

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

Given the declaration of the state of alarm, and the confinement that this entailed, the institution adopted several internal measures that have allowed the institution to ensure continuity of its work and services.

- The teleworking system was adopted in three phases, which has enabled 150 laptop computers to be made available to staff, allowing workers to carry out their activities from home through a secure VPN connection.
- The telephone service has been strengthened to make it easier for people who before the state of emergency (around 30%) to contact us by mail to do so by telephone, as well as by email and the web.
- The minimum services imposed by mail has forced us to make important decisions regarding the admission and processing of complaints. In addition, a broad interpretation of our regulatory Organic Law regarding the admission of complaints is being applied, so that:
 - Complaints in which only name + surname + email are accepted (until now DNI / NIE / PASSPORT and postal address were requested)
 - In the case of people who cannot send complaints by email or via the web, the telephone service staff will transcribe the complaint (this is exceptional and has not yet occurred but is contemplated)
- Processing: During the first week of confinement, everything related to the state of emergency has been processed as a priority.

As of the second week, in addition to processing complaints related to the state of emergency, other complaints are also being processed on important issues, such as scholarships, grants, subsidies, and all the other normal complaints of the institution later and gradually.

References

- Royal Decree 463/2020, declaring the state of alert as a result of the health crisis caused by COVID-19 (full text in Spanish <https://www.boe.es/eli/es/rd/2020/03/14/463/con>)
- English version web page of the Presidency of the Government publishes the performances carried out by the government <https://www.lamoncloa.gob.es/lang/en/Paginas/index.aspx>
- The English version of several press releases of the Ombudsman can be found at: <https://www.defensordelpueblo.es/en/news/ombudsman-calls-autonomous-communities-improving-health-care-retirement-homes-information-family-members-protection-rights/> April, 24 2020
- <https://www.defensordelpueblo.es/en/news/ombudsman-contemplates-possibility-letting-children-outdoors-limited-way-necessary-precautions/April.17.2020>
- [https://www.defensordelpueblo.es/en/news/ombudsman-passes-concerns-citizens-coronavirus-crisis-authorities/](https://www.defensordelpueblo.es/en/news/ombudsman-passes-concerns-citizens-coronavirus-crisis-authorities/April.3.2020) April, 3 2020

Sweden

Relevant developments towards the establishment of a National Human Rights Institution

ENNHRI's member in Sweden is the Swedish Equality Ombudsman, which was [accredited](#) with B status in May 2011. The SCA noted that the NHRI's mandate is limited to equality matters and stressed the need for a broader mandate to promote and protect human rights. Also, the SCA encouraged the Equality Ombudsman to advocate for the formalization of broad and transparent selection and dismissal process in the relevant legislation.

Recently, the Swedish government took important steps in relation to a [proposal](#) for the establishment of an NHRI in Sweden in compliance with the Paris Principles. ENNHRI provided [comments](#) on the proposal and stands ready to give further support towards the establishment and accreditation of an NHRI in compliance with the Paris Principles in the country. In view of the ongoing process to establish an institution in compliance with the UN Paris Principles, the Swedish Equality Ombudsman abstained from contributing to this reporting process.

Switzerland

At present, Switzerland does not have a National Human Rights Institution.

In December 2019, the Swiss Federal Council submitted a proposal to Parliament on the establishment of an NHRI. The future institution would replace the current *Centre suisse de compétence pour les droits humains* (CSDH), which had been created in 2011 as a pilot to assess the need for an NHRI in the country. This pilot was supposed to end in 2020 but it will be extended for 2 years, allowing enough time for the establishment of the NHRI by then.

ENNHRI stands ready to further provide information to the government and any other relevant stakeholder on the establishment of an NHRI in Switzerland in compliance with the Paris Principles.

References

- Webpage of the government setting out the current progress on setting up an NHRI: <https://www.admin.ch/gov/fr/accueil/documentation/communiques.msg-id-77508.html>

Turkey

Human Rights and Equality Institution of Turkey

Independence and effectiveness of the NHRI

The Human Rights and Equality Institution of Turkey is a non-accredited, associate member of ENNHRI. As such, the institution has committed taking proactive steps towards applying for accreditation and complying with the UN Paris Principles.

In 2019, a capacity assessment of the institution took place, led by the United Nations Development Program (UNDP) and in cooperation with OHCHR and ENNHRI. The main purpose of the capacity assessment was to identify the challenges and institutional needs of the institution in developing their capacities and to develop strategies for ensuring compliance with the UN Paris Principles.

The Institution has demonstrated interest in applying for accreditation and ENNHRI will continue to support it in its efforts to enhance compliance with the UN Paris Principles.

Ukraine

Ukrainian Parliament Commissioner for Human Rights

The Commissioner calls on regional human rights and rule of law monitoring bodies to give particular attention to the following issues as regards Ukraine:

- the urgency to address the systemic problem identified in the judgment of the European Court of Human Rights “Burmych and others v. Ukraine” regarding the implementation of decisions of national courts in Ukraine;
- the need to establish a legal mechanism to ensure the execution of decisions of the Constitutional Court of Ukraine – including decisions regarding the restoration of the rights of certain categories of citizens to benefits, as well as to receiving a pension in case of going abroad;
- the importance to address legislative gaps affecting the enjoyment of human rights and in particular the right to protection against discriminatory acts – and in particular: (1) providing liability for committing discriminatory acts and spreading hate speech; (2) providing liability for crimes committed on the grounds of intolerance such as race, skin colour, religious beliefs, sexual orientation, transsexuality, disability, language; (3) ensure the ratification of the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence (the Istanbul Convention).

Independence and effectiveness of the NHRIs

International accreditation status and SCA recommendations

The Ukrainian NHRI was [reaccredited](#) with A status in October 2019. While acknowledging the proposed amendments to the establishing law, the SCA encouraged the NHRI to continue to advocate for a broader and more transparent selection and appointment process, as well as clearer limits to the terms of office of the decision-making body of the NHRI. Similarly, the SCA welcome the increase in funding to the NHRI but encourages the NHRI to keep advocating for the provision of adequate resources. Finally, the SCA encouraged the NHRI to strengthen its cooperation with civil society organizations.

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

Positive developments can be reported as regards funding supporting the national preventive mechanism (hereinafter - NPM).

The Law of Ukraine "On the State Budget of Ukraine for 2019" provided for the first time funds within the State Budget - in the amount of 2.6 million UAH - to support the NPM. This was one of the recommendations addressed to Ukraine by the UN Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (SPT).

In accordance with the Law of Ukraine "On the State Budget of Ukraine for 2020", in the year 2020 the funding supports the NPM in ensuring independent and effective monitoring visits for the observance of human rights in places of detention.

The Order of the Cabinet of Ministers of Ukraine of February 26, 2020 № 157 "On Amendments to the Procedure for Using Funds provided in the State Budget for Measures to Implement the National Preventive Mechanism" establishes the procedure and order for using funds allocated for the implementation of the national preventive mechanism, in particular for:

- conducting monitoring visits to places of detention in order to verify compliance with the human rights;
- involvement of experts, researchers, translators in monitoring visits;
- organization and holding of trainings and seminars for employees of the Department, regional coordinators, public monitors;
- conducting foreign business trips, to participate in international conferences and exchange experiences with representatives of the national preventive mechanism in different countries;
- purchase of protective equipment and facilities for more effective monitoring visits to places of detention.

References

- <https://zakon.rada.gov.ua/laws/show/157-2020-%D0%BF>

Human rights defenders and civil society space

As of today, Ukraine has no law that regulates the procedure to exercise of the freedom of peaceful assembly, although. However, at the same time, a provision Article 185.1 of the Code of Ukraine on Administrative Offences, Article 185.1, allows to sanction violations of public order in the exercise of this freedom. Although, court decisions under this article have so far been made in favour of activists, the Ukrainian Parliament Commissioner for Human Rights, in its Annual Report on the state of observance and protection of human and civil rights and freedoms for 2019, emphasised the need to repeal the provisions of Article 185.1 of the Code of Ukraine on Administrative Offences for reasons of legal certainty.

An analysis of journalists' appeals regarding an illegal denial of access to information indicates problems in the implementation of the pre-trial investigation by the National Police of Ukraine (part one of Article 171 of the Criminal Code of Ukraine), which hinders the implementation of professional activities.

The results of the parliamentary control over the observance of the right of access to public information attested the effectiveness of administrative measures against authorities holding information (such as public authorities, other state bodies, local governments, etc. - pursuant to Article 13 of the Law of Ukraine "On access to the Public Information") which violate the right to access information by unduly refusing disclosure; as well as of the criminalisation of the act of failure to provide information to the journalist deprives this person of the right to effective protection in order to quickly ensure access to the necessary information. The presence of an ineffective pre-trial investigation under part one of Article 171 of the Criminal Code of Ukraine leads to non-compliance with the requirements of Articles 6 and 10 of the Convention for the Protection of Human Rights and Fundamental Freedoms.

In view of the above, the Commissioner made recommendations to the Parliament proposal on the reduction of the state interference in the professional activities of journalists, on abolition of criminal liability for violations of journalists' rights to information and on expansion of administrative sanctions of Article 212-3 of the Code of Ukraine on Administrative Offences for obstructing lawful professional activities of journalists.

To improve the procedure of bringing to administrative responsibility for violation of information rights, the Commissioner submitted proposals to the Parliament within the elaboration of the draft Law of Ukraine on Amendments to Certain Legislative Acts of

Ukraine, in particular, to the Code of Ukraine on Administrative Offenses of 25.03.2020 registration № 3265.

Checks and balances

The Commissioner's monitoring revealed a longstanding lack of enforcement of court decisions of courts of various jurisdictions in Ukraine.

The government has not taken measures to enforce the decision of the European Court of Human Rights "Burmich and others v. Ukraine", combining in one case more than 12000 complaints of citizens filed against Ukraine regarding non-enforcement of court decisions in Ukraine. Laws to address these issues have not been adopted. In February 2020, the Commissioner submitted the next act of response to the central executive authority (Ministry of Justice of Ukraine) regarding the adoption of regulatory documents to ensure the implementation of this decision of the European Court of Human Rights.

Since 2009, the Constitutional Court decision has not been executed. This requires the settlement at the legislative level of the issue of pension payment to citizens of Ukraine permanently residing abroad. In November 2019, the Commissioner submitted an act of response to the Government of Ukraine to take measures to ensure the realization of the right of citizens to a pension without discrimination on the basis of residence.

The decisions of the Constitutional Court of Ukraine on the restoration of benefits to citizens affected by the Chernobyl disaster and to war veterans and their families are equally not being implemented. Bodies of social protection of the population continue to apply the norms of legislation, which have been recognized as unconstitutional. As a result, citizens do not receive their benefits. The reason is the lack of a mechanism for the enforcement of decisions of the Constitutional Court of Ukraine (CCU). Laws to address these issues have not been adopted. In November 2019, the response act has been submitted to the central executive authority (Ministry of Social Policy of Ukraine) to take measures to renew the right of citizens to benefits in accordance with the indicated decisions of the Constitutional Court. The issue remains unresolved.

There are widespread claims of non-fulfilment by the Pension Fund of Ukraine of court decisions on the restoration of individual citizens' rights in the field of pension provision and as a consequence of their failure to receive timely pension payments. The reasons are not taking into account the provisions of the motivational part of such decisions. The Commissioners submitted acts of response to the central executive bodies (the Ministry of Social Policy of Ukraine, the Pension Fund of Ukraine) for each the revealed fact. Local executive bodies and citizens have no way to predict their actions and behaviour in

the field of social protection and pensions. The reason is accelerated legislative process in these areas, as between the adoption of the legal act and entry into force of its provisions is not sufficient time period. As a result of this situation, the right of citizens to timely receive social benefits and privileges is violated

The above-mentioned problematic issues are highlighted in the Ukrainian Parliament Commissioner's for Human Rights Annual Report on the state of observance and protection of human and civil rights and freedoms in Ukraine for 2019.

References

- Ukrainian Parliament Commissioner's for Human Rights Annual report on the state of observance and protection of human and civil rights and freedoms in Ukraine for 2019
- <http://www.ombudsman.gov.ua/ua/page/secretariat/docs/presentations/&page=4>

Functioning of justice systems

When monitoring the observance of procedural rights, the Commissioner has identified the problem of non-provision of legal assistance of an interpreter at the trial stage to persons, who did not speak at all or do not speak enough the state language, even despite the existing regulatory framework.

The relevant response letter has been submitted by the Commissioner to the central executive body, responsible for functioning of the system of free secondary legal aid in Ukraine, to eliminate obstacles to the right to a fair trial to obtain legal aid translator. Based on the results of consideration of the said response act, a resolution of the Cabinet of Ministers of Ukraine on regulation of payment for translation services was adopted at the initiative of the Ministry of Justice.

However, the issues of maintaining (filling) the register of translators and the mechanism of their involvement in criminal proceedings remained unresolved. Therefore, the head of the central executive body, whose tasks include ensuring the functioning of the system of free secondary legal aid in Ukraine, was reiterated the need to take appropriate measures to address this issue.

At the end of 2019, the Ministry of Justice set up a working group to develop a proposal for the legislative settlement of certain issues regarding the definition of requirements for translators and the mechanism for their involvement in pre-trial investigation and trial.

To date, to regulate the issue of payment for services provided by translators (sign language interpreters), who are involved in providing free secondary legal aid in the prescribed manner, without applying the appropriate public procurement procedure, a draft law has been developed to simplify procurement of the services of interpreters involved in provision of free secondary legal aid in the prescribed manner. The said draft law will be submitted to the Verkhovna Rada of Ukraine after its approval by the interested bodies. Its adoption will improve the quality of secondary legal aid and solving the problem.

The problem of observance of the right to an effective remedy also deserves attention, in particular as regards the lack of timely notification of the Free Legal Aid centres about the detention of a person, which impairs the access to a lawyer. According to the findings of the Commissioner's monitoring, officials of certain bodies of the National Police did not comply with the requirements of informing the centres for free secondary legal aid about cases of detention, administrative arrest or detention.

The Commissioner sent a number of acts of response to both the Minister of Internal Affairs of Ukraine and the Prosecutor's Office to eliminate violations of procedural human rights to protection during detention. Based on the results of consideration of the above-mentioned acts of response, the Ministry of Internal Affairs and the Prosecutor's Office conducted official investigations and brought the perpetrators to disciplinary responsibility.

Issues concerning access to legal assistance by persons deprived of liberty was also identified during the NPM's monitoring visits to places of detention in 2018-2019, which found out that in most institutions, detainees were unaware of their right to free professional legal assistance. This makes it impossible to lodge a complaint with the authorities in cases of torture and ill-treatment. Based on the results of the monitoring visit, a report was prepared outlining the essence of violations, provided relevant recommendations and response acts. The report was sent to the executive authorities, which in accordance with the established powers have the right and competence to eliminate identified violations. Violations of the right of detainees to access legal assistance are also highlighted in the annual reports of the Ukrainian Parliament Commissioner for Human Rights for 2018-2019.

In 2019, there were still reports of failure to consider citizens' reports of crimes and consequently enter information into the Unified Register of Pre-trial Investigations. Citizen also pointed to the failure or refusal by authorities to provide extracts from the Unified Register of Pre-trial Investigations, to disclose information about crimes or about decisions to close or closing criminal proceedings. Following up to complaints received by the

Commissioner about the failure or refusal by the authorities to provide information about the consideration of reports of crimes, ongoing investigations or termination of criminal proceedings, as included in the Unified Register of Pre-trial Investigations, the Commissioner addressed relevant response acts to the Prosecutor's Office for urging it to initiate inspections of the legality of decisions concerning on the consideration of applications and reports of criminal offences and disclosure of relevant information. As a result, the information on 15 cases, was entered in Unified Register of Pre-trial Investigations.

In total, as a result of established violations of procedural rights, the Commissioner sent 738 response acts to state bodies, including 111 to the National Police of Ukraine, 406 to the prosecutor's office, 73 to the State Bureau of Investigation, and 148 to the judiciary. During the participation in 101 court hearings the observance of procedural rights during the hearings was monitored.

Another problem is the non-enforcement of court decisions in Ukraine, which is systemic in nature. During 2019, 278 applicants appealed to the Commissioner claiming the impossibility of enforcing a court decision. As in the past, this situation is the result of many economic and legislative factors. Following the consideration of these complaints, the Commissioner addressed to the Minister of Justice of Ukraine a response act urging it to address the issue, which amounts to a violation of the right to a fair trial within a reasonable time established by Article 6 of the Convention for the Protection of Human Rights and Fundamental Freedoms.

References

- Ukrainian Parliament Commissioner's for Human Rights Annual report on the state of observance and protection of human and civil rights and freedoms in Ukraine for 2019
- <http://www.ombudsman.gov.ua/ua/page/secretariat/docs/presentations/&page=4>

Media pluralism

During the monitoring of the right to freedom of expression and respect for guarantees of professional journalism, the Commissioner has in recent years identified various limitations of media pluralism such as inefficiency of law enforcement agencies in investigating cases of pressure on journalists' freedom of speech, including in the temporarily occupied territories of Donetsk and Luhansk regions, the Autonomous Republic of Crimea and the city of Sevastopol.

In particular, in July 2016 continued pre-trial investigation into the murder of journalist Pavel Sheremet. The Commissioner is concerned about delaying the investigation of this and other high-profile crimes and repeatedly appealed to the law enforcement authorities to ensure the implementation of effective investigation and respect for fundamental human and civil rights.

On April 29, 2020, law enforcement officers inflicted bodily injuries on journalist Bohdan Kutepov while performing his professional duties and damaged the camera equipment of the Hromadske UA TV channel. The Commissioner addressed the leadership of the National Police with a demand to conduct a prompt and impartial investigation.

An analysis of the state of observance of the right to freedom of expression in the temporarily occupied territories shows that the work of independent journalists is almost impossible due to cases of pressure, in particular, attacks, torture, detention and seizure of property, etc.

On April 19, 2016, FSB officers detained a Crimean journalist, the author of "Crimea. Realities" project Mykola Semena. On the occupied peninsula, he was accused of publicly calling for a violation of Russia's territorial integrity, detained and sentenced to four years in prison. Thanks to the measures taken by the Commissioner, in January 2020 the journalist got a resolution on early termination of probation and removal of his criminal record. The activist is currently on the mainland of Ukraine and undergoing treatment. At least 18 Ukrainian information sites and 2 social networks are completely blocked on the territory of the occupied peninsula. On these issues, the Commissioner engages with the Commissioner for Human Rights of the Russian Federation, including requests to assist in the restoration of violated rights of Ukrainian citizens.

The above-mentioned problematic issues are highlighted in the Annual Report of the Ukrainian Parliament Commissioner for Human Rights for 2019. In particular, it is stated that interference in the professional activities of journalists violates the guarantees of journalistic activity, which stipulate that a journalist has the right not to disclose the source of information or information that allows establishing the source of information, except when required by a court decision under the law.

In-focus section on COVID-19 measures

Most significant impacts of measures taken in response to the COVID-19 outbreak on the rule of law in the country

In the context of the COVID-19 outbreak and the measures adopted to respond to it, the Commissioner:

- participates in the meetings of the Committees of the Verkhovna Rada of Ukraine and the Government, which consider issues related to combating the spread of acute respiratory disease COVID-19 caused by the coronavirus SARS-CoV-2 in Ukraine;
- provides proposals and recommendations, sets out the position on draft regulations aimed at resolving problematic issues in various spheres of public life of Ukraine, sent to the Commissioner from the central executive authorities for considering and for approval;
- conducts remote monitoring of official websites of the legislature, central, local executive and local governments and notifications of citizens on the observance of social rights in quarantine and emergency, introduced in connection with the spread of acute respiratory disease in Ukraine COVID-19 caused by coronavirus SARS-CoV-2.

Also, in accordance with the recommendations of the UN Subcommittee on Prevention of Torture and the CPT, the Commissioners continued their activities to conduct targeted monitoring visits to the national preventive mechanism to verify respect for human rights in quarantine measures related to the COVID-19 coronavirus epidemic.

Recommendations for monitoring visits to places of detention and observation in conditions of quarantine measures related to the coronavirus epidemic COVID-19 have been developed and implemented in practice. During the period of quarantine in Ukraine, until June 22, 2020, representatives of the Secretariat of the Commissioner conducted 237 targeted monitoring visits to places of detention, during which a number of human rights violations were revealed.

Under the chairmanship of the Commissioner, there were held working meetings with representatives of central executive bodies responsible for the legal regulation of places of detention. On April 2-3, 2020, meetings were held in the Office of the Commissioner with representatives of the relevant ministries and other central authorities in order to conduct anti-epidemic measures in places of detention.

The situation with the spread of acute respiratory disease COVID-19 and the resulting quarantine measures, led to the restriction of a number of rights and freedoms of citizens, in particular:

Ensuring the right to social protection

The monitoring established that in March 2020 amendments were made to the regulations, which stipulate that if a person with a disability has missed the re-examination period by a medical and social expert commission during the quarantine period, the payment of a pension or state disability benefit is not suspended until expiration of restrictive measures imposed for the period of quarantine, followed by recalculation of the amount of these payments.

Reports received from citizens in April 2020 testified that these norms are not complied with in practice by the territorial bodies of the Pension Fund of Ukraine.

In April 2020, the Commissioner submitted an act of response to the central executive body (Pension Fund of Ukraine) to ensure compliance with the legislation, as well as to ensure the timely appointment (recalculation) of pensions during the implementation of quarantine measures.

According to the monitoring in April 2020, 90 official websites of local executive bodies and local bodies, there have been found violations of the rights of privileged categories of citizens to free travel in 22 regions of Ukraine by 7 local governments. In April 2020, the Commissioners submitted acts of response to the heads of these bodies to take urgent measures to restore and ensure the realization of the right of citizens to preferential travel. As a result of the Commissioner's intervention, the rights of citizens to preferential travel in Zhytomyr city and Voznesensk city (Mykolaiv region) were restored.

According to the report, in April 2020, a volunteer organization on the accumulation of homeless people in various parts of the capital of Ukraine, the Commissioner monitored the provision of their right to receive social services in quarantine.

In April 2020, the Commissioner submitted an act of response to the Head of the Kyiv City State Administration, the Mayor of Kyiv regarding the measures taken to organize and provide social services to homeless persons in the relevant territory.

Ensuring the right to health care

The Commissioner's monitoring revealed various issues impacting on the right to healthcare, including:

- restrictions on citizens' access to medical services, especially at the secondary level of medical care under quarantine and medical reform;
- inadequate provision of privileged categories of citizens with free medicines and medical devices;
- inability to undergo vital medical procedures due to the problem of transporting patients to and from health care facilities;
- non-receipt of services of medical and social expert commissions;
- failure to provide proper maintenance and medical support in specialized institutions for the organization of observation (isolation).

In April 2020, the Commissioner submitted acts of response to the central executive bodies on the state of financial support of health care facilities and medical care, medicines and medical devices under quarantine and medical reform, on ensuring the provision of social transportation services to obtain vital medical supplies procedures and settlement of the situation with examinations by the medical and social expert commission after the end of quarantine and to the regional state administration to take measures to ensure the organization of food and medical care.

Ensuring the right to education

The Commissioner's monitoring revealed various measures impacting on the right to education, including:

- the Government's ban on visiting educational institutions by its applicants;
- introduction by the central executive body (Ministry of Education and Science of Ukraine) of changing the form of education (full-time, part-time, part-time to distance (online) form) for all educational institutions in connection with the introduction of restrictive measures by the Government;
- restricting the rights of children in difficult life circumstances to access education in the proposed distance (online) form.

In April 2020, the Commissioner submitted the response acts:

- to the central body of executive power (Ministry of Education and Science of Ukraine) on the accessibility of education for persons in difficult life circumstances;
- to 25 local executive bodies in the field of education and to 7 higher education institutions for the realization of the right of man and citizen to equal access to professional (vocational), professional and higher education and ensuring the implementation of educational programs in quarantine.

Ensuring the right to work

The Commissioner's monitoring revealed various issues impacting on the right to work, including:

- an increase in the number of people fired during quarantine;
- the restrictive measures imposed by the Government have led to changes in working hours and working conditions for workers;
- the introduction of a moratorium on planned and unscheduled measures of state supervision (control) on labour issues deprived citizens of the right to use such means of protection of violated labour rights as the employer's inspection by territorial bodies of state power on labour issues;
- an increase in the number of people applying to territorial bodies of state power for unemployment benefits and employment assistance.

Safe working conditions have not been created for medical workers (there are not enough special personal protective equipment to work with patients with infectious diseases).

In April 2020, the Commissioner submitted response acts to the Government, the Head of the Zhytomyr Regional State Administration and the Kyiv City Mayor. In order to increase the legal awareness of citizens about current changes in labour legislation, labour rights in quarantine, as well as actions in case of dismissal, an explanation of the labour rights of citizens in quarantine. The Government adopted an Order № 306 "On approval of the procedure for providing and refunding funds aimed at financing partial unemployment benefits for the period of quarantine implemented by the Cabinet of Ministers of Ukraine to prevent the spread of acute respiratory disease COVID-19 caused by SAR-CoV-2" dated 22.04.2020. This Procedure provides a mechanism to support employers in connection with the forced suspension (reduction) of employees during the quarantine period, which allows you to save jobs, reduce the burden on employers and prevent rising unemployment.

Ensuring the right to culture

Monitoring of the official website of the central executive body (Ministry of Culture and Information Policy of Ukraine) and 36 websites of local executive bodies in the field of culture and local governments on the organization of cultural services in online format, revealed a low level of promotion and development of innovative forms of cultural services in quarantine and restrictive measures.

In April 2020, the Commissioner submitted an act of response to the central executive body (Ministry of Culture and Information Policy of Ukraine) regarding the response measures to expand cultural online services for citizens.

Ensuring the rights of children

In connection with the COVID-19 outbreak, one of the most important issues has been ensuring the rights of children whose families are in difficult life circumstances. According to information received by the Secretariat of the Ukrainian Parliament Commissioner for Human Rights, due to the implementation of quarantine measures in Ukraine, more than 40,000 children from boarding schools have returned to their parents, most of them are in difficult life circumstances. Those families need to have social support and targeted financial support.

However, due to poor coordination in the work of the relevant governmental bodies, bodies responsible for education and educational institutions did not inform the guardianship authorities and the children's service about the return of these children to their parents' places of residence.

This situation is significantly complicated by the fact that in the conditions of decentralization of power at the local level, social services and children's services are not formed or significantly understaffed.

In order to resolve this situation, the Commissioner held a meeting with representatives of relevant ministries and the UNICEF Office in Ukraine. During the meeting the parties discussed the topic and it was clarified that currently it is impossible to ensure the quality and effectiveness of social support for families and monitoring the rights of children in families due to the lack of children's services and social workers.

Following the discussion, the Commissioner sent a letter to the Prime Minister of Ukraine with a request to introduce a subvention from the State Budget for the positions of social work specialists, holding relevant meetings with representatives of ministries and local authorities to ensure coordination of inspections of each family, in which children were returned from boarding school with the aim to create a safe environment for the child in the family, to ensure coordination and control of ministries and local state administrators actions to protect the rights of vulnerable children.

The letter was also sent to the UNICEF Office in Ukraine with a request to consider assistance to the Ministry of Social Policy of Ukraine, as well as to regional state

administrations in providing means of protection to workers that monitoring families with aim to determine their needs, providing assistance to these families and, if possible, providing humanitarian support to families with children who have returned from boarding schools in quarantine and faced difficult life circumstances.

Taking into consideration a significant increase of domestic violence cases which also affects children all over the world and in Ukraine as well, the official website of the Commissioner published information for children on how to get help in case of domestic violence.

The recommendations of UN human rights experts on strengthening the protection of children from violence, human trafficking, sexual violence and exploitation in the context of the COVID-19 virus pandemic had been sent to the Ministry of the Interior of Ukraine and the Ministry of Social Policy of Ukraine.

Increase of gender-based and domestic violence cases

Quarantine measures, including self-isolation, led to increase of domestic violence. According to the information from “La Strada Ukraine”, which protects the rights of women and children, the organization's call centre recorded 2,051 appeals in the first month of quarantine, while in January and February this figure reached 1273. The vast majority of appeals were from women. The Ministry of Internal Affairs of Ukraine has also reported about increasing of domestic violence cases in the context of the coronavirus.

Due to the increase of domestic violence cases during quarantine, the Commissioner on the official website provided clarifications with contacts of institutions that qualified to give assistance in domestic violence case.

With the spread of disease COVID-19 in Ukraine, there is a deterioration of situation concerning women from vulnerable groups; in particular, there is a risk of women and girls illegal activities due to lack of employment opportunities.

The Commissioner was sent a response act to the National Police of Ukraine with a request to take all possible measures to prevent and combat cybercrime related to violations of the rights of minors, including sexual exploitation and fraud against them, as well as violent crimes against vulnerable groups.

Restrictions of the right to freedom of movement

On April 23, 2020, the Commissioner received information about intention of the mayor of the Ivano-Frankivsk city to forcibly relocate the Roma nationals to another region due to the threat of the spread of coronavirus infection.

The Commissioner sent a response act to the city mayor to prevent incitement to national hatred and violation of Roma rights to freedom of movement.

A response act was also sent to law enforcement agencies regarding the proper investigation of a criminal offense initiated on the fact of inciting national hatred against Roma nationals.

The Commissioner also receives numerous appeals from citizens of Ukraine, who are unable to return home due to restrictions established at the checkpoints between the temporarily occupied territories of Ukraine and the territories in Donetsk and Luhansk regions.

In this regard, the Commissioner made a request to the Head of the Joint Forces Operation to provide an opportunity for citizens to cross the contact line with humanitarian purposes.

Observance of the right to return to the homeland for citizens of Ukraine

About 9,000 Ukrainian citizens are currently abroad, they do not have the opportunity to return home due to restrictive measures introduced in foreign countries.

In this regard, the Commissioner sent a letter to the Minister of Foreign Affairs of Ukraine. In response, it was confirmed that the Ministry of Foreign Affairs of Ukraine continues to take measures for returning out citizens to Ukraine.

The Secretariat of the Commissioner at the requests of citizens of Ukraine abroad also provides clarification on possibility to obtain consular and legal assistance from diplomatic and consular missions of Ukraine.

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

At the present moment, there are some objective complications in the work of the Secretariat of the Commissioner due to absence of possibility for timely processing of some appeals or complaints in opened proceedings, in particular in those areas where the main activities of the subjects of control are limited due to quarantine.

First of all, these are no answers from the subjects of control to the inquiries made by the Secretariat of the Commissioner (even to the repeated inquiries) in the frames of the

proceedings (that is probably caused by actual absence of employees of the subject at place of work).

In addition, the current legislation provides for the procedure for drawing up reports on administrative offenses in the field of personal data protection, does not provide a possibility of drawing them up without the direct participation of the offender (in particular due to the impossibility of handing a second copy of the protocol).

Another problematic issue is an absence of logistic for arrangement of monitoring visits to places of detention in remote settlements, even despite the fact that the staff of the Secretariat of the Commissioner has all necessary protection (masks, gloves, gowns, etc.).

In order to monitor the observance of the rights of children who due to the quarantine have returned from boarding schools to their families, the Commissioner collects weekly information from the Ministry of Social Policy of Ukraine on monitoring social rights of such children in families, increasing or decreasing number of families in difficult life circumstances, discovering cases of taking of children from their parents in connection with the threat to life and health of the child.

In order to fulfil the powers provided by law, the Commissioner exercised remote work for its employees and practiced holding online workshops, round tables, seminars, etc. The official website contains information on working hours of the Secretariat of the Commissioner and order of reception of applicants under COVID-19.

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Annex I – Reporting questionnaire/grid

| Topic | Questions |
|-------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Independence and effectiveness of the NHRI | <p>1. Did significant changes take place in the environment in which your NHRI operates that are relevant for the independent and effective fulfilment of your mandate?</p> <p>2. Did the national regulatory framework applicable to your NHRI change, since the last review by the SCA?</p> <p>Please provide reference to relevant sources.</p> |
| Human rights defenders and civil society space | <p>3. Has your 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? <i>(eg impacting on freedom of association, freedom of assembly, freedom of expression, and access to information, attacks on human rights defenders, their work and environment)</i></p> <p>Did your NHRI take any particular action in this regard?</p> <p>Please provide reference to relevant sources.</p> |
| Checks and balances | <p>4. Has your human rights monitoring and reporting found any evidence of laws, processes and practices that erode the separation of powers, participation of rights holders, and the accountability of State authorities? <i>(eg expedited legislative processes, lack of scrutiny or consultation, lack of judicial or constitutional review, non-execution of judgments, non-publication of administrative decisions, increased executive powers or insufficient parliamentary oversight)</i></p> <p>Did your NHRI take any particular action in this regard?</p> <p>Please provide reference to relevant sources.</p> |
| Functioning of justice systems | <p>5. Has your human rights monitoring and reporting found evidence of any laws, measures or practices that restricts access to justice? <i>(eg independence and impartiality of the courts, effective judicial protection, access to (free) legal aid, fair trial standards, execution of judgments)</i></p> <p>Did your NHRI take any particular action in this regard?</p> <p>Please provide reference to relevant sources.</p> |

| | |
|--------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Media pluralism | <p>6. Has your human rights monitoring and reporting found any evidence of laws, measures or practices that could restrict a free and pluralist media environment? <i>(eg insufficient protection of journalists' independence, adequacy of resources, inadequate investigations on attacks on journalists)</i></p> <p>Did your NHRI take any particular action in this regard?</p> <p>Please provide reference to relevant sources.</p> |
| Corruption | <p>7. Has your human rights monitoring and reporting found any evidence of state measures or practices relating to corruption, or significant inaction in response to alleged corruption, and which could have an impact on human rights? <i>(eg protection of whistleblowers)</i></p> <p>Did your NHRI take any particular action in this regard?</p> <p>Please provide reference to relevant sources:</p> |
| COVID-19 measures | <p>8. What have been the most significant impacts of measures taken to in response to the COVID-19 outbreak on the rule of law in your country? <i>(eg emergency measures not time-limited, lack of access to the courts, measures that are not legitimate or proportionate to the threats posed)</i></p> <p>Did your NHRI take any particular action in this regard?</p> <p>Please provide reference to relevant sources.</p> <p>9. What are the most important challenges due to COVID-19 for your NHRI's functioning? <i>(eg reduced monitoring capacity, reduced delivery of services to citizens)</i></p> <p>What are the most important measures taken by your NHRI to continue the fulfilment of your mandate in the COVID-19 context?</p> <p>Please provide reference to relevant sources.</p> |
| Other relevant areas | <p>10. Are there any other relevant developments or issues you would like to report on, which have impact on the national rule of law environment?</p> <p>Please provide reference to relevant sources.</p> |
| Suggestions for support | <p>11. Do you have any suggestions for support from regional mechanisms that could help the rule of law situation in your country, as reported above?</p> <p>12. In particular, do you have any suggestions for support from ENNHRI and/ or regional mechanisms that would help address any negative trends impacting on your NHRI's ability to fulfil its mandate in compliance with the Paris Principles? <i>(eg enabling environment, regulations, threats)</i></p> |

Annex II – List and contacts of contributing NHRIs

| Country | Institution | Website | Contact |
|------------------------|----------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------|
| Albania | People's Advocate of Albania | www.avokatipopullit.gov.al | ap@avokatipopullit.gov.al |
| Armenia | Human Rights Defender of the Republic of Armenia | www.ombuds.am | ombuds@ombuds.am |
| Austria | Austrian Ombudsman Board | www.avokatipopullit.gov.al | post@volksanwaltschaft.gv.at |
| Azerbaijan | Azerbaijan Ombudsman Institute | www.ombudsman.gov.az | ombudsman@ombudsman.gov.az |
| | Unia | www.unia.be | info@unia.be |
| Belgium | Myria | www.myria.be | myria@myria.be |
| | Combat Poverty Service | www.combatpoverty.be | combatpoverty@cntr.be |
| Bosnia and Herzegovina | Human Rights Ombudsman of Bosnia and Herzegovina | www.ombudsmen.gov.ba | bl.ombudsmen@ombudsmen.gov.ba |
| Bulgaria | Ombudsman of the Republic of Bulgaria | www.ombudsman.bg | priemna@ombudsman.bg |
| Croatia | Ombudswoman of the Republic of Croatia | www.ombudsman.hr | info@ombudsman.hr |
| Cyprus | Office of the Commissioner for Administration and the Protection of Human Rights (Ombudsman) | www.ombudsman.gov.cy | commissioner@dataprotection.gov.cy |
| Czech Republic | Public Defender of Rights | www.ochrance.cz | www.ochrance.cz/kontakty |
| Denmark | Danish Institute for Human Rights | www.humanrights.dk | info@humanrights.dk |
| Estonia | Office of the Chancellor for Justice | www.oiguskantsler.ee | info@oiguskantsler.ee |
| Finland | Finnish Human Rights Centre Parliamentary Ombudsman | www.ihmisoikeuskeskus.fi www.oikeusasiamies.fi | info@humanrightscentre.fi ombudsman@parliament.fi |
| France | French National Consultative Commission on Human Rights | www.cncdh.fr | www.cncdh.fr/fr/contact |
| Georgia | Public Defender (Ombudsman) of Georgia | www.ombudsman.ge | info@ombudsman.ge |
| Germany | German Institute for Human Rights | www.institut-fuer-menschenrechte.de | info@institut-fuer-menschenrechte.de |
| Great Britain | Equality and Human Rights Commission | www.equalityhumanrights.com | international@equalityhumanrights.com |
| Greece | Greek National Commission for Human Rights | www.nchr.gr | info@nchr.gr |
| Hungary | Office of the Commissioner for Fundamental Rights | www.ajbh.hu | hungarian.ombudsman@ajbh.hu |
| Ireland | Irish Human Rights and Equality Commission | www.ihrec.ie | info@ihrec.ie |
| Italy | No NHRI | | |

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|---------------------------|------------------------------------------------------------|------------------------------------------------------------------------------|------------------------------------------------------------------------------------|
| Kosovo* | Ombudsperson Institution of Kosovo | www.oik-rks.org/ | info@ombudspersonkosovo.org |
| Latvia | Ombudsman's Office of the Republic of Latvia | www.tiesibsargs.lv | tiesibsargs@tiesibsargs.lv |
| Liechtenstein | Liechtenstein Human Rights Association | www.menschenrechte.li | info@vmr.li |
| Lithuania | The Seimas Ombudsmen's Office of the Republic of Lithuania | www.lrski.lt | ombuds@lrski.lt |
| Luxembourg | National Human Rights Commission of Luxembourg | www.ccdh.lu | info@ccdh.public.lu |
| Malta | No NHRI | | |
| Moldova | People's Advocate Office | www.ombudsman.md | ombudsman@ombudsman.md |
| Montenegro | Protector of Human Rights and Freedoms of Montenegro | www.ombudsman.co.me | ombudsman@t-com.me |
| Netherlands | The Netherlands Institute for Human Rights | www.mensenrechten.nl | info@mensenrechten.nl |
| North Macedonia | Ombudsman | ombudsman.mk | contact@ombudsman.mk |
| Northern Ireland | Northern Ireland Human Rights Commission | www.nihrc.org | info@nihrc.org |
| Norway | Norwegian National Human Rights Institution | www.nhri.no | info@nhri.no |
| Poland | Office of the Commissioner for Human Rights | www.rpo.gov.pl | biuro@rzeczniczka@brpo.gov.pl |
| Portugal | Portuguese Ombudsman | www.provedor-jus.pt | provedor@provedor-jus.pt |
| Romania | Romanian Institute for Human Rights | www.irdo.ro | office@irdo.ro |
| Russian Federation | Commissioner for Human Rights of the Russian Federation | eng.ombudsmanrf.org | doc@rightsrf.ru |
| Scotland | Scottish Human Rights Commission | www.scottishhumanrights.com | hello@scottishhumanrights.com |
| Serbia | Protector of Citizens of the Republic of Serbia | www.ombudsman.rs | zastitnik@zastitnik.rs |
| Slovakia | Slovak National Centre for Human Rights | www.snslp.sk | info@snslp.sk |
| Slovenia | Human Rights Ombudsman of the Republic of Slovenia | www.varuh-rs.si | info@varuh-rs.si |
| Spain | Ombudsman of Spain | www.defensordelpueblo.es | registro@defensordelpueblo.es |
| Sweden | The Swedish Equality Ombudsman | www.do.se | do@do.se |
| Turkey | Human Rights and Equality Institution of Turkey | www.tihek.gov.tr | tihek@tihek.gov.tr |
| Ukraine | Ukrainian Parliament Commissioner for Human Rights | www.ombudsman.gov.ua | international@ombudsman.gov.ua |

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