ENNHRI European Network of National Human Rights Institutions

State of the rule of law in the European Union

Reports from National Human Rights Institutions

2021

ENNHRI

Table of contents

Executive Summary **4**

Introduction **9**

Overview of trends and challenges **22**

Further strengthening EU and national rule of law and human rights frameworks through NHRIs' engagement: Key Recommendations to the EU **40**

Country reports **50**

- Austria 50
- Belgium 53
- Bulgaria 63
- Croatia 76
- Cyprus 90
- Czech Republic 105
- Denmark 113
- Estonia 121
- Finland 129
- France 144
- Germany 153
- Greece 163
- Hungary 194
- Ireland 214
- Italy 228
- Latvia 229
- Lithuania 233
- Luxembourg 234
- Malta 241
- Netherlands 242
- Poland 250

Portugal 262
Romania 271
Slovakia 292
Slovenia 316
Spain 343
Sweden 351
ANNEX I – Reporting questionnaire 352
ANNEX II – List and contacts of contributing NHRIs 358

ENNHRI

Executive Summary

NHRIs‘ contribution in monitoring and advancing the rule of law in the EU

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

The added value of NHRIs' collective engagement in efforts to promote and protect rule of law, human rights and democracy has been the object of increasing recognition by European Union (EU) and other regional actors over the past year. Both the European Commission's first annual rule of law report in the EU and the European Parliament's resolution on an 'EU Mechanism on Democracy, the Rule of Law and Fundamental Rights' stressed the important role of NHRIs as contributors and beneficiaries of these efforts and valued NHRIs' contributions through their European Network, ENNHRI. Such recognition rests on the crucial role of NHRIs as an essential component of the national systems of checks and balances and as key actors in the human rights enforcement chain, as also stressed in the new Strategy for the effective implementation of the Charter of Fundamental Rights of the EU.

ENNHRI and its member NHRIs have built on their increased recognition to further deepen their 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' joint rule of law reporting is one key aspect of such strategic engagement. Information on the extent to which NHRIs are able to independently and effectively fulfil their mandate is internationally recognized as an important rule of law indicator. Furthermore, reporting by NHRIs on the human rights situation on the ground – one of the core elements of their legal mandate – contributes to reflect a more accurate picture of the rule of law environment of each state, with a view to improving the rule of law situation across Europe.

In turn, NHRIs find that joint reporting has a positive impact on NHRIs' own work, from contributing to a strengthened focus on rule of law issues, to facilitating targeted initiatives, raising awareness and visibility of NHRIs' work, fostering mutual learning and the exchange of information and strengthening solidarity among NHRIs – each of which can have a positive impact on rule of law. Building on a first successful joint rule of law reporting experience last year, European NHRIs have again joined forces to compile their second collective report on the state of the rule of law in the EU.

This report, coordinated by ENNHRI, brings together the national rule of law reports which NHRIs in all countries of the EU drafted based on a common reporting structure, including consideration of NHRIs as rule of law indicator. It gives account of the independence and effectiveness of each NHRI – and of progress made towards their establishment, in those countries where such an institution has not yet been established. It also reflects 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.

Key findings

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

- Persisting issues affecting the effectiveness of NHRIs in many Member States, including limited mandates, lack of sufficient resources, poor implementation of NHRIs' recommendation by state authorities, flawed consultation practices and, for some, worrying threats to independence. Steps were taken in a number of Member States towards strengthening the mandates of NHRIs, while in some other Member States regulatory amendments lag behind or risk creating negative impacts for NHRIs;

- Severe challenges facing human rights defenders (HRDs) and civil society across the EU, due to laws and practices restricting CSOs' enabling space and operations, limited funding, gaps in access to and participation in decision-making, measures negatively impacting the exercise of freedom of expression and peaceful assembly, as well as threats and attacks, in particular targeting CSOs and HRDs working with minority groups. Against this background, many NHRIs are investing to further support and protect HRDs and CSOs;

- Weakened democratic checks and balances, that range from the widespread use of accelerated legislative procedures, lack of impact assessment and consultations and reduced parliamentary oversight. While these are mostly reported in connection to the emergency situation created by the COVID-19 pandemic, in a number of countries NHRIs are concerned about long-term impacts of weakened checks and balances on the rule of law framework and on human rights protection – especially in those countries where more generalised deficiencies exist as regards key safeguards such as judicial oversight, access to information and public participation. In this respect, several examples are given on how NHRIs exercise their role as elements of the national systems of checks and balances, although a number of them experience difficulties such as lack of cooperation and consultations, limited direct access to information held by state authorities and insufficient resources;

- Concerns over the functioning of justice systems, which include insufficient resources, deficiencies in the enforcement of judgments, excessive length of proceedings and challenges affecting the right to access to a court and to a fair trial. In certain Member States, NHRIs express concerns over the independence of the judiciary. In others, reforms are ongoing to improve the general functioning of justice systems. In this context, NHRIs continue to contribute to promote fair and effective justice, including by advising on reforms, dealing with complaints on the administration of justice and improving access to justice for vulnerable groups;

- Threats to media pluralism and freedom of expression reported by many NHRIs, which also concretise in threats, intimidation, harassment and hate speech targeting journalists, arbitrary arrests and prosecutions, abusive lawsuits and obstacles to reporting. In various Member States, the media sector reportedly suffers from concentration, political and economic pressure, while hate speech in the public discourse remains a concern. A number of NHRIs report being particularly active in this area, through monitoring and advising on reforms, litigation and public education initiatives.

- Limited progress in the fight against corruption, with some NHRIs engaging in advocating for reforms of the anti-corruption framework and actively contributing to the implementation of rules on whistle-blowers protection;

- Violations of human rights of migrants and ineffective responses to racist attacks as widespread human rights violations affecting the national rule of law environment in some countries.

The report also reflects NHRIs' views on the impacts of the COVID-19 outbreak and of the measures taken to address the pandemic on human rights and rule of law. Among the concerns most frequently raised, NHRIs point to the impact of emergency regimes on checks and balances, the particular challenges affecting the functioning of justice systems, the situation of individuals in detention, and the long-term impact of the crisis on vulnerable groups (among others, persons with disabilities, Roma, migrants and homeless people). Concerns over long term impacts are also expressed as regards access to education, shrinking civil society space, and reduced transparency and information. The crucial role of NHRIs in monitoring, assessing and addressing these challenges is exemplified in many concrete initiatives, which NHRIs carried out despite the difficult working conditions experienced during the pandemic.

Looking ahead: a continued engagement and strengthened impacts

By engaging in European rule of law monitoring mechanisms, NHRIs can help policy makers reach a more comprehensive and informed assessment of the situation in each state. This, in turn, can lead to stronger impacts of follow up action to drive progress in the national and European rule of law and human rights environment. With a view to making NHRIs' engagement even more impactful, this year's report contains a number of concrete and targeted recommendations addressed to the EU, including as regards:

- Prioritising the establishment and strengthening of fully independent and effective NHRIs in each EU Member State, including through a more systemic inclusion of NHRIs' independence and enabling space in European rule of law mechanisms and their follow-up initiatives;
- Enabling NHRIs in bridging European policies with national realities, including through enhanced participation in EU policy processes and providing effective support to NHRIs under threat;
- Supporting NHRIs in bridging national realities with European values, including by supporting NHRIs' recommendations and reinforcing the need for national actors to take into account the NHRIs' mandate, and facilitating engagement with national actors;
- Strengthening complementarities across policy initiatives and enhancing cooperation with other regional actors to address common concerns on the respect for rule of law, human rights and democracy in Europe.

ENNHRI and NHRIs will continue to invest in a regular and comprehensive monitoring and follow-up of developments related to the rule of law in the EU, as a means to making concrete progress in advancing rule of law, human rights and democracy across the region. This report, which is meant as a submission to feed the European Commission's 2021 report on the rule of law in the EU, will be followed by the publication of a more comprehensive report covering all ENNHRI's members across 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 support for the establishment and strengthening of NHRIs, a platform for collaboration and solidarity in addressing human rights challenges, and a common voice for NHRIs at the European level to enhance the promotion and protection of human rights, democracy and the rule of law in the region. ENNHRI is one of four regional NHRI networks, which together form GANHRI, the Global Alliance of NHRIs.

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

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

Irrespective of their specific mandate, NHRIs are unique in that their independence, pluralism, accountability and effectiveness is periodically assessed and subject to international accreditation. Such accreditation, performed by the UN Sub-Committee on Accreditation (SCA) of the Global Alliance of NHRIs (GANHRI), is reviewed by reference to each NHRI's compliance with the UN Paris Principles, international standards on the independent and effective functioning of NHRIs. This accreditation reinforces NHRIs as key interlocutors on the ground for rights holders, civil society organisations, state actors, and international bodies. More information on NHRI accreditation can be found here.

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

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

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

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

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

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

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

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

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

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

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

At the EU level, there also has been increasing attention on the side of EU institutions over threats facing NHRIs in EU member states. A telling example are the recent public

statements made by the European Commission's Vice-President for Transparency and Values, Věra Jourová, concerning the difficult situation of the Polish NHRI, which she said is an integral part of the Commission's dialogue with Poland on the respect for the rule of law.

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

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

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

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

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

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

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

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

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

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

Key principles

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

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

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

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

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

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

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

Considerations on methodology

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

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

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

A common reporting structure

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

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

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

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

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

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

- As regards the NHRI as an indicator of rule of law:
  - Progress in the establishment and/or accreditation of the NHRI;
  - Changes in the regulatory framework;
  - The extent to which state authorities ensure enabling space for the NHRI to independently and effectively carry out its work;
  - Significant changes in the NHRI's environment relevant for the independent and effective fulfilment of the NHRI's mandate;
- As regards human rights issues with relevance to the rule of law, evidence of problematic laws, measures or practices in five thematic areas:
  - Human rights defenders and civil society space;
  - Checks and balances;
  - Functioning of justice systems;
  - Media pluralism;
  - Corruption;
- The impact of measures adopted to address the COVID-19 pandemic, in terms of rule of law and human rights protection, long-term implications, as well as the impact on the NHRI's functioning;

- Any other pressing challenge in the field of human rights, or any other relevant developments or issues, having an impact on the national rule of law environment, relevant for the specific country situation.

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

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

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

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

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

Building on NHRIs' existing functions and expertise

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

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

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

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

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

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

Scope of this report

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

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

ENNHRI has members in all EU Member States except Malta and Italy, where no institution is currently intending to apply for accreditation as an NHRI, albeit developments on NHRI establishment in each state.

Despite ongoing challenges brought by the ongoing COVID-19 pandemic and the very short timeframe for reporting due to the tight deadline of the European Commission's public consultation within its annual rule of law review cycle, almost all EU NHRIs in a position to prepare a country submission did so. This report collates all such submissions, covering 23 out of the 25 EU countries where ENNHRI has a member institution, and information on the process to establish an NHRI in the two other EU Member States. 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 Lithuanian Seimas Ombudsman Office (A-status) did not contribute to the report. Contributing ENNHRI members thus include 17 of the 18 A-status NHRIs in the EU, 4 B-status NHRIs in the EU and 2 non-accredited institutions.[1] The list of contributing NHRIs is included in the overview table below.

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

ENNHRI

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

	EU Country	ENNHRI Member	NHRI establishment /accreditation status	Information provided on national situation per topic						
				NHRI Independence & effectiveness	HRDs and civil society space	Checks and balances	Justice systems	Media pluralism	Corruption	COVID-19
1	**Austria**	Austrian Ombudsman Board	B status (applying)							✓
2	**Belgium**	Interfederal Centre for Equal Opportunities and Opposition to Racism (Unia)	B status	✓	✓	✓	✓			✓
3	**Bulgaria**	Ombudsman of the Republic of Bulgaria	A status	✓	✓	✓	✓	✓	✓	✓
4	**Croatia**	Ombudswoman of the Republic of Croatia	A status	✓	✓	✓	✓	✓	✓	✓
5	**Cyprus**	Office of the Commissioner for Administration and the Protection of Human Rights (Ombudsman)	B status (applying)	✓	✓	✓	✓		✓	✓
6	**Czech Republic**	Public Defender of Rights	No status	✓	✓	✓	✓			✓
7	**Denmark**	The Danish Institute for Human Rights	A status	✓	✓	✓	✓			✓
8	**Estonia**	Office of the Chancellor for Justice	A status	✓	✓	✓	✓	✓	✓	✓

	EU Country	ENNHRI Member	NHRI establishment /accreditation status	Information provided on national situation per topic						
				NHRI Independence & effectiveness	HRDs and civil society space	Checks and balances	Justice systems	Media pluralism	Corruption	COVID-19
9	**Finland**[2]	Finnish Human Rights Centre Parliamentary Ombudsman	A status	✓	✓	✓	✓	✓		✓
10	**France**	French National Consultative Commission on Human Rights	A status		✓	✓	✓	✓	✓	✓
11	**Germany**	German Institute for Human Rights	A status	✓	✓	✓	✓	✓		✓
12	**Greece**	Greek National Commission for Human Rights	A status	✓	✓	✓	✓	✓	✓	✓
13	**Hungary**	Office of the Commissioner for Fundamental Rights	A status (deferred)	✓	✓	✓	✓	✓	✓	✓
14	**Ireland**	Irish Human Rights and Equality Commission	A status	✓	✓	✓	✓	✓		✓
15	**Italy**	No NHRI	No NHRI							
16	**Latvia**	Ombudsman's Office of the Republic of Latvia	A status	✓		✓				✓
17	**Lithuania**	The Seimas Ombudsmen's Office of the Republic of Lithuania	A status	No submission						
18	**Luxembourg**	National Human Rights Commission of Luxembourg	A status	✓	✓	✓	✓	✓		✓
19	**Malta**	No NHRI	No NHRI							

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

	EU Country	ENNHRI Member	NHRI establishment /accreditation status	Information provided on national situation per topic						
				NHRI Independence & effectiveness	HRDs and civil society space	Checks and balances	Justice systems	Media pluralism	Corruption	COVID-19
20	**Netherlands**	The Netherlands Institute for Human Rights	A status	✓	✓	✓	✓			✓
21	**Poland**	Office of the Commissioner for Human Rights	A status	✓	✓	✓	✓	✓	✓	✓
22	**Portugal**	Portuguese Ombudsman	A status	✓	✓	✓	✓	✓	✓	✓
23	**Romania**	Romanian Institute for Human Rights	No status (applying)	✓	✓	✓	✓	✓	✓	✓
24	**Slovakia**	Slovak National Centre for Human Rights	B status	✓	✓	✓	✓	✓	✓	✓
25	**Slovenia**	Human Rights Ombudsman of the Republic of Slovenia	A status	✓	✓	✓	✓	✓	✓	✓
26	**Spain**	Ombudsman of Spain	A status	✓	✓	✓		✓	✓	✓
27	**Sweden**	The Swedish Equality Ombudsman	B status	No submission, due to ongoing consultation to establish NHRI						

Overview of trends and challenges

Follow-up to the 2020 rule of law reporting

Initiatives by state authorities

Initiatives by state authorities to follow-up to the 2020 rule of law reporting, as reported by NHRIs, vary from country to country. NHRIs in a few countries pointed to **general follow-up actions.** These include, in Croatia, a draft proposal for a National Action Plan on the protection and promotion of human rights and the elimination of discrimination, which includes a chapter on rule of law that builds on the European Commission's 2020 rule of law report. An initiative based on **cooperation between different EU members states** was also reported in Croatia, where the Swedish embassy organised a rule of law and human rights focus discussion which the NHRI attended. In some countries, like Finland and Estonia, general discussions on rule of law issues were triggered by the authorities as part of the government's programme. **Sectoral follow-up initiatives** were reported for example in Cyprus in relation to the fight against corruption and in Spain through measures to counter disinformation. In other countries, including Bulgaria, the Czech Republic, Denmark, the Netherlands, Slovakia, Slovenia and Poland no particular follow-up initiatives were reported.

Initiatives by NHRIs

On their part, **NHRIs have taken general and sectoral measures** based on last year's rule of law reporting. **General dissemination** of the 2020 ENNHRI Rule of Law Report, and of the European Commission's rule of law report, as well as **awareness raising initiatives** addressed at national authorities and/or the general public took place in Croatia, Germany, Hungary and Romania. Some **joint initiatives** have also been reported, in particular a conference on protecting the rule of law and on the importance of an independent judiciary jointly organised by the German and Polish NHRIs. NHRIs in other countries built on the ENNHRI 2020 Rule of Law Report to formulate **targeted recommendations** (Finland) or to integrate relevant information in their **annual reports** (Croatia, Estonia). NHRIs also ensured follow-up through **sectoral initiatives** including thematic reports and statements in Cyprus, a workshop on the impact of COVID-19 on rule of law in Finland, online plenary meetings on a weekly basis during the pandemic, with the participation of governmental and non-governmental stakeholders involved in the decision-making

process in Greece, a specific analysis in relation to hate speech and recommendations on justice administration in Slovenia and specific initiatives to ensure protection for vulnerable groups in Slovakia. The NHRI in Poland has taken several actions, such as engaging in strategic litigation, publishing independent reports and giving opinions on the legislative process to the Parliament and other public authorities and bodies.

NHRIs generally indicated that the 2020 rule of law reporting exercise had a **positive impact on NHRIs' work**. In this respect, NHRIs in some countries stated that **more focus was put on rule of law issues as part of the NHRI's work**. This translated, for example, into a **strengthened focus on rule of law** in the 2021 Action Plan of the NHRI in Finland, a push for strategic planning of the NHRI's work in Bulgaria and Greece and into an NHRI's focus 2021 report in Portugal. In Slovakia, the 2020 rule of law reporting inspired the NHRI to initiate a project involving a creation of a rule of law tracker in cooperation with external experts. NHRIs in other countries, such as in Hungary, indicated that the report generally helped the NHRI raise awareness, get more visibility and trigger follow-up inquiries. The NHRIs in Croatia and Denmark stated that the 2020 reporting exercise developed into a **useful source of information** for research and the NHRI's own annual reports and the NHRI in Poland used the report as an important reference document. NHRIs also underlined the relevance of **solidarity and mutual learning** opportunities, in particular in Cyprus, Denmark, Finland, Hungary, Luxembourg, the Netherlands and Slovakia, insofar as the joint reporting exercise helped NHRIs get an overview of the rule of law situation across the region and learn from other NHRIs' practices, which fed into their work on rule of law related issues.

Some NHRIs, such as in Croatia, Greece and Slovakia, stressed that impacts and follow-up initiatives were frustrated by the **challenges posed by COVID-19**.

NHRIs' recommendations to increase impacts of joint reporting

NHRIs were also invited to formulate **recommendations to ENNHRI and EU or other regional actors**, also with a view to developing further impacts from the joint rule of law reporting.

As regards recommendation to ENNHRI, NHRIs generally expressed **appreciation for the work of ENNHRI** in this area and some NHRIs, such as those from Cyprus and Hungary, specifically encouraged ENNHRI to **continue facilitating joint reporting**. Various NHRIs made recommendations aimed at **increasing the impact of reporting in particular at the national level**. In this respect, the NHRI in Slovakia suggested that the role of NHRIs in **EU rule of law reporting procedures could be strengthened**, and NHRIs' capacity be further

built to that effect, also to ensure effective follow-up at country level. In this connection, some NHRIs made concrete proposals, including the **development of guidelines or a toolkit for NHRIs** including as regards their engagement with the EU representation in the country, as suggested by the NHRI in Slovenia; **developing model quantitative and qualitative indicators** on human rights and rule of law to help NHRIs measure progress at national level, as proposed by the NHRI in Greece; further **facilitating the sharing of best practices** as well as analysing **differences in NHRIs' mandates and capacity to work on rule of law issues** based on lessons learnt from reporting cycles was suggested by Finland.

The NHRIs in Croatia and Germany underlined the **importance for EU and regional actors to better value national rule of law discussions, in which NHRIs should be included**. **Concrete recommendations targeted at EU actors** were addressed by the NHRI in Germany, calling for a **stronger and more visible role of the representations of the European Commission** in the member states and possible cooperation with NHRIs in this area (for example, by organising public discussions with state authorities and civil society, with the involvement of the NHRI; or organising regular public debates on rule of law issues, including on the basis of NHRIs' reports). The German NHRI also stressed the importance for EU and regional bodies to **expressly refer to relevant NHRI reports, including the ENNHRI Rule of Law Reports**, when engaging with national governments or parliaments on rule of law issues.

Independent and effective NHRIs

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

Support for the establishment and accreditation of NHRIs could be found throughout EU Member States, including in countries taking **steps towards creating new institutions or strengthening existing bodies** to achieve A-status accreditation. In the Czech Republic, a roundtable was organised in 2020 by relevant stakeholders, who reiterated their commitment towards having an accredited NHRI. In Sweden, the government proceeded with its plans to establish an NHRI and is expected to submit a draft bill to that effect to the Parliament in 2021. In Belgium, the Federal Institute for the Protection and Promotion of Human Rights, created in 2019, progressed with appointing its Board and recruiting initial staff. While the Institute's mandate is limited to federal and residual competences only, it intends to apply for international accreditation, and will seek cooperation with pre-existing Belgian bodies, including the B-status accredited institution, Unia. In Italy, different stakeholders continued to encourage the establishment of an NHRI, and the Committee on

Constitutional Affairs of the Italian Chamber of Deputies adopted a unified text that will serve as a basis for the discussions on the establishment of the NHRI.

The EU also saw A-status accreditation in two more EU Member States – as an outcome of the SCA Session in December 2020: the Slovenian Human Rights Ombudsman was upgraded from B to A-status; and the Estonian Chancellor of Justice was granted A-status following its first accreditation. Moreover, the B-status institution in Cyprus is scheduled for review by the SCA in June 2021, while the B-status institution in Austria has applied for review of its accreditation status with the SCA.

While no major changes affected the national **regulatory frameworks** in which EU NHRIs operate since the past year, some NHRIs signalled relevant **ongoing reforms**. In Romania, the institution's proposal to amend its obsolete legal framework was invalidated by the Constitutional Court, while the government has presented another legislative proposal to absorb the Romanian Institute for Human Rights into the state authority combating discrimination which causes serious concern for the Institute and its staff. The NHRI in Finland is likely to be affected by a draft legislation due to be adopted in spring 2021, aimed at clarifying the division of competences and tasks of the country's supreme guardians of legality. Since the Parliamentary Ombudsman is part of the Finnish NHRI, effects concern directly the Ombudsman and indirectly the entire NHRI. In Latvia, changes were made to the appointment process of the Head of the NHRI and to the length of its mandate as a follow-up to the latest SCA recommendations.

A number of NHRIs reported about **new specific mandates**. This concerns, in Ireland, the new role taken by the NHRI as National Independent Rapporteur on trafficking of human beings. In Hungary, the NHRI took over the role of two former institutions, one dealing with police complaints and the other with equal treatment. In Croatia, the mandate for the protection of whistle-blowers recently granted to the NHRI was operationalized through new procedural rules, foreseeing, among others, the creation of a specific department devoted to this new task. By contrast, other NHRIs exposed **concerns related to their mandate**. The NHRI in Slovenia deplores the lack of progress regarding the recognition of the NHRI as monitoring body under the UN Convention for the Protection of Rights of Persons with Disabilities (CRPD), while the reporting institution from Belgium flags that the limited mandate of the institution restricts its actions regarding rule of law issues. The NHRI in Finland is concerned that, with the creation of new sectoral bodies with overlapping mandates, the human rights landscape is getting more fragmented, and the reduced resources available to each body may represent a challenge.

Enabling environment

As regards resources, the NHRIs in Hungary and Ireland reported a **significant increase of budget**, also consequent to their new mandates. This allowed for a revalorisation of the staff, including an increase of salaries, in Hungary and hiring of new staff in Ireland. The budget of other NHRIs also increased, such as in Bulgaria and in Spain (in connection to a digital transformation project aiming to eliminate bureaucracy and streamline processes for citizens). Progress in the appointment of additional staff was also reported by NHRIs in Cyprus and Slovenia. In Slovenia, a budget reform to enhance NHRI's independence from the government should also be triggered by a recent decision of the Constitutional Court.

On the contrary, **several NHRIs continued to deplore a lack of sufficient resources**. For example, the NHRI in Luxembourg reported the lack of appropriate resources to fulfil its task of monitoring the situation of people in closed institutions, while the NHRI in Croatia stressed the insufficient support provided following the earthquake that destroyed the institution's office in Zagreb, as regards the inadequacy of the alternative premises offered. Concerns over the lack of sufficient resources were also raised by the NHRIs in Belgium, Finland, Germany, the Netherlands and Romania.

Several NHRIs experience **generally good cooperation with national authorities.** This is the case for institutions in Belgium, Cyprus, Denmark, Finland, Germany, Hungary, Ireland, Slovenia and Spain. Nevertheless, many NHRIs highlighted **issues with the implementation of their recommendations**. Follow-up by state authorities, notably regarding its timeliness, is reported as particularly flawed in Croatia, Cyprus, the Czech Republic, Slovakia and Slovenia, but difficulties are also registered in Belgium and Luxembourg. A number of NHRIs also stressed issues affecting the **effectiveness of consultation processes,** such as in the Czech Republic, Germany, Hungary, Luxembourg and Slovakia. This includes the **lack of automatic consultations** (as reported for example in Germany and Greece) and **short deadlines** (as reported for example as regards Hungary). Some NHRIs further reported about **reduced access to information**. This is the case, in particular as regards information concerning the treatment of irregular migrants, in Croatia as well as, especially in the context of the COVID-19 emergency, in Slovakia.

Some NHRIs continued to expose worrying **threats to their independence.** The situation has further deteriorated for the NHRI in Poland, where the very existence of the NHRI is threatened as no Commissioner was appointed since September 2020 despite some attempts, and the provisions on transitional arrangements are being challenged before the constitutional court. **Episodes of obstruction** were reported by the NHRI in Slovakia, after its request for information about health care for persons other than in the context of COVID-19. By contrast, as regards concerns reported in ENNHRI 2020 Rule of Law Report,

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

The **increasing questioning of values related to human rights and rule of law protection** from some segments of society and some political actors was identified by the NHRI in Finland as one factor that may affect the enabling environment of democratic institutions meant to protect those values, including NHRIs.

Human rights defenders and civil society space

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

A number of NHRIs reported about **laws and practices negatively affecting the operations of civil society organisations**. In Ireland, rules on political campaigning still negatively affect the **advocacy role** of civil society organisations (CSOs): an electoral reform bill recently presented does not address the issues raised, already illustrated in ENNHRI 2020 Rule of Law Report. Similarly, in Germany, challenges deriving from existing rules on charitable status still affect the advocacy role of CSOs, in particular those working on human rights, as a new law failed to fully address the issues raised. New developments are reported by the NHRI in Greece, where **stricter administrative requirements** were imposed for the operations of CSOs working with asylum seekers and migrants; and in Slovenia, where the NHRI relates about the debate around the eviction of a well-known collective of CSOs from their premises. In Cyprus, the NHRI provides explanations over the questioned **de-registration** of a high number of CSOs over the past year.

Insufficient funding, and restrictions in relation to access to funding, are reported by NHRIs as a persisting challenge for CSOs. **General concerns**, exacerbated by the impact of the crisis triggered by the COVID-19 outbreak, are voiced by the NHRIs in Croatia and in Ireland, both of which called for increased state funding for CSOs. **Discriminatory practices** of public funding were exposed by the NHRI in Slovakia, affecting in particular progressive organisations working on gender equality. **Restrictions on access to foreign funding** continue being reported in Hungary, while the NHRI in Denmark drew attention to a bill that, with a view to safeguarding respect for democracy and fundamental rights,

would restrict CSOs' access to and use of foreign donations in a manner which the NHRI considers overly vague and at risk of arbitrary decisions.

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

In some countries, NHRIs also reported about **attacks and threats targeting CSOs and human rights defenders (HRDs)**. This is the case in Belgium, where the institution informed about activists being criticised by a parliamentary representative in relation to their work denouncing police violence. In Finland and in Greece, NHRIs point to a less favourable environment for HRDs and CSOs defending human rights – this is the case, particularly in Greece, as regards CSOs supporting migrants and LGBTI+ people, which are increasingly subject to hate speech. In France, the NHRI pointed to a worrying trend as it concerns the authorities' measures targeting CSOs allegedly opposing the 'Republican order' or linked to radical Islamism.

Several NHRIs also report about **restrictions to the exercise of civic freedoms** and in particular **freedom of expression and freedom of peaceful assembly**. In Spain, no progress was made in reforming the so called "gag law" to mitigate the negative impact of its implementation on the exercise of freedom of expression and freedom to peaceful assembly. In France, two draft bills pose serious threats to civic space and the free exercise of freedom of assembly, notably through extended powers granted to the police. Several NHRIs in other countries draw attention to (**disproportionate) restrictions of peaceful assemblies** also in the context of measures taken to contain the COVID-19 pandemic, including in Belgium, Bulgaria, Hungary, the Netherlands, Slovenia and Poland. NHRIs in Bulgaria, Slovenia and Poland particularly reported the **disproportionate use of police powers towards peaceful protesters** – including episodes of **police brutality** towards demonstrators in Bulgaria and Poland.

As regards **relations between NHRIs and other HRDs and CSOs**, many NHRIs stressed their investments in establishing **good cooperation**, including in Croatia, Cyprus, Denmark, Finland, Greece, Hungary, Ireland, Poland and Romania. Such cooperation is also beneficial in view of **joint efforts to raise awareness and promote a rule of law culture**. For

example, in Croatia, the NHRI took part in a conference on rule of law and human rights organised by a coalition of CSOs.

Specific **efforts were made by NHRIs to ensure better protection of HRDs** in Croatia, Finland, Germany, Greece, Ireland, Slovakia and Slovenia, including through enhanced monitoring and targeted inquiries, the formulation of recommendations to relevant authorities, capacity building, legal and political support and spaces for dialogue and information exchange. In Germany, the NHRI advised the Foreign Office in the development of a protection programme for HRDs, that was launched in 2020 and is expected to be further developed in 2021.

Checks and balances

Some NHRIs have reported a **generally low level of trust in state authorities**, in particular in Cyprus, Poland and Slovakia. NHRIs in Croatia, Denmark, Germany, the Netherlands and Slovenia have pointed to recent developments that **decreased the level of public trust** (in relation to the management of COVID-19 situation in Croatia). In some cases, such episodes were linked to the authorities' management of the pandemic, as for the debate around mink culling in Denmark and what were perceived as unclear criteria based on which measures were adopted in relation to COVID-19 in Croatia. The NHRI in Germany reconnected issues affecting public trust with **authorities' accountability**, making reference, on the one hand, to problems of structural racism within the police and, on the other hand, deploring that no real progress was made on the lack of independent police complaints bodies at the level of federal states. The NHRI in France reported a deteriorating confidence of the citizens in the police, which is being granted increasing powers. A generally **good level of trust** prevails in Finland.

Many NHRIs pointed at **problematic issues concerning law-making**, often in connection to the emergency situation created by the COVID-19 pandemic outbreak. Concerns relate to the use of **accelerated legislative procedures** particularly in Denmark, France, Greece and Slovakia. This has led to increasing powers of the executive as mentioned by the NHRI in Slovakia. The **lack of proper consultations and impact assessment** (especially of impacts on human rights), also partly resulting from expedited legislative procedures, has been reported by various NHRIs and namely in Bulgaria, Czech Republic, Denmark, Finland, France, Greece, Ireland, Poland and Slovakia. In Croatia and Germany, reported issues seem to be more generalised and not necessarily linked to emergency law-making. NHRIs in Ireland and Slovenia further question the **lack of disaggregated data** to support relevant measures. In Greece, Hungary and Ireland NHRIs stressed the **widespread use of**

executive decrees and regulations, which sometimes resulted in overregulation and poorly drafted decisions (as reported, respectively, in relation to Greece and Ireland). The NHRI in Luxembourg raised concerns about restrictions to human rights deriving from recommendations, bearing the risk of arbitrary decisions. The impact of reduced checks and balances and consultations in the process of law-making, in particular on **vulnerable persons such as persons with disabilities**, was underlined by NHRIs in Ireland and Luxembourg. On a more positive note, in Denmark, the NHRI reports that the extensive executive powers given to the Minister for Health in emergency COVID-19 legislation was mitigated as from February 2021 by the adoption of a new epidemics act which provides that some emergency measures taken by the executive branch in order to handle an epidemic can be vetoed by a parliamentary committee.

Reduced parliamentary oversight was reported as one of the main challenges affecting law-making in the context of the **COVID-19 pandemic**, as indicated by NHRIs in Austria, Croatia, Germany, Greece, Ireland, Romania, Slovenia and Spain. In some cases, such as in Croatia, the government's decision not to activate the state of emergency was questioned, insofar as it could have strengthened the parliament's say over measures restricting human rights and freedoms. **Beyond the pandemic context**, the NHRI in the Netherlands reported that deficiencies in oversight over the tax authority and executive authorities raised general concerns in light of the 'child benefit scandal' case.

As regards **judicial oversight**, the NHRI in Poland reflected how the serious threats affecting judicial independence in the country negatively impact on the national system of checks and balances. The NHRI also reported on lack of resources in relation to a new mandate to file extraordinary complaints to the Supreme Court against all final judgements of ordinary courts. Other NHRIs touched upon the **lack of effectiveness in legality and constitutionality checks**. In particular, in Slovenia, the NHRI reported that problems persist as regards the implementation of judgments of the Constitutional Court, while the NHRI in Luxembourg pointed at practices undermining the role of the Council of State. In Finland, the pluralistic system of checks and balances is generally considered to work well. In Slovakia, the NHRI reported a positive change in the appointment system of Constitutional Court judges, aimed at preventing one political party from electing the majority of judges. The important **role of the constitutional review of measures taken in response to the COVID-19 pandemic** was highlighted in particular by NHRIs in Croatia and in Romania, as regards the judicial review exercised by Constitutional Courts, as well as in Finland, as regards the ex-ante review of draft laws submitted to the Parliament carried out by the constitutional law committee.

Some NHRIs also reported **challenges in the implementation of judgments by supranational courts.** The NHRI in Poland makes particular reference to the **lack of implementation of judgments by the Court of Justice of the EU (CJEU)** concerning the government's controversial reforms to the judiciary. The NHRI in Germany also draws attention to the possible impact of a recent ruling by the constitutional court on the implementation of CJEU judgments. The NHRI in Bulgaria advocated for the establishment of a national inter-institutional coordination council to monitor the **implementation of judgments of the European Court of Human Rights** (ECtHR). NHRIs in particular in Greece also raised concerns about the **failure to implement ECtHR judgments.**

Among the other issues reported by NHRIs in relation to checks and balances, NHRIs in Hungary and Poland referred to **deficiencies in access to information**, with attempts to reduce access to public interest information also registered by the NHRI in Romania. NHRIs in Bulgaria, Poland and Romania pointed at **issues negatively affecting the holding of elections** during the pandemic emergency, while the NHRI in Germany relates about the need for a **reform concerning the size of the Federal Parliament**.

Many examples were provided which confirm the **key role played by NHRIs in the national systems of checks and balances**. These include **reviewing draft laws** and addressing **recommendations and advice to state authorities** (see examples from NHRIs in Bulgaria, Denmark, Germany, Hungary, Ireland, the Netherlands and Slovenia; in Belgium, the NHRI reports efforts to integrate and promote UN treaty bodies' recommendations); **triggering judicial and constitutional review** (see examples from NHRIs in Belgium, Bulgaria, Germany, Hungary, Ireland, Latvia and Spain); organising **trainings for state authorities and awareness raising initiatives** (see examples from NHRIs in Finland, Greece and the Netherlands); **facilitating access to information and providing protection to whistle-blowers** (see in particular NHRIs' contributions on Croatia and Hungary).

At the same time, **a number of NHRIs report challenges affecting their role as part of the system of checks and balances**. **Lack of cooperation and consultation** is mentioned by the NHRI in Greece, despite efforts to enhance cooperation, as well as Slovakia. In Poland, the NHRI points at a particularly difficult situation, where the institution's recommendations are said to be ignored by the authorities, and its positions not considered by the courts. The Croatian NHRI reported a **lack of direct access to information** especially on the treatment of migrants. Some NHRIs underlined the **need for additional resources** to support the NHRIs' role in the system of checks and balances. This includes the NHRIs in Finland and Germany, which voiced that more resources would be

needed to ensure effective monitoring and reporting; and the NHRI in the Netherlands, calling for additional resources in particular for training activities.

Functioning of justice systems

Efforts to improve the general functioning of justice systems are reported by NHRIs in Slovakia and in Slovenia. In Slovakia, in particular, progress is related to major ongoing reforms aimed at increasing the independence and accountability of judges, make improvements to the appointment and functioning of the Judicial Council, create a new Supreme Administrative Court and improve geographical distribution and access to courts through a new 'court map'. By contrast, the NHRI in Croatia reports an **increase in complaints related to the functioning of the justice system compared to previous years**, and in particular the conduct of judges and the manner of conducting proceedings. The NHRI in France draws attention to two worrying judicial reforms affecting respectively the juvenile criminal justice system and the treatment of persons convicted of acts of terrorism.

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

Some NHRIs report **insufficient resources of justice systems**, in particular in Poland and Slovenia. **Excessive length of proceedings** remains a widespread concern as reported by NHRIs is Croatia, the Czech Republic, Cyprus, Greece, Ireland, Poland and Portugal. Some **progress** is only reported in Slovenia, where the NHRI affirms that excessive delays in

judicial proceedings are no longer a systemic problem. The NHRI in Portugal also reports about **deficiencies affecting the enforcement of judgments.**

NHRIs variably report on **challenges affecting the right to access to a court**. The NHRI in Bulgaria stresses the urgent need to develop the **e-justice system**. Issues affecting the **legal aid system**, including delays in legal aid procedures and the difficult financial position of certain free legal aid providers, such as CSOs and legal clinics, continue to be reported by NHRIs in Croatia, Ireland, the Netherlands, Portugal and Slovenia. **Some progress** was reported by the institution in Belgium, which informed about changes made to raise the income threshold to access legal aid. An audit to evaluate the existing system triggered by the government, and involving the participation of the NHRI, is ongoing in Denmark. In Hungary, the NHRI reports about a draft law on administrative proceedings aimed at addressing the **lack of legal remedy against certain courts' decisions**.

NHRIs in the Netherlands and in Slovenia express concern over the **lack of respect of fair trial rights** – with regards in particular to the rights of suspects and accused, especially in the context of pre-trial detention, for the former. The NHRI in Germany raises concerns about obstacles to **access to justice for certain vulnerable groups**, and in particular persons with disabilities, women victims of gender-based violence and victims of racist violence.

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

Media pluralism and freedom of expression

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

A worrying trend is reported by NHRIs in Croatia, Finland, Ireland, Poland, Slovakia and Slovenia concerning **threats, intimidation, harassment and hate speech, sometimes gender-based, targeting journalists**. The NHRI in Germany reported a similar trend albeit limited to demonstrations against Covid-19 measures. While most episodes relate to **verbal attacks, including online**, **violent physical attacks** were also reported by the NHRIs in Croatia and in Poland. In Poland and Slovakia, NHRIs also raised concerns about **arbitrary arrests and prosecutions** by law enforcement authorities. Some NHRIs reported about **restricted access for journalists**, including access to institutional premises in Bulgaria and Poland, and access to sensitive sites, namely refugee camps, in France. The NHRIs in Bulgaria and Croatia also reported of journalists targeted by **abusive lawsuits**. At the same time, the Croatian NHRI also reported about a **positive development**, consisting in the introduction of a new criminal offence of coercion against a person who performs activities of public interest or in the public service which includes journalists.

A number of NHRIs have reported on issues relating to **media pluralism and independence**. In some cases, these are linked to **media concentration**, as reported by the NHRI in Poland, which informs about the ongoing acquisition of an important national media by a state-controlled oil company, which would grant state authorities a dominant position in the media market. Minor concerns on media concentration were also voiced by the NHRI in Finland, although the situation regarding media independence and pluralism there remains overall good and stable. **Poor editorial autonomy** is particularly a concern for the NHRI in Greece, which deplores lack of transparency in media ownership and visible owners' influence over editorial content. In relation to **media pluralism**, the NHRI in Hungary reports that, while there is a legal framework to ensure media diversity, there are concerns on its effectiveness in practice. **Discriminatory access to media,** in particular affecting minorities, is also reported by NHRIs in Greece and Hungary.

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

At the same time, issues around **hate speech in the media** were also reported on by a number of NHRIs. The Slovenian NHRI raises particular attention about hate speech and the lack of ethics in public discourse, including in the media. NHRIs are active in prompting better responses to hate speech, including a more effective monitoring and reporting

framework, as recommended by the NHRI in Bulgaria, or a strengthened and modernised code of professional ethics for media, as called for by the NHRI in Ireland. As regards **online media**, in Croatia, a new draft law on electronic media was recently proposed and the NHRI welcomed it but expresses concerns over its inadequacy to fight against illegal content on social media, including hate speech. In Hungary, the NHRI also underlined the urgency to adapt the existing legislation to the rapid rise of social networks and platforms. The Hungarian NHRI further points to the **need to invest more in media education**, including to better protect children; in this respect, on a positive note, the NHRI in Ireland informs about the creation of an **online safety commissioner**.

A number of country reports highlight the **role of NHRIs in promoting free, balanced and pluralistic media**, including through **monitoring** (see report on Greece), **recommendations on draft laws and on necessary improvements to the legal framework** (see reports on Ireland and Slovenia) as well as **public education** (see report on Finland). In Poland the NHRI has engaged in strategic litigation in this area, for example in relation to issues affecting the independence of public radio and television.

Corruption

Corruption remains at **concerning levels in some countries** as reported in particular by NHRIs in Greece, Slovakia, Slovenia and Spain.

At the same time, a number of NHRIs registered **some progress as regards the strengthening of the regulatory frameworks to combat corruption**. This is the case in particular in Romania, where the NHRI informs about a new comprehensive framework set in place in 2020, but also in Cyprus, Estonia and Slovenia. The NHRI in Bulgaria notes a decrease in complaints related to good governance and a high implementation of its recommendations on the issue. The NHRIs in Greece also reports of some efforts, although considered insufficient to date, with **still more transparency needed in the legislative process**. Transparency and lack of information for citizens are also reported as an issue by the NHRI in Poland. In Slovakia, the NHRI also mentions an attempt of setting up an anti-corruption framework as well as some positive changes to the appointment process of prosecutors, which may have a positive impact on **investigations**, although concerns remain over appointment of heads of district offices.

As regards **whistle-blowers protection**, NHRIs in Bulgaria, Greece, Slovakia and Slovenia report that no real or almost any real progress was achieved to date. By contrast, the NHRI in France notes positive steps and the NHRI in Romania reports about a draft law being submitted to consultations. Elsewhere, namely in Croatia and Hungary, issues are reported

by NHRIs as regards the **implementation of rules in practice**. In Croatia, in particular, the NHRI refers to practical arrangements being set in place, while underlining the need for awareness raising and public education to ensure effective implementation of rights and obligations in practice – on which the NHRI is investing.

The **role of NHRIs in the framework of the fight against corruption** is exemplified by the responsibilities attributed to them as regards **whistle-blowers protection**, for example in Croatia and Hungary; as well as by NHRIs' role in **advocating for the improvement of existing rules** – as reported, for example, by the NHRI in Estonia as regards rules on conflict of interest in the context of municipal councils' elections. The NHRI in Poland actively engages in efforts to enhance transparency and information for citizens.

Systemic human rights issues affecting the national rule of law environment

The NHRI in Cyprus pointed at serious deficiencies in safeguarding and respecting the **human rights of migrants**, while the NHRI in Greece raised concern over the growing racist rhetoric, the worrying incidence of **racist attacks** and delays in their investigation and prosecution.

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

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

Impact of COVID-19 on human rights and rule of law protection

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

As in ENNHRI 2020 Rule of Law Report, all NHRIs' 2021 reports still point with concern at the impact of measures taken in response to the COVID-19 pandemic on human rights and rule of law protection. Even more this year, a great number of NHRIs reported how most of the above-mentioned components of the rule of law framework were affected by the challenges brought by the COVID-19 pandemic outbreak. Indeed, it becomes difficult to

dissociate the impact of COVID-19 when reporting as, after one year, the situation can no longer be deemed an emergency.

While no NHRI has questioned the constitutionality of **emergency regimes** as such, many continue to highlight the impact of such regimes on the national system of checks and balances. This includes **reduced parliamentary oversight** (as reported by NHRIs in Austria, Croatia, France, Greece, Ireland, Romania, Slovenia, Spain); **fast-track decision-making** (Denmark, France, Greece, Romania, Slovakia, Slovenia); **reinforcement of executive powers** (Belgium, France, Germany, Hungary, Romania); reduced parliamentary law-making due to this expanded executive law-making through decrees (Germany); **poor quality of regulations and laws** (Greece, Finland, Ireland, Romania); **lack of or inadequate impact assessments**, in particular on human rights (Croatia, Finland); **lack of or inadequate publicity and consultation** (Austria, Belgium, Luxembourg, Romania, Slovenia); **challenges to judicial review** (Greece, Luxembourg); **unclear legal basis for restrictions** (as reported by NHRIs in Belgium, Denmark, Luxembourg, the Netherlands, Poland).

Against this background, NHRIs in Denmark and Slovakia signalled how **new rules on emergency regimes** (new rules applicable in particular during epidemics in Denmark) were later introduced to strengthen constitutional safeguards, while NHRIs in Austria, Croatia, Germany and Romania highlighted the **important role of constitutional courts** in mitigating challenges through continued constitutional review.

In some countries, the emergency situation also effected the democratic process more broadly. NHRIs in Hungary, Romania and Poland signalled in particular **challenges affecting the electoral system.**

Several NHRIs stressed the crisis' **impact on the national justice system**. Issues reported included **problems of a general nature**, due to the suspension of court activity and remote justice (for example in Bulgaria, Greece and Slovenia), to more specific challenges such as: **unclear regulation of the functioning of the courts**, also leading to different practices in the handling of cases (in Belgium and Romania); **court decisions taken without proper hearings** (as reported by the institution in the Czech Republic as regards involuntary hospitalisations); and **failures to ensure fair trial rights** (as reported by the NHRI in Ireland). The NHRI in France further alerted on the **risk of a normalisation of the state of health emergency** into the common procedural law.

NHRIs also remain concerned about the **long-term implications of the public health crisis, especially on vulnerable groups**. Similarly to what was reported in ENNHRI 2020 Rule of Law Report, those considered as being at particular risk include **persons with**

disabilities (see in particular reports on Belgium, Bulgaria, Czech Republic, Greece, Finland, Hungary, Ireland, Latvia, the Netherlands, Romania), **ethnic minorities and in particular Roma** (Greece, Hungary, Ireland, Portugal, Slovakia), **migrants and foreigners** (Belgium, Czech Republic, Germany, Greece), **homeless people and persons living in poverty** (Belgium, Czech Republic, Cyprus, Finland, France, Hungary, Spain), **youth and children** (Belgium, France, Greece, Finland, Hungary, the Netherlands, Romania), the **elderly** (Belgium, Finland, Hungary, Ireland, Portugal, Romania), **women** (Belgium, Greece, Finland, the Netherlands, Romania).

The specific situation of **people in detention** and in other closed institutions also continues to worry NHRIs, as reported in particular in relation to Austria, Belgium, Bulgaria, the Czech Republic, Greece, Finland, Ireland, Latvia, Portugal and Slovenia.

Possible **long-term impacts** are also highlighted by NHRIs as regards three specific areas.

A first area relates to the **civil society space**, where NHRIs are concerned about practices unduly restricting in particular the exercise of the right to peaceful assembly (as reported in Austria, Belgium, Poland, Romania); but also, more generally, the right to participation in public affairs, as highlighted by the NHRI in Romania. This is against the background of strained resources further exacerbated by the economic crisis triggered by the pandemic outbreak, which affects CSOs' resilience and which, as underlined by the NHRI in Croatia, was not met with adequate financial support to the sector on the side of the authorities.

Another area of particular concern is access to and the exercise of the **right to education**, where NHRIs raise either general issues, also linked to the impact of long-lasting restrictions on children and students (for example in Estonia, Finland, France, Hungary, the Netherlands, Romania) or specific issues in connection to existing inequalities – as reflected in reports by NHRIs in the Czech Republic (by reference in particular to children with disabilities) and Slovakia (as regards especially Roma children).

A third area is related to **transparency and information**. In this respect, NHRIs expose two main trends. First, an increasingly reduced access to public interest information, both for citizens and for professional actors like media, as reported by NHRIs, to varying degrees, in the Czech Republic, Luxembourg, Poland and Romania. This contrasts with efforts reported by NHRIs in certain countries, and namely in Latvia and Slovakia, to engage in transparent communication with the public, counter misinformation and fake news. A second trend relates to the disclosure and use of data, including sensitive health data, as illustrated in particular in the NHRI's report on Estonia.

NHRIs' role and related challenges

NHRIs reports illustrate well the **crucial role that NHRIs have continued to play** in monitoring, assessing and addressing the impacts of COVID-19 and of measures taken in response to it on human rights and rule of law protection. NHRIs' engagement is reflected in **general monitoring, complaints handling, public statements and cooperation with the authorities and other stakeholders** (see for example reports from the NHRIs in Austria, Bulgaria, Czech Republic, Denmark, Germany, Estonia, Slovakia, Slovenia); the setting up of **specific monitoring or reporting tools** (as the Human Rights Observatory in Greece, targeted reports in Estonia, Finland, Luxembourg and Romania); or **dedicated public events** (in Croatia and Latvia) and other **targeted awareness raising initiatives** (in Romania). Many NHRIs also engaged in **specific initiatives and interventions to tackle challenges facing vulnerable groups and groups at risk**, including persons with disabilities, migrants, children, women, Roma and other minority groups, elderly, people in detention and other closed institutions (see NHRIs' reports on Austria, Belgium, Cyprus, Finland, Germany, Hungary, Ireland, Latvia, Portugal, Slovakia, Slovenia and Spain). Some of these initiatives offered NHRIs the opportunity to **timely and concretely feed into sectoral policies**, such as in the case of the new National Action Plan against Racism adopted in Belgium.

Measures taken to contain the pandemic, from social distancing to remote working requirements, continued to **impact on NHRIs' work**, while workload increased for many in view of the urgency of timely interventions. Reported issues include delays in NHRIs' procedures (for example in the Netherlands), suspension of in-person counselling and trainings (for example in Romania and Slovakia), reduced opportunities for advocacy meetings with state authorities (as reported in Germany) and inadequate resources (in Croatia and in Luxembourg). **Inspections as National Preventive Mechanisms (NPM) and similar on-site monitoring activities** were obviously more difficult: most NHRIs acting as NPMs were obliged to temporarily suspend them, however many were able to resume them under strict protocols (as in Bulgaria, Czech Republic, Estonia, Portugal, Spain) or replace them by alternative means (as in Austria, Croatia, Denmark, Finland). Nonetheless, overall, most NHRIs report having managed to cope with the difficult situation and **preserve efficiency and effectiveness**, including through the use of digital technologies – as confirmed by NHRIs in Czech Republic, Cyprus, Finland, Estonia, Germany, Greece, Portugal, Poland, Romania, Slovenia and Spain.

Further strengthening EU and national rule of law and human rights frameworks through NHRIs' engagement: Key Recommendations to the EU

Developments over the past year marked an intensification of efforts by international and regional actors to achieve positive change for rule of law, human rights and democracy across the region.

The EU has strengthened its policy framework to better promote and protect these values across the spectrum of the EU's internal and external action. This is reflected in key EU initiatives and instruments introduced over the past year. These include, for EU Member States, the European Commission's first report on rule of law in the EU, its revised Strategy on the effective implementation of the EU Charter of Fundamental Rights and its EU Action Plan on Democracy, as well as key initiatives by other EU institutions such as the new rule of law peer review dialogue within the Council of the EU, and the European Parliament Resolution on the establishment of an EU Mechanism on Democracy, the Rule of Law and Fundamental Rights.

Progress was equally made to better anchor EU funding to the promotion and protection of rule of law, human rights and democracy, both through the definition of funding priorities and through enhanced conditionality. This is reflected, in particular, in the 'Union values' strand included in the new Citizens, Equality, Rights and Values Programme (CERV) and in the newly adopted Regulation on a general regime of conditionality for the protection of the Union budget in the case of breaches of the principles of the rule of law in the Member States.

These developments come at a critical time when countries across the EU are faced with ongoing human rights, democracy and rule of law challenges exacerbated by the persisting impacts of the COVID-19 pandemic.

Against this background, ENNHRI and its EU member NHRIs call on the EU to further foster new strategic opportunities to strengthen cooperation among NHRIs and EU institutions and bodies in this area, with a view to making sure that policy efforts can have a real impact on the ground. In this respect, ENNHRI's 2020 leadership webinars and Annual Conference offered an opportunity to NHRIs to take stock of the experience and impacts of NHRIs' engagement in European rule of law mechanisms to date. Four key focus areas

were identified where enhanced collaboration with and support for NHRIs appears particularly crucial to achieve strong rule of law, democracy and human rights in the EU.

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

Strong regional and national frameworks for human rights, democracy and rule of law need independent and effective NHRIs in each country. Indeed, this is reflected in the explicit recognition by the European Commission as an indicator of rule of law within its annual rule of law review cycle, as part of the system of national checks and balances.

The need for establishing and promoting Paris principles' complaint A-status NHRIs in each EU country is also reaffirmed in the European Commission's revised Strategy for the effective implementation of the Charter of Fundamental Rights, which has called on those member states that have not yet established an independent NHRI to do so, and on member states in which NHRIs have been established, to ensure they are given the tools and means to comply with the Paris principles and refer to the Charter in their mandate. As also underlined in FRA recent report on NHRIs, the establishment and strengthening of effective NHRIs in compliance with the UN Paris Principles in all EU countries is, in turn, key to enable EU actors to rely on independent counterparts at national level and thus reinforce the quality and impacts of their efforts to promote and protect human rights, democracy and rule of law.

ENNHRI's first core objective is to support European NHRI establishment and compliance with the Paris Principles, including before, during and after the accreditation process. The number of NHRIs accredited by reference to the UN Paris Principles has risen significantly in the EU since the establishment of the ENNHRI Secretariat - this number has increased a 76%, from 13 to 23 countries in the EU with an accredited NHRI. Among these, the number of EU MS with an "A-status" NHRI (fully compliant with the Paris Principles) doubled, from 9 to 18 EU member states.

ENNHRI members across the EU are committed to continue contributing, in line with their role and mandates, to healthy checks and balances and enabling space for HRDs.

Their and ENNHRI's efforts must however be better supported by EU actors. In line with the recognition of NHRIs as an essential part of checks and balances in EU member states, the establishment of an NHRI in compliance with the Paris Principles in all EU member states, as well as support to their independent and effective functioning, should be regarded as a priority at EU and national level.

This priority should be adequately reflected in existing mechanisms. Reference goes, in particular, to the annual rule of law review cycle triggered by the European Commission, where the establishment and functioning of independent and effective NHRIs should not only be reflected in the rule of law reports but also consistently raised in follow-up initiatives. This concerns both political and technical dialogues held by the European Commission and initiatives by other institutions, such as the rule of law peer review dialogue in the Council of the EU. Such priority should also be integrated in future mechanisms that may follow the possible conclusion of an inter-institutional agreement on the establishment of an EU Mechanism on Democracy, the Rule of Law and Fundamental Rights, as proposed by the European Parliament.

To that effect, concrete action should be taken, including the definition of EU adopted standards and indicators to assess and ensure the independent and effective functioning of NHRIs in each EU Member State, similarly to what has been done through the European Commission's Recommendation on Standards for Equality Bodies. Enhanced support to ENNHRI's work to guide and accompany NHRIs' establishment and accreditation across the EU is equally crucial.

Key recommendations to the EU

- Consistently integrate the establishment and compliance of NHRIs with the UN Paris Principles, as well as the enabling environment for NHRIs, as an indicator of state compliance with the rule of law, to be reflected in existing and future EU rule of law mechanisms
- Consistently include the establishment and strengthening of Paris Principles compliant NHRIs in rule of law dialogues with EU member states, especially where no NHRI exists or the NHRIs does not fully comply with the Paris Principles
- Clarify and integrate, in dedicated EU legal and/or policy frameworks, EU standards on the independence and effectiveness of NHRIs and HRDs – this could be done, for example, through a non-binding instrument from the European Commission or a dedicated resolution from the European Parliament

ENNHRI

- Secure increased structural financial support for ENNHRI's core function of supporting establishment and strengthening of NHRIs in compliance with the Paris Principles, including through technical support for state authorities on NHRI draft laws and amendments.

Enhanced promotion and support for NHRIs' role in bridging European policies with national realities, including through concrete support for NHRIs under threat

Both NHRIs and EU actors agree on the value add of NHRIs' joint rule of law reporting and on the need of strengthening their cooperation in this area – both individually, and collectively though ENNHRI.

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

As for other HRDs, visible NHRIs' engagement on rule of law issues, including through joint reporting, may expose NHRIs to threats. ENNHRI is investing increasing resources in providing support and protection to NHRIs under threat, in line with its Guidelines on ENNHRI support to NHRIs under threat. Indeed, as also illustrated in this report, worrying developments in certain countries over the past years have shown that NHRIs across the EU can also be vulnerable to serious threats to their independence and effectiveness. These may include reduction in formal independence, reduction in mandate, budget cuts or the removal of office holders, as well as harassment or attacks due to their work. In such situations, ENNHRI provides timely and tailored support in close cooperation with the concerned NHRI, coordinating with key stakeholders and ENNHRI members as appropriate.

Ongoing challenges facing the Polish NHRI and ENNHRI support action

Since 2016, the Polish government has adopted legal reforms impacting on human rights, rule of law and democracy, including the reduction of judicial independence, restrictions on the right of assembly, controversial media reforms and limitations on funding for civil society organisations. The Polish NHRI (Office of the Polish Commissioner for Human Rights) has issued legal opinions and public statements, joined constitutional complaints, intervened in parliamentary instances and cooperated with international organisations speaking out for human rights, democracy and the rule of law. The country report on Poland included in ENNHRI 2020 Rule of Law Report offers a useful overview of major issues to date.

As a consequence of its work, the NHRI has faced institutional and individual threats. These have gone from budgetary constraints and the undermining of functional immunity to abusive lawsuits. Most recently, following the end of the Commissioner's term in September 2020, and pending the appointment of a new one, an attempt was made to hinder the Commissioner from performing his duties ad interim, by challenging the legislative provisions which require the Commissioner to continue in post until a new Commissioner has been appointed under the constitutional process.

ENNHRI has continuously supported the Polish NHRI over the past years, including through information provision on international applicable standards, a country visit and releasing joint statements together with partner organisations, including the Office of the UN High Commissioner for Human Rights, the Global Alliance of NHRIs, the International Ombudsman Institute, the Council of Europe, the OSCE Office for Democratic Institutions and Human Rights and Equinet. Most recently, ENNHRI issued an opinion and a statement on the importance of respecting international standards on the selection and appointment of new Heads of NHRIs and during any associated transitional period, encouraging NHRIs across Europe to help increase the awareness of the difficult situation facing the Polish NHRI.

The issue was addressed in public statements later made by the European Commission's Vice-President for Transparency and Values, Věra Jourová, which underlined how ongoing threats to the NHRI are an integral part of the Commission's dialogue with Poland on the respect for the rule of law.

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

Key recommendations to the EU

- Enhance the sustainable inclusion of NHRIs and ENNHRI in the EU rule of law review cycle and any other future rule of law mechanisms, to further enable them to meaningfully contribute to the reporting and monitoring processes, by means of: providing for an adequate timeframe to allow quality reporting; establishing a transparent, structured and formalised upstream cooperation with NHRIs and ENNHRI at all stages of the process, building on ENNHRI's role as a/the central point of contact for NHRIs; and providing NHRIs and ENNHRI with timely information on national follow-up initiatives such as rule of law dialogues, and involving them as appropriate
- Develop a coordinated and comprehensive approach to the protection of and support to HRDs, including NHRIs, under threat, including dedicated financial support for the establishment of an effective protection mechanism, the use of political dialogue and public statements and support by high-level EU officials
- Increase financial support to ENNHRI to further promote a strategic and sustainable engagement of NHRIs in EU rule of law mechanisms, including through the regular coordination of quality and timely rule of law reporting, capacity- and institution building, solidarity and support to NHRIs under threat

Increased attention to the role of NHRIs in bridging national realities with European values

Newly adopted EU policy tools offer strategic opportunities to foster concrete progress in the protection and promotion of rule of law, democracy and human rights in the EU member states. EU member NHRIs have a key role to play to raise awareness, mobilise support and maximise impacts of these efforts, building on their monitoring role, their cooperation with state and non-state actors and as interlocutors between the state and the general public.

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

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

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

Key recommendations to the EU

- Give visibility to NHRIs' recommendations in relevant horizontal and thematic reporting initiatives, such as the European Commission's annual rule of law reports and annual reports on the application of the EU Charter of Fundamental Rights, and include the timely and effective implementation of such recommendations by state authorities in progress monitoring and follow-up initiatives such as rule of law dialogues

- Facilitate and support NHRIs' efforts to engage with national actors, by: mobilizing EU national structures such as EU country delegations and member states' permanent representations; making use of relevant cooperation channels such as networks of contact points and inter-parliamentary dialogues; ensuring more transparency on national follow-up by EU institutions and involve NHRIs as appropriate, through consultation and/or participation to national rule of law dialogues

- Offer dedicated financial support to ENNHRI and NHRIs for initiatives aimed at raising awareness and increasing impacts of EU efforts to safeguard and advance human rights, democracy and rule of law at national level, including through peer learning and information exchange

Strengthened complementarities across different policy initiatives and cooperation with other regional actors

Enhancing complementarities of different EU policy initiatives on rule of law, democracy and human rights and strengthening the EU's cooperation with other regional actors in this area is key to achieve positive impacts on the ground.

On the one hand, the need for enhanced complementarity between existing policy initiatives, and in particular the European Commission's annual rule of law review cycle, the implementation of its revised Strategy on the effective implementation of the EU Charter of Fundamental Rights and of its EU Action Plan on Democracy, is crucial to reflect the mutually reinforcing connection between the rule of law, human rights and democracy. This, as regularly stressed by ENNHRI (see for example, ENNHRI's recent submissions on the EU Action Plan on Democracy and on the effective application of the EU Charter of Fundamental Rights), is in turn an important element to maximise impacts of efforts on the ground.

Indeed, as NHRIs' rule of law reporting shows, at the level of national realities, the EU foundational values cannot be conceived in isolation from one another: certain rule of law challenges have a direct relevance for the enjoyment of fundamental rights and implementation of the Charter at national level, while also affecting key EU priorities related to democracy such as elections, media freedom and the fight against disinformation. This calls for consistency in the methodology and scope of monitoring processes, as well as concerted follow-up to make use of all available policy tools to address concerns.

On the other hand, increased synergies can potentiate the effect of initiatives by EU and other regional and international organisations in key areas of common concern – one being that of the protection of HRDs, also in the context of increased attacks and challenges experienced during the COVID-19 pandemic. Increased cooperation and coordination would also increase coherence of EU member states positioning in the different regional and international fora.

Key recommendations to the EU

- Ensure interconnections between different EU policy initiatives on rule of law, democracy and fundamental rights, including by enhancing coherence in methodology and scope and better coordinating follow-up
- Intensify cooperation with other regional actors to address common concerns, including NHRIs and HRDs as well as the impact of COVID-19 on rule of law and human rights protection

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

This is also reflected in the comprehensive and cross-sectorial nature of ENNHRI's work. Indeed, NHRIs' joint rule of law reporting, as expressed in this second Rule of Law Report, is meant to feed other key areas of ENNHRI's work.

This includes further actions to feed the implementation of the revised Strategy on the effective implementation of the EU Charter of Fundamental Rights. The Strategy identifies NHRIs as critical actors able to address the 'protection gap' between the rights of individuals and responsibilities of the state, by: (i) monitoring the application, implementation and promotion of the Charter on the ground, including in the context of the disbursement of EU funds[3]; (ii) providing information and support to victims of fundamental rights violations; and (iii) cooperating with the national institutions to improve their use and awareness of the Charter. Building on its collation of practices on how NHRIs across the EU work towards the implementation of the Charter, ENNHRI's work in this area will be guided by a dedicated Action Plan that will identify actions in line with the new Charter Strategy.

[3] The new framework provided by the revised Common Provisions Regulation, as proposed by the Commission, replaces and expands previously existing rules on 'ex-ante conditionality' and allows for a strengthened and closer involvement of NHRIs including in the preparation of national implementation programmes and through participation in monitoring committees.

In addition, the information collected from across the network for rule of law reporting will inform ENNHRI's work on the promotion and support to human rights defenders and democratic space. It will also be considered within ENNHRI's thematic priorities, including its current work on NHRI monitoring of the human rights of migrants at borders, which takes into account rule of law and human rights accountability. Finally, the information collected on the impacts of COVID-19 will inform ENNHRI's ongoing initiatives to support NHRIs in this area.

Country reports

Austria

Austrian Ombudsman Board

International accreditation status and SCA recommendations

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

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

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

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

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

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

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

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

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

The AOB regularly interacts with its Human Rights Advisory Council, which consists of human rights experts from civil society and government, to assess the impact and proportionality of COVID-19 related governmental measures. Thus, the AOB asked the Council to assess the proportionality of severe health restrictions instituted in detention facilities, and of police action in dispersing peaceful public demonstrations whose participants violate COVID-19 safety standards (e.g., distancing and mask requirements). As far as health restrictions permit, members of the AOB meet and consult with office holders

on the federal and regional levels to discuss the ongoing challenges that the COVID-19 pandemic poses to good administration and human rights. In February 2021 for instance, members of the AOB met with the Federal President and the President of the National Council.

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

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

The COVID-19 crisis has made preventive human rights monitoring more difficult. The AOB's commissions, which have monitoring rights to perform the function of OPCAT NPM, temporarily suspended their visits to nursing homes and care facilities during the first lockdown, as the Ministry of Health provided neither protective equipment nor recommendations for preventing infection. However, the AOB conducted a survey in May 2020 with numerous nursing home managers to better assess the situation in the homes. Additionally, through nationwide telephone interviews, the commissions surveyed the main problems in these facilities during and after the lockdown. In the course of this activity, the commissions earned a certain amount of trust, which led to greater responsiveness on the part of the institutions under review. The shortage of nursing staff created or exacerbated many problems.

After about ten weeks, the commissions' inspection visits could again take place to the usual extent, as the government put in place a clear framework for visits by the commissions and by other visiting institutions and representative bodies. These safety protocols created clarity and security for everyone concerned and removed psychological barriers that may have existed in approaching residents directly.

Belgium

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

International accreditation status and SCA recommendations

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

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

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

Impact of 2020 rule of law reporting

Follow-up by State authorities

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

References

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

Independence and effectiveness of the NHRI

Changes in the regulatory framework applicable to the Institution

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

Enabling space

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

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

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

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

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

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

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

Human rights defenders and civil society space

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

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

References

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

Checks and balances

Executive powers were clearly reinforced since the beginning of the Covid-19 outbreak. While the government was granted special powers by the Parliament until June 2020, the legal basis for their decisions taken after this date is more doubtful. In the absence of a law that would give a dedicated legal basis to their measures, the government decided to base its decisions mainly on article 182 of the law of 15 May 2007 relating to civil protection, obviously not intended for situations like the pandemic. This has been heavily criticised by civil society actors, yet has not been condemned by the Council of State, which has not considered itself competent to assess the constitutionality check in that case. More details are exposed in the COVID section of the present report.

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

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

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

References

- On the meaning of "Special powers" in Belgium: http://www.vocabulairepolitique.be/pouvoirs-speciaux/ and https://www.dekamer.be/kvvcr/pdf_sections/news/0000012118/MAG_Edition_Speciale_06-2020_FR_BAT.pdf.
- Law of 15 May 2007 relating to civil protection: https://www.ejustice.just.fgov.be/cgi_loi/change_lg_2.pl?language=fr&nm=2007000663&la=F
- Opinion of 25 University teachers in constitutional law: https://plus.lesoir.be/335482/article/2020-11-02/carte-blanche-sortez-le-parlement-de-la-quarantaine

- Opinion of the Ligue des droits humains : https://www.liguedh.be/la-deuxieme-vague-de-la-covid-19-une-menace-pour-nos-droits-et-libertes/
- List of laws adopted during the second wave of the pandemic: http://www.droitbelge.be/news_detail.asp?id=1037
- Opinion of the lawyer's bar associations (representing about 20.000 lawyers): https://avocats.be/sites/default/files/10.02.2021%20-%20Carte%20blanche%20-%20L%27Etat%20de%20droit%20bientot%20sous%20respirateur.pdf

Functioning of the justice system

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

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

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

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

References

(1). https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=INT%2fCESCR%2fCSS%2fBEL%2f41232&Lang=en

(2) (https://csj.be/fr/)

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

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

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

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

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

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

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

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

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

The curfew (from 10pm or 12pm depending on the region) imposed on the whole Belgian territory can be questioned in terms of proportionality.

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

The COVID-19 outbreak worsened already existing inequalities, impacting disproportionately the most vulnerable groups in society (people in poverty, undocumented migrants, women, older people, younger people, prostitutes, detainees, persons with disabilities, etc.). There is a risk that the measures taken (1) will not be able to correct this trend. There is also a tendency to rely heavily on the executive power during

the emergency situation. This can be justified under some conditions, including a strict limitation in time and sufficient parliamentary oversight. The legal base currently mobilized by the executive power for adopting decisions might not guarantee sufficient safeguards in this respect.

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

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

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

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

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

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

References

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

Bulgaria

Ombudsman of the Republic of Bulgaria

International accreditation status and SCA recommendations

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

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

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

Impact of 2020 rule of law reporting

Follow-up by State authorities

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

Impact on the Institution's work

In general, the 2020 ENNHRI Rule of law Report had effects on the work of the Ombudsman of Bulgaria' institution: it has served the strategic planning of the institution at

two levels: first, it has informed the strategic priorities of the candidate for the election of the Ombudsman in both the Standing Parliamentary Committee on Human Rights and the political groups of the National Assembly; second, it served as a background for the development of the strategic program 2020 – 2025 of the institution.

References

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

Independence and effectiveness of NHRIs

Changes in the regulatory framework applicable to the Institution

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

Enabling space

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

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

The Ombudsman was involved in the processes of public discussion of all issues that relate to human rights and fundamental freedoms protection – all in total more than 150 recommendations have been sent to respective parliamentary committees, ministries and

state agencies, and a greater part of the Ombudsman concerns and proposals were taken into account.

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

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

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

References

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

Human rights defenders and civil society space

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

There are also claims that the police authorities detained people who had not disturbed the public order. The media published a series of images of violence and unauthorised use of force against protesters and reporters. In addition, media content showed police officers

carrying brass knuckles and wearing stickers on their uniforms in English reading "*One hit. One kill. My decision. No remorse.*" The Ombudsman took a public stance on the issue emphasising the need to examine if there is proportionality in the use of physical force and auxiliary means by the law-enforcement authorities as a fundamental principle set out in international acts, the Bulgarian law and the case-law of the European Court of Human Rights in Strasbourg. In line with this principle, any force used must correspond strictly to the attaining a legitimate aim.

References

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

Checks and balances

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

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

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

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

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

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

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

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

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

The Ombudsman is also invested with the responsibility to conduct assessments of domestic compliance with and reporting on international human rights obligations – in

2020 the institution submitted parallel or shadow reports to EU and UN monitoring bodies on several issues and one alternative report within the third cycle of UPR process. The Ombudsman is also monitoring the implementation of recommendations originating from international human rights monitoring bodies and devotes a special part within its Annual report on the findings and the recommendations thereof. In 2020 the Annual report of the Ombudsman stressed again the need for **the establishment of an inter-institutional coordination council**, including representatives of all national institutions which should be directly engaged in the process of coordinating and monitoring the implementation of the measures to execute the sentencing judgments of the European Court of Human Rights.

References

- Summary of the 2020 Annual Report of the Ombudsman of Bulgaria - to be published on 31 March 2021

Functioning of justice systems

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

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

A major persisting problem is the need for improved access to justice through the effective implementation of information and communication technology (ICT). In 2020, the suspension of court sittings for a period of two months during the lockdown situation exposed the consequences of the under-development of the e-justice system. The Ombudsman addressed a recommendation to the President of the Supreme Judicial Council. The Ombudsman expressed the position that the human right to access to justice could be damaged in the future unless measure are taken to ensure a real functioning of the e-justice system. While the first package of laws, introducing the e-justice system in

Bulgaria was initiated back in 2012, and was adopted and came into force in 2016, at present only magistrates have use of the electronic facilities, while ordinary citizens cannot take advantage of such tools. The negative impact of such delay in introducing all the functionalities of the e-justice became evident in the context of the present COVID-19 crisis, when courts had to halt their work for three weeks.

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

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

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

References

- Public statement of the Ombudsman on legislative amendments that will temporarily limit the right of access to justice - https://www.ombudsman.bg/news/5410?page=4#middleWrapper
- Summary of the 2020 Annual Report of the Ombudsman of Bulgaria - to be published on 31 March 2021

Media pluralism and freedom of expression

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

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

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

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

References

- Public statement of Ombudsman on access of journalists to National Assembly premises - https://www.ombudsman.bg/news/5396?page=6#middleWrapper

- *Bozhkov v. Bulgaria* case - https://hudoc.exec.coe.int/eng#{%22EXECIdentifier%22:[%22004-1909%22]}\
- Speeches of the Ombudsman https://www.ombudsman.bg/news/5211?page=10#middleWrapper
- Statement of the Ombudsman https://www.ombudsman.bg/news/5287?page=4#middleWrapper

Corruption

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

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

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

The **protection of whistle blowers** is still not implemented in Bulgarian law. The Ombudsman has invited state authorities to consider with special attention the need for addressing this gap. A special focus should be put on prohibition of retaliation and support measures including comprehensive and independent information and advice, which is easily accessible to the public and free of charge, on procedures and remedies available, on protection against retaliation, and on the rights of the person concerned. In a statement the Ombudsman has underlined **the need for timely and effective transposition** of the Directive (EU) 2019/1937 of the European Parliament and of the Council of 23 October 2019 on the protection of persons who report breaches of Union law. Such a recommendation will be brought to the attention of the newly elected National Assembly after the general elections of April 2021.

References

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

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

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

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

In 2020 the institution has examined 13 794 complaints of citizens for violations of their rights. The ombudsman of Bulgaria has also the mandate to inspect and examine public premises, documents, equipment and assets – in 2020, despite the difficult epidemic situation and the state of emergency[4], the **Ombudsman as the NPM** carried out inspections in 49 sites (see section below).

Access to courts has been initially suspended for three weeks (between 13 of March until 4th of April) upon decision of the Supreme Judicial Council, thus depriving citizens of their right of access to justice, before an amendment of the special legislation reduced the scope of such limitation to some civil law proceedings only. Cases such as those on undertaking victim protection measures and child protection measures are not affected by the suspension. The Ombudsman nonetheless sent to the parliament an opinion on the

need for statutory extensions and suspensions of time limits, related to judiciary procedural regulations during the state of emergency.

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

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

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

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

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

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

The main activities of the Ombudsman acting as the NPM are focused on the places accommodating persons deprived of liberty, detainees or persons placed there as a result of an act or with the consent of a government authority and these persons may not leave these places of their own accord. The annual monitoring group of the NPM includes the

places to serve the punishment of deprivation of liberty with the Ministry of Justice, detention centres at the Ministry of the Interior structures, special homes for temporary accommodation of foreigners with the Migration Directorate and registration and reception centres of the State Agency for Refugees at the Council of Ministers, residential social care for children and adults, state psychiatric hospitals. For some of the said groups of persons affected, the monitoring performed by the Ombudsman is the only form of independent control of the observance of their rights.

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

The Ombudsman has always expressed concern for the respect for the rights of people at closed institutions but the protection of these people's rights proved to be a serious challenge during the COVID-19 outbreak. The pandemic seriously affects vulnerable persons given the nature of the restrictions imposed on them and the difficulties to ensure adequate protection and anti-epidemic measures at institutions and facilities. It is important to note that international human rights standards allow for restrictions of almost all human rights if certain statutory conditions are in place and the interference in these fundamental rights is carried out within the margins of discretion recognised to the State. **Only the prohibition of torture is absolute in nature – it may not be derogated or restricted in any way.**

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

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

References

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

Croatia

Ombudswoman of the Republic of Croatia

International accreditation status and SCA recommendations

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

Impact of 2020 rule of law reporting

Follow-up by State authorities

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

References

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

Impact on the Institution's work

Rule of Law has become a significant part of our work and we have been recognized by stakeholders for our work on the issue. For example, civil society organisations' priorities for the Republic of Croatia Presidency of the Council of the European Union included Rule of law issues. The conference "Just Europe – Strengthening the Rule of Law and Human Rights in Europe" was planned for March 2020.The Ombudswoman, her Deputy and staff were involved. While, due to COVID-19 the in-person conference was cancelled, the event took place in online form, through recorded interventions. The Deputy Ombudswoman took part in it.

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

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

Follow-up initiatives by the Institution

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

References

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

Independence and effectiveness of NHRIs

Changes in the regulatory framework applicable to the Institution

In 2019 a new responsibility was added to the Ombudsman's mandate with the entry into force of the Law on the Protection of Reporters of Irregularities (Whistle-blowers) on 1 July 2019. The Ombudswoman was granted the mandate of the competent body for external reporting of irregularities (i.e., protection of whistle-blowers). As a consequence, in 2020 new Rules of Procedure of the Ombudsman were adopted by the Croatian Parliament, which introduced a new Department within the institution responsible for protection of whistle-blowers. As the Rule of Law Report recognized the need for strengthening of the institution within this mandate, during 2020 one staff member was employed for this mandate.

References

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

Enabling space

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

As in the previous Report, the Ministry of the Interior continues to deny the Ombudswoman direct access to data on the treatment of irregular migrants in their information system. The Ombudsman is, in the performance of the National Preventive Mechanism mandate, authorized under Articles 4, 19 and 20 of the OPCAT and Article 3 and 5 of the Law on NPM to visit places where there are or could be detained persons

unannounced and freely access information about their treatment. This practice was reported to the Croatian Parliament on several occasions, and in the 2019 and 2020 Annual Reports the Ombudswoman issued a recommendation to the Ministry of Interior to ensure unannounced and free access to data on irregular migrants to the staff of the Office of the Ombudsman and the NPM in line with provisions of the OPCAT, Law on National Preventive Mechanism and the Ombudsman Act.

References

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

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

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

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

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

Human rights defenders and civil society space

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

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

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

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

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

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

References

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

Checks and balances

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

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

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

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

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

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

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

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

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

References

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

Functioning of justice systems

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

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

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

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

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

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

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

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

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

References

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

Media pluralism and freedom of expression

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

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

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

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

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

References

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

Corruption

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

During 2020, employers with at least 50 employees were required to set up a system of internal reporting of irregularities. Persons in charge of internal reporting sent us 26 notifications on received complaints. What can be seen from them is that both the persons filing the complaints and persons responsible for internal reporting do not have sufficient

understanding of the Law. Namely, these cases often related to the violations of employment rights, and not of an irregularity that poses a threat to the public interest.

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

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

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

References

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

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

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

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

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

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

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

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

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

References

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

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

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

References

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

Cyprus

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

International accreditation status and SCA recommendations

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

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

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

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

Impact of 2020 rule of law reporting

Follow-up by State authorities

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

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

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

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

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

References

(1) https://www.pio.gov.cy/%CE%B1%CE%BD%CE%B1%CE%BA%CE%BF%CE%B9%CE%BD%CF%89%CE%B8%CE%AD%CE%BD%CF%84%CE%B1-%CE%AC%CF%81%CE%B8%CF%81%CE%BF.html?id=18152#flat

(2) https://www.pio.gov.cy/en/press-releases-article.html?id=18161#flat

Impact on the Institution's work

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

- It has stressed the important and interlinked relationship that the implementation of the Rule of Law has on the protection of human rights of citizens and, thus, the emphasis

and the priority that our Institution, as a NHRI, has to give in the promotion and protection of the Rule of Law in Cyprus;

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

Follow-up initiatives by the Institution

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

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

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

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

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

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

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

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

The first campaign is entitled "Break the Silence" and involves harassment and sexual harassment in the workplace. This topic was chosen due to the constant revelations about cases of sexual harassment that come to light.

References

(1) http://www.ombudsman.gov.cy/ombudsman/ombudsman.nsf/index_new/index_new?openform

(2) https://www.voiceitproject.eu/

(3) http://www.ombudsman.gov.cy/ombudsman/ombudsman.nsf/annualreport_table/annualreport_table?openform

(4) http://www.ombudsman.gov.cy/ombudsman/ombudsman.nsf/All/AF7CE4A0ED353EC4C225867100418F7C?OpenDocument

Independence and effectiveness of the NHRI

Changes in the regulatory framework applicable to the Institution

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

As regards the independence of the Commissioner, under her mandate to act as an NHRI, it has to be noted that the Commissioner for Administration and the Protection of Human Rights (Ombudsman) was established in 1991 by virtue of Law no. 3(I)/1991 (the Law on the Commissioner for Administration as amended, (1991-2014)), as an independent Incumbent, responsible to deal with individual complaints concerning maladministration, misbehaviour and the protection and the promotion of human rights.

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

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

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

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

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

- In 2019 the Commissioner succeeded the approval by the Council of Ministers and the Parliament of the exclusion of the Ombudsman Office staff to take the governmental exams. The Institution now organises specialised exams by the Advisory Committee set up by the Commissioner. Those who succeed in the examination are brought before the Public Service Commission and their recruitment is in accordance with the Commissioner's recommendation, based on a relevant assessment of their specific knowledge and experience. Although during six months the above decision was mistakenly revoked, the Council of Ministers, by a new decision dated February 17, 2021, reverted back to its original decision and confirmed the exclusion of the Ombudsman Office staff to take the general governmental exams. It is to be noted that in the Annual Budget for 2021, an amount of 18,000 EUR is included for the preparation of specialized exams for the recruitment of new staff during the current year.
- The final selection for the recruitment of the staff of the Office is taking place among candidates who have the academic qualifications based on the employment plan and are eligible to apply for the post, without any limitations. 10% of the vacant post are offered to persons with disabilities, when they are candidates, by relevant Law in force.
- In 2020, the Institution's staff was increased by the recruitment of four new staff members and six more vacant positions are about to be filled in 2021-2022.
- In relation to the threat posed to the Commissioner's "independence" which we reported on in the 2020 ENNHRI Rule of Law Report, following a letter of the President of the International Ombudsman Institute and by reference to the Venice Principles, the Attorney General in his legal opinion stressed that the matter was raised unnecessarily and deemed no further legal examination.
- Concerns over the above-mentioned matter are also included in the European Commission's 2020 Rule of Law Report – country report on Cyprus, where is noted, among others, that "…However, it (the Ombudsman) has faced challenges in view of an attempt by the Auditor General to investigate the way it exercises its powers, which the Commissioner considered an interference with its independence. This

position was supported by the International Ombudsman Institute (IOI) and subsequently, the Attorney General stopped the procedure…".

References

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

Enabling space

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

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

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

Human rights defenders and civil society space

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

Recent examples of such reports are:

- Report on 12/1/2021 regarding the arrangements made in public schools for long distance learning especially for pupils with disabilities – following a complaint submitted by an NGO active on the rights of persons with autism (1);
- Report on 18/12/2020 regarding the Status of Foreign Domestic Workers in Cyprus - submitted jointly with a University Assistant Professor active on the issue (2);
- Report on 22/12/2020 regarding the living conditions of the Roma community in Cyprus - the investigation was done in cooperation with an NGO active in the protection of Roma Rights in Cyprus (3).
- Report on 3/3/2021, after a complaint by the NGO Cyprus Refugee Council, regarding the excessive detention of a third-country national under repatriation at a Police Detention Center until his return to his country of origin.

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

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

References

- (1)http://www.ombudsman.gov.cy/ombudsman/ombudsman.nsf/All/B7434AEFDD11330AC225865C003890F0/$file/54.2021_12012021.pdf?OpenElement

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

Checks and balances

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

Functioning of justice system

Our Institution has no mandate to take cases before courts or intervene in the operation of the courts. Nonetheless, it is worth noting how some problematic aspects related to the functioning of the justice system in Cyprus have been highlighted in a number of international reports. Particular reference is made to the delays observed in the completion of court proceedings and the backlog of cases pending before courts.

References

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

Corruption

As stated above, additional initiatives and measures were taken by the Government to combat corruption in Cyprus. In particular, our Institution was actively engaged in the discussions held in the Parliament, for the establishment, by Law, of an Independent Body with responsibility and competences to combat corruption.

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

Over the last 2 years, Cyprus has witnessed a rapid increase in the number of people who come and apply for international protection, making it the EU country with the highest number of first-time applicants relative to the population (1)(2)(3). That has consequently led to long delays in the examination of asylum applications (as well as appeals filed to Courts on rejection decisions), overcrowding in the 2 Reception Centres that operate in Cyprus, and to major challenges in providing the necessary material reception conditions to the thousands of asylum seekers who live in the community (outside the Reception Centres).

Addressing this situation and intervening towards the protection of the fundamental human rights of this particularly vulnerable group of people, was indeed a pressing challenge for the Institution. In the framework of our competences, in the past years, we did a number of interventions towards implicated state authorities (e.g., the Asylum Service, the migration authorities and the Welfare Services), with specific recommendations and suggestions on enhancing the protection, in practice, of the human rights of asylum seekers, as well as people who eventually are granted international protection status. In these Interventions we cited relevant human rights laws, and especially the provisions of the Cyprus Refugee Law of 2000 (which has been amended to align with the recast Directive 2013/32/EU on asylum procedures and the Directive 2013/33/EU on reception conditions).

Our Reports/Interventions covered, among others: the living conditions of asylum seekers in the reception centres; the level of specialized support provided to those who belong to vulnerable groups; detention of asylum seekers; difficulties in accessing asylum procedures and delays in the examination of applications; access to welfare benefits and difficulties in finding housing etc.

Following our Reports/Interventions, the State implemented the majority of our recommendations. For instance:

- The payments of asylum seekers via coupons was replaced via direct deposit of cash in their bank accounts since it has now been made easier for asylum seekers to open bank accounts. In addition, the financial support provided for asylum seekers (in, allowances, rent coverage etc.) has been increased and supplementing support in cases of families of employed asylum seekers has been approved.
- The employment sectors accessible to asylum seekers have been expanded.
- Further EU funding has been requested in order to improve the services provided to asylum seekers.
- A national plan for the housing of asylum seekers is being promoted by the competent authorities.
- An additional reception centre is planned to be created/constructed.
- Interviews of asylum seekers staying in the Reception and Accommodation Center in Kokkinotrimithia that had been interrupted due to the pandemic, were resumed via video conferencing.
- Our suggestions for improving the living conditions in the Reception and Accommodation Center in Kokkinotrimithia were implemented and procedures for the replacement of a number of tents with prefabricated houses have been accelerated.
- Unaccompanied minors who were staying in the Reception and Accommodation Center in Kokkinotrimithia were transferred to juvenile shelters.

Furthermore, the Asylum Service and the Civil Registry and Migration Department were strengthened with the recruitment of additional staff and 10 Judges were hired for the Administrative Court of International Protection. In this way, the examination of asylum applications has been accelerated and, at the same time, the examination of presumably unfounded applications is expected to be completed within 10 days so that, when the applicant appeals to the Administrative Court of International Protection, the decision is normally issued within 25 days.

References

(1) https://www.nytimes.com/2020/01/28/world/europe/cyprus-migrant-

(2) https://cyprus-mail.com/2020/12/18/cyprus-top-in-asylum-applicants-relative-to-population-in-eu/

(3) https://in-cyprus.philenews.com/over-7000-asylum-seekers-entered-cyprus-in-2020-despite-covid-restrictions/

(4) Impact of measures taken in response to COVID-19 on the national rule of law

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

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

The Government took several measures to contain the pandemic, which affected the rights of citizens (e.g., restrictions in movement both inland and internationally, prohibition of social gatherings, closure of businesses and schools, mandatory wearing of face mask). In view of a 2nd wave of the pandemic, the most restrictive measures have recently been reintroduced.

We have received many complaints regarding the measures taken to combat the pandemic (between March 2020 and December 2020, we received 370 such complaints). Generally, the Institution's approach to these complaints is to assess as to whether the measures taken are: legally based, time-limited, proportionate and non-discriminatory. Furthermore, we give special emphasis to the protection of rights of people in situations of vulnerability.

Since what reported in the contribution on Cyprus to the 2020 ENNHRI Rule of Law Report, the Institution made the following additional Interventions:

1) Intervention, on 8/5/2020, regarding the protection of women's maternity rights, during the COVID-19 pandemic.

2) Intervention/Report, on 21/5/2020, regarding decision of the Ministry of Education to adopt different criteria for children with disabilities, for their return to school on 1/5/2020, after the easing of the COVID-19 measures.

3) Own Initiative Intervention of Commissioner for Administration and the Protection of Human Rights (Ombudsman), within the framework of her jurisdiction as National

Preventive Mechanism (NPM), regarding measures in aged care facilities to deal with the spread of the COVID-19 pandemic and the post-COVID-19 era

4) Intervention/Report, on 24/8/2020, regarding the decision of the Ministry of Education that all pupils wear protective masks (including children ages 6-11).

5) Report, on 15/9/2021 regarding the measures taken for protection from COVID-19 at a Psychiatric Hospital (both for staff and the patients).

6) Report on 20/11/2021 regarding the granting of special permits to enter Cyprus, to people who are in long term relations with Cypriot citizens or permanent residents of Cyprus.

7) A new follow-up Report, on 9/12/2021, regarding the living conditions of Asylum Applicants in a Reception Center, including the measures or lack of measures taken to protect them from COVID-19.

8) Report, on 12/1/2021, regarding the COVID-19 measures taken for online education specifically for children with disabilities (autism) in elementary education.

More information on our Interventions, including a short summary in English, is included in a Publication that the Commissioner prepared in December 2020, titled "COVID-19 and Human Rights"(1).

The Institution is concerned that the COVID-19 pandemic will have negative implications on many people, even after the measures taken to address it are eased or lifted. We are mainly concerned on the long-term effects/implications that the pandemic will have on the people who belong to the most vulnerable groups of the society (e.g., unskilled workers, the elderly, minorities, migrants, persons with disabilities, Roma, detained persons), and, in particular, how it will affect their ability to enjoy equal access to basic social rights (such as employment, welfare support, healthcare (including timely vaccination against COVID-19) and education).

References

http://www.ombudsman.gov.cy/Ombudsman/ombudsman.nsf/All/039ECAB1E67D4984C225863F00347A1F/$file/COVID19%20AND%20HUMAN%20RIGHTS.pdf?OpenElem

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

The most significant changes affecting the Institution's operations are related to the nationwide emergency measures implemented to respond to the COVID-19 Pandemic.

Regarding the impacts that the measures initially adopted to counter the pandemic (March-April 2020) had on the functioning of our NHRI, we refer to our contribution to the 2020 ENNHRI Rule of Law Report.

In relation to the most recent measures taken to address the second wave of the pandemic (that started in Autumn 2020), we would like to note the following:

- In November and December 2020 new emergency measures were implemented to contain the pandemic, which also affected the operation of public authorities. These measures included: the operation of departments/authorities (in rotation) with emergency personnel, the introduction of arrangements for staff to work remotely (from home) where possible, the provision – in view of the closure of schools – for staff with children under the age of 15 years to take a special leave and stay at home or work remotely if possible, the provision for staff with underlying health conditions to take special leave for public health reasons. Despite the above-mentioned measures, the functionality, operation and productivity of our Institute were not affected;
- In order to comply with these measures, our Institution had to implement organizational arrangements which affected our human resources capacity in dealing with our extensive mandate. Despite the above-mentioned measures, the functionality, operation and productivity of our Institute were not affected significantly. On the contrary, the productivity of our Institute was increased since as a NHRI we remained vigilant over any human rights concern or violation which may arise.
- In view of the lockdown measures, we restricted visits from the public to our premises, and urged the public to use alternative methods to submit a complaint (eg. using either electronic submission, by fax, via our website or by post).

We were able to carry out visits and inspections to different institutions/detention centers/sites, including in the framework of our competence as a National Preventive Mechanism. In fact, our institution not only has continued to carry out, but has increased the visits and inspections as NPM during the pandemic. During the reporting period, we carried out visits and inspections to the following places:

- Nicosia Central Prisons (9 visits)
- Paphos Police Station
- Aradippou Police Station
- Athalassa Psychiatric Hospital (2 visit)
- Temporary Holding Facility at Larnaca Airport
- Temporary Reception and Accommodation Center in Kokkinotrimithia "Pournara Camp" (2 visits)

The recent reinforcement in 2020 of our NHRI with the recruitment of four new Officers (which was mentioned above), was a positive development in our capacity to effectively fulfil our mandate, including in these challenging circumstances. Additionally, with the approval of three more posts (officers) by the State, a total of six more positions are about to be filled in 2021-2022.

Czech Republic

Public Defender of Rights

International accreditation status and SCA recommendations

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

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

A roundtable on NHRI accreditation took place in 2020 proving that there are many stakeholders who are prepared to support the establishment of the NHRI. The Government's Representative for Human Rights promised to present a legislative proposal concerning the NHRI in a reasonable future.

Impact of 2020 rule of law reporting

The Public Defender of Rights is not aware of follow-up actions or initiatives by state authorities, nor has taken any specific follow-up initiative based on the 2020 ENNHRI Rule of Law Report.

Independence and effectiveness of NHRIs

Changes in the regulatory framework applicable to the Institution

The regulatory framework applicable to the Public Defender of Rights has not changed since the last report.

Enabling space

The Public Defender of Rights' Annual Reports

The Annual Report 2019 has not yet been discussed by the Chamber of Deputies. Therefore, the legislative recommendations addressed to the Chamber of Deputies by the Defender have not been heard so far.

The Annual Report 2018 has been discussed in the Chamber of Deputies and the Chamber of Deputies asked the Government to express its opinion on the recommendations stated in it. However, the Government has not responded yet.

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

The Public Defender of Rights took part in the round table concerning the NHRI in the Czech Republic organised by the Government's Representative for Human Rights. In the discussions, the importance of the NHRI in the national context was acknowledged and concrete steps and options leading to the establishment of an NHRI in compliance with the Paris Principles in the Czech Republic were discussed. All stakeholders taking part in the meeting agreed on the importance of the NHRI's work in the national political environment.

Human rights defenders and civil society space

The Public Defender of Rights has good relations and cooperation with NGOs and the CRPD Department cooperates with the civil society on a regular basis, especially through the Advisory Body. The Public Defender of Rights does not however do general monitoring when it comes to the protection of HRDs and observation of their rights, unless it is a case that falls under its legal mandate.

Checks and balances

Limitations of participation of rightsholders

- Participation rights in environmental matters

Public participation rights in environmental matters are set out especially in the Construction Code, and in the Act on the Protection of the Nature and the Countryside. However, there is a draft of the new Construction Code currently being discussed in the

Chamber of Deputies which attempts to significantly restrict the above-mentioned participation rights. The Public Defender of Rights took part in the stakeholders' consultation prior the presentation of the draft legislation to the Chamber of Deputies and criticized this deficiency several times.

Moreover, the Constitutional Court of the Czech Republic announced a decision in the case Pl. ÚS 22/17 concerning public participation rights in environmental matters on 2nd February 2021. The constitutional complaint was filed by a group of Senators in 2017 seeking the abolishment of several provisions of the Construction Code and of the Act on the Protection of the Nature and the Countryside. According to their view, legal provisions in question undermined the public participation rights in environmental matters by excluding environmental associations from the participation in many important types of proceedings according to the Construction Code. The Public Defender of Rights intervened in the proceedings in support of the applicants.

The Constitutional Court decided that the provisions in question are not unconstitutional, and therefore remain in force. It argued that the participation rights of environmental associations have been narrowed, but not entirely erased from the Construction Code. It concluded that the restriction of participation rights was legitimate, rational, and not contrary to the international obligations of the Czech Republic (namely the Aarhus Convention). It is also important to mention that seven judges of the Plenary (consisting of 15 judges) presented their dissenting opinions in the case. The Public Defender of Rights considers the Constitutional Court's decision as a "step back" in relation to participation rights in environmental matters.

References

- https://www.ochrance.cz/aktualne/tiskove-zpravy-2021/ani-po-nalezu-ustavniho-soudu-nejsou-spolky-ucastniky-rizeni-podle-stavebniho-zakona/
- https://www.usoud.cz/fileadmin/user_upload/Tiskova_mluvci/Publikovane_nalezy/2021/Pl._US_22_17_na_web_vcetne_disentu.pdf

Functioning of justice systems

The only problematic issue the Public Defender of Rights is aware of in this regard are delays in court proceedings. This problem is of a long-term nature and it is mainly a result of the long-term overload of the courts.

More specifically, there are also long-term problems with delays in court proceedings in relation to the work of expert witnesses. The causes of delays are mainly twofold: either there are not enough experts in the field who could prepare the expert opinion, or the experts have delays with submitting their expert opinions. In both cases, it has a negative influence on the length of the court proceedings.

The expert witnesses' agenda has newly been entrusted to the Ministry of Justice. The Public Defender of Rights cannot predict the further developments in this field and how this change will influence it, but it will further monitor this issue.

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

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

During 2020, we have registered several COVID-19 governmental measures which gave rise to doubts regarding their legality or proportionality, such as:

- General prohibition of visits in facilities of social services (i.e., homes for the elderly, children's houses), prohibition of leaving such facility;
- Prohibition of presence of fathers at childbirths, or prohibition of parental presence at hospitals with their ill or operated children;
- Prohibition of prison visits, then replaced by limitation to only one person (this meant that minor children could not visit their imprisoned parents as they could not be accompanied by an adult);
- Prohibition of access to the country for foreigners, even for purposes of reunion with their family or closest relatives;
- Strict requirements for persons who had to cross state boarders on an everyday (or very frequent) basis due to their work, family relations etc. (the prescribed frequency

of the regular testing of such persons on COVID-19 was considered particularly problematic);

- Access to education for pupils with disability in the light of the online learning;
- Closing of services for endangered families and children.

The Public Defender of Rights was dealing with all the above-mentioned issues. Most of the problematic measures have been fully or partially repealed (and sometimes replaced by less strict measures).

There have also been issues with involuntary hospitalisation and access to information during the pandemic as the following examples show.

The Public Defender of Rights has registered issues in judicial decision-making in cases of involuntary hospitalisation. Under normal circumstances, judges deciding these cases tend to personally visit the people in facilities. In some cases, this has not happened during the pandemic, and some judges issued decisions without personally seeing the person. Thus, the Public Defender of Rights intervened and discussed the issue with the Ministry of Justice and representatives of the judiciary.

The CRPD team has dealt with the issue of lacking access of people with audial disability to information about COVID-19. Since the beginning of the pandemic, the media outlets offered only limited possibilities of spreading information to people with audial impairment. This also turned out to be problematic in relation to passing information about testing and beginning of vaccination. The Public Defender of Rights has intervened in this regard and the television outlets are about to include the sign language.

It is already possible to estimate certain long-term consequences resulting from the COVID-19 pandemic. The Public Defender of Rights has registered growth and strengthening of domestic violence and general increase of social-pathologic phenomena in families. Families dealing with this type of violence may suffer its consequences for a rather long time.

Another issue is the low accessibility of supportive social services as it may be expected that in these exact areas the state funding might be limited, and the cuts may appear soon. In a larger scale, as a direct result of long-lasting isolation, we might experience general breakdown of personal or family ties, something we are already witnessing concerning imprisoned persons who have not had many possibilities of maintaining contact with their close persons.

Furthermore, the CRPD team has expressed concerns regarding the future employment situation of people with disabilities. The active policy of employment and general support of employment of people with disabilities may face cuts and may not be a priority for many stakeholders in upcoming times. Another of the concerns is the influence of long-distance education of children with disabilities: this type of education may be difficult for many of them, the support of such pupils is not emphasized, and hence, in the future, they may fall behind.

Also, the COVID-19 pandemic has highlighted and deepened the issues that were already present in the Czech society but neglected. The pandemic may increase the number of people falling into poverty, facing executions, losing their housing without any governmental support, or facing removal of children from families. Another challenge will be to maintain the quality and accessibility of the health care system which has been under serious pressure and is significantly underfunded.

The Public Defender of Rights has been vocal regarding the isolation of people in social service facilities and the legality of such measures. The Public Defender of Rights has insisted that visiting and leaving these facilities must be allowed under safe conditions which would combine exercising fundamental rights with complying with hygienic standards. Regarding prisons, the Public Defender of Rights demanded that prisoners may receive more than only one person for a visit, and that the prisons would implement more measures to compensate for the lack of visits (i.e., more phone calls, Skype calls).

Furthermore, the Public Defender of Rights expressed our concern regarding the approach of the education system towards children with disability and the support of their needs especially, during distance learning. Also, the Public Defender of Rights has investigated the issue of barrier-free access to places where testing or vaccination take place.

In these mentioned areas, the Public Defender of Rights has initiated a dialogue with relevant stakeholders, organised closed meetings, raised practical recommendations and solutions, and released statements for media.

References

- https://www.ochrance.cz/aktualne/tiskove-zpravy-2020/ombudsman-resi-omezeni-preshranicniho-pohybu-v-dusledku-epidemie/
- https://www.ochrance.cz/aktualne/tiskove-zpravy-2020/navstevy-v-zarizenich-pro-seniory-v-dobe-epidemie/
- https://www.ochrance.cz/aktualne/tiskove-zpravy-2020/lide-v-zarizenich-byli-v-dobe-pandemie-covid-19-nekdy-uplne-odriznuti-od-okoli/
- https://www.ochrance.cz/aktualne/tiskove-zpravy-2020/ve-veznicich-jsou-v-omezenem-rozsahu-opet-povoleny-navstevy/
- https://www.ochrance.cz/aktualne/tiskove-zpravy-2020/ani-v-soucasne-situaci-nemuze-nemocnice-pritomnost-rodicu-u-ditete-zcela-vyloucit/
- https://www.ochrance.cz/aktualne/situace-ve-veznicich-v-dobe-epidemie/

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

Most significantly, the pandemic has affected the NPM and its possibility to conduct regular visits of facilities where persons are deprived of liberty. During Spring 2020, the monitoring activity was stopped as such and no visits occurred.

Gradually, the monitoring visits were restated, however, under strict conditions. They were not conducted unexpectedly; the facility was usually informed one day in advance in order to prepare the hygienic conditions. To reduce the risk of contagion, the NPM team has used protective suits and it has undertaken antigen and PCR testing regularly.

The pandemic has also influenced the selection of topics of the visits. It became more crucial than ever to focus on the contact with the outside world or conditions of further deprivation of liberty connected to COVID-19 (e.g., locking up patients in quarantine).

The pandemic has also affected on-site investigations. In Spring, on-site investigations were not possible to perform; during the second wave starting in Autumn, on-site investigations have been generally allowed but the Public Defender of Rights has performed them carefully and with full respect to organisational difficulties the public authorities the Defender has decided to visit have had to face. During the visits, all necessary safety measures are implemented.

As to the general functioning of the office, we have been facing the same difficulties as any other institution. The Public Defender of Rights has had to adapt to the home office regime (including finding suitable IT solutions), has also had to reduce the official office hours, and there is also an increased morbidity of the employees. Fortunately, these challenges have not paralyzed the functioning of the office and the Public Defender of Rights continues to perform our duties more or less as before.

References

- https://twitter.com/apt_geneva/status/1361411056321638404?s=04&fbclid=IwAR1DT1xpa2Dh-KUGx-VXMGRSdXPeIWDnIWyR4i-JLgDMUJH3L3A7eR-l2sQ

ENNHRI

Denmark

Danish Institute for Human Rights

International accreditation status and SCA recommendations

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

Impact of 2020 rule of law reporting

Follow-up by State authorities

The Danish Institute for Human Rights is not aware of any follow-up action by State authorities after the 2020 ENNHRI Rule of Law Report.

Impact on the Institution's work

The 2020 ENNHRI Rule of Law Report has helped give a fruitful overview of the rule of law situation in Europe, which the Danish Institute for Human Rights has benefitted from in several parts of our work, especially while doing desk research.

Follow-up initiatives by the Institution

While the Danish Institute for Human Rights has used the 2020 ENNHRI Rule of Law Report, as described above, it has not given us reason to initiate specific follow-up measures.

Independence and effectiveness of NHRIs

Changes in the regulatory framework applicable to the Institution

There have been no changes in the regulatory framework after the 2020 ENNHRI Rule of Law Report.

Enabling space

The Danish Institute for Human Rights works with legislative processes in Denmark and Greenland in various ways. Primarily by responding to public consultations on draft bills, including giving recommendations for alterations of the text etc. We also do research and analyses in various fields where human rights are at stake. We strive to present our reports to authorities directly or through public debate in order to enhance the protection and promotion of human rights. It is our impression that state actors take our responses/recommendations into thorough consideration.

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

There have not been any significant changes in the environment in which the Institute operates.

Human rights defenders and civil society space

1. The Danish Parliament has adopted an act aiming at safeguarding democracy by hindering natural or legal persons in impeding or attempting to undermine democracy and fundamental human rights and freedoms through donations. The act includes a public list of banned natural or legal persons, in particular foreign state authorities or state-controlled organisations or companies. A receiver of a donation from a natural or legal person on this list will be fined the equivalent of 30% of the donation.

The Danish Institute for Human Rights found the wording of what constitutes "undermining the democracy" to be (too) vague and open for interpretation. The Institute noted, among other things, the risk of the law being arbitrary and giving rise to legal uncertainty and recommended specifying on which grounds a natural or legal person can be included on the list of banned persons.

2. In a bill, the Danish Government suggests giving the police powers to forbid individuals to be present in a specific public place, i.e., a square, a part of a street etc. As a "safety-creating ban" the measure should keep an area safe from a group of persons which is likely to make residents or other persons in the area unsafe. The Danish Institute for Human Rights has found that there is a risk of arbitrariness in the enforcement of such a measure, seeing that the police is given a wide margin of appreciation and is not obligated to give a warning before a ban is issued.

3. The National Agency for Education and Quality (*Styrelsen for Undervisning og Kvalitet* (STUK)) has in the past years reinforced its supervision of independent private schools (*friskoler*) in Denmark. This has led to a withdrawing of government subsidies from several schools based on Islamic values and consequently the closure of seven schools. The Danish Parliamentary Ombudsman has by letter on 20 September 2020 raised the question as to whether STUK has breached the schools' right to be heard before the decision to withdraw and reimburse government subsidies and withdraw the status of the schools as a private school (*friskole*).

The Danish Institute for Human Rights cooperates with civil society organisations in order to promote human rights and to contribute to an inclusion of the views of civil society in different processes, e.g., in the preparation of international reporting and scrutiny under the UN Universal Periodic Review (UPR) or UN treaty bodies.

References

- Act no. 414 of 13 March 2021 on the prohibition of receiving donations from certain physical persons and legal entities (Lov om forbud mod modtagelse af donationer fra visse fysiske og juridiske personer) (in Danish): https://www.retsinformation.dk/eli/lta/2021/414
- The Danish Institute for Human Rights, public consultation response to draft bill on prohibition of receiving donations from certain physical persons and legal entities, 20 March 2020 (in Danish), https://menneskeret.dk/hoeringssvar/forbud-modtagelse-donationer-visse-fysiske-juridiske-personer
- Bill L189 2020-21 on introducing the possibility of police ordering persons to stay away from public places *(Forslag til lov om ændring af straffeloven, lov om politiets virksomhed, retsplejeloven og udlændingeloven (Forbud mod deltagelse i nattelivet, tryghedsskabende opholdsforbud, udvidet adgang til beslaglæggelse af værdigenstande og udvisning af udlændinge dømt for vanvidskørsel m.v.))*, introduced to parliament 10 March 2021 (in Danish), https://www.retsinformation.dk/eli/ft/202012L00189

- The Danish Institute for Human Rights, public consultation response to draft bill introducing the possibility of police ordering persons to stay away from public places (*forslag til lov om ændring af straffeloven, lov om politiets virksomhed og retsplejeloven* (*Tryghedsskabende opholdsforbud, forbud mod deltagelse i nattelivet og udvidet adgang til beslaglæggelse af værdigenstande*)), 11 February 2021, https://menneskeret.dk/hoeringssvar/tryghedsskabende-opholdsforbud-forbud-deltagelse-nattelivet-udvidet-adgang
- Article in the Danish daily newspaper "Information": Several islamic shools have had their government subsidies withdrawn – the Danish Ombudsman goes into the matter (*"Flere muslimske friskoler har fået frataget statstilskud – nu går Ombudsmanden ind i sagen"*), 12 October 2020 (in Danish): https://www.information.dk/indland/2020/10/flere-muslimske-friskoler-faaet-frataget-statstilskud-gaar-ombudsmanden-sagen

Checks and balances

Laws affecting the system of checks and balances

1. Expedited legislative processes take place in the Danish Parliament a few times a year, whereby the parliament with ¾ of the votes can decide to make an exemption to the common rule in parliament that 30 days must pass between the presentation of a bill and the final vote on the same bill. For instance, two central acts changed the former epidemics act during March 2020. The first act basically shifted the powers of the act from the then regional Epidemic Commissions do the Minister of Health and introduced a range of new powers for the minister, including the possibility of forbidding events, assemblies etc., restricting public transport and regulating measures of contact tracing etc. This act was introduced and adopted the same day, meaning that three readings and committee work all took place on the 12 March 2020. The second act introduced extra measures and was introduced, considered and adopted between 26 and 31 March 2020.

2. As mentioned in the 2020 ENNHRI Rule of Law Report, examples of expedited legislative processes include some of the measures taken in response to the COVID-19-crisis, creating a legal basis for various increased executive powers, including restrictions on freedom of assembly, personal freedom, respect for personal and private life etc. In February 2021, a new permanent act on the handling of epidemic diseases was adopted by parliament,

whereby the temporary acts adopted through 2020 were repealed. The new act was considered under normal legislative procedure.

3. Among the features of the new epidemics act is that some measures initiated by the executive branch in the handling of an epidemic can be vetoed by a parliamentary committee, a procedure untraditional and uncommon in Danish legal tradition. However, the procedure aims at ensuring the democratic foundation of the introduction of certain restrictions for the general public during an epidemic including, inter alia, assemblies, access to schools, day care, libraries, shops and businesses, the visiting of care homes and hospitals, public transport, etc.

4. In November 2020, the Danish government decided to cull all mink in mink farms in Denmark, amounting to 12 to 15 million animals, due to threat of mink being the centre of new coronavirus mutations. The decision was carried through during November and December but caused outrage and the resigning of the cabinet minister responsible, when it turned out that it was doubtful if the decision, at the time it was taken, had sufficient legal basis.

Trust in state authorities

In general, the level of trust among citizens and between citizens and the authorities is very high in Denmark. Whereas the level of trust in the government's handling of COVID-19 was also generally high during 2020, the mink crisis during November and December, described above, resulted in widespread criticism.

NHRI engagement as part of the system of checks and balances

The Danish Institute for Human Rights participates in legislative and policy processes as described above. The Institute has been highly engaged in the process leading to the new Act on epidemics (described above). The institute has amongst other things participated in meetings with the minister of health and a number of members of parliament to discuss the balance of handling an epidemic while at the same time respecting human rights and the rule of law.

ENNHRI

References

- Act on epidemics (*Lov om epidemier m.v. (epidemiloven)*), act no. 285 of 27 February 2021, in Danish, https://www.retsinformation.dk/eli/lta/2021/285
- Examples of expedited procedures: Act no. 208 of 17 March 2020, link to Danish Parliament's time schedule for the bill (L133/2019-20), https://www.ft.dk/samling/20191/lovforslag/l133/index.htm. Act no. 359 of 4 April 2020, link to Danish Parliament's time schedule (L158/2019-20), https://www.ft.dk/samling/20191/lovforslag/l158/index.htm
- COVID-19: All mink in Denmark must be culled, press release, Ministry of Food, Agriculture and Fisheries in Denmark, 5 November 2020, https://en.fvm.dk/news/news/nyhed/covid-19-all-mink-in-denmark-must-be-culled/
- Governement's report to Danish parliament on the mink case, 18 November 2020, in Danish, https://www.ft.dk/samling/20201/almdel/mof/bilag/130/index.htm
- Excerpt of international news articles on the mink culling:
- BBC, 10 November 2020, https://www.bbc.com/news/world-europe-54893287
- Reuters, 17 November 2020, https://www.reuters.com/article/health-coronavirus-denmark-mink/danish-government-finds-backing-for-mink-cull-law-idINL8N2I31O3
- The Washington Post, 18 November 2020, https://www.washingtonpost.com/world/2020/11/18/denmark-mink-cull-coronavirus-minister/
- Our World in Data, Trust, https://ourworldindata.org/trust (last visited 5 March 2021)
- BBC, 19 October 2020, http://www.bbc.com/travel/story/20201018-samfundssind-the-single-word-that-connects-denmark

Functioning of justice systems

The Danish government is during 2020–22 conducting an analysis of the system of access to legal aid in Denmark. The Danish Institute for Human Rights was invited to participate in the working group which also consists of representatives from different parts of government, the judiciary, academia, and the Danish Consumer Council and with a reference group with, inter alia, the Danish Bar and Law Society. The working group shall go through present legislation for legal aid and its linkages to private insurance and give recommendations for possible changes.

The Institute is intervening in cases before national courts and/or international courts, namely the European Court of Human Rights, when we assess that the case includes matters of principle concerning human rights or equal treatment and that the Institute can add value to the case in light of our resources available to make the intervention.

References

- The Ministry of Justice, in Danish, https://www.justitsministeriet.dk/ministeriet/raad-naevn-og-udvalg/udvalg-om-retshjaelp-og-fri-proces/ (last visited 5 March 2020).

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

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

Please see the 2020 ENNHRI Rule of Law Report and the information provided above under the part on checks and balances.

As described above, The Danish Institute for Human Rights has given advice to the government and members of parliament – both in public consultation responses and in meetings – on human rights and rule of law protection during 2020, including during the considerations on a new epidemics act which was adopted in February 2020 and entered into force 1 March 2021.

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

The Danish Institute for Human Rights is assisting the Danish Parliamentary Ombudsman in its duties as National Preventive Mechanism. During 2020 and 2021 many, if not most, of the inspections have been carried out by tele-conference, including interviews with persons deprived of their liberty and staff.

ENNHRI

Estonia

Chancellor of Justice

International accreditation status and SCA recommendations

The Estonian NHRI was accredited with A-status in December 2020. The SCA welcomed the legislative changes from 2019 that allowed the Chancellor of Justice to act as the NHRI in Estonia. The SCA encouraged the NHRI to advocate for the formalization and application of clear, transparent and participatory process for the selection and appointment of the Chancellor of Justice. It also called on the NHRI to advocate for amendments to its enabling law to provide for limits to the term of office of the Chancellor of Justice.

Impact of 2020 rule of law reporting

Follow-up by State authorities

There has not been any direct follow-up action that could be traced back to the 2020 ENNHRI Rule of Law Report.

Impact on the Institution's work

The 2020 ENNHRI Rule of Law Report has not directly impacted the Chancellor's work.

Follow-up initiatives by the Institution

As part of the Chancellor's 2018/2019 Annual Report, the issues raised by the Chancellor in the 2020 ENNHRI Rule of Law Report had been, as usual, already presented to the Parliament, and the contributions disseminated widely.

Independence and effectiveness of NHRIs

Changes in the regulatory framework applicable to the Institution

The national regulatory framework has not changed since the 2020 ENNHRI Rule of Law Report.

Enabling space

The Chancellor of Justice is able to carry out the institutional mandate, as also explained and illustrated in the recent SCA report.

References

- https://nhri.ohchr.org/EN/AboutUs/GANHRIAccreditation/Documents/SCA%20Report%20December%202020%20-%2024012021%20-%20En.pdf.

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

COVID-19 related issues have increased the workload of the Chancellor of Justice but have not hindered the effective fulfilment of the institutional mandate. There was a foreseeable adjustment period – e.g., figuring out how to safely carry on with NPM inspection visits, how to continue in-person meetings with people who need to file an application etc.

The Chancellor wrote in the section "Chancellor's year in review" of the Annual Report 2019/2020:

"(…) For years, the complaint was heard that those at the head of the state often strive for goals with a view to the long-term gain of the nation, yet do not bother to explain clearly why something is done that does not seem either convenient or right at the time but will still be useful later. Now the situation is different: rational decisions are too often swept aside by perceptions of what voters might like at the moment. (…) The Chancellor's Office does not let itself be disturbed by this irrational confusion and will do its best to contribute to preserving the rule of law. This will be done within the limits of the Chancellor's mandate and powers, just as the Chancellors of Justice of the Republic of Estonia have done their work since 1993. Competently, swiftly, and as clearly as possible. If possible, by pre-empting problems and not picking up the pieces trying to be wise after the event."

The central task of the Chancellor of Justice – constitutional review – is supported by the Chancellor's roles as ombudsman, the Ombudsman for Children, national preventive mechanism against cruel treatment, supervisor of surveillance agencies, human rights institution, and promoter of the rights of people with disabilities. The Office of the Chancellor has not expanded but thanks to their professionalism and commitment, the staff was able to withstand the pressure and cope with new, unexpected duties while working remotely.

References

- https://www.oiguskantsler.ee/annual-report-2020/chancellor-year-in-review

Human rights defenders and civil society space

All public meetings were prohibited during the emergency situation. The Chancellor was asked repeatedly whether the prohibition on holding (political) rallies due to the emergency situation was indeed constitutional.

The freedom of assembly stipulated in § 47 of the Constitution may be restricted to prevent the spread of an infectious disease. The prohibition on public meetings was imposed with a view to protecting the life and health of people, by preventing physical assembly and movement. Even in the event of compliance with the 2 + 2 rule (up to two people can move together keeping a 2-meter distance, excluding families or if the rule cannot be reasonably ensured), the state has the right to prevent gatherings of crowds.

The Chancellor noted in her reply concerning the restriction of (political) rallies that during the emergency situation declared because of the epidemic, everyone's right under § 45 of the Constitution to freely disseminate ideas, opinions, beliefs and other information by word, print, picture or other means was not and could not be restricted. Freedom of expression is a basic principle of a democratic society. However, restriction of freedom of assembly does not necessarily excessively inhibit freedom of opinion and freedom of expression. It is possible to express one's views otherwise than through physical assembly. Not every form of expression of one's views in a public space (for example, distributing leaflets or carrying posters) can be considered a public meeting.

The general day-to-day human rights work of the Chancellor is, inter alia, geared towards making sure that the civic space is indeed defended, even though there are not any specific initiatives in that regard. The Chancellor reacts to restrictions and uses its mandate also to prevent disproportionate restrictions.

References

- https://www.oiguskantsler.ee/annual-report-2020/rule-of-law-in-an-emergency-situation#p9
- https://www.oiguskantsler.ee/annual-report-2020/rule-of-law-in-an-emergency-situation

Checks and balances

The Estonian National Electoral Committee (NEC) analysed legal, technical and budgetary aspects in view of a referendum planned for October 2021 and local elections. A memorandum to this effect was sent to the Minister of Finance and several Riigikogu (Estonian Parliament) committees. The NEC also analysed all the proposals made by the committee set up by the Minister of Economic Affairs and Communications to remedy the alleged shortcomings in the organisation of online voting in elections in Estonia.

References

- https://www.oiguskantsler.ee/annual-report-2020/the-rule-of-law#p5

Functioning of justice systems

The following are examples from the Annual Report 2019/2020:

The Chancellor receives many complaints about the justice system. The reason of the complaints is mostly discontent and disagreement with court judgments. Under the Constitution, courts are independent, and the Chancellor does not intervene in the substantive work of administration of justice. The Chancellor initiates disciplinary proceedings if a judge behaves disreputably or fails to fulfil their duties of office. Every year there are also cases where the Chancellor examines the work of judges more specifically in order to decide whether to initiate disciplinary proceedings against a judge. During the reporting period, there were 15 such cases.

The Chancellor also analysed conformity with the Constitution of the provisions of the current statutes of the courts' information system and whether there exists a conflict between the Courts Act and the procedural codes. The Chancellor found no conflict between the Courts Act and the procedural codes. However, a conflict with the Courts Act and the Constitution exists in the case of those provisions of the statutes of the courts' information system which entitle the Ministry of Justice to request judges to amend information in the system and lay down supervisory competence of the Ministry over the judges in using the information system. To ensure compliance with the requirements, the Chancellor made a proposal to the Minister of Justice to amend the statutes of the information system of the courts.

The Chancellor also had the opportunity to deal with a complaint concerning court fees and access to justice. In particular, a petitioner asked the Chancellor to verify whether the requirement to pay a security guarantee of 3000 EUR for an appeal in cassation filed with the Supreme Court was constitutional. The Chancellor found that the amount in question, whose payment was imposed in connection with a claim amounting to 300 000 EUR, was not to be regarded as per se disproportionate. However, the Chancellor pointed out that, if paying that sum proves to be burdensome in the case at hand, the party should have the possibility to request legal aid to pay the security guarantee.

References

- https://www.oiguskantsler.ee/annual-report-2020/the-rule-of-law

Media pluralism and freedom of expression

The Chancellor has drawn attention to media and privacy in its Annual Report. It has done so also during the state of emergency.

The Chancellor was contacted in connection with publication of health data in the media. Unless an individual agrees to disclosure of their data, disclosure of their health data in the media is normally prohibited. An exception is laid down in § 4 of the Personal Data Protection Act, when certain criteria are fulfilled. The media channel must be convinced that three main criteria are fulfilled simultaneously: public interest exists for disclosure of the data of the particular person; principles of journalism ethics are observed in disclosure;

and disclosure of personal data does not cause excessive damage to the rights of the data subject.

The Estonian Code of Journalism Ethics lays down that data and opinions about the health (both mental and physical health) of specific individuals shall not be disclosed. As an exception, the Code sets out cases when disclosing data is allowed; if a person consents to disclosure of their data or if disclosure of their data is required by the public interest. To disclose such data, it is not merely sufficient that the public is in principle interested in a particular topic (e.g., spread of the coronavirus). Disclosure of personal data must contribute to the debate on an important public issue, not merely to satisfy people's natural curiosity or serve the economic interests of a media publication.

The Chancellor of Justice was persistently against the disclosure of data of infected persons. The Health Board was asked for information about infected persons, which was due to a natural and understandable fear of the virus. For example, people enquired who was infected and where that person lived. Stigmatising infected people does not in any way help to combat the coronavirus since it would encourage people to hide their symptoms. Disclosure of such sensitive health data is unequivocally prohibited.

References

- https://www.oiguskantsler.ee/annual-report-2020/protection-of-privacy#p1
- https://www.oiguskantsler.ee/annual-report-2020/rule-of-law-in-an-emergency-situation#p3

Corruption

To highlight one example from anti-corruption activities:

In September 2019, the Chancellor made a proposal to the Riigikogu to bring the Local Government Organisation Act into conformity with the Constitution insofar as it did not allow a contractual employee of an administrative agency of the same rural municipality, town or city to be a municipal council member. The Riigikogu did not support this proposal so the Chancellor submitted an application to the Supreme Court. In April 2020, the Supreme Court satisfied the Chancellor's application and declared invalid a part of the sentence containing the words "or working in an administrative agency of the same rural

municipality, town or city on the basis of an employment contract" in § 18(1) clause 6 of the Local Government Organisation Act. The court postponed the entry into force of the judgment by six months, to enable the Riigikogu to review the restrictions on the municipal council members as a whole. The court emphasised that "regulation should take into account the principle of equal treatment of local authority employees. A conflict between the interests of the mandate and of the place of employment as well as public and private interests may arise not only for employees of a local government administrative agency but also for employees of an agency administered by a local authority's administrative agency". The principle of equal treatment requires, inter alia, that the Riigikogu should give a clear and reasoned answer to the question whether a conflict of interest of contractual employees of a rural municipality, town or city administrative agency elected to a municipal council is more severe than a conflict of interest of heads and deputies of an agency administered by a local authority's administrative agency elected to a municipal council. To regulate the issue, on 11 June 2020 the Riigikogu Constitutional Committee initiated a Draft Act (212 SE) amending the Local Government Organisation Act.

References

- https://www.oiguskantsler.ee/annual-report-2020/the-rule-of-law#p3

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

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

The Annual Report of the Chancellor includes a full summary in English on the impacts and measures taken in response to the COVID-19 pandemic.

Although there is currently no state of emergency, some of these issues are still relevant since there are pandemic-related restrictions in place (from schools being closed to limitations in health care). Also electing the Board of the Riigikogu and organising municipal council sessions were affected by the pandemic.

During the emergency situation, the Estonian National Electoral Committee (NEC) had to offer flexible solutions to members of the Riigikogu for the regular election of the Board of

the Riigikogu. To accommodate the necessary precautions, six voting places were set up in the Riigikogu, enabling members of parliament to make their choice in compliance with all the requirements of social distancing. The Chancellor had supported this solution being of the opinion that those members of the Riigikogu who feel sick or are considered as posing a risk of infection should still be entitled to participate in the elections of the Board.

During the emergency situation, many municipal councils held their sessions over the internet. The lack of familiarity with digital technologies sometimes caused problems, and one such complaint was also heard in July by the NEC. The NEC had to decide whether a member of Peipsiääre Rural Municipal Council could be deemed to have been absent from three consecutive municipal council sessions or not, and whether the alleged absence was sufficiently proved in order to suspend the mandate of the particular municipal council member. The Committee reached the conclusion that the member had actually not participated in the work of the municipal council during three consecutive months and dismissed the complaint.

The COVID-19 outbreak is still ongoing, which makes it hard to make a reliable assessment of the long-term implications on education, health (especially mental health) etc. However, some of these themes will be addressed in our Annual Report 2020/2021 that will be published in September 2021.

References

- https://www.oiguskantsler.ee/annual-report-2020/rule-of-law-in-an-emergency-situation

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

Despite the increased workload, the Chancellor of Justice has been able to carry out its mandate. The Office has been using online meetings (for example the advisory bodies of the Chancellor have been meeting via Internet) and telework. Inspection visits have been carried out with extra safety measures – such as testing and rigorous use of personal protective equipment.

Finland

Finnish Human Rights Centre

International accreditation status and SCA recommendations

The Human Rights Centre (HRC) and its Human Rights Delegation form the Finnish NHRI, together with the Parliamentary Ombudsman. All three institutions have their own statutory tasks and mandates. The HRC's legal mandate is to monitor and promote fundamental and human rights and to engage international and European human rights cooperation. The Parliamentary Ombudsman has a mandate based on the Finnish constitution to supervise the legality of actions by all public authorities and those performing public tasks. It includes fundamental and human rights compliance. The Ombudsman is one of the key institutions for checks and balances in Finland as a supreme guardian of legality together with the Chancellor of Justice.

In October 2019, the Finnish NHRI was re-accredited with A status. While the SCA understands that the government bill establishing three components as the NHRI (the Human Rights Centre, Parliamentary Ombudsman and Human Rights Delegation) is a source of law in Finland, it encourages the FNHRI to continue to advocate for legislative amendments to further clarify this. The SCA encouraged the NHRI to continue to advocate for the funding necessary to ensure that it can effectively carry out its mandates. The SCA considers it preferable for the Human Rights Centre to also have the ability to table its reports in Parliament for discussion, as is the case for the reports of the Parliamentary Ombudsman. The HRC submits its annual report to the parliamentary committees, but not to the plenary for discussion. The HRC's annual report has been discussed in the Constitutional Law Committee.

Impact of 2020 rule of law reporting

Follow-up by State authorities

Since the reports of ENNHRI and the European Commission were published in May and September 2020 respectively, discussions on the rule of law principle in Finland have focused mostly on the EU level and on questions related to the EU rule of law mechanism and the recovery package.

The follow up actions taken by the state authorities are not directly related to the European Commission's report as most observations of the report are included in the Government's program, such as enacting an openness register in relation to lobbying and taking measures in order to counter targeting and harassment. The progress of the program is tracked openly at the Government's website.

References

- Progress of the Government's program: https://valtioneuvosto.fi/marinin-hallitus/hallitusohjelman-seuranta/toimintasuunnitelma

Impact on the Institution's work

The Parliamentary Ombudsman is consulted directly by the European Commission for its report and therefore the contribution to ENNHRI's report by the HRC does not include the Parliamentary Ombudsman.

The HRC has been working on the rule of law issues already before ENNHRI's first joint rule of law reporting in 2020. The European Commission rule of law report, with its focus on prevention, is a useful new tool and has helped us develop our work. The focus of the HRC is on the functioning of the rule of law principle and institutions, on the checks and balances and legislative processes and on monitoring and reporting on fundamental and human rights. The monitoring of the rule of law has broadened the HRC's focus, and new contacts have been made in Finland as a result for example with the justice system and constitutional lawyers.

In the HRC's Action Plan 2021, the focus on the rule of law has strengthened. Activities include monitoring, research, promotional and educational activities and awareness raising. The HRC continues to work with and support ENNHRI's rule of law reporting, capacity building and cooperation activities. In addition, the HRC engages directly with European rule of law and human rights institutions and mechanisms.

Follow-up initiatives by the Institution

The HRC and its Human Rights Delegation held a workshop on the rule of law and the impact of COVID-19 on fundamental and human rights in September 2020 and a report with recommendations addressed to the government was published in January 2021. It was

widely distributed to the Government ministers and authorities and political decision makers and communicated through social media channels.

References

- The impact of the coronavirus pandemic on the implementation of fundamental rights and human rights – recommendations of the Human Rights Delegation https://www.humanrightscentre.fi/?x170869=1015738

Independence and effectiveness of NHRIs

Changes in the regulatory framework applicable to the Institution

The amendment of the Act on the division of labour between the two supreme guardians of legality, i.e., the Parliamentary Ombudsman and the Chancellor of Justice, was already included in the first Rule of Law report. The Government bill has now been finalized after an open consultation at the end of 2020. It is scheduled to be given to the Parliament during spring 2021. The new Act touches also upon the HRC as the tasks given to the Parliamentary Ombudsman based on international conventions are reflected in the new Act on the division of labour. The Finnish NHRI was given a joint task based on CRPD 33.2, when UN CRPD was ratified in Finland in 2016.

The Act on the division of labour between the two supreme guardians of legality is important both in practice and in principle as they are the pillars of the independent human rights structure in Finland. Following this major reform, it would be time to assess the other independent human rights structures and the system as a whole. The HRC has been advocating for such an assessment to be carried out by the Ministry of Justice to complement the study done by the Ministry in 2015. The assessment should include at least all the special ombudsmen and the Finnish NHRI and aim at streamlining the competencies, simplifying the structures and strengthening the actors and fundamental and human rights in Finland.

The HRC notes with concern the current plans of the Government to set up new human rights actors with overlapping mandates with the already existing human rights institutions.

The new Ombudsman for the rights of older persons will be set up as an independent function but in connection with the Non-Discrimination Ombudsman, which already has a mandate on age discrimination. In 2019 the Finnish NHRI was given significant additional resources by the Parliament to strengthen the protection and promotion of the rights of older persons. It is regrettable that despite consultations and statements by the HRC, the tasks given by law to the new Ombudsman are identical with the statutory tasks of the HRC. It would be preferable to strengthen the Non-Discrimination Ombudsman's activities and resources as regards age discrimination rather than duplicate the tasks of the HRC.

A new position of a Rapporteur on violence against women is proposed to be legislated as an additional task for the Non-Discrimination Ombudsman. This proposed draft law has drawn strong criticism from a broad range of actors in a recent consultation on the draft law. The draft was generally considered poorly justified and not in line with the Istanbul Convention's strong grounding on gender equality. The more logical place for such a new task would be within the Office of the Equality Ombudsman dealing with gender equality or the HRC (the Finnish NHRI) mandated to monitor and report on human rights.

The HRC has pointed out repeatedly that existing independent human rights actors that already have relevant mandates to protect and promote human rights should be strengthened rather than new ones being created.

References

- Statement of the HRC on the division of labour of the Supreme guardians of legality (in Finnish) https://www.ihmisoikeuskeskus.fi/?x5822114=10048067
- The impact of the coronavirus pandemic on the implementation of fundamental rights and human rights – recommendations of the Human Rights Delegation https://www.humanrightscentre.fi/?x170869=1015738
- Statement of the HRC on the ombudsman for elderly (in Finnish) https://www.ihmisoikeuskeskus.fi/?x5822114=10037341
- Statement of the HRC on the rapporteur on violence against women (in Finnish) https://www.ihmisoikeuskeskus.fi/?x5822114=10255437

Enabling space

The Finnish NHRI is able to work independently and effectively. It is completely independent from the government or any other state actors.

The environment is generally enabling in Finland, but the fragmented and complicated human rights structures are not conducive to effective work as limited resources are spread thin and coordination requires time and resources. Lack of coordination may lead to unnecessary duplication and weakened impact. The fundamental and human rights protection system that guarantees the rights of all people gets lost in the maze of thematic and group-based mandates.

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

The overall environment in which the institution operates has not changed. The parliamentary context provides good access to political decision-making and legislative processes and ensures total independence from the government.

But like in many other European countries, attacks on rule of law principles, fundamental and human rights and those who defend these norms and values have increased also in Finland. Another disturbing factor making the environment less favourable is the increasing spreading of disinformation, which has become more visible during the pandemic. It is of growing concern also in Finland that human rights and rule of law principles are questioned by some segments of the society and that the role of democratic institutions is undermined by some political actors. If the trend continues and gains more strength in the future, it could lead to a deterioration of the rule of law and human rights situation also in Finland.

The HRC has increased its human rights and rule of law monitoring capacity in general in order to provide reliable and comprehensive information on how human rights are realized in Finland. The goal is to have a monitoring system in place in 2021.

Targeted advocacy, strategic cooperation with civil society and other human rights actors, direct engagement with key state authorities and politicians as well as effective communication activities are other means and ways to increase its impact. The HRC is constantly striving to develop its own work and is looking for synergies and cooperation in particular with the Parliamentary Ombudsman.

Human rights defenders and civil society space

Some of the challenges have been described above in the previous response relating to the environment where the institution operates and later in the response to the questions on media. These are common challenges to actors defending human rights, gender equality, violence against women, minorities, LGBTI etc. In our assessment, what started as attacks on specific human rights issues has spread more generally to all human rights and rule of law issues. Anti-gender movement is clearly gaining ground also in Finland.

The HRC cooperates with and supports civil society organisations defending fundamental and human rights. The Human Rights Delegation, the pluralistic and cooperative body that is part of the Finnish NHRI includes also NGOs and human rights defenders.

Checks and balances

Constitutional review

The Constitution of Finland guarantees the rule of law and human rights, also according to the Venice Commission. The strength of the Finnish Constitution's checks and balances is its pluralism. The Finnish system relies primarily on the ex-ante constitutionality review by the Parliament's Constitutional Law Committee. The system is generally considered to function well. There is little support for the establishment of a constitutional court in Finland.

The Finnish courts do not have the right to generally and in abstract assess if a law conflicts with the Constitution. However, section 106 of the Constitution stipulates that courts should refrain from applying the provision of the law in a concrete case if it is *evidently* in conflict with the Constitution. The ex-post monitoring of the constitutionality by the courts has been limited to relatively few cases in the last decade. Some of the cases have been significant and have been a reason for legislative amendments. There is support by the majority of constitutional lawyers and practitioners for the lowering of the threshold for the courts by removing the "evidently" criteria in section 106, although there are also views to the opposite. One of the arguments in favour of removing the "evident" criteria is that courts in Finland already must give priority to the EU law and international human rights treaties and that the threshold should be the same for the Constitution. The HRC has done research on this question and will publish a study in March 2021.

Trust in state authorities

Generally, the Finnish public administration is transparent and open, and the principle of legality is respected. The level of trust in state authorities is fairly high, although issues such as (alleged) political appointments to high level positions are met with criticism. There are low threshold complaints mechanisms in place, such as the Parliamentary Ombudsman, which are important channels for citizens to get their concerns addressed. The recommendations made by the Parliamentary Ombudsman based on complaints received are generally complied with by the public authorities.

NHRI's engagement as part of the system of checks and balances

The Parliamentary Ombudsman is one of the key institutions for the checks and balances in Finland. Their information is submitted directly to the European Commission for their report.

The independent monitoring and reporting on fundamental and human rights by the HRC as well as its other activities, such as human rights education, training and awareness raising have an increasing role in the system of checks and balances in general, but in particular in prevention with its strong focus on promotion.

The HRC has in received some more staff and funds in the last few years, but as described earlier, monitoring of human rights suffers from lack of sufficient resources.

References

- Venice Commission's statement: https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2008)010-e
- A project funded by the HRC and the Ministry of Justice at the University of Helsinki supports the development of education for democratic citizenship and human rights education in teacher training: https://www.helsinki.fi/en/projects/human-rights-democracy-values-and-dialogue-in-education/background

- The Constitution of Finland: https://www.finlex.fi/fi/laki/kaannokset/1999/en19990731
- See the tasks of the Non-Discrimination Ombudsman: https://syrjinta.fi/en/tackling-discrimination-and-promoting-equality1
- See a review of the Non-discrimination Act (in Finnish): http://urn.fi/URN:ISBN:978-952-287-959-2

Functioning of justice systems

The HRC is promoting access to justice by conducting surveys and research, by its educational activities and with its focus on the rights of older persons and persons with disabilities. Generally, the justice system functions well, but access to the courts can be hindered by the high costs and court fees especially in civil cases.

Media pluralism and freedom of expression

According to World Press Freedom Index 2020, the legal, institutional and structural basis for free media and free journalism in Finland remained intact throughout the year 2019. There is not yet data available for the year 2020, but overall, the situation has remained relatively similar.

Nonetheless, hate speech, different type of harassment and targeting of journalists have recently been a major threat against media freedom in Finland. Moreover, the economic situation of media has worsened mainly because of COVID-19 and its impact on economy in Finland: commercial media organisations have seen a decline of at least a third and possibly up to 50 % in advertising, with print and local newspapers and local radio suffering the most. Over half of all newspapers have laid off employees, and a handful of local papers have also suspended publication altogether during the crisis. (Media for Democracy Monitor 2020)

The findings of a recent study (Hiltunen 2021) suggest that the hybridization of the media environment has intensified the external interference and pressure journalists encounter in their work in Finland. Several interviewees reported experiences of coordinated interference by groups and networks fitting this description and promoting, for example, anti-vaccination, anti-immigration or pro-Russia views. This interference included verbal abuse,

verbal threats, orchestrated public defamation and discrediting, and various forms of harassment. These groups utilized social media and other online platforms to publicly fan collective aggression toward journalists. Political populism was often explicitly identified as the main catalyst for polarization, creating divisions and explicitly inciting mistrust against journalism as an institution. Polarization was manifested by an increasingly aggressive public discourse and hostile attitudes toward journalism and journalists. The Union of Journalists in Finland (UFJ) has stated that there is an urgent need to pay more attention to the growing external interference and pressure journalists are facing in Finland. On the positive side, the UFJ has noticed that inappropriate conduct and criticism towards journalists by leading politicians has diminished during the term of this government.

According to different studies, especially female journalists experience gender-based hate speech and harassment. The Finnish government has recently proposed that gender should be aggravating factor for the punishment. The government proposal to amend the Criminal Code of Finland was circulated for comments in the fall 2020, and e.g., the UFJ supported the proposal in its statement.

The Council for Mass Media (CMM) in Finland is a self-regulating committee established by publishers and journalists in the field of mass communication for the purpose of interpreting good professional practice and defending the freedom of speech and publication. The CMM’s mandate is considered quite strong because it includes all forms of media and the council’s decisions are usually published without exception. However, the CMM has also faced some external interference and pressure as its independence and impartiality has been questioned, and journalists, in turn, are threatened with a complaint to the council. In 2020, 15 % of all complaints received by the council was concerned with news on COVID-19. The number of the complaints increased by a third in 2020.

Finnish legislation does not set additional transparency requirements for media companies. Most media companies operating in Finland are by choice open about their ownership, but according to the study commissioned by the Ministry of Transport and Communications (2020), as much as a quarter of media websites surveyed did not provide information on their ownership. In addition, only four out of 134 media websites had clearly and openly expressed their editorial ethics and corrective practices.

Regarding media pluralism and ownership, few companies dominate each media sector in Finland: in the TV broadcast sector, the four largest companies hold 92 percent of the audience and 97 percent of revenues; the four largest companies in the radio market hold 80 percent and 92 percent; and the four largest companies in the newspaper market hold 59 percent (audience) and 64 percent (revenue). (Media Pluralism Monitor 2020)

The HRC considers monitoring and reporting of the media environment to be very important in protecting the right to information and the functioning of democracy. For the time being, the situation of media is relatively good and stable in Finland so there has not been any urgent need for actions to promote a free and pluralist media environment.

References

- Reporters without borders: Finland: https://rsf.org/en/finland
- Media for Democracy Monitor 2020: http://euromediagroup.org/mdm/policybrief01.pdf
- Hiltunen, Ilmari (2021) External Interference in a Hybrid Media environment. Manuscript in process.
- Inquiry to the Union of Journalists in Finland (UFJ) 24 February 2021.
- Inquiry to the Council for Mass Media in Finland (CMM) 25 February 2021.
- Project to add gender among the motives that constitute grounds for increasing the punishment as specified in the Criminal Code https://valtioneuvosto.fi/hanke?tunnus=OM024:00/2019
- Statement of UFJ on amending the Criminal Code: https://api.hankeikkuna.fi/asiakirjat/54a5998d-2eb6-4a91-9f22-a429e66254a8/9b062d3a-7f69-45c2-81f1-6c4e28838e80/LAUSUNTO_20201005115738.PDF
- Media and Communication Policy Monitoring report 2019: https://julkaisut.valtioneuvosto.fi/handle/10024/162144
- Media Pluralism Monitor 2020: https://cmpf.eui.eu/mpm2020-results/

Corruption

The HRC does not work on corruption as such. The Parliamentary Ombudsman has a mandate to supervise the legality of actions of all public authorities.

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

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

The Finnish rule of law mechanisms have coped well during the state of emergency and the pandemic in general. However, the stringent mechanisms for checks and balances that exist in Finland have been criticized at times due to their strict interpretation of constitutional rights and permissible restrictions. This has deemed to be an obstacle to effective legislative responses to the pandemic by some politicians.

There have been recurring problems with the quality of draft laws submitted to the Parliament by the Government.

The principle of legality has sometimes been overlooked during the pandemic. Rules on competences have not always been followed. Political decisions have been used on matters that according to the law are under the authorities' decision-making powers. Many measures had to be taken quickly in the spring 2020, but in the rush, they were not always based on law and procedural rights were often forgotten. It was not always clear whether the measures were recommendations or binding regulations. Based on such recommendations, for example the housing units for older persons and persons with disabilities put in place categorical visiting bans without proper legal basis thus violating the rights of the residents.

The numbers of complaints made both to the Ombudsman and the Chancellor of Justice and their own initiatives have risen sharply. It is of concern that no on-site inspections have been carried to any closed institution by the Ombudsman for almost a year. However, alternative methods have been developed and some inspections have been carried out remotely.

The crisis preparedness and capacity of fundamental and human rights actors needs to be strengthened. Guidelines issued by intergovernmental organisations and their monitoring bodies could be better utilized in this regard.

The HRC is monitoring the impacts of the pandemic, also long term, and the HRD has issued a report with recommendations to the Government in January 2021. Follow up to the report is planned for the spring/early summer.

Recommendations made by the HRC and its Human Rights Delegation in a recent report:

- The coronavirus pandemic has highlighted problems with the legislation and law drafting, access to information and competence questions, which will need special attention in future.
- The crisis preparedness of the supreme guardians of legality, other overseers of legality, as well as fundamental and human rights actors, must be further strengthened and developed.
- The Finnish NHRI needs to be strengthened so that it has the means to carry out its statutory tasks, especially monitoring human rights, also in a state of emergency.

In addition to the rule of law, we focused our monitoring and reporting on the impact of the pandemic and the measures taken on the rights of elderly persons and persons with disabilities, the rights of children and young people and on violence against women and domestic violence. Our findings confirmed that people who were already in a vulnerable position have found themselves in an even more difficult situation due to the COVID-19.

More detailed information on the impact on fundamental and human rights of vulnerable people and is included in the report.

Finally, we also recommended that a comprehensive human rights assessment on the impact of the pandemic should be initiated by the Government. It should focus in particular on the situation of vulnerable groups.

References

- The impact of the coronavirus pandemic on the implementation of fundamental rights and human rights – recommendations of the Human Rights Delegation https://www.humanrightscentre.fi/?x170869=1015738
- Statistics on complaints concerning the state of emergency received by the Parliamentary Ombudsman (in Finnish): https://www.oikeusasiamies.fi/fi/poikkeusoloihin-liittyvien-kanteluiden-tilastotiedot

- Press release: Koronakantelut työllistävät oikeuskansleria (Complaints related to coronavirus employ the Chancellor of Justice): https://www.okv.fi/fi/tiedotteet-ja-puheenvuorot/545/koronakantelut-tyollistavat-oikeuskansleria/
- CPT's statement of principles relating to the coronavirus pandemic: https://www.coe.int/en/web/cpt/-/covid-19-council-of-europe-anti-torture-committee-issues-statement-of-principles-relating-to-the-treatment-of-persons-deprived-of-their-liberty-
- See the summary of the guidelines of human rights bodies from the HRC's COVID-19 theme site: https://www.humanrightscentre.fi/covid-19/
- FRA's publication on the coronavirus pandemic's impact on social rights and the groups most at risk: https://fra.europa.eu/en/news/2020/social-rights-coronavirus-pandemic-continues-hamper-access-education-and-healthcare

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

The HRC has been able to fulfil its mandate and perform its work despite the pandemic. Remote working has been the most concrete impact of the pandemic to the HRC. Obviously, it has not been as easy to reach out to people and to receive visitors as in normal times.

The Parliamentary Ombudsman, which is also the Finnish National Preventive Mechanism under the UN OPCAT, has not been able to carry out inspections, but has developed alternative methods for remote inspections and is preparing for on-site inspections to start as soon as possible.

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

Awareness, information and education about human rights

Promoting human rights education is an important part of creating better awareness and access to rights. It is also one of the main tasks of the HRC.

According to section 22 of the Constitution, public authorities must ensure the implementation of fundamental rights and human rights, but many authorities have insufficient resources for this task. Especially at the municipal level, which is responsible for the implementation of many key rights and services, it is difficult to carry out statutory tasks.

Knowledge and expertise in fundamental and human rights is needed especially in exceptional circumstances such as the coronavirus pandemic. Gaps in knowledge and awareness of rights in Finland has been identified by the HRC. More needs to be done on human rights education at every level of education.

The implementation of rights is not monitored systematically enough, not by the authorities or by the independent human rights actors. The annual reports of the Parliamentary Ombudsman and the Chancellor of Justice provide the Parliament with their observations on the status of implementation of fundamental and human rights. Others, such as special ombudsmen, research institutes and authorities also produce reports with information on issues they are mandated to deal with. However, information on human rights is scattered to many different sources and is not comprehensive. There is no systemic follow up. The HRC is tasked by law with monitoring and reporting but it has not been given the resources to do it comprehensively yet, although monitoring has been increased.

The following recommendations were included in the report by the HRC and its Human Rights Delegation in January 2021:

- Training in fundamental and human rights must be increased, especially for authorities, also at the local level.
- Teaching fundamental and human rights at all levels of education must be strengthened. Teacher training must include fundamental and human rights education as a mandatory subject.
- Human rights monitoring in Finland must be further developed and necessary human resources given. The Government's third National Action Plan on Fundamental and Human Rights, which will be completed in 2021 has as its aim to improve the monitoring of fundamental and human rights and to develop an indicator framework for the use of the government.
- The HRC collects information on fundamental and human rights and publishes up-to-date reports on the implementation of rights. But it does not have the resources

to do it comprehensively. The HRC's systematic and independent monitoring work must be further strengthened.

- The structure and competences of fundamental and human rights actors must be clarified, and existing actors strengthened. The competences must be clear and easy to understand for those in need of protection. When new actors or functions are set up, they must be placed so that the overall system does not weaken and fragment further, and without creating duplicate activities.
- The basic tasks of the Non-Discrimination Ombudsman, promoting equality and tackling discrimination, must be strengthened.

References

- The impact of the coronavirus pandemic on the implementation of fundamental rights and human rights – recommendations of the Human Rights Delegation https://www.humanrightscentre.fi/?x170869=1015738

France

French National Consultative Commission on Human Rights

International accreditation status and SCA recommendations

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

Human rights defenders and civil society space

Two new bills currently being debated in France raise serious concerns in view of their potential impact on civil society space.

A draft legislation known as the "**Global Security law**" (1), adopted in November 2020 by the National Assembly, was the object of a heated debate and criticized throughout 2020 as providing a worrying basis for a securitarian State. The CNCDH also drew attention (2) to some of the measures' severe impacts on fundamental rights and democratic values, in particular as regards the ban on disseminating images allowing the identification of law enforcement officers (art. 24), and rules allowing for a widespread use of drones which opens up unprecedented surveillance prospects, especially during demonstrations (art. 22).

French civil society massively mobilised against the draft law, gathering in protests all over the country in late 2020 and early 2021. Protests eventually prompted the authorities to review some of the most controversial articles. The draft text is currently in the hands of the Senate, the upper legislative chamber, which is expected to adopt it in March 2021. In the meantime, the Council of State however banned the use of drones during demonstrations in Paris, as the practice has no satisfactory legal basis for now (3).

Another draft bill "to strengthen respect for Republican principles", also known as the **anti-separatism law** (4), was announced by President Macron in October 2020 and has now been approved by the National Assembly. The draft law was first presented in December

2020 to respond to threats of fundamentalism, and has since been heavily criticized by various civil society actors (CSOs, academics, lawyers) as affecting essential components of civic space and seriously endangering freedom of assembly. The CNCDH published an opinion in this sense (5) while the Council of State has, on its side, noted in December that parts of the draft law raised sensitive questions of constitutional conformity (6).

The two legislative initiatives mentioned above are, in addition to their controversial content and impacts, following a fast-track procedure.

Apart from those problematic bills, other concerning trends impacting on civic space and human rights defenders were observed over the past year. The French authorities have for instance **targeted several CSOs allegedly opposing the 'Republican order' or linked to radical Islamism**. Civil society actors notably expressed concern at the dissolution (by decree) of the Collective Against Islamophobia in France (7), which was a member of the European Network Against Racism. This has led to some support from civil society and anti-discrimination associations. Muslim organisations have been in general regularly the ta rget of attacks by extreme right and other mainstream political forces.

References

(1) https://www.assemblee-nationale.fr/dyn/15/dossiers/securite_globale1

(2) CNCDH, Avis sur la proposition de loi relative à la sécurité globale - 26.11.2020 https://www.cncdh.fr/fr/actualite/avis-sur-la-proposition-de-loi-relative-la-securite-globale

(3) https://www.laquadrature.net/wp-content/uploads/sites/8/2020/12/4461551PR1.pdf

(4) https://www.dalloz-actualite.fr/flash/projet-de-loi-confortant-respect-des-principes-de-republique

(5) CNCDH, Avis sur le projet de loi confortant le respect des Principes de la République – 04.02.2021 https://www.cncdh.fr/fr/actualite/avis-sur-le-projet-de-loi-confortant-le-respect-des-principes-de-la-republique

(6) https://www.conseil-etat.fr/ressources/avis-aux-pouvoirs-publics/derniers-avis-publies/avis-sur-un-projet-de-loi-confortant-le-respect-par-tous-des-principes-de-la-republique

(7) https://www.ldh-france.org/dissolution-politique-du-ccif/

Checks and balances

The draft "**Global Security law**" referred to in the previous section provided dangerously extended powers to police forces. In addition to the problematic measures mentioned above, the draft text transfers some judicial police powers to municipal police officers, on subjects as sensitive as the use of narcotics. Moreover, the vague manner in which some of its provisions are written (e.g. on drones use) amplify the risks (1).

The CNCDH expressed concern over the fact that the measures provided for in this draft legislation will further deteriorate the relationship between the police and French citizens. Yet for years France has already been part of the bottom third of European Union states with regard to the **lack of confidence expressed by the population in its police** (2). The CNCDH issued over 20 recommendations to the authorities to address these matters, through structural reforms of the police system.

Another issue raised by many actors, including the CNCDH, relates to the **lack of sufficient consultation in the legislative processes**. This is partly due to the COVID-19 crisis and the state of emergency (more detailed in the dedicated section below), however it cannot entirely be linked to or justified by this special context.

As mentioned above, the two very controversial draft laws are being passed via a fast-track procedure. While these texts touch upon major fundamental freedoms and rights, they could not be transparently and democratically debated before their adoption, which represents a very worrying trend in a country governed by the rule of law.

In the same vein, the CNCDH expressed concern over the current reform of juvenile criminal justice (adoption of a criminal code for minors), without any meaningful prior debate with the relevant actors (3). Instead, the government decided to pass the legislation by executive order through an accelerated procedure.

References

(1) CNCDH, Avis sur la proposition de loi relative à la sécurité globale (A - 2020 - 16)

(2) CNCDH, Avis sur les rapports entre police et population : Rétablir la confiance entre la police et la population https://www.cncdh.fr/fr/publications/avis-sur-les-rapports-entre-police-et-population-retablir-la-confiance-entre-la-police

(3) https://www.cncdh.fr/fr/publications/justice-penale-des-mineurs-la-cncdh-sinquiete-dune-reforme-sans-debat-prealable

Functioning of justice systems

The **reform of juvenile criminal justice** mentioned above is also problematic as to its content. Indeed, while the CNCDH agrees with the updating of the legal basis for juvenile justice, the institution expressed serious concerns as to how the reform addresses the issue (1). The CNCDH has stressed, in particular, that the priority for the justice system must be that of protecting any child, including children who are criminal offenders, and has called for the reform to be integrally reviewed in that sense, including by: prioritising education over repression; setting up a specialised jurisdiction and justice system to deal with minors; introducing mandatory diminution of liability between 16 and 18 years, and a minimum age for criminal liability; as well as providing all necessary resources, human and financial, to support this transition.

Another area of concern regards the **security measures for those convicted of acts of terrorism**, which the CNCDH exposed as yet another demonstration of the state's current security-focused drift (2). Several parliamentarians recently made legislative proposals to create a specific security regime for those specific convicts. The CNCDH strongly denounced this text and the logic behind it, feeding on the French population's fear of terrorism to override respect for constitutional values and human rights.

The French justice system was moreover heavily **impacted in general by the current COVID-19 crisis**, as further developed in the dedicated section below.

References

(1) https://www.cncdh.fr/fr/publications/les-droits-fondamentaux-et-linteret-superieur-de-lenfant-les-grands-oublies-de-la

(2) https://www.cncdh.fr/sites/default/files/200623_cp_ppl_terro.pdf

Media pluralism and freedom of expression

While the French authorities firmly condemned the terrorist assassination of history professor Samuel Paty in October 2020 (following his lesson on freedom of expression, using the Charlie Hebdo's subversive cartoons of Muslim prophet Mahomet), some civil society actors pointed out **France's own poor record regarding freedom of expression** (1), for instance stressing the numerous convictions for "contempt of public officials", a vaguely defined criminal offence. The European Court of Human Rights also ruled in June 2020 that France's criminal conviction of activists campaigning to boycott Israeli products violated their freedom of expression (2).

Several journalists raised their voices (3) after some were **denied access to sensitive sites by the police**, for instance while they were attempting to cover the eviction of refugees and migrants from an encampment. The French Council of State validated the police decision for a case that occurred in December 2020 (4). The CNCDH addressed that issue in February 2021 report (5), recommending inter alia that 'external observation by citizens or journalists not be hindered during camp evacuation operation' (cf para 19 of the report).

References

(1) Amnesty https://www.amnesty.org/en/latest/news/2020/11/france-is-not-the-free-speech-champion-it-says-it-is/

(2) https://www.reuters.com/article/us-france-israel-court-idUSKBN23I1CQ

(3) https://www.lemonde.fr/idees/article/2021/01/26/il-est-urgent-de-garantir-la-liberte-citoyenne-d-informer-et-etre-informe_6067689_3232.html

(4) https://www.coe.int/fr/web/media-freedom/detail-alert?p_p_id=sojdashboard_WAR_coesojportlet&p_p_lifecycle=2&p_p_cacheability=cacheLevelPage&p_p_col_id=column-4&p_p_col_pos=2&p_p_col_count=3&_sojdashboard_WAR_coesojportlet_alertPK=90282251&_sojdashboard_WAR_coesojportlet_cmd=get_pdf_one

(5) CNCDH, Opinion on the situation of exiled persons￼ in Calais and Grande-Synthe " – 11.02.2021 Para n°21 recommendation n°5 https://www.cncdh.fr/sites/default/files/a_-_2021_-_3_-_en_-_situation_of_exiled_persons_in_calais_and_grande-synthe_febr_2021.pdf

Corruption

France was ranked 23 out of 180 countries in Transparency International 2020 Corruption Index, which is the same as in 2019. A few elements can however be evoked.

Transparency International highlighted France's adoption of a **new provision for returning stolen assets and proceeds of crime**, recognising "a step forward with room for improvement" (1). The new provisions create a restitution mechanism, by which illicitly acquired assets (with proceeds of corruption or embezzled public funds) that were confiscated by the French justice system, will be returned "as close as possible to the population of the foreign State concerned" to finance "cooperation and development actions".

In September 2020, the French National Assembly adopted an opinion on the **transposition the EU Whistleblowers Directive** (2), that will have to be effective by the end of 2021. The CNCDH issued several recommendations to the legislator in this context, in order to ensure a strengthened protection for whistleblowers in France (3).

References

(1) https://www.transparency.org/en/press/france-adopts-new-provision-for-returning-stolen-assets-and-proceeds-of-crime-a-step-forward-with-room-for-improvement

(2) https://www.legifrance.gouv.fr/jorf/id/JORFTEXT000042393830

(3) https://www.cncdh.fr/sites/default/files/avis_2020_-_11_-_avis_transposition_directive_lanceurs_dalerte.pdf

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

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

Both the health crisis caused by COVID-19 pandemic and the French governmental response to it had massive and diverse impacts on human rights and the rule of law in the past year.

The CNCDH issued a Report specifically on **state of emergency and rule of law** (1), stressing three main areas of concerns, needing to be closely assessed: the need and proportionality of the state of health emergency; the modification of the traditional balance of powers; and the weakened oversight system. Indeed the past year has seen a totally modified division of powers, which is a major component of the rule of law. Through the state of emergency, the executive has considerably extended powers, with a decreased parliamentary oversight and democratic consultation. A high number of regulations, often undermining basic rights and liberties, have been adopted through fast-track processes, at the initiatives of different ministries. The CNCDH expressed concern over the extent of these new powers, even more so after a law passed in March 2020, allowing the Government, as long as the State of Emergency will be in place (i.e at least until 1st June 2021), to legislate by order on very wide areas, likely to touch upon rights and freedoms.

The CNCDH also alerted on the worrying **impact of the current situation of the functioning of the justice system** (2). Most pressing concerns in that regard relate firstly to the breach of the continuity of public service, due to: access to a judge restricted to cases deemed "essential"; non-respect of the rights of the defendant; problems related to protection of minors at risk ('assistance éducative'); extension of pre-trial detention; and poor enforcement of sentences. Secondly, concerns pertain to the risk of normalising the state of health emergency into the common procedural law.

The CNCDH monitored the adoption and application of COVID-19 related measures and their impacts on specific groups of the French population. To this purpose, the institution set up in March 2020 an Observatory of the state of health emergency and lockdown. The Observatory raises concern about threats to fundamental rights and freedoms, and provides recommendations to address problematic measures or practices. The Observatory issued documents focused on **specific groups or issues particularly affected by the crisis** (3): child protection, housing, people in poverty, access to healthcare, workers' protection, continuity of access to healthcare, right to education.

The CNCDH also issued various statements and opinions during the past year, alerting or advising on security-focused and liberty-threatening drifts (4).

References

(1) https://www.cncdh.fr/sites/default/files/avis_2020_-_2_-_200424_avis_etat_durgence_sanitaire_et_etat_de_droit.pdf

(2) https://www.cncdh.fr/sites/default/files/avis_2020_-_4_-_200424_avis_urgence_fonctionnement_justice.pdf

(3) Communiqué de presse de lancement

- Lettre parue le 6 avril 2020 #1
- Lettre #2, parue le 15 avril 2020 - la protection de l'enfance
- Lettre #3, parue le 21 avril 2020 - le logement
- Lettre #4, parue le 24 avril 2020 - les personnes en situation de pauvreté
- Lettre #5, parue le 6 mai 2020 - l'accès aux soins
- Lettre #6, parue le 6 mai 2020 - protection des travailleurs
- Lettre #7, parue le 14 mai 2020 - continuité pour l'accès aux soins
- Lettre #8, parue le 4 juin - le droit à l'éducation

(4) CNCDH opinions related to COVID-19 impacts:

- Avis "Etat d'urgence sanitaire et Etat de droit", 28 avril 2020
- Avis sur le suivi numérique des personnes, 28 avril 2020
- Avis "Une autre urgence : rétablir le fonctionnement normal de la justice au plus vite", 28 avril 2020
- Avis "Etat d'urgence sanitaire : le droit à l'éducation à l'aune de la Covid-19", 26 mai 2020
- Avis "Prorogation de l'état d'urgence sanitaire et Libertés", 26 mai 2020
- Déclaration relative au projet de loi organisant la sortie de l’état d’urgence sanitaire, 23 juin 2020
- Déclaration sur l'état d'urgence sanitaire, novembre 2020
- Déclaration sur les droits fondamentaux des travailleurs pendant l'état d'urgence sanitaire (D - 2021 - 1)

Germany

German Institute for Human Rights

International accreditation status and SCA recommendations

In November 2015, the German NHRI was re-accredited with A status. Among its recommendations, the SCA flagged out that government representatives and members of parliament should not be voting members of the Board of Trustees. The SCA also highlighted the need for the NHRI to receive additional funding corresponding to its additional mandates and encouraged the GIHR to advocate for appropriate amendments to its enabling law that would clarify and strengthen its protection mandate as encompassing monitoring, inquiring, and investigating human rights violations.

Impact of 2020 rule of law reporting

Follow-up by State authorities

Some measures were taken in relation to certain concerns raised in ENNHRI 2020 Rule of Law Report.

First, as regards the enabling environment for civil society, the country chapter on Germany of the ENNHRI 2020 Rule of Law Report raised concerns regarding a 2019 ruling of the Federal Financial Court concerning the criteria for civil society organisations to benefit from tax privileges for non-profit associations with a public benefit purpose. While this issue still awaits resolution, the 2020 Annual Tax Law (*Jahressteuergesetz*) amended some grounds for tax privileges for non-profit associations, including support for people who have been discriminated against on grounds of their gender identity or sexual orientation. However, this is still a far cry from the changes that civil society organisations have advocated for. Among other things, (work for) "human rights" has not been accepted as a ground for tax privilege (see also below, section on human rights defenders and civil society space).

Secondly, as regards independent police complaint bodies and checks and balances, the 2020 ENNHRI rule of law report pointed out the lack of independent police complaints bodies at the Länder level. In 2020, Bremen, Berlin, Brandenburg and Hesse tabled or adopted acts to establish police ombudspersons who shall process complaints by citizens or police officers. However, none of these bodies has the power to investigate independently and to bring cases to court.

Impact on the Institution's work

Protection and promotion of human rights and the rule of law is one of the three core aims in the Institute's strategic planning for 2019–2023. The Institute has engaged with authorities on rule of law issues on several occasions. For example, it approached the Foreign Office in support of the Polish Ombudsman and jointly organised a conference with the Polish NHRI on protecting the rule of law and the importance of an independent judiciary. It used a conference on the 70th anniversary of the ECHR, jointly organised with the German Foreign Office and Ministry of Justice and Consumer Protection, to gather political and public support for a strong system of human rights protection through the European Court of Human Rights, as the Court is an important guardian of the rule of law. The Institute also promoted the Commission's characterisation of NHRIs as an integral part of a state under the rule of law.

The Institute did not take any specific follow-up initiatives based on the ENNHRI 2020 Rule of Law Report. This is due in part to the topics covered by the Commission's rule report which do not specifically fall in the ambit of the Institute's mandate (e.g., corruption) or are covered by the Institute from a different perspective (e.g., justice system where our focus currently lies on providing training to judges and prosecutors and fostering inter-institutional dialogue to improve prosecution of rightwing, racist and antisemitic crimes).

Independence and effectiveness of the NHRI

Changes in the regulatory framework applicable to the Institution

The Institute's regulatory framework has not changed since the previous report.

Enabling space

Generally speaking, the Institute has very good working relationships with state authorities. Its expertise is highly regarded, and authorities are well aware that its status as NHRI is different from civil society organisations.

However, when Parliament holds a hearing on a draft law, the GIHR is not entitled to participate ex officio, but needs to be invited by a parliamentary party.

Moreover, sufficient financial resources play an important part in securing an enabling environment for an NHRI. While there has been a comparatively small increase in institutional funding for the GIHR in 2019, it should be noted that the requirement of the Institute's broad mandate is not adequately reflected by the current level of funding. In particular, the Institute needs more financial resources for research and monitoring.

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

As any other organisation the Institute's work has been affected by the ongoing Covid-19 pandemic. Fortunately, the Institute was able to provide the necessary infrastructure for remote work and much of the Institute's work, which consists of research and reporting, can well be done remotely (see below, in the section concerning impacts of COVID-19 pandemic and measures taken to address it).

Human rights defenders and civil society space

As described in ENNHRI 2020 Rule of Law Report, a judgment by the Federal Tax Court of January 2019 has narrowed civil society space through a restrictive interpretation of the statutory criteria for civil society organisations (CSOs) to benefit from tax privileges (as non-profit associations benefitting to the public). Consequently, the ability of a number of organizations to function and proceed with their work in order to actively participate in democratic discourse and social welfare has been affected or at least jeopardized. While the Federal Ministry of Finance had suspended the implementation of the abovementioned judgment and promised a draft to amend the applicable law, it now seems that discussions within the ministry, within the government and among the federal and Länder ministries are currently stuck, and no further development is expected this year (due to federal elections on 26 September). In the meantime, the CSO affected by the judgement has recently lodged its appeal to the Federal Constitutional Court. (1) Generally speaking, it is recommended that the law providing tax privileges to certain CSOs be revised and modernised so as to reflect a contemporary understanding of what "activities of benefit to the public" means and how an enabling space for CSOs can be secured in today's world.

Freedom of assembly has been curtailed for the purpose of preventing the spread of COVID-19. It should however be noted that these measures were not targeted against human rights defenders, neither de jure nor de facto. During the first wave in the spring of 2020, the first measures enacted by the states of the federation (Länder) were framed as absolute prohibitions. However, the Federal Constitutional Court decided in an urgent procedure that the applicable norms had to be understood in a way that required the competent authority to examine whether the assembly could be carried out under precautionary hygiene measures, so as to do justice to the high value of freedom of association in a democratic society (2).

In 2020 the Institute has advised the Foreign Office in the development of a protection programme for human rights defenders. The programme has been launched in 2020 under the name of Elisabeth-Selbert-Initiative and is expected to be further developed in 2021. (3)

References

(1) https://www.attac.de/presse/detailansicht/news/gemeinnuetzigkeit-bundesfinanzhof-haelt-an-umstrittenem-urteil-fest-1/

(2) https://www.bundesverfassungsgericht.de/SharedDocs/Entscheidungen/DE/2020/04/rk20200415_1bvr082820.html

(3) http://ennhri.org/news-and-blog/germany-launches-protection-programme-for-human-rights-defenders-at-risk/; https://www.ifa.de/en/fundings/elisabeth-selbert-initiative; https://www.ifa.de/foerderungen/elisabeth-selbert-initiative/

Checks and balances

Access to legislative and policy processes/participation of rightsholders

There has been a tendency, equally noted by CSOs, to provide very short timeframes for stakeholder consultations. While ministries, federal and Länder level alike, regularly request written comments from CSOs and the Institute on draft legislative proposals, the timeframe for submitting responses varies greatly from a day or two to several weeks. Providing only very little time for submitting responses might obviously discourage CSO from providing input at all (and, at times, has caused CSOs and the Institute to refrain from submitting input) and it creates the impression that stakeholder consultations are a mere formality and not taken seriously. (1)

Fairness of the electoral process

Following two judgements by the Federal Constitutional Court, so-called overhang seats (*Überhangmandate*) have been declared unconstitutional and have to be compensated for with additional seats. These resulted from the specific electoral system that combines proportional representation with elements of a majority voting system as well as from the

increased number of political parties and decreased number of votes received by the two main parties. As a result, the total number of seats has grown so much that, after the next federal elections, it may exceed 1,000. (2) While all parties agree that an electoral law reform is necessary, the compromise achieved between the parties of the ruling coalition government is expected to heavily favour the currently largest party. Furthermore, many legal experts do not expect that the new law will effectively reduce the number of seats so as to maintain a functioning parliament and hence argue that many parts of the law are unconstitutional. Although opposition parties have lodged a complaint with the Federal Constitutional Court, a decision is not expected to be rendered very shortly so that the next parliamentary elections will take place according to the new law.

Implementation of judgements of supranational courts

With its PSPP ruling in May 2020, the Federal Constitutional Court (FCC) caused concerns among critics that EU-sceptic governments could use the ruling to undermine the respect for and domestic implementation of judgements by the Court of Justice of the EU (CJEU). The judgements and its possible effects have been widely discussed in Germany, including at a conference jointly organised by the Institute and the Polish Ombudsman. One main argument by the proponents of the judgment (and from within the Court as well) against the allegation that the judgement would be used by EU-sceptic governments was that the CJEU should actually have exercised more control and oversight, not less.

Public trust in institutions

Trust of citizens in state authorities, including the public administration and courts has changed under the influence of the COVID-19 pandemic. While trust in government and parliament was at a medium height in 2019, trust has increased during the pandemic; in recent weeks, however, the level of trust has sunk due to a perceived lack of foresight with a long-term perspective, direction and decisiveness on the part of decision-makers and a perceived lack of effectivity of the measures taken.

Despite a generally high trust in the police, concerns have increased as to right-wing extremist tendencies and institutional blindness towards racism and antisemitism within the police and security forces. This was caused by the repeated detection of such statements and actions within the forces (e.g., in chat groups, through hoarding of weapons or Nazi devotional objects). Moreover, in 2020 the issue of structural racism within the police was widely debated in the wake of the death of George Floyd and worldwide protest against police brutality. Resulting calls (3) for an independent study into racial profiling practices and structural racism among security forces led to division among the Government. The Ministry of Interior consistently refused such a study and has only conceded so far as to

include this aspect into a broader three-year study on everyday life of police officer. (4) Experts and opposition parties have denounced this study as being of little use to actually contribute to solving the problem. (5)

The NHRI in the system of checks and balances

The Institute regularly engages with political actors in relevant legislative and policy processes. In 2020 these included e.g., engagement to introduce children's rights into the constitution; engagement to delete the word "race" from the constitutional provision on discrimination and replace it with "racist discrimination"; introduction of a law on human rights due diligence for business enterprises. The broad support for the Institute's proposal on racist discrimination, particularly from organizations of victims of racist discrimination, is a strong proof of the need for an NHRI that has the resources to work on an issue for a long time to bring about.

In 2020, the Federal Constitutional Court requested the Institute to submit an amicus curiae in a constitutional complaint concerning the prioritization ("triage") of severely ill Corona patients.

In its 2019/2020 report to Parliament on the human rights situation in Germany, the Institute brought to the attention of the legislature the practical impact of earlier legislative changes with respect to the deportation of rejected asylum seekers with severe illnesses. The findings of the report, viz. that severely ill persons were deported in violation of Germany's international human rights obligations, were taken up in legislative debates, also by members of the governing coalition parties; so far, however, no legislative action has been taken to remedy the situation.

The main obstacle affecting the NHRI's engagement as part of the system of checks and balances is the lack of resources, which limits the extent of activities and range of issues that the Institute can work on.

References

(1) A recent example was stakeholder consultation on the 2nd Cybersecurity Law where CSOs were given only two days to draft and submit their comments https://gi.de/meldung/offener-brief-ausreichende-fristen-fuer-verbaendebeteiligung

(2) https://www.dw.com/en/germany-seeks-electoral-reform-to-avoid-xxl-bundestag/a-54694043

(3) https://www.institut-fuer-menschenrechte.de/fileadmin/Redaktion/Publikationen/Stellungnahmen/Stellungnahme_Racial_Profiling_Bund_Laender_muessen_polizeil_Praxis_ueberpruefen.pdf

(4) https://www.dw.com/en/germany-commissions-study-to-address-racism-in-police-force/a-55867763

(5) https://www.br.de/nachrichten/deutschland-welt/opposition-kritisiert-seehofers-geplante-polizei-studie,SIa9MtY

Functioning of the justice system

The current legal framework and its implementation currently affects access to justice by certain vulnerable groups.

Access to justice is hindered for persons with disabilities due to the existing law on guardianship, which is based on the concept of substituted decision-making. Presently, a legislative proposal is pending before the Federal Parliament, which would bring about a change to assisted decision-making. However, some elements of the draft are still not in line with the CRPD, as forced treatment and forced restraints, e.g., would still be permissible under certain circumstances. It is not yet clear whether the draft law will be adopted before the end of the legislative period in September 2021. The GIHR, as Germany's CRPD Monitoring Body, has published a position paper on the matter (1).

Access to justice for women victims of gender-specific violence, including domestic violence, depends on the availability of counselling services and, for victims of sexual violence, of easily accessible rape crisis or sexual violence referral centres providing medical and forensic examination as well as trauma support and counselling (Article 25 Istanbul Convention). The funding of counselling services for gender-specific violence is precarious, as funding is not permanent but depends on actual demand, thus rendering it difficult to cover running costs and to keep staff. With respect to referral centres, a study of the GIHR has shown the need for stepping up the cooperation between medical, forensic and

counselling services and to develop structures that ensure access for women in rural areas (2).

Access to justice for victims of racist violence depends on the identification by the justice system of the racist motivation of the perpetrator. So far, there is no evidence whether the pertinent legal changes (Sect. 46 of the Penal Code) and the concomitant internal rules for the investigating authorities are effectively applied in practice. Within a project funded by the Federal Ministry of justice and consumer protection, the GIHR is supporting pilot states (Länder) to strengthen the justice system in dealing effectively with combatting racist violence and in dealing with racist discrimination by the justice system. The project reveals the difficulty stemming from the fact that institutions cannot describe the needs they have in this regard as long as they do not have a human rights based understanding of racism. Therefore, the Institute is continuously calling for training of the actors within the justice system on racism and racist discrimination (see, e.g., on the Federal Cabinet's Plan for Combating Right-wing extremism and Racism (3).

References

(1) https://www.institut-fuer-menschenrechte.de/fileadmin/Redaktion/Publikationen/Stellungnahmen/Stellungnahme_Referentenentwurf_BMJV_Entwurf_Gesetzes_Reform_Vormundschafts_Betreuungsrecht.pdf

(2) https://www.institut-fuer-menschenrechte.de/fileadmin/Redaktion/Publikationen/Analyse_Studie/Analyse_Akutversorgung_nach_sexualisierter_Gewalt.pdf

(3) https://www.institut-fuer-menschenrechte.de/fileadmin/Redaktion/Publikationen/Stellungnahmen/Stellungnahme_zu_geplantem_Massnahmenpaket_Kabinettsausschuss_Bekaempfung_Rechtsextremismus_Rassismus.pdf

ENNHRI

Media pluralism and freedom of expression

The Institute has not carried out any systematic monitoring in this regard. In the context of demonstrations against the Corona protection measures, journalists' organizations have reported attacks against, and harassment of, journalists by demonstrators.

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

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

Parliamentary oversight of the measures taken is limited, due to the fact that the pertinent federal law gives the federal and state governments the power to act by decree (*Verordnung*). Although general debates are head in the parliaments, the parliaments of the Länder have not used constitutionally available means of turning their general oversight into a specific oversight, e.g., by making the decrees (or the duration of specific measures) depending on parliamentary consent. The federal parliament consented to the prolongation of the "epidemic situation of national extent" (*epidemische Lage vn nationaler Tragweite*), which triggers the (time-limited) power of the Federal Minister of Health and of the Lander to act by decree. However, on these occasions, parliament did not use its powers to review, in detail, the measures taken.

While parliaments have not taken measures to weigh and to protect human rights, courts have done so. However, the less clarity there is about a strategy behind the measures taken (because there is no in-depth parliamentary debate, and the debates of the circle of the prime ministers of the Länder and f the chancellor are behind closed doors), the more difficult it is for courts to carry out a proper assessment of the proportionality of a single measure against which the individual case is directed. Thus, the primary role of parliaments in protecting human rights is further weakened.

The Institute dealt with these implications through statements, press releases, and in its annual report to parliament on the situation of human rights in Germany, which was taken up in parliamentary debates.

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

The Institute overall managed to cope well with the challenges brought by the COVID-19 pandemic. It has converted many of its public events to online formats, which has often and successfully attracted a larger audience than events that woul

d have taken place in person in Berlin. However, activities such as outreach to members of parliament and political parties, or other activities that require a trustful and confidential environment became difficult or impossible to carry out. While the overall fulfilment of the Institute's mandate remained effective, some projects and activities had to be postponed or even cancelled.

Greece

Greek National Commission for Human Rights

International accreditation status and SCA recommendations

The Greek NHRI was reaccredited with A-status in March 2017. During the latest accreditation session, the SCA recommended more clarity regarding the selection and appointment process of the Commission's members. The SCA also encouraged the NHRI to continue to advocate for an adequate level of funding to fully carry out its mandate.

Impact of 2020 rule of law reporting

Impact on the Institution's work

The GNCHR, as the Greek National Human Rights Institution (NHRI), not only has a strong voice and role in promoting respect for the rule of law, but furthermore is itself part of the rule of law framework. Therefore, monitoring and reporting on issues pertaining to human rights promotion and protection is not a novelty for the GNCHR. Nonetheless, the 2020 ENNHRI rule of law report impacted the GNCHR's work in a way that it urged the GNCHR to promote the development of a Strategic planning regarding the implementation of rule of law in the Country. Such a strategic planning, seen as a "road map" to support the implementation of human rights, rule of law and democracy, allowed the GNCHR to draft a concrete plan of action, which is regularly monitored and adjusted to achieve specific objectives. Taking into account, the national environment in which the GNCHR operates, international human rights standards and the Paris Principles requirements, the GNCHR seeks through this strategic planning to direct energy and resources towards achievable goals with respect to human rights and rule of law, while at the same time assessing the progress made. Finally, 2020 was marked by the Covid-19 pandemic, which *de facto* lead to deviation from the planned program of work and the GNCHR initial strategic planning.

References

- GNCHR Report on the need for protection of human rights with regard to the measures taken in response to the coronavirus (COVID-19) pandemic and recommendations to the State. Description of the issues discussed in the Plenary Meetings during the lockdown Meetings of 8th, 22nd, 29th of April and of 6th May 2020: https://nchr.gr/images/English_Site/COVID19/GNCHR_HR_COVID-19ENG.pdf.
- GNCHR Statement on the ban of all public open-air gatherings, November 2020 [in Greek]: https://www.nchr.gr/images/pdf/apofaseis/politika_dikaiomata/Dilosi_EEDA_Dimosies_Synathroiseis.pdf.
- GNCHR Reference Report on the Refugee and Migrant Issue (Part B), September 2020: https://www.nchr.gr/images/English_Site/PROSFYGES/Reference_Report_Refugees.pdf.

Follow-up initiatives by the Institution

Despite the COVID-19 outbreak, in 2020, the GNCHR intensified its efforts and work. In particular, the GNCHR played a decisive role in the follow-up to the annual rule of law report, by issuing and submitting among others approximately 30 reports, statements, press releases and other contributions, by conducting more than 20 Plenary meetings and other hearings on various human rights issues, as well as by raising awareness and triggering a genuine discussion at national level, including through open seminars, trainings and discussion in Parliament.

ENNHRI

References

- GNCHR Oral Statement on the implementation of the Convention on the Elimination of All forms of Discrimination against Women (CEDAW), November 2020: https://www.nchr.gr/images/pdf/apofaseis/isothta_fullwn/GNCHR_Oral_Statement_CEDAW_site2.pdf.
- GNCHR's Observations on Draft Law of Ministry for Migration and Asylum "Improvement of migration legislation, amendments of provisions of Laws 4636/2019, 4375/2016, 4251/2014 and other provisions", September 2020: https://www.nchr.gr/images/English_Site/PROSFYGES/Summary_GNCHR%20Observations%20to%20Draft%20Law%20on%20Improvement%20of%20migration%20legislation.pdf
- GNCHR Statement on the fire in Moria and the day after, September 2020: https://www.nchr.gr/images/English_Site/NEWS/GNCHR%20Statement%20on%20Moria.pdf.
- GNCHR Statement on the reported practices of push backs, July 2020: https://www.nchr.gr/images/English_Site/PROSFYGES/GNCHR-Statement-on-the-reported-practices-of-push-backs.pdf.
- GNCHR Statement: Reviewing asylum and immigration policies and safeguarding human rights at the EU borders, March 2020:https://www.nchr.gr/images/English_Site/PROSFYGES/GNCHR_STATEMENT_Borders.pdf

Independence and effectiveness of NHRIs

Changes in the regulatory framework applicable to the Institution

Following the SCA recommendation to the GNCHR, during its reaccreditation with A-status in March 2017, the GNCHR took the initiative to draft and propose to the Greek Legislator a new legal framework for its operation. This is aimed at offsetting the negative changes brought by recent legislative measures which affected the regulatory framework of the Institution by downgrading its scientific staff (Article 38 of Greek Law no. 4465/2017) and

unilaterally altering its composition and violating its independence (Article 11 of Greek law no. 4606/2019). As a result, a draft law on "National Accessibility Authority, National Commission for Human Rights and National Bioethics and Technoethics Committee" was put up for deliberation in the Opengov.gr platform from December 31st, 2020 to January 14th, 2021 and was introduced to Parliament on February 5, 2021. The said draft law, aiming at addressing effectively issues such as the recognition of legal personality of the GNCHR, the guarantee of its functional independence and administrative and financial autonomy in accordance with the Paris Principles, was finally voted by Parliament on 23 February 2021 and published in the Official Journal as Law no. 4780/2021 (OJ 30/A/28.2.2021). It is important at this point to highlight the participatory procedure followed by the GNCHR, since the said legislation is the result of constant and persistent efforts and successive consultations of its Plenary and public dialogue contributing to the decision-making process. However, there are still pending issues which constitute a setback in relation to the common goal and the will to ensure the independence of the National Institutional and therefore its reaccreditation with A-status. These include the explicit assimilation of the GNCHR staff's status to the status of the staff performing similar tasks in other independent institutions of the State. The GNCHR continues to advocate, with a strong and passionate voice, for the full compliance of its legislative framework with the Paris Principles.

References

- GANHRI, *Report and Recommendations of the Session of the Sub-Committee on Accreditation (SCA)*, 9–13 May 2016, p. 34 et seq.:
- https://nhri.ohchr.org/EN/AboutUs/GANHRIAccreditation/Documents/SCA%20FINAL%20REPORT%20-%20MAY%202016-English.pdf.
- GANHRI, *Report and Recommendations of the Session of the Sub-Committee on Accreditation (SCA)*, 13–17 March 2017, p. 23 et seq.:
- https://nhri.ohchr.org/EN/AboutUs/GANHRIAccreditation/Documents/SCA%20Final%20Report%20-%20March%202017-%20English.pdf.
- Announcement of the resignation of the President of the Greek National Commission for Human Rights, George Stavropoulos, 4 April 2019:

- http://www.nchr.gr/images/English_Site/NEWS/Announcement%20of%20the%20GNCHR%20Presidents%20Resignation.pdf.
- Law no. 4780/2021 on "National Accessibility Authority, National Commission for Human Rights and National Bioethics and Technoethics Committee" (OJ 30/A/28.2.2021): https://www.hellenicparliament.gr/UserFiles/18a4e643-1429-4e6b-a317-d7c6a29adabf/11578912.pdf.

Enabling space

According to Article 12(b) of Law no. 4780/2021, the GNCHR, in order to fulfill its mandate, "submits recommendations and proposals, carries out studies, submits reports and gives an opinion on the taking of legislative, administrative and other measures which contribute to the improvement of the protection of human rights". In order to do so, the GNCHR must be informed without delay and in the most effective possible way of legislative initiatives dealing with human rights issues. To this end, it is necessary on the one hand for the Ministries' representatives participating in its composition to inform the GNCHR and on the other hand, for the other Ministries to send the final draft laws after the end of the consultation and before its submission to the Parliament. Nonetheless, in the vast majority of cases, the GNCHR deplores the failure by the authorities to share draft legislation with the NHRI, highlighting the fact that such a failure constitutes, in addition to disrespect to its composition, a major institutional setback which needs to be fully addressed. This is a procedural impediment, which the GNCHR overcomes by closely monitoring regulatory changes with impact on human rights and commenting on relevant legislation, regardless of whether it has received the draft law in advance. One of the most recent examples is the new Greek Law no. 4735/2020 of the Ministry of Interior, which was passed on October 2020 and contains among others, provisions for the amendment of the Greek Citizenship Code. Despite the fact that the competent Ministry expressed the need for transparency, speed and efficiency, it never consulted with the GNCHR, in order to address together several human rights issues and serious obstacles and restrictions on the acquisition of Greek citizenship arising from the system of naturalisation the Law introduced.

The GNCHR has, since its establishment more than 20 years ago, struggled to maintain a fruitful and constructive cooperation with the competent national Authorities, even though strongly advocating for the benefits for the Greek State from cultivating a climate of dialogue. Especially, as far as the Parliament is concerned, the GNCHR has made continuous efforts to evolve an effective working relationship with Parliamentarians in order to better promote and protect human rights. Respectively, the GNCHR expects from Parliamentarians to produce an appropriate legislative framework for the operation of the Greek NHRI in accordance with the Paris Principles.

References

- Letter to Minister on Interior, Mr P. Theodorikakos, on Draft law of the Ministry of Interior regarding the "Amendment of the Code of Greek Citizenship etc.", October 8th, 2020.
- The Abuja guidelines on the relationship between Parliaments, Parliamentarians and Commonwealth National Human Rights Institutions (NHRIs), 23–26 March 2004.

GNCHR's pluralistic composition

Greece has attributed the role of NHRI to a pluralistic Institution, a choice which has also been confirmed most recently by Article 13(1) of Law no. 4780/2021 on "National Accessibility Authority, National Commission for Human Rights and National Bioethics and Technoethics Committee" regarding the composition of the GNCHR. The pluralistic composition of the GNCHR, reflecting the representation of various social forces and fields involved in the protection and promotion of human rights, such as NGOs, Universities and qualified experts, third level trade unions, professional organisations, Parliament, Government departments, allows the GNCHR not only to maintain and stay focused on its strategic planning, but also to adjust to new challenges by modifying/adapting it with guarantees of wide acceptance.

Human rights defenders and civil society space

The GNCHR monitors very closely the situation regarding civil society space and the protection of human rights defenders. In this regard, the GNCHR maintains a very close

relation with NGOs and CSOs. Not only prominent NGOs and CSOs form part of the GNCHR Plenary, but the GNCHR also maintains within its premises the Racist Violence Recording Network (RVRN), which was established in 2011 by the GNCHR and the Greek Office of UNHCR, the UN Refugee Agency. Today, RVRN consists of 47 non-governmental organisations and civil society actors, who acknowledge and jointly pursue combating racist violence, as well as all racially motivated acts on the grounds of race, colour, religion, descent, national or ethnic origin, sexual orientation, gender identity, sex characteristics and disability.

GNCHR is deeply concerned about the tensions manifested in 2019 against human rights defenders, particularly affecting organisations and activists working with refugees and migrants and with the LGBTQI+ community. The increasing incidence of attacks, according to the 2019 RVRN Annual Report which was published in June 2020, highlight a worrying trend which points to an increasingly hostile environment for humanitarian organisations, and civil society organisations in general, active in the promotion and protection of human rights. The growing racist rhetoric in the public sphere often aims to discredit the work and services offered by these organisations, while the lack of special protection for human rights defenders – which RVRN has already pointed out in its previous annual reports – deteriorates the conditions in which organisations are called upon to operate. The RVRN annual report for 2020 is not published to date (February 2021), nonetheless, according to the already existing recordings it is safe to say that this trend is confirmed for 2020. Attacks on human rights defenders remain alarming, highlighting the lack of special protection for human rights defenders on the one hand, and making the implementation of a legal provision for special protection of human rights defenders even more urgent on the other hand.

Finally, regarding NGOs active in Greece in the field of asylum, migration and social inclusion, there is an obligation, since 2016, to be registered in a special "Register of Greek and Foreign NGOs", operating under the Ministry for Migration and Asylum. However, by virtue of Laws no. 4636/2029 and 4686/2020, the requirements for registration and verification of these NGOs became stricter, involving also the registration of their members and employees (physical members) for anti-laundering purposes. According to an Opinion by the Expert Council on NGO Law which reviewed the legislation in place, the above requirements "give rise to problems of compliance with the rights in Articles 8 and 11 of the ECHR", because of a lack of legitimacy, proportionality and legal certainty. These provisions will have a significant chilling effect on the work of the civil society, which "may produce a worrying humanitarian situation, given the significant needs of this very vulnerable population and already existing gaps in the significant needs of government and others,

and the continued violence and judicial harassment such NGOs face, including criminalisation of t aspects of their work".

The GNCHR intervenes whenever it considers that there is a shrinking danger for the civil society space. In particular, the GNCHR's efforts in this area focus on the following priorities:

Monitoring of the execution of ECtHR case law aiming at empowering and protecting human rights defenders

In December 2020, RVRN submitted to the Committee of Ministers of the Council of Europe a Communication, pursuant to Rule 9.2 of the Rules of the CoE Committee of Ministers for the supervision of the execution of judgments and the terms of friendly settlements, relating to the case of Sakir v. Greece (Application No. 48475/09). In the aforementioned Communication, RVRN expressed, among others, its deep concern regarding the breach by the authorities of their obligation under the European Convention on Human Rights (ECHR) to conduct an effective investigation into violent assaults inter alia against members of migrant related CSOs. Most importantly, RVRN stressed the delays in the investigation process of the aforementioned cases, highlighting that these delays and shortcomings foster a climate of impunity for perpetrators on the one hand and limitation of the rights and freedoms of human rights defenders and CSOs on the other hand.

Legal recognition and protection of human rights defenders

To this end, RVRN addresses every year specific recommendations to the competent public authorities, such as the Ministry of Citizen Protection, the Ministry of Justice and the Prosecution and Judicial Authorities or the Ministry of Migration and Asylum, aiming among others, at combating racist crime and racially motivated police violence, protecting human rights defenders and ensuring the safety of humanitarian workers and members of civil society. In particular, RVRN strongly recommends, in every given opportunity, the adoption of a legislative provision for the protection of human rights defenders.

In order to tackle this very important issue, the GNCHR has already approved in principle the adoption of a bill on "Recognition and Protection of Human Rights Defenders", brought before the GNCHR Plenary by the Greek Transgender Support Association (SYD), which is a GNCHR member. The bill aims at ensuring that human rights defenders are free from attacks, reprisals and unreasonable restrictions, in order to work in a safe and supportive environment. In one of the following meetings of the GNCHR Plenary there will be

discussion on the bill's articles and adoption of a final legislative text, which will be submitted to the competent public authorities.

Capacity strengthening and promotion and support of human rights defenders' work

Furthermore, in this regard, the GNCHR, on its own or through the work of RVRN, supports the work of human rights defenders, for example through sharing best practices and holding training workshops, presenting awards. For instance, in 2018, the GNCHR nominated the RVRN for the OHCHR Human Rights Prize 2018, in order not only to give public recognition to the achievements of all these devoted NGOs and persons working against racist violence in Greece, but also to send a clear message of support for the tireless efforts of the human rights defenders working in the field of promotion and protection of human rights in general.

In addition, and taking into account that NHRIs not only constitute a protection mechanism for human rights defenders, but also are themselves recognised as human rights defenders, the GNCHR, in establishing and strengthening capacity in this area, organises programs to sensitize the general public and particular target groups (state institutions, lawyers, etc.) on the importance of respecting the work of human rights defenders. In this regard, the GNCHR organises annual (open) seminars on "Education in Human Rights", on a wide range of human rights thematics. At the same time, the GNCHR considers the establishment of a focal point for human rights defenders within the NHRI.

Finally, with regard to NGOs active in Greece in the field of asylum, migration and social inclusion and the stricter requirements for their registration, the GNCHR closely monitors all developments in the field contributing to the promotion and protection of other human rights defenders. In fact, the GNCHR has alarmed the State on the escalating situation in the islands, where the RVRN recorded specific racist and xenophobic attacks against

newcomers, refugees and migrants, international organisations' employees, NGOs, CSOs as well as journalists.

References

- RVRN Annual Report 2019: http://rvrn.org/wp-content/uploads/2020/06/ETHSIA-EKTHESH-2019-english.pdf.

- Communication from the Racist Violence Recording Network, pursuant to Rule 9.2 of the Rules of the Committee of Ministers of the Council of Europe for the supervision of the execution of judgments and the terms of friendly settlements, relating to the case of Sakir v. Greece (Application No. 48475/09), 18.12.2020: http://hudoc.exec.coe.int/eng?i=DH-DD(2020)1178E.

- Expert Council on NGO Law of the Conference of INGOs, Opinion on the compatibility with European standards of recent and planned amendments to the Greek legislation on NGO registration, 2.7.2020, CONF/EXP(2020)4: https://rm.coe.int/expert-council-conf-exp-2020-4-opinion-ngo-registration-greece/16809ee91d.

- ENNHRI, National Human Rights Institutions and Human Rights Defenders. Enabling human rights and democratic space in Europe, 2018. http://ennhri.org/wp-content/uploads/2019/09/Publication-NHRIs-and-Human-Rights-Defenders-Enabling-Human-Rights-and-Democratic-Space-in-Europe.pdf.

- GNCHR, Annual (Open) Seminar Season on "Education in Human Rights", Third Cycle, February – June 2021: https://www.nchr.gr/ekpaidefsi.html.

- GNCHR, Statement: Reviewing asylum and immigration policies and safeguarding human rights at the EU borders, 5.3.2020: https://nchr.gr/images/English_Site/PROSFYGES/GNCHR_STATEMENT_Borders.pdf.
- RVRN Press Release: Serious concern over attacks against refugees and humanitarian workers, 5.3.2020: http://rvrn.org/2020/03/racist-violence-recording-network-serious-concern-over-attacks-against-refugees-and-humanitarian-workers/

Checks and balances

The GNCHR welcomes the fact that the Greek Parliament did not suspend its operation and succeeded in adapting to the new realities resulting from the COVID-19 outbreak, by changing the way Parliamentarians vote, conduct committee hearings and plenary sessions and by adapting globally to keep working through the pandemic.

That said, there are issues to be reported concerning the exercise by the GNCHR of its role in the system of checks and balances, in particular when legislation is enacted. More specifically, over-regulation and bad regulation constitute two phenomena inextricably linked to the Greek reality, exacerbated in times of crisis, such as the financial crisis and the pandemic. Between 2001-2015, 1.478 laws were passed, and 3.452 presidential decrees were issued. During the same period (2002-2015) the laws known as "multi-bills" amount to approximately 90, while in total legislation of this period grants about 17.000 authorisations to the executive for the issuance of regulatory administrative acts of all kinds. Despite the fact that Greek Law no. 4048/2012 sets an obligation for all ministries to apply the principles of Better Regulation to all legislative developments, major challenges, still persist with its implementation. Regulatory impact assessment (RIA) is obligatory for all primary laws; however, the quality is poor due to the short time period in which new drafts are developed. Public consultations are required for all primary laws. In practice, consultation usually takes place through exchanges with selected groups. The GNCHR deplored on many occasions the frequent use of an expedited legislative process, by which many laws, even important legislative reforms, have been adopted. This process takes place even when no emergency requirement is actually met, as a result restricting significantly the discussion in Parliament. Furthermore, the GNCHR has repeatedly and publicly criticized the fact that it does not receive the Greek draft laws in advance, and thus it normally does not have

sufficient time to comment upon the provisions in detail. This impacts the effective fulfilment of its mandate. The GNCHR normally takes note of the legislation once uploaded to the official public consultation platform (opengov.gr).

The GNCHR, as the Greek NHRI and the independent advisory body to the State on matters pertaining to human rights promotion and protection, considers it of crucial importance to develop and maintain an effective relationship with the Parliament. In particular, the GNCHR's efforts in this area focus on the following priorities, in accordance with Paris Principles and the Abuja guidelines on the relationship between Parliaments and NHRIs:

With regard to the close working relationship between the GNCHR and the Parliament:

Discussion of the GNCHR's reports before appropriate parliamentary committees

The GNCHR is (and must be) invited to appear regularly before the appropriate parliamentary committees to discuss the annual report and its other reports on human rights protection and promotion.

Periodic meetings with Parliamentarians

The GNCHR considers it very important to hold periodic meetings to raise awareness amongst Parliamentarians of both human rights and the GNCHR's work. In addition, the GNCHR must provide Parliamentarians with regular expert, independent advice on national, regional and international human rights issues, instruments and mechanisms. Parliamentarians must be aware of the human rights implications of all proposed legislation and constitutional amendments as well as existing laws. To this end, Parliamentarians must be informed of the research into human rights issues being undertaken by the GNCHR.

Training for Parliamentarians

The GNCHR reiterates its willingness and availability to organise seminars and conferences, as well as provide on-going training for Parliamentarians on human rights principles, given the fact that it is of high importance for Parliamentarians to have a sound knowledge of international human rights and international human rights instruments as well as the GNCHR's work.

Encouraging the ratification of international Human Rights standards

Recognizing its responsibility as an NHRI and responding to the mission assigned to it by the national legislature – a mission which consists, inter alia, in the constant monitoring of the development of matters pertaining to human rights protection, the promotion of relevant research, the sensitization of the public opinion (Article 11(a), Law no. 4780/2021) and the organisation of a Documentation Centre on human rights (Article 12(k) of Law no. 4780/2021) – the GNCHR collected and cited in a single list the international and European legally binding texts, which are designed to protect human rights, always with a view to ensuring the broadest possible framework for human rights protection.

References

- Letter to Minister on Interior, Mr P. Theodorikakos, on Draft law of the Ministry of Interior regarding the "Amendment of the Code of Greek Citizenship etc.", October 8th, 2020.
- GNCHR, List of International and European Conventions: https://www.nchr.gr/images/English_Site/List%20of%20Conventions%204.2019.pdf.

Functioning of justice systems

The GNCHR has on several occasions submitted to the Greek authorities and subsequently published a series of observations to draft laws potentially restricting access to justice, highlighting that a well-functioning judiciary with an efficient court system is central to effective access to justice. Unfortunately, economic and social factors, specifically the financial crisis, constituted the key factors triggering and/or intensifying barriers to effective access to justice. In particular, substantial delays in the proceedings in the Greek judiciary adversely affect the right to judicial protection. In general, procedures are not concluded within a reasonable time. There seems to exist a general problem of unreasonable delay within the trial of a case running through every stage and kind of a trial, from the delays in fixing a hearing date in the courts of first instance to the average time until the issuance of an irrevocable judgment. At the same time, judicial reforms are moving rather slowly. A number of new legal instruments were adopted in recent years, in a bid to speed up access to justice. Chief among these were Article 9 of Law no. 4048/2012, Law no. 4446/2016 and

more recently Law no. 4745/2020 aiming at accelerating the proceedings of pending cases under Law no. 3869/2010, in accordance with the reasonable time requirement under Article 6(1) ECHR. The GNCHR recalls the concerns that it had repeatedly expressed in the past regarding the risk that the measures aimed at simplifying judicial procedures might create more problems than those they would solve. The efforts to accelerate penal proceedings, for instance, are necessary, as Greece has been frequently found in breach of the ECHR by the ECtHR in this respect. However, some measures create doubts as to their effectiveness and coherence.

With regard to the non-execution of case law of the European Court of Human Rights (ECtHR), in almost 90% of the ECtHR judgments delivered concerning Greece, the Court has given judgment against the State, finding at least one violation of the Convention, while over half of the findings of a violation concerned Article 6 (right to a fair hearing), relating either to the length of the proceedings (in the great majority of cases) or to the fairness of the proceedings. In particular, according to the Explanatory report to the draft law proposal (initiated by members of the Parliament) on "Harmonization of national provisions with the ECtHR case law and introduction of a special remedy for the detention conditions in penitentiary establishments", from 2017 to 2019, 307 judgments were delivered by the ECtHR concerning Greece, of which 93 have given judgment against the State. According to said report, at the date of its publication (July 2020), 735 appeals were pending before the ECtHR against Greece, with a total of 186 ECtHR judgments under ongoing supervision concerning our country. This number is very large in relation to the size of our Country and its population. Moreover, according to the same Explanatory report, the compensations paid by Greece from 2016 to 2018 amount approximately to 11.500.000 euros. Furthermore, this year, the ECtHR condemned Greece in the leading case Stavropoulos and others, for breach of Article 9 of the Convention (freedom of thought, conscience and religion), because of the disclosure of religious beliefs in frequently used public documents, exposing the complainants to the risk of discriminatory situations in dealings with administrative authorities.

It is to be noted that a Special Permanent Parliamentary Committee on monitoring the ECtHR judgments has been established since 2014. Nonetheless, and despite the GNCHR's efforts in the past to establish a cooperation with the aforementioned Committee, it seems that this Committee started in fact operating in 2018. The GNCHR deplores, nonetheless, the total absence of any cooperation until today. In fact, during its most recent session, in July 2020, the above-mentioned Draft law proposal on "Harmonization of national provisions with the ECtHR case law and introduction of a special remedy for the detention conditions in penitentiary establishments" was discussed, without any consultation with the

Greek NHRI. The aforementioned draft law proposal has not yet received any further elaboration/discussion by the Parliament.

The GNCHR's efforts in this area focus on the following priorities, in accordance with Paris Principles and the Nairobi Declaration aiming at the contribution of NHRIs to the strengthening of the administration of Justice:

Strengthening of the legal system and judiciary

The GNCHR traditionally considers of high priority its effective contribution to the reforming and strengthening of the judicial institutions, in order to guarantee equal access to justice for all. To this end, the GNCHR has advocated with a strong and steady voice for strengthening of laws to improve the judicial or criminal law system and has, to this end, monitored and reported on issues concerning the functioning of justice systems as well as the principle of fair trial in great detail. By way of example, the GNCHR has contributed by means of submitting to the Greek authorities and subsequently publishing a series of observations to draft laws potentially restricting access to justice. Indicatively, we could refer to: a) the GNCHR Observations on the Draft Law of the Ministry of Justice, Transparency and Human Rights on «Providing Legal Assistance to Individuals» (July 2016) and b) the GNCHR Observations on the Draft Law of the Ministry of Justice, Transparency and Human Rights «Fees and charges of remedies and procedural acts and court fees» (July 2016). For instance, the GNCHR believes that the overload of cases before courts leading to significant delays could be tackled through the decriminalization of less important crimes and administrative infringements. Indeed, the overloading of penal courts cannot be addressed without a daring and extensive revision of substantive penal law.

Furthermore, the GNCHR strongly believes that any legislative reform to strengthen the judiciary (e.g., procedures related to the level and appointment of prosecutors and judges and qualifying lawyers; the independence of the judiciary and its capacity to adjudicate cases fairly and competently) must be brought into line with the international human rights instruments that the State has ratified or acceded to. Taking into account that the GNCHR, as the Greek NHRI, is the best placed Institution to monitor the compliance of the Greek justice system with international human rights standards and ensure that the administration of justice provides effective remedies particularly to minorities and to the most vulnerable groups in society, the GNCHR believes it is necessary to enhance its role and participation in the administration of justice, with a view to developing a strong national system for human rights protection. To this end, the GNCHR confirms its readiness to assist the Ministry of Justice to develop and implement a comprehensive national strategy to

strengthen the administration of justice in full compliance with both international and national human rights obligations.

Compliance of the judiciary with international human rights standards

The GNCHR has increased its interaction with judges and prosecutors, in order to raise awareness and knowledge by the judiciary of international human rights norms, standards and practices and related jurisprudence. To this end, in addition to the annual open seminars covering a wide range of human rights, addressed to the general public, the GNCHR also undertook a more specialised cycle of seminars to judicial officers entitled "Education in Human Rights".

In addition, the GNCHR assists in the human rights education not only of judges, but also of other legal professionals, such as lawyers, prosecutors and other judicial authorities and law enforcement officers, by engaging with judicial educational bodies and professional legal training bodies (e.g., ensuring curricula reflect international human rights law), as well as by providing itself training and seminars on human rights.

As far as the non-execution of ECtHR judgments is concerned, the GNCHR's efforts focus on the following priorities:

Close cooperation with the ECtHR in general

The GNCHR maintains a particularly rich and important cooperation with the ECtHR. This cooperation is multilateral and consists of (a) the translation in the Greek language of the ECtHR Newsletters by the GNCHR. In cooperation with the ECtHR, the Newsletters at hand are available on the official website of the Court, (b) referrals to the GNCHR reports, positions, and recommendations by the ECtHR, (c) the participation of the GNCHR in the wider debate with regard to both the reform of the ECtHR and the EU accession to the ECHR and the Strasbourg system.

The GNCHR also provides instructions and practical information to the general public on how they can lodge an application before the ECtHR.

Monitoring of the execution of ECtHR judgments

The GNCHR monitors and reports on the execution and implementation of the ECtHR's judgments through the following actions: (a) the collection of all ECtHR judgments against Greece, (b) emphasis on the list of simple and enhanced surveillance decisions, (c) intervention in the Committee of Ministers regarding the decisions of enhanced supervision

through the implementation, where necessary, of the provision no. 9 of the Rules of Procedure of the Committee of Ministers.

In order to assist the work of the State in this regard, the GNCHR has submitted recommendations and proposals, either by focusing exclusively on the issue of the execution or by drafting reports on problems that emerge through the ECtHR decisions, or by commenting on legislative proposal drafts which adopt measures affiliated with the execution of ECtHR judgments. The GNCHR placed special emphasis, through specific recommendations to the Greek State, on the immediate compliance of the Greek Government with the milestone judgment of the ECtHR, Chowdury and others against Greece (known as the "Manolada case") and, above all, with the State's obligations arising from the international and European commitments, concerning both the efficient reaction and the prevention of trafficking in human beings and/or forced labour. Hence, the GNCHR harked back to its previous and established repeated recommendations which remain relevant due to the prevailing situation in Greece, which reveals that the facts of this case are not "isolated incidents". At the same time, in December 2020, RVRN submitted to the Committee of Ministers of the Council of Europe a Communication, pursuant to Rule 9.2 of the Rules of the CoE Committee of Ministers for the supervision of the execution of judgments and the terms of friendly settlements, relating to the case of Sakir v. Greece.

Cooperation with the Special Permanent Parliamentary Committee on monitoring the decisions of the ECtHR

The GNCHR reiterates its willingness and readiness to establish and maintain steady working relationship with the Special Permanent Parliamentary Committee on monitoring the judgments of the ECtHR, as its interlocutor by definition, as a bridge between the international/regional and domestic systems of human rights protection. The GNCHR recalls that it has become increasingly involved in independent reporting to the Council of Europe monitoring bodies as well as to the UN monitoring bodies and is willing to play a decisive role in monitoring the ECtHR judgments and contribute to the domestication of the international/regional human rights standards in general.

Sensitization of the public opinion on the execution of the ECtHR judgments

The GNCHR has developed a user-friendly webpage on the ECtHR case-law for the facilitation of the more effective monitoring of the execution of the ECtHR judgments. Furthermore, the GNCHR participated with speakers (the GNCHR and RVRN scientific staff) at a Webinar Series organised by the Council of Europe, ENNHRI and the European Implementation Network on the Effective Implementation of Judgments of the European

Court of Human Rights (October 2020), presenting its experience regarding the use of Rule 9.2 by Human Rights Institutions.

References

- GNCHR Observations [in Greek] on the Draft Law of the Ministry of Justice, Transparency and Human Rights on «Providing Legal Assistance to Individuals», July 2016: https://www.nchr.gr/en/decisions-positions/73-fair-trial/359-gnchr-observations-in-greek-on-the-draft-law-of-the-ministry-of-justice-transparency-and-human-rights-on-providing-legal-assistance-to-individuals.html.
- GNCHR Observations on the Draft Law of the Ministry of Justice, Transparency and Human Rights «Fees and charges of remedies and procedural acts and court fees», July 2016: https://www.nchr.gr/en/decisions-positions/73-fair-trial/360-gnchr-observations-on-the-draft-law-of-the-ministry-of-justice-transparency-and-human-rights-fees-and-charges-of-remedies-and-procedural-acts-and-court-fees.html.
- GNCHR Comments on the Bill of the Ministry of Justice titled "Acceleration of proceedings in administrative courts and other provisions", October 2010: https://www.nchr.gr/en/decisions-positions/73-fair-trial/361-comments-on-the-bill-of-the-ministry-of-justice-titled-acceleration-of-proceedings-in-administrative-courts-and-other-provisions.html.
- GNHCR Observations on the compliance of the Public Administration with domestic judicial decisions, September 2009: https://www.nchr.gr/en/decisions-positions/73-fair-trial/362-the-compliance-of-the-public-administration-with-domestic-judicial-decisions.html.
- GNCHR, Monitoring of the execution of ECtHR judgments. Introductory report and methodology (Summary in English), December 2019: https://www.nchr.gr/images/newPDF/Execution_of_ECHR_Decisions.pdf.
- Draft law proposal on "Harmonization of national provisions with the ECtHR case law and introduction of a special remedy for the detention conditions in penitentiary establishments", 20 July 2020: https://www.hellenicparliament.gr/UserFiles/c8827c35-4399-4fbb-8ea6-aebdc768f4f7/11332797.pdf.

- Explanatory report to the draft law proposal on "Harmonization of national provisions with the ECtHR case law and introduction of a special remedy for the detention conditions in penitentiary establishments", 20 July 2020: https://www.hellenicparliament.gr/UserFiles/c8827c35-4399-4fbb-8ea6-aebdc768f4f7/11332795.pdf.
- GNCHR Communication on the assessment of the level of compliance of the Greek Government with GNCHR's recommendations on ECtHR judgment Chowdury and Others v. Greece (Manolada-case). Communication under Rule 9(2) on the execution of the judgment in Chowdury v. Greece (21884/15), June 2020: http://hudoc.exec.coe.int/eng?i=DH-DD(2020)522E.
- GNCHR Communication to the CoE Committee of Ministers under Rule 9(2) on the ECtHR judgment Chowdury and Others v. Greece (Manolada-case). Recommendations for the full compliance of the Greek State, December 2018: http://hudoc.exec.coe.int/eng?i=DH-DD(2018)1074E.
- Communication from the Racist Violence Recording Network, pursuant to Rule 9.2 of the Rules of the Committee of Ministers of the Council of Europe for the supervision of the execution of judgments and the terms of friendly settlements, relating to the case of Sakir v. Greece (Application No. 48475/09), 18 December 2020: http://hudoc.exec.coe.int/eng?i=DH-DD(2020)1178E.

Media pluralism and freedom of expression

The GNCHR expresses its deep concerns over the challenges affecting media pluralism in Greece, which seem to be increasingly worrying, according to an EU-wide research on media plurality, conducted for the Greek section of the ECMPF. The report found that standards for the protection of the journalistic profession, as provided for by laws and practices that are in place in order to protect the media sector, are insufficient in Greece. As far as market plurality is concerned, according to the same research, transparency in media ownership is almost non-existent, while commercial and owner influence over editorial content is visible. When it comes to political independence, there is practically no editorial autonomy, as a result of the direct relations existing between the government and the board members of the state-owned media ERT, with the government being able to appoint and dismiss board members at will. At the same time, regarding social inclusiveness in the media sector, Greece ranks very low within the EU. Access of minorities to the media is very

limited (high risk) and so is access of local communities and local media to the mainstream sources of information. Greek media are also inadequate in meeting the needs of disabled people (medium risk), while the presence of women in broadcasting media is also rather weak.

The GNCHR has been following quite closely issues such as the freedom of speech, the freedom of expression and the promotion and protection of a pluralist media environment. With regard to mainstreaming human rights, inter alia via the media, the GNCHR as the Greek NHRI, develops initiatives on the sensitization of public opinion and the mass media on matters of respect for human rights, in accordance with its founding law. Moreover, it is to be noted with emphasis that the National Radio and Television Council (ESR) is a Member of the GNCHR. That being said, the GNCHR seeks to bring human rights issues and concerns to the attention of the broader public and provide a forum for discussion and debate through the media. For instance, national information campaigns on human rights or press conferences and other relevant events attracting publicity aim at increasing public awareness and creating a national culture in which tolerance, equality, mutual respect and human rights thrive.

The GNCHR, fulfilling its mission to promote research on human rights issues, has signed Cooperation Protocols with ten universities and departments, so that it can consolidate and strengthen their cooperation in both research and education fields. In that context, the GNCHR has signed a bilateral Cooperation Protocol with the Communication, Media and Culture Department of Panteion University. The GNCHR aims, among others, at putting together and proposing to the Greek national authorities an effective strategy for strengthening, on the one hand, the role of the media in promoting human rights and contributing, on the other hand, to ensuring a more independent and pluralist media sector.

Finally, the GNCHR, in its Recommendations on the Constitutional Review (2019), recommended the revision of Article 15 of the Greek Constitution, aiming at strengthening the guarantees of pluralism in radio and television. In particular, the GNCHR proposed the extension of the guarantees of transparency and pluralism, in accordance with Article 14(9) of the Constitution, to radio and television, as enshrined in Article 15 of the Constitution, in combination with the strengthening of the National Radio and Television Council (ESR) as the independent administrative authority, in order to ensure the objectivity, equality and quality of all types of broadcasts. The aim is to prevent the gathering of media by the same person or entity.

References

- GNCHR Recommendations on the Constitutional Review, February 2019 [in Greek]: https://www.nchr.gr/images/pdf/apofaseis/EEDA_Syntagmatiki%20Anatheorisi.pdf

Corruption

Over the last 15 years, the fight against corruption has been progressively recognised as an important issue in Greece. Corruption is broadly considered as "the problem which drove Greece into the current financial crisis". The perception of corruption remains at high levels, according to the indexes published by Transparency International. In the latest Corruption Perception Index (2020), reflecting public perception of corruption around the world, published annually by TI, Greece is ranked 59th out of 180 countries with a score of 50 out of 100. After a historically low ranking in 2008/2009, the position of Greece is thus marked by a positive upward trend in recent years in TI's CPI. With a score of 50, Greece is a significant improver on the CPI, jumping 14 points since 2012 and achieving high on the CPI, partly as a result of the bold reforms undertaken by the Country after 2012 to counter-balance severe austerity measures. Furthermore, in accordance with the Eurobarometer survey 2019 on the perception of corruption which covers specifically the 27 European Union Member States, Greece sometimes remains characterised by the highest levels of perceived corruption. For instance, 95 % of those questioned consider that corruption is widespread in the country and 57% consider that it affects them personally in daily life. 91% consider that there is corruption in national public institutions. According to the GRECO Report of the 4th Evaluation prevention round on Corruption prevention in respect of members of parliament, judges and prosecutors (2015) and the Second Compliance Report on Corruption prevention in respect of members of parliament, judges and prosecutors (2020), politicians at national and regional/local level are perceived by a large proportion of the population as particularly affected by certain forms of corruption. To a lower extent, this concerns also the judicial institutions. Controversies have been triggered by incidents of legislative and institutional manipulation exempting from their liability the authors of illegal acts: this was facilitated by the complexity of legislation, insufficient transparency of the legislative process, a lack of appropriate controls and other factors.

The GNCHR stresses with satisfaction that, since the outbreak of the economic crisis in 2010, successive Greek governments have upgraded the institutional armoury that the Greek state has at its disposal in order to fight corruption. Yet, the new anti-corruption mechanisms have not been fully operational. Despite progress in anti-corruption, not only petty corruption concerning the public services, but also grand or political corruption still mark the case of Greece out as an outlier in international comparisons. The regulatory framework of anti-corruption has proven to be incomplete; there is a gap in policy implementation and successive governments have put anti-corruption to political uses. Yet, it is possible for Greece to implement further measures to fight political corruption, particularly today when trust towards political institutions is needed in order to fight the COVID-19 pandemic.

On a positive note, according to the Enhanced Surveillance Report on Greece by the European Commission, released in November 2020, the National Authority for Transparency is now fully operational, which is expected to improve coordination and a number of important steps have been taken regarding the fight against corruption in the political field. Good progress is being made on several work streams. The Authority oversees the implementation of the National Anticorruption Plan, which shows encouraging results. For instance, it has supported the Ministry of Health in the drafting of a dedicated anticorruption strategy. At the same time, the legislation on political party financing will benefit from a codification project in 2021, which should contribute to making the legal framework more coherent and clearer.

The fight against corruption and the promotion of confidence in institutions is among the GNCHR's priorities and part of its core mission. In particular, the GNCHR plays an important role in promoting and evaluating the fight against corruption in its role as NHRI and more specifically in light of its human rights monitoring and constant human rights impact assessment. The GNCHR's efforts in this area focus on the following priorities:

Transparency of the legislative process

As already mentioned, the GNCHR deplored on many occasions the frequent use of an expedited legislative process, by which many laws, even important legislative reforms, have been adopted. This process takes place even when no emergency requirement is actually met, as a result significantly restricting discussion in Parliament. Furthermore, the GNCHR has repeatedly and publicly criticized the fact that it does not receive the Greek draft laws in advance, and thus it normally does not have sufficient time to comment on the provisions in detail. This has an impact on the effective fulfilment of its mandate. The GNCHR normally takes note of the legislation once uploaded to the official public

consultation platform (opengov.gr). To this end, the GNCHR constantly recommends, in line with the GRECO Recommendations (2019), to ensure that legislative drafts including those carrying amendments are processed with an adequate level of transparency and consultation including appropriate timelines allowing for the latter to be effective.

Transposition of EU Directive on whistle blowers' protection

The GNCHR deplores that the protection of whistle blowers in Greece is still pending and invites the competent State Authorities to consider with special attention the need for addressing the gap. Following the adoption of the EU Directive on the protection of persons who report breaches of Union Law in 2019, the EU member States have until the 17th of December 2021 to transpose its provisions into their national legal and institutional systems. On a positive note, the Greek government has established a special legal drafting committee for the preparation of a draft law for the integration into the national legal order of Directive 2019/1937/EE "on the protection of persons reporting violations of Union Law". The GNCHR underlines the need for timely and effective transposition of the Directive.

References

- GNCHR Recommendations on the Constitutional Review, February 2019 [in Greek]: https://www.nchr.gr/images/pdf/apofaseis/EEDA_Syntagmatiki%20Anatheorisi.pdf
- Letter to Minister on Interior, Mr P. Theodorikakos, on Draft law of the Ministry of Interior regarding the "Amendment of the Code of Greek Citizenship etc.", October 8th, 2020.

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

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

The GNCHR monitors closely the Greek Government's series of measures in response to the COVID-19 pandemic, given that they affect directly the enjoyment of human rights in

Greece. In particular, the Greek government adopted the first measures in response to the outbreak of COVID-19 in March and April 2020 and continues until today to adopt specific measures in this regard. The measures adopted take the form of Acts of Legislative Content whose implementation is then specified through Joint Ministerial Decisions and Circulars. In other words, the coronavirus pandemic has given birth to consecutive Acts of Legislative Content (submitted to the Parliament for approval), ministerial decisions and circulars restricting various constitutional rights and establishing an atypical "emergency law", which affects directly the enjoyment of a large number of fundamental rights in varied fields, among which economic and social rights. This way of "fast-track" legislating by the executive, which was also criticized throughout the financial crisis, seems to considerably reduce the role of the Parliament, by bypassing parliamentary deliberation. And Parliament is not the only Institution bypassed in this case, since the Courts have repeatedly accepted that the "extraordinary circumstances of an urgent and unforeseeable need" (of Article 44(1) of the Greek Constitution) is a political matter, not subject to judicial review.

On a positive note, the Greek government has also taken further measures in order to mitigate the effects of the COVID-19 pandemic on the Greek economy and labour market. Such an example is Law no. 4690/2020 introducing new measures for businesses to tackle the COVID-19 pandemic.

Impact of restrictive measures aiming at combating the spread of the pandemic on the rights of vulnerable groups

The GNCHR has on many occasions stressed that restrictive measures aiming at combating the spread of the pandemic should not undermine respect for human rights and rule of law, nor discriminate, but take into account the special needs of the particularly vulnerable groups. Given that the State has taken emergency measures to deal with the pandemic, imposing restrictions on citizens' rights (such as the right to free movement, personal liberty, access to public health of non-infected citizens, etc.), the GNCHR focused, in its "Report on the need for protection of human rights with regard to the measures taken in response to the coronavirus (COVID-19) pandemic and recommendations to the State", issued on June 2020, mainly on the impact of those measures on the rights of vulnerable groups. More specifically, with regard to the situation in the refugee camps, the GNCHR stressed that structural problems remain. Overcrowding and a complete lack of sanitation and medical services, combined with limited access to healthcare and basic services, exacerbate the risk of COVID-19 infections. Infection prevention is impossible as social distancing measures cannot be implemented. The protective measures, according to the competent Minister, are stricter than those provided for the general population. With

regard to the situation in prisons, the GNCHR raised also its serious concerns mainly due to the overcrowding under the current circumstances. We have called for measures such as decongestion of the prisons, release of certain detainees and quarantine measures for infected prisoners. The GNCHR, due to the hunger strike of a prisoner in protest over the non-decongestion of prisons during the pandemic, has issued 3 consecutive public statements calling upon the State to respect the human rights standards and the rule of law and to take immediate measures to protect the right to life of the prisoner, to ensure his/her access to higher education, to decongest the prisons and to respond to COVID-19 with a plan of action. Indeed, following further reactions of many CSOs, the authorities have withdrawn their decision to transfer the prisoner to another prison, where it would be impossible to exercise her/his right to education.

Proportionality of restrictive measures aiming at combating the spread of the pandemic

Moreover, the GNCHR pointed out that restrictive measures must have a legal basis, be proportionate and time limited. The GNCHR also underlined that, taking into account the uncertain context of the pandemic, decisions should be continually re-evaluated with a rebalancing of the rights, as what is proportional to the beginning of the pandemic may become disproportionate later and thus the measure should be mitigated or abolished. This being clarified, following the Decision No. 1029/8/18 of the Chief of the Hellenic Police, which prohibited all public open-air gatherings from November 15, 2020 to November 18, 2020 (covering the 47th anniversary since the students' uprising at the Athens Polytechnic on November 17, 1973, a milestone for democracy in our Country), the GNCHR pointed out that the aforementioned Decision of the Chief of the Hellenic Police, which imposes the restriction of the freedom of assembly in the whole Territory of the Country, raises the issue of suspension of the above fundamental right, as enshrined in Article 11 of the Greek Constitution, as well as in Articles 11 of the ECHR, 12 of the EU Charter of Fundamental Rights and 21 of the International Covenant on Civil and Political Rights. Furthermore, recalling the requirements which need to be met by the Police Authorities in order to justify the ban on public assemblies, as they emerge from the ECtHR case-law, the GNCHR concluded that the legality and constitutionality of the above-mentioned disposition prohibiting all public open-air gatherings are subject to judicial review.

Access to Justice during the pandemic outbreak

At the same time, in response to the COVID-19 outbreak, all courts' hearing procedures were temporary suspended, until the 10th of April 2020 – with some exceptions regarding the examination of requests for granting or annulling provisional orders, all criminal

hearings about pre-trial detention, all proceedings about emergency cases and the issue and publication of court decisions. In this regard, the GNCHR has examined the issue of the reoperation of the courts, the exceptions provided with regard to the presence of the parties concerned in specific cases and the digitalisation of proceedings in the field of Justice, which is expected to be launched soon. Pertaining to the institutional role of justice in safeguarding respect for the rule of law, the GNCHR emphasized the need for effective measures to facilitate and ensure the safe operation of the courts in the context of de-escalating the restrictions imposed due to the pandemic and called upon the competent authorities to ensure the immediate reoperation of the judicial system and the protection of the right to a fair trial, of human value and dignity.

De facto COVID-19 Human Rights Observatory

Fulfilling its monitoring and advisory missions in the field of human rights, the GNCHR has been particularly active since the outbreak of the COVID-19 pandemic, operating in fact as a de facto COVID-19 Human Rights Observatory. Bringing together experts from different human rights fields, with a wide range of backgrounds: its members, the GNCHR monitors the situation in the field, adopts specific recommendations focusing mainly on the most vulnerable groups and alerts national authorities at the highest level of risks of human rights violations in the context of the COVID-19 outbreak. In this regard, the GNCHR, taking into account that the need for restrictive measures may be obvious at the beginning of a crisis, emphasized that it remains vigilant in this context as long as the measures are in place, assessing at the same time whether there is no longer a necessity for these measures. Moreover, the GNCHR reassured that the necessity, nature and extent of the restrictions applied to the rights and freedoms protected, will be systematically evaluated to determine whether they are justified in response to COVID-19. An important part of the evaluation is the possibility, within a reasonably short timeframe, to appeal to the administrative authorities against the restrictive measures as well as to establish a relative control mechanism for objections and complaints in case of incorrect and discriminatory implementation of these measures.

References

- GNCHR Report on the need for protection of human rights with regard to the measures taken in response to the coronavirus (COVID-19) pandemic and recommendations to the State. Description of the issues discussed in the Plenary Meetings during the lockdown Meetings of 8th, 22nd, 29th of April and of 6th May 2020: https://nchr.gr/images/English_Site/COVID19/GNCHR_HR_COVID-19ENG.pdf.
- GNCHR Statement on the ban of all public open-air gatherings, November 2017 [in Greek]: https://www.nchr.gr/images/pdf/apofaseis/politika_dikaiomata/Dilosi_EEDA_Dimosies_Synathroiseis.pdf.
- GNCHR Statement on the case of the transfer of prisoner V. Dimakis, April 2020: https://www.nchr.gr/images/pdf/apofaseis/sunthikes_krathseis/Dilosi_EEDA_gia_VDimaki.pdf.
- GNCHR New Statement on the case of the prisoner-student V. Dimakis, May 2020: https://www.nchr.gr/images/images2020/PDF/Dilosi%20EEDA%20gia%20V.Dimaki_2.pdf.
- GNCHR Urgent Statement on the case of the prisoner-student V. Dimakis, May 2020: https://www.nchr.gr/images/images2020/PDF/Katepeigousa%20Dilosi%20EEDA%20gia%20V.Dimaki_25.5.2020.pdf.

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

Naturally, the GNCHR has faced significant challenges due to COVID-19 restrictions and, especially, due to the lockdown and the total restriction of movement throughout the Country. Meanwhile, the severe restriction of movement has had an impact on the GNCHR's power to carry out investigations and, therefore, on the effective fulfilment of its monitoring functions. In particular, the COVID-19 pandemic has affected field research,

which is one of the most important human rights monitoring techniques of NHRIs, while hearings of persons before the GNCHR have been delayed or relocated and finally conducted via teleconference. In addition, due to COVID-19, the GNCHR has temporarily suspended its planned visits to migrant and refugee reception and accommodation centres to a later date. At the same time, the GNCHR had to postpone part of its seminars of the Second Cycle of the GNCHR Seminars on Human Rights, scheduled to be conducted from March to May 2020 by physical presence. Moreover, despite the fact that Plenary meetings of the GNCHR by physical presence had to be cancelled, the online Plenary meetings have doubled throughout the pandemic. In fact, it is important to emphasize that the GNCHR has held online plenary meetings on a weekly basis during the pandemic, with the participation of governmental and non-governmental stakeholders involved in the decision-making process, in order to deal with the new challenges in the best possible way, to assess the impact of the restrictive policy measures regarding human rights and democratic values, to provide the Greek government with appropriate advice on the protection of the core human rights and at the same time in order to inform the public about their rights and the risks of violations due to the pandemics.

That said, the GNCHR deals with the challenge quite effectively. The GNCHR heavily relies on the information available from its own members, the press, civil society and the government and remains in close contact with them. Moreover, its personnel works from home and Plenary meetings take place online very frequently. As far as monitoring of human rights violations at European borders is concerned, the GNCHR has overcome difficulties in obtaining first-hand information on the situation by conducting hearings with state authorities and grassroot organisations with a strong presence on the ground, including in geographically remote areas. Monitoring of the situation, in general, by collecting data from relevant authorities regarding preventive measures for protection of vulnerable groups, such as persons deprived of liberty or refugees and irregular migrants continues.

Furthermore, the postponed planned seminars of the Second Cycle of Human Rights Education were rescheduled and included in the Third Cycle of the GNCHR Seminars, which will be conducted by teleconference from February to June 2021. Finally, it is worth mentioning that for the first time in the 20 years of operation of the GNCHR, the Hellenic Republic, in the presence of the President of the Hellenic Republic, Katerina Sakellaropoulou, paid tribute to the contribution of the GNCHR to the respect and promotion of human rights in this country, by assisting a special Plenary meeting (by teleconference) in celebration of the International Human Rights Day, on Thursday, 10 December 2020.

References

- GNCHR, Annual (Open) Seminar Season on "Education in Human Rights", Third Cycle, February – June 2021: https://www.nchr.gr/ekpaidefsi.html.
- GNCHR, Press Release: The President of the Hellenic Republic Katerina Sakellaropoulou at the GNCHR Plenary on the International Human Rights Day 2020, December 2020: https://www.nchr.gr/images/pdf/nea_epikairothta/deltia_tupou/DT_PtD_stin_Olomeleia_EEDA_08_12_2020_en.pdf.
- GNCHR Report on the need for protection of human rights with regard to the measures taken in response to the coronavirus (COVID-19) pandemic and recommendations to the State. Description of the issues discussed in the Plenary Meetings during the lockdown Meetings of 8th, 22nd, 29th of April and of 6th May 2020: https://nchr.gr/images/English_Site/COVID19/GNCHR_HR_COVID-19ENG.pdf.

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

Racist violence and lack of proper investigation

Furthermore, the GNCHR is deeply concerned by the delays in the investigation process regarding specific racist attacks. In particular, in several cases, NGOs and CSOs participating in RVRN have witnessed unacceptable delays in the investigation process, which hinder the victims' right to an effective remedy. The most prominent of these cases is the one with racist attacks at Sappho Square (Mytilene, Lesvos 22-23 April 2018), where around 150 local residents started attacking the approximately 180 refugees with bottles, sticks, stones, pieces of marble, firecrackers, flares etc. Approximately 30 refugees were taken to the hospital, many with head injuries. The total number of injured persons was much higher. The case file regarding the racist violence against the refugees was transmitted by the Police to the Prosecutor in November 2018 and identifies 26 persons as potential perpetrators of the attacks. The Public Prosecutor pressed charges in February 2019, invoking also Article 81A ("racist motive") and requested that a "main investigation" be carried out. The case has since been pending before the Office of the Investigating Judge.

The defendants have not been called to provide their statements to date. The delays in the investigation of the aforementioned case have fostered a climate of impunity on the island of Lesvos, while many of the defendants in this case have already been identified as suspects of attacks against members of migrant related CSOs.

In addition, in 2020, there have been many attacks mainly by local groups, both on newly arrived refugees and migrants as well as humanitarian workers in the Aegean islands and at the land border in Evros. Among other things, there were physical attacks on employees of refugee agencies, including arson in places intended for the accommodation of refugees and involving cars that belong to organisations, incidents of obstruction of movement or prevention of disembarkation of newcomers with a parallel expression of racist statements. However, up to now it seems that in many cases both the police and the prosecutor's office have not initiated the necessary procedures to investigate the racist motive for these attacks.

Establishment and operation of an Independent mechanism for recording and monitoring informal push backs

The GNCHR has on many occasions stressed the need to establish an official independent mechanism for recording and monitoring informal push back complaints, due to the most serious human rights violations involved. In this regard, the GNCHR reiterates its willingness to contribute to this direction, given its experience from the establishment and operation of the RVRN in terms of setting up a framework for recording life-threatening incidents through practices with consistent methodological features. To this end, the GNCHR is already discussing with different human rights stakeholders the possibility of setting up such a Network.

References

- Law no. 4780/2021 on “National Accessibility Authority, National Commission for Human Rights and National Bioethics and Technoethics Committee” (OJ 30/A/28.2.2021): https://www.hellenicparliament.gr/UserFiles/18a4e643-1429-4e6b-a317-d7c6a29adabf/11578912.pdf.
- RVRN Annual Report 2019: http://rvrn.org/wp-content/uploads/2020/06/ETHSIA-EKTHESH-2019-english.pdf.

- Communication from the Racist Violence Recording Network, pursuant to Rule 9.2 of the Rules of the Committee of Ministers of the Council of Europe for the supervision of the execution of judgments and the terms of friendly settlements, relating to the case of Sakir v. Greece (Application No. 48475/09), 18.12.2020: http://hudoc.exec.coe.int/eng?i=DH-DD(2020)1178E.
- GNCHR Statement on the reported practices of push backs, July 2020: https://www.nchr.gr/images/English_Site/PROSFYGES/GNCHR-Statement-on-the-reported-practices-of-push-backs.pdf.

Hungary

Commissioner for Fundamental Rights

International accreditation status and SCA recommendations

The Hungarian NHRI was accredited with A status in October 2014. In October 2019, the SCA decided to defer its decision on the accreditation of the NHRI. The SCA will review the Hungarian NHRI in June 2021.

Impact of 2020 rule of law reporting

Impact on the Institution's work

The 2020 ENNHRI Rule of law Report impacted the work of the Commissioner for Fundamental Rights (CFR) in many ways. The fact that its findings were channeled into the rule of law mechanisms of the European Union, and of other relevant regional and international entities, granted the Report a greater importance and provided **further publicity and weight to the input of NHRIs.**

The 2020 Report also gives an excellent overview of the **trends and challenges** in the European scene and shares good examples to learn from in the field of the promotion and protection of human rights, including on the functioning of and the different approaches taken by NHRIs of different countries. Recognizing common issues can lead to a **concerted strategic approach** between partner organizations and, eventually, to more efficient solutions to problems in European rule of law mechanisms such as timely and inclusive coordination between partners, and the common understanding of the notion of rule of law. **Civil society organizations can also rely on the findings of the Report in their advocacy and awareness raising activities, e.g.,** in their participation in different human rights fora such as the Human Rights Council or its Universal Periodic Review.

The Report provides a good combination of general and specific information on the human rights situation on the ground. The common reporting structure **enabled the CFR to get to a more comprehensive and informed assessment of the situation in each country**. It also stimulated the CFR to work in a more concerted manner on rule of law-related matters through the **enhanced cooperation between its different departments.**

Follow-up initiatives by the Institution

The COVID-19 pandemic prevented the CFR from implementing several of the planned follow-up activities. However, it broadly shared the Report with its partners, for instance through its newsletters.

Other follow-up initiatives based on the 2020 Report included **preventive awareness raising activities on human rights violations**, with several statements and general comments published in the relevant fields of concern, such as: combating hate speech and hate crimes against members of nationality groups and disadvantaged communities; addressing the challenges posed by the Covid-19 crisis and its economic and social implications disproportionately affecting the most vulnerable groups of the society, including the Roma.

One of the focus points of the 2020 Report was the situation of **media pluralism** in Hungary. As a follow-up to that, the OCFR launched in 2020 a follow-up investigation to its inquiry of 2018 (1) on the implementation of national cultural autonomy in the field of public media services. The MTVA (Hungarian Media Services and Support Trust Fund) stated in 2018 that digital audio broadcasting (DAB), which was then under development in Hungary, would answer all complaints raised by the nationality communities regarding the fact that the technical conditions for the availability of nationality radio programs were inadequate. The Office thoroughly studied the situation in its inquiry reviewing the impact of the shutdown of digital terrestrial radio broadcasting in Hungary on the accessibility of national radio programs. Although the drafting of the relevant general comment is still under way, the Office has maintained its concerns about the current outdated technical conditions (AM transmission) and the termination of the technically promising DAB-transmission for public service radio broadcasts for the nationalities living in Hungary.

References

(1) 2018 investigation: http://nemzetisegijogok.hu/documents/2657648/3055496/3_2018+sz.+%C3%A1ll%C3%A1sfoglal%C3%A1s+a+nemzetis%C3%A9gi+kultur%C3%A1lis+autonomia+%C3%A9rv%C3%A9nyes%C3%BCl%C3%A9s%C3%A9r%C5%91l+a+k%C3%B6zszolg%C3%A1lati+m%C3%A9diaszolg%C3%A1ltat%C3%A1s+ter%C3%BClet%C3%A9n.pdf/9cf87f06-cd96-8b54-21e2-7aa764e3618d?version=1.0

Independence and effectiveness of the NHRI

Changes in the regulatory framework applicable to the Institution

The Hungarian Ombudsman institution has recently become **exceptionally powerful in Europe thanks to the integration of the advantages of the ombudsman-type legal protection and the legal protection by a public authority** by extending the competences assigned to the CFR. The rules pertaining to the CFR, in particular his/her special legal status (institution set up by the Fundamental Law, mandate with sole responsibility to the National Assembly, full independence from the executive branch of power, immunity, strict professional requirements towards the person fulfilling the position) and his/her wide-ranging investigative powers are suitable for guaranteeing the effective identification of fundamental rights-related improprieties. The Ombudsman's competences have been strengthened in two areas of particular importance: in connection with police complaints, and with regard to the enforcement of the principle of equal treatment.

As of 27 February 2020, the CFR performs the tasks and responsibilities of the **former Independent Police Complaints Board**. The investigative powers of the CFR have been increased significantly in this field: the CFR may now proceed directly in cases concerning police complaints (i.e., prior to potential investigations carried out by police organs). In these cases, the police organs may deviate from the conclusions drawn by the CFR only if they provide adequate justification for the derogation in their decisions. If an action is brought before the court to seek the judicial review of a police decision, the CFR may participate and represent his/her position in the proceeding, even if it is different from that of the police organ making the decision.

On 1 January 2021, the **Equal Treatment Authority** (ETA) was merged into the Office. The CFR took over all the responsibilities and functions of the ETA, including its authority competences. The fact that an inquiry has been conducted under the CFR Act does not preclude that, after its conclusion, the CFR institute a proceeding, upon complaint or ex officio, in the same case under the provisions of the Equal Treatment Act. Thereby, it has become possible that if the violation of the principle of equal treatment is exposed by the CFR in an ombudsman-type procedure, he/she may not only make a non-binding recommendation to remedy the impropriety exposed, but he/she may also make an administrative decision in a separate procedure, in which he/she may order the termination of the injurious situation, forbid the continuation of the violation, or even impose a fine. In order to ensure the professional performance of tasks, the former staff members of the ETA have been taken over by the CFR.

Under the Act on Bodies with Special Legal Status and the Status of Their Employees all **employees were re-classified**, and at the initiative of the Commissioner for Fundamental Rights, **a significant raise of their salaries** took place enabling a better working environment.

Enabling space

In accordance with Act CXI of 2011 on the Commissioner for Fundamental Rights, the Commissioner shall give an **opinion on the draft legislation** affecting his/her tasks and competences, and on directly affecting the quality of life of future generations. The CFR may make proposals to develop or amend legislation affecting fundamental rights, or regarding the State's consent to be bound by an international treaty. However, ministries often send the bills for review to the CFR with **short deadlines.** The Ombudsman has stressed this problem in its annual report submitted to the Parliament, as well as in the plenary session of the Parliament discussing this report.

On the other hand, authorities usually respond to the CFR's inquiries within deadline, providing in depth answers.

The CFR is involved in several **government-established working groups** on human rights-related matters, such as children's rights, rights of persons with disabilities, or digital security. The working group on children's rights expressly requested the CFR's active participation.

Pursuant to the provisions of the Act on the Commissioner for Fundamental Rights, if the CFR finds an impropriety with regard to fundamental rights, it can **make a recommendation to the supervisory body of the authority under investigation to remedy such situation**, while informing the authority concerned. The addressee then decides whether to accept the recommendations. The acceptance rate of the CFR's recommendations is 85 to 90%.

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

In 2020, the Office of the Commissioner for Fundamental Rights (OCFR) moved to a **new** building that effectively meets the requirements for an environment enabling to perform effectively the increased quantity of the CFR tasks. Despite the move, the Office has been able to process citizens' complaints without interruption.

The long-awaited **salary raise** of civil servants employed by the Office, in addition to those of other public bodies, was accomplished by Act CVII of 2019 on Bodies with Special Legal Status and the Status of their Employees, leading to an average of 30% salary increase.

From 2020 onward, the Central State Budget allocates a considerably **larger budget to the CFR**: a 22 and 33% increase compared to the previous financial year for 2020 and 2021 respectively. This considerable growth is the result of the above-mentioned improved salary system and the merging of the Independent Police Complaints Board with the CFR. However, this increase does not yet include the effects of the **merger with the Equal Treatment Authority** (outlined in detail later in the report), which will take effect in 2021.

The global **COVID-19 pandemic** and subsequent economic and social crisis posed unprecedented challenges to governments, administrations and societies, including national human rights institutions. The Office of the Commissioner for Fundamental Rights had to adapt also its operation to the special circumstances. On-site inspections as well as offline programs and events have mostly been replaced by online meetings and inquiries requiring desk research. Still, the CFR has conducted numerous on-site inspections during the pandemic to inspect the preventive measures taken against the virus.

As already highlighted above, as of 27 February 2020, the CFR also performs the tasks and responsibilities of the **former Independent Police Complaints Board**. The investigative powers of the CFR have been increased significantly in this field: the CFR may now proceed directly in cases concerning police complaints (i.e., prior to potential investigations carried out by police organs). In these cases, police organs may deviate from the conclusions drawn by the CFR only if they provide an adequate justification. If an action is brought before the court to seek the judicial review of a police decision, the CFR may represent its position in the proceeding.

On 1 January 2021, the **Equal Treatment Authority** (ETA) was merged with the CFR. The Office took over all the responsibilities and functions of the ETA. An inquiry under the CFR Act does not preclude that the CFR then initiates a proceeding, upon complaint or ex officio, in the same case under the provisions of the Equal Treatment Act. Thereby, it has become possible that if the violation of the principle of equal treatment is exposed by the CFR in an ombudsman-type procedure, the Commissioner makes not only a non-binding recommendation to remedy the impropriety exposed, but also issues an administrative decision in a separate procedure to order the termination of the injurious situation, forbid the continuation of the violation, or impose a fine.

In accordance with Act CXI of 2011 on the Commissioner for Fundamental Rights, the Commissioner shall give an **opinion on the draft legislation** affecting his/her tasks and competences, on long-term development and spatial planning plans and concepts, and on plans and concepts otherwise directly affecting the quality of life of future generations, and may make proposals for the amendment or making of legislation affecting fundamental rights and/or the expression of consent to be bound by an international treaty. Ministries often send the bills for review to the CFR with **short deadlines.** The Ombudsman has expressed this problem in the annual report submitted to the Parliament and has also voiced his concern in the plenary session of the Parliament discussing the report. For instance, as a tool to further compliance with the Aarhus Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters, the Office has also addressed a **letter to the Minister of Justice drawing attention to the importance of public consultation in environmental issues.**

After the outbreak of the COVID-19 pandemic, the CFR decided to focus also on **comprehensive studies** to be concluded with publishing general comments and he also issued several statements.

Human rights defenders and civil society space

Restrictions imposed on the right of assembly due to the state of danger declared because of COVID-19 also affect the exercise of the rights of nationalities. The prohibition of group gatherings prevents the holding of regular annual cultural events of the nationality communities, impacting their right to maintain their cultural identity. Similarly, the social distancing rules prevent the holding of the regular annual public hearings of the nationality self-governments.

In summer 2014, civil society organisations turned to the Commissioner in a letter objecting the audit initiated by the Government Control Office (GCO) regarding the **distribution of the NGO Fund of the European Economic Area (EEA) / Norway Grants,** which had been performed through calls for applications. The operation of the “Norwegian Financial Mechanism” rests on international treaties. The international agreement for the 2004–2009 funding period designated the GCO as the organ in charge of the control of the projects funded by the Norwegian Financial Mechanism. However, the new agreement for the 2009–2014 funding period made no mention of the GCO and designated the Directorate General for Audit of European Funds (EUTAF) as Audit Authority with respect to the funding allocated on the basis of relevant international treaties. In this funding period, grants were handed out in the following way: funding awarded from the NGO Fund of the

EEA/Norway Grants was transferred directly by the Brussels-based Financing Mechanism Office to the civil society organisations performing operator's tasks in Hungary. These civil society organisations – a civil consortium headed by Ökotárs Foundation – then re-distributed the grants of the NGO Fund of the EEA/Norway Grants to the beneficiary civil society organisations.

The Commissioner called on the Prime Minister's Office to exchange with the Norwegian Government that signed the agreement in order to clarify its provisions, therefore clearly defining the powers of control of the GCO in connection with the NGO Fund of the EEA/Norway Grants. At the end of 2020, the Norwegian and Hungarian Governments concluded an agreement according to which funding was made available to civil society and establishing a fund operator independent of the Hungarian authorities. On 19 January 2021, the Commissioner for Fundamental Rights received the Ambassador of Norway to Hungary. They reinforced their intention to cooperate in the future, with special regard to enhancing the execution of the agreement.

The Ombudsman and his Deputies are in a unique position to be able to act as a bridge between civil society, legislators, regulatory authorities, business organisations and academia by bringing the various stakeholders to the negotiation table on sensitive matters. Currently, the OCFR is in the process of **setting up an additional consultative body for NGOs** to support the implementation of the other mandates of the CFR. In addressing individual complaints, the CFR strives to seek cooperation with NGOs and civil society organisations locally involved.

The OCFR is an active member of international human rights networks such as EQUINET, ENNHRI, GANHRI, OPRE-platform, CAHROM and the regional V4 cooperation of the ombudspersons of the Visegrad Countries.

The CFR is actively involved in the governmental **Human Rights Working Group** operating in Hungary, which monitors the enforcement of human rights in the country. The WG considers the implementation of recommendations made with regard to Hungary at the UPR Working Group of the Human Rights Council. Furthermore, it reviews the tasks related to the enforcement of human rights arising from conventions and agreements accepted in the framework of the United Nations, the Council of Europe, the Organisation for Security and Co-operation in Europe, the membership in the European Union and other international commitments and monitors the performance of these tasks. The Human Rights Working Group created in 2012 the **Round Table on Human Rights**, a platform for civil society organisations, working with thematic working groups (e.g. on other civil and political rights, on the rights of LGBT people, on Roma issues, the freedom of expression,

the rights of persons with disabilities, the rights of children, the elderly, the homeless). The Office of the Commissioner for Fundamental Rights plays an active role in the dialogue between the members.

In order to support the performance of the **OPCAT National Preventive Mechanism,** the CFR established a **Civil Consultative Body** (CCB) in 2014, involving the experts of civil society organisations which have experience in inspecting places of detention and enforcing the rights of detainees. The CCB meets at least twice a year, receiving a lot of useful information and proposals for locations to visit. The last CCB meeting took place in December 2020.

The CFR also met regularly with the heads of civil society organisations, including the Hungarian Red Cross, the Hungarian Civil Liberties Union, and the Hungarian Helsinki Committee.

The Ombudsman and his Deputies annually grant the **"Justitia Regnorum Fundamentum" award** to individuals or groups for outstanding accomplishments and professional activities in the field of protecting human rights.

Checks and balances

The CFR examined some issues relevant to checks and balances which have arisen in the context of the handling of the COVID-19 pandemic. In response to a petition it received, the Commissioner inquired into the ways in which the restrictive measures introduced due to the COVID-19 pandemic might affect the **functioning of the municipal councils of local governments**. The CFR examined whether the restrictive measures make it impossible for the members of municipal councils to take part in the decision-making procedures of municipal councils. The CFR came to the conclusion that it clearly follows from the regulation pertaining to special legal order that the latter allows measures that are absolutely necessary to and suitable for averting the situation for which the special legal order has been introduced. Consequently, the legislator must pay special attention to the requirement of necessity and proportionality, and to the prohibition of abuse of rights. Therefore, measures that are not reasonably related to the aim, not suitable to its attainment, or not absolutely necessary may not be taken.

In the framework of the **state of danger declared because of the COVID-19 pandemic**, several restrictions are applicable to the Election law: no interim election (including nationality self-government elections) shall be scheduled until after the end of the emergency, and the elections already scheduled shall not be held. Any unscheduled or not-

held election shall be scheduled within fifteen days after the end of the emergency. This also applies to national and local referendums, including the ones initiated by the members of communities of nationalities living in Hungary.

The CFR also contributes to ensuring transparency of decision-making by providing individuals with the possibility to submit **public interest disclosures** – to be examined – through a **protected electronic system**. The Commissioner forwards these disclosures to the administrative organs concerned, which investigate the given issues and provide information, again through the same system. This protected electronic system protects whistleblowers as they may remain anonymous to the organs investigating their public interest disclosures. In 2020, almost 80% of the whistleblowers indeed requested that their personal data be accessible only to the Commissioner for Fundamental Rights. The number of public interest disclosures in 2020 corresponds to the average of the past five years.

The Commissioner has additional powers in the field of public interest disclosures. Following the investigation of such disclosure by the competent organ, the whistleblower may submit a petition requesting the CFR to remedy a perceived impropriety in that investigation. The Commissioner shall then conduct an inquiry on the basis of which it may **make a recommendation to the organ concerned or its supervisory authority to remedy a possible impropriety.**

The Commissioner for Fundamental Rights has a **Client Service Office** to provide assistance to whistleblowers. The Client Service Office offers support via telephone, as well as more practical assistance (for example, arranging personal appointments with clients, receiving and issuing documents, providing professional information, etc.). In addition to this, clients can present their case during pre-arranged appointments (or, in exceptional cases, even without making an appointment in advance), while minutes are taken. Based on the cases exposed by the whistleblowers, the professional staff members of the Office working in specialized fields carry out an inquiry. Ever since the outbreak of the coronavirus pandemic, there has been a possibility for whistleblowers to be heard by way of phone calls in order to reduce personal contacts, as well as to make it easier for them to submit their complaints.

In 2020, the CFR initiated the interpretation of the Fundamental Law by the **Constitutional Court** in two cases (1).

The Fundamental Law sets out that everyone **whose liberty has been restricted "without a well-founded reason or unlawfully" shall have the right to compensation**. However, from a previous inquiry of the CFR, it became clear that the legislation concerning custody

for petty offences, and the legislation related to aliens policing, do not provide for any compensation for the cases when the restriction of liberty has been lawful, albeit without a well-founded reason. As the legislator failed to amend the relevant legal provisions to remedy this incoherency, the CFR turned to the Constitutional Court.

Article III of the Fundamental Law sets out the **prohibition of torture, inhuman or degrading treatment or punishment**. This prohibition is among other issues of special importance concerning the "right to hope", meaning that a person sentenced to life imprisonment should have the hope to be released. A legislation not providing for a reasonable hope to be released is suspected to violate the prohibition of torture. A previous inquiry of the CFR revealed a gap in the Hungarian criminal law: the former Criminal Code (still applicable to some detainees) does not provide for a maximum period of time upon the expiration of which the detainee's release on parole has to be considered. Contrary to the new Criminal Code, the earlier Criminal Code specifies the minimum period of time after which the release on parole can be considered; however, there are no guarantees in the legislation that this deliberation will actually be made at any time. Despite the CFR's recommendation, the legislator failed to amend the relevant piece of legislation in order to ensure the right to the deliberation of release on parole for those who are still subject to the earlier Criminal Code. Therefore, the Commissioner requested the interpretation of Article III of the Fundamental Law with regard to the jurisprudence of the European Court of Human Rights, with a special emphasis on the right to hope.

The OCFR is active in the field of public health and groundwater protection as well. The right to a healthy environment is an important priority of the OCFR and **safeguarding the quantity and quality of groundwater** plays an essential part in this. The OCFR opposed an amendment of the **Water Management Act** that seriously endangered groundwater resources by allowing the drilling of groundwater wells for irrigation purposes without proper authorization. The Office's consultations with the Minister for Agriculture convinced the legislator to modify the proposed act, which amended version included many of the changes suggested by the OCFR.

By giving his/her **opinion on draft legislation**, the Commissioner Fundamental Rights can, in theory, influence the law-making process. However, the ministries often send the bills for review to the CFR with **short deadlines.** The Ombudsman has already pointed out this problem in the annual report (2) submitted to the Parliament and has also voiced his concern in the plenary session of the Parliament discussing the report. Due to discussions between the CFR and several ministries, there seems to be an improvement in this regard.

More generally, the Commissioner has drawn attention to the importance of public consultations and participation in the law-making process. For instance, as recalled above, as a tool to further compliance with the Aarhus Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters, the Office has addressed a **letter to the Minister of Justice drawing attention to the importance of public consultation in environmental issues.**

Functioning of the justice system

The Commissioner for Fundamental Rights (CFR) raised his voice regarding a **bill relating to administrative courts**, which aimed to modify the specific rules of administrative judicial proceedings. The CFR raised concerns in relation to the regulations of the draft legislation that do not enable legal appeal against such court decisions. The law on administrative courts has not entered into force yet, neither has the act in relation to which the CFR raised his concerns.

The role and structure of the National Judicial Council (NJC) has been under debate since 2019 because of the two sharply contrasting views on the constitutional operation of the NJC which resulted in an uncertainty in interpretation that jeopardized legal certainty. The CFR proposed in March 2019 that the Constitutional Court interpret constitutional provisions on the role and structure of the NJC of the Fundamental Law of Hungary [Paragraphs (5) and (6) of Article 25] to resolve such constitutional law issue. The case is still pending before the Constitutional Court. (3)

References

(1) Two cases mentioned

http://public.mkab.hu/dev/dontesek.nsf/0/B3A624F43C1F0989C125865B004BEE5E?OpenDocument

http://public.mkab.hu/dev/dontesek.nsf/0/D11855993D6C5A0FC125865B004BEE71?OpenDocument

(2) CFR Annual report:
http://www.ajbh.hu/documents/14315/3445212/Report+on+the+Activities+of+the+Commissioner+for+Fundamental+Rights+and+his+Deputies+2019/04ed103e-6c17-deab-623a-00b67db41adb?version=1.0

(3) CFR Application submitted to the Constitutional Court:
http://public.mkab.hu/dev/dontesek.nsf/0/E40059CA0811C088C12583C200614E99?OpenDocument

Media pluralism and freedom of expression

The conditions of media diversity are laid down **Act CLXXXV of 2010 on Media Services and Mass Media**. It stipulates that the protection of the diversity of media services extends to the prevention of the development of a monopoly of ownership, as well as to the unjustified limitation of market competition; that the act should be interpreted in consideration of the protection of diversity. The law also requires that these criteria be taken into account with a view to ensuring the right of Hungarian citizens to information, and the evolution of democratic publicity.

The **rules of the calls for tenders** for the frequencies used by the electronic media providers in an open and transparent manner are aimed at preventing the development of market monopoly. The requirements for the prevention of unlawful mergers also serve this purpose.

In its decision l6/2020. (VII. 8.) AB, the **Constitutional Court** established that "The Constitutional Court also calls attention to the fact that the obligation set forth in paragraph (2), Article IX of the Fundamental Law of Hungary does not mean that any and all changes affecting the diversity of the press are absolutely prohibited. The Hungarian State will only have a protection obligation against the actions of civil actors committed in the scope of free activities and affecting the diversity of the press if the 'conditions of free information required for the development of a democratic public opinion' could not be ensured any more in the changed circumstances". In this case, the very opposite happened as the Government considered that a merger, which was the result of the acquisition of privately-owned media companies by a foundation, was of public interest. The Constitutional Court did not deem the diversity of the press jeopardized on the basis of the

arguments put forth in the motion, and therefore it did not find that the State had breached its obligation to protect media diversity.

The CFR is a member of the **Digital Freedom Committee** set up by the Ministry of Justice, which reflects Hungary's commitment to join efforts to make the operation of transnational technological companies transparent. Indeed, the need for regulation has emerged only in the past few years due to the quick rise of social networks. Concerns identified in the field of **public service nationality media broadcasting and programmes** are addressed in the ongoing investigation (a follow-up to the comprehensive nationality media investigation in 2018) reviewing the impact of the shutdown of digital terrestrial radio broadcasting (DAB) in Hungary on the accessibility of national radio programmes. Furthermore, in order to facilitate the professional dialogue between the stakeholders involved, the Deputy Commissioner for Fundamental Rights/Ombudsman for The Rights of National Minorities is engaged in continuous consultation with the representatives of the nationalities, the member of the public media's public service body delegated by the nationality self-governments as well as with the managers in charge of nationality broadcasts. This case is also described under the question related to the follow-up initiatives based on the 2020 report.

Media regulation falls outside the Commissioner's competence. In Hungary, it belongs to the **National Media and Telecommunications Authority** (NMHH), which is an autonomous regulatory body reporting to the National Assembly on an annual basis. It publishes recommendations to assist in the practical application of the regulations. The Media Council - which is a part of the NMHH - exercises supervisory powers concerning compliance with child protection standards.

However, the CFR has some insight into the digital child protection: The CFR's inquiry into the situation of the practical implementation of **media education** in Hungary pointed out that there is significant variation between children's knowledge concerning media education, media literacy and online awareness regarding their local, individual and school opportunities. Due to the exponential multiplication of information, there has never been a greater need to provide children and youth with education and training that will enable them to orientate themselves safely in a world of diverse media platforms and cyberspace. The CFR study highlighted the main consequences of this dissatisfactory media education on the children and explored possible existing regulations on media-use in public education institutions. There is a lack of qualified media professionals in schools, and media-literacy is not part of the national curriculum. As a first step, the CFR has asked the Minister of Human Capacities to conduct a comprehensive research on the effectiveness of

media literacy education and to propose specialised teacher training including the topic of online abuse.

The CFR is a member of the **Child Protection Working Group** operating within the National Cyber Security Coordination Council. The CFR also has a good relationship with the **Internet Roundtable for Child Protection**, which is an advisory body established by the National Media and Telecommunications Authority (NMHH).

Other initiatives of the CFR in the area of media are described above in the section relating to follow-up activities to last year's rule of law report.

References

- Act on media services: https://net.jogtar.hu/jogszabaly?docid=a1000185.tv
- Constitutional Court decision l6/2020. (VII. 8.) AB: http://public.mkab.hu/dev/dontesek.nsf/0/12bda2b452503d2dc12583a5006153a1/$FILE/16_2020%20AB%20hat%C3%A1rozat.pdf
- CFR report on media education and the respective press release: http://www.ajbh.hu/documents/10180/2500969/Jelent%C3%A9s+a+m%C3%A9dia%C3%A9rt%C3%A9s-oktat%C3%A1s+helyzet%C3%A9r%C5%91l+497_2016/41838d72-616e-45bf-8b51-e744c4fa1b59?version=1.0&inheritRedirect=true
- http://www.ajbh.hu/en/web/ajbh-en/press-releases/-/content/ujPUErMfB9lw/the-intention-is-palpable-the-results-not-so-much-the-ombudsman-s-inquiry-into-the-state-of-media-education-in-schools

Corruption

In connection with **whistle blowers'** reports, rules are defined in Act CXI of 2011 on the Commissioner for Fundamental Rights (CFR) and in Act CLXV of 2013 on Complaints and Public Interest Disclosures. The CFR has set up a protected electronic system to safely record and transfer public interest disclosures. The electronic system works as an external channel and is available for reporting corruption cases as well, though this regards very few cases. The investigation of these cases is the competence of the National Protective Service

(NPS), a state authority performing internal crime prevention and detection duties. The whistleblower may request that his/her report be treated anonymously. In this case he/she would not suffer any disadvantages because of his/her disclosure. In cases where the whistleblower disclosed untrue information of crucial importance in bad faith, the personal data shall be disclosed to the body or person entitled to carry out the proceedings. After the inquiry of the whistleblowers report, the whistleblower may request the CFR to inquire into the practice of the acting body. The CFR shall inquire *ex officio* as well. Any action taken as a result of a whistleblower report which may cause disadvantages to the whistleblower shall be unlawful, even if it was otherwise lawful. Any whistleblower is entitled to receive legal aid (defined in Act LXXX of 2003 on Legal Aid), provided by the State.

According to Act II of 2012 on regulatory offences, offence procedures and the system for registering regulatory offences, "Any person who causes disadvantage to the whistleblower commits an offence. The police shall have jurisdiction in the procedure."

The CFR stated (1) that the relevant legal regulations are not clear concerning the **support measures to whistleblowers,** either in the Act on Complaints and Public Interest Disclosures, or in the Act on Legal Aid. Furthermore, it is not clearly defined which authority shall establish that the whistleblower is at risk. Guarantees that a person can benefit from a protection are not regulated under national law, and psychological support to whistleblowers is not and should be provided by the Government. The lack of such measures may prevent to become whistleblowers from fear of being stigmatised and exposed to reprisals. Hopefully, as a result of the 2019 EU Whistleblower Protection Directive, these questions will be settled by the Ministry of Justice, responsible for its implementation.

References

(1) CFR Report: https://www.ajbh.hu/documents/10180/2602747/Jelent%C3%A9s+egy+k%C3%B6z%C3%A9rdek%C5%B1+bejelent%C5%91+vesz%C3%A9lyeztetetts%C3%A9g%C3%A9r%C5%91l+1873_2017/da2510cb-5353-cab8-b063-eef3dd38e03b?version=1.0

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

As illustrated above, during the state of danger declared due to the **COVID-19 pandemic**, the CFR has been continuously monitoring the situation and informing the public about his considerations and actions, as well as launching inquiries concerning specific topics. Besides its other activities carried out in 2020, the CFR has conducted numerous **on-site inspections** in Hungary during the first and second waves. Unlike the current international practice of holding events online, the Commissioner has paid personal visits all over Hungary, to children's homes for instance, in order to inspect the measures taken for the prevention of the COVID-19 pandemic.

In a **state of emergency**, the Government may adopt decrees by means of which it may suspend the application of certain acts, derogate from the provisions of acts and take other extraordinary measures. A new bill was drafted which allows the Government to make these extensions under the control of the Parliament. Under Section 2 of this new law (Act XII of 2020 on the containment of coronavirus), during this period the Government may, in order to guarantee that life, health, persons, property and the rights of the citizens are protected, and to guarantee the stability of the national economy, by means of a decree, suspend the application of certain Acts, derogate from the provisions of Acts and take other extraordinary measures. Also added as a restriction, the Government may exercise its power only for the purpose of preventing, controlling and eliminating the human epidemic, and preventing and averting its harmful effects, to the extent necessary and proportionate to the objective pursued. According to Section 4, the Government shall also regularly provide information on the measures taken to eliminate the state of danger until the measures are in effect at the sessions of the Parliament or, in the absence thereof, to the Speaker of the Parliament and the leaders of the parliamentary groups. The Parliament, on the basis of Article 53(3) of the Fundamental Law, authorises the Government to extend the applicability of the government decrees adopted in the state of danger until the end of the period of state of danger, but this authorisation is not unlimited. The Parliament may withdraw the general authorisation before the end of the period of state of danger.

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

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

The Government declared a **state of danger on 11 March 2020, a week after the announcement of first Covid-19 cases in Hungary**. According to the Fundamental Law of Hungary, in a state of emergency, the government may adopt decrees by means of which it may suspend the application of certain acts, derogate from the provisions of acts and take other extraordinary measures. It is the Government that may end the state of emergency as well. These decrees shall remain in force for fifteen days, unless the Government, on the basis of authorisation by the Parliament, extends those decrees. Under a special legal order, such as the state of danger, the exercise of fundamental rights – with the exception of the universal right to human life and dignity, the prohibition of torture, inhuman or degrading treatment, and the guarantees concerning fair trial – may be suspended or restricted and may be exempt from the test of necessity and proportionality. However, even under a special legal order, the application of the Fundamental Law may not be suspended, and the operation of the Constitutional Court may not be restricted. The goal of a special legal order is to maintain the efficiency of the state in the transitional period, to establish such a security and protection system which ensures the performance of the tasks that come up during states of emergency, and the aversion of dangers for which the normal state structure is not suitable

The CFR examined the introduced measures and published a joint statement with its Deputies. It focused on its on-site presence and paid special attention to the most vulnerable groups of society. Regarding the concerns raised, based on the consistent practice and standards of the CFR’s past 25 years, our investigations did not reveal any cases in which intervention would have been necessary.

COVID wave 1 – The period of the state of danger declared on 11 March 2020 and terminated on 18 June 2020: Using his general rights protection and other specific mandates, such as the one within the framework of the OPCAT National Preventive Mechanism, the Ombudsman visited 6 children’s homes or special homes, 7 social care homes or residential care homes, 2 reformatories, as well as places of detention, and 5 institutions of the national prison service organisation.

COVID wave 2 – The special legal order restored, and the state of danger repeatedly declared from 4 November 2020: In the recent period, the CFR has resumed his on-site visits in Hungary. The Commissioner visited as many as 32 police units, among others, he inspected 10 border crossing points, as well as 14 county police headquarters and city police departments.

A **new bill** (Act XII of 2020 on the containment of coronavirus) was drafted, allowing the Government to make these extensions under the control of the Parliament. During this

period, the Government may, in order to guarantee that life, health, persons, property and rights of the citizens are protected, and to guarantee the stability of the national economy, by means of a decree, suspend the application of certain Acts, derogate from the provisions of Acts and take other extraordinary measures. Also added as a restriction, the Government may exercise these powers only for the purpose of preventing, controlling and eliminating the human epidemic, and preventing and averting its harmful effects, to the extent necessary and proportionate to the objective pursued. According to Section 4, the Government shall also regularly provide information on the measures taken to eliminate the state of danger until the measures are in effect, at the sessions of the Parliament or, in the absence thereof, to the Speaker of the Parliament and the leaders of the parliamentary groups. The Parliament, based on the Fundamental Law, authorises the Government to extend the applicability of the government decrees adopted in the state of danger until the end of the period of state of danger but this authorisation is not unlimited. The Parliament may withdraw the general authorisation before the end of the period of state of danger.

In a **joint statement**, the Ombudsman and his Deputies pointed out that the complex economic and social consequences of the grave epidemic situation, as well as the related state measures make the lives of the citizens difficult and limited in many different ways. Current challenges and losses have been unprecedented in the past few decades. The statement stressed the unequal resilience of different groups in society regarding the prevention, treatment and resolution of the health risks involved by the pandemic. Unique challenges rose as consequences of the epidemic, such as: lack of the technological background necessary for digital education, isolation, narrowed job and earning opportunities, financial difficulties, obstacles to access the basic services. These challenges are particularly hard on the most vulnerable members of society, such as: persons who were already in an extremely dire financial situation, the elderly, the Roma, the ill, persons with disabilities, the homeless, children. The Ombudsman and his Deputies strongly urged everyone **not to leave the most deprived people and communities without support.**

The social welfare and health care system are facing enormous challenges. In addition to the actions of state and municipal institutions entitled and obliged to act in times of emergency, civil initiatives (of individuals and groups, donations from church communities, involvement of local Roma minority self-governments) can only achieve their goals with appropriate financial background, professional organisation and adequate information. That is why the Ombudsman and his Deputies encouraged the setting up of **a special task force to coordinate the volunteering and donation activities** as a good practice of dealing with the emergency. They recommended that relevant policymakers consider setting up of such a task force to provide extraordinary protection and support to

vulnerable groups, notably disadvantaged children and their families, for which they offered their professional experience. The Ombudsman and his Deputies also emphasised that the impact of the challenges caused by the emergency situation was being continuously assessed even in the changing circumstances, with special focus on the challenges faced by members of the endangered social groups.

The Deputy Commissioner for the Rights of National Minorities also published a statement (1) in which she drew attention to the particular vulnerability and special needs of the Roma population in the current situation. The CFR issued a statement in which he pointed out that state authorities need to monitor cases of child abuse even during the COVID-19 situation. It was questionable whether the final school-leaving exams – that were to begin on 3 May 2020 – could be responsibly organised. Parents and teachers submitted concerns regarding the exams to the Commissioner as well.

References

(1) Statement: http://www.ajbh.hu/kozlemenyek/-/content/qzyKPkTyQAvM/az-alapveto-jogok-biztosanak-es-helyetteseinek-kozlemen-1

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

During the state of danger declared due to the COVID-19 pandemic (detailed above), the Commissioner for Fundamental Rights (CFR) has been continuously monitoring the situation and informing the public about his considerations and actions, as well as launching inquiries concerning specific topics. Besides its other activities carried out in 2020, the CFR has conducted numerous on-site inspections in Hungary during the first and second waves of the pandemic. Unlike the current international practice of holding events online, the Commissioner has paid personal visits all over Hungary in order to inspect the measures taken for the prevention of the COVID-19 pandemic.

Being responsible for performing the tasks of the **OPCAT National Preventive Mechanism** (NPM), the CFR pursued its activities during the COVID-19 pandemic in line with the relevant international principles. The NPM conducted visits to a wide range of places of detention, including penitentiary institutions, police detention facilities, a guarded shelter, a guarded refugee reception centre and social care homes. Between May 2020 and February

2021, the NPM visited 31 places of detention. In line with the 'do no harm' principle, the visiting group wore protective equipment during the visits.

The CFR has received a number of **complaints in relation to the pandemic**. At the beginning, complainants evidently lacked information on the topic. The CFR inspected or is inspecting the cases and, even in the cases where the CFR had no competence to launch an inquiry, it provided the complainants with the legal background (i.e., the new rules) as well as about the authorities that they could turn to.

References

- You can find further information about the visits on the website of the OCFR via this link: http://www.ajbh.hu/en/web/ajbh-en/main_page

Ireland

Irish Human Rights and Equality Commission

International accreditation status and SCA recommendations

The Irish NHRI was accredited with A status in November 2015. In its recommendations, the SCA encouraged the NHRI to advocate for adequate funding while safeguarding its financial independence. The Irish NHRI will be reviewed by the SCA in June 2021.

Independence and effectiveness of the NHRI

Changes in the regulatory framework applicable to the Institution

The Commission has been designated as Ireland's Independent National Rapporteur on the Trafficking of Human Beings. To bring this change into effect, a Statutory Instrument has been signed by the Minister for Justice confirming the Commission in this new additional role.

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

There has been no significant development affecting the IHREC's independent functioning. The Commission accounts directly to the Oireachtas (Irish Parliament) for its statutory functions and the provisions contained within the Irish Human Rights and Equality Act 2014 ensure its structural and financial independence.

The Commission has recommended that it be given a role as National Preventative Mechanism co-ordinating body under OPCAT, and emphasised the importance of appropriate funding, staffing and data access for the effective function of this co-ordinating body. In its August 2020 submission, the Commission recommended that the United Nations Human Rights Committee urge the State to ratify OPCAT without further delay, and provide detail on the establishment, resourcing and data access of the national preventive mechanism.

The Commission has been designated as Ireland's Independent National Rapporteur on the Trafficking of Human Beings. As National Rapporteur, the Commission will prepare and publish monitoring reports and thematic reports evaluating Ireland's overall performance

against the State's international obligations such as the EU's Anti-Trafficking Directive, the Council of Europe's Convention on Action against Trafficking (2005) and the Palermo Protocol to the UN Convention against Organised Crime (2000). The Commission has been allocated additional resources for 2021 to service the requirements of this Rapporteur function, including additional staff and operational resources.

References

- IHREC, Submission to the United Nations Human Rights Committee on the List of Issues for the Fifth Periodic Examination of Ireland (August 2020).
- IHREC, Commission Takes on New Role as Ireland's National Rapporteur on the Trafficking of Human Beings (press release, 22 October 2020).

Human rights defenders and civil society space

In the 2020 ENNHRI Rule of law Report, the Commission outlined its concerns that the definition of the terms 'political purposes' and 'third party' in the relevant legislation are overly broad and include a range of Irish civil society organisations (CSOs), and therefore put constraints on the advocacy functions of CSOs. They may be required to comply with the strict requirements of the legislation, which impacts on their ability to carry out their work and seek funding.

As the recently published General Scheme of the Electoral Reform Bill does not address these issues, the Commission continues to have concerns about undue restrictions on civil society activity in Ireland.

The Commission has engaged with the Oireachtas (Irish Parliament) and international monitoring mechanisms in support of civil society. In a February 2021 submission to the Committee on Housing, Local Government and Heritage on the General Scheme of the Electoral Reform Bill, the Commission repeated its view that the work of civil society organisations in Ireland, and their sources of funding, should continue to be clearly regulated and subject to high standards of scrutiny, transparency and accountability. However, such regulatory measures should avoid placing undue restrictions on wider civil society activity engaging in legitimate advocacy aiming to influence political decision making and policy making, including with regard to human rights and equality issues. The

Commission recommended consideration of whether further reforms of the Electoral Acts are required in order to avoid placing undue restrictions on civil society.

In August 2020, the Commission recommended that the Human Rights Committee asks the State to ensure that the planned review of the Electoral Acts considers whether the provisions are proportionate and do not unduly restrict the right to freedom of association and the ability of civil society organisations to freely carry out their activities.

In its submission to the United Nations Committee on the Elimination of Discrimination Against Women in August 2020, the Commission highlighted the repeated calls for funding to be restored to pre-austerity levels for civil society organisations and community-based groups working to promote women's rights, including to ensure their ongoing sustainability. It recommended that the State adopt measures to ensure that the resources allocated for organisations working in the field of human rights and equality, including women's rights, are protected in future situations of economic recession and budgetary cuts.

The Commission has hosted a number of Civil Society Forums, to create a space for it to discuss human rights and equality issues with civil society in a structured way. It hosted a Forum on combatting racism and promoting intercultural understanding in May 2019, on the housing and accommodation crisis in October 2019 and on COVID-19 in October 2020.

References

- IHREC, Submission to the Committee on Housing, Local Government and Heritage on the General Scheme of the Electoral Reform Bill (January 2021).
- IHREC, Submission to the Committee on Housing, Local Government and Heritage on the General Scheme of the Electoral Reform Bill (January 2021).
- IHREC, Submission to the United Nations Human Rights Committee on the List of Issues for the Fifth Periodic Examination of Ireland (August 2020).
- IHREC, Submission to the United Nations Committee on the Elimination of Discrimination Against Women on the follow-up procedure to Ireland's combined sixth and seventh periodic report (August 2020)

Checks and balances

The Commission has identified concerns over the system of checks and balances in particular in connection with the state's handling of the COVID-19 pandemic.

In particular, a new research published in February 2021 by the Commission has found that the Government has persistently blurred the boundary between legal requirements and public health guidance in its COVID-19 response, generating widespread confusion about the extent of people's legal obligations. While the report considers the public health threat is sufficient to provide a justification for some restrictions, it finds that: parliamentary oversight of Ireland's emergency legislation has been lacking; shifting relations between the National Public Health Emergency Team (NPHET) and Government makes it difficult to ascertain where, if at all, human rights and equality concerns are being addressed; there has been limited or no consultation with those groups most likely to be affected in respect of the public health framework; and the Government's making and presentation of Regulations raises serious rule of law concerns. In particular, the Regulations have applied retroactively, are frequently not published for several days after they are made, are misleadingly described in official communications, and are inadequately distinguished from public health advice.

The report makes a number of core recommendations, including the establishment of a parliamentary Committee on Equality, Human Rights and Diversity to scrutinise emergency legislation and ministerial regulations; the use of sunset clauses for all emergency powers; an expert sub-group within NPHET on human rights, equality and ethical concerns; and a published human rights and equality analysis of each emergency regulation within 48 hours of their being made.

The Commission has also raised its concerns about the very limited participation of persons with disabilities and Disabled Persons Organisations in the development and oversight of the COVID-19 response. The COVID-19 emergency has highlighted in sharp relief that if a standard of equal dignity and equal participation is not met in 'normal' times, it can rapidly become a casualty in times of crisis. The Commission has recommended that an explicit human rights and equality-based approach be taken to build a transition out of COVID-19 that is fully inclusive of people with disabilities.

As part of the system of checks and balances, the Commission engages in analysis of key draft legislation with a view to submitting observations to government and parliament. For example, it is now analysing of a bill that would introduce changes to modernise the process for the appointment of judges (see below under the section on justice system).

As part of its oversight of the State’s activities, the Commission also:

- made a submission to the Special Committee on COVID-19 Response regarding the adequacy of the State's legislative framework to respond to the COVID-19 pandemic and potential future national emergencies in September 2020, calling for an effective mechanism to provide close parliamentary oversight of the implementation of emergency legislation and more detailed, disaggregated data on the implementation of emergency powers;

- engages with regional actors and international monitoring mechanisms, including through submissions on the European Semester 2020 and the National Reform Programme, the implementation of the Revised European Social Charter and the implementation of the International Covenant on Civil and Political Rights in 2020.

- called for disaggregated data to be provided by the government. Concerns have been repeatedly raised by treaty monitoring bodies, including the Committee on the Elimination of Racial Discrimination, the Committee on the Elimination of Discrimination against Women, the Committee on the Rights of the Child, and the Committee on Economic, Social and Cultural Rights that Ireland does not have sufficient disaggregated data to allow an adequate and regular assessment of the extent to which it is meeting its obligations under international law. For example, the recent report published by the Commission on Ireland’s use of emergency powers during the Covid-19 pandemic highlights that An Garda Síochána (Irish police force) does not maintain disaggregated data tracking how enforcement powers are exercised against particular groups

- exercised its amicus curiae powers in the Supreme Court case, Ali Charaf Damache v the Minister for Justice and Equality on the procedures for the revocation of citizenship, as highlighted below (see the section on other challenges to rule of law and human rights protection).

References

- Conor Casey, Oran Doyle, David Kenny and Donna Lyons, Ireland’s Emergency Powers During the Covid-19 Pandemic (IHREC, 2021).
- IHREC, State COVID Planning Must Not Discriminate Against People with Disabilities (press release, 14 January 2021).

- IHREC, The Impact of COVID-19 on People with Disabilities: Submission by the Irish Human Rights and Equality Commission to the Oireachtas Special Committee on COVID-19 Response (June 2020).
- IHREC, Supreme Court Rules that Procedure to Revoke Irish Citizenship is Unconstitutional (press release, 14 October 2020).
- IHREC, Supreme Court Rules that Sections of Law Revoking Citizenship Are Unconstitutional and Need Revision Through Oireachtas (press release, 10 February 2021)
- Conor Casey, Oran Doyle, David Kenny and Donna Lyons, Ireland's Emergency Powers During the Covid-19 Pandemic (IHREC, 2021).
- IHREC, Submission to the Special Committee on COVID-19 Response Regarding the Adequacy of the State's Legislative Framework to Respond to COVID-19 Pandemic and Potential Future National Emergencies (September 2020).
- IHREC, Submission to the Department of the Taoiseach on the European Semester 2020 and the National Reform Programme (March 2020).
- IHREC, Comments on Ireland's 17th National Report on the Implementation of the European Social Charter (June 2020).
- IHREC, Submission to the United Nations Human Rights Committee on the List of Issues for the Fifth Periodic Examination of Ireland (August 2020).
- IHREC, Commission's Call for Additional Data from An Garda Síochána on COVID Policing Restated in Policing Authority Report (May 2020).

Functioning of the justice system

Some measures are currently underway in Ireland to modernise the process for the appointment of judges. Proposed legislation envisages the establishment of a nine-member Judicial Appointments Commission, made up of both lay and legal members. The proposed Commission would develop upgraded procedures and requirements for office selection, including selection procedures, interviews, judicial skills and attributed having regard to several criteria - including such matters as diversity.

IHREC is currently conducting an analysis of the draft legislation with a view to submitting observations to government and parliament.

The Commission has repeatedly highlighted the State's failure to ensure independent, thorough and effective investigations, in line with international standards, into allegations of human rights abuses in respect of Magdalene Laundries, Mother and Baby Homes, reformatory and industrial schools, and the practice of Symphysiotomy. The Mother and Baby Homes Commission of Investigation's Final Report was published by the Government in January 2020. Concerns had been raised regarding the narrowness of the investigation's remit in terms of the institutions, types of abuses, and persons under investigation.

The report, and the actions stemming from it, further illustrate the ongoing need for a systemic change in how the State approaches and treats survivors seeking justice and redress for human rights abuses, to ensure full accountability and avoid inflicting further and ongoing trauma. The Retention of Records Bill 2019, referenced in the 2020 ENNHRI Rule of law Report, lapsed due to the dissolution of the Parliament in January 2020. Due to the concerns raised, the Government has recently indicated that it will delay and re-examine the planned legislation. With regard to the O'Keeffe v Ireland case, the Commission continues to call on the State to overhaul its ex gratia scheme to ensure effective remedy to those who are being denied justice by State inaction.

In its 2020 submission to the Human Rights Committee, the Commission raised a number of issues relating to fair trial rights and equal access before the law in Ireland, including the following: chronic delays in the Courts system; repeated delays in progressing the planned legislation to reform the system of criminal legal aid; and the continued operation of the Special Criminal Court despite repeated calls for its abolition. The Commission noted that the move towards remote hearings during the pandemic has given rise to concerns on the right to a fair trial, including the ability to fully participate in proceedings, access to legal assistance, access to information, and access to translation and interpretation services. The Commission also raised its concerns about the civil legal aid system, as set out in the 2020 ENNHRI Rule of law Report. The Department of Justice has recently committed to reviewing the civil legal aid scheme and bringing forward proposals for reform in 2021.

As an update to its previous comments on wardship, the Commission has been granted liberty by the High Court to exercise its amicus curiae function in a case that raises important questions about the human rights and equality of persons with disabilities and wards of court. This case challenges the constitutionality and compatibility with the European Convention of Human Rights of the wardship jurisdiction of the High Court and the Marriage of Lunatics Act 1811.

As highlighted above, the Commission, in its capacity as an "A" Status National Human Rights Institution, engages with United Nations Treaty Monitoring mechanisms on Ireland's adherence to its international Human Rights obligations, including in the area of access to justice.

The legal work of the Commission includes amicus curiae interventions, legal assistance to individuals, own name proceedings and equality reviews.

In addition to the case set out above, recent examples of amicus curiae interventions by the Commission include:

- In the Matter of JJ (Supreme Court): admission into wardship of an 11-year-old boy for medical treatment reasons.
- Christina Faulkner and Bridget McDonagh v. Ireland (European Court of Human Rights): access to housing and legal aid for members of the Traveller community.

Recent examples of the Commission's Legal Assistance cases include:

- Robert Cunningham v. The Irish Prison Service: this High Court case examined whether the Irish Prison Service must provide reasonable accommodation under the EEA to prison officers with disabilities.
- An Asylum Seeker v. A Statutory Agency: the Commission provided legal representation to a woman who is an asylum seeker. The Workplace Relations Commission found the statutory agency in refusing her a driving licence had discriminated against the woman, on race grounds. The WRC decision was subsequently appealed to the Circuit Court. The Circuit Court overturned the decision of the WRC. The Commission is providing legal representation to the woman in proceedings before the High Court, appealing the Circuit Court decision.

References

- IHREC, Taoiseach's Mother and Baby Homes Apology Must Mark Start of Human Rights Compliant Redress and Restitution Process (press release, 12 January 2021).
- IHREC, Submission to the United Nations Committee on the Elimination of Discrimination Against Women on the follow-up procedure to Ireland's combined sixth and seventh periodic report (August 2020).
- IHREC, Submission to the United Nations Human Rights Committee on the List of Issues for the Fifth Periodic Examination of Ireland (August 2020).
- Department of Justice, Action Plan 2021.
- IHREC, Human Rights and Equality Commission Granted Leave to Appear as Amicus Curiae in Disability Rights Case (press release, 18 November 2020).
- IHREC, Annual Report 2019.

Media pluralism and freedom of expression

The Commission has highlighted, including in its recent submission to the Committee on the Elimination of Racial Discrimination, that a strong link can be observed between editorial decisions and the emergence of online and real-world hate speech and incidents. It has recommended that the State encourage the media to update their codes of professional ethics and press codes and provide appropriate training for editors and journalists, to reflect the challenges of the modern media environment where the circulation of prejudicial and discriminatory content and hate speech are concerned.

The Commission is currently preparing observations on the Online Safety and Media Regulation Bill 2020, which will transpose the revised Audiovisual Media Services Directive into Irish law. The Bill also provides for the establishment of a multi-person Media Commission, including an Online Safety Commissioner, with appropriate compliance and sanction powers.

References

- IHREC, Submission to the United Nations Committee on the Elimination of Racial Discrimination on Ireland's Combined 5th to 9th Report (October 2019).
- Department of Tourism, Culture, Arts, Gaeltacht, Sport and Media, Online Safety and Media Regulation Bill (January 2020).

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

In February 2021, the Minister for Children, Equality, Disability, Integration and Youth published a 'White Paper to End Direct Provision and to Establish a new International Protection Support Service' (1). It sets out a new Government policy to replace Direct Provision by 2024 and establish a new system for accommodation and supports for applicants for International Protection, grounded in the principles of human rights, respect for diversity and respect for privacy and family.

The Commission exercised its amicus curiae powers in the Supreme Court case, Ali Charaf Damache v the Minister for Justice and Equality. The case examined the lawfulness of the existing procedure under the Irish Nationality and Citizenship Act 1956, which provides for a power to revoke Irish citizenship from people who acquire Irish nationality. The Court held that the relevant legislative provisions do not meet the high standards of natural justice required due to the absence of necessary procedural safeguards and are therefore unconstitutional. It has ordered that these provisions are replaced by the Minister with the approval of the Oireachtas.

References

(1) https://www.gov.ie/pdf/124757/?page=0

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

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

As highlighted above, the Commission has a number of significant concerns regarding the impact of the COVID-19 pandemic and related measures on human rights and equality in Ireland, including that:

- The Government has persistently blurred the boundary between legal requirements and public health guidance in its COVID-19 response;
- Parliamentary oversight of Ireland's emergency legislation and the use of appropriate sunset clauses has been lacking;
- There is a lack of human rights and equality expertise in the decision-making structures put in place to tackle the pandemic, and in the systems that implement and scrutinise these decisions;
- The introduction of restrictions by the Minister for Health through regulations makes it difficult to maintain effective democratic oversight;
- There is a lack of published disaggregated data to confirm indications that the Garda enforcement of emergency COVID powers has disproportionately affected young people, ethnic and racial minorities, Travellers and Roma;
- There has been limited or no consultation with those groups most likely to be affected in respect of the public health framework;
- The significant gaps and vulnerabilities in existing policy and services have resulted in a disproportionate impact of COVID-19 on people with disabilities and Travellers;
- The procedural safeguards for detention on mental health grounds have been relaxed;
- There have been a number of COVID-19 clusters in Direct Provision, and concerns are being raised by residents and civil society organisations about the inability of those in shared accommodation to effectively self-isolate.

The lessons learned thus far during this crisis regarding how we can enhance protections of human rights, equality and the rule of law when adopting and implementing emergency powers must be brought to bear on how we continue to address the pandemic, as well as

on how we meet the challenges of any potential future national emergency. Such lessons include:

- The need to establish a parliamentary committee on diversity, human rights and equality to provide oversight of rights concerns in the law-making process;
- A series of specific oversight measures, such as rigorous sunsetting and parliamentary validation of all core emergency regulations;
- New structures to ensure rights are robustly considered in the making of these regulations.

COVID-19 has both exposed and exacerbated existing inequality in Ireland. Over the course of the pandemic, this inequality is evidenced in the sharp divergence in the experience of different groups in our society and, at times, a divergence in rights. Such groups include people with disabilities, older people, people living in congregated settings and overcrowded accommodation, including Direct Provision, Travellers and Roma, and people in precarious employment. In response to this magnification of our most fundamental societal challenges, an explicit human rights and equality-based approach must be taken to the transition from COVID-19. Such an inclusive recovery programme requires long-term lessons to be learned regarding institutional models of care and congregated settings, the delivery of State functions through private, non-State actors, the strengthening of data collection systems and addressing delays in legislative reform and policy implementation processes. In particular, positive measures must be taken across a range of areas to ensure that all groups of people with disabilities transition out of the emergency phase on an equal basis with each other and the rest of the population.

The Commission has taken various measures to address the issues exposed above, and more generally to promote and protect rule of law and human rights in the crisis context. It notably:

Published research evaluating Ireland’s use of pandemic related emergency powers in February 2021;

- Made submissions in June and September 2020 to the Oireachtas Special Committee on COVID-19 Response regarding the adequacy of the State's legislative framework to respond to the pandemic and potential future national emergencies and on the impact of COVID-19 on people with disabilities;
- Highlighted the impact of COVID-19 on the protection of civil and political rights and children's rights in Ireland in its 2020 submissions to the Human Rights Committee and the Committee on the Rights of the Child;

- Highlighted the disproportionate impact of COVID-19 on Travellers and people living in social housing in its 2020 submission to the European Committee of Social Rights;
- Held a Civil Society Forum on COVID-19 and human rights and equality in October 2020, including discussions on emergency legislation and regulations and the impact on people in congregated settings.

References

- Conor Casey, Oran Doyle, David Kenny and Donna Lyons, Ireland's Emergency Powers During the Covid-19 Pandemic (IHREC, 2021).
- IHREC, Submission to the Special Committee on COVID-19 Response Regarding the Adequacy of the State's Legislative Framework to Respond to COVID-19 Pandemic and Potential Future National Emergencies (September 2020).
- IHREC, State COVID Planning Must Not Discriminate Against People with Disabilities (press release, 14 January 2021).
- IHREC, The Impact of COVID-19 on People with Disabilities: Submission by the Irish Human Rights and Equality Commission to the Oireachtas Special Committee on COVID-19 Response (June 2020).
- IHREC, Emergency Legislation Around COVID Must be the Exception Not the Norm (press release, 9 September 2020).
- IHREC, Statement from the Irish Human Rights and Equality Commission In Respect of Direct Provision (press release, 19 August 2020).

- Conor Casey, Oran Doyle, David Kenny and Donna Lyons, Ireland's Emergency Powers During the Covid-19 Pandemic (IHREC, 2021).

- IHREC, Submission to the Special Committee on COVID-19 Response Regarding the Adequacy of the State's Legislative Framework to Respond to COVID-19 Pandemic and Potential Future National Emergencies (September 2020).
- IHREC, State COVID Planning Must Not Discriminate Against People with Disabilities (press release, 14 January 2021).
- IHREC, The Impact of COVID-19 on People with Disabilities: Submission by the Irish Human Rights and Equality Commission to the Oireachtas Special Committee on COVID-19 Response (June 2020)

Italy

International accreditation status and SCA recommendations

Despite several initiatives over many years, a National Human Rights Institution has not yet been established in Italy. Other state bodies, such as the National Authority (*Garante nazionale*) for the rights of persons deprived of liberty, carry out important human rights work in the country. However, they do not have a broad human rights mandate and do not fulfil other criteria under the UN Paris Principles to be considered an NHRI.

In November 2019, at the occasion of the Universal Periodic Review (UPR) of Italy, delegations from over 40 countries included in their recommendations the establishment of an NHRI in Italy, in compliance with the UN Paris Principles. As a result, the Italian government reaffirmed its commitment to establish an NHRI.

Multiple actors, including ENNHRI, have been calling for the establishment of an Italian NHRI in compliance with the UN Paris Principles. In January 2019, ENNHRI addressed the Italian Chamber of Deputies to underline the importance of establishing an NHRI in Italy and how it would differ from other existing national mechanisms. This message was reiterated later that year during a roundtable in Italy, organized by ENNHRI with Amnesty International, which brought together representatives from Italian civil society, European NHRIs and regional organisations.

In October 2020, the Committee on Constitutional Affairs of the Italian Chamber of Deputies adopted a unified text version based on three draft proposals for the establishment of an Italian NHRI. The unified proposal will serve as a basis for the discussions on the establishment of an Italian Commission on human rights an anti-discrimination.

In January 2021, ENNHRI intervened in a conference organised by the EU's Fundamental Rights Agency and a group of leading academics on the establishment of an Italian NHRI. ENNHRI highlighted that an Italian NHRI, in compliance with the UN Paris Principles, will contribute to greater promotion and protection of human rights in Italy.

ENNHRI is closely monitoring developments in the country and stands ready to provide its expertise on the establishment and accreditation of NHRIs to relevant stakeholders in Italy, including the legislature, government, academics and civil society organisations.

Latvia

Ombudsman's Office of the Republic of Latvia

International accreditation status and SCA recommendations

The Latvian NHRI was reaccredited with A status in December 2020. In its review, the SCA encouraged the Latvian NHRI to advocate for the formalization and application of a broader and more transparent process for the selection and appointment of the Ombudsman. The SCA also called on the NHRI to advocate for appropriate amendments to its legislation to ensure an independent and objective dismissal process of the position of Ombudsman, an explicit limitation to the possibility of consecutive re-appointments of the Ombudsman's term of office, and stronger protection from criminal and civil liability for actions taken by the Ombudsman in their official capacity in good faith. The SCA also recommended the Ombudsman to continue efforts to address all human rights issues affecting the society, including economic, social and cultural rights, and that accredited NHRIs should take reasonable steps to enhance their effectiveness and independence in line with the Paris Principles and the recommendations of the SCA.

Independence and effectiveness of NHRIs

Changes in the regulatory framework applicable to the Institution

The Ombudsman has taken action on the recommendations of the SCA. Since 7 January 2021, amendments to the Ombudsman Law provide that the Ombudsman's appointment shall be approved in the office by the Saeima pursuant to the proposal of not less than ten members of the Saeima (previously five members) and that the same person can be Ombudsman for maximum two terms (of five years each).

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

The ability of the Ombudsman's Office of the Republic of Latvia to fulfil its mandate independently and effectively was reaffirmed by the re-accreditation of A status in December 2020 by the SCA.

Checks and balances

Trust in state authorities

On 9 December 2020 the Ombudsman organised its Annual Conference which focused on "Why is it difficult to trust the opinion and decisions of the government in a crisis situation?". The topic was discussed from three perspectives – from a scientific perspective, from a business and law perspective, in particular stressing the challenges of disinformation and how government decisions affect businesses, and from a human rights perspective, namely what is the role of constitutional and human rights in a crisis situation. The COVID-19 crisis has indicated the tension between individuals' right to freedom, including freedom of speech and the obligation of the state to take care of safety and health of the society. Disinformation that can be observed in the society can hinder citizens' trust in the work of the Government. The Ombudsman stresses that although government decisions must be taken fast, they need to be thoughtful and proportionate.

NHRI as part of the system of checks and balances

During 2020 Ombudsman submitted four applications to the Constitutional Court on the following topics where it has found problematic issues: minimum disability pension; minimal amount of the state old-age pension; the amount of the state fee for the partner of the estate-leaver for registering the ownership rights in the Land Register; increase of the state financing for increasing the remuneration of health care workers. The Ombudsman sent a letter to the Cabinet of Ministers on two aspects: to provide society-based services on the whole territory of the state, including for persons benefiting from state financed support; and recommended to discontinue the institutionalisation of people with disabilities starting from 1 January 2024.

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

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

The Ombudsman has continued to play its role of monitoring the government's measures and their impact on human rights, expressing opinions and making recommendations to EU and national policy makers in particular as regards the need to respect and promote economic and social rights, the right to healthcare and the importance of engaging in transparent communication with the public.

The Ombudsman monitored the government's decisions taken in the framework of the containment of the COVID-19 pandemic to ensure that restrictions were adequate, and that the society was being informed timely and accurately.

Special attention was paid to people in institutions, as people living in institutions are at higher morbidity risk. The Ombudsman stressed the importance of timely health care for people residing in closed-type institutions. The Ombudsman sent a letter about COVID-19 control measures to the Cabinet of Ministers, the Ministry of Welfare, to social care and social rehabilitation centres, and to institutions for children care.

On 13 October 2020 the Ombudsman together with the NGO "Latvian Movement for Independent Living" organized a press briefing on the reality of the deinstitutionalisation process and of the conditions of people in state social care institutions that does not meet the conditions that have been promised and hoped for.

As mentioned in the part on checks and balances, in December the Ombudsman organised its Annual Conference which focused on "Why is it difficult to trust the opinion and decisions of the government in a crisis situation?". The topic was discussed from three perspectives – from a scientific perspective, from a business and law perspective, in particular stressing the challenges of disinformation and how government decisions affect businesses, and from a human rights perspective, namely what is the role of constitutional and human rights in a crisis situation.

References

- The EU must put economic and social rights at the heart of its economic response to COVID-19 (15 May 2020) https://www.tiesibsargs.lv/news/en/the-eu-must-put-economic-and-social-rights-at-the-heart-of-its-economic-response-to-covid-19
- Unemployed people receiving disability pension do not qualify for state support for the unemployed (16 June 2020) in Latvian: https://www.tiesibsargs.lv/news/lv/bezdarbniekiem-invaliditates-pensiju-sanemejiem-valsts-atbalsts-bezdarbnieka-palidzibas-pabalsts-iet-secen

- Explaining Equinet suggestions to overcome COVID-19 crisis (01 July 2020) in Latvian: https://www.tiesibsargs.lv/news/lv/eiropas-lidztiesibas-iestazu-sadarbibas-tikla-ieteikumiem-covid-19-krizes-parvaresana
- Access to health care services or 'patient sorting' during COVID-19 pandemic (17 November 2020) in Latvian: https://www.tiesibsargs.lv/news/lv/pacientu-skirosana-covid-19-pandemijas-laika
- Ombudsman addresses the Government regarding communication with the society during COVID-19 crisis (01 December 2020) in Latvian: https://www.tiesibsargs.lv/news/lv/tiesibsargs-vers-valdibas-uzmanibu-uz-komunikacijas-uzlabosanu-ar-sabiedribu-covid-19-krizes-laika

Lithuania

Seimas Ombudsmen's Office

International accreditation status and SCA recommendations

The Lithuanian NHRI was accredited with A status in March 2017. The SCA acknowledged the cooperation of the NHRI with other Ombuds institutions in Lithuania, and encouraged the NHRI to continue, develop and formalise similar working relations with national bodies.

Luxembourg

Consultative Human Rights Commission of Luxembourg

International accreditation status and SCA recommendations

The Luxembourgish NHRI was reaccredited with A status in November 2015. The SCA encouraged the NHRI to advocate for an independent and sufficient funding that allows for remunerated full-time members in the NHRI's decision-making body. Moreover, the SCA encouraged initiatives to result in the NHRI's annual report being tabled and debated by Parliament. The SCA commended the CCDH for continuing to produce reports and recommendations, despite the fact that consultation of the NHRI on draft legislation was not systematic.

Impact of 2020 rule of law reporting

Impact on the Institution's work

There has been no direct impact on the institution's work. However, learning about the rule of law situation in other countries and obstacles encountered by other NHRIs has been interesting on an internal level.

Follow-up initiatives by the Institution

There have been no follow-up initiatives, due to work overload and a lack of capacity and resources. Since March 2020, most of the Commission's time and resources have been invested in the screening of the COVID-19 legislation and other priority issues.

Independence and effectiveness of NHRIs

Changes in the regulatory framework applicable to the Institution

There have been no changes in the national regulatory framework since the 2020 report.

Enabling space

There has so far been no interference in the CCDH's functioning that could have endangered its independence.

In general, the CCDH deplores that the government very rarely follows on its recommendations. For instance, very few of the Commission's recommendations regarding COVID-19 laws have been taken into account (10 opinions were issued in 2020, 4 in 2021). There is, for that matter, no obligation for the government to reply or follow on the CCDH's recommendations laid out in the law that established the Commission.

While the CCDH is occasionally consulted on a draft legislation by a parliamentary committee, this remains very rare. Moreover, the CCDH has deplored for years the fact that the government does not systematically make the draft Grand-Ducal regulations available for the Commission to review. In addition, apart from a few exceptions such as the COVID-19 laws, Grand-Ducal legislations and regulations are not systematically consolidated, which affects legal clarity and certainty.

Regarding the cooperation with other human rights bodies, the government occasionally conducts consultations (for example on the elaboration of future action plans or draft legislation) on a bilateral basis or within the framework of the interministerial human rights Committee. However, their inputs and recommendations are then rarely considered.

While the government accepted the CCDH’s recommendation to establish an independent mechanism to monitor and analyse the situation of older persons or persons with disabilities living in care facilities, it entrusted this mission to the Commission without giving it the necessary resources to do so.

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

In order to be able to better fulfil its mandate, the CCDH applied for additional (human) resources, and regularly raised concerning issues in its various opinions and publications.

Human rights defenders and civil society space

As highlighted above, and in the CCDH Report on the COVID-19 consequences on human rights, several journalists’ associations (e.g., Association luxembourgeoise des journalistes professionnels and Conseil national de la presse) strongly criticized the government's communication and transparency, notably their limited access to information (no physical presence of journalists during press conferences and limited access to health facilities).

In that context, journalists recalled that "Luxembourg still [is] one of the only European countries to not guarantee a right to access to information for the press" and called the

government to introduce this right without delay. The CCDH similarly calls the government to take this criticism into account and guarantee journalists access to information in all circumstances.

Besides, the CCDH was preoccupied by the reaction of the Minister of Education, Children and Youth to a parliamentary question on the situation in Luxembourgish schools (question n° 3200 of 15 November 2020), where he criticized the journalists' interrogations regarding public administrations' integrity during times of crisis, and regarding the high number of infections in schools. The Minister denied and condemned questions and allegations directed at a government report on the COVID-19 situation in schools and pointed out that questioning the integrity of public administration is dangerous and could lead to protest movements. The press plays a crucial role in the rule of law. Valuing the press' role and ensuring transparency are vital to a democratic society, and to trustworthy public institutions.

While no precise initiative has been recently taken by the CCDH with regard to civic space and human rights defenders, the Commission has met with a representative of the press in order to discuss issues exposed above and potential steps to strengthen the right to access to information.

Moreover, the CCDH has been asked by the government to participate in the development of the project "shelter cities" for human rights defenders. The aim of this project is to set up a procedure for the reception of individual human rights defenders in Luxembourg for a predetermined rest period, via the protectdefenders.eu website.

References

- https://ccdh.public.lu/dam-assets/dossiers_th%C3%A9matiques/bilan_covid19/rapports/Covid-EffetsDroitsHumains-DocReflexion-20210225.pdf
- Réponse du Ministre de l'Education nationale, de l'Enfance et de la Jeunesse à question N°3200 de Madame Martine Hansen et de Monsieur Claude Wiseler concernant Communiqué du Ministère de l'Éducation nationale, de l'Enfance et de la Jeunesse sur l'état de la situation dans les écoles luxembourgeoises au 15.11.2020.

- Richard Graf, Crise sanitaire et droit à l'information: La vérité est la première victime, WOXX, 10 April 2020

Checks and balances

The CCDH addresses recommendations to the government through opinions on draft laws or through its reports on the general state of human rights in Luxembourg. In 2020, it addressed 14 opinions and one report to the government and parliament.

Functioning of justice systems

Apart from cooperating with other national human rights structures (e.g., Centre pour l'égalité de traitement, Ombudsman pour enfants et jeunes), the CCDH did not take any initiatives related to the functioning of the justice system.

Media pluralism and freedom of expression

The CCDH raised issues related to the access to information during the sanitary crisis (see below).

The draft legislation on video surveillance already mentioned in the ENNHRI 2020 Rule of Law Report is still being developed. As a result of the opinion of CCDH and its recommendations issued therein, the Commission had follow-up meetings with the Minister of Internal Security and the General Police Inspectorate in charge of a recently published study on the effectiveness of video surveillance. The draft legislation is still undergoing some changes and some of our recommendations seem to have been taken into account.

Corruption

Related issues are not a current priority in the CCDH's work and therefore have not yet been considered.

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

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

Democracy and rule of law have suffered from the impacts of the health crisis. In the face of many unknowns and the urgency put forward to stop the spread of the virus, the democratic process, participatory and transparent, could not always take place in due form.

For instance, the suspension of the right to protest during the first months of the state of crisis and the voting of controversial laws (in the political world as well as for the population) does not correspond to a democratic and pluralistic process. Besides, apart from a few exceptions, laws and regulations are not all systematically consolidated, which makes it difficult for the population to be aware of the applicable rules. This is even more problematic considering that some measures are attached to sanctions.

Considering the permanent evolution of COVID-19 and related scientific research, there must be a thorough and repeated analysis of the merits, proportionality and necessity of measures taken in response to the pandemic.

The CCDH published on 25 February 2021 a report on the health crisis and its consequences on human rights. As the COVID-19 crisis is still ongoing, it is difficult and premature to provide a complete analysis, however the CCDH can already note important impacts of the crisis and measures taken in response on several human rights, notably: rights to life, to health, to information, to education, to asylum, to private and family life, to culture, freedoms of movement, of assembly, of expression, socio-economic rights, children's rights, gender equality, non-discrimination on the basis of gender identity and sexual orientation, as well as the principles of the rule of law.

The government consulted the CCDH on all its draft legislation aimed at responding to the COVID-19 pandemic, however always within extremely short timelines. This considerably limits the possibility for external actors to participate to the public debate and perform a thorough analysis of the news measures.

Moreover, the CCDH noted a general lack of transparency and insufficient access to information throughout the sanitary crisis. For instance, press conferences were not made fully available online after their live broadcast, excluding the question-and-answer sessions with journalists. This was eventually remedied upon the intervention of the CCDH and journalists' associations.

Although the government adopted a laudable inclusive approach in guaranteeing access to COVID-19 testing for residents as well as for cross-border workers, the CCDH deplored its decision to exclude these workers from the national statistics, for fear of other countries' reaction (those imposing restrictions to Luxembourgish citizens). Yet, ignoring such a significative part of the daily population in Luxembourg in the relevant data represents a flagrant lack of transparency.

Other than the answers already given above, the CDDH highlights that the pressure exerted by members of the government on certain institutions, such as the Council of State (Conseil d'Etat), in the legislative process is attaining unprecedented and dangerous levels. Under Luxembourgish law, the Council of State is required to advise laws. If they formally oppose to a law, it cannot be passed unless a period of 6 months passes. Since Luxembourg is amending its legislation related to COVID-19 measures and restrictions on a monthly or even on a two-week basis (most of the restrictions and measures are reviewed, amended and prolonged on a monthly basis, lately more frequently due to the fast changing epidemiological situation) under a considerable amount of pressure (there is often only a couple of days between the publication of the draft and the vote on the law in Parliament), members of government have made public statements hinting at the fact that if the Council of State opposes certain amendments, there will be no rules at all.

Moreover, certain areas (such as education/schools) and the restrictions applicable are currently not regulated by laws, although this should be the case under the Luxembourgish Constitution and international human rights law. The Ministry of Education issues "recommendations" that can have considerable impact on the fundamental rights of the children and other persons affected by the measures. The same goes for the restrictions applicable in institutions for people with a disability or older persons. The CCDH has criticised this approach in its recent report on the impact of COVID-19 on human rights and reminded the government to make sure that rules in place guarantee the rights of the child and the rights of persons with disabilities. Indeed, this current use of recommendations led and is still leading to a wide array of incoherent measures. The human rights of those

involved are thus not equally protected and the level of protection afforded depends largely on the institutions (and in case of children, on their teachers and parents).

References

- https://ccdh.public.lu/dam-assets/dossiers_th%C3%A9matiques/bilan_covid19/rapports/Covid-EffetsDroitsHumains-DocReflexion-20210225.pdf

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

Considering the sanitary crisis and CCDH related work (opinions on COVID-19 laws, report on human rights implications of the crisis), the Commission has not been able to thoroughly address other issues in the past year.

ENNHRI

Malta

International accreditation status and SCA recommendations

In the part years, national, regional and international stakeholders have called on Malta to establish a NHRI. This recommendation has featured prominently during the Universal Periodic Review of Malta.

On July 2019, the Bill on the Human Rights and Equality Commission was presented to the Maltese Parliament, which would establish an NHRI. ENNHRI, alongside civil society organisations and other actors, has supported the establishment of a Maltese NHRI and advised national actors in their efforts. Prior to the submission of the bill to Parliament, the Council of Europe's Venice Commission published its Opinion on the draft bill.

The revised Bill is being discussed before the relevant Parliamentary Committees.

Netherlands

The Netherlands Institute for Human Rights

International accreditation status and SCA recommendations

The Dutch NHRI was re-accredited with A status in December 2020. In its review, the SCA encouraged the NHRI to advocate for the extension of the applicability of the Equal Treatment Act to the Caribbean territories of the Netherlands, to ensure that the NHRI can discharge the full breath of its mandate in these territories. The SCA also called on the NHRI to further to advocate for the formalisation of a clear, transparent and participatory selection and appointment process to avoid situations of conflict of interest. Finally, the NIHR was asked to continue to advocate for adequate funding necessary to allow it to address a broader range of priorities, including, for example, the rights of migrants and of the LGBTI community.

References

- Letter of the NIHR to the Minister for Legal Protection regarding the re-accreditation: Brief aan minister Dekker naar aanleiding van de re-accreditatie | Mensenrechten

Impact of 2020 rule of law reporting

Follow-up by State authorities

To our knowledge, the ENNHRI rule of law report was not used at national level. Representatives from the Dutch NHRI did refer to it in other talks, e.g., vis-à-vis EU institutions.

Impact on the Institution's work

The 2020 ENNHRI rule of law report has reaffirmed the usefulness of having EU rule of law as focus of attention for the Dutch NHRI. This is channelled in particular through the

membership of one of the Institute's commissioners of the Meijers committee, a committee of independent experts (lawyers, judges, NGO professionals) giving legal analysis-based advice to Dutch and EU-level politicians and their support staff.

Follow-up initiatives by the Institution

Briefing to NGOs working on the EU rule of law in the EU context, co-organised by Amnesty International and Open Society Justice Initiative.

Human rights defenders and civil society space

As regards freedom of assembly, under the Dutch Public Assemblies Act (*wet openbare manifestaties*) planned assemblies need to be pre-notified to the public authorities. The intention for this is to be a procedural requirement, i.e., merely to allow public authorities to assess security risks and make arrangements in time. Such assessment however has, on occasion, also involved mayors checking the actual substantive contents of the planned assembly with a view to fulfilling the procedural requirement and led to a practice where the content has played a role in decision-making.

In addition to the findings of the NHRI in 2019, during the COVID-19 pandemic demonstrations were allowed to continue. Additional requirements were included in order for the organisers to ensure the implementation of the COVID-19 measures (incl. 1,5-meter distancing of the participants). Several demonstrations were cancelled as mayors deemed that compliance with the COVID-19 measures could not be ensured. Other protests were cut short, or interventions were made to ensure that everyone was able to keep their distance and comply with the measures, for example by not allowing new protestors to come to the place of the protest. Generally speaking, the right to freedom of assembly was ensured during the COVID-19 pandemic, although there have been instances where questions were raised about the necessity and proportionality of the requirements imposed on the organisation of the protests. At least in two instances this has led to litigation.

Furthermore, there have been various protests concerning the COVID-19 measures that have resulted in violence and destruction of property. On several occasions the police had to step in to end the protests.

In addition to the information provided on our website on COVID-19 measures, the Institute has published an informative article on the right to protest.

References

- The NIHR informs the public about COVID-19 measures in light of human rights via its webpage, this also includes an answer to the question whether a demonstration can be cancelled due to COVID-19 (Q18): Coronavirus en mensenrechten | College voor de Rechten van de Mens
- Lawsuit against the mayor of The Hague for the limitations imposed on grounds of COVID-19 measures: Rechtszaak tegen beperking protest op grond van de coronamaatregelen verloren - PILP (pilpnjcm.nl)
- Judgment of the District Court of Amsterdam http://deeplink.rechtspraak.nl/uitspraak?id=ECLI:NL:RBAMS:2020:2126
- Webpage: Van blokkades tot online demonstreren: wat mag wel en niet tijdens een demonstratie? | College voor de Rechten van de Mens (mensenrechten.nl)

Checks and balances

What is known as the 'child benefit scandal' ('*toeslagenaffaire*'), was the reason for the Dutch government to resign at the end of 2020. In the Netherlands parents are entitled to receive day-care allowance under certain conditions, in order to continue working or following an education. The benefits are given without a thorough check of the request, but when a mistake is made, the parents are required to reimburse the allowance to the tax authority. After many years of research by journalists and parliamentarians, it turned out that certain parents were subjected to additional controls of their request for child benefits because of their nationality, their double nationality and/or the day-care they were sending their child(ren) to. If selected for additional monitoring, also (minor) administrative mistakes would result in the requirement to reimburse the entire sum of day-care allowance received – to a maximum of 5 years. Parents had to pay back tens of thousands of euros, which they had already spent on day-care. This resulted in serious financial troubles and emotional harm, sometimes leading to unemployment and loss of their homes. In a report a parliamentary committee concluded that as a result of strict legislation, rigid execution thereof, biased acting, non-transparent decision-making and insufficient legal protection, more than ten thousand parents were unjustifiably targeted as fraudulent. It was the combination of political pressure to deal with frauds and harsh legislation, that resulted in

an all-or-nothing approach, which limited the possibility of the tax authority to mitigate consequences for (minor) administrative mistakes made by the parents and led to a very restrictive review by the Dutch administrative judges. Parents that were marked as fraudulent, were required to provide extensive information about their situation without knowing what would be relevant for their case, and in some cases, on what grounds the decision to reimburse the money was taken. In addition to this, the tax authority and government were not open about the situation even after continued questions were raised in parliament about the day-care allowance issue. Also, when parents were finally provided the documents on the basis of which the reimbursement decisions were taken – almost all information was erased with black ink.

The government is currently in the process of improving the day-care allowance system and reviewing legislation and the practice of the tax authorities. Furthermore, parents that were victimised will be immediately entitled to reimbursement of 30.000 EUR. Although efforts are being made, at the moment the targeted parents are still dealing with problems as a result of the day-care allowance affair. In light of this affair, serious questions have been raised about the lack of parliamentary oversight regarding the tax authority, and executive authorities more generally.

The day care allowance affair has had a serious impact on the trust of citizens in state authorities. Not only citizens but also municipalities have concerns about the government's approach to the matter and its solution to it, which is considered to lead to more problems for the parents.

Besides starting a project to inform Dutch authorities on what the prohibition of discrimination means in practice, including for executive authorities, the central government has pinpointed the Dutch NHRI as the place for victimised parents to request a decision on whether they were discriminated. The tax authority will accept the decision of the Dutch NHRI. The challenge for the NHRI is, however, that its mandate as an equality body in cases concerning social benefits is limited to determining whether there was discrimination on the basis of race/ethnicity, and not on other discrimination grounds. In addition, the Dutch NHRI is requested to develop and carry out trainings for officers working at executive authorities to prevent discrimination in practice.

The Netherlands Institute of Human Rights is furthermore involved in various legislative processes through advising the government, both as regards new law proposals and existing laws and policies. It has issued an annual report in 2018 on access to justice, in which it discussed policy developments and developments in legislation that restricted access to justice. It has also issued a report on self-sustainability (*zelfredzaamheid*) as the

government is considering that individuals are able to ensure their rights themselves. These developments of limiting access to justice and reliance on self-sustainability are considered to have contributed to the day-care allowance affair.

Furthermore, the Dutch NHRI is currently in the process of talking about extra funding from the government to decide on cases relating to day-care allowance reimbursement, and training government professionals.

References

- Pages of parents in black ink: Ouders zwartgelakte dossiers: 'Ik weet nog steeds niet wat ik fout heb gedaan' | NOS
- For more information about this and what the Dutch NHRI does, see Nooit meer een toeslagenaffaire: pak discriminatie aan | College voor de Rechten van de Mens (mensenrechten.nl)
- De Tweede Kamer is een falende controleur - NRC
- Gemeenten zeggen vertrouwen in Belastingdienst op | Trouw

Functioning of justice systems

No progress was made on the issues mentioned in ENNHRI 2020 Rule of Law Report, on which concerns persist.

In addition, there are concerns about the respect for fair trial standards and the right to liberty in the Netherlands. The ECtHR has delivered several judgments on these issues concerning the Netherlands in 2020 and 2021. Three cases concerned the lack of motivation of (continuation of) pre-trial detention decisions by judges, which a study of the Dutch NHRI shows is a structural issue (NB various courts are currently in the process of improving their decision-making). The Dutch NHRI had been requested to intervene in the case in order to share information about its study and the systemic nature of the problems. Other violations of Article 6 ECHR related to the right of a suspect to question a witness who has made incriminating statements (*Keskin v. The Netherlands*, app. no. 2205/16). The attorney-general of the Supreme Court has incorporated the ECtHR's judgment on hearing

witnesses in his opinion to the Supreme Court, and also criminal courts are starting to improve their motivation of pre-trial detention.

References

- Nederlandse strafrechtspraktijk moet op de schop: betere motivering van voorlopige hechtenis nodig | College voor de Rechten van de Mens (mensenrechten.nl)
- The Conclusion of the Attorney-General, ECLI:NL:PHR:2021:91, Parket bij de Hoge Raad, 19/02460 (rechtspraak.nl)

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

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

The Dutch government has enacted the Temporary Act on COVID-19 measures. Although it was an emergency law it took over half a year before the Act was approved by the parliament and senate. This was partially due to the time given for deliberation in parliament and senate, including various amendments and advice from various organisations (including the Dutch NHRI). In the meantime, measures were either put forward as recommendations, or they were imposed on other legal bases (sometimes the validity of those was questioned). The Act entered into force on the 1st of December 2020. It provides the basis for the government to restrict fundamental rights, including the right to freedom of movement and freedom of assembly. On the basis of this law, the government has amongst others restricted the amount of people you are allowed to gather with in public, imposed a requirement to wear a facial mask, closed shops and prohibited the execution of certain professions.

The government recently also imposed a curfew from 9 p.m. to 4:30 a.m. in order to limit social gatherings at night even further, which is not a measure foreseen in the Temporary Act. This curfew is enforced and in case of violations, people can be fined with 95 EUR. Besides (violent) protests against the curfew, the main legal issue was the legal basis for this measure (NB our Institute provided information in relation to questions on necessity

and proportionality of the measure and considered that there were sufficient arguments to that effect for imposing the curfew). The curfew was imposed on the basis of a specific law that allows for emergency measures (WBBBG). It has been argued by scholars that this law can only be used when there are extraordinary and urgent circumstances that prevent the government from getting approval by the Parliament and Senate in time. However, several argued that such circumstances were not in place, as the Parliament was consulted in a debate to see whether the government would get approval for the measure. Furthermore, another – a more democratic means –for enacting the curfew was not chosen. This would have been to amend the Temporary Act COVID-19 measures, as was suggested by the Council of State. In February litigation was pending before the preliminary relief judge (*voorzieningenrechter)* and Court of Appeal. According to the preliminary relief judge the measure did indeed lack a legal basis, and the curfew was lifted. The decision to lift the curfew was suspended the same day by the Court of Appeal. A week later the Court of Appeal decided that the WBBBG formed a valid legal basis for the curfew. Whilst the litigation was pending, the government had issued an emergency law (*Tijdelijke wet beperking vertoeven in de openlucht covid-19*, Temporary Act on restriction to stay in the outdoor COVID-19) which has been approved by the parliament and the senate and is now in force. In any case, therefore, the curfew would have had a legal basis even if the Court of Appeal had decided that the WBBBG would not suffice.

Our Institute is currently in the process of researching long term effects of the COVID-19 outbreak on human rights. In particular it has discussed this impact on youth in various podcasts.

In its annual report 2020 (expected to be published in June 2021), the Institute will discuss the impact of the crisis on human rights in the area of employment. In short, what it notices is that there are problems on the one hand for people getting employment. This concerns those who for the first time access the labour market, students that cannot finish their studies because of the lack of internships or people who face discrimination in the recruitment and selection process for a job. The problems may result in long-term unemployment, which has serious effects on people's enjoyment of fundamental rights and could lead to poverty.

On the other hand, those who have a job may be subject to working and employment conditions that are contrary to human rights standards. For example, the crisis has shown the vulnerability of migrant workers to unsafe working conditions and risks of getting sick from COVID-19, this because they are dependent on their employer or employment agency for their housing and health benefits and are often transported together to work. Another

issue with employment conditions is the increasing flexibility of employment contracts, resulting in people losing jobs and not being entitled to the same social benefits as those with permanent contracts. The report will conclude with several recommendations to the government to better ensure human rights protection in the area of employment, now and in the future.

The NIHR has taken various actions by providing information and advising the government on Acts to be enforced. Measures are explained in the Institute's annual report 2020.

References

- The Institute updated its webpage with information about the curfew in light of human rights (Q23): Coronavirus en mensenrechten | College voor de Rechten van de Mens
- Judgment of the Court of Appeal regarding the legal basis of the curfew (incl. proportionality analysis) Invoeren avondklok was toegestaan (rechtspraak.nl)
- Wees alert op de effecten van de coronamaatregelen op jongeren | College voor de Rechten van de Mens (mensenrechten.nl)

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

The Institute's main challenge at the start of the pandemic was to continue deciding on discrimination cases as an equality body. After the first months the Institute continued its hearings and is currently doing its utmost to catching up on delays from last year.

References

- Information about the hearings and COVID-19 measures: Update coronavirus: het oordelenproces van het College en de bereikbaarheid | College voor de Rechten van de Mens (mensenrechten.nl)

Poland

Commissioner for Human Rights

International accreditation status and SCA recommendations

The Polish NHRI was re-accredited with A status in November 2017. The SCA encouraged the NHRI to advocate for amendments to its enabling legislation to require a pluralistic composition in its membership and staff, and for changes that would guarantee, for Deputy Commissioners and staff of the NHRI their protection from legal liability for actions undertaken in good faith in their official capacity. The SCA also underlined the need for the provision of adequate funding to enable the NHRI to effectively carry out its mandate.

Impact of 2020 rule of law reporting

Follow-up by State authorities

No information as regards the application of the 2020 ENNHRI Rule of Law Report by other state authorities is available. This is due to the fact there has not been any positive developments in this area in Poland.

Impact on the Institution's work

The 2020 ENNHRI Rule of Law Report has been used by the CHR in his activities as an important point of reference.

Follow-up initiatives by the Institution

The CHR has undertaken different forms of action:

I. Strategic judicial litigation, proceedings before:

1. CJEU, 2. ECHR (amicus curiae briefs), 3. National courts (the Constitutional Court, the Supreme Court, common courts, administrative courts, specialized courts, e.g., competition court).

II. Presentation of CHR opinions:

1. Rule 9 submissions to Committee of Ministers of CoE, 2. Opinions for UN treaty bodies

III. Opinions on the legislative process directed to:

1. Parliament, 2. Council of Ministers, 3. Ministers, 4. Other public authorities and bodies.

IV. Publishing independent reports

V. Education and awareness raising 1. Series of online interviews and podcasts with lawyers engaged in rule of law protection, 2. Online seminars, 3. Social media events.

Independence and effectiveness of the NHRI

Changes in the regulatory framework applicable to the Institution

In September 2020, a group of deputies to the Sejm applied to the Constitutional Tribunal (K 20/20) to examine the compliance of Art. 3 sec. 6 of the Act of 15 July 1987 on the Commissioner for Human Rights with Art. 2 of the Constitution of the Republic of Poland, i.e., with the principle of a democratic state ruled by law and the resulting principle of citizens' trust in the state and the law it enacts, as well as with the principle of justice and Art. 209 paragraph. 1 of the Constitution, which defines the term of office of the Commissioner for Human Rights (CHR). The case concerns the performance of duties by the Commissioner for Human Rights, after the expiration of the five-year term of office, until the new Commissioner for Human Rights will take office. So far, the date of the hearing has been postponed 7 times. The newest date of the hearing is 25th March 2021.

References

- Application to the Constitutional Tribunal https://ipo.trybunal.gov.pl/ipo/view/sprawa.xhtml?&pokaz=dokumenty&sygnatura=K%2020/20

Enabling space

The CHR gives opinions on bills important for civil rights and freedoms, regardless of whether the competent authorities ask him for his opinion. However, often the Commissioner's opinions are not taken into account by the government, even if there was a slight overall improvement in 2020.

The president of the Constitutional Tribunal – Mrs Julia Przyłębska started to set deadlines for the CHR's interventions before the Court that are inconsistent (shorter) with the provisions of the law for submitting a position in cases before the Tribunal. One of the examples is case No. K 6/20, concerning electoral law, where the CT president shortened the time for the CHR opinion from statutory 30 days to 22 hours.

It is worth to notice that on 9 September 2020, the term of the current Commissioner for Human Rights ended. However, no successor has yet been elected. The candidate and member of the ruling "Law and Justice" (PiS) party was rejected by the Senate, while a candidate supported by non-governmental organizations was rejected three times during a vote in the Sejm.The Marshall of Sejm set a new deadline for proposing candidates to 19 March 2021.

Human rights defenders and civil society space

The year of the pandemic has significantly influenced the work of human rights defenders and the space for civil society is constantly shrinking in Poland. The biggest changes noticed concern the right to peaceful assembly. This right was gradually limited by introducing a limit on participants in assemblies, and then − temporarily − assemblies were completely banned. Changes to the legal framework for the exercise of this freedom were introduced contrary to the constitution − regulations (*rozporządzenia*, government executive acts) were issued exceeding the statutory law. A complete ban on assemblies was also unconstitutional as limitations are possible only under the constitution, proportional and by virtue of parliamentary legislation only. Spontaneous assemblies were also banned during the pandemic.

In practice the limitations affected the protesters (mainly women) taking part in manifestations of entrepreneurs, protesting against COVID-19 business restrictions, and in particular those protesting against Constitutional Court judgment of 22 October 2020 in case No. K 1/20, declaring the embryo pathological reasons for abortion unconstitutional (assemblies have been organized by Women's Strike). The participation in the manifestations, treated by police as illegal, ended for many with financial fines (reaching up 10.000 PLN) or police actions (like temporary halt, custody in distant police stations, refusal to contact legal attorneys etc.). The irregularities of police actions were reporter by the CHR within the NPM report.

In addition, a significant increase in police brutality towards demonstrators was noticed; in particular, there was a widespread use of direct coercive measures against demonstrators (gas, 'kettling', stopping). Journalists who reported about the protests were arrested, a

journalist was shot by the police, and three journalists were beaten up by participants of protests. Protesters were detained en masse − their access to a lawyer was impeded and they were taken to police stations located several dozen kilometres from their place of residence (outside Warsaw).

The state of the epidemic and the limitations of fundamental rights and freedoms increased the importance of citizens' access to reliable information about the activities of the authorities. The pandemic act made it impossible to apply the provisions on inactivity of authorities upon request for public information. In practice, this meant depriving citizens of the possibility to challenge the inactivity of an authority in a situation where information is not provided. In Spring 2020, the "Covid" act (art 15zzs para. 10 point 1) deprived citizens of the possibility to effectively pursue the information obligation of public institutions.

The CHR joined the proceedings before the Administrative Court in Warsaw on a complaint of a citizen against the Ministry of State Assets for disclosure of public information. The case concerns information on the costs of election packages prepared in connection with the planned organization of postal elections on May 10, 2020.

The CHR constantly supports and cooperates with non-governmental organizations. In 2020, together with the STABILO Foundation, he dealt with the topic of professional burnout of activists. Two conferences were organized, scientific research conducted by the SWPS University was commissioned, and activists collaborated in working groups.

Due to the pandemic, the Ombudsman could not continue the program of Regional Meetings during which for four years he met local activists throughout Poland to talk about their problems and the human rights situation in the region.

References

- https://www.rpo.gov.pl/pl/content/Policja-zatrzymania-demonstracje-strajk-kobiet-raport-KMPT

Checks and balances

The influence of the legislative and executive powers over the judiciary has been growing steadily since the end of 2015. These authorities are trying to influence independent courts.

Disciplinary proceedings are initiated against independent judges and prosecutors. A number of proceedings have been conducted in this matter before the CJUE and the ECHR.

Since 2015, there has also been a decline in public consultations of laws. At present, consultation in sensitive issues is practically possible only in the Senate, where the opposition has a majority.

The CHR intervened in March 2020 in the case of early and supplementary elections in nine towns in Poland. He noted, inter alia, that quarantined persons will not be able to vote.

Despite the announcement of the pandemic, the authorities did not give up holding the presidential election on the previously set date of May 10, 2020. The CHR pointed to the related dangers for citizens, the election process and the unconstitutionality of changes in the election law during the ongoing campaign. In many countries, citizens residing abroad could only vote by correspondence, because the local pandemic regulations did not allow voting at polling stations.

Trust in state authorities

The trust is eroded by the rule of law problems and more currently by the low quality of "pandemic legislation". Many human rights and liberties (e.g., freedom of assembly, freedom of movement, freedom of religion) have been limited (in some cases completely banned, like freedom of assembly) with a violation of the Constitution. The Constitution provides that in a situation of a natural disaster (like COVID-19 pandemic) a state of a natural disaster may be introduced. The Constitution provides which rights and liberties may be then limited and to what extent. In practice the government decided to rule by executive acts, based on a law on the prevention and counteraction against infectious diseases, which cannot legally limit fundamental rights. Such a conclusion was confirmed by the Supreme Court in citizens' cases resolved on 17th March 2021.

NHRI's role in the system of checks and balances

On 29th April 2020, the CHR requested the court to annul a decision of the Prime Minister ordering the Polish Post Office to implement certain measures to prepare for the presidential elections of the Republic of Poland in 2020 by correspondence in view of the COVID-19 pandemic. On this basis, the Post asked local authorities to provide it with the lists of voters. The administrative court upheld the complaint.

The Commissioner for Human Rights complained to the Provincial Administrative Court of the decision of the Minister of Digitization to transfer the PESEL register (personal data of voters) to Polish Post Office.

The CHR regularly presents his positions on key issues for citizens before the Constitutional Tribunal, but his position is not taken into account by a politicized tribunal.

Since taking office, the Commissioner for Human Rights has encountered difficulties in cooperation with state authorities. These include the authorities' refusal to react on general statements and to take CHR's comments and recommendations into account and the CHR's inability to obtain information on planned bills. Public trust in institutions remains at a very low level.

The CHR budget has been limited for a couple of last years, limiting its ability to act effectively for the protection of fundamental rights. In addition, by the force of the Law of 8 December 2017 on the Supreme Court, the CHR mandate was broadened by adding a new competence of filing extraordinary complaints to the Supreme Court against all final judgments of common courts dated back up to April 1997. The CHR has received by now around five thousand requests to file such a complaint and the trend is rising since the final date for the oldest cases elapses in April 2021. The CHR did not receive any financial resources for this purpose, as mentioned above, the budget of the CHR was cut.

References

- https://www.rpo.gov.pl/sprawy-generalne/pdf/2020/4/VII.6060.19.2020/1972686.pdf
- SC Resolution of 23.01.2020 of the formation of the combined Civil Chamber, Criminal Chamber, and Labour Law and Social Security Chamber, BSA I-4110-1/20.
  https://ipo.trybunal.gov.pl/ipo/view/sprawa.xhtml?&pokaz=dokumenty&sygnatura=U%202/20
  https://www.rpo.gov.pl/sites/default/files/Wyst%C4%85pienie%20do%20PKW%2C%2025.03.2020.pdf
  https://www.rpo.gov.pl/sites/default/files/Do%20Prezesa%20Rady%20Ministr%C3%B3w%2C%2024.03.2020.pdf

Functioning of justice systems

Since 2015, the situation related to the independence of the judiciary and the independence of judges has been deteriorating as a result of changes introduced by the ruling party. The situation has not improved since the last report. Despite the judgments issued by the EU Court of Justice and the European Court of Human Rights, as well as numerous concerns raised by national and international institutions, the legislative and executive authorities have not withdrawn from the changes.

A number of cases concerning the Polish judiciary have been dealt with by the Court of Justice in the European Union, on the initiative of the Polish courts themselves (references for a preliminary ruling) or of the European Commission (infringement proceedings) and also before the ECtHR. The Commissioner for Human Rights presents his position on matters relating to the independence of the judiciary before both tribunals. Additionally, a case within the EU mechanism for the protection of Union values (Art. 7 TEU) is pending against Poland before the Council of the European Union.

The CJEU judgment in the case of *A.K. and others,* concerning the respect for the right to effective judicial protection of Supreme Court judges unduly removed from office based on unlawful rules changing the retirement age, in the light of the competence attributed to the newly created Disciplinary Chamber to hear those cases, has been deprived of a genuine significance in Poland. Likewise, the Supreme Court resolution of 23 January 2020 implementing the *A.K.* (C-585/18) ruling in domestic procedural law. In the judgment on 20th April 2020, the Constitutional Tribunal stated that the Supreme Court resolution was inconsistent with the constitution (U2/20). In the opinion of the CHR this ruling circumvents the decision of CJEU.

The so-called muzzle law had a significant impact on judges, who, fearing reprisals, stopped adopting resolutions on changes imposed to the functioning of the judiciary. During the legislative process to enact the muzzle law, the CHR presented his comments to both the Marshal of the Sejm and the Marshal of the Senate.

There is a noticeable decline in referring questions for a preliminary ruling to the CJEU and ceasing to examine the correctness of appointment of judges.

Both disciplinary and criminal proceedings brought against judges for criticizing changes in the judiciary and judicial activity are pending. Cases for the waiver of immunity are examined by the Disciplinary Chamber of the Supreme Court, although this body should

not take any action as established by the interim ruling issued by the CJEU on 8th April 2020 (C-791/19 R).

However, changes in the judiciary did not contribute to the speed of hearing cases. Courts deal with bureaucracy and the number of incoming cases. During the epidemic, there was a problem with access to court and the openness of proceedings. The CHR noted numerous problems related to this.

The CHR presents its position on these matters before CJEU and the ECtHR. He also deals in key cases in the constitutional tribunal and before national courts.

During the legislative process on the muzzle act, the CHR presented his comments to both the Marshal of the Sejm and the Marshal of the Senate.

The CHR appealed to the Minister of Justice for a proper reform of the judiciary, which would actually improve the situation in the courts. The CHR also drew attention to the problems that arose in the functioning of the judiciary during the pandemic.

The CHR also presented his comments to the authorities conducting disciplinary proceedings against judges.

References

- https://www.rpo.gov.pl/pl/content/ustawa-kagancowa-do-odrzucenia-adam-bodnar-pisze-do-marsza%C5%82ka-senatu
- https://www.rpo.gov.pl/sites/default/files/WG%20do%20MS%20w%20sprawie%20konieczno%C5%9Bci%20elektronizacji%20s%C4%85downictwa%2C%208.06.2020.pdf

Media pluralism and freedom of expression

The situation of journalists who cover public demonstrations must be noted, as explained in the section above on human rights defenders. This has included attacks, brutality of police, journalists stopped in ‘kettles’ and they were not allowed to do their reporting job on the spot by police.

For the last few years, the ruling party has pledged to "re-Polishize" the domestic media. One big step in that direction was made in December 2020, with an announcement that Poland's state-controlled oil refiner PKN Orlen was buying the local media group Polska Press from Germany's Verlagsgruppe Passau. This decision reignited a debate about press freedom in the country. The decision, although controversial for many, was accepted by the Office of Competition and Consumer Protection. In its opinion on this decision, the CHR raised concerns that, as a result of it, public authorities will be able to take a dominant position on the regional media market. Just few weeks later another development triggered public discussion. The Polish government announced plans to introduce a new tax on the media levied on income from advertisements. Major private outlets unitedly protested against this measure with an unprecedented 24-hour blackout. The tax will drastically influence the condition of small media companies.

The Ombudsman also reacted on the violent attack to the editorial office of the Fakty magazine. This attack, where the office was raid and severely damaged, was covered by public media which attacked private media (labelling them as foreign entities and personally attacking journalists, such as by claiming publicly that the parents of one journalist had collaborated with the communist regime).

Moreover, the situation in the public media sector has worsened, with an increase of politically motivated dismissals being reported. The case of the Third Program of Polish Radio (Trójka) is particularly worth mentioning. In the song '*Twój ból jest lepszy niż mój*' ('Your Pain is Better than Mine'), the Polish artist Kazik criticised the actions of Jarosław Kaczyński, the head of the ruling PiS party in Poland. His song won the listeners' vote on Poland's Trójka radio station and topped the charts on 15 May 2020. Immediately afterwards, the Trójka management annulled the vote and removed the information from the station's website. In protest, many employees left the station, including the host of the chart show. Internal regulations in public media were introduced in order to limit social media activities of journalists which manifest opposition to the government's line.

NHRI's actions

The CHR has taken many actions in relation to media. Especially worth noticing is the strategic judicial litigation of the CHR, e.g.:

1. Independence of public radio and television – on request of the CHR the Constitutional Court issued a judgment in case K 13/16 declaring unconstitutionality of a reform of public media management and supervisory body nomination process (the CC ruled out provisions allowing the Minister of Treasury to nominate them directly, also criticising similar

competences of the newly established National Media Council (RMN), as bodies circumventing constitutional powers of the National Broadcasting Council (KRRiT)). However, the CC judgment of 2016 has not been implemented yet.

2. The CHR challenged a UOKiK's decision (Polish regulator in the area of consumers' rights and competition) allowing a merge between Orlen (the biggest Polish oil company) and Polska Press (one of the biggest media company owning 20 regional newspapers and over 500 internet portals with a number of 17,4 million users). The merge in the opinion of the CHR goes beyond legal tasks of a public oil company and it will affect negatively pluralistic media market. The decision of the UOKiK has not analysed many factors regarding the media market and therefore shall be nullified by courts and then reconsidered.

References

- Merger case: https://www.rpo.gov.pl/pl/content/wstrzymanie-wykonania-zakupu-polska-press-przez-pkn-orlen-sad-przyjal-wniosek-rpo

Corruption

The CHR pays great attention to transparency and access to public information as a prerequisite to ensure effective corruption prevention. The CHR fulfils in practice a role of extra-judicial independent body protecting fundamental rights in this area, mainly helping citizens with their individual cases. Therefore, the CHR critically assesses the complaint directed to the Constitutional Court by the First President of the Supreme Court (case K 1/21). In her complaint the First President challenged basis institutions of the Law of 2001 on access to public information, using citizens' motions for information directed to Supreme Court as an example of misuse of citizens' rights. The CHR joined proceedings before the Constitutional Court demanding a declaration of constitutionality of the challenged legislation.

Other relevant areas

The lack of independent Constitutional Courts limits the capacities of the CHR to challenge legislation violating fundamental rights as guaranteed by the Constitution and international and European law. During the pandemic, actions of the police violated human rights, however there is no effective accountability system to be applied. Generally speaking, the

erosion of rule of law is developing and the fundamental rights protection system is becoming weaker due to system factors and gradual process of annihilation of the system checks and balances.

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

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

The CHR has noted numerous irregularities in the functioning of the state and public authorities during the pandemic. The office has received numerous complaints from citizens and has tried to consider each case.

Courts have canceled hearings, and the parties have had problems with submitting their pleadings and entering the premises of courts and offices. The courts have also limited the number of proceedings and unfortunately, only a few had the resources to launch online hearings.

The authorities have taken advantage of the lack of a state of emergency to introduce numerous changes to the law by means of an ordinary act. There was a problem with the organisation of the presidential elections scheduled for May 2020, since until the last moment, citizens did not know if and in what form they would take place.

Access of citizens to public information has been limited. Difficulties in accessing primary care have been reported. The rules related to quarantine remain unclear. There was a huge problem with the availability of education. The schools cannot react to pathological situations and it is not possible to provide psychological help for students.

Amidst the pandemic, the Constitutional Tribunal restricted the right to abortion (case K 1/20). This has led to numerous protests that were, sometimes brutally, suppressed by the police.

When it comes to long-term implications of the pandemic, the limitations introduced during the pandemic may be prolonged and the limitation of fundamental rights by force of executive acts may be prolonged.

The CHR organized online meetings and conferences, gave and conducted interviews. During the winter break, the Commissioner organized meetings for young people on the protection of human rights.

References

- https://isap.sejm.gov.pl/isap.nsf/DocDetails.xsp?id=WDU20200000374
- https://www.rpo.gov.pl/pl/kategoria-tematyczna/koronawirus-i-epidemia-w-polsce

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

During the coronavirus pandemic, the office switched to remote work. The number of complaints directed to the office of CHR was 25% higher when compared to similar period in 2019. It was also necessary to undertake numerous interventions in connection with many ambiguities in the adopted regulations. NPM visits, however limited, were continued. The staffing of the office stayed the same, however the budget of the CHR was cut by the parliament.

Portugal

Portuguese Ombudsman

International accreditation status and SCA recommendations

The Portuguese Ombudsman was last reaccredited with A status in November 2017. While acknowledging that the selection and appointment process is governed by the Parliament's rules of procedure, the SCA recommended the formalization of the process in relevant legislation. Also, the SCA encouraged the NHRI to advocate for the legal provision for an independent and objective dismissal process of the NHRI's deputies.

Independence and effectiveness of the NHRI

Changes in the regulatory framework applicable to the Institution

The legal framework governing the functioning and guarantees of the Portuguese Ombudsman is traditionally stable and has not undergone any changes in the last year.

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

There have not been any relevant developments in the past year affecting the functioning of the Portuguese Ombudsman, apart from COVID-19 measures and impacts which are addressed in a dedicated section below.

Human rights defenders and civil society space

There have not been any significant changes with regard to the information provided in the 2020 Rule of Law Report.

Relevantly to known racist attacks to rights groups (e.g., the case of SOS Racismo), the Government recently created a working group on the prevention and combat to racial discrimination (1).

Updated figures of the Rule of Law Index 2020 for Portugal are available here - https://worldjusticeproject.org/sites/default/files/documents/WJP-ROLI-2020-Online_0.pdf , page 128. In this regard, Portugal has scored:

Freedom of expression -80%

Freedom of association - 85%

Civic participation - 77%.

References

(1) https://dre.pt/home/-/dre/153341296/details/maximized

- World Justice Project's 2020 Rule of law Index: https://worldjusticeproject.org/sites/default/files/documents/WJP-ROLI-2020-Online_0.pdf

Checks and balances

Guarantees and safeguards, as described in ENNHRI 2020 Rule of Law Report remain in place.

WJP Rule of Law Index figures for Portugal:

Limits by legislature - 84%

Limits by Judiciary - 76% Independent

Auditing - 75%

Non-governmental checks - 80%

Lawful transition of power - 91%

Pursuant to Articles 23 of the Portuguese Constitution and 1(1) of the Ombudsman Act, the main function of the Portuguese Ombudsman is to defend and promote the rights, freedoms and guarantees and legitimate interests of citizens, ensuring that public authorities act fairly and in compliance with the law.

The limits to the Ombudsman's mandate are set out in Article 22 of the Ombudsman Act, excluding the political and jurisdictional functions from the Ombudsman competence. On the one hand, the Ombudsman cannot intervene with regard to courts or the Public

Prosecution Service in order to scrutinize, monitor or influence the way in which judicial cases are handled. On the other hand, the Ombudsman cannot intervene in matters relating strictly to political choices, falling within the legislator's margin of discretion.

The Ombudsman may act on matters falling within his/her competence on the basis of complaints submitted by any person or group of persons (whether natural or legal persons), as well as on his/her own initiative.

The Portuguese Ombudsman has the following competences:

- To address recommendations to the competent bodies with a view to correcting illegal or unfair acts of public authorities or to improving their services and the administrative procedures followed by those services – i.e., administrative recommendations;
- To point out shortcomings in legislation, to issue recommendations concerning its interpretation, amendment or revocation, or to suggest the drafting of new legislation – i.e., legislative recommendations. Such recommendations or suggestions shall be forwarded to the President of the Parliament, to the Prime Minister and to the Ministers directly involved and, if applicable, to the Presidents of the Regional Legislative Assemblies and to the Presidents of the Governments of the Autonomous Regions – Azores and Madeira;
- To issue opinions upon request of the Parliament on any matter related to its activity;
- To promote the divulgation of the content and meaning of fundamental rights and freedoms, as well as of the purpose of the Ombudsman's institution, the means of action at its disposal and how to appeal to its decisions;
- To intervene in the protection of collective or diffuse interests when public authorities or companies and services of general interest, regardless of their legal status, are involved;
- To request the Constitutional Court to declare the unconstitutionality or illegality of any legal provisions or of legislative omissions;

If the Ombudsman deems it convenient, he/she may participate in the work of parliamentary committees for the purpose of dealing with matters within his/her competence.

To examine matters falling within his/her scope of competence, the Ombudsman has significant powers of investigation.

Where the circumstances so require, the Ombudsman may decide to issue statements or to publish information concerning the conclusions reached in the proceedings or any other matter related to his activity, using, if necessary, the State-owned media and benefiting in any event from the legal regime governing the publication of official statements, according to the applicable laws.

While the Ombudsman's mandate is generally performed without any obstacles, in Portugal there is no focal point in Parliament which would allow for a swift follow-up on the Ombudsman recommendations to Parliament.

References

- Portuguese Constitution; TC > (tribunalconstitucional.pt)
- Ombudsman Act. - Provedor de Justiça - Na defesa dos cidadãos (provedor-jus.pt)

Functioning of the justice system

Please refer to 2020 Rule of Law Report.

The Portuguese Ombudsman does not have a mandate to intervene with regard to courts or the Public Prosecution Service in order to scrutinize, monitor or influence the way judicial cases are handled. The Ombudsman's powers of inspection and monitoring can only be exercised with regard to administrative dimensions of the activity of courts – especially cases of judicial delay – and do not extend to the content or merits of judicial decisions.

Therefore, complaints submitted to the Ombudsman dealing with judicial acts are usually dismissed for lack of competence.

In 2020, the Ombudsman received approximately two hundred of complaints dealing with judicial delays and/or non-enforcement of judicial decisions.

WJP Rule of Law Index 2020 figures for Portugal:

Accessibility and affordability - 69%

No improper government influence - 77%

No unreasonable delay - 43%

Effective enforcement - 53%

Media pluralism and freedom of expression

Please refer to 2020 Rule of Law Report.

WJP Rule of Law Index for freedom of expression - 80%.

Corruption

Please refer to 2020 Rule of Law Report.

Portugal is ranked 33 out of 180 countries in Transparency International's 2020 Corruption Perception Index (1).

WJP Rule of Law Index 2020 for Portugal:

In the executive branch - 66%

In de judiciary - 88%

In the police/military - 87%

In the legislature - 50%

Justice statistics identify 70 crimes of corruption registered with the police in Portugal in 2019, resulting in 57 convictions.

References

- https://estatisticas.justica.gov.pt/sites/siej/pt-pt/Paginas/Corrupcao.aspx
- https://www.transparency.org/en/countries/portugal

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

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

In 2020, the state of emergency was in force from 18 March to the 3rd of May (1). The Government then issued several different restrictive measures on the basis of ordinary legislation (notably the Public Health Act and the Civil Protection Act).

On the 6th of November 2020, the President of the Republic declared again the state of emergency, which has been continuously renewed since.

During the state of emergency, several fundamental rights have been suspended, notably: (i) free movement and fixation in national territory; (ii) private property and economic and social initiative; (iii) worker's rights; (iv) right to travel internationally; (v) freedom of reunion and demonstration; (vi) freedom of religion; (vii) right to resistance; (viii) freedom to teach and learn; (ix) data protection; (x) right to health in its negative dimension and right to freely develop one's personality.

There has been a public debate on the proportionality of some measures imposed by the Government in response to the pandemic. The discussion has been most acute on measures adopted throughout the periods not covered by the state of emergency.

In 2020, a significant number of complaints submitted to the Ombudsman focused on various aspects of Covid-19 regulations touching upon very different rights-related issues (ranging from free movement of citizens to access to basic goods of people in confinement, lack of governmental support to independent workers, reimbursement of travel costs by travel agencies, lay-off schemes, banking services, domestic violence, parental responsibilities, access to education, among others).

There also was a dramatic increase of the number of calls to the hotline for the support of the elderly, who have been particularly affected by the pandemic and by the measures adopted in response.

In this context, throughout the pandemic, several types of COVID-19 issues arrived at the Ombudsman’s Office, on for instance the obligatory use of masks, mandatory quarantine, testing and control of temperature, mandatory use of “stay-away Covid” application for mobile phones, right of access to information, and freedom of reunion and demonstration.

In general, the Ombudsman considered that constitutional safeguards were ensured in the majority of cases. However, in some situations, the Ombudsman manifested concerns issuing recommendations and asking for clarifications, for example: (i) on the need to have uniform quarantine regimes throughout the national territory, (ii) on the mandatory quarantine in Azores, in hotel facilities, exclusively for non-residents and at one's expenses; (iii) isolation measures for children placed in foster care; and (iv) suspension of distance learning in January 2021.

In this ambit, the Ombudsman further submitted several recommendations to different public authorities on Covid-19 measures:

- Recommendation on the adoption a specific temporary licence for prisoners;
- Recommendation on the adoption of an exceptional regime for the extension of medical certificates on disabilities/incapacities;
- Recommendation on the adoption of financial support measures for providers of services/independent workers
- Recommendation on breastfeeding and the right to have a companion of the mother's choice during delivery;
- Recommendation on the possibility of visits by family members to Covid-19 dying patients and on their presence in funerals;
- Recommendation on the suspension of tax and social security execution procedures;
- Question to the Government on the exclusion of medical professionals from the scope of application of the special protection regime applicable to chronical patients and immunosuppressed individuals;
- Questions to the Government on the scope of application of the lay-off regime

Furthermore, the Ombudsman decided not to refer the first presidential decree on the state of emergency to the Constitutional Court for lack of constitutional issues. More recently, a pandemic norm on the support regime applicable to rents of shops located in shopping centres was sent to the Constitutional Court (2).

Moreover, since March 2020, the Ombudsman increased its efforts to ensure closer monitoring of the Roma communities, especially in light of the need to protect Roma children and ensure access to education and to basic living conditions. Attention to the needy and homeless people has also been a priority of the Ombudsman action ever since.

At the international level, the Ombudsman has contributed to several questionnaires, surveys and requests from different entities, such as the UN High Commissioner for Human Rights, the European Ombudsman, the Global Alliance of National Human Rights Institutions and the Federación Iberocamericana de Ombudsman.

Lastly, the Ombudsman has initiated an in-depth, systemic and systematized reflexion on the impact of the pandemic on rule of law issues, an exercise which is expected to be completed in 2021.

References

- Please refer to 2020 Report.
- Covid legislation has been compiled in a dedicated online section of the official journal - https://dre.pt/legislacao-covid-19-areas-tematicas#1
- https://dre.pt/documents/10184/2816226/DPR_14-A_Traducao.pdf/9cd3619b-2bc6-47fb-a8f7-1e651113cb03
- 2020_11_20_Tribunal_Constitucional.pdf (provedor-jus.pt).
- All recommendations available here: Provedor de Justiça - Na defesa dos cidadãos (provedor-jus.pt)

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

The work performed by the Ombudsman has suffered minor changes since the pandemic started in Portugal.

According to national legislation on the state of emergency, the Ombudsman keeps working in permanent session. In compliance with rules and recommendations and in order to limit social contacts, full time teleworking was progressively introduced for the Ombudsman staff since March 2020. The staff was granted access to computers and phone lines, and regardless of minor IT difficulties, has well adapted to current arrangements. A limited task force – composed of the Ombudsperson, two members of Cabinet, the two Deputy Ombudsmen, department coordinator, a public relations collaborator and two members of accounting and staff departments – keeps on working in the headquarters.

In person services were suspended for a few weeks during the first wave. All other services remained fully functional, with individuals submitting complaints through alternative means, notably the website, email and phone lines, and in presence once public attendance was resumed.

The three hotlines ran by the Ombudsman – for the protection of the elderly, children and persons with disabilities – kept operating as usual.

Visiting activities of the National Preventive Mechanism were suspended for several months but have been resumed since July 2020. Notwithstanding, considering the status of the pandemic some visits have been ensured by videoconferencing.

During the first state of emergency on site visits following the submission of a complaint were also suspended but have also meanwhile been resumed.

Romania

Romanian Institute for Human Rights

International accreditation status and SCA recommendations

The Romanian Institute for Human Rights (RIHR) is a non-accredited associate member of ENNHRI. It had been previously accredited with C status, which is no longer a valid accreditation status. The Romanian Institute has a strong promotional mandate and has been addressing a wide range of human rights in Romania.

In 2020, the Romanian Ombudsman (which is not an ENNHRI member and is not accredited) and the Romanian Institute both applied for accreditation. The request for accreditation of both bodies is being processed by the SCA, in accordance with its Rules of Procedure.

Impact of 2020 rule of law reporting

Follow-up initiatives by the Institution

The Institute (RIHR) informed the leadership of the two human rights committees of the Romanian Parliament about the ENNHRI Report and the Institute's contribution to this document. At the same time, the Human Rights Directorate of the Ministry of Foreign Affairs was informed about the report.

Independence and effectiveness of the NHRI

Changes in the regulatory framework applicable to the Institution

In 2020, a legislative proposal to amend Law no. 9/1991 on the establishment of the Romanian Institute for Human Rights, was discussed in the Romanian Parliament.

The RIHR proposed to amend the Law in order to update the Institute's obsolete regulatory framework, taking into account international bodies' recommendations (in particular from the SCA) notably to strengthen the RIHR autonomy and independence.

The proposed amendments included:

- Regulation of the legal status of the Institute as an independent institution from any other public authority;
- Providing that the activity of the Institute should follow the Paris Principles;
- Systematisation and completion of the attributions included in the mandate of the Institute;
- Plurality and transparency of the process of appointing members of the governing bodies of the Institute;
- Limitation of the mandate of the members of the Institute's management;
- Clarification of the status and remuneration of the staff of the Institute;
- Public debate of the Institute's report;

On June 30, 2020, it was adopted by the Romanian Senate, as decisional Chamber. However, as the document was subject to constitutional review; the Constitutional Court admitted an unconstitutionality objection raised by the Romanian President. In its analysis, the Constitutional Court identified several elements of extrinsic unconstitutionality on the legislative process (the wrong qualification of the legal nature of the Institute determined the adoption of the document as organic law and not as ordinary law, thus reversing the order of referral of the Chambers [1]; at the same time, Parliament did not request the financial statement from the Government, as laid down in art. 15 of Law no. 500/2002 on public finances [2]). As a consequence, considering the nature of the unconstitutionality issue, the Court decided that the law was unconstitutional as a whole.

Moreover, considering the status of the Institute, the objectives for which it was created, its attributions and institutional connections, the Constitutional Court noted that the Institute is a public institution of national interest, and its main role is to be a documentation/consultation and research centre in the field of human rights.[3]

Currently, a legislative proposal on the merger of the Romanian Institute for Human Rights into the National Council for Combating Discrimination is under debate in the Senate. However the two institutions have major differences regarding their legal status, mission, and mandate:

- RIHR has the status of independent body with legal personality; NCCD was established as a state authority with legal personality,
- RIHR's mission is to ensure a better knowledge by public bodies, NGOs and Romanian citizens, of human rights issues; NCCD's mission is to implement the

principle of equality between citizens, provided by the Romanian Constitution, in the national and international legislation

- Finally, RIHR has a general mandate to provide research, information, training and education activities in the field of human rights; NCCD exercises a mandate limited to the field of implementing the principles of equality and non-discrimination

The proposition of this merger with the NDDC has caused an unfavourable working climate in the RIHR, as the staff of the Institute was affected by the lack of security and uncertainty regarding the future.

References

[1] The Court notes that the law does not change the legal nature of the Institute from public institution into autonomous administrative authority, see §51-57 of the Decision of the Constitutional Court, no. 772 of October 22, 2020, https://senat.ro/legis/PDF/2020/20L266DC.PDF

[2] Under the constitutional relations between the Parliament and the Government, it is mandatory to request information when a legislative proposal affects the provisions of the state budget. Thus, given the imperative nature of this obligation, it follows that non-compliance has as a consequence the unconstitutionality of the adopted law. See §59-65 of the Decision of the Constitutional Court, no. 772 of October 22, 2020, https://senat.ro/legis/PDF/2020/20L266DC.PDF

[3] According to §47 of Decision no. 722 of October 22, 2020

[4] https://www.senat.ro/legis/lista.aspx?nr_cls=L701&an_cls=2020

Enabling space

Several elements have hindered the activity of the Institute, including insufficient resources and an obsolete legislative framework. Indeed, the Law establishing the Institute dates from 1991 and has not been modified since, although in the past two years there were two legislative proposals in this regard, aimed at strengthening the observance of the Paris Principles. In the past 10 years, the Institute carried out its activity with a shortage of the

staff, especially with regards to specialists: in 2020, the Institute operated with a staff deficit of 31% (the unoccupied positions being specialised positions).

The Institute nevertheless kept on pursuing to fulfil the mandate provided by Law no. 9/1991, as recognised for example by the Working Group on discrimination against women and girls following in its working visit to Romania, February 24–March 6, 2020:

„(…) We are pleased to note the operation of different independent state-based human rights bodies: the National Council for Combating Discrimination, the Office of the Romanian Ombudsman, and the Romanian Institute for Human Rights, all of which are playing an important role in the promotion and protection of the human rights of women and girls. We call on the Government to ensure adequate resources to these institutions and strengthen their independence. (…)"[1]

References

[1] https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=25687&LangID=E

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

The fact that the proposal on the merger by absorption of the Romanian Institute for Human Rights by the National Council for Combating Discrimination is under debate in the Senate has been under parliamentary debate has created a less favourable environment for the Institute's activity, as explained above.

Human rights defenders and civil society space

In 2020, the composition of the Romanian Economic and Social Council changed [1]. Civil society members were appointed following a voting process, but initially one of the elected civil society members was replaced by a decision of the interim Prime Minister. Subsequently, this decision was reversed, under pressure from civil society and the media, and the position went to the person who had been voted for.

The RIHR collaborated with and promoted the work of women's rights organisations and of representatives of civil society with expertise and experience in the field of combating bullying and cyberbullying.

References

[1] The Economic and Social Council is a consultative body for setting economic and social strategies and policies at national level

Checks and balances

According to Law no. 218/2002 on the organisation and functioning of the Romanian Police [5], the latter is part of the Ministry of Internal Affairs and has responsibilities in defending fundamental rights and freedoms of individuals, private and public property, crime prevention and detection, observance of public law and order, in accordance with the law. The activity carried out by the Romanian Police is a specialised public service and is carried out in the interest of the person, of the community, as well as in the support of the state institutions, exclusively on the basis and for the enforcement of the law. However, some provisions of the Law no. 218/2002 may lead to the limitation of the police officers' liability and, implicitly, to potential abuses on their part: Article 36 (4) and (5) lack predictability, as they allow the application of a custodial measure, without an appropriate temporal circumstance: The verification of the factual situation and the potential taking of legal measures against the person taken to the police headquarters is carried out *immediately*. The police officer has the obligation to allow the person to leave, *immediately*, the police headquarters after the completion of the activities according to par. (4) or the required legal measures. The absence of clear and predictable legal regulations clearly establishing the period within which the police officer is responsible for performing his/her duties reduces the degree of accountability of national authorities.

The decision of the Court is the final step of the judicial procedure. Although the judgment of the Court is usually enforced voluntarily, an enforcement can proceed if necessary - as a phase subsequent to the trial. In order to contest the enforcement, conclusions given by the enforcement officer, or any enforcement act, an appeal can be lodged by interested or injured parties. The appeal can also be lodged when the enforcement officer refuses to carry out a seizure or to fulfil an act of enforcement under the conditions of the law.

Article 719 of the Code of Civil Procedure, in its current formulation, hampers the implementation of judgments of national courts: "Pending the judgement on the appeal against enforcement or another request for enforcement, at the request of the interested party and only for good reasons, the competent court may suspend enforcement. The suspension may be requested together with the appeal against enforcement by a separate application.". Its wording is ambiguous, leaving it to the interpretation of the courts the determination of the actual procedural moment until which the execution of the judgment can be suspended following the filing of an appeal against enforcement. In particular, it does not specify whether the decision on the appeal on enforcement shall be taken following the decision of the Court of First Instance or the final judicial decision.

This confusion was mitigated by the judgment rendered on 8 February 2021 by the High Court of Cassation and Justice of Romania following an appeal in the interest of law submitted by the People`s Advocate. The Court established that the suspension of enforcement is “limited in time up to the date a court of first instance rules in the challenge brought against foreclosure.” [6]

- GEO no. 26/2020 [7] amends and completes some normative acts regarding elections for the Senate and the Chamber of Deputies, as well as some measures for the efficient organisation and conduct of early parliamentary elections, aspect contrary to the provisions of Article 115 (6) of the Constitution, which provides that emergency ordinances cannot be adopted in the field of constitutional laws, or affect the status of fundamental institutions of the State, the rights, freedoms and duties stipulated in the Constitution, the electoral rights, and cannot establish steps for transferring assets to public property forcibly. It is clear that the legitimacy of the electoral process is harmed, in the context of regulation, by normative acts having legal force inferior to the law, (GEO), as these aspects are, *expressis verbis*, in the competence of the country's legislative authority. Another aspect that implies effects on the legitimacy of the electoral process consists in the fact that GEO no. 26/2020 was adopted in the immediate period of the organisation of elections, affecting the principle of legal certainty, changing the perception of voters from the perspective of legitimate expectations regarding the general framework of elections. The Constitutional Court emphasised in 2012 [8] that an untimely legislative amendment could create additional difficulties for the authorities in charge of its application, in terms of adapting to the newly established procedure and the technical operations it entails. By Decision no. 150/2020, the Constitutional Court held that the Government Emergency Ordinance no. 26/2020 is unconstitutional, in whole. [9]

The legislation in force applicable to the activity of public administration authorities ensures the concrete realisation of the requirements of openness and transparency of public administration activity, consequently improving communication with citizens and increasing their trust in public authorities. Law no. 52/2003 [10] states that the purpose of the regulation is: to increase the degree of responsibility of the public administration towards the citizen, as a beneficiary of the administrative decision; to actively involve citizens in the process of making administrative decisions and in the process of drafting normative acts; to increase the degree of transparency of the entire public administration.

With a view to implementing these principles , normative acts that appropriately amend the legislation in force have been adopted: the Law no. 10/2020 [11] modifies Government Ordinance no. 71/2002 providing that local public administration authorities must "*ensure the transparency and the access of operators to the information and documents necessary for the development of procedures to award the management delegation contracts, in compliance with the legislation in the field of public procurement and works and services concessions*".

From a legislative point of view, the requirements of openness and transparency of the public administration activity are therefore ensured, however in practice, it is too slow regarding the digitalisation process that would facilitate communication to citizens. And even more considering how the COVID-19 pandemic showed the importance and need to introduce digitalisation in all areas of social life.

References

[5] Law no. 218 of 23 April 2002 on the organisation and functioning of the Romanian Police, published in the Official Journal no. 170 of 2 March 2020.

[6] Please see https://www.scj.ro/en/1538/5498/Press-releases-appeals-in-the-interest-of-the-law-2021/Press-release-Panel-for-Appeals-in-the-interest-of-the-Law-in-its-session-of-8-February-2021

[7] Emergency Ordinance no. 26 of 4 February 2020 on the amendment and completion of some normative acts in the matter of elections for the Senate and the Chamber of Deputies as well as some measures for the efficient organisation and conduct of early parliamentary elections, published in the Official Journal no. 118 of 14 February 2020.

[8] Constitutional Court of Romania, Decision no. 51 of 25 January 2012, published in the Official Journal no. 90 of 3 February 2012.

[9] Constitutional Court of Romania, Decision no.150 of 12 March 2020, published in the Official Journal no.215 of 17 March 2020.

[10] Law no. 52/2003 on transparency of decision-making in public administration, published in the Official Journal no. 749 of 3 December 2013.

[11] Law no. 10 of 9 January 2020 amending and supplementing Government Ordinance no. 71/2002, published in the Romanian Official Journal no. 14 of 10 January 2020.

Functioning of the justice system

In 2020, the RIHR organised training for specialists of the Bucharest Bar on the European system for the protection of human rights. The course entitled "Regional Human Rights Instruments and Mechanisms" aimed to provide the conceptual definition of human rights-specific terminology, the detailed content of regional human rights instruments (namely the European Convention on Human Rights and the Charter of Fundamental Rights of the European Union), an analysis of rights categories and their articulation, as well as a detailed illustration of the proceedings before the European Court of Human Rights and the Court of Justice of the European Union, and of the mutual relations and influences between them.

The RIHR dealt with issues related to the efficiency of the justice system in accordance with its mandate as provided for by Law no. 9/1991, which include the possibility to carry out initiatives in particular in the field of research, training, information and human rights education. On this basis, in 2020, RIHR carried out a research concerning the particularities of the organisation and functioning of the European Court of Human Rights, in which led

to the publication of the volume "European Court of Human Rights: theoretical landmarks and case-law analysis".

Given that parliamentary elections took place in December 2020, the new parliamentary majority and the new government are considering disbanding the Special Section [1], considering the reports of the European Commission (EC 2020 Rule of Law Report [2] and EC report on Progress in Romania under the Cooperation and Verification Mechanism [3]). In this sense, on February 18, the Romanian Government approved the draft law proposed by the Ministry of Justice, regarding the disbanding of the Section for the investigation of offences committed by the judiciary [4]. The project is to enter the parliamentary debate.

References

[1] Section for the Investigation of Offences in the Judiciary

https://www.mpublic.ro/ro/content/sec%C8%9Bia-pentru-investigarea-infrac%C8%9Biunilor-din-justi%C8%9Bie [2] https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52020SC0322&from=EN

[3] https://ec.europa.eu/info/sites/info/files/progress-report-romania-2019-com-2019-499_en.pdf

[4] https://sgg.gov.ro/new/wp-content/uploads/2021/02/LG.pdf

Media pluralism and freedom of expression

Taking into account the responsibility to provide information according to the RIHR mandate, the Institute guaranteed the access of the media to the results of actions, events, programs, projects organised under its coordination. In this sense, the Institute ensures the publicity of research, education and training actions by disseminating specific information on its website (www.irdo.ro).

The Institute also issues shared opinions on particular human rights issues at the request of the media, thus providing adequate information according to which media representatives can inform citizens in a relevant, responsible and objective manner. The RIHR issue for

instance, at the request of the media, an opinion on the promotion and protection the rights of older persons in the context of the challenges of the COVID-29 pandemic. The collaboration between the Institute and the media structures is also highlighted through the press releases sent by RIHR following the organisation/participation in events and actions provided by its mandate.

Corruption

The national legal framework establishes a comprehensive approach to the issues related to corruption, taking into account both legal and financial implications. Three legal initiatives were taken in 2020 on these matters to further strengthen the anti-corruption legal framework:

- Law no 283/2020 [1] addresses financial implications of corruption, harmonising the national legislation with the requirements of Directive (EU) 2017/1371. This Law amends Law no. 78/2000 on the prevention, detection and sanctioning of acts of corruption by introducing new offences which affect - from a material point of view - the budget of the European Union.
- Government Emergency Ordinance no. 111/2020 [2] amends the existing normative framework (especially Law no. 129/2019 for preventing and combating money laundering and terrorist financing, as well as for amending and supplementing some normative acts, published in the Official Journal of Romania, Part I, no. 589 of 18 July 2019) by inserting provisions in the spirit of implementing the principles of interinstitutional cooperation and transparency.
- Law no. 105 of 3 July 2020 [3] complements the regulatory framework for rules on integrity in the exercise of public office and dignity, taking into account the communication challenges posed by the COVID-19 pandemic, and introduces provisions to facilitate electronic communication in this area.

Romania still has to transpose into national law the EU Whistleblowers Protection Directive2019/1937. One of the obligations imposed by the directive is that public institutions and private companies having 50 or more employees must establish certain mechanisms dedicated to warnings/reports, safety standards, procedures to guarantee anonymity of the data of whistleblowers. The transposition deadline is December 2021. In December 2020, the Ministry of Justice had a meeting with civil society to discuss the drafting of the transposition law [4]. While the transposition of the directive is an important step for the protection of whistleblowers, it is then essential that it is implemented.

At the same time, a bill was submitted to Parliament to make information of public interest transparent and to facilitate citizens' access to information of public interest (the Chamber of Deputies is the decision-making chamber) [5]. The expected changes of the normative act are represented by the new obligation for public authorities and institutions to publish and communicate information of public interest in an open format that can be processed automatically, and the realisation and updating of an electronic public register of registered requests and answers in an anonymous manner.

On another hand, in 2020, there were attempts to reduce access to public information. For example, a draft law restricting access to information limited to normative administrative acts concerning the general public interest has been submitted to Parliament. The draft law has meanwhile been withdrawn by the initiator [6].

References

[1] Law no. 283 of 8 December 2020, published in Official Journal no. 1199 of 9 December 2020.

[2] Government Emergency Ordinance no. 111 of 1 July 2020, published in Official Journal no. 620 of 15 July 2020.

[3] Amending Law no. 176/2010, published in Official Journal no. 588 of 6 July 2020.

[4] https://euwhistleblowingmeter.polimeter.org/promise/14109

[5] http://cdep.ro/pls/proiecte/upl_pck2015.proiect?cam=2&idp=18851

[6] https://senat.ro/legis/lista.aspx?nr_cls=b584&an_cls=2020

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

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

There were a series of normative acts adopted during the state of emergency/alert, established following the COVID-19 pandemic, which raise concern in terms of their compliance with the principle of separation of powers in the state, a principle enshrined in art. 1 (4) of the Romanian Constitution. The following normative acts have been the object of the constitutionality review exercised by the Constitutional Court:

After the Presidential Decree no. 195/2000 declaring the state of emergency (an administrative act that restricted/limited multiple rights and fundamental freedoms e.g. freedom of movement, right to private and family life, free access to justice, economic freedom) was issued the Court was notified to determine the constitutionality of art. 14 c[1])-f) of the Government Emergency Ordinance (GEO) no. 1/1991, as they would allow the President to legislate – in areas for which the Constitution requires the intervention of the primary or delegate legislator – by amending organic laws and by effectively restricting the exercise of human rights.

- The Constitutional Court consider ed [1] that the provisions of GEO no. 1/1991 "[…] do not entitle the President to adopt norms with the rank of law, so that the Constitutional Court to find a violation of the invoked constitutional norms". Thus, urgent regulations that the President can adopt have an administrative nature and can only target aspects that are regulated by the law. "The Court noted that the way in which the President exercised his constitutional role, by exceeding the legal framework, is not the result of an unconstitutionality flaw of the normative act of primary regulation, by virtue of and within the limits of which the public authority was empowered to act." "The Constitutional Court holds that in the current legislative framework, the legal regime of the state under siege and state of alert can only be regulated by a law, as a formal act of the Parliament, adopted in accordance with the provisions of art. 73 (3) g) of the Constitution, as organic law."

At the same time, the Constitutional Court also examined the constitutionality of GEO no. 34/2020 amending GEO no. 1/1991 and held that there was a violation of art. 115 (6) of the Constitution, i.e., the requirement that the legislative delegation should not be applied for acts which affect rights and freedoms stipulated in the Constitution.

- The GEO no. 21/2004 on the National Emergency Management System (approved by Law no. 15/2005, with subsequent amendments and completions) allows to adopt measures to restrict the exercise of fundamental rights through administrative acts (regulations, plans, programmes or operational documents approved by decisions, orders or provisions) issued by high administrative bodies. This does not respect the rule by which the measure restricting the exercise of certain rights

should be provided by law. The Constitutional Court ruled in [2] that although the legislation providing for the legal regime of crisis situations that require exceptional measures implies a greater degree of generality than the legislation applicable during the normal period (precisely because the peculiarities of the crisis situation are the deviation from normal (exceptionality), and the unpredictability of the serious danger affects both society as a whole and each individual), the generality of the primary rule cannot be mitigated by secondary legislation that complement the existing regulatory framework. In this sense, the Constitutional Court concluded that the actions and measures taken during the state of alert, pursuant to the provisions of Government Emergency Ordinance no. 21/2004, cannot target fundamental rights or freedoms. The Court also found that the delegated legislator cannot, in turn, delegate to another administrative authority/entity measures for which it itself does not have jurisdiction.

According to the provisions of Law no. 55/2020, the Government is empowered to adopt a decision enforcing the state of alert in order to adopt measures to prevent and combat the effects of COVID-19 pandemic. Article 4 (3) of this Law provides that if the state of alert targets at least half of the administrative territorial units of the country, the decision of the Government is subject to the approval of Parliament, which can then approve, in full or with amendments, the measure adopted by the Government (Article 4 (4)).

The Constitutional Court ruled [3] that the Parliament cumulates the legislative and executive powers which is incompatible with the principle of separation of powers in the state, enshrined in art. 1 (4) of the Constitution; it skews the legal regime of Government decisions, as acts of law enforcement, enshrined by art. 108 of the Constitution; it creates a confusing legal regime of government decisions, likely to raise the issue of exemption from judicial review under the conditions of art. 126 (6) of the Constitution, with the consequence of violating the provisions of art. 21 and 52 of the Constitution, which stipulate the free access to justice and the right of a person aggrieved by a public authority.

- Under GEO no. 11/2020, the Government enforces specific measures to prevent and combat the effects of the Covid-19 pandemic, without explicitly clarifying those measures. The provisions of the ordinance are incomplete, merely establishing adequate measures such as enforcing a quarantine, restrictions on free movement, evacuation measures, without concretely identifying methods of implementation. In general, the effect of these measures restricts rights and freedoms, and the RIHR identified the GEO as an inadequate/incomplete normative act, lacking predictability in regulating the way in which the respective measures will operate. By expressly mentioning the possibility of implementing the measures previously provided by a

normative act in the category of orders, there is an interference in the correct application of the principle of separation of powers in the state. The Constitutional Court admitted [4] this argument of unconstitutionality invoked by the People`s Advocate (institution whose mandate provides the possibility to notify the Constitutional Court), reiterating that, according to the provisions of article 115 (6) of the Constitution, emergency ordinances cannot be adopted in the field of rights and freedoms stipulated in the Constitution. The Court specified that art. 53 of the Constitution considers law stricto sensu, as legal act adopted by Parliament, excluding emergency ordinances, as provided by art. 115 (6) of the Constitution and secondary legislation.

The measures taken during the state of emergency, as a result of the COVID-19 pandemic, have had an impact on certain human rights organisations. Due to traffic restrictions, some organisations could not actually perform field work. However, some of their work took place online to a greater extent than in previous years.

At the request of members of the Romanian Parliament, the RIHR conducted a study on the crisis generated by the COVID-19 pandemic and its impact on human rights [5], especially regarding vulnerable groups (children and young people, women, older persons, people with disabilities). A key element of the study was the evaluation of measures specific to the state of emergency/alert which restricted certain rights (right to assembly, right to free movement, right to a fair trial, right to privacy, family and private life, the right to education, and the freedom of assembly) in order to protect the right to health of the population. These measures were analysed from the perspective of the standards of necessity, proportionality, objectivity, equality and non-discrimination, the results being read in conjunction with the evaluation of the way in which the competent state authorities exercised, under the given conditions, the executive, legislative, judicial prerogatives. The Institute also stressed that all measures taken should be legal, clear, predictable, in accordance with the principles of legal certainty and separation of powers.

The impact of the state of emergency at national level on the rule of law can be observed through the regulations concerning the field of justice [6]. According to art. 63 (1), the first sentence of Decree no. 240/2020, during the state of emergency, the judicial activity continues in cases of special urgency. The purpose of the measures was to avoid congestion in the courts; in this sense we are talking about a restriction of non-urgent causes. During the state of emergency, all procedural and prescription periods were also suspended by law, which implies a mitigation of the restriction of rights.

Regarding the right to a fair trial, the Superior Council of Magistracy and the management boards of the Courts of Appeal established the types of cases to be tried during the state of emergency. These administrative acts added to the provisions of the decrees establishing or extending the state of emergency and contributed to the emergence of non-unitary jurisprudence and different management of those types of cases.

Decision no. 417/24 March 2020 of the Superior Council of Magistracy (SCM) provides guidelines regarding the cases assigned to the courts for trial, on the merits or in appeals, during the state of emergency. Thus, the cases assigned to the courts were individualised, depending on their object. This SCM Decision remains applicable even in the period of extension of the state of emergency, decided by Decree no. 240/2020. Although the purpose of adopting the SCM Decision was to ensure unity as to whether the trial continues during the state of emergency, the actual effect differed. For instance, the SCM decision (art 1(2)) established that, during the state of emergency, cases that are judged without summoning the parties should be resolved. However, a Decision of the Management Board of the Bucharest Tribunal (no. 8 of 30 March 2020) stipulates the contrary.

Under these circumstances, the courts have acted differently, with different approaches to cases concerning the appeal of enforcement in criminal matters, requests for amendment of the sentence, in general, cases concerning judicial proceedings relating to the enforcement of final judgments in criminal matters; there were also different approaches to the types of cases considered to be urgent by each panel.

The lack of predictability of the manner of managing cases during the state of emergency could lead to violations of the right to a fair trial, given that litigants in identical or similar situations have received different legal treatment, regardless of the quality of the pronounced decisions.

Taking into account the evolution of the state of emergency and the dynamics of the applications whose solution was necessary during the state of emergency, the Superior Council of Magistracy adopted Decision no. 707 of 30 April 2020, which expands the list of cases whose resolution is required during the state of emergency. Consequently, in the jurisdiction of the courts, during the state of emergency, there were included complaints against decisions to reject in accelerated procedure, complaints against decisions to reject applications for access to a new asylum procedure, cases tried without summoning parties, applications for bail refund. Cases referred to tribunals during the state of emergency have been extended to include: public procurement disputes, requests to open insolvency proceedings filed by the debtor, appeals against the decision to dismiss or the decision to

suspend the individual employment contract, cases tried without summoning parties, applications for bail refund. In the jurisdiction of the courts of appeal were included cases related to public procurement, cases that are tried without summoning the parties, cases for bail refund.

The RIHR, in its role of promoting a human rights-based approach to the handling of the crisis, drew attention through its Covid-19 report to the fact that the protection of fundamental rights and freedoms should be a strategic governmental priority during the crisis caused by the pandemic. During the state of alert, the critical evaluation of the measures adopted, the identification of the failure to fully protect human rights and the efforts for their restitutio in integrum was necessary, and it still is. At the same time, the Institute stressed the need to reconfigure public priorities, resume dialogue between public authorities and civil society, in a non-fragmented manner, in order to restore the violated rights and provide remedies for irregularities during the state of emergency.

Following Decree no. 195/2020 establishing the state of emergency, respectively the Decree no. 240/2020 of prolonging the state of emergency, there is a real need to complete the national regulatory framework with provisions likely to ensure the gradual relaxation of the sectoral measures adopted in order to prevent and combat the COVID-19 pandemic. Currently, Law no. 55/2020 on measures to prevent and combat the effects of the COVID-19 pandemic establishes the legal basis for enabling the Government to adopt normative acts in order to establish an intermediate legal regime.

The principles of proportionality, necessity and adequacy of the measures adopted to the circumstances of to the COVID-19 pandemic must be observed in both state of emergency and alert. However, the measures taken during the state of alert should be adapted to the circumstances, taking into account any non-compliant restrictions enforced in the state of emergency.

Although the challenges posed by the state of emergency and the state of alert are indisputable, the measures taken during those periods should be legal, clear, predictable, in accordance with the principles of legal certainty and separation of powers.

During the state of alert, measures restricting rights and freedoms shall be more flexible by comparison to the degree of severity imposed during the state of emergency; the state of alert generated by the health emergency determines the maintenance exclusively of those measures aimed at combating the pandemic.

The Institute emphasised that the measures taken by authorities during the state of alert are subject to the assessment of civil society in terms of social acceptability. Thus, relevance, coherence, legality are standards that are recommended to be implemented in order to develop relevant solutions, as little restrictive as possible in terms of fundamental rights and freedoms.

In the preliminary study on the effects of COVID-19 pandemics [7], the RIHR highlighted that the restrictions on the right to peaceful assembly and association should be established so as to ensure that civil society remains active, and it is consulted in the process of developing or reviewing appropriate measures proposed by national authorities.

Acknowledging the particular impact of the COVID-19 pandemic on the economic and psychological dimension of social life, the Institute drew the attention to the need to rebuild the framework for social interaction by replacing social isolation measures (where they are not justified by infection/suspicion of infection with SARS-CoV-2 virus) with social distancing measures.

Restrictions adopted during the state of emergency that applied to public services (especially the field of justice, education or health) need to be reassessed in order to ensure the principles of openness, transparency and continuity of public services. It is clear that the efficiency of the functioning of public services is directly related to the efficiency of the functioning of information systems. To this end, public authorities must act responsibly, constantly monitoring any risks associated with information technology. [8]

With regard to access to information, during the state of emergency, journalists drew the attention of the authorities to the provision of conclusive data on cases of COVID-19 [9].

According to the report prepared by the Centre for Independent Journalism (CIJ) on freedom of expression during March-July 2020 [10], the presidential decree declaring the state of emergency provided at art. 54 the possibility for the authorities to require content providers “to immediately interrupt, after informing users, the transmission of content in an electronic communications network or its storage, by eliminating it at source, if the content promotes false news about the evolution of COVID- 19 and protection and prevention measures." The decision to interrupt an online publication would be made by the Ministry of Internal Affairs (MIA), based on the analysis of the Strategic Communication Group [11], and, according to the MIA, the measures did not refer to well-known media institutions [12].

At the same time, the state of emergency decree doubled the delays for answering to requests made in the exercise of free access to information of public interest, as well as petitions. The report of the Centre for Independent Journalism points out that in some cases the activity of providing information was even suspended. In this regard, it reminds of an MIA order to county prefects regarding the prohibition to publish local information on the number of COVID tests made, the number of people tested positive after the tests, the health of patients and the locations where quarantine centres would open. Both the CJI and APADOR-CH [13] called for the transparency of information on the evolution of COVID-19.

The same report points out that, in many cases, the authorities did not provide certain information, based on the provisions of the GDPR on the anonymisation of information, stating that it did not fall within their responsibilities.

The RIHR reacted to many Covid-19-related issues through opinions issued at the request of citizens and/or public authorities with attributions in the field of human rights, to clarify the normative acts that involve shortcomings in terms of clarity and predictability. Thus, RIHR has issued opinions on:

(1) the special legal protection of older persons in the context of the COVID-19 pandemic. [14];

(2) the assessment of the legal framework adopted during the state of emergency/alert regarding: (a) the impact of final examinations (national assessments and baccalaureate) in COVID-19 context; and (b) the impact of the epidemiological triage measure (including taking the temperature and assessment of candidates' personal history of respiratory symptoms) on the right to education and health of children and young people [15];

(3) clarification of the national legal framework adopted in the medical field during the state of emergency/alert in relation to the conditioning of access to private medical centres by performing tests for the detection of infection with the SARS-CoV-2 virus [16];

(4) on the regulatory framework established to guarantee the rights of revolutionaries (with special regard to the right to housing and related land as well as the right to benefit from compensation) [17];

(5) the analysis of the legal and non-discriminatory character of the requests formulated by the Romanian public administration authorities in the relations with the Romanian citizens living abroad, to present the marriage certificate in order to issue a new passport [18];

ENNHRI

(6) the non-discriminatory application of the free movement of capital in the light of the compatibility between national law and the European Union legislation [19].

References

[1] Constitutional Court of Romania, Decision no. 152 of 6 May 2020, published in the Official Journal no. 387 of 13 May 2020;

[2] Constitutional Court of Romania, Decision no. 157/2020, published in the Official Journal no 397 of 15 May 2020;

[3] Constitutional Court of Romania, Decision no. 457 of 25 June 2020, published in the Official Journal no 578 of 1 July 2020;

[4] Constitutional Court of Romania, Decision no. 458 of 25 June 2020, published in the Official Journal no 581 of 2 July 2020.

[5] RIHR, *Preliminary study on the crisis caused by the COVID-19 pandemic and its impact on human rights*, RIHR, 2020, http://irdo.ro/pdf/IRDO_Studiu%20preliminar%20privind%20criza%20generata%20de%20pandemia%20COVID%2019.pdf

[6] Ibidem, pp. 45-51

[7] http://irdo.ro/pdf/IRDO_Studiu%20preliminar%20privind%20criza%20generata%20de%20pandemia%20COVID%2019.pdf

[8] RIHR, Preliminary study on the crisis caused by the COVID-19 pandemic and its impact on human rights, RIHR, 2020, http://irdo.ro/pdf/IRDO_Studiu%20preliminar%20privind%20criza%20generata%20de%20pandemia%20COVID%2019.pdf

[9] https://cji.ro/92-de-redactii-si-163-jurnalisti-cer-acces-la-informatii-si-transparenta/

[10] https://cji.ro/wp-content/uploads/2020/09/Raport-libertate-de-exprimare_final.pdf

[11] The Strategic Communication Group was set up at the beginning of the COVID-19 epidemic to provide official information on COVID-19.

[12] https://www.mai.gov.ro/precizare-23/

[13] https://apador.org/prin-lipsa-de-transparenta-institutiile-statului-alimenteaza-conspirationismul-si-dezinformarea/

[14] RIHR, Opinion on respecting the rights of older persons (Romanian), http://www.irdo.ro/pdv.php?ideseu=13

[15] RIHR, Opinion requested by Parliament on conducting final year exams (Romanian), http://www.irdo.ro/pdv.php?ideseu=17

[16] RIHR, Opinion: Legality of the requirement of patients to take COVID tests in private centres (Romanian), http://www.irdo.ro/pdv.php?ideseu=19

[17] IRDO, Opinion on the rights of revolutionaries (Romanian), http://www.irdo.ro/pdv.php?ideseu=16

[18] IRDO, Opinion on the protection of personal data (Romanian), http://www.irdo.ro/pdv.php?ideseu=18

[19] IRDO, Opinion on the non-discriminatory application of the free movement of capital (Romanian), http://www.irdo.ro/pdv.php?ideseu=14

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

The Covid-19 crisis has altered the activity of the Institute, however, RIHR managed to adapt to these challenges:

- the advisory activity at RIHR headquarters was suspended during the entire state of emergency/alert. During this period, in order to implement safety measures to prevent infection, public relations were conducted via distance communication (e-mail, telephone, written correspondence). At the same time, the Presidential Decrees establishing and extending the state of emergency doubled the deadlines for answering to petitions,
- training sessions, organised on the basis of an institutional agreement between the Romanian Institute for Human Rights and the Institute for Public Order Studies, on the Prevention of Torture and Inhuman Treatment designed for staff working in Detention and Preventive Arrest Centres at the country level, were interrupted for a certain period following the COVID-19 outbreak.
- the events organised by the Institute have taken place online, for example: the Annual Conference on Human Rights on the Respect for Human Dignity and Equal Opportunities and Treatment in Crisis Periods, organised in partnership with the National Agency for Equal Opportunities between Women and Men (ANES), Titu Maiorescu University (Faculty of Law) and Dimitrie Cantemir Christian University (Faculty of Foreign Languages and Literatures); the campaign against moral harassment at the workplace launched under the motto 'Moral Harassment is Illegal - Stop dysfunctional work relations!' was carried out between 15 September and 15 October, in partnership with ANES.

Slovakia

Slovak National Centre for Human Rights

International accreditation status and SCA recommendations

In March 2014, the Slovak NHRI was re-accredited with B-status. While recognising that the NHRI interprets its mandate broadly, the SCA found that the mandate has a strong emphasis on equality and non-discrimination, thus it encouraged the NHRI to advocate for legislative amendments that would clarify its mandate to promote and protect all human rights. The SCA also recommended further security of tenure of the decision-making body of the NHRI and the need to ensure it can operate with sufficient budget.

Impact of 2020 rule of law reporting

Follow-up by State authorities

There have been no follow-up actions by State authorities after the 2020 ENNHRI Rule of Law report.

Impact on the Institution's work

The Centre has decided to actively monitor the rule of law at national level. In 2021, it will publish a standalone report on the rule of law in Slovakia (due end of March 2021). The Centre has also designed a small rule of law project that focuses on bringing relevant stakeholders together to create a rule of law tracker – a tool that would enable to reflect on the rule of law in Slovakia and allow key stakeholders to make informed decisions about measures that might negatively (or positively) impact the rule of law in Slovakia. The tracker will be also used to report to the EU Mechanism on Rule of Law.

Follow-up initiatives by the Institution

Due to the COVID-19, the Centre has decided to use its resources to promote and protect human rights on the ground, especially concerning vulnerable groups such as patients, women, Roma and children. The measures adopted by the Government of the Slovak Republic and subsequent negative impacts of COVID-19 pandemic have not allowed the Centre to dedicate resources to any follow-up activities. Even if the Centre would attempt to carry out any specific follow-up initiatives, the key stakeholders are fully occupied with

managing the health, economy and human rights crisis. Therefore, the response of state authorities and/or regional actors would not be adequate, if any.

Independence and effectiveness of NHRIs

Changes in the regulatory framework applicable to the Institution

There have been no changes in the legislative framework after the 2020 ENNHRI Rule of Law report.

Enabling space

Given the current state of affairs (COVID-19 pandemic and change of the government in 2020), the situation has worsened. The Centre has been excluded/or not invited (as usual) to several policy and legislation processes. Some of the processes that the Centre participated in were impacted by the COVID-19 measures. The capacity of the Centre to intervene was restricted. The Council of the Government of the Slovak Republic on Human Rights, National Minorities and Gender Equality was not fully operational (some of its committees were fully disabled, e.g., Committee on Rights of LGBTI People).

When collecting information through regular procedures established by the Act No. 308/1993 Coll. on the Establishment of the Slovak National Centre for Human Rights, as amended, or the Act No. 211/2000 Coll. on Free Access to Information (the Freedom of Information Act), as amended, it took much more time to receive information and data. Some of the requests were not responded. Moreover, the Centre has been "bullied" after requesting information and data concerning the access to healthcare of patients other than those infected by SARS-COV-2. In response, the Centre was requested to provide information and expert opinions on its mandate in the field of healthcare. There were approximately 8 to 10 identical requests delivered over a period of two weeks from individual members of the Association of the Hospitals of the Slovak Republic (all members concerned were state-owned hospitals managed directly or indirectly by the Ministry of Health of the Slovak Republic).

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

The Centre would like to point out, that the situation was also impacted by the fact that the Centre did not have regular management – the position of the executive director was vacated in December 2019 due to the regular end of mandate. From January 2020 to October 2020, the Centre was managed by the executive director ad interim (an

employee). However, his powers were restricted by the Administrative Board, which also impacted on the mandate of the Centre. The new executive director was elected in September 2020 with the start of her mandate in November 2020.

Human rights defenders and civil society space

After the elections, a new Minister of Labour, Social Affairs and Family of the Slovak Republic – Mr. Milan Krajniak (hereinafter the "Minister") was appointed. The Minister is a conservative and decided to change the approach of the Ministry of Labour, Social Affairs and Family of the Slovak Republic (hereinafter the "Ministry") to promotion and protection of gender equality on national level. The term of gender equality was stopped to be used and was changed for equality between men and women. All experts working for the Ministry and its contributory organisation – Institute for Research of Labour and Family – were either fired, demoted or pushed out. A new conservative management was introduced.

Against this background, the Ministry decided not to award grants to feminist organisations working on issues such as sexual and reproductive rights (including access to safe abortion) or LGBTI rights, despite the fact that the expert evaluating the applications for funding awarded the respective organisations with the highest number of points. Instead of that, the Ministry awarded funds to conservative (pro-life) organisations closely connected to the new management introduced at the Ministry. Apart from the state funded grant scheme, the Ministry fully stopped funding for the projects selected for funding within the EEA Norway grant scheme promoting gender equality and work-life balance (DGV01). The project of the Centre and its co-applicant (civil society organisation Freedom of Choice) was also selected for funding in April 2020. Until now, the grant agreement has not been signed.

Moreover, the Minister engaged in smears and misinformation about the feminist and pro-choice organisations (civil society organisations Freedom of Choice, Aspect and Alliance of Women Slovakia), their activities and funding by using his public social media accounts.

In November 2020, the Ministry amended laws on existing grant scheme and restricted the eligibility of potential applicants and beneficiaries. Under the new scheme, only organisations promoting marriage and values of family will be able to apply. The amendments excluded those organisations which are working on issues related to gender equality, including also protection and promotion of LGBTI rights.

The Centre made a public statement of the current state of affairs through available channels (e.g., website, social media). The Centre encouraged the Minister to apologize to the organisations against which the misinformation and smears were directed and offered the respective organisations legal aid concerning their discrimination in the access to the funding provided by the grant scheme.

References

- SME/Slovak Spectator: "*New head of a Labour Ministry's body considered controversial by some*"
(6 July 2020) available online in English at: https://spectator.sme.sk/c/22441819/new-head-of-a-labour-ministrys-body-considered-controversial-by-some.html
- SME/Slovak Spectator: "*Conservative NGOs received gender equality subsidies despite experts' recommendations*" (19 January 2021) available online in English at: https://spectator.sme.sk/c/22577137/conservative-ngos-received-gender-equality-despite-experts-recommendations.html
- Social media (Facebook) post made by the Minister of Labour, Social Affairs and Family of the Slovak Republic (20 January 2021): https://www.facebook.com/krajniakmilan/photos/a.389503057883154/1807254349441344/
- Website of the Centre: http://snslp.sk/aktuality/sirenie-dezinformacii-o-zenskych-mimovladnych-organizaciach/
- Social media (Facebook) post made by the Centre (21 January 2021): https://www.facebook.com/Strediskopreludskeprava/photos/a.234969393520899/1300691433615351/

Checks and balances

Reform of the composition of the Constitutional Court of the Slovak Republic

The newly enacted Constitutional Act from 9 December 2020 amending the Constitution of the Slovak Republic No. 460/1992 Coll. as amended (hereinafter the "Constitutional Act"),

introducing multiple reforms in the justice system includes the amendment of the composition and elections of judges to the Constitutional Court of the Slovak Republic (hereinafter the Constitutional Court). According to the Ministry of the Justice of the Slovak Republic, the new composition should provide sufficient securities against the passivity of the National Council of the Slovak Republic (hereinafter the National Council) in case of the non-election of candidates for constitutional judges, as well as a check against concentration of power in the hands of one political representation in case the majority of constitutional judges were elected by one political party.

In particular, the reform of the composition of the Constitutional Court of the Slovak Republic includes redefined conditions for the appointment of a judge of the Constitutional Court (integrity, moral credit), an increase in the quorum for the election of a candidate for a judge of the Constitutional Court (qualified majority), and public voting on candidates for judges of the Constitutional Court in the National Council of the Slovak Republic. With regard to the increase in the quorum, a qualified majority of all Members of the National Council will be required for the election of a candidate for the post of a Judge of the Constitutional Court of the Slovak Republic, i.e., at least 90 Members' votes. If the candidates fail to be elected by the qualified majority even in a re-election, only a simple majority of all Members will suffice in the new election.

The Constitutional Act also deals with the possible passivity of the National Council in the case of non-election of the required number of candidates for constitutional judges. Judges of the Constitutional Court will be able to be appointed by the President of the Slovak Republic even without the proposal of the National Council of the Slovak Republic, provided that the National Council of the Slovak Republic does not elect the required number of candidates within the specified time limits. The aim of the legal regulation is to avoid a situation where the Constitutional Court will be dysfunctional only because the political parties within the National Council are not able to agree on the necessary number of candidates for judges of the Constitutional Court of the Slovak Republic.

The Constitutional Act also contains a mechanism that prevents the concentration of power in the hands of one political representation in the event that a majority of constitutional judges are elected by a single political party. According to the new amendment, the tenure of judges of the Constitutional Court appointed after 1 January 2021 varies in length.

Amendment of the legislation on the state of emergency

In December 2020, the National Council of the Slovak Republic approved the amendment to Constitutional Act No. 227/2002 on State security in times of war, state of war, state of

emergency, and state of crisis, as amended (hereinafter the "Constitutional Act on State Security") according to which the Government of the Slovak Republic can extend the declared state of emergency repeatedly, at most by 40 days. According to the enacted amendment, the extension of the state of emergency will have to be approved by the National Council, no later than 20 days after the extension becomes effective. According to the press release of the Ministry of Interior, this amendment was approved with the aim of constitutional safeguard in the system of the division of power and the system of checks and balances in a parliamentarian republic. Such constitutional safeguard shall also be introduced when declaring a state of emergency again. The resolution of the National Council on the approval of the extension of the state of emergency or the repeated declaration of the state of emergency will be published in the Collection of Laws. The amendment also explicitly stipulates that a state of emergency can be declared on the territory of the Slovak Republic. In relation to the adopted amendment to the Constitutional Act on State Security, Act No. 314/2018 on the Constitutional Court of the Slovak Republic, amending and supplementing certain other acts ("Act on the Constitutional Court") was also amended with the aim to include the possibility for the Constitutional Court of the Slovak Republic to review the decision on the extension of the state of emergency.

The level of trust of citizens in the state authorities remains constantly low, also in 2020. For example, when it comes to the level of trust in the national justice system, pursuant to the Eurobarometer survey findings, it remains very low. Out of all EU Member States, the level of trust in Slovak Republic is the second lowest, just after Croatia. In fact, 26% of respondents rated the independence of the Slovak justice system as very bad and 38% as fairly bad in the Eurobarometer survey. In comparison with the previous years' results of the survey, the level of mistrust has increased by 4%. Only 26% of respondents perceived the level of independence of the national justice system as very good or fairly good. The main reason often stated by the respondents in relation to the perceived lack of independence of the justice system is the interference or pressure from the Government of the Slovak Republic. In fact, the overall country results for all EU Member States show that Croatia and the Slovak Republic are the only Member States in which at least half of respondents indicated the interference or pressure from the government and politicians as the main reason for the low level of trust in the independence of the judiciary.

Accelerated legislative procedures also threaten the system of checks and balances. In 2020, accelerated legislative procedures have taken place in the Slovak Republic. A number of legislative proposals have undergone accelerated legislative procedures in response to the COVID-19 pandemic, or as part of measures directly related to the Covid-19 pandemic.

For instance, the abovementioned law amending the Constitutional Act on State security as well as the amendment to the Act on the Constitutional Court were adopted in an accelerated legislative procedure. The newly adopted Constitutional Act not only enables the government to repeatedly extend the declared state of emergency, for a maximum of 40 days, with the approval of the National Council of the Slovak Republic but also includes a number of essential restrictions and obligations adopted for an emergency declared for reasons other than danger to life and health in connection with a pandemic. Among others, restrictions on the inviolability of the person, the privacy of persons and restrictions on freedom of movement and residence are regulated in the same constitutional act. The National Council of the Slovak Republic discussed this constitutional act involving restrictions of fundamental rights and freedoms in an accelerated legislative procedure. Such measures create the legal basis for increasing the powers of the executive, including restriction on freedom of movement, freedom of assembly, or respect for personal and private life (creating limited accountability of the executive). In addition, a number of legislative proposals that do not directly relate to combatting the Covid-19 pandemic have been adopted in accelerated legislative processes.

The current status of the Centre regarding its role in the system of checks and balances remains weakened, namely due to the lack of consultation and cooperation from the state authorities when creating or passing legislative amendments. The acts being adopted may have a direct impact on the enjoyment of fundamental rights and freedoms, yet the Centre can only participate in the procedure as part of general public. Conducting impact assessments and consulting stakeholders, including the Centre, should be an established practice for enacting legislation with direct impact on fundamental rights and freedoms. There is a need for more systematic involvement of the Centre in the legislative process.

References

- Constitutional Act from 9 December 2020 amending the Constitution of the Slovak Republic No. 460/1992 Coll. as amended, available in Slovak language at: https://www.nrsr.sk/web/Dynamic/DocumentPreview.aspx?DocID=489083.
- Ministry of Justice of the Slovak Republic, 'Poslanci definitívne schválili reformné zmeny v justícii' 9 December 2020, available in Slovak language at: https://www.justice.gov.sk/Stranky/aktualitadetail.aspx?announcementID=3060 .
- Proposal for the Constitutional act amending Constitutional Act No. 227/2002 on State security in times of war, state of war, state of emergency, and state of crisis, as amended, available at: https://www.nrsr.sk/web/Default.aspx?sid=zakony/zakon&MasterID=8054.
- Ministry of Interior of the Slovak Republic, 'Núdzový stav bude možné opakovane predlžovat", Press release, 28 December 2020, available in Slovak language at: https://www.minv.gov.sk/?tlacove-spravy&sprava=nudzovy-stav-bude-mozne-opakovane-predlzovat.
- Act No. 314/2018 on the Constitutional Court of the Slovak Republic, available in Slovak language at: https://www.slov-lex.sk/pravne-

Functioning of justice systems

General observations about the functioning of the justice system

In 2020, the Government of the Slovak Republic has initiated numerous proposals for amendments of legislation and reform plans to strengthen the functioning of the justice system in the Slovak Republic. These proposals include the amendment of the Criminal Code of the Slovak Republic (including introducing a new criminal offence of abuse of law to prosecute judges for unlawful decisions), amendments to the Constitution of the Slovak Republic (partial loss of functional immunity of judges, new proposal improving the structure and the appointment procedure for members of the Judicial Council of the Slovak Republic, abolition of the consent of the Constitutional Court of the Slovak Republic as a condition for the detention of a judge or a Prosecutor General), the introduction of a compulsory retirement age for judges of general court (67 years) and judges of the

Constitutional Court of the Slovak Republic (72 years) and the creation of the supreme administrative court.

Reform of the Judicial Council of the Slovak Republic

The Constitutional Act contains reformed plans in the change of the composition of the Judicial Council, including amending the appointment processes to guarantee regional representation. In this regard, it includes a rule according to which the National Council of the Slovak Republic, the President of the Slovak Republic and the Government of the Slovak Republic will nominate only non-judges to the Judicial Council of the Slovak Republic. The intention according to the author of the legislation was to ensure a balance in decision-making for the whole judiciary, but also to contribute to increasing the public control of the judiciary, which is one of the constitutional tasks of the Judicial Council of the Slovak Republic. In addition, a regional principle was also introduced for the election of members of the Judicial Council of the Slovak Republic by judges. One member of the Judicial Council of the Slovak Republic will be elected by the judges of the Supreme Court of the Slovak Republic and the Supreme Administrative Court of the Slovak Republic from among themselves, and the other eight members of the Judicial Council of the Slovak Republic will be elected by judges of other general courts in the respective constituencies. In this way, the proportional representation of the regions in the Judicial Council of the Slovak Republic will be ensured.

The new legislation extends the powers of the Judicial Council of the Slovak Republic in strengthening controls of asset declaration of judges. It enables the Judicial Council of the Slovak Republic to actively monitor the fulfilment of the conditions of judicial competence.

The creation of the Supreme Administrative Court

The Constitutional Act also created the Supreme Administrative Court of the Slovak Republic which is included in the system of courts and has an equivalent position in the hierarchy as general courts with the Supreme Court of the Slovak Republic. In addition to the general jurisdiction of the Supreme Administrative Court of the Slovak Republic in the field of administrative justice, the Supreme Administrative Court will act as a disciplinary court for judges of general courts, prosecutors and, to the extent provided by law, for other professions. The Supreme Administrative Court of the Slovak Republic should start operating in the second half of 2021, primarily by appointing the head of the Court. The selection of the head of the Supreme Administrative Court of the Slovak Republic will be in April 2021 as announced by the Head of the Judicial Council of the Slovak Republic in March 2021.

Strengthening the protection of fundamental rights – reform of the Constitutional Court of the Slovak Republic proceedings

The enacted Constitutional Act also introduces the possibility for the Senate of the Constitutional Court, which acts and decides on individual complaints of natural and legal persons alleging violations of their fundamental rights and freedoms guaranteed by international treaties, to initiate proceedings on the conformity of legal regulations concerning the individual complaint with the Constitution of the Slovak Republic, constitutional acts and international treaties. This strengthens the constitutional system of human rights protection, because if the Senate believes that a law or other regulation is in conflict with the Constitution of the Slovak Republic, it will be able to turn to the Plenary of the Constitutional Court to assess the compliance of the challenged law with the Constitution. The amendment will be effective from 1 January 2025.

The new Court Map

The proposal to reform the court map as introduced by the Ministry of Justice of the Slovak Republic, has not received as much support as the previously introduced reforms to the justice system. As stated by the Ministry of Justice of the Slovak Republic, one of the basic goals of the new court map is the specialisation of judges. The specialisation of judges shall be presumed for criminal, civil, family and commercial matters in general courts and for administrative matters in a separate administrative judiciary. As mentioned by the Ministry of Justice of the Slovak Republic, the current network of 54 district courts does not meet the condition that three specialised judges be employed in the court, which is necessary for the random allocation of files to work. The new court map also takes into account the long-term downward trend in court cases.

The Ministry of Justice of the Slovak Republic has been organising numerous roundtables, inviting representatives from selected groups of experts to discuss the proposed court map reform that should change the system of courts.

References

- Constitutional Act from 9 December 2020 amending the Constitution of the Slovak Republic No. 460/1992 Coll. as amended, available in Slovak language at: https://www.nrsr.sk/web/Dynamic/DocumentPreview.aspx?DocID=489083.
- Proposal for the Constitutional Act amending the Constitution of the Slovak Republic No. 460/1992 Coll. as amended, available in Slovak Language at: https://www.nrsr.sk/web/Default.aspx?sid=zakony/cpt&ZakZborID=13&CisObdobia=8&ID=270
- Constitutional Act from 9 December 2020 amending the Constitution of the Slovak Republic No. 460/1992 Coll. as amended, available in Slovak language at: https://www.nrsr.sk/web/Dynamic/DocumentPreview.aspx?DocID=489083
- Ministry of Justice of the Slovak Republic, 9 July 2020, available at: https://www.justice.gov.sk/Stranky/aktualitadetail.aspx?announcementID=2884.
- Judicial Council of the Slovak Republic, available in Slovak language at: https://www.sudnarada.gov.sk/vyhlasenie-novej-volby-kandidata-na-funkciu-prveho-predsedu-najvyssieho-spravneho-sudu-slovenskej-republiky/
- Ministry of Justice of the Slovak Republic, 'Reform of the Court Map,' available in Slovak language at: https://www.justice.gov.sk/Stranky/Ministerstvo/Sudna-mapa.aspx.

Media pluralism and freedom of expression

Safety of journalists

The rise in violence against journalist and the challenges to the safety of journalists has been previously highlighted and remain an issue in the Slovak Republic also in 2020. As reported by the Council of Europe's Platform to promote the protection of journalism and safety of journalists, from the period of January 2020 to 1 March 2021, there have been two alerts relating to the safety of journalists in Slovakia. One regarding an investigative journalist of the Slovakian news website Aktuality.sk who reported to the police that he found a pistol bullet in the mailbox of his Bratislava apartment, and one alert on

surveillance of a newspaper editor, who reported to the police suspicious behavior, namely that she had been monitored and photographed. As is clear from the Statement of the Permanent Representative of the Slovak Republic of the Council of Europe, pursuant to the Slovak Criminal Code, the Slovak law enforcement authorities are conducting criminal investigations in both cases. In addition, pursuant to the reply of the Permanent Representative, the Ministry of Culture of the Slovak Republic is preparing a media legislative package, which should enhance the constitutional protection of journalists in the exercise of their profession, especially in the protection of their resources.

Furthermore, an additional alert was published with regard to media freedom. In 2020, criminal proceedings against a newspaper opinion writer were initiated, including criminal charges of criminal defamation. Police investigators concluded that the author's article called for the suppression of religious people's freedom of expression and "defamed the expressions of their faith" and charged the author with defamation on account of religious belief under Article 423 of the Slovak Criminal Code. According to the reply of the Permanent Representative of the Slovak Republic to the Council of Europe, the criminal proceedings against the accused are not lawfully completed and the authorities of the Slovak Republic shall proceed consistently in accordance with the principle of the presumption of innocence.

References

- Council of Europe, Platform to promote the protection of journalism and safety of journalists, 'Media freedom alerts', available at: https://www.coe.int/en/web/media-freedom/all-alerts?p_p_id=sojdashboard_WAR_coesojportlet&p_p_lifecycle=0&p_p_col_id=column-4&p_p_col_count=1&_sojdashboard_WAR_coesojportlet_keywords=&_sojdashboard_WAR_coesojportlet_selectedStringFilters=year.2021,year.2020&_sojdashboard_WAR_coesojportlet_selectedCategories=11709578.

- Council of Europe, Platform to promote the protection of journalism and safety of journalists, 'Slovak Investigative Journalist Peter Sabo Finds Bullet in His Mailbox', 26 June 2020, available at: https://www.coe.int/en/web/media-freedom/detail-alert?p_p_id=sojdashboard_WAR_coesojportlet&p_p_lifecycle=0&p_p_col_id=column-3&p_p_col_pos=1&p_p_col_count=11&_sojdashboard_WAR_coesojportlet_alertPK=68749398&_sojdashboard_WAR_coesojportlet_displayLink=SojPortlet.getDashboardPortletId%28%29

- Council of Europe, Platform to promote the protection of journalism and safety of journalists, 'Slovak Republic – Denník N Editor Monika Tódová Surveilled by Unknown Men', 15 January 2021, available at: https://www.coe.int/en/web/media-freedom/detail-alert?p_p_id=sojdashboard_WAR_coesojportlet&p_p_lifecycle=0&p_p_col_id=column-3&p_p_col_pos=1&p_p_col_count=11&_sojdashboard_WAR_coesojportlet_alertPK=90042854&_sojdashboard_WAR_coesojportlet_displayLink=SojPortlet.getDashboardPortletId%28%29.

- Statement of the Permanent Representative of the Slovak Republic to the Council of Europe on the alert submitted to the Platform to promote the protection of journalism and safety of journalists on 26 June 2020 entitled "Slovak Investigative Journalist Peter Sabo Finds Bullet in His Mailbox", available at: https://rm.coe.int/slovakia-reply-en-journalist-p-sabo-finds-bullet-in-his-mailbox-15jumy/16809efced.

- Statement of the Permanent Representative of the Slovak Republic to the Council of Europe on the alert submitted to the Platform to promote the protection of journalism and safety of journalists on 15 January 2021 entitled "Denník N Editor Monika Tódová Surveilled by Unknown Men", available at: https://rm.coe.int/slovak-republic-reply-en-dennik-n-editor-monika-todova-surveilled-by-u/1680a141f3.

- Council of Europe, Platform to promote the protection of journalism and safety of journalists, 'Slovak Columnist Charged with Criminal Defamation for Criticism of Priest,' 11 February 2021, available at: https://www.coe.int/en/web/media-freedom/detail-alert?p_p_id=sojdashboard_WAR_coesojportlet&p_p_lifecycle=0&p_p_col_id=column-3&p_p_col_pos=1&p_p_col_count=11&_sojdashboard_WAR_coesojportlet_alertPK=60779625&_sojdashboard_WAR_coesojportlet_displayLink=SojPortlet.getDashboardPortletId%28%29

- Statement of the Permanent Representative of the Slovak Republic to the Council of Europe to the alert submitted to the Platform to promote the protection of journalism and safety of journalists on 11 February 2020 entitled "Slovak Columnist Charged with Criminal Defamation for Criticism of Priest", available at: https://rm.coe.int/slovakia-en-reply-slovak-columnist-charged-with-criminal-defamamtion-f/16809cdcdc.

- Official Statement of the Spokesperson of the Police Force of the Slovak Republic, included in the article, 'Polícia sa v roku 2020 venovala aj vyvracaniu hoaxov,' 4 January 2021, available in Slovak language at: https://www.teraz.sk/slovensko/policia-sa-v-roku-2020-venovala-aj-vyvr/518171-clanok.html

- Ministry of Interior of the Slovak Republic, 'Koronavírus: dávajte si pozor, akým informáciám uveríte', Press release, 5 October 2020, available in Slovak language at: https://www.minv.gov.sk/?tlacove-spravy&sprava=koronavirus-davajte-si-pozor-akym-informaciam-uverite

Corruption

Anti-corruption framework

Challenges remain also in the area of fight against corruption. Pursuant to the findings of the latest Transparency International 2020 Corruption Perceptions Index, Slovakia scored 49/100, decreasing its position in comparison with the last three years' ranking of the Corruption Perceptions Index. It was ranked 23rd in the EU and 60th globally. According to the findings of the Special Eurobarometer survey, 87% of respondents consider corruption widespread (EU average 71%) and 41% of people feel personally affected by corruption in their daily life (EU average 26%).

Statistics on corruption

In 2020, the number of prosecutions of corruption offenses increased, with the number of indictments increasing by half to the highest level in ten years. Although, in recent years only few high-level corruption cases have been investigated and are being prosecuted, throughout 2019 and 2020, an increase in the number of cases concerning the criminal offence of corruption is reported. According to the statistics provided by the Office of the Special Prosecution, in 2019, 139 persons were prosecuted for corruption offences or suspected thereof, compared to 135 in 2018, 83 persons were indicted, compared to 48 in 2018, and 44 persons concluded plea bargain agreements in 2019, compared to 63 in 2018. There are numerous pending criminal proceedings against a number of high-ranking public officials, including judges, prosecutors.

Whistle blowers Protection Act

As reported previously, Act No. 54/2019 Coll. on the Protection of persons reporting on anti-social activities and on amendments to certain laws (hereinafter the "Act on Whistleblowers") aims to increase the protection measures of whistleblowers by establishing an independent office for complaints. In February 2021, the National Council of the Slovak Republic elected the head of office, who now has 6 months to create the office which will commence its work on 1 September 2021. However, besides the election of the head, there have been no developments, or any particular steps being taken to make this office functioning and operable to serve its purpose.

New legislation on the selection of candidates for public officials

In 2020, several acts and amendments have been enacted in order to make the selection procedure of staff in key positions, including public officials, transparent. For example, Act.

No. 153/2001 Coll. on Public prosecution service, as amended, was revised and amended with the focus of enhancing the transparency of the selection procedure of the new Prosecutor General and Special Prosecutor. The amendments included enlarging the group of entities with a mandate to propose a candidate for Prosecutor General and Special Prosecutor, and conducting the selection procedure by detailed public hearings, in the presence of numerous representatives from the Office of the President of the Slovak Republic, external experts and representatives of non-governmental organisations.

Then again, the nomination procedures for the position of heads of district offices have not been as transparent, as the candidates have been nominated by the leading political party and appointed by the Government of the Slovak Republic.

Lack of regulation governing lobbying

The Anti-corruption policy adopted in September 2019 already foresees the proposal for regulatory framework regarding lobbying. According to the available information from the news, the draft legislation is being prepared. The Slovak authorities indicated that the adoption of measures on lobbying should be a combination of legal regulation, a mandatory register of lobbyists and a code of conduct. The special register for lobbyists should consist of information on the matters in which the lobbyists plan to lobby, as well as information on their clients and costs and remuneration for the lobbyist's activities. However, no specific proposals have been submitted.

Asset declaration and conflict of interest of the Members of the National Council of the Slovak Republic

The obligation for Members of the National Council of the Slovak Republic to declare gifts or other benefits and the use of immovable or movable assets has improved through amendments to Constitutional Act No. 357/2004 Coll. on Protection of public interest in the performance of functions of public officials ("Constitutional act on protection of public interest") as is also clear from the GRECO's Second Addendum to the Second Compliance Report of the Fourth Evaluation Round on the Slovak republic. However, the thresholds set remain a subject of concern vis-à-vis the minimum wage. Furthermore, as recommended by GRECO in the Second Compliance Report, the mandate of the Committee on the Incompatibility of Functions of the National Council of the Slovak Republic needed to be revised to allow for more proactivity in the supervision and enforcement of rules on conflicts of interest, asset declaration and other duties and restrictions applicable under the constitutional act on protection of public interest. New provisions concerning the

amendments to Constitutional act on protection of public interest have entered into force on 1 January 2020.

References

- Special Eurobarometer Survey 502, 'Corruption', June 2020, available at: https://ec.europa.eu/commfrontoffice/publicopinion/index.cfm/Survey/getSurveyDetail/instruments/SPECIAL/yearFrom/1974/yearTo/2021/surveyKy/2247.
- Statistics of the General Prosecution of the Slovak Republic, available at: https://www.genpro.gov.sk/statistiky/statisticky-prehlad-trestnej-a-netrestnej-cinnosti-za-rok-2020-3a68.html.
- Office of the Special Prosecution, 'Report of the Special Prosecutor on the activities of the Office of the Special Prosecution and findings of the Office of the Special Prosecution on the status of legality in 2019' November 2020, available in Slovak language at: https://www.nrsr.sk/web/Default.aspx?sid=zakony/cpt&ZakZborID=13&CisObdobia=8&ID=116
- Office of the Government of the Slovak Republic, 'Prevention of Corruption', 26 February 2021, available at: https://www.bojprotikorupcii.gov.sk/urad-na-ochranu-oznamovatelov-protispolocenskej-cinnosti-ma-svoju-sefku/.
- Proposal of the Members of the National Council of the Slovak Republic to amend Act No. 153/2001 Coll. on Public Prosecution Service, amending Act of the National Council of the Slovak Republic No. 350/1996 Coll. on the Rules of Procedure of the National Council of the Slovak Republic, as amended, May 2020, available in Slovak language at: https://www.nrsr.sk/web/Default.aspx?sid=zakony/zakon&ZakZborID=13&CisObdobia=8&CPT=108.
- Act No. 153/2001 Coll. on Public Prosecution Service, amending Act of the National Council of the Slovak Republic No. 350/1996 Coll. on the Rules of Procedure of the National Council of the Slovak Republic, as amended,

- Ministry of Interior of the Slovak Republic, 'Kandidátov na šéfov okresných úradov môže každý lustrovať na stránke prednostovia.sk', Press release, 6 July 2020, available in Slovak language at: https://www.minv.sk/?tlacove-spravy-7&sprava=kandidatov-na-sefov-okresnych-uradov-moze-kazdy-lustrovat-na-stranke-prednostovia-sk.
- Resolution of the Government of the Slovak Republic No. 585/2018, 'Anti-corruption policy of the Slovak Republic for the period 2019-2023', 12 December 2018, available in Slovak language at: https://www.bojprotikorupcii.gov.sk/protikorupcna-politika-sr/.
- Council of Europe's Group of States against Corruption, 'Fourth Evaluation Round – Corruption prevention in respect of members of parliament, judges and prosecutors, Second Addendum to the Second Compliance Report', GrecoRC4(2020)14, adopted 29 October 2020, published 3 February 2021, p. 2-3, available at: https://rm.coe.int/fourth-evaluation-round-corruption-prevention-in-respect-of-members-of/1680a1417a.

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

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

The impact of COVID-19 measures on access to education

With the beginning of the COVID-19 pandemic, the Slovak Republic took the precaution of closing the schools as an attempt to contain the spread of the virus. Schools were forced to replace classes with distance learning and home schooling, in most cases facilitated by teachers and parents.

However, the access to distance learning depends on the availability of information and communication technologies, which makes it possible to continue teaching and learning when physical interaction is no longer possible. As was further observed, although the absence of in-person lessons can be somewhat compensated using online platforms and other technology-rich activities, access to the necessary information and communication

technologies is not equally distributed across the population. Due to the currently valid restriction on freedom of movement and a valid curfew, pupils without access to distance education using digital technologies do not have the possibility of full-time education in any form. In particular, this may severely impact the access to education of students from socio-economically disadvantaged backgrounds who lack the means to access these devices. This in turn, increases learning inequalities.

In fact, according to the survey published by the Institute of Education Policy under the Ministry of Education, Science, Research and Sport of the Slovak Republic in September 2020, based on data collected from principals and teachers around the country, almost 50,000 children, including mainly from poor localities, many of them inhabited by Roma, did not participate in distance learning at all during the first wave of the pandemic. Further analysis of the Institute of Education Policy also stressed that there was a lack of systemic measures for accessing children from the socially deprived environment to attend distance learning. 44% of children (aged 6 to 11 years) live in overcrowded households with limited possibilities for learning.

Good practices in the area of access to education

Drawing experience from the first wave, the Ministry of Education, Science, Research and Sport of the Slovak Republic developed methodical guidelines on the content and organisation of education in primary schools and in primary school for pupils with special educational needs. The methodical guidelines encouraged employing creative methods in order to compensate for educational drawbacks regarding inaccessibility to distance learning for certain vulnerable groups of pupils. For instance, printed teaching materials or assignments and worksheet for younger children and students from disadvantaged groups without access to adequate information and communication technologies or the internet were distributed by post or teachers themselves, educational and health mediators, local administration employees, police officers and volunteers. In addition, public television provided regular broadcasts of educational television programs mainly for primary school children. Additional care was paid also to the vulnerabilities of certain groups, including Roma with regard to the provision for basic needs, such as food. The Public Health Authority issued ordinance allowing school canteens to continue to provide food in the form of food packages for children in vulnerable situations, including Roma.

Impact of COVID-19 measures on particular groups – quarantine of Roma communities

After cases of coronavirus infections have been confirmed in several Roma settlements in the Slovak Republic, several of these settlements have been locked down. While protecting

health from the uncontrollable spread of COVID-19 is a legitimate aim, the widespread quarantine in the form of a general ban on contact with the rest of the population could unduly restrict the personal freedom of the inhabitants of the settlements concerned and go beyond possible restrictions on freedom of movement. The marginalised Roma communities represent a specific group in terms of prevention and protection of the population against the spread of COVID-19, due to the higher risk of this group to get the virus (due to insufficient hygiene conditions and access to water, health status, access to health services, higher population density).

For example, in the first wave of the COVID-19 pandemic, quarantine involved municipalities of for example, Bystrany, Žehra and the town of Krompachy. In the second wave, for example, the town of Bánovce nad Bebravou and the village of Ratnovce. According to the findings of the European Union Agency for Fundamental Rights from June 2020, in the second wave of the pandemic, the Slovak Republic was the only country in which entire Roma communities continued to be quarantined. The quarantine measures have had a rather negative impact on the situation of people living in segregated settlements, including worsening the access to health care for people in segregated Roma communities in quarantine, or the access to medicines.

The fight against fake news

The spread of fake news related to the pandemic of the coronavirus was one of the challenges that the Police Force had to tackle. For this purpose, the Police Force explained the misinformation on their social network page "Hoaxes and frauds – Police of the Slovak Republic" on Facebook. According to the Press release of the Ministry of Interior of the Slovak Republic in October 2020, the Police of the Slovak Republic constantly receives tips from the general public on misinformation through private messages on their special Facebook site. Such messages are evaluated separately with the main factor being the number of shares of the fraudulent post. The subsequent statuses draw attention to mass-shared misinformation and include analysis explaining why the misinformation are not based on truth. As reported in October 2020, the Police Force published and explained more than 110 misinformation issues since the outbreak of the pandemic. Currently, with more than 98 000 followers, the social network site created by the Police Force of the Slovak Republic is the most followed site among the sites dedicated to fight misinformation in the Slovak Republic. The Police of the Slovak Republic cooperates with the Ministry of Health of the Slovak Republic to refute the medical hoaxes shared in relation to the pandemic.

Actions of the Centre

The Centre, within its mandate as an NHRI and equality body, has been closely monitoring the adopted measures in relation to the COVID-19 pandemic and evaluating their impact on the protection of fundamental rights and freedoms. For example, in the area of access to education, the Centre has, in cooperation with other NGOs active in the field, expressed their position in relation to measures adopted and in force during the second wave of the pandemic in the field of education. In particular, the Centre has called on the relevant state authorities, including the Prime Minister of the Slovak Republic, in November 2020 to reintroduce the in-person classes at the secondary level of primary schools and secondary schools. The Centre has further issued an official statement and press release on 9 December 2020 on the situation in the field of education in primary and secondary schools in which it drew attention to the non-compliance of the adopted measures, including the decisions of the Ministry of Education, Science, Research and Sport of the Slovak Republic, with the principle of equal treatment as laid down by Act No. 365/2004 Coll. on equal treatment in certain areas and protection against discrimination, amending and supplementing other acts (Anti-discrimination act).

Subsequently, within its mandate, the Centre issued an expert opinion on 16 December 2020 on the evaluation of measures adopted in the area of access to education and their impact on the protection of fundamental rights and freedoms. In its opinion the Centre evaluated and assessed the conditions for renewal of teaching at schools as laid down by the Resolution of the Government of the Slovak Republic No. 760 and subsequent legal acts and their compliance with the Constitution of the Slovak Republic and Constitutional Act on State Security. After the assessment of their legal compliance, the Centre has evaluated that due to the impossibility of „justifying" the different treatment of pupils and teachers of grades 5 to 9 of primary and secondary schools in comparison with pupils and teachers of grades 1 to 4 of primary schools, the relevant legal acts of the Government of the Slovak Republic, as well as the Minister of Education, Science, Research and Sport of the Slovak Republic, and Public Health Office of the Slovak Republic, violate the principle of equal treatment and non-discrimination as stipulated in Article 12 of the Constitution of the Slovak Republic in connection with the fundamental right to education pursuant to Article 42(1) of the Constitution and the right of employees to fair and satisfactory working conditions and to protection against discrimination under Article 36(1)(b) of the Constitution .

The Centre continues to regularly monitor and evaluate the possible impacts of adopted measures in relation to the COVID-19 disease on fundamental rights and freedoms in the Slovak Republic.

References

- Government Resolution No.77/2021 on the proposal to extend measures regarding the state of emergency pursuant to Article 5 paragraph 2 of Constitutional Act No. 227/2002 Coll. on State Security in Times of War and State of Emergency as amended, declared by Government Resolution No. 578 of 30 September 2020 and for the adoption of measures under Article 5 paragraph 4 of Constitutional Act No. 227/2002 Coll. on State Security in Times of War and State of Emergency, as amended, 5 February 2021, available in Slovak language at: https://www.slov-lex.sk/pravne-predpisy/SK/ZZ/2021/49/
- Government Resolution No. 123/2021 on the proposal to adopted measures pursuant to Article 5 paragraph 4 of Constitutional Act No. 227/2002 Coll. on State Security in Times of War and State of Emergency as amended, 28 February 2021, available in Slovak language at: https://www.slov-lex.sk/pravne-predpisy/SK/ZZ/2021/94/20210303.
- OECD, 'School Education During COVID-19: Were teachers and students ready? Slovak Republic - Country Note,' 2020, available at: http://www.oecd.org/education/Slovak-Republic-coronavirus-education-country-note.pdf.
- Ministry of Education, Science, Research and Sport of the Slovak Republic on the content and organization of education in primary schools and in primary school for pupils with special educational needs, October 2020, available in Slovak language at: https://www.ucimenadialku.sk/usmernenia/otvorenie-skolskeho-roka-2020-2021/Metodicke_usmernenie_ZS_SZS_26-10-2020_NEW.pdf.

- European Union Fundamental Rights Agency, 'Implications of COVID-19 pandemic on Roma and Travellers communities, Country: Slovakia', 15 June 2020, available at: https://fra.europa.eu/sites/default/files/fra_uploads/sk_report_-_covid-19_impact_on_roma_en.pdf.
- Človek v ohrození (2020), Spájame sa na pomoc zraniteľným skupinám, available at: https://clovekvohrozeni.sk/spajame-sa-pre-ochranu-ohrozenych-komunit/
- Slovak National Centre for Human Rights, 'Verejná výzva na znovu zavedenie prezenčnej formy vzdelávania na druhom stupni základných škôl a stredných školách', 26 November 2020, available in Slovak language at: http://snslp.sk/wp-content/uploads/Vyzva-predsedovi-k-zavedeniu-prezencnej-formy-vzdelavania.pdf
- Slovak National Centre for Human Rights, 'Vyjadrenie Slovenského národného strediska pre ľudské práva k aktuálnemu stavu v oblasti vzdelávania na základných a stredných školách', Press release, 9 December 2020, available in Slovak language at: http://snslp.sk/wp-content/uploads/TS-aktualny-stav-vzdelavania.pdf
- Slovak National Centre for Human Rights, expert opinion, 16 December 2020, available in Slovak language at: http://snslp.sk/wp-content/uploads/2020-2-Odborne-stanovisko-diskriminacne-podmienky-pri-obnoveni-skolskeho-vyucovania.pdf

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

Due to the rapidly changing measures in force in relation to the COVID-19 pandemic, it was not possible to file a complaint personally in the premises of the Centre during some periods of 2020. However, other available options for filing a complaint had remained in place, for example via phone or email.

Even though the strict measures adopted in relation to the COVID-19 pandemic had impacted the number of planned activities, the Centre has been working through and organising video conferences as a substitute for the cancelled working groups or meetings.

The Centre continues to adapt to the challenging circumstances, while teleworking to ensure the continuity of work. It continues to carry out its mandate and deliver its services to the public. Despite the measure restricting the freedom of movement currently in force, the Centre still receives individual complaints via available options and carries out its regular monitoring and reporting activities, issuing expert opinions on topics relevant to the mandate of the Centre.

Slovenia

The Human Rights Ombudsman of the Republic of Slovenia

International accreditation status and SCA recommendations

The Slovenian NHRI was accredited with A-status in December 2020. The SCA commended the efforts undertaken by the NHRI to advocate for the amendments to its enabling legislation, which took place in 2017 and addressed the SCA previous recommendations.

The SCA encouraged the NHRI to advocate for the formalization and application of clear, transparent and participatory process for the selection and appointment of the Ombudsman. While acknowledging the actions taken by the NHRI, the SCA also considered important that the ability to encourage ratification of and accession to regional and international human rights instruments is explicitly included in the NHRI's enabling legislation.

Moreover, the SCA noted that the NHRI would benefit from additional funding in order to continue to effectively carry out the full breadth of its mandate. The SCA encouraged the NHRI to advocate for changes that would grant it further financial autonomy and independence.

Impact of 2020 rule of law reporting

Follow-up by State authorities

The European Commission 2020 Rule of Law Report received attention from several public media and some professional journals in Slovenia. However, the Human Rights Ombudsman of the Republic of Slovenia (the Ombudsman) is not aware of any concrete follow-up made by state authorities regarding the report and notes that there has also beena lack of a broader expert discussion about the report in Slovenia.

The Ombudsman welcomes that the 2020 ENNHRI rule of law report was referred to by the European Commission in its country chapter of the rule of law situation in Slovenia (1).

References

1. European Commission, 2020 Rule of Law Report, Country Chapter on the rule of law situation in Slovenia, SWD(2020) 323 final, 30. 9. 2020.

Impact on the Institution's work

The Ombudsman has based its activities and priorities on various grounds, including the follow-up to key issues reported on in the 2020 ENNHRI rule of law report, in particular in the area of hate speech, the functioning of the justice system and the monitoring of the impact of COVID-19 and the measures taken to address it on human rights.

Follow-up initiatives by the Institution

The Ombudsman has not taken any follow-up initiatives solely based on the 2020 report due to the increase of workload related to the COVID-19 situation, and to some extent, to the lack of human resources.

Independence and effectiveness of the NHRI

Changes in the regulatory framework applicable to the Institution

The national regulatory framework applicable to the Ombudsman has not changed since the 2020 Rule of Law report. However, a highly relevant Decision of the Constitutional Court of the Republic of Slovenia for the Ombudsman's work was adopted in December 2020 (1). This Decision annulled several provisions (Articles 20, 40/2, 103/1) of the Public Finance Act on budgetary funds, insofar as they relate to the National Council, the Constitutional Court, the Ombudsman and the Court of Audit. It also decided that Article 95/1 of the same Act was inconsistent with the Constitution. In particular, the Constitutional Court has decided that the funds received by the four independent institutions must not be dependent on the government. It has exposed that the existing legislation allows the government or the finance minister to accumulate budgeting powers concerning the independent institutions in question, thus significantly affecting their financial independence. However, to implement their constitutional role, the four independent institutions must have a legal position in budgeting equal to the government. Until the law is amended, the Finance Ministry must thus include the proposals of financial plans made by the four independent institutions into the draft state budget.

The Ombudsman expects the Parliament to implement the mentioned decision within one year from its publication in the Official Gazette of the Republic of Slovenia, i.e., before 23 December 2021, as required by the Constitutional Court.

In addition, the Ombudsman advocates to further amend the Human Rights Ombudsman Act in order to comply with the GANHRI Sub-Committee for Accreditation recommendations of December 2020 (2). The Ombudsman also asks for the necessary legislative changes to comply with the Venice Principles on the Protection and promotion of the Ombudsman Institution (3).

The Ombudsman has at several occasions (4) also clearly indicated that it is prepared to assume the responsibility and mission of an independent body for promoting, safeguarding and monitoring the implementation of the Convention on the Rights of Persons with Disabilities (the Convention) in accordance with paragraph two of Article 33 of the Convention. However, no concrete results have been reached in this regard, and Slovenia has so far not established an independent body under Article 33 of the Convention.

References

1. The Decision on the annulment of Article 20, second paragraph of Article 40, the first paragraph of Article 103 in connection to the first and second paragraph of Article 103 of the Public Finance Act insofar as they relate to the National Council, the Constitutional Court, the Ombudsman and the Court of Audit, on the ruling that the first paragraph of Article 95 of the Public Finance Act insofar as they relate to the National Council, the Constitutional Court, the Ombudsman and the Court of Audit in inconsistent with the Constitution and on the ruling that the fifth point of the first paragraph of Article 3, as well as the first and the third to seventh paragraph of Article 40 of the Public Finance Act, are not inconsistent with the Constitution, Official Gazette of the Republic of Slovenia, No. 195/2020 of 23 December 2020. Available also at https://www.uradni-list.si/glasilo-uradni-list-rs/vsebina/2020-01-3501/ (1 March 2021).

2. Global Alliance of National Human Rights Institutions (GANHRI), Report and Recommendation of the Virtual Session of the Sub-Committee on Accreditation (SCA), 7–18 December 2020, pp. 22–24, available at https://nhri.ohchr.org/EN/AboutUs/GANHRIAccreditation/Documents/SCA%20Report%20December%202020%20-%2024012021%20-%20En.pdf (1 March 2021).

3. Principles on the Protection and Promotion of the Ombudsman Institution ("The Venice Principles"), adopted at the Venice Commission at its 118th Plenary Session (Venice, 15–16 March 2019), endorsed by the Committee of Ministers at the 1345th Meeting of the Ministers' Deputies (Strasbourg, 2 May 2019), available also at https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2019)005-e (1 March 2021).

4. Annual Report of The Human Rights Ombudsman of the Republic of Slovenia for 2019, also available at https://www.varuh-rs.si/fileadmin/user_upload/pdf/lp/LP_2019/Annual_Report_2019.pdf (1 March 2021).

Enabling space

In general, enabling space for the Ombudsman is sufficient, including with regard to access to legislation and policy process, as well as a level of cooperation among different human rights bodies. Regarding the recommendations given by the Ombudsman to the state authorities, mainly to the government but also to the Parliament, courts and other bodies, the Ombudsman noted in its last annual report that there were more than 200 recommendations that had not been implemented or only partially. Some had been topical since 2013, and the competent authorities had not approached them seriously enough. Nevertheless, the Ombudsman issued numerous new recommendations, 158 in its last annual report, to address countless and frequently new challenges faced in Slovenian society (1).

The Ombudsman as Slovenian National Human Rights Institution (NHRI) continued its endeavours to be accredited as a status A institution under the 1993 Paris Principles, which relate to the status and functioning of national human rights institutions. During the

COVID-19 crisis, the Ombudsman increased its involvement at the international level with global and regional international organizations as well as NHRI networks. The aim has been to further promote international human rights standards at the national level. Regarding the accreditation, the GANHRI Sub-Committee on Accreditation session was postponed from March 2020 to December 2020. In January 2021, The Slovenian Ombudsman received recognition by the SCA that it fulfils the Paris Principles and was declared as a status A institution (1). It has therefore been officially confirmed that the Ombudsman meets the highest performance standards of an independent national institution for the protection and promotion of human rights. For the Ombudsman, the newly acquired status is principally a great acknowledgement and recognition of the work done so far and will also enable its full participation in various meetings within the United Nations, at the regional level, as well as within the Global Alliance of National Human Rights Institutions (GANHRI) and the European Network of National Human Rights Institutions (ENNHRI), where it was granted voting rights (2).

The SCA, however, regularly highlights that even the institutions accredited with "A" status must continue to strive to enhance their effectiveness and independence and to realise the GANHRI recommendations (2). The Ombudsman concurs with the commentary of the SCA; it notes, however, that attention and real support from the authorities, especially the Government and the legislature, will also be needed for the realisation of the targets set. The Ombudsman's accreditation will again be reviewed in five years' time. The Ombudsman is committed to continuing its work until then with due diligence and professionalism. The Ombudsman supports all recommendations of the SCA: on the procedure for selecting and appointing the Ombudsman and deputies, the financial autonomy of the institution, and on competence to encourage ratification or accession to human rights treaties (3).

References

1. Annual Report of The Human Rights Ombudsman of the Republic of Slovenia for 2019, also available at https://www.varuh-rs.si/fileadmin/user_upload/pdf/lp/LP_2019/Annual_Report_2019.pdf (1 March 2021).

2. Global Alliance of National Human Rights Institutions (GANHRI), Report and Recommendation of the Virtual Session of the Sub-Committee on Accreditation (SCA), 7–18 December 2020, pp. 22–24, available at: https://nhri.ohchr.org/EN/AboutUs/GANHRIAccreditation/Documents/SCA%20Report%20December%202020%20-%2024012021%20-%20En.pdf (1 March 2021).

3. For the Press Statement of the Ombudsman, see https://www.varuh-rs.si/en/news/news/hro-slovenia-with-the-paris-principles-highest-status/ (1 March 2021).

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

The Center for Human Rights, an organizational unit of the Ombudsman, greatly increased its activities in 2021 s in the following fields:

- research (i.e., a continuation of an analysis on the prosecutor's practice regarding hate speech; analyses of schooling of Roma children during the COVID-19 epidemic, analyses COVID-19 and violence), short research of the access to courts);
- promotion activities (i.e., information on the position of international organizations on human rights-based approach to tackle epidemic, a project "If you see injustice, use justice" (1) on children's rights in December 2020, the Ombudsman's Short Guide "How and when can an individual submit a communication to UN human rights treaty bodies" (2));
- monitoring activities (i.e., the Ombudsman's Report on the Placement of Detainees at the Postojna Aliens Center of 10 November 2020 (3), the Ombudsman's Submission to Grevio of October 2020 (4));
- training (i.e., a webinar on individual complaint mechanisms under the United Nations Treaty Body System (5));
- opinions (i.e., on the accessibility of websites for vulnerable groups is a commitment for the EU Member State)

- international cooperation and reporting (i.e., on COVID-19 situation, on questionnaires of the UN special rapporteurs on human rights; to United Nations, to FRA, EU, Council of Europe (alternative report to the Committee on Social Rights and other global or regional organizations/networks).

The Ombudsman also opened new staff positions in order to respond to the workload and tasks of the Institution.

References

1. See: https://www.varuh-rs.si/za-otroke/ (1 March 2021).

2. See: https://www.varuh-rs.si/vodic-mednarodne-pritozbe/?categories=%2F (1 March 2021).

3. See: https://www.varuh-rs.si/en/news/news/the-ombudsmans-report-on-the-placement-of-detainees-at-the-postojna-aliens-centre/ (1 March 2021).

4. See: https://www.varuh-rs.si/en/news/news/the-ombudsmans-submission-to-grevio/ (1 March 2021).

5. https://www.varuh-rs.si/projekti/projekt/pritozbeni-postopki-po-mednarodnih-pogodbah-o-clovekovih-pravicah-zdruzenih-narodov/ (1 March 2021).

Human rights defenders and civil society space

During the COVID-19 epidemic, the Ombudsman found cases of laws, measures and practice that could negatively affect civic space and reduce human rights defender's activities.

The Ombudsman received several comments related to the alleged controversial nature of Article 42 of the amendments to the Act on measures to mitigate the effects of the epidemic (ZIUZEOP-A) (1). The Ombudsman emphasized that it is in the interest of all that the economy after the Covid-19 crisis is recovering as soon as possible; however, that the measures taken to limit public participation in environmental issues, without addressing other reasons for the length of the process, are unacceptable for present and future

generations. The Ombudsman found a violation of the rule of law (Article 2 of the Constitution), a violation of the right to judicial protection (Article 23 of the Constitution), a violation of the right to a healthy living environment (Article 72 of the Constitution) and a violation of the prohibition of retroactive effect of legal acts (Article 155 of the Constitution). However, the authorities did not react, and the issue is currently under the review of the Constitutional Court (2). In the mentioned ZIUZEOP-A case on the involvement of civil society and NGOs in environmental issues, the Ombudsman forwarded its findings and a proposal for the elimination of irregularities to the Ministry of the Environment and Spatial Planning. It appealed to the Ministry to consider preparing a proposal to amend, repeal or abolish Article 42 of the ZIUZEOP-1 while taking into account also negative opinions of the Legislative and Legal Service of the National Assembly and the Commission for the Prevention of Corruption. The Ombudsman identified several violations of human rights and urged to eliminate the identified inconsistencies with the Constitution of the Republic of Slovenia and the Aarhus Convention by (again) ensuring adequate and effective public participation in all administrative and judicial proceedings that have and could have an impact on the environment, adequate and effective legal protection and eliminate all other shortcomings (below) which are pointed out not only by the institution of the Ombudsman but also by other already mentioned bodies (3).

The Ombudsman also paid attention to the freedom of assembly and the right to peaceful protest. There have been several and regular protests since Spring 2020. On 19 June 2020 the Ombudsman checked the police procedures for establishing identity during the protest in Ljubljana. It considered that circumstances such as moving in the direction of a protest rally or staying at the protest rally site immediately before or during the protest rally are not a sufficient reason for suspicion, which is a condition for the execution of the identification procedure provided for in the Police Tasks and Powers Act. The Ombudsman recalled that in cases where different police powers can be used for the successful performance of a police task, police officers must use those with the least harmful consequences. Harmful consequences are measured by the intensity of interference with human rights and fundamental freedoms. The Ombudsman recalled that any measure or action should be proportional (4). Regarding the June 2020 protests in Ljubljana, the Ombudsman addressed a detailed inquiry to the Ministry of the Interior on 22 June 2020 from the point of view of the protection of human rights and fundamental freedoms. The circumstances provided by the police for identification of individuals were in view of the Ombudsman also so general that they could, most likely, be attributed to all the protesters, who numbered around 7,000. Therefore, it was not entirely clear on what basis the police actually established the identities of only 69 people out of all other protesters. The Ombudsman recommended once again that the police officers always exercise a careful

assessment of the conditions laid down by law and other regulations for the exercise of police powers in order to exercise their power of identification (5).

The Ombudsman also called on the Ministry of Culture to engage in a constructive dialogue with NGOs operating at Metelkova 6 (a group of NGOs focused on culture and human rights), to whom the Ministry of Culture in October 2020 proposed to end their rental agreement and called to leave the building by the end of January 2021. With reference to the Council of Europe recommendation (6), the Ombudsman underlined that state authorities have a duty to remove any unnecessary, unlawful or arbitrary restrictions to civil society space, in particular with regards to freedom of association, peaceful assembly and expression. The Ministry, however, did not respond to the Ombudsman's call for dialogue (7).

Concerning other measures related to peaceful protests undertaken by the Government, the Ombudsman underlined on various occasions that the freedom of expression and freedom of assembly are integral rights. Therefore, even for epidemic control reasons, they can only be restricted if this was proportional and necessary to achieve the legitimate aim pursued. In this respect also the sanctions must be proportionate. The limitations of the freedom of assembly should also not be discriminatory; therefore, any regulations, which limit peaceful protests on such a basis and have no grounds on the epidemiological situation, are considered problematic (8).

The Ombudsman also wish to draw attention to the need for dialogue between the authorities and non-governmental organizations. As the Ombudsman publicly wrote, active two-way communication and dialogue are necessary in all areas in order not to enter a crisis of values (9). COVID-19 crisis cannot be an excuse for lack of dialogue, arbitrary decision-making or interference from a position of power. Last but not least, it is a socially responsible community that contributes to co-creating a positive social climate and a culture of dialogue. Only in this way will the recovery process after the coronavirus disease pandemic be effective.

References

1. Act Amending the Act Determining the Intervention Measures to Contain the COVID-19 Epidemic and Mitigate its Consequences for Citizens and the Economy, Official Gazette of the Republic of Slovenia, No. 61/2020 of 30 April 2020, also available at http://www.pisrs.si/Pis.web/pregledPredpisa?id=ZAKO8190 (1 March 2021).

2. https://www.varuh-rs.si/sporocila-za-javnost/novica/mop-ni-upostevalvaruha-naj-s-spremembo-42-clena-ziuzeop-a-znova-zagotovi-sodelovanje-javnosti-v-ok/ (1 March 2021).

3. https://www.varuh-rs.si/sporocila-za-javnost/novica/mop-ni-upostevalvaruha-naj-s-spremembo-42-clena-ziuzeop-a-znova-zagotovi-sodelovanje-javnosti-v-ok/ (1 March 2021).

4. https://www.varuh-rs.si/sporocila-za-javnost/napovednik/?tx_news_pi1%5Bnews%5D=5748&cHash=2ff02e01c1f6ad406aa8d534c8b8c384 (1. 3. 2021).

5. https://www.varuh-rs.si/sporocila-za-javnost/napovednik/?tx_news_pi1%5Bnews%5D=5748&cHash=2ff02e01c1f6ad406aa8d534c8b8c384 (1 March 2021).

6. Council of Europe, Recommendation CM/Rec(2018)11 of the Committee of Ministers to member States on the need to strengthen the protection and promotion of civil society space in Europe, *Adopted by the Committee of Ministers on 28 November 2018 at the 1330th meeting of the Ministers' Deputies.*

7. See https://www.varuh-rs.si/index.php?id=1320&L=306&tx_news_pi1%5Bnews%5D=5949&tx_news_pi1%5Bday%5D=30&tx_news_pi1%5Bmonth%5D=12&tx_news_pi1%5Byear%5D=2020&cHash=781e05d02de31bdec8369f11c5f602b2 (1 March 2021).

8. See: https://www.varuh-rs.si/sporocila-za-javnost/novica/varuh-svetina-v-dz-o-svobodi-mirnega-zbiranja-in-zdruzevanja/ (18 March 2021).

9. The message of The Human Rights Ombudsman of the Republic of Slovenia Peter Svetina on the occasion of the International Human Rights Day, 10 December 2020, available at https://www.varuh-rs.si/sporocila-za-javnost/novica/poslanica-varuha-clovekovih-pravic-ob-mednarodnem-dnevu-clovekovih-pravic/ (1 March 2021).

Checks and balances

The Ombudsman continued with its monitoring and calls on the need for the execution of the decision of the Constitutional Court of the Republic of Slovenia as well as of the judgments of the European Court for Human Rights. While in last years a positive development was noticed regarding the execution of the judgments of the European Court for Human Rights, no major positive development could be noticed regarding the implementation of the Constitutional Court decisions (1). Nonetheless, some development was reached regarding the implementation of the Constitutional Court decision U-I-32/15, of 18 November 2018 (2). It ruled that Article 4 of the Act Establishing Constituencies for the Election of Deputies to the National Assembly (3), which determined the area of constituencies, was inconsistent with the Constitution. The necessary changes of the Act did not meet the required deadline determined by the Constitutional Court, which expired on 21 December 2020; however, they were adopted in February 2021 and entered into force on 2 March 2021 (4).

Through several public statements and interviews, the Ombudsman brought several issues also to the attention of the general public (5). In exercising its mandate, the Ombudsman did not encounter any major obstacles with respect to its check and balances powers.

The Ombudsman made several calls regarding the lack of disaggregated data in Slovenia. It pointed out that combating discrimination requires valid, accurate and representative data on the situation of persons or groups of persons with a specific personal ground (protected ground) in different areas of social life. Equality data is used to determine the current state and trends of de facto (in)equality and is of utmost importance for the planning, implementation and review of non-discrimination policies, particularly regarding positive measures. Such data and measures to counter discrimination and inequality will also be of particular importance in the post-Covid-19 world. An EU study (6) has indeed shown that equality data collection in Slovenia is critically weak, far most EU member states. Data disaggregated by protected grounds has also been recommended to Slovenia by several international monitoring mechanisms, including the Committee against Torture, Committee on the Rights of the Child, Committee on Economic, Social and Cultural Rights, Committee on the Elimination of Racial Discrimination and, recently, the UN Rapporteur on Minority Issues and the Committee on the Rights of Persons with Disabilities (7). In this regard, the Ombudsman recommended within the Third Cycle of the Universal Periodic Review (8) as well as in its last Annual Report to the National Assembly (9) that:

- The Government drafts and the National Assembly adopts suitable legislation on personal data protection and sector-specific legislation to determine special

exemption with regard to collecting disaggregated data as per individual personal grounds in order to promote equal treatment and equal opportunities when observing applicable national and international standards on personal data protection.

- The competent authorities enable and ensure systematic collection of disaggregated data as per protected personal grounds in all areas of social life in order to accurately determine the situation and trends regarding (in)equality in society and that the competent line ministry takes over the management of the informal working group for resolving the issue of disaggregated data collection as per paragraph one of Article 62 of the State Administration Act (ZDU-1) (10), and, if the ministries fail to reach an agreement, the Government of the Republic of Slovenia should decide on the issue as per paragraph two of Article 62 of the ZDU-1.

Both recommendations remain unimplemented.

Last but not least, according to various sources, there is, in general, a low level of trust among citizens to the state authorities and between citizens and the public administration, including regarding the measures to tackle the epidemic.

References

1. See for example: Vlasta Nussdorfer: Zakaj se odločbe ustavnega sodišča tako težko uveljavijo, 13. 1. 2021, available at: https://www.iusinfo.si/medijsko-sredisce/kolumne/277623 (1 March 2021).

2. Official gazette of the Republic of Slovenia, No 82/2018 of 21 December 2018, also available at https://www.us-rs.si/odlocitev-ustavnega-sodisca-v-zadevi-u-i-32-15/ (1 March 2021).

3. Official Gazette of the Republic of Slovenia, No. 24/05 – official consolidated text.

4. See: Act Amending the Act Establishing Constituencies for the Election of Deputies to the National Assembly, Official Gazette of the Republic of Slovenia, No. 29/2021 of 1 March 2021.

5. See https://www.varuh-rs.si/sporocila-za-javnost/vsa-sporocila-za-javnost/ (1 March 2021).

6. European Commission, Analysis and comparative review of equality data collection practices in the European Union, Equality data indicators: Methodological approach, Overview per EU Member State, Technical annex, p. 49, https://ec.europa.eu/newsroom/just/document.cfm?action=display&doc_id=45793 (1 March 2021)

7. CAT/C/SVN/C0/3 of June 2011, CRC/C/SVN/C0/3-4, of July 2013, E/C.12/SVN/CO/2 of December 2014, CERD/C/SVN/C0/8-11 of January 2016, CRPD/C/SVN/CO/1 of April 2018 and A/HRC/40/64/Add.1 of January 2019.

8. https://www.varuh-rs.si/nc/en/about-us/organisational-units-and-hro-council/center-for-human-rights/levi-meni/universal-periodic-review-upr/.

9. https://www.varuh-rs.si/fileadmin/user_upload/pdf/lp/LP_2019/Annual_Report_2019.pdf (1 March 2020).

10. Official Gazette of the Republic of Slovenia, No. 113/05 – official consolidated text, 89/07 – odl. US, 126/07 – ZUP-E, 48/09, 8/10 – ZUP-G, 8/12 – ZVRS-F, 21/12, 47/13, 12/14, 90/14 in 51/16.

Functioning of the justice system

Regarding the functioning of the justice system, the Ombudsman continued focusing on the operation of the justice system. During 2020, the Ombudsman noted a significant increase in the number of breaches of the right to judicial protection under Article 23 of the Slovenian Constitution – while the Ombudsman found six such violations in 2019, it found 22 in 2020.

The Ombudsman reiterates that, based on the complaints, a trial within a reasonable time is no longer a systemic problem in Slovenia (this also follows from the European Commission's 2020 Rule of law Report). However, according to the President of the Supreme Court (1) and in view of the Ombudsman, the restrictions relating to the new

coronavirus epidemic importantly undermined the functioning of the judicial system, especially in the courts of the first instance. This shall have an effect on the increasing backlog of cases before the Courts in the future.

On the operation of the courts, despite repeated warnings by the judiciary (2) and the Ombudsman, there still are no tangible measures aimed at improving working conditions, business organization and financial situation of judges and some groups of judicial employees. For several years, the issue of resources for the provision of appropriate staff has not been resolved - especially the appropriate support of court staff and spatial conditions. The proposals regarding a single first-instance judge have also not been implemented. The main challenges for the judiciary in 2020 were the increased number of complex new cases (e.g., transfer of competences in family matters from social work centres, administrative procedures) and preparation for a large number of specific procedures.

Several of the Ombudsman's past recommendations have still not been implemented. For example, in its last Annual Report, the Ombudsman recommended that the Ministry of Justice take additional measures to increase the number of court experts in the field of family relations, yet the recommendation remains relevant. The Ombudsman also calls on the Ministry to strengthen the efficiency of supervisory bodies in order to ensure the quality of the work of courts and to enable a more effective and accessible free legal aid.

The Ombudsman also regularly recommends that all judicial authorities continue to strengthen the efficiency and transparency of their work. It, for example, proposed that the Slovenian judiciary continues to provide appropriate information to the public and the necessary response to media-exposed allegations regarding its work; however, the recommendation has not yet been sufficiently implemented (3). The Ombudsman also recommended to the Supreme Court of the Republic of Slovenia that, in order to ensure uniform case-law, all courts continue to be encouraged to improve the operation and quality of trials, and to the Ministry of Justice to continue to strengthen the judiciary for efficient and quality judicial administration (4).

The number of cases dealt with by the Ombudsman in the wider field of justice increased slightly (to a total of 410 cases). Most of the complaints related to the quality of trials and other (judicial) decision-making issues. The most frequently raised issues in 2020 were again the right to judicial protection, equal protection of rights, the right to legal remedy, legal guarantees in criminal proceedings and other rights, including the principle of good administration. Some issues in this area were also related to the management of the COVID-19 epidemic. The share of permissible complaints is again the highest in the field of

proceedings before labour and social courts. However, the activities of the Ombudsman in the field of the judiciary are very much related to its (limited) powers in relation to this branch of state power: the Ombudsman may intervene in ongoing court proceedings only in the event of an unjustified delay in the proceedings or manifest abuse of power. The Ombudsman is not a body, which could give instructions to courts for deciding on matters within their competence. However, the Ombudsman's intervention is possible in the role of a friend of the court (amicus curiae) under Article 25 of the Ombudsman Act. The Ombudsman is also not mandated to determine the legality of courts' decisions (and other state bodies). In case of disagreement with the courts, the party in the proceedings has other available legal remedies (regular and extraordinary). In relation to the judiciary, the Ombudsman's actions can only be such that they do not jeopardize the independence of judges in the performance of their judicial functions. The Ombudsman's intervention, therefore, mainly extends to the judicial or justice administration.

In dealing with cases in this area, the Ombudsman continued to address court presidents and other competent persons (e.g., heads of prosecutors' offices) through its inquiries and other interventions. When necessary, the Ombudsman also turned to the Ministry of Justice for clarifications regarding the legal framework for the functioning of the judiciary and to the Ministry of the Interior when regarding the procedures of the Police as a misdemeanour body and individual police. In general, the Ombudsman is satisfied with the responses of relevant authorities in considering the initiatives, as they mostly responded to inquiries and other interventions in due time.

In September 2020, the Judicial Council proposed again to the President of the Republic to speed up the initiative to amend the Constitution and the Judicial Service Act regarding the procedure for appointing judges (5). The Judicial Council, together with the Supreme Court of the Republic of Slovenia and the Slovenian Judges' Association, has long advocated the withdrawal of the election of judges from the National Assembly, especially of the judges of the Supreme Court, as such a system is an exception to the European Union legal framework. GRECO also recommended, in its Second Compliance Report on Slovenia of 23 March 2018, that the Slovenian authorities consider revisiting the procedure of appointment of judges to the Supreme Court in order to minimise the possibilities of political influence (6). The recommendation of GRECO remains unimplemented.

References

1. http://www.sodisce.si/usrs/objave/2021021712031513/# .

2. http://sodisce.si/sodni_postopki/objave/2020021213193911/ .

3. 2018 Ombudsman Annual Report, available at https://www.varuh-rs.si/fileadmin/user_upload/pdf/lp/LP2017_VARUH_ENG.pdf .

4. 2019 Ombudsman Annual Report, available at:

https://www.varuh-rs.si/fileadmin/user_upload/pdf/lp/LP_2019/Annual_Report_2019.pdf

5. Dopis Sodnega sveta, SU 569/2019-55 z dne 16. 9. 2020, also available at http://www.up-rs.si/up-rs/uprs.nsf/cc1b0c2e0c8f0e70c1257aef00442bbd/749059dca573ed12c12585ff004245be/$FILE/Pobuda%20Sodnega%20sveta.pdf (1 March 2021).

6. Council of Europe, GRECO, Fourth Evaluation Round, Corruption prevention in respect of members of parliament, judges and prosecutors, Second Compliance Report, Slovenia, adopted in Strasbourg on 23 March 2018, published on 5 July 2018; paragraphs 22-26; also available at https://rm.coe.int/fourth-evaluation-round-corruption-prevention-in-respect-of-members-of/16808c1a9c (1 March 2021).

Media pluralism and freedom of expression

Regarding freedom of expression, the Ombudsman has kept a focus on the issue of hate speech in the Republic of Slovenia. The Center for Human Rights (an organizational unit of the Ombudsman) has to a large extent concluded its analysis of the prosecution of a criminal offense under the first paragraph of Article 297 (Public incitement to hatred, violence, and intolerance) of the Criminal Code of the Republic of Slovenia, which is going to be the first analysis giving an inside look to the Public Prosecutors' as well as, to a certain extent, to the courts' practice over the period from 2008 to 2018.

The situation in the field of freedom of expression (and media freedom) remains strongly linked to current social developments – both numerically and substantively – as well as to the epidemic situation. The Ombudsman draws attention on several occasions to the need for the ethics of the public world (1). Online harassment of and threats against journalist remains an issue of concern. The Ombudsman has for years recommended (2) that the Ministry of Culture, within the scope of its competences, make every effort to determine, with regard to the implementation of the norm on the prevention of the spread of hate speech in the media (Article 8 of the Media Act):

- protection of public interest (inspections, minor offences control),
- remedial actions (such as immediate removal of illegal content)
- sanctions for the media allowing hate speech.

Unsurprisingly, public debate on the needed reform of (a set of) media legislation is highly politicized, and therefore status quo remains for years.

The Ministry's proposal of amendments of three media-related laws, introduced in July 2021, was largely criticised as it was subject to a very short public debate, a lack of coalition consensus and was based on questionable principles: the proposals received 193 comments. Consequently, the amendments of the legislation were removed from further proceedings. (3)

The Ombudsman follows several debates on the issue of a free and pluralistic media environment in Slovenia. Politicians are often in conflict with the media or journalists.

References

1. See, for example, https://www.varuh-rs.si/sporocila-za-javnost/novica/varuh-svetina-o-etiki-javne-besede/ (1 March 2021), https://www.varuh-rs.si/sporocila-za-javnost/novica/varuh-poziva-organe-odkrivanja-in-pregona-da-zajezijo-epidemijo-nestrpnosti-in-sovraznosti/ (1 March 2021), https://www.varuh-rs.si/sporocila-za-javnost/novica/varuh-svetina-sprejel-varuhinjo-pravic-gledalcev-in-poslusalcev-rtv-slovenija/ (1 March 2021) and https://www.varuh-rs.si/sporocila-za-javnost/novica/varuh-svetina-razvoj-in-uporaba-digitalnih-tehnologij-naj-bo-skladna-s-clovekovimi-pravicami/ (1 March 2021).

ENNHRI

2. See 2020 ENNRHI Rule of Law Report, Slovenia and Annual Report of the Human Rights Ombudsman of the Republic of Slovenia for 2018, recommendation no. 13(2018) and p. 107, available at http://www.varuh-rs.si/fileadmin/user_upload/pdf/lp/LP_2018.pdf (1 March 2021).

3. See, for example: https://www.rtvslo.si/javna-razprava-o-medijski-zakonodaji/svet-delavcev-o-spremembah-medijske-zakonodaje/535517 (1 March 2021), https://www.delo.si/novice/slovenija/kritike-kratke-javne-razprave-o-novi-medijski-zakonodaji/ (1 March 2021), https://siol.net/novice/slovenija/pivceva-desus-ne-podpira-predlaganih-sprememb-medijske-zakonodaje-531729 (1 March 2021), https://www.dnevnik.si/1042938911 (1 March 2021), https://www.vecer.com/slovenija/nsi-o-medijski-zakonodaji-predlagali-bomo-popravke-paket-zelimo-se-izboljsati-10206651 (1 March 2021), https://www.amnesty.si/spreminjanje-medijske-zakonodaje.html (1 March 2021).

Corruption

The responsible independent institution for combating corruption in Slovenia is the Commission for the Prevention of Corruption (1), not the Ombudsman.

The Ombudsman, however, notes the adoption of relatively comprehensive amendments to the Integrity and Prevention of Corruption Act in November 2020 (2), which brought several long-expected changes (3). The Ombudsman also notes that Slovenia reached 35th place in the Transparency International Corruption Perception Index (CPI 2020) with a score of 60, which is the same score as in 2019. This means that Slovenia has not made progress on the Corruption Perceptions Index since 2012 and is below the EU average (average score of the Member States' Index is 64) and the OECD average (average score of the Member States' Index is 67) (4). The year 2020 was marked with several claims of corruption in relation to providing protective and medical equipment to prevent and limit COVID-19 infections – the procedures are ongoing.

No progress has been made so far regarding the implementation of the 2019 EU Whistleblowers Protection Directive (5). The draft of the envisaged specific law on the

protection of whistle-blowers in Slovenia has not yet been made available to the public nor to the Ombudsman.

References

1. Commission for the Prevention of the Corruption of the Republic of Slovenia, see https://www.kpk-rs.si/en/ (1 March 2020).

2. Official Gazette of the Republic of Slovenia, No. 158/20 of 2 November 2020.

3. For some most important changes, see https://www.kpk-rs.si/2020/11/17/od-danes-veljajo-spremembe-zakona-o-integriteti-in-preprecevanju-korupcije/ (1 March 2020).

4. https://www.transparency.si/8-novice/471-cpi-2020-slovenija-brez-napredka-ze-od-leta-2012 (1 March 2020).

5. Official Journal of the European Union, L 305/17, 26 November 2019.

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

The Ombudsman has been closely monitoring the COVID-19 situation in the Republic of Slovenia and internationally and the measures adopted by state authorities to contain the epidemic and protect the most vulnerable groups of citizens. In these incredibly challenging times, decision-makers must operate the delicate balance between societal interests and individual rights, freedoms or interests.

The most significant impacts of the COVID-19 outbreak and the measures taken to address it for the rule of law and human rights protection rely on the manner in which the authorities exercise their powers to tackle the epidemic. The awareness that the measures are interfering with human rights and fundamental freedoms and should therefore meet the legitimacy test of necessity, proportionality, non-discrimination, professional justification, legality and time-limitation, sometimes seems questionable. In Slovenia, no state of emergency has been proclaimed, and the Government should, in theory, have no extended powers.

In general, a vast majority of governmental decrees claim their legal basis as Article 39 of the Communicable Diseases Act (1), which gives a general authority to the Government to order certain additional measures, when those provided for in this Act cannot prevent spreading certain infectious diseases. However, the governmental decrees include several measures interfering with human rights and freedoms (2) inter alia: the obligation to wear face-masks in public, limitations of movement on municipalities and/or statistical regions (while there are no political regions determined in Slovenia), curfew between 9 p.m. and 6 a.m. (currently enforced since 20 October 2020), closure or limitations of operation of services (shops, hairdressers etc.), the closing of schools and schooling from home, obligation to disinfect apartment buildings, limitations to assembling in public space, closure of ski slopes, closure of gyms, conditions to cross a state border, restrictions on health services, an obligation of testing for COVID-19. Since March 2020, hundreds of such decrees, amendments or ministers' decisions have been adopted (3).

These measures had very limited Parliamentary or any other democratic oversight and were not formally explained. They are also not subjected to fast judicial review. Even when the measures are based on the views of the Governmental expert advisory group on COVID-19, related scientific analysis is, in general, not publicly accessible. Furthermore, many measures might change on a daily basis or are prolonged on a weekly basis, which makes the legal framework applicable unpredictable and difficult to follow. Besides, the existing Communicable Diseases Act has proven to be outdated and cumbersome to use in this situation. For this reason, the Ministry of Health introduced a draft of a new law in August 2020 (4), to which the Ombudsman has given several comments and views on identified shortcomings regarding its implementation.

If the above-mentioned approach and powers of the Government might somehow be tolerated due to the epidemic and specific COVID-19 situation, if adopted in good faith and limited to necessary COVID-19 measures, they should be strictly limited to counter epidemic/pandemic and not become new normality and generally applicable.

A long-term implication of the COVID-19 outbreak also concerns the manner in which the laws are adopted in Parliament. The second set of measures to address the COVID-19 situation have been adopted by the National Assembly in the form of so-called "omnibus laws", which means that one act changes several other sectoral acts. Such an approach had been rarely used before the health crises for reasons of legal certainty. As of 1 March 2021, eight packages of such laws were adopted. These acts predominantly address COVID related matters such as economic situation, social benefits, limit functioning/ access to courts, schooling from home etc. (5). However, some acts also address issues, which have no direct connection with the COVID-19 situation, like the provisions which limit the

participation of environmental civil society organizations in decision-making (6). In addition, deadlines for a public debate and comments are often extremely short. More attention should be paid to democratic participation, which could also increase the trust of the public in the adopted measures.

Another issue regards the access of individuals to effective legal remedies regarding various COVID-19 measures and their access to the courts. Even though there are dozens of cases related to the COVID-19 situation pending before the Constitutional Court, it has rarely suspended the implementation of concerned regulations (7) and so far adopted only two final decisions. The first decision (U-I-83/20 of 27. 8. 2020) assesses the constitutionality of two government decrees restricting movement to the municipality of residence (8). The Court found that the Government pursued a constitutionally permissible goal, i.e., containing and controlling the spread of the infectious disease COVID-19 and thus protecting the health and lives of people at risk. (9) The second decision (U-I-445/20 of 3 December 2020) (10) regards the non-publication of governmental decrees and a decision of the Minister of Education regarding schooling from home. The Constitutional Court ruled that three decrees of the Government and a decision of the Minister of Education extending the period of distance education, published only on the webpage of the Ministry and not in the Official Gazette of the Republic of Slovenia, were invalid. The Court has given the government three days to take action, which it did; otherwise, children would return to school. This decision might also have consequences regarding the validity of other decrees enforced in a similar way. The question of whether the citizens could claim compensation could also be raised.

As to the regular courts, in one case, the Administrative Court found a poorly justified quarantine decision to have no effect (11). In cases of corona-measures related misdemeanour proceedings (including regarding disproportionately high fines for misdemeanours), individuals might undertake regular complaint procedures (although lengthy and expensive). In other cases of challenging alleged human rights violations by corona-measures, in practice the only visable option was to bring the case before the Constitutional Court. The right to an effective remedy is protected by Article 13 of the European Convention on Human Rights and should as such be meaningful and also ensured during the epidemic.

Regarding the rule of law, a publicly very exposed opinion of the Ombudsman stated that a failure to wear a mask in an enclosed public space could not be penalised under the legislation at the time. The Ombudsman noted that the adoption of the decree on the mandatory use of face masks in enclosed public spaces had been based on an article of The Infectious Diseases Act, which was only a general provision and too weak of a legal

basis. The Ombudsman was, therefore, of the opinion that an individual who did not wear a facemask in an enclosed public space could not be fined for committing an offence (13).

There have also been several occasions where the Ombudsman called upon the authorities to respect non-discrimination principles and the rights of elderly persons living in institutions. The Center for Human Rights also undertook research on domestic violence during the epidemic and the availability of counselling services and accessibility of crisis centres and shelters for women victims of violence; and distant schooling of Roma children. The Center for Human Rights also undertook a public campaign on children rights and the possibility for children to submit a complaint to the Ombudsman, under the slogan "If you See Injustice, Use Justice!" (14)

On 10 November, the Ombudsman also published a Report on the Placement of Detainees at the Postojna Aliens Center. Given the current epidemiological situation, the Ombudsman proposed inter alia that the competent authorities and epidemiological experts prepare the appropriate organisation of the detention regime at the Aliens Centre. The Ombudsman also called on the Ministry of the Interior to stop the use of service dogs for Center activities (e.g., during mealtimes) involving contact with the detainees (15).

References

1. Official Gazette of the Republic of Slovenia, No. 33/06 – Official Consolidated Text, 49/20 – ZIUZEOP, 142/20, 175/20 – ZIUOPDVE in 15/21 – ZDUOP.

2. See https://www.uradni-list.si/glasilo-uradni-list-rs (2. 3. 2020).

3. Ibidem. There have been 204 issues of the Official Gazette published in 2020 and by 1 March 2021, already 29 issues (while the average per year is usually between 80 and 90 issues).

4. https://e-uprava.gov.si/drzava-in-druzba/e-demokracija/predlogi-predpisov/predlog-predpisa.html?id=11571 (2 March 2021).

5. https://www.gov.si/teme/koronavirus-sars-cov-2/odpravljanje-posledic-epidemije/ (2 March 2020).

6. See: Act Determining the Intervention Measures to Mitigate and Remedy the Consequences of the COVID-19 Epidemic, Official Gazette of the Republic of Slovenia, No. 80/2020. The Constitutional Court suspended the implementation of relevant provisions of Article 2 of the said law until its final decision (case U-I-184/20, Official Gazette of the Republic of Slovenia, No. 101/2020).

7. Ibidem. See also: https://www.us-rs.si/neresene-zadeve/?year_nrz= (2 March 2021).

8. Namely, the Ordinance on the Temporary General Prohibition of Movement and Gathering of People in Public Places and Areas in the Republic of Slovenia and the Prohibition of Movement Outside Municipalities and the Ordinance on the temporary general prohibition of movement and gathering of people in public places, areas and towns in the Republic of Slovenia and the prohibition of movement outside municipalities.

9. See https://www.us-rs.si/odlocba-ustavnega-sodisca-st-u-i-83-20-z-dne-27-8-2020/ (2 March 2021).

10. Official gazette of the Republic of Slovenia, No 179/2020 of 3 December 2020, also available at https://www.us-rs.si/odlocitev/?id=115421 (2 March 2021).

11. II U 261/2020-18 of 2 September 2020, also available at http://www.sodisce.si/mma_bin2.php?nid=2020090910514762&static_id=2020090910360488.

12. See https://www.varuh-rs.si/en/news/news/ombudsman-meets-with-directors-of-rtv-sta-and-ukom-on-the-accessibility-of-information-for-vulnerab/ (2 March 2021).

13. See https://www.varuh-rs.si/en/news/news/ombudsman-says-failure-to-wear-mask-in-enclosed-spaces-cannot-be-penalised/ (2 March 2021).

14. See https://www.varuh-rs.si/za-otroke/ (2 March 2021).

15. See https://www.varuh-rs.si/en/news/news/the-ombudsmans-report-on-the-placement-of-detainees-at-the-postojna-aliens-centre/ (2 March 2021).

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

The Ombudsman continued with its activities, promoting a human-rights based approach to the measures taken with regard to the COVID-19 epidemic. The most difficult challenges the Ombudsman had to address have been related to a proper, equitable and legitimate approach to the COVID-19 epidemic and measures that needed to be adopted. A balance of values such as the protection of the right to life, the right to health, as well as public health on one side and other individual rights and fundamental freedoms on the other side, has not been an easy challenge. For the Ombudsman, an important dilemma was to identify when to respond publicly in a critical way and when to use other more discreet means (dialogue, informal advice). The Ombudsman has both been criticized for being not active enough in protecting human rights and for being too active, therefore presumably threatening the efficiency of the adopted life-saving measures. The Ombudsman also started to promote respect for human rights, fundamental freedoms, non-discrimination, respect for diversity and the rule of law in a post-covid world (1).

The environment in which the Ombudsman operates has changed due to the COVID-19 situation and related limitations. In order to prevent the spread of infections and to act responsibly, the Institution has largely (albeit not fully) suspended physical contact in its operations. It has therefore stopped receiving complainants and carrying out fieldwork and is instead available via email, regular mail, toll-free telephone and social media. In 2020 the Ombudsman noted a considerable increase in the number of complaints (from 4.600 cases in 2019 to 6.852 cases in 2020). During 2020 the Ombudsman received over 1000 individual complaints regarding the COVID-19 measures. While the Ombudsman's workload during the COVID-19 outbreak has considerably increased, the Ombudsman still managed to process al complaints, finding 150 different violations of human rights or fundamental

freedoms related to the coronavirus epidemic (most of the violations (57) were related to equality before the law and the prohibition of discrimination). The elimination of individual violations or irregularities often had an immediate effect on the initiator as well as on many other individuals, families or groups. The Ombudsman Peter Svetina delivered several public statements and press interviews as well as brought several COVID-19 related issues directly to the attention of the Government and other relevant authorities. He has promoted the human rights-based approach to tackle the epidemic.

Despite the COVID-19 situation, the National Prevention Mechanism (NPM), which operates as an organizational unit of the Ombudsman, visited 51 places of deprivation of liberty and performed two monitoring of the return of aliens (53 in total). The NPM visited 18 police stations, 10 social welfare institutions (homes for the elderly), 7 different educational institutions, 5 prisons, 5 special educational institutions, 3 psychiatric hospitals, detention facilities in the military police, a youth crisis centre, and the care work centres. All visits (except for two monitoring of foreigner returns due to the very nature of these activities) were carried out without prior notice.

Since the beginning of the epidemic, the Ombudsman has addressed more than 40 opinions to the Government or directly to the Prime Minister, and many more to Ministers and Ministries to raise human rights concerns. The Ombudsman has also held several meetings with the Prime Minister, members of the Government, non-governmental organizations and other stakeholders to address current issues. For example, in December 2020, the Ombudsman met with the Director-General of Public Radiotelevision Slovenia (RTV SLO), Director of the Slovenian Press Agency (STA) and Director of the Government Communication Office of the Republic of Slovenia (UKOM) to discuss the importance of accessibility of information for people with disabilities and vulnerable groups (12).

The Ombudsman brought several human rights concerns to the attention of the authorities, made public statements and calls as well as promotional activities. Raising awareness on the importance of respect for human rights and the rule of law is of crucial importance also in light of the most probable economic and political crises, which will surely follow the present health crisis. Therefore, activities on the promotion of human rights will be a priority in Ombudsman's future endeavours.

Regarding a general approach to the COVID outbreak Slovenia did not declare a state of emergency, as permitted within the conditions set by Article 15 of the European Convention on Human Rights (the Convention) and Article 4 of the International Covenant on Civil and Political Rights, nor did a vast majority of European States. Under the Convention, interference with several rights might be subject only to such limitations as are

prescribed by law and are necessary in a democratic society, inter alia in the interests of public health (i.e., Articles 8/2, 9/2, 10/2, 11/2). The appropriateness of the increased executive powers, or at least of increased Governmental activity in adopting and amending the governmental decrees, could also be questioned from the separation of powers viewpoint. While no temporary suspension and restriction of rights were invoked under Article 16 of the Constitution, Article 15 of the Constitution stipulates that the manner in which human rights and fundamental freedoms are exercised may be regulated (only) by law whenever the Constitution so provides or where this is necessary due to the particular nature of an individual right or freedom. It could be questioned whether the present interference in these rights and the manner in which the measures are enforced are fully in accordance with the Convention. Yet it is hard to imagine any other exceptional circumstances or public emergency but war, which would better justify invoking Article 15 of the Convention as clearly the life of the nation is threatened in the present situation.

Article 15 (derogation in time of emergency) of the Convention allows governments, in exceptional circumstances, to derogate, in a temporary, limited and supervised manner, from their obligation to secure certain rights and freedoms under the Convention, to the extent strictly required by the exigencies of the situation (2). The use of Article 15 is subjected to procedural and substantive conditions. While it is hard to emagine that substantial conditions would not be met in the present situation, the procedural conditions would include a requirementto keep the Secretary General of the Council of Europe fully informed.

It is a rule of law question, rarely addressed, whether the adopted COVID-19 measures, which interfere with the exercise of several human rights and fundamental freedoms to protect other rights and public health, are *de facto* temporal derogations of several rights. However, if Article 15 on derogation in time of emergency is not invoked, it seems that States also avoid the international reporting obligations and any other procedures, which might be applicable in such a situation.

Quick adoption of so-called corona governmental decrees, laws and their quick and sometimes unclear amendments further raised questions related to the lack of scrutiny or consultation with relevant stakeholders. The Ombudsman, therefore, often raised its voice – sometimes successfully and others not – on behalf of various vulnerable groups, most importantly affected by these measures (3).

References

1. Peter Svetina: Do boljšega okrevanja s človekovimi pravicami, Uvodnik, v: Pravna praksa, No. 48/2020 of 10 December 2020.

2. European Court of Human Rights, Factsheet – Derogation in time of emergency, September 2020, available at https://www.echr.coe.int/documents/fs_derogation_eng.pdf (2 March 2021).

3. See for example https://www.varuh-rs.si/sporocila-za-javnost/novica/vlada-ni-sprejela-predlogov-varuha-o-zasciti-otrok-s-posebnimi-potrebami-v-izrednih-primerih/ (1. 3. 2021); https://www.varuh-rs.si/sporocila-za-javnost/novica/pregled-aktivnosti-varuha-pri-zagotavljanju-clovekovih-pravic-invalidov-oktober-december-2020/ (1 March 2021).

Spain

Ombudsman of Spain

International accreditation status and SCA recommendations

The Spanish NHRI was re-accredited with A status in May 2018. The SCA encouraged the NHRI to advocate for amendments to the establishing law in order to ensure a limit to the Ombudsman's term of office, a pluralist staff composition and a broad and transparent selection process with the direct participation of civil society. The SCA acknowledged the NHRI's level of engagement with the international human rights system and encouraged the NHRI to continue advocating for the provision of adequate funding.

Impact of 2020 rule of law reporting

Follow-up by State authorities

Specific follow-up concerned the concerns raised about the impact of COVID-19 on rule of law and human rights protection.

For example, as regards the fight against disinformation, the Spanish Government stressed the need to counter recent waves of disinformation through preventing mechanisms. These efforts have been justified to defend the National Health System, citizenship's security, and even Spain's economic interests. However, the most significant justification that was highlighted is the protection of the rule of law at the national level.

Follow-up initiatives by the Institution

Developing public events in the past year was challenging due to the different periods of lockdowns, and the consequences of the second and third wave of coronavirus that have been striking Spain over the past months.

Nonetheless, the Ombudsman engaged throughout the year in actions to follow-up and address the challenges posed by the COVID-19 outbreak. For example, he addressed the Secretary General of Penitentiary during the COVID lockdown to know about the communication protocols with the prisoners' families to inform them of the health situation of the inmates, so that the information flew daily to prevent the spread of fake news

References

- https://www.defensordelpueblo.es/wp-content/uploads/2020/12/Documento_COVID-19.pdf (p. 179)

Independence and effectiveness of the NHRI

Changes in the regulatory framework applicable to the Institution

There has been no change regarding the national regulatory framework or the Institution's internal composition.

Enabling space

The institutional value of the Spanish Ombudsman is widely respected and represents an undeniable voice of reference in Spain. The effectiveness and the development of the functions and the duties of the institution are therefore adequately protected. Furthermore, the fact that it is designated by the Constitution as the protector of fundamental rights of citizens with regard to the public administration, guarantees its recognition and its independence as an external institution with access to the resources it considers necessary to fulfil its mandate. In addition, the art. 502 of the Spanish Criminal Code punishes as disobedience the lack of cooperation with the Ombudsman.

References

- https://www.legislationline.org/download/id/6443/file/Spain_CC_am2013_en.pdf

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

The Covid-19 pandemic and subsequent lockdowns changed the Institution's methods of work. Few on-site visits to places of deprivation of liberty or social centres could be carried

out in order to respect the principle of Do No Harm, they resumed as soon as the situation improved.

The Ombudsman has been immersed in a digital transformation project for several years, that just crystallized in a macro-contract of 4M EUR, aiming to eliminate bureaucracy and streamline processes for citizens. The Institution's budget has raised for this reason.

There is a clear need to simplify and improve procedures, that the Ombudsman is committed to address in order to provide support to the citizens in a timely manner.

Citizens choose to submit complaints mainly through the institutional portal. For this reason, the key in the digital transformation project will be to improve the "user experience". In this way, an intelligent form will be created to help citizens expose their problems to the Institution.

In the framework of the COVID-19 outbreak, numerous issues were brought to the attention of the Institution, including in relation to the number of ERTEs (temporary collective dismissals), aid to the culture sector, closure of the hotel industry, health waiting lists, nursing homes. In order to deal with these complaints more efficiently, the Institution is considering new ways of communicating with the people involved, such as a news item, a newsletter or surveys.

Human rights defenders and civil society space

The Organic Law 4/2015 on the protection of Citizen Security has continued to spark protests from civil society. Even international organizations have expressed their concern. The Venice Commission is currently preparing an opinion on this Organic Law at the proposal of the Parliamentary Assembly of the Council of Europe. The Ombudsman expressed concern and made recommendations in relation to external body searches on public roads, offences in the context of meetings and demonstrations, or the use of images or data by the police. The recent Ombudsman's annual reports, advocated for the reform of some aspects of this law, seeking the right balance between security and freedom.

Although there has been a parliamentary majority in favour of a reform of this law since 2016 and some legislative initiatives in this regard, such reform has not yet been completed, either due to a lack of sufficient political will or because of the parliamentary instability in recent years.

The Ombudsman recommends a reform of the current Organic Law 4/2015, addressing at least the following elements:

- Administrative and judicial guarantees regarding external body searches (art. 20(2)(b)) should be reinforced.
- Violation of article 37 should not hinder the rights of assembly and demonstration.
- Violation of article 36.23 should not hinder freedom of expression or the right to information.

References

- https://www.defensordelpueblo.es/resoluciones/sobre-la-ley-organica-de-proteccion-de-la-seguridad-ciudadana-7/
- https://www.defensordelpueblo.es/wp-content/uploads/2020/05/I_Informe_gestion_2019.pdf (p. 124–127)

Checks and balances

The "state of alarm" declared in response to the pandemic has decreased the parliamentary oversight of the government. However, the Ombudsman continued its scrutiny, and publicly shared its opinion about the relationship between state of alarm and fundamental rights on three occasions: in a resolution of January 2021 denying an appeal of unconstitutionality against the decree establishing the first state of alarm; in the public hearing before the Mixed Congress-Senate Commission on relations with the Ombudsman on November 26; and in the publication of December 2020 "Actions in the face of the COVID-19 pandemic".

In these statements, the Ombudsman concludes that the provisions of the first state of alarm, as well as those adopted by various authorities in the intermediate period between the two states of alarm (June to October 2020), have been adopted in line with the framework of the Constitution, of the Organic Law 4/1981, of June 1, of the states of alarm, exception and siege, and of the sanitary legislation foreseeing cases of epidemic.

The mere designation of the Spanish Ombudsman as a National Human Rights Institution serves as proof of how it interacts with the system of checks and balances that constitutes the separation of powers in Spain. It is the Congress of Deputies, along with the Senate, who decide by a 3/5 majority who will be the Spanish Ombudsman, whose term is of five years. As part of the Ombudsman's activities, it elaborates an annual report including the

issues identified as most important or which require the intervention of the executive and the legislative powers with relative urgency.

References

- https://www.defensordelpueblo.es/noticias/segundo-estado-alarma/
- https://www.defensordelpueblo.es/wp-content/uploads/2021/01/Resolucion-compulsada-20027822_1.pdf
- https://www.defensordelpueblo.es/wp-content/uploads/2020/12/Documento_COVID-19.pdf
- https://www.defensordelpueblo.es/noticias/comparecencia-covid-19/

Media pluralism and freedom of expression

In the framework of the proposals of reform made by the institution concerning the Organic Law 4/2015 on the protection of Citizen Security, the Ombudsman advocated, with respect to the fundamental right to information and concerning the serious infraction established in article 36.23 of the Law, to establish urgent instructions to guarantee the interpretation and application in the most favourable way to the full effectiveness of freedom of expression. In particular, the Ombudsman stressed that the expression "**unauthorized** use of images or personal or professional data" should not be interpreted as requiring prior administrative authorization for the dissemination of such images or data. Likewise, article 19, relating to the apprehension of the effects of a crime or administrative offense, should not be interpreted as meaning that an apprehension of informative material is possible without judicial authorization.

Finally, and considering the difficulty for citizens to be aware *a priori* that the use of certain data or images can jeopardize the success of a police operation, it is advisable to reserve the provisions' application to cases where fraud circumstances are proven.

By a decision TC 172/2020 the Spanish Constitutional Court declared the prior authorization foreseen in art. 36.23 unconstitutional and null, and the rest of the section constitutional, provided that it is interpreted in the sense established in the Legal Ground number 7 C (FJ 7 C).

References

- https://www.defensordelpueblo.es/resoluciones/sobre-la-ley-organica-de-proteccion-de-la-seguridad-ciudadana-7/
- https://www.tribunalconstitucional.es/ResolucionesTraducidas/STC%20172%202020%20of%2019%20November%202020.%20Legal%20grounds%20and%20separate%20opinion_.pdf
- Constitutional Court decision TC 172/2020

Corruption

Considering the national economic situation and its GDP, Spain ranks as32nd most corrupted country in the world, according to Transparency International.

Even though the level of corruption decreased from 2019 to 2020, the frequency of corruption scandals in Spain remains considerably high. The media play an important role by unveiling these cases, which are then adequately examined by the courts.

References

- https://www.transparency.org/en/cpi/2020/index/esp

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

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

The Spanish Ombudsman, from the beginning of 2020 right until the end, carried out more than 26.000 interventions in response to the complaints brought to the Institution, most of which were related to the sanitary crisis. The Ombudsman was operating 24 hours per day via telecommuting. Amongst the different complaints, there were cases related to: incorrect

sanctions in application of the Citizens Security Law, sanctions by the security forces regarding permission for minors to leave their houses; the insufficiency of the health system and the inefficient use of the system's resources; the problematic of the most vulnerable households exposed to the most immediate effects of the pandemic; problems of assistance in nursing homes; the lack of access to digital resources, preventing impoverished children to adapt to the new format of education; non-discrimination and acceptance of migrants.

Given that Spain prevails as a major touristic destination worldwide, and as a result of the consequences that the pandemic has had short-term and medium-term, the major danger that Spain is facing at the moment is the enormous impact of the future economic recession on the country. The International Monetary Fund indeed stated that Spain will suffer the worst recession amongst the most developed countries in the world. Thus, the most worrying elements regarding rule of law and human rights protection in the following years will be marked by the lack of access to resources, decreased standards of living of a significant proportion of the population, homelessness, increase of people below /close to the income poverty line, social exclusion.

The current national and international health emergency situation represents an unprecedented challenge for all of society. Public bodies have been forced to act with an unprecedented immediacy in order to respond to changing and unpredictable circumstances, while citizens had to modify many of their habits.

The application of the health and social prevention and protection measures, approved by different Spanish public administrations to fight the pandemic, may have certain effects on the exercise of the fundamental rights recognized in the Title I of the Spanish Constitution.

Social distancing, the most effective preventive measure to prevent contagion, caused travel limitations and the generalization of blended learning at all educational levels.

On the other hand, the notable socioeconomic effects of the pandemic led to the overflow of requests for aid and social benefits.

Faced with this situation, the Ombudsman, within the framework of his powers, works to defend and safeguard fundamental rights. It published a whole report on its activities during the pandemic.

References

- https://www.defensordelpueblo.es/wp-content/uploads/2020/12/Documento_COVID-19.pdf

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

The lockdown required the Ombudsman office to change its working system. The Spanish Ombudsman adapted to the circumstances through the use of technological tools, transferring many of the proceedings, meetings, or initiatives on digital platforms.

During the first state of alarm, no NPM on-site visits were carried out in application of the Do No Harm Principle, only phone calls to supervise centres were made. The NPM resumed its activities in the end of May 2020.

References

- https://www.defensordelpueblo.es/mnp/actividad/

ENNHRI

Sweden

International accreditation status and SCA recommendations

ENNHRI's member in Sweden is the Swedish Equality Ombudsman, which was accredited with B status in May 2011. The SCA noted that the NHRI's mandate is limited to equality matters and stressed the need for a broader mandate to promote and protect human rights. Also, the SCA encouraged the Equality Ombudsman to advocate for the formalization of broad and transparent selection and dismissal process in the relevant legislation.

In 2019, the Swedish government took important steps in relation to a proposal for the establishment of an NHRI in Sweden in compliance with the Paris Principles. ENNHRI provided comments on the proposal and stands ready to give further support towards the establishment and accreditation of an NHRI in compliance with the Paris Principles in the country. In January 2020, the draft bill was sent to the Swedish Council on Legislation (an advisory body composed of current and former judges of the Supreme Court and Supreme Administrative Court). At the time of writing, the Swedish government had not yet introduced the bill before the Parliament, but it had indicated its wishes to do so shortly.

In view of the ongoing process to establish an institution in compliance with the UN Paris Principles, and having regard to the limitations of its mandate, the Swedish Equality Ombudsman abstained from contributing to this reporting process.

ANNEX I – Reporting questionnaire

<table>
<tr><th>Topic</th><th>Questions</th></tr>
<tr><td>Impact of 2020 ENNHRI rule of law report</td><td>1. To your knowledge, has there been any follow-up action or initiative on the part of state authorities to address any of the issues reported on in the 2020 ENNHRI rule of law report as regards your country and/or, more generally, to foster a rule of law culture at national level (e.g., debates in national parliaments on the rule of law, awareness raising/public information campaigns on rule of law issues, etc.)?

2. How has the 2020 ENNHRI rule of law report impacted on your institution's work (for example, with regard to the institution's priorities/strategic planning, the institution's engagement with state authorities, with civil society organisations and/or with regional actors, or the impact on dissemination/awareness of your institution and its work)?

If you have taken any specific follow-up initiatives based on the 2020 report (such as dedicated meetings with or briefings to state authorities and/or regional actors, public events, hearings, petitions, follow-up research/reports, cooperation with civil society, awareness raising/dissemination actions, public education/information initiatives), please briefly describe them. If not, please briefly explain why (for example, mandate limitations, lack of capacity/resources, practical hurdles, lack of access to/cooperation with state authorities and/or regional actors).

3. Would you have any recommendations to ENNHRI or to regional actors on how to further facilitate impacts on the ground of NHRIs' annual rule of law reporting and/or that could more generally support your institution's work to promote and protect the rule of law in your country?</td></tr>
</table>

Independence and effectiveness of the NHRI	4. Has the national regulatory framework applicable to your institution changed since the 2020 report? 5. Do you consider that state authorities sufficiently ensure enabling space for your institution to independently and effectively carry out its work (for example, as regards access to the legislative and policy process, or timely response and adequate follow-up to your institution's recommendations, level of cooperation between different human rights actors/bodies)? 6. Have significant changes taken place in the environment in which your institution operates that are relevant for the independent and effective fulfilment of your mandate (including, for example, challenges due to COVID-19), and/or are there any other challenges related to the rule of law environment in your country that impact on your institution's functioning? Has your institution taken any action to address the problematic issues raised and/or to more generally increase your institution's ability to fulfil its mandate in compliance with the Paris Principles and/or the impact of your institution's work?
Human rights defenders and civil society space	7. Has your institution's human rights monitoring and reporting found any evidence of laws, measures or practices that could negatively impact on civic space and/or reduce human rights defenders' activities (for example, limitations on freedom of association, freedom of assembly, freedom of expression or access to information; evidence of attacks on human rights defenders, their work and environment; negative attitudes towards/perceptions of civil society and human rights defenders by public authorities and the general public)? 8. Can you briefly describe the initiatives taken by your institution to promote and protect civic space and human rights defenders, including through institutional mechanisms (such as the human rights defender focal points) and/or provide examples of your engagement in this area, including with

	international and regional mechanism in support of human rights defenders and civil society?
Checks and balances	9. Has your human rights monitoring and reporting found any evidence of laws, processes and practices that: - erode the separation of powers (including, for example, increased executive powers or insufficient parliamentary oversight); - limit the participation of rightsholders, including vulnerable groups, and of stakeholders representing them, to legislative and policy processes (including, for example, by the use of expedited legislative processes, lack of scrutiny or consultation, non-publication of regulations); - limit access to information from state authorities and to public documents; - reduce the accountability of state authorities (including, for example, the lack of effective judicial or constitutional review on state laws, measures or practices); - hinder the implementation of judgments of national or supranational courts (including the Court of Justice of the EU and the European Court of Human Rights); - impair the independence and effectiveness of independent institutions (other than NHRIs); - impact on the fairness of the electoral process. 10. Do you consider that state authorities sufficiently foster a high level of trust amongst citizens and between citizens and the public administration? If so, how? 11. NHRIs are recognised as an important component of the system of checks and balances in a healthy rule of law environment, including by regional actors. Can you provide examples of your engagement as part of the system of checks and balances and/or briefly describe the initiatives taken by your institution to address the problematic issues raised in that respect (including, for example, through participation in

	legislative and policy processes, litigation and/or interventions before courts, cooperation with regional actors)? Have you encountered any particular obstacles in that respect (including, for example, mandate limitations, lack of capacity/resources, practical hurdles, lack of access to/cooperation with state authorities and/or with regional actors, insufficient data/inadequacy of data collection system)?
Functioning of justice systems	12. Has your human rights monitoring and reporting found evidence of any laws, measures or practices that restrict access to justice and/or effective judicial protection (including, for example, as regards the independence and impartiality of the courts, the quality and efficiency of the justice system, the professionalism, specialisation and training of judges, the geographical accessibility of courts, access to legal aid, respect for fair trial standards, execution of judgments)? Has your institution taken any action to address the problematic issues raised and/or more generally promote access to justice and/or effective judicial protection in line with your institution's mandate (including, for example, through legal advice, litigation and/or interventions before courts, through handling complaints concerning the courts and their functioning)? If not, please briefly explain why (for example, mandate limitations, lack of capacity/resources, practical hurdles, lack of access to/cooperation with state authorities and/or with regional actors, insufficient data/inadequacy of data collection system).
Media pluralism	13. Has your human rights monitoring and reporting found any evidence of laws, measures or practices that could restrict a free and pluralist media environment? (including, for example, as regards insufficient protection of journalists' and media independence, adequacy of resources, evidence of attacks on journalists, their work and environment (including legal harassment), negative attitudes towards/perceptions of journalists and media by public authorities and the general

	public, protection of journalist sources, independence and effectiveness of media regulatory bodies, transparency of media ownership, disinformation). Has your institution taken any action to address the problematic issues raised and/or more generally promote a free and pluralist media environment in line with your institution's mandate? If not, please briefly explain why (for example, mandate limitations, lack of capacity/resources, practical hurdles, lack of access to/cooperation with state authorities and/or with regional actors, insufficient data/inadequacy of data collection system).
Corruption	14. Has your human rights monitoring and reporting found any evidence of laws, measures or practices relating to corruption, or significant inaction in response to alleged corruption, and which could have an impact on human rights (including, for example, as regards the protection of whistleblowers, conflicts of interest, procurement rules and their implementation, respect for the principles of good administration)? Has your institution taken any action to address the problematic issues raised and/or more generally promote a strong framework for combating corruption in line with your institution's mandate? If not, please briefly explain why (for example, mandate limitations, lack of capacity/resources, practical hurdles, lack of access to/cooperation with state authorities, lack of access to/cooperation with regional actors, insufficient data/inadequacy of data collection system).
COVID 19 measures	15. What are the most significant impacts of the COVID-19 outbreak and the measures taken to address it for rule of law and human rights protection in your country (e.g., emergency measures not time-limited, lack of access to the courts, limited judicial review (including constitutional review), limited oversight by parliament of emergency regimes and measures taken, disruptions in the activities of the parliaments, measures affecting human rights that are not legitimate or proportionate

	to the threats posed)? Are you aware of any good practices set in place by state authorities aimed at mitigating these challenges? 16. More generally, which long term implications do you see arising from the COVID-19 outbreak and the measures taken to address it for rule of law and human rights protection in your country? Has your institution taken any action to address the problematic issues raised and/or more generally promote and protect rule of law and human rights in the crisis context, in line with your institution's mandate (such as, for example, dedicated meetings with or briefings to state authorities and/or regional actors, public events, hearings, petitions, follow-up research/reports, cooperation with civil society, awareness raising/dissemination actions, public education/information initiatives)? If not, please briefly explain why (for example, mandate limitations, lack of capacity/resources, practical hurdles, lack of access to/cooperation with state authorities and/or with regional actors, insufficient data/inadequacy of data collection system). 17. What have been the most important challenges for your NHRI's functioning due to COVID-19? More specifically, were you able to carry out/resume visits and inspections to different institutions, including as National Preventive Mechanism?
Other relevant areas	18. Are there any pressing challenges in the field of human rights that you came across in your work, or any other relevant developments or issues, that you would like to report on in the light of their impact on the national rule of law environment (including, for example, systemic human rights violations, or systemic gaps in state accountability for unlawful laws, measures or practices)?

ANNEX II – List and contacts of contributing NHRIs

Country	NHRI	Contact (name)	Contact (email)
Austria	Austrian Ombudsman Board	Ulrike Grieshofer	ulrike.grieshofer@volksanwaltschaft.gv.at
Belgium	Unia Myria Combat Poverty Service	Emilie Van den Broeck Koen Dewulf Henk Van Hootegem	emilie.vandenbroeck@Unia.be Koen.Dewulf@Myria.be henk.vanhootegem@cntr.be
Bulgaria	Ombudsman of the Republic of Bulgaria	Katia Hristova-Valtcheva	k.hristova@ombudsman.bg
Croatia	Ombudswoman Institution of the Republic of Croatia	Tatjana Vlašić	tatjana.vlasic@ombudsman.hr
Cyprus	Commissioner for Administration and the Protection of Human Rights	George Kakotas Kyriacos Kyriacou	gkakotas@ombudsman.gov.cy kkyriakou@ombudsman.gov.cy
Czech Republic	Public Defender of Rights	Zuzana Melcrová	melcrova@ochrance.cz
Denmark	The Danish Institute for Human Rights	Lise Garkier Hendriksen Christoffer Badse	lgh@Humanrights.dk cba@Humanrights.dk
Estonia	Office of the Chancellor of Justice	Liiri Oja	liiri.oja@oiguskantsler.ee
Finland	Finnish Human Rights Centre Parliamentary Ombudsman	Sirpa Rautio Susan Villa	Sirpa.Rautio@ihmisoikeuskeskus.fi susan.villa@ihmisoikeuskeskus.fi
France	National Consultative Commission on Human Rights	Magali Lafourcade Cécile Riou	magali.lafourcade@cncdh.fr cecile.riou@cncdh.fr
Germany	German Institute for Human Rights	Beate Rudolf Rosa Oektem	rudolf@dimr.de Oektem@institut-fuer-menschenrechte.de
Greece	Greek National Commission for Human Rights	Roxani Fragkou	roxani.fragkou@nchr.gr info@nchr.gr
Hungary	Office of the Commissioner for Fundamental Rights	Judit Menyhárt Milan Magyar	judit.menyhart@ajbh.hu magyar.milan@ajbh.hu
Ireland	Irish Human Rights and Equality Commission	Walter Jayawardene Muireann Ni Thuairisg	wjayawardene@ihrec.ie mnithuairisg@ihrec.ie
Latvia	Ombudsman's Office of the Republic of Latvia	Liena Eisaka Evita Berke	liena.eisaka@tiesibsargs.lv

ENNHRI

			evita.berke@tiesibsargs.lv
Luxembourg	National Human Rights Commission of Luxembourg	Fabienne Rossler	fabienne.rossler@ccdh.lu
Netherlands	The Netherlands Institute for Human Rights	Leonie Huijbers John Morijn	l.huijbers@mensenrechten.nl j.morijn@mensenrechten.nl
Poland	Office of the Commissioner for Human Rights	Miroslaw Wróblewski	m.wroblewski@brpo.gov.pl
Portugal	Provedor de Justiça	Teresa Anjinho Patricia Fragoso Martins	teresa.anjinho@provedor-jus.pt pfmartins@provedor-jus.pt
Romania	Romanian Institute for Human Rights	Marius Mocanu	marius.mocanu@irdo.ro
Slovakia	Slovak National Centre for Human Rights	Beáta Babačová	babacova@snslp.sk
Slovenia	Human Rights Ombudsman of the Republic of Slovenia	Simona Drenik Bavdek	simona.drenik-bavdek@varuh-rs.si info@varuh-rs.si
Spain	Defensor del Pueblo	Carmen Comas-Mata Mira	Carmen.Comas-Mata@defensordelpueblo.es

Co-funded by
the European Union