

## Croatia

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*Ombudswoman of the Republic of Croatia*

### Independence and effectiveness of the NHRI

#### International accreditation status and SCA recommendations

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

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

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

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

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

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

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

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

#### *References*

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

### Human rights defenders and civil society space

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

In 2019, the **National Strategy** for the Creation of Enabling Environment for Civil Society Development 2017-2021 was still not adopted, although the public consultation ended in

September 2017. Hence, the Ombudswoman reiterated its recommendation to the Government, to adopt a new National Strategy.

In relation to CSOs **access to financial resources**, the National Foundation for Civil Society Development produced a publication "Contribution of Active Citizens" based on the regional consultations with over 400 CSO, in which CSOs stated that funding priorities are not aligned with the needs on the ground and that there are almost no tenders aimed at advocating for and monitoring human rights policies. CSOs also warn that state bodies are late in publishing tenders. The Forum for Freedom in Education (NGO) conducted a research on the experiences of beneficiaries of the European Social Fund, which showed that CSOs point to delays in the implementation of tenders, that evaluations take long and that they are faced with institutions not being able to meet the deadlines for reimbursement of funds and uneven work of implementing bodies. For this reason, the Ombudswoman recommended to the Government to adopt a new National Programme of Protection and Promotion of Human Rights; which will include an aim on importance of creating enabling environment for human rights CSOs.

### *References*

- <https://www.ombudsman.hr/hr/izvjesca-puckog-pravobranitelja/>
- <https://zaklada.civilnodrustvo.hr/uploads/files/sectionModuleFile/2020/01/22/pbjNSzFW1btRsrpjCDkmP7LqewAV6IAj.pdf>

## Checks and balances

In the context of legislative processes, provisional data from the E-Counselling platform that supports involvement of citizens and CSO in public policy and law making processes, shows that in 1,031 consultations that took place in 2019 there was a slightly fewer (271) number of NGOs participating, compared to 2018. Through this platform 19,543 comments were received, of which 22% were unanswered by authorities, which unfortunately does not contribute to building of citizens' trust into the work of administration. Additionally, in 2019 the Government sent into procedure 222 laws and the Preliminary Impact Assessments were conducted on the impacts of proposed legislative initiatives, including in reference to how they impact human rights. As in the vast majority of cases no direct impact on human rights were identified, it would be important to strengthen the **capacity of civil servants to monitor impact of legislative initiatives on human rights** in the upcoming period.

### *References*

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

## Functioning of justice systems

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

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

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

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

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

### *References*

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

## **Media pluralism**

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

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

In the context of **media freedom**, with the end of 2019 Article 148 of the Criminal Code (the criminal act of embarrassment) is no longer in force, with the explanation that the injured parties will have sufficient legal protection through retained criminal offences of

insult and (intentional) defamation, as well as in civil proceedings. This is partially an answer to the repeated demands of the public and the Croatian Journalists' Association, which have been seeking its abolition since 2014. However, in practice, this institute did not constitute a particular threat to freedom of expression because, in practice the criminal offence of (international) defamation is more frequently used.

**Media diversity and pluralism** is also influenced by the fact that since 2016 non-profit media have solely relied on funding under the Fund for the Encouragement of Pluralism and Diversity of Electronic Media provided by the Agency for Electronic Media (AEM) of three million HRK. Since there is no institutional funding available for non-profit media and funds from the AEM are not sufficient, non-profit media continued to collect donations through crowdfunding campaigns. The allocation of HRK 30 million secured by the ESF programme "Community Media", which was ensured already in 2015, would help resolve this problem. However, in 2019 the Ministry of Culture opened a tender for only half of allocated funds, and by the end of the year the evaluation of the application has still not finished. Ministry noted that the tender is taking place in two phases, each of the amount of HRK 15 million as a new Law on Electronic Media is being drafted which should include the definition of non-profit media.

### *References*

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## **Corruption**

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

the employer or that there is immediate danger to life, health, safety, damage of large scale or destruction of evidence.

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

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

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

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## **In-focus section on COVID-19 measures**

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

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

Some of the measures include:

- citizens were advised to stay at home and limit their movement to the necessary extent.
- restriction on leaving the place of residence.
- limiting of social gatherings, work in commerce, services and the holding of sports and cultural events by suspension of social gatherings for more than 5 persons; of all cultural activities; work of cafes, bars and restaurants (except delivery), as well as of services that include direct contact with clients (hairdressers, beauticians, barbers, pedicures, massage parlours, saunas, swimming pools); suspension of all organized sports activities and contests; of all workshops and courses; of religious gatherings.
- Suspension of public transportation, train and bus stations being closed.
- temporary prohibition or restriction of all border crossings.

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

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

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

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

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

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

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

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

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