

Montenegro

Protector of Human Rights and Freedoms of Montenegro

Independence and effectiveness of the NHRIs

International accreditation status and SCA recommendations

The Montenegrin NHRI was first accredited with B status in May 2016. The SCA encouraged the NHRI to advocate for the formalization in its enabling law of an open, transparent and merit-based selection process to ensure pluralism and the selection of skilled staff. Similarly, the SCA encouraged the NHRI to keep advocating for the explicit inclusion of a promotional mandate and the responsibility to encourage the ratification or accession to international instruments. Finally, the SCA recommended the introduction of a legally-based power enabling the NHRI to independently determine its staffing structure, as well as the provision of adequate resources to allow the NHRI to independently manage its own budget, in line with its extended mandate.

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

The Protector of Human rights and Freedoms of Montenegro notes that there have been no changes in the normative framework in which the Institution operates since the Institution has been accredited with status B by GANHRI - May 2016. Activities on amendments to the law on prohibition of discrimination are currently underway.

On a positive note, increased transparency was registered in the procedure for the appointment of the of the Ombudsman in January 2019, with more than 30 human rights organisations being involved in the process.

References

- www.ombudsman.co.me
- <http://www.ombudsman.co.me/Propisi.html>

Human rights defenders and civil society space

We are dedicated to strengthening cooperation with all three branches of government, the civil sector and international organisations, the academic community, the media, as well as human rights defenders. We emphasize the importance of the role that civil society organisations play in democratic societies, and especially in young democracies where work continues to establish and accept the values of civil societies.

For the Ombudsman Institution there is no doubt that NGOs help the public administration system to function better, to provide better services, when it needs to be "awakened" and encouraged to take action. It is also part of our mission, which is why as stated above we consider ourselves natural partners with both civil society and the media.

Regarding good cooperation it is especially important for us when we receive complaints, information and instructions for action from them. In the past year, based on cooperation with NGOs and the media, we have identified and taken action on dozens of cases, including cases related to children's rights (social protection of families with children), the right to good administration and legal protection, the rights of persons deprived of their liberty, the rights of persons with disabilities, the work of state bodies, state administration and other organisations.

References

- www.ombudsman.co.me
- https://www.ombudsman.co.me/lzvjestaji_Zastitnika.html

Checks and balances

In the annual report on the work of Ombudsman we inform members of the Parliament of Montenegro and the interested public about the situation of human rights and freedoms in Montenegro which we based on collected data, analysis, observations, research, statistics and practice in handling complaints and monitoring recommendations for improvement.

During 2019 In work of Ombudsman institution we had 840 complaints and we maintained a high level of resolved cases, almost 95%. The average duration of the procedure was 71 days. Also, a significant number of appeals end up giving legal advice and consultations is

not included in official statistics and is somehow unfairly left aside when evaluating results and effects. Total of 215 recommendations were given to the competent authorities.

There are certain weaknesses in the work of public administration that have a negative impact on the exercise of the rights of citizens and other entities the principle of legal security and equality of citizens before the law.

These weaknesses are most often manifested in the form of silence of the administration, non-compliance with legal deadlines, and the so-called "ping pong" decision making. Sometimes cases are returned to the first instance bodies several times, for decision-making. The first-instance body often does not eliminate the violations of rights pointed out by the second-instance body or issues an almost identical decision, or the second-instance public administration body does not act or partially acts according to the ruling of the Administrative Court of Montenegro.

References

- www.ombudsman.co.me

Functioning of justice systems

In 2019, we had 100 cases under examination concerning justice, of which seven (7) cases were from 2018 and they are completed. The proceedings were terminated in 96 cases.

Complaints about the work of regular courts are mostly related to the violation of the right to a trial within a reasonable time, mainly on first instance courts. Also, citizens complained about the long duration of the constitutional complaint procedure.

In the 2019, the courts achieved timeliness and efficiency in resolving cases and resolved more cases than the annual inflow.

It encourages an increase in the use of legal remedies to protect the right to a trial within a reasonable time, as well as the success of citizens in proceedings on control requests and lawsuits for fair satisfaction. The courts recognise the effectiveness of these remedies, so it is important to continue with the improvement of the system of protection of the right to a trial within a reasonable time and the right to effective access to justice, in accordance with the practice of European Court of Human Rights.

The Protector reminds that the unjustifiably long duration of the procedure creates legal uncertainty for the citizens and the obligation of the state is to provide an effective system of guarantees and respect for human rights in court proceedings at the national level.

References

- www.ombudsman.co.me

Media pluralism

Media encourages good governance, keeps vigilant responsible and competent bodies, services, institutions and other holders of public authority. The media on behalf of citizens ask, find out, point out and act in other ways in order to provide information of public importance. Only when the media are free to do work without pressure of any kind we can talk about full freedom of the press.

Although freedom of expression is not an absolute right, the safety of journalists must be absolute. What remains a cause for serious concern in Montenegro are individual cases of violation of the physical and mental integrity of journalists, with unresolved cases from an earlier period. This statement is rightly mentioned again and again by relevant subjects in domestic and international reports and assessments of the situation, because the issue of absolute security stands as a precondition for all other rights of journalists and public expectations to perform their mission professionally and comprehensively. As stated by professional associations, there is still dissatisfaction with the level of salaries, contracts, number of employees and working conditions. These problems are also expressed in local public broadcasters.

At the international conference of the Network of Equality Bodies, hosted by Montenegro Ombudsman (2019) within the panel Media and Equality Bodies - Natural Allies or Just a Source of Information in the Fight against Discrimination, the Institution stated that media are our natural allies, if we working in accordance with laws and codes as moral and ethical principles of the profession.

In the annual report for 2019, we state that the visible influence of politics on the media is concerning and clearly affects the way media content is being reported and edited. Against these challenges, the issue of unresolved self-regulation, non-acceptance of uniform rules of conduct and professional responsibility needs to be addressed.

References

- www.ombudsman.co.me
- https://www.ombudsman.co.me/lzvjestaji_Zastitnika.html

In-focus section on COVID-19 measures

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

During the emergency situation, the Institution of Montenegro Ombudsman was approached by citizens in relation to a variety of situations caused by the pandemic, as soon as the prevention and protection measures were introduced. The Ombudsman strived to react as soon as possible to the issues brought to its attention, in order to meet citizens' basic living needs, but also to protect the health of the population - as a fundamental public interest that prevailed during the pandemic. The Ombudsman pointed to the need to respect fundamental rights and freedoms, and especially the necessity and proportionality principles governing the possibility to introduce restrictions to such rights, in particular given that the government decided not to declare a state of emergency.

In the period March 16-June 2, we recorded 705 appeals from citizens (this number includes complaints, but also all other contacts with citizens - legal advice, consultation, information on the functioning of the public administration system, etc.). It is important to note that not all appeals referred to measures and other circumstances related to the epidemic caused by the COVID-19 virus. Based on these instances, as well as own initiative reactions to identified issues, we established and followed up to 128 cases. It is important to note that we treated as one collective instance 369 individual complaints by of students, who asked for the abolition of the graduation and professional examinations to be reported.

A notable case concerned a group of seafarers placed in quarantine in Vučje who addressed the Ombudsman with requests related to the improvement of accommodation and the authorization of limited stay in front of the facility, given the individual accommodation facilities' lack of an outdoor space. After a visit of the premise and individual interviews with the persons concerned by the Ombudsman Siniša Bjeković and member of the NCB, their requests were approved in accordance with current epidemiological measures and taking into account possible solutions.

We recorded more than 100 calls on the regular fixed telephony since the beginning of the coronavirus pandemic, while their number on mobile telephony is even higher. Citizens have complained about the termination of employment contracts and non-compliance maternity leave and maternity leave, as well as self-isolation measures in general, social conditions and the application of sanitary and health measures, complaints in the field of labour and civil service relations, general health care, property rights, status rights of citizens, protection of vulnerable groups, and other issues related to proceedings before authorities and public authorities. Perhaps the questions and demands of the citizens which the Ombudsman received during the pandemic are the best indicator of the fact that such difficult and complex situation not only poses challenges to public health but also to human rights.

During a pandemic, vulnerable groups are in special focus for us. This applies to children, the elderly people, people with disabilities, persons deprived of their liberty and those with limited mobility on various grounds. In the current situation, there have not been many complaints about quarantine conditions.

The Ombudsman discussed about the current situation with the head of the National Coordination Body and on that occasion, they exchanged information and agreed on accelerated communication to solve the problems pointed out by citizens. Also, contacts were made with the presidents of the municipalities of Pljevlja, Berane and Bijelo Polje and the capital Podgorica, who informed him about measures and actions undertaken within the competence of local government bodies and local self-government bodies, which are primarily aimed at vulnerable groups.

The Ombudsman as National Protection Mechanism (NPM) visited temporary quarantine facilities in different towns. Ombudsman representatives were accompanied in their visits by epidemiologists from the Institute of Public Health with the aim of monitoring implementation of all health and hygiene recommendations. In this regard, we may give a generally positive assessment of the current situation in this field.

The Ombudsman strongly condemned the publication of the list of coronavirus infected persons on social networks and warned that this situation must not lead to distrust in the data protection standards, calling for a quick, efficient and effective investigation into the matter.

The Ombudsman also issued a statement to the media relating to the respect of the right to freedom of expression, expressing reservations about rigid measures of a criminal law

nature introduced to sanction those that disseminated false news through the media. Examples from other countries showed that it is not just an issue which was raised in Montenegro. Criminal measures restricting freedom of expression are only acceptable as long as they are strictly necessary and proportionate to the protection of overriding public interests. There are reasons to consider the effects of such measures on several levels, especially in the crime of While causing panic and disorder can put public security and safety in peril, in particular in a situation of emergency, it is necessary for the courts to interpret and apply these restrictions in accordance with national and international standards protecting freedom of expression.

Similarly, when it comes to freedom of religion, limitations may be possible with a view to avoid the spread of the epidemic and thus protect the health of the population ; however, law enforcement authorities cannot conduct interventions in a way that would unduly violate human rights and freedoms.

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

During the COVID -19 pandemic emergency, the Institution of Ombudsman has continued to carry out its functions. In accordance with recommendation of on the protection of public health and the needs of citizens, we organized work in different ways. Employees are allowed to work from home and when the specifics of the job require it in accordance with recommended precautionary measures the Ombudsman's staff used institution premises.

Complaints are received electronically, by telecommunications and by regular mail. We also opened two additional mobile phone line. The Ombudsman and colleagues participated in several webinars with the aim of exchanging experiences and practices of countries during the COVID-19 pandemic with a focus on economic and social rights, vulnerable groups and monitoring the place of detention.

In addition to the additional telephone lines that were available to citizens outside of working hours, we increased even more our availability to the public by opening an account on the social network Instagram. Although the opening of the account was planned for later this year, we made an effort to establish the account as part of our response to the epidemic, as given that citizens spent much of their time online and on social media.

For the first 40 days of the epidemic, we published 36 pieces of information on the site. We remained open for communication with journalists, so the Protector was very present in the

media through guest appearances on TV programs, phono statements and press releases. It was pointed out that, as time went on, journalists showed more and more interest in dealing with the situation regarding issues related to the coronavirus pandemic from the angle of the impact on human rights and freedoms.

Our web site ombudsman and Instagram profile „ Ombudsman Crna Gora“ are being updated on daily basis to ensure transparency and to share information and activities related to our mandate. Also during the pandemic, the Ombudsman's network of “golden advisers” (children aged 11 to 18 from all over Montenegro) were active, sending various messages to their friends via Instagram profile.

References

- www.ombudsman.co.me
- <https://www.ombudsman.co.me/article.php?id=34345>
- <https://www.dan.co.me/?nivo=3&rubrika=Drustvo&clanak=741392>
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- Instagram profile: Zlatni savjetnici Ombudsmana

