

Montenegro

Protector of Human Rights and Freedoms of Montenegro

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.

Impact of 2020 rule of law reporting

Follow-up by State authorities

The Institution has no information on possible initiatives by state authorities. However, the institution of Montenegro Ombudsman is recognized for its open and accessible attitude towards various initiatives that contribute to the promotion of human rights and freedoms. Despite the challenges posed by the COVID 19 pandemic, the institution managed to maintain contacts and cooperation thanks to the network platforms on which international gatherings are organized.

Impact on the Institution's work

Rule of law promotion has been an intrinsic part of the work of the Ombudsman Institution since its inception. The institution has a mission to promote the rule of law through its daily work, working on complaints, with promotional activities, initiatives and good practices from other countries that have proven to be effective. The 2020 ENNHRI rule of law report served as a platform for working and exchanging information with ombuds institutions regionally and internationally. Planned and transparent adoption of legal norms, published and accessible laws along with the prohibition of retroactive validity of regulations, predictability of legal norms and efficiency of the judiciary are some of the key postulates of the rule of law. In exercising the rule of law, one should take into account inclusion, participation, transparency in the adoption of norms and planned adoption, with the timeliness and efficiency of the judiciary.

Following the developments in this area, Ombudsman gave a presentation on "Key Challenges in the Rule of Law" at the opening of the School of Political Studies, organized by the NGO Civic Alliance.

References

- www.ombudsman.co.me

Follow-up initiatives by the Institution

During 2020, the Institution held a large number of meetings (mostly online) with the civil society sector, regional/international ombudsman institutions and international partners. ENNHRI Rule of Law Report- 2020 is being used for raising awareness on rule of law through meetings with civil society sector and relevant stakeholders. The Report is available on the Ombudsman's webpage. Also, the European Commission Rule of Law Report was used as a source of information for the Annual Report of Ombudsman for 2020, which is to be discussed in the Parliament and presented to the general public via live TV broadcast.

An Instagram account has been opened as an additional channel of communication and promotion; the ombudsman's website has been redesigned. The novelties are subsites for each individual area of work of the Ombudsman - public administration and justice; protection from abuse, security and NPM; rights of the child, youth and social protection; protection against discrimination, vulnerable groups and gender equality. The new content and platforms will make the site more accessible for all interested especially to children and people with disabilities.

References

- www.ombudsman.co.me

Independence and effectiveness of the NHRI

Changes in the regulatory framework applicable to the Institution

There have been no major changes to the regulatory framework in which the Institution operates. The Institution of the Protector of Human Rights and Freedoms of Montenegro, in accordance with the Constitution of Montenegro and the Law on the Protector of Human Rights and Freedoms of Montenegro, as an independent state body, takes measures to protect human rights and freedoms when violated by an act, action or inaction of state institutions, state administration bodies, local self-government bodies and local administration, public services and other holders of public authorities. Also, the Protector takes measures to prevent torture and other forms of inhuman or degrading treatment and punishment, as well as measures to protect against discrimination. The Protector also has a broader mission to promote human rights.

The legislative framework for the functioning of the Institution is in line with the acquis and international standards. There are still some legislative gaps to be filled to ensure full compliance with the recommendations of international organizations regarding the strengthening of administrative capacities, the manner of selecting office holders (in order to eliminate the possibility of blocking the process) and strengthening financial independence in accordance with the recommendations of the EU, the Council of Europe and the UN. In accordance with the recommendations of the competent UN committees, the Institution also planned to further strengthen international cooperation and fulfil the recommendations on the implementation by Montenegrin state authorities of the UN Convention on the Rights of Persons with Disabilities and the Convention on the Rights of the Child and the recommendations of ECRI and the CoE Advisory Committee on Minority Rights.

References

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

Enabling space

The Ombudsman has seen positive developments in the exercise of its functions in 2020: largest number of received cases in one year (1031) since the establishment of the institution; high percentage of completed cases (almost 86%); largest number of recommendations sent to the

competent authorities within the cases resolved during one reporting year (357); continued good practice of drafting opinions with reference to relevant domestic and international practice and in particular to the decisions of the European Court of Human Rights.

The Institution plans for 2021 include: further strengthening the visibility of the Institution for citizens and promotion of its competencies, especially at local level and among vulnerable groups; maintain a high level of presence in international gatherings and activities, especially through membership in networks; improve and concretize cooperation with civil society organizations dealing with the protection of human rights and freedoms, especially vulnerable groups. Representatives of the Ombudsman's Institution will continue, as observers, to contribute to working groups for the drafting of laws, bylaws, strategies and other documents with the aim of more effectively combating discrimination.

In addition to cooperating on some complaints, the Ombudsman cooperates with public institutions at several levels. Its representatives take part in numerous gatherings, events and meetings organized by bodies, institutions of the executive, legislative and judicial branches.

Cooperation with state bodies, state administration bodies, local self-government bodies and local administration bodies, public services and other holders of public authority in acting upon the Ombudsman requests has improved, especially as regards authorities' readiness to eliminate certain irregularities that could lead to violation of human rights and freedoms.

By resolving citizens' complaints, the Ombudsman strives to contribute to the improvement of the work of state and local self-government bodies, as well as other holders of public authority, by pointing out problems and making recommendations for action. As noted in several previous annual reports, cooperation with public administration institutions is improving, primarily due to the change of attitude and acceptance of the role of the Ombudsman as a corrective mechanism that contributes to the professionalization of the system as a whole. However, it still happens that some bodies do not react timely or at all upon the Institution's recommendations.

The Report of the European Commission for Montenegro [SWD (2020) 353 final, Brussels, 6.10.2020] assessed that the institution of the Protector has good visibility, reach and productivity and that confidence in its work is increasing. It is also said that the and institutional framework for the functioning of the institution of the Protector has been regulated. However, in spite of being largely regulated, it is an important challenge to ensure that national human rights legislation is effectively enforced.

References

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

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

The coronavirus epidemic in Montenegro was first officially declared on March 26, 2020. In the new circumstances, the Institution of Ombudsman had to adjust its work with the recommendations of the competent institutions, but also to remain at the level of international standards. Compared to the previous year (2019), 2020 was marked by an increase in the total number of complaints filed, which resulted in an increase in the scope of work in all segments of the Institution's competences. This impacted especially the process of preparing opinions due to the complexity of complaints filed by citizens and their attorneys as well as the application of standards of the European Court of Human Rights and other international instruments for the protection of human rights.

References

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

Human rights defenders and civil society space

The Ombudsman of Montenegro supports human rights defenders (HRDs) through its work on individual cases, joint activities and human rights education. Raising public awareness on the pressure faced by HRDs and ensuring their protection remains one of the Institution's priorities. Protecting defenders is a challenge on national and international level.

The Ombudsman participated in a two-day online meeting with state bodies, NHRIs and civil society organizations in Montenegro on the findings and recommendations of the ODIHR (link in references below), emphasizing the situation regarding HRDs. ODIHR visited Montenegro in order to examine the situation of human rights defenders in the country, including gaps and challenges in the protection of human rights defenders as well as good practices in this area.

The Ombudsman deputy and advisers participated in working groups that discussed the implementation of the recommendations in four thematic areas, identifying shortcomings and challenges in protecting HRDs, as well as possible ways to cooperate with the ODIHR and other OSCE structures in implementing the recommendations. The main objectives identified are:

- better protect HRDs through effective investigations into attacks and the conduct of criminal proceedings
- create a database on attacks on HRDs in order to increase accountability
- strengthen mechanisms to prevent defamation campaigns, negative publicity or stigmatization of HRDs and their work

Employees in the NGO sector and the media are HRDs and as such must be protected and supported.

The Ombudsman of Montenegro remains a dedicated partner in cooperation with civil society organizations and HRDs through joint initiatives/trainings/ and other forms of cooperation in order to improve the situation in this area.

A strong civil society sector significantly affects the democratic capacity of society as a whole in Montenegro and is needed to lead to the necessary reforms in the process of Euro-Atlantic integration.

The state is obliged to provide a supportive environment for the work of NGOs and HRDs in terms of funding transparency, availability of information and participation in the decision-making process. In practice, decisions on the allocation of funds need to be aligned with funding objectives.

One of the main objectives of the Institution plans for 2021 is to improve and concretize cooperation with civil society organizations dealing with the protection of human rights and freedoms, especially vulnerable groups.

References

- www.ombudsman.co.me
- <https://www.ombudsman.co.me/34475.news.html>
- <https://www.osce.org/odihhr/463200>

Checks and balances

The reporting year 2020, compared to the previous year (2019), was marked by an increased number of complaints submitted to the Institution. This increase was an additional challenge but also an indicator of increasing confidence of citizens in the work, efficiency and quality of work of this Institution.

During 2020 there occasionally were delays in the statements of public administration bodies, which was partly influenced by the COVID-19 infection of some employees, teleworking, but also due to the period of transition after parliamentary elections.

The analysis of the submitted complaints continues to show that citizens complain about the slowness, inefficiency and difficulties in exercising their rights before state administration bodies, local self-government, local government and other entities exercising public authority. Citizens complain that they feel unequal before the law.

All this indicates that public administration bodies still do not sufficiently provide effective protection of rights, and that they frequently do not act in accordance with the principles of good administration. The public administration system should be more transparent and accessible to all citizens, it should be better organized and prepared to respect human rights and freedoms and create opportunities for the exercise of these rights. It is necessary for administrative bodies to improve their written communication with citizens, which implies consistent application of the provisions of regulations in the field of administrative procedure, especially regarding delivery, both in the first and second instance proceedings.

As part of the national system of checks and balances, in 2020, the Protector submitted one initiative for amending the law and two opinions on a draft law in order to improve human rights and freedoms, namely:

- Recommendation submitted to the Ministry of Justice on the introduction of a formal legal remedy regarding the protection of the right to a trial within a reasonable time, foreseeing various procedural guarantees to speed up the procedure and to compensate the citizen where appropriate. The Ombudsman notes that the Montenegrin legislative system for protection of the right to a trial within a reasonable time before the Constitutional Court of Montenegro suffers from systemic weaknesses, that hinder the functioning of an otherwise effective system (given that a constitutional complaint is an effective remedy for protection of the right to a trial within a reasonable time).

- Opinion on the Draft Law on Amendments to the Law on Pension and Disability Insurance.
- Opinion on the Draft Law on Internal Affairs in part "Application of police powers towards persons with disabilities".

References

- www.ombudsman.co.me
- https://www.ombudsman.co.me/docs/1619074992_izvjestaj_01042021.pdf

Functioning of the justice system

In 2020, 40 complaints were received by the Ombudsman related to the work of courts. The citizens mostly complained about the legality of court decisions, mostly in civil matters, in which direction the Protector pointed out its incompetence.

In a number of cases, the court with which the complainant was unsatisfied would remedy the violation. The follow-up on complaints against the work of courts suggests that the courts recognize the importance of timely and urgent action, while respecting the procedural and legal guarantees of the parties to the proceedings, in order to ensure protection of the right to trial within a reasonable time.

The year 2020 was marked by an increase in the number of complaints in relation to the work of state prosecutor's offices concerning the investigation and prosecution of criminal acts. Based on its work on the complaints, the Ombudsman issued an opinion stating that the rights of the injured parties in the pre-trial proceedings who filed a criminal complaint were not adequately protected, and that the injured parties were not informed about the actions taken or on the state of the proceedings upon the filed criminal report.

The Ombudsman noticed a significant increase in complaints concerning the length of proceedings before the Constitutional Court and identified this issue as a systemic shortcoming in the sense that a citizen does not have an effective remedy to protect the right to a trial before the Constitutional Court. The only option available to citizens to protect this right is to apply to the European Court of Human Rights in Strasbourg.

The Ombudsman also noted that the courts' awareness of their obligation to apply EU Directives and other relevant binding international legal instruments is not at a satisfactory level.

References

- https://www.ombudsman.co.me/docs/1603718086_061020202-inicijativa.pdf
- <https://www.ombudsman.co.me/Inicijative.html>

Media pluralism and freedom of expression

In 2020, given the pandemic context, the importance and "sensitivity" of topics and events, including numerous incidents, cooperation of the Protector with the media was very intense. The Ombudsman Institution maintained a high level of transparency regarding the reporting on its activities, publishing 189 pieces of information on its website in 2020.

On the Day of Journalists, the Institution reminded that respect for the principles of free and professional journalism is important for the realization of human rights and freedoms and the overall progress of every society, and condemned unacceptable pressure of any kind on journalists and media editorial policy. Among the issues most discussed in 2020 relating to media and freedom of expression were: the call to meet the election day in order to maintain an atmosphere of tolerance and respect; concerns about obstruction of media representatives on work assignments; protection of the best interests of the child in the pre-election period and other situations that may be inappropriate for their age; hate speech graffiti in Berane settlements; hooligan outburst against some religious and national backgrounds on the occasion of a football match; events in local areas where there was a disturbance of public order and peace, in relation to which the Protector's institution called to calm tensions and pointed to the need for constructive dialogue.

At the meeting with the Media Syndicate, the Ombudsman concluded that journalists played an important role and made a great contribution to the overall response of the society to the outbreak of the Covid-19, but their labour rights and working conditions were further endangered during the pandemic.

In 2020, more often than in previous years, the Institution pointed out the exposure to online violence and threats to public officials and other public figures (politicians, journalists, analysts, civil society activists, individuals from the judiciary, prosecutors, police, etc.). The influence of the media on socio-political processes was very pronounced in 2020. During the year, the Institution called for respect of the rules of the journalistic profession in order to calm tensions, especially in municipalities where religious and nationally motivated incidents have been reported. Many journalists contacted the Ombudsman, addressing issues such as employment status, protection against discrimination, the attitude of the police (exceeding authority) towards journalists on duty (e.g. in public gatherings), denial of attendance to an event, due to the comments they were exposed to on social networks and portals, statements of public figures about them as well as omissions in the reporting of other media, i.e. violations of the Code, laws and the like.

References

- <https://www.ombudsman.co.me/34547.news.html>
- <https://www.ombudsman.co.me/.news.html>

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 past year was characterised by **serious challenges affecting the enjoyment of human rights and freedoms**. Such challenges were closely linked to the current socio-political context, the global pandemic, the economic crisis, a deepening polarization of society, the increased presence of specific forms of civil disobedience, the need for urgent and effective measures to combat the spread of the epidemic, closing borders, difficult communication, rising tensions in the framework of the elections, intolerance and lack of culture dialogue, violent communication and hate speech on social networks, further vulnerability of vulnerable groups (people with disabilities, LGBTIQ + people, elderly households, women in rural areas, victims of domestic violence, unemployed and others) and lack of adequate substantive basis to regulate special situations.

In general, human rights and freedoms have been at risk due to the current socio-political events and circumstances. Although we cannot speak of mass and systemic violations, there have been **obvious violations deriving from restrictions on rights and freedoms** assessed in the light of international human rights standards and the way in which they are implemented in the national legal order. The crisis also has caused a certain **stagnation of human rights in the economic and social spheres**, and numerous dilemmas in relation to other dimensions of human rights, especially when it comes to the so-called welfare rights.

Similar to most countries in the world, Montenegro has declared an **epidemic urgency** on its territory on two occasions, depending on the evolution of the epidemiological situation. Out of two options for the state to react – formal derogation from human rights obligations in case of extraordinary circumstances that threaten the survival of the nation, or restrictions on certain human rights and freedoms in accordance with international legal standards - Montenegro chose to adopt targeted restrictions. In view of the novelty of the emerging challenges, it is difficult to assess that decision at this stage from the rule of law and human rights perspective. It is necessary to consider the manner and means used for the purpose of the introduced restrictions, and especially the short time limits in which such restrictions were prescribed and placed into legal transactions within the national legal order. When imposing restrictive measures, states are required to strike a balance between protecting health and respecting individual human rights. International human rights treaties allow for the restriction of or derogation to rights for the purpose of protecting public health. There are strict criteria for when, how and to what extent certain rights may be restricted.

Restrictions on human rights adopted by the Montenegrin government included:

- limitation of **social contacts**, including within families (e.g. children and parents not living together) and for people who are in any way dependent on communication with relatives and other close persons (older persons in care homes, sick and immobile persons, guardians and persons supporting or caring for such persons), the status of persons deprived of their liberty in relation to contact with their families, especially children.
- limitations to **freedom of movement**: ban on leaving the place of residence, partial blockade of borders, ban on movement at certain times
- limitations to **freedom of assembly**: restriction / ban on public gatherings
- **privacy rights**: restriction of human rights in relation to violations of privacy rights, including measures of mandatory testing or vaccination, mandatory wearing of masks and application of the same measures in relation to different categories of citizens (children, persons with respiratory diseases, allergic persons, etc).

- others: ban on commercial activities, primarily provision of services, ban on communication between local communities

During the year, the Ombudsman Institution initiated more frequent and direct contacts with state bodies in order to obtain as much information as possible about the introduced measures, manner of implementation, suggestions on possible corrections of imposed measures in order to protect certain categories, labour relations and other current issues during the measures.

The consequences of the pandemic have already shown exposure to additional risk for several **vulnerable groups** (unemployed, low-income people, older persons, persons with disabilities, women and children, victims of domestic violence, LGBTIQ+ population). Bearing in mind that the state budget was largely limited by the consequences of the pandemic, it is certain that the state authorities will continue to face a great challenge to ensure the realization of primarily economic and social rights.

The conclusion is that the national legal order was unprepared for the pandemic, ie that certain regulations remained vague when it comes to the possibility of introducing restrictions in the exercise of human rights and freedoms. On the other hand, the Ombudsman warned that any different treatment in the same/similar situations leads to legal uncertainty.

At the meeting with the Media Syndicate, the Ombudsman concluded that **journalists** played an important role and made a great contribution to the overall response of the society to the outbreak of the Covid-19, but their labour rights and working conditions were further endangered during the pandemic.

The Golden Advisers of the Ombudsman (Network formed in 2014 with a view to promoting children's right to participation) highlighted the problems faced by students, primarily in the field of exercising the **right to education**.

The Ombudsman's attention was also focused on **persons deprived of their liberty** as well as persons serving prison sentences.

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

The year 2020 was very special and different due to the appearance and consequences of the COVID19 virus pandemic, globally and for Montenegro. Through its work on complaint, the Ombudsman Institution noticed that there was no obstruction in the number of unresolved cases, that there was no significant delay in administrative proceedings, or violation of the right to a fair trial within a reasonable time. The parties actively participated in the proceedings with respect to health measures

During the strictest quarantine period, from the end of March to the beginning of May 2020, a team of employees on duty worked from the Institution, led by the Ombudsman. With the easing of measures from May 4, all employees in good health returned to their jobs, in full respect with the recommended precautions (limited presence of several people in the same space, social distance, use equipment and means for disinfection, room ventilation, etc.).

The coronavirus epidemic in Montenegro was first officially declared on March 26, 2020. In the new circumstances, the Institution of Ombudsman had to adjust its work with the recommendations of the competent institutions, but also to remain at the level of international standards. Compared to the previous year (2019), 2020 was marked by an increase in the total number of complaints filed, which resulted in an increase in the scope of work in all segments of the Institution's competences. This impacted especially the process of preparing opinions due to the complexity of complaints filed by citizens and their attorneys as well as the application of standards of the European Court of Human Rights and other international instruments for the protection of human rights.

In the first half of 2020, the Institution suffered from an incomplete deputy staff and from an insufficient number of executors in professional jobs; lack of financial resources for the implementation of all activities from the mandate of the Institution; the establishment of a national network for protection against discrimination was not implemented in 2020, due to the situation caused by Covid-19; the epidemiological situation did not allow the organization of the Protector's Day according to the established methodology. There were examples of inadequate understanding of the mandate, competencies and obligations of opinion with the recommendations of Ombudsman especially by the professional public (decision makers, lawyers, institutions) and those who directly apply the regulations and decide on the rights and interests based on the law. There were also cases of ignoring the Protector's recommendations, especially in relation to complaints related to the long duration of administrative proceedings (which last for several years), as well as ignoring requests for a statement, which was an obstacle to more prompt action of the Protector in certain cases. A special challenge in 2020 year was the dilemma regarding jurisdiction over the work of courts, which concerns "abuse of procedural powers", especially having in mind the imperative norm of the law which prescribes that the Protector does not perform instance control of court work, nor can change or abolish or annul their acts.

It was not possible to carry out activities involving direct communication with children such as creative-educational programs on the rights of the child and visits to educational/social and child protection institutions. The pandemic further aggravated the situation of children and families living in poverty, and contributed to the increase of socially vulnerable families due to unemployment.

In addition to working on cases, as the main activity, the Ombudsman carries out a number of other activities within his mandate in the field of the protection and promotion of human rights and freedoms.

The Ombudsman organised diverse events in 2020:

- COVID related such as conference on "(Dis) respect for human rights the Covid-19 pandemic" (in cooperation with traditional partners of the NGO Civic Alliance, the EU Delegation to Montenegro and the Council of Europe) and an event on International Children's Day, November 20, in the presence of the President of Montenegro, invited to discuss the exercise of the right to education in a pandemic.
- On other issues such as the Ombudsman's presentation on "Key Challenges in the Rule of Law" at the opening of the School of Political Studies (organized by the Civic Alliance), the co-organisation of the multi-day program to mark Human Rights Day (December 10), and, as part of a project supported by the Council of Europe, the Protector's Institution produced a brochure "No one must touch you" in 2019, which presents the basics of the Council of Europe Convention on the Ombudsman of Children against Sexual Exploitation and Sexual Abuse (Lanzarote Convention) children in connection with this topic.

The Ombudsman also cooperated with the National Coordination Body and exchanged information with the aim of resolving the problems pointed out by the citizens on the influence of the COVID on the functioning of human rights and freedoms. Most often they referred to the area of labour and legal relations, realization of health and social protection, application of health and sanitary measures (self-isolation and quarantine measures, restriction of movement, separation from family, provision of existential needs of people), problems arising from measures of restriction of movement , farms, etc.), protection of vulnerable groups, issues related to education at home; non-response or delay in the answers of state bodies as well as other issues related to proceedings before public authorities, services and other holders of public authority. The epidemiological situation has made it impossible to carry out the Institution's field activities and tours to a large extent. However, following the demands of citizens and our assessments, the Institution decided to organize visits to facilities intended for quarantine accommodation of citizens throughout Montenegro.

Sectors of the Ombudsman Institution monitored the situation of certain categories of the population at special risk. This applied to children, the elderly, people with disabilities, the Roma population, persons deprived of their liberty or restricted in their movements on various grounds, and others.

For that purpose, the Institution tried to get as much information as possible in direct contact with state bodies about the introduced measures, the manner of implementation, suggestions on possible corrections of the imposed measures in order to protect certain categories, employment during the measures. The Institution also shared relevant international standards and recommendations, obtained by exchanging data with foreign partners.

In this regard, a preventive visit to the UICS (Directorate for the execution of criminal sanctions Montenegro) was made, as well as a continuous exchange of information with the administration, in order to get acquainted with the measures and actions taken by this institution in connection with the health care of persons deprived of their liberty, as well as employees. With the easing of measures, visits to prisons, as well as wards and security centres were organized.

In order to strengthen visibility and make the Institution closer to the citizens in the conditions of restrictive measures and limited reception of parties, the Instagram profile of the Institution / ombudsman / was opened, which is getting increased attention and visibility.

References

- www.ombudsman.co.me/Report/

