ENNHRI European Network of National Human Rights Institutions

The rule of law in the European Union

Reports from National Human Rights Institutions

11 May 2020

ennhri.org

@ennhri

ENNHRI

Contents

Executive summary **4**
Introduction **7**
Overview of trends and challenges **19**
Country reports **28**
Austria 28
Belgium 31
Bulgaria 40
Croatia 49
Cyprus 58
Czech Republic 64
Denmark 68
Estonia 73
Finland 84
France 96
Germany 109
Greece 114
Hungary 118
Ireland 128
Italy 133
Latvia 134
Lithuania 137
Luxembourg 147
Malta 156
Netherlands 157
Poland 161

Portugal 169
Romania 179
Slovakia 192
Slovenia 200
Spain 211
Sweden 215
Annex I – Reporting questionnaire/grid 216

Executive summary

NHRIs, ENNHRI and Rule of Law

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

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

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

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

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

This ENNHRI report compiles all the national rule of law reports drafted by NHRIs in countries of the European Union. It gives account of the independence and effectiveness of

each NHRI – and of progress made towards its 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:

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

Given the relevance to the rule of law of many of the measures recently taken by governments to respond to the COVID-19 outbreak, the report also offers an overview of the most significant impacts identified by ENNHRI members in relation to such measures in their countries. Concerns shared among NHRIs in this regard include the way measures are adopted in the context of the state of emergency; the situation of vulnerable groups (including the elderly, persons with disabilities, children, women, persons deprived of liberty as well as migrants and asylum seekers); and the severe restrictions to a number of fundamental rights and freedoms such as access to justice, the right to health, the right to information, privacy and the right to family life.

These findings highlight the importance of a regular and comprehensive monitoring of the rule of law environment in the EU member states and the urgency to make sure that identified challenges are addressed promptly and effectively at national and, where appropriate, EU level.

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

Next Steps

Looking ahead, NHRIs' rule of law reporting intends to contribute substantively to making concrete progress to advance the rule of law, democracy and human rights across the region. Indeed, this report is not the end but rather the very first step of NHRIs' engagement in European rule of law mechanisms. Other sub-regional reports will be compiled as relevant to the wider ENNHRI membership, and all reports will be part of a comprehensive regional rule of law report which will be published by ENNHRI.

Building on this work, all ENNHRI members will be able to engage in different processes at regional and national level in order to inform, based on their institutional role and their understanding of the situation on the ground, the identification and implementation of the appropriate follow-up measures in their countries. They will also be well placed to further contribute to the active promotion of a value-based culture, helping to grow grassroots support for democracy, rule of law and human rights among public authorities as well as citizens.

In this framework, ENNHRI will continue to act as a regional focal point and provide continued support to its members' engagement to secure its sustainability and enhance its impact. It will keep on investing to secure the establishment and effective functioning of NHRIs across the region, build up NHRIs' expertise and capacity, and ensure support to NHRIs under threat.

ENNHRI stands ready to engage with international and regional actors to further the advancement of rule of law, democracy and human rights in wider Europe.

Introduction

About ENNHRI and NHRIs

The European Network of National Human Rights Institutions (ENNHRI) brings together over 40 National Human Rights Institutions (NHRIs) across wider Europe. It provides a platform for collaboration and solidarity in addressing human rights challenges and a common voice for NHRIs at the European level to enhance the promotion and protection of human rights in the region. ENNHRI is one of four regional NHRI networks, which together form GANHRI, the Global Alliance of NHRIs.

National human rights institutions (NHRIs) are **state-mandated bodies, independent of government, with a broad constitutional or legal mandate to protect and promote fundamental rights 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 set forth that NHRIs must carry out their work independently and promote respect for fundamental rights, democratic principles and rule of law in all circumstances, including in situations of state of emergency.

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

Irrespective of their specific mandate, NHRIs are unique in that their independence, pluralism, accountability and effectiveness is periodically assessed and subject to **international accreditation**. Such accreditation, performed by the UN Sub-Committee on Accreditation (SCA) of the 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.

NHRIs and the rule of law

Given the **close interconnection and mutually reinforcing relationship between the rule of law, democracy and human rights**, NHRIs are in a key position to report and participate in rule of law monitoring initiatives. European NHRIs are already working in this area, and have chosen 'democracy and rule of law' to be one of ENNHRI's priorities in its Strategic Plan 2018-21. This is reflected, for example, in ENNHRI's Regional Action Plan on Promoting and Protecting Human Rights Defenders and Democratic Space.

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

- the international recognition of **NHRIs as a rule of law indicator,** based on the need for their formal and functional independence, pluralism and effectiveness in the light of standards set by the UN Paris Principles;
- NHRIs' unique position, based on their broad human rights mandate and taking into account their accreditation status, to **provide information** that can help international and European actors to get a more accurate picture of the national rule of law environment. In this respect, monitoring and reporting on the situation of human rights in their country is an obligation under the Paris Principles and a central function of all NHRIs - NHRIs accredited as fully independent and effective (A-status NHRIs) being given independent reporting rights before the UN Human Rights Council, Treaty Bodies and other UN mechanisms.

As it is true with other international monitoring mechanisms, NHRIs' engagement in rule of law mechanisms forms an **integral part of their mandate to promote and protect human rights**. By contributing to a more comprehensive and accurate assessment of the situation in each country, and recommending action needed to address challenges, NHRIs' engagement within their strategic priorities can help to enhance the impact of existing frameworks and related initiatives, and thus achieve better promotion and protection of human rights, rule of law and democracy. Similarly, regional mechanisms' awareness of NHRI reporting and recommendations in relation to rule of law can lead to enhanced follow-up to those recommendations, through multilateral or independent processes at regional level.

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

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

On this basis, ENNHRI's members committed to engage with a **united approach** to rule of law reporting. They engaged, in particular, in developing **country-specific rule of law reports**, using information extracted from relevant national reports and compiled on the basis of a **structure and methodology common to all NHRIs**, developed by ENNHRI. These country rule of law reports will be collated and published by ENNHRI as one **comprehensive regional report**. In addition, these reports are collated into **sub-regional reports** to feed in different consultation processes as relevant for NHRIs across ENNHRI's membership (Enlargement/Western Balkans, Eastern Partnership and other countries).

Such a united approach reflects the spirit of **cooperation and solidarity** that underlies ENNHRI membership, while acknowledging the **differences in roles, status, functioning and environment of NHRIs** across the region. It is meant to frame a **coherent engagement** and **timely and consistent reporting** of ENNHRI in the different European rule of law monitoring processes as relevant to EU Member States, Enlargement/Western Balkans, Eastern Partnership and other countries - while supporting the **overarching work of ENNHRI** on supporting its members' efforts to promote and protect democracy, rule of law and human rights at national level.

Scope of this report

The present report constitutes the contribution by ENNHRI and its EU member NHRIs to the **targeted stakeholder consultation launched by the European Commission in preparation to its first 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 exists which currently intends to apply for accreditation as an NHRI.[1]

This report covers **24 EU countries** out of the 25 EU countries where ENNHRI has a member, and information on the process to establish an NHRI in the three other EU Member States. In particular, Sweden has not reported, 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. Contributing ENNHRI members thus include all the 16 A-status NHRIs in the EU, 5 B-status NHRIs in the EU and 5 non-accredited institutions.[2] The list of contributing NHRIs is included in the overview table at the end of this section.

Considerations on methodology

A detailed methodology paper, available here, has been developed by ENNHRI to illustrate the common approach of its members to reporting and participation in European rule of law mechanisms. The key guiding principles and features underlying the agreed methodology are outlined below.

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

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

[1] While Malta is in the process of establishing an NHRI, no concrete progress has so far been made in Italy despite the government's indication of its will to do so.

[2] Note that three Belgian institutions (one B-status accredited NHRI, and two non-accredited institutions) have contributed collectively to the Belgian national report. In the system of international accreditation, A-status NHRIs are considered fully in compliance with the UN Paris Principles and B-status partially. No status ENNHRI members committed to working towards becoming accredited institutions. All A-status NHRIs are periodically reviewed every 5 years. Deferral of accreditation is possible – this is currently the case, among ENNHRI members from the EU, for the Hungarian Commissioner for Human Rights.

international and national level, as well as the development of European rule of law processes.

A common reporting structure

ENNHRI developed a **common reporting structure** in order to facilitate and streamline the collection of country information on rule of law by all NHRIs in wider Europe. The related questionnaire is included as Annex II to this report.

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

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

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

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

In filling the questionnaire, each NHRI was **free to report on what it deemed appropriate**, also on the basis of the NHRI's mandate, capacity, and national context. Each country report therefore reflects the NHRI's autonomous choice of scope of its country-specific reporting. Each NHRI is also solely responsible for the information provided as well as the

positions or opinions expressed in connection to the issues reported on – without those positions or opinions being attributable to other NHRIs or to ENNHRI.

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

Building on NHRIs' existing functions and expertise

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

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

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

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

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

- **Verification and consistency checks**, performed via consultation with the relevant NHRI to obtain clarification or complementary information and data included in a country report - each NHRI remaining in any case responsible for the information and data provided therein;
- **Highlighting emerging trends**, through analysis and processing of the information included in the country reports received;
- Provision of information on the **accreditation status and on the latest report of the international accreditation committee with recommendations to improve compliance with the Paris Principles in each country report**, in connection to the recognition of NHRIs as rule of law indicator.

Looking ahead: seeking concrete impacts and follow-up

This report is a starting point for ENNHRI's ongoing engagement of with the EU on rule of law, seeking to achieve positive change for fundamental rights, rule of law and democracy in the Union.

Paris Principles-compliant NHRIs across all EU Member States

The independent and effective functioning of an NHRI in each EU Member State is an indicator of the respect for rule of law. Accordingly, this report includes information on the establishment and international accreditation of an NHRI in compliance with the Paris Principles in each EU member state.

One of ENNHRI's core objectives is to support its members with accreditation – before, during and after the accreditation process. The number of NHRIs accredited by reference to the UN Paris Principles has risen significantly in the EU since the establishment of the ENNHRI Secretariat - this number has increased a 69%, from 13 to 22 countries in the EU with an accredited NHRI. Among these, there was an increase of about 77% in the number of EU MS with an "A-status" NHRI (fully compliant with the Paris Principles), from 9 to 16 A-status NHRIs in EU Member States.

ENNHRI underlines that the establishment of an NHRI in compliance with the Paris Principles in all EU Member States, as well as the support to their effective functioning, should be regarded as a priority at EU and national level also with a view to ensuring comprehensive and consistent collection of information on the state of fundamental rights, rule of law and democracy in the EU.[3]

Ongoing Engagement and Follow-up Measures

While this report is based on ongoing monitoring and reporting of NHRIs and their advice to state authorities in EU Member States, important added value can be created by the EU through the use of this country-specific information in follow-up actions. While ENNHRI

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

functions as focal point for engagement on rule of law of NHRIs at regional level, we encourage all relevant EU actors to engage with NHRIs directly in country-specific procedures and follow-up actions on rule of law.[4] Indeed, through their national mandate and their understanding of the situation on the ground, NHRIs will be well placed to contribute to the identification and implementation of appropriate follow-up measures in their countries, including the active promotion of a culture of understanding and respect for fundamental rights, rule of law and democracy.

Some indications of important follow-up actions can already be identified in this initial report of NHRIs on the rule of law. Importantly, the EU should actively explore and implement a variety of actions to support NHRIs when facing threats. The Polish NHRI, for example, invites European actors to ensure 'further monitoring of the situation in Poland, reacting in cases of subsequent violations of the rule of law and the European standards, making clear statements, analyses and reports, organizing visits to Poland when possible, and meeting both Polish representatives and members of the civil society'. When doing so, account can be taken of ENNHRI's Guidelines on support to NHRIs under threat, which include guarantees of confidentiality and clarify that public support is only appropriate at request of the NHRI concerned.

Another aspect for follow-up that emerges is the need for provision of support to NHRIs on how to effectively address rule of law through their promotion and protection mandate, while making use of the various relevant processes and standards at regional level. The report also shows that the COVID-19 context has created new and additional challenges for the rule of law, which also require NHRIs to adapt their working methods and practices.

ENNHRI will review all proposals for further work in this area, such as guidelines in the context of emergency measures, for follow-up with EU actors.

Synergies across Mechanisms and across ENNHRI's Work

While the current report feeds into broader engagement of ENNHRI and its members in rule of law related process -including also at the UN and Council of Europe-, the further development of synergies between the various processes will be of particular relevance for NHRIs, who play a role in all those processes with a view to bringing rights back home.

[4] Key contact points for each NHRI that provided a national report for this collation are included in Annex I.

As a network connecting all European NHRIs, ENNHRI will continue to play a key role in further developing actions in support of NHRIs' engagement in regional rule of law processes for creating change at national level. Depending on available capacity, ENNHRI could for example develop guidelines for NHRIs on rule of law, and tailored capacity-building activities.

The current rule of law reporting process will also feed into other key areas of ENNHRI's work, including further actions on implementation of fundamental rights and the EU Charter.

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 with ENNHRI's current work on NHRI monitoring of the human rights of migrants at borders, which takes into account rule of law and human rights accountability. Finally, the information collected on COVID-19 will inform ENNHRI's future actions to support NHRIs in this area.

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	✓			✓		✓	✓
2	**Belgium** *Collective response*	Interfederal Centre for Equal Opportunities and Opposition to Racism (Unia)	B status	✓	✓	✓	✓	✓		✓
		Belgian Federal Migration Centre (Myria)	No status							
		The Combat Poverty, Insecurity and Social Exclusion Service	No status							
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	✓		✓	✓		✓	✓
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	No status (applying)	✓		✓			✓	✓
9	**Finland**	Finnish Human Rights Centre Parliamentary Ombudsman	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
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	✓	✓	✓	✓	✓	✓	✓
18	**Luxembourg**	National Human Rights Commission of Luxembourg	A status	✓	✓	✓	✓	✓	✓	✓
19	**Malta**	No NHRI	No NHRI							
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)	✓	✓	✓	✓		✓	✓

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
24	**Slovakia**	Slovak National Centre for Human Rights	B status	✓	✓			✓		✓
25	**Slovenia**	Human Rights Ombudsman of the Republic of Slovenia	B status (applying)	✓	✓	✓	✓	✓	✓	✓
26	**Spain**	Ombudsman of Spain	A status	✓					✓	✓
27	**Sweden**	The Swedish Equality Ombudsman	B status	No submission, due to ongoing consultation to establish NHRI						

ENNHRI

Overview of trends and challenges

Independence and effectiveness of NHRIs

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

A positive trend is visible concerning the **establishment of NHRIs** in compliance with the Paris Principles in EU Member States. Since the establishment of the ENNHRI Secretariat in 2014, the number of newly accredited NHRIs has increased from 13 to 22 Member States, and the number of A-status NHRIs has increased from 9 to 16 Member States. Three Member States currently have NHRIs seeking accreditation review for A status in 2020.

Despite several legislative initiatives, there is still no clear pathway to establish an NHRI in Italy. While laws have been adopted on the establishment of an NHRI in Belgium, Malta and Sweden, the new institutions in these countries are not in operation yet.

Positive developments on the NHRI regulatory frameworks have been recorded in Lithuania (A-status NHRI), Estonia (seeking accreditation) and Slovenia (B-status NHRI, seeking review of its accreditation status). ENNHRI members in Slovenia and Estonia are awaiting their accreditation (delayed, due to COVID-19), while institutions in Romania recently applied for accreditation.

NHRIs in Austria, Croatia, Hungary, Lithuania and Slovenia report having been granted **new responsibilities**. In Austria, Lithuania and Slovenia, this reflects progress towards a **strengthened mandate** of the NHRI to promote and protect human rights in line with the UN Paris Principles. In Croatia and Hungary, the new responsibilities concern **specific new mandates** for the implementation of new rules on **whistle-blowers protection**. In Hungary, an additional mandate has also been accorded on addressing police-complaints.

The NHRI in Hungary reports an **increase of budget** for the salaries of staff. The NHRIs in Finland and Luxembourg also report an increase in staff. On the contrary, other NHRIs point to the **lack of adequate resources**: this is the case, in particular, for the NHRI in Poland; and for the NHRI in Croatia, where the new tasks did not entail additional resources being granted. Also, in Slovenia and Cyprus, the lack of resources, in particular to cover staff costs, is still a concern despite some recent improvements.

Some NHRIs report **problematic practices by the authorities impacting on the NHRI's functioning**. The NHRI in Poland reports being constantly subject to heavy criticism and pressure from the government. In Slovenia, the NHRI points at administrative requirements on budget approval making it difficult to implement the NHRI's budget in a timely manner.

In Croatia, the NHRI reports limited access to information and restraints in visits as regards in particular the situation of irregular migrants. The NHRI in Cyprus reports an **investigation into the NHRI's leadership,** opened on unclear grounds by the prosecutor general. The NHRIs in Belgium and Greece reported threats against their leadership.

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

In their contributions, NHRIs expressed **appreciation for ENNHRI's role**, in particular in terms of: enhancing exchanges and promoting mutual solidarity and understanding between NHRIs; enabling and supporting NHRIs' engagement in regional processes (; supporting NHRIs in their work at national level (in particular, in relation to issues raised within the current emergency situation); and supporting NHRIs under threat .

Human rights defenders and civil society space

Challenges related to the enabling framework for human rights defenders and civil society organisations are reported by 15 NHRIs.

The NHRI in Croatia points at the general lack of progress by the government towards a strategy to support a strong and free civic space, despite its recommendations.

Issues related to **access to public funding** for civil society organisations are reported by NHRIs in Belgium, Croatia, Poland, Portugal and Slovakia– the latter pointing in particular at discriminatory disbursement of state funding by the authorities. On the same point, **positive developments** are reported by the NHRI in Finland where the government increased funding for civil society organisations.

Problematic issues in relation to the **regulatory framework** likely to have a chilling effect on the free exercise by civil society organisations of their advocacy functions are highlighted by NHRIs in France (as regards the criminalisation of humanitarian assistance to migrants); Germany (as regards the revocation of public benefit status, and related tax

benefits, to organisations); in Ireland (as regards the application to civil society organisations of rules on political campaigning); and in Romania (as regards the application to civil society organisations of rules on combating money laundering and terrorist financing).

The NHRI in Luxembourg raises concern in relation to registration requirements applicable to civil society organisations, in particular as regards respect of privacy, as well as on the impact on freedom of expression and freedom of information of a legislative proposal on national security. In Belgium, France and Poland, the NHRIs draws attention to the **excessively strict application of rules on freedom of assembly,** whereas the NHRI in the Netherlands points to the potential for misapplication of relevant rules by mayors.

As regards an enabling environment, instances of **legal harassment against human rights defenders** are reported by NHRIs in Belgium and Luxembourg. NHRIs also raise concerns about **threats and hate speech against human rights defenders and activists**, in particular against women. NHRIs reported increased attacks against those advocating for women's rights (Bulgaria, Finland and Netherlands) and for the rights of ethnic minorities (Netherlands).

The NHRI in Poland also points with concern as smear campaigns including from political figures targeting human rights defenders and civil society organisations (in particular in relation to LGBT, as well as the legal education, journalistic and medical professions). At the same time, some positive progress is reported, in Belgium, concerning the implementation of hate speech laws to prosecute online harassment against human rights defenders.

Checks and balances

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

In this respect, the NHRI in Poland describes the process as generally distorted, also pointing at the lack of a genuine constitutional review of laws. ENNHRI's member in Romania raises concerns over the **delegation of powers** to the executive to regulate through ordonnances.

Another issue which emerges is the **lack of consultation and impact assessment on human rights**: in Croatia this is raised by the NHRI as a general issue, while ENNHRI members in Estonia, Germany and Lithuania highlight the problem in particular in relation to data collection and surveillance measures by public authorities. In Denmark, Finland and

France, NHRIs link this to the use of accelerated legislative procedures – particularly concerning for the French NHRI in relation to measures to combat terrorism, and the Danish NHRI in relation to the removal of citizenship of foreign fighters.

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

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

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

NHRIs also raise specific issues by reference to other countries: in Belgium, as regards the government's respect of the legislative and judiciary functions, with particular reference to the allocation of resources to the judiciary; and in Luxembourg, concerning the respect by the judiciary and the prosecution service of the parliament's inquiry functions, in connection to police's data collection practices. The NHRI in Slovenia further refers to rules applicable to the approval by the government of the NHRI's budget as a practice affecting the separation of powers.

The NHRI in Ireland draws attention to certain practices and measures **showing limited transparency and accountability of state bodies** on human rights related issues. Also related to state bodies accountability are the issue of **use of force and measures of physical restraint by law enforcement** on suspects and accused in Lithuania and the wide

powers enjoyed by law enforcement authorities for home searches in relation to certain crimes in Denmark.

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

Functioning of justice systems

As regards **independence of the judiciary**, serious concerns are raised in particular by the NHRIs in Poland. In Poland the NHRI points to several developments resulting in a severe infringement of the principle of independence and impartiality at all levels of the judiciary.

Concerning the **quality of justice**, various NHRIs variably point at **limitations, unequal access and inadequacy of the legal aid system**: it is the case for Belgium, Croatia, Finland, France, Greece, Ireland, Luxembourg, Netherlands, Portugal and Slovenia. The level of **litigation fees** was also mentioned by NHRIs' contributions on Belgium and the Netherlands as affecting access to justice.

Measures and practices impacting on access to justice for groups in a vulnerable situation also emerge as a concern in a number of NHRIs' contributions. The reported issues relate in particular to: access to judicial review procedures for migrants in Belgium, Finland, France and Portugal; child friendly justice and access to justice for Irish Travellers; access to judicial review for persons subject to a declaration of incapacity in Lithuania; and the failure to provide effective redress for victims of racist violence and police ill-treatment in Germany. The NHRI in Luxembourg also pointed to issues related to the respect of privacy for victims of crime, in particular victims of domestic violence and trafficking.

NHRIs also point to **challenges in access to justice in relation to specific areas of law**: the NHRI in Denmark points to the lack of judicial review against administrative acts in the field of the **fight against terrorism**, while the NHRI in France raises concern over the impact of a recent reform on the rights of suspects, accused and victims in **criminal**

proceedings more generally. Furthermore, ENNHRI members in Germany and Romania refer in particular to **data collection and surveillance** for the purpose of national security, and the latter to the treatment of **persons deprived of liberty** as well as the delays in implementing EU rules on **procedural rights of suspects and accused.**

The NHRI in Bulgaria noted concerns in relation to the access of individuals to e-justice tools.

On a positive note in connection to access to justice, the contribution on Belgium gives account of the recent introduction under national law of the possibility to submit **collective actions**. The NHRI in Austria points to the creation of an administrative courts' system as a positive development.

As concerns the **efficiency of justice systems**, the **length of proceedings and delays in delivering justice** are highlighted in NHRIs' contributions from Cyprus, Portugal and Slovenia.

Reports of the **non-execution of judgments** from the European Court of Human Rights are provided in the NHRIs' contributions received on Belgium, France, Greece and Slovenia, while the NHRI in Bulgaria points at **some progress** being made.

The lack of **publication of judgments** was highlighted as a concern by the NHRI in Luxembourg.

In terms of **positive developments,** the NHRI in Croatia refers to government's **efforts to improve citizens' trust** in the judicial system; while the NHRI in Bulgaria provides examples of how **interpretative judgments** can help clarify the courts' case-law.

Media pluralism and freedom of expression

Most of the issues raised by NHRIs in their contributions as regards media pluralism and freedom of expression concern **independence and safety of journalists and other media actors**. NHRIs in Finland, France, Greece, Slovakia and Slovenia point at **attacks and hate speech** against journalists and question the adequacy of the protection provided by the authorities against such attacks.

A number of NHRIs provide examples of **legal harassment** of journalists in their countries, including Belgium, Bulgaria, Croatia, Portugal and Slovakia, while the NHRI in Poland reports about **defamatory campaigns** against independent media**.** ENNHRI's member in Romania raises concern over **journalists' independence** due to the inadequacy of the

legal framework regulating their status. NHRIs in France, Slovakia and Slovenia reported concerns about pressure for journalists to reveal their sources, and a similar issue was addressed through a court case in Finland.

Some NHRIs also point at recent **legislation likely to impact on the exercise of freedom of expression**, in particular in France, Luxembourg and Slovakia**.** In this respect, a positive development as regards the **protection of media against defamation lawsuits** is reported by the NHRI in Greece.

NHRIs in Bulgaria and Slovenia also point at **hate speech**, in particular in the media, as a reason for concern.

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

Corruption

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

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

At the same time, other NHRIs report on some progress in this area. The NHRI in Portugal points to improvements in the overall framework for the fight against corruption. Progress is also reported in a number of contributions as regards legislative measures to protect whistle-blowers (in Croatia, Cyprus, France, Hungary and Lithuania). It is noted, however, that some NHRIs, such as in Croatia, have been afforded this mandate without a corresponding increase in resources.

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

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

A number of NHRIs draw attention to the **way such measures are adopted**. These include NHRIs in France, Germany, Poland, Romania, and Slovenia, which variably raise concern over the **use of accelerated legislative procedures**, the **weakened control by parliament and courts**, and **limited consultation**. Also, the NHRI in France raises concern over the suspension of the constitutional review of laws in such a situation. However, NHRIs in Germany and Slovenia, underline the ongoing exercise by their constitutional tribunals of their **constitutional review** functions.

ENNHRI's members in Germany, Luxembourg, Romania and Poland raise concern over the **lack of clarity and predictability** of measures adopted, in particular for the latter those impacting on access to justice and the functioning of courts and provisions on sanctions. ENNHRI's members in Latvia, and Romania also refer to the government's notification on the use of the **derogation clause** provided in Article 15 of the European Convention on Human Rights. Furthermore, submissions provided on Belgium, Romania and Slovenia point at a **lack of transparency and consultation** and **limited access to information** by state bodies – the latter point being also raised by the NHRI in Luxembourg (where regulations have not been published).

As it concerns the **impact** of the adopted measures, the **situation of certain groups in a vulnerable situation** emerges as a concern in many NHRIs' contributions. NHRIs draw particular attention to the importance to avoid a disproportionate impact of confinement measures on migrants, **asylum seekers and refugees** (as reported in Belgium, Croatia, Cyprus, Finland, Germany and Luxembourg); **detainees** (as reported in Belgium, Croatia, Cyprus, Finland, Hungary, Latvia, and Lithuania; **Roma** (as reported in Croatia, Hungary, Slovenia and Slovakia); **persons living in poverty and homeless people** (as reported in Belgium, Croatia, Finland, France, Germany, Latvia, Romania and Slovenia); **women, including in relation to domestic violence** (Germany, the Netherlands and Romania); **persons with disabilities** (Belgium, Bulgaria, Cyprus, Finland, Ireland, the Netherlands, Romania and Slovenia); and **children and the youth** (as reported in Bulgaria, Belgium, France, Germany, Hungary, Romania and Slovenia).

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

contributions, including: **access to justice** (see contributions on Bulgaria, France, and Luxembourg); the **right to health** (see report on Czech Republic, Finland, Slovakia); **social security and social assistance** (see report on Latvia); the **right to family life** (see different issues reported as regards the Czech Republic, Hungary and Latvia); the **rights of the elderly** (Finland, Romania); **privacy and data protection,** for example in relation to mobile tracking apps (see reports on Croatia, Denmark, Luxembourg, Poland and Slovakia); the **right to information** (Romania); **accessibility of information and reasonable accommodation** for persons with disabilities (see issues raised by NHRIs in particular in Cyprus, Ireland, the Netherlands and Slovenia).

Some NHRIs also draw attention to the **impact on civil society and rights groups** (Croatia, Estonia) as well as on **community cohesion** (Luxembourg).

NHRIs were also invited to share **challenges to their institutions' functioning** due to the COVID-19 emergency. NHRIs contributions on this point show that overall NHRIs managed to adapt well to the challenging circumstances while teleworking, in particular to ensure **continuity of work and the possibility to receive individual complaints** (see in particular the measures, including telephone hotlines, adopted by ENNHRI members in Bulgaria, Cyprus, Czech Republic, Denmark, Greece, Lithuania, Portugal, Slovakia, Slovenia and Spain). Some NHRIs reported an increased in complaints (Bulgaria, Estonia and Slovenia), others a decrease (the Netherlands).

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

Country reports

Austria

Austrian Ombudsman Board (AOB)

Independence and effectiveness of the NHRI

International accreditation status and SCA recommendations

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

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

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

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

The latest amendment to the mandate of the AOB occurred when the National Council unanimously resolved to entrust the AOB with the compensation for victims of abuse in

children's homes. Since July 2017, there has thus been an independent Pension Commission at the AOB, which acts as an umbrella organisation according to the Pensions for Victims of Children's Homes Act. This Act stipulates that those affected receive a monthly pension as soon as they reach the regular pensionable age or retirement. The Pension Commission is chaired by one of the three members of the AOB and also includes representatives of organisations for the support of victims.

References

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

Functioning of justice systems

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

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

Corruption

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

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

In-focus section on COVID-19 measures

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

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

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

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

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

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

AOB manages to uphold the delivery of services to citizens.

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

ENNHRI

Belgium

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

Independence and effectiveness of the NHRIs

International accreditation status and SCA recommendations

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

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

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

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

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

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

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

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

Belgium has still not established a type A NHRI.

However, Belgium does have a B status NHRI (Unia) which is competent in the field of anti-discrimination and has been designated as an independent mechanism for the promotion, protection and monitoring of the implementation of the Convention on the Rights of Persons with Disabilities. Unia is competent throughout Belgian territory and for all levels of government. Flanders has announced its intention to withdraw from the cooperation agreement as of March 2023 and to create its own anti-discrimination institution. This withdrawal will have a negative impact on the effectiveness of the fight against discrimination in Belgium, creating confusion and unclarity for the citizens. It will also impact Unia financially and structurally (in the functioning of the Board).

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

In the meantime, the effectiveness and equal enjoyment of the human rights for persons residing in Belgium are ensured through organisations that have either a partial mandate, partial geographical competence or relative independence.

References

- Loi du 12 mai 2019 portant création d'un Institut fédéral pour la protection et la promotion des droits humains, M.B., 21 juin 2019: https://www.tribunaux-rechtbanken.be/fr/nouvelle-l%C3%A9gislation/loi-du-12-mai-2019-portant-cr%C3%A9ation-dun-institut-f%C3%A9d%C3%A9ral-pour-la-protection-et.
- https://www.rtbf.be/info/belgique/detail_le-gouvernement-flamand-devra-cooperer-avec-unia-pendant-les-3-prochaines-annees?id=10332071
- https://www.unia.be/fr/articles/accord-de-gouvernement-flamand-les-questions-qui-restent-en-suspend

Human rights defenders and civil society space

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

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

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

References

- Funding civil society organisations in Flanders:
- https://www.standaard.be/cnt/dmf20190930_04636977
- https://www.vrt.be/vrtnws/nl/2019/11/22/daf/
- https://www.levif.be/actualite/belgique/le-gouvernement-flamand-taille-dans-les-subsides-accordes-au-secteur-culturel/article-news-1214067.html
- Exhibition Ligue des droits humains: https://plus.lesoir.be/250444/article/2019-10-01/carte-blanche-quand-la-police-menace-le-droit-dinformer
- Fidelio case: https://www.hln.be/nieuws/binnenland/rechter-veroordeelt-man-die-anoniem-haat-spuide-op-twitter-tot-celstraf-en-boete-sociale-netwerken-zijn-geen-wetteloos-gebied~ab68a561/

Checks and balances

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

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

References

- https://www.lecho.be/economie-politique/belgique/general/la-justice-condamne-l-etat-pour-avoir-illegalement-sous-finance-la-justice/10215862.html
- https://www.unia.be/fr/publications-et-statistiques/publications/mesures-et-climat-consequences-post-attentats

Functioning of justice systems

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

household but who are registered at the same address (cohabitants), all incomes are taken into account and added together, even if they are simply flatmates. As a result, cohabitants can be excluded in full or in part from second line legal assistance despite having very low financial means.

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

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

Furthermore, **discriminatory practices** can be reported which impact on the exercise of the right to an effective remedy by minority groups. In particular, the lack of information about access to legal assistance to migrants and foreigners in a language they understand has an impact on the rights of vulnerable groups such as undocumented migrants or transit migrants, including when they face police misconduct. Undocumented migrants' right to access to justice is also negatively impacted by the risk of setting off immigration control and expulsion procedures, due to the failure to make a clear distinction between the authorities in charge of implementing immigration control and those tasked with providing public services, including justice, as the European Commission against racism and intolerance (ECRI) pointed out in its latest report on Belgium. As a result, Myria observes that many undocumented migrants fear to report even serious acts to the police (including domestic violence).

Belgium has also failed to implement the judgement of 18 September 2018 by the European Court of Human Rights in the case Lachiri v. Belgium, where the Court held that the exclusion of Ms. Lachiri from the courtroom of a case in which she was a civil party, on the sole ground that she wore a headscarf covering her hair out of religious conviction,

constituted a violation of her right to religious freedom under article 9 of the European Convention on Human Rights. The exclusion was based on the interpretation given to an ancient law which provides that litigants must uncover their heads in court.

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

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

References

- Loi du 6 juillet 2016 on legal aid http://www.ejustice.just.fgov.be/mopdf/2016/07/14_1.pdf#Page7
- Shadow report of Plateforme Justice pour Tous to the Committee on Economic, social and cultural rights: https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=INT%2fCESCR%2fCSS%2fBEL%2f41232&Lang=en
- Unia's, Myria's and Combat Poverty Service's contribution to the 6th Periodic Report of Belgium to the Human Rights Committee of the United Nations: https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=INT%2fCCPR%2fCSS%2fBEL%2f35803&Lang=fr
- Concerning access to justice by undocumented migrants: European Commission against racism and intolerance (ECRI) 2020 report (esp. paragraphs 23 and 25): https://rm.coe.int/ecri-sixth-report-on-belgium-/16809ce9f0); https://www.Myria.be/fr/publications/note-police-et-migrants-en-transit
- On M.N. v Belgium: https://www.justice-en-ligne.be/L-Etat-belge-refuse-d-executer-l
- Lachiri case: https://www.coe.int/en/web/execution/-/belgian-equality-body-submits-new-communication-in-freedom-of-religion-case

Media pluralism

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

References

- https://www.rtbf.be/info/medias/detail_une-equipe-de-la-rtbf-arretee-par-la-police-lors-d-une-action-au-centre-127-bis?id=9950937

In-focus section on COVID-19 measures

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

The federal government has been a caretaker government since the 2019 election. It was acting as an interim government until a fully-fledged government was in place. Faced with the coronavirus pandemic, the government obtained the support of the opposition and special powers to best respond to the health emergency. On March 17, 2020, the new government became a fully-fledged government.

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

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

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

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

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

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

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

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

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

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

References

- Overview of COVID-19 measures relating to situations of poverty and insecurity: https://www.armoedebestrijding.be/themas/covid-19/
- Steunpunt tot bestrijding van armoede, bestaansonzekerheid en sociale uitsluiting, To leave no one behind: aandacht en ondersteuning voor mensen in armoede en bestaansonzekerheid in het COVID-19-beleid, 24 maart 2020 : https://www.armoedebestrijding.be/wp-content/uploads/2020/03/200323-communicatie-COVID-19-.pdf
- Unia, Myria, Steunpunt tot bestrijding van armoede, bestaansonzekerheid en sociale uitsluiting, COVID-19: Beschermingsmaatregelen mét respect voor de grondrechten, 20 maart 2020: https://www.armoedebestrijding.be/wp-content/uploads/2020/03/200320-PB-Covid19-NL.pdf

Bulgaria

Ombudsman of the Republic of Bulgaria

Independence and effectiveness of the NHRI

International accreditation status and SCA recommendations

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

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

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

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

The Ombudsman's legally assigned mandate includes, without any limitation, all violations of the rights of citizens, that is, economic, social, cultural, political and civil rights plus the rights that are set in the EU Charter of Fundamental Rights as related to EU membership. In 2019 the institution has examined 13 762 complaints of citizens for violations of their rights. The ombudsman is also vested with the power to examine existing and draft legislation and make recommendations to ensure human rights compliance – in 2019 Ombudsman has issued 13 legislative initiatives and opinions, addressed 5 referrals to the Constitutional

Court and 4 requests for interpretative rulings to the two supreme courts in Bulgaria. The ombudsman of Bulgaria has also the mandate to inspect and examine public premises, documents, equipment and assets – in 2019 were organized 55 inspection visits that ended with a set of recommendations to public authorities. In 2019 alone the Ombudsman institution reached 96% of its recommendations being implemented by public authorities. The Ombudsman is also vested with the responsibility to conduct assessments of domestic compliance with and reporting on international human rights obligations – since March 2019 the institution submitted parallel or shadow reports to EU and UN monitoring bodies on several issues. The Ombudsman is also monitoring the implementation of recommendations originating from international human rights monitoring bodies and devotes a special part within its Annual report on the findings and the recommendations thereof.

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

References

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

Human rights defenders and civil society space

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

the Ombudsman institution has opposed all practices of instilling fear and hatred of non-governmental organisations that assist women and children affected by violence.

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

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

References

- 2019 Annual Report of the Ombudsman of Bulgaria (Bulgarian only, pp. 231 - 257) - https://www.ombudsman.bg/pictures/file/REPORT-BG%20mart_2020.pdf
- Summary of the 2019 Annual Report of the Ombudsman of Bulgaria - https://www.ombudsman.bg/pictures/SUMMARY_%202020%20_ENG(1).pdf

Checks and balances

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

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

second one refers to the disproportionate increase of taxes for administrative cases brought to courts for review that would limit the rights of citizens for fair trial.

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

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

References

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

Functioning of justice systems

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

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

In many cases, citizens turn to the Ombudsman during pending judicial proceedings or after their completion (in 2019 those represented 2% of all complaints filed for Ombudsman examination). Although it is inadmissible for the Ombudsman to review such complaints, they demonstrate the existence of **numerous and repeated allegations of violations and concerns from citizens as regards the administration of justice,** as equally shown by the cases on this matter referred to the European Court of Human Rights.

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

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

References

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

Media pluralism

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

For the last three years, the Ombudsman institution has been approached with just 3 complaints on violation of freedom of expression. This might be related to the fact, that there are two more independent state bodies that have competencies to deal either with the issues related to media pluralism (the Council for electronic media) or with some infringements of the freedom of expression, i.e. hate speech, (the Commission for Protection against Discrimination). Nevertheless, the Ombudsman is constantly advocating the freedom of expression as a fundamental right. Latest statements of the Ombudsman against **hate speech** include specific recommendations to public authorities to put more effective instruments for monitoring and reporting hate speech crimes.

The Ombudsman institution is closely monitoring the execution by Bulgarian authorities of the European Court of Human Rights final judgments related to violations of Article 10 of the ECHR under the Bozhkov v. Bulgaria case– still an issue of concern is related to **disproportionate interference with the freedom of expression of journalists**, as a result of their convictions to administrative penalty in criminal proceedings between 2003 and 2008 for defamation of public servants. In its 2019 Annual Report the Ombudsman of the Republic of Bulgaria has underlined the need for completing the work of the special inter-ministerial working group which has prepared draft amendments to the Criminal Codewith the aim to include the exemption from criminal liability and the imposition of an administrative sanction where the defamation concerns a public authority or official and the removal or reducing of the lower limits of fines.

References

- Council for electronic media - www.cem.bg/
- Commission for Protection against Discrimination, established in 2005 by a special Act. The Commission also acts as a national contact point on hate crimes with the Organisation for Security and Cooperation in Europe.
- Bozhkov v. Bulgariacase - 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

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

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

The **protection of whistle blowers** is still a deficit in Bulgarian law. The Ombudsman has invited state authorities to consider with special attention the need for addressing this gap. A special focus should be put on prohibition of retaliationand support measuresincluding 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 theDirective (EU) 2019/1937 of the European Parliament and of the Council of 23 October 2019 on the protection of persons who report breaches of Union law.

References

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

In-focus section on COVID-19 measures

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

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

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

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

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

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

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

and services delivered to citizens during the emergency period as compared to the same period one year earlier.

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

References

- https://www.ombudsman.bg/news/5307?page=3#middleWrapper
- https://www.ombudsman.bg/news/5310?page=2#middleWrapper
- http://legalworld.bg/86507.byrzite-krediti-%E2%80%93-izvyn-moratoriuma-i-izvynredniia-zakon-triabvat-resheniia.html
- https://www.ombudsman.bg/news/5309?page=3#middleWrapper

Croatia

Ombudswoman of the Republic of Croatia

Independence and effectiveness of the NHRI

International accreditation status and SCA recommendations

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

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

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

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

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

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

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

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

References

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

Human rights defenders and civil society space

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

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

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

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

References

- https://www.ombudsman.hr/hr/izvjesca-puckog-pravobranitelja/
- https://zaklada.civilnodrustvo.hr/uploads/files/sectionModuleFile/2020/01/22/pbjNSzFW1btRsrpjCDkmP7LqewAV6lAj.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

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

Corruption

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

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

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

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

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

References

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

In-focus section on COVID-19 measures

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

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

Some of the measures include:

- citizens are advised to stay at home and limit their movement to the necessary extent.
- the decision on measures to limit social gatherings, work in commerce, services and the holding of sports and cultural events for 30 days (prolonged for two weeks). They include: suspension of social gatherings for more than 5 persons; suspension of all cultural activities; suspension of the 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; suspension of all workshops and courses; suspension of religious gatherings (the measure was prolonged).
- public transportation is suspended, train and bus stations closed for 30 days (also prolonged for two weeks).
- temporary prohibition or restriction of the crossing of persons across all border crossings (prolonged).
- restriction on leaving the place of residence (it was not time limited and this measure was relaxed)

Some of the key discussions relating to the protection of human rights during the health emergency refer to:

- The authority to adopt measures – they were adopted by the National Civil Protection Headquarters which at the beginning of pandemic made decisions that restrict 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 is strengthened;
- Whether when restricting rights and freedoms, the Government should call upon Article 16 (restrictions need to be regulated by law and proportionate to the nature of event) or Article 17 of the Constitution needs to be activated (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);
- 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 is given to monitoring the situation in relation to 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, the Office's work is now 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. The office continues to receive complaints either by phone or by email, a great majority relating to COVID-19, while staff continues to telework ensuring an effective workflow. However, as the relaxation of measures in relation to COVID -19 comes into place, new premises to continue regular work need to be assured, including in order to enable access by citizens.

Also, due to COVID-19 measures, the Office acting as NPM has 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 centers as well as of older persons in long term care, continues.

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 this, as there is a ban on employment in force and cuts have already been made.

References

- https://mailchi.mp/06ea3ce97a5a/newsletter-of-the-ombudswoman-of-the-republic-of-croatia-COVID-19-epidemic-april-2020
- https://www.koronavirus.hr/
- www.ombudsman.hr
- https://vlada.gov.hr/sjednice/223-sjednica-vlade-republike-hrvatske-29197/29197
- https://vlada.gov.hr/sjednice/222-sjednica-vlade-republike-hrvatske-29132/29132

Cyprus

Commissioner for Administration (Ombudsman)

Independence and effectiveness of the NHRI

International accreditation status and SCA recommendations

The Cypriot NHRI was first accredited with B status in November 2015.

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

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

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

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

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

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

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

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

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

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

References

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

Checks and balances

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

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

References

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

Functioning of justice systems

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

References

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

Corruption

Regarding corruption, we would like to note that:

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

In-focus section on COVID-19 measures

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

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

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

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

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

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

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

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

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

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

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

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

References

- Detailed Information regarding the legislative and administrative measures taken in Cyprus in view of the pandemic, can be found in Relevant Page in the Ministry of Health's website : https://www.pio.gov.cy/coronavirus/en/
- Court Case regarding recourse to Court on the restriction to repatriation by a Cypriot student in the UK: https://www.financialmirror.com/2020/04/02/covid19-cypriot-students-take-legal-action-over-repatriation/
- https://in-cyprus.philenews.com/court-rejects-student-challenge-to-repatriation-rules/
- Links to our website where the COVID-19 related interventions of the Commissioner are published:
- http://www.ombudsman.gov.cy/ombudsman/ombudsman.nsf/All/4D78C79481321A4AC225855700301B99/$file/NPM.pdf?OpenElement
- http://www.ombudsman.gov.cy/ombudsman/ombudsman.nsf/All/7EE18391CBE8E56CC2258542002907CB/$file/AYT_9_2020.pdf?OpenElement
- http://www.ombudsman.gov.cy/Ombudsman/ombudsman.nsf/All/BDDE33B1D61926DBC22585370040AFB1/$file/NPM%20COVID-19_26032020.pdf?OpenElement
- Information on the Cyprus news Agency website on the gradual easing of measures:
- http://www.cna.org.cy/WebNews-en.aspx?a=8623b28898b94f10851cc5fa7f8c0560

Czech Republic

Public Defender of Rights

Independence and effectiveness of the Institution

International accreditation status

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

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

In-focus section on COVID-19 measures

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

References

- https://www.ochrance.cz/aktualne/tiskove-zpravy-2020/ombudsman-kdo-ochrani-klienty-cestovnich-kancelari/
- https://mmr.cz/cs/ministerstvo/vsechna-opatreni-a-pomoc-mmr-pri-pandemii-COVID-19/cestovani-v-dobe-koronaviru/nechci-absolvovat-zajezd,-ktery-se-ma-konat-po-opa
- https://www.ochrance.cz/aktualne/tiskove-zpravy-2020/dopis-ombudsmana-ministrovi-zdravotnictvi/
- https://www.mzcr.cz/dokumenty/ministerstvo-zdravotnictvi-opet-povoli-pritomnost-druheho-rodice-u-porodu_19018_1.html
- https://www.mvcr.cz/mvcren/article/cross-border-workers-so-called-pendlers.aspx
- https://www.vlada.cz/en/media-centrum/aktualne/measures-adopted-by-the-czech-government-against-coronavirus-180545/

Denmark

Danish Institute for Human Rights

Independence and effectiveness of the NHRI

International accreditation status and SCA recommendations

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

Checks and balances

Expedited legislative processes:

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

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

Lack of judicial review/increased executive powers:

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

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

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

The parliament is currently considering similar legislation concerning individuals convicted of terror-related crimes. The Danish Institute for Human Rights assesses that the proposed legislation can result in legal uncertainty with a risk of the supervision being arbitrary.

References

- The Danish Institute for Human Rights, annual report to the Danish Parliament, 23 April 2020, available in English for download: https://www.humanrights.dk/publications/annual-report-danish-parliament-2020, including a short news piece, https://www.humanrights.dk/news/2019-status-report-political-respect-due-process-falters
- The Danish Institute for Human Rights on the expedited legislative process re. revocation of Danish citizenship from "foreign fighters": News article from Danish Broadcasting Corporation, 21 October 2019, "Harsh criticism on Governement's proposal on foreign fighters" ("Kritikken vælter ned over regeringens lovforslag om fremmedkrigere"), available in Danish: https://www.dr.dk/nyheder/politik/kritikken-vaelter-ned-over-regeringens-lovforslag-om-fremmedkrigere
- The Danish Institute for Human Rights on the contents of the draft bill on revocation of citizenship from "foreign fighters", public consultation memo, 21 October 2019, available in Danish: https://menneskeret.dk/hoeringssvar/aendring-reglerne-frakendelse-fremmedkrigeres-statsborgerskab
- The Danish Institute for Human Rights on access to homes of persons convicted of sexual crimes, public consultation memo, 11 February 2019, available in Danish: https://menneskeret.dk/hoeringssvar/lovudkast-forbud-doemte-seksualforbrydere
- The Danish Institute for Human Rights on initiatives against foreign fighters and other persons convicted of terror-related crimes, public consultation memo, 18 February 2020, available in Danish: https://menneskeret.dk/hoeringssvar/initiativer-fremmedkrigere-andre-terrordoemte

Functioning of justice systems

See examples above which also impact on effective judicial protection.

In-focus section on COVID-19 measures

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

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

Denmark:

- Restrictions on freedom of assembly (so far max. 10 persons an assemble – this does not apply to private homes or to demonstrations)

- Restrictions on movement (police can temporarily forbid people to gather in popular public spaces if too many assemble in the same spot)
- Access to coercively isolate, treat, vaccinate individuals or submit them to hospital.
- Authorities can submit companies (e.g. phone companies etc.) to give access to relevant data when necessary in order to avoid spread of COVID-19.
- Tightened punishment for COVID-19-related crimes.
- Increased access to expel foreigners for COVID-19-related crimes.
- Closing the borders for inbound travel to Denmark from 14 March 2020 until, so far, 10 May 2020. Only Danish citizens can enter the country. Foreign nationals can enter if entry has a legitimate purpose and they show no symptoms of COVID-19.

Greenland:

- As of 9 April 2020 (?): Recommendation (not ban) as to avoid assembling more than 100 persons.
- All flight traffic to Greenland is cancelled by the Greenlandic authorities, so far until 1 June 2020. Only necessary inbound travel is allowed and needs authorisation from Greenlandic authorities. Necessary travel are SAR-operations, medical evacuations, transport in order to uphold critical functions in society etc. People travelling from Greenland (which is now allowed again, as of 4 May 2020) can only re-enter under conditions described above. This includes Danish/Greenlandic citizens.
- During 28 March-30 April 2020, all traffic to/from Nuuk was forbidden, excluding critical operations, medical evacuations etc. in order to prevent the spread of COVID-19 from Nuuk (confirmed cases) to other parts of Greenland (no confirmed cases).
- During 18 March-8 April 2020: Temporary bans in Nuuk included bans of assemblies of more than 10 people, closing of shops/malls/restaurants/bars/sport facilities etc, excluding grocery shops. Travel ban as described above (was prolonged after the 8 April).
- During 28 March-15 April 2020: Ban on sale of alcohol in Nuuk.
- The restrictions are generally either time-limited, some apply for three months, others until early 2021, or subject to revision later in 2020. The Danish Institute for Human Rights has published a statement/policy brief on the COVID-19-situation and is continuously monitoring the situation.

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

As an independent state-funded Danish institution, the Danish Institute for Human Rights follow directives and recommendations from the Danish government and health authorities. All staff members in Denmark currently work from home and we have suspended all travel activities and physical meetings. However, online consultations and meetings are effective and frequent.

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

References

- The Danish Institute for Human Rights has designated a webpage for COVID-19, https://menneskeret.dk/COVID-19-menneskeretten, including a statement/policy brief, available in Danish, Greenlandic and English here: https://www.humanrights.dk/publications/covid-19-human-rights-law
- The Danish Institute for Human Rights, Our response to the COVID-19-pandemic, statement of 26 March 2020 available in English here, https://www.humanrights.dk/news/our-response-COVID-19-pandemic
- Greenlandic authorities press release, 4 May 2020 (travel ban into Greenland): https://naalakkersuisut.gl/da/Naalakkersuisut/Nyheder/2020/05/0405_Udrejserestriktioner
- Greenlandic police, press release 7 April 2020 (travel ban to/from Nuuk): https://politi.gl/politistationer/nyhedsliste/paabud/2020/04/07
- Greenlandic authorities, poster on temporary bans in Nuuk, 1 April 2020, https://politi.gl/-/media/mediefiler/dokumenter/gl/a3-forbud--eng.pdf?la=da&hash=391E47D539B1519384A3370A71335ADDAD5A1CAC
- Greenlandic Government on temporary alcohol ban in Nuuk, press release 28 March 2020, https://naalakkersuisut.gl//da/Naalakkersuisut/Nyheder/2020/03/2803_Forbud_mod_salg

Estonia

Chancellor of Justice

Independence and effectiveness of the NHRI

International accreditation status and changes in the national regulatory framework

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

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

Checks and balances

Political parties and the Political Parties Act

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

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

Elections

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

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

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

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

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

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

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

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

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

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

Public information

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

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

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

Participation of rights-holders: accessibility

Access to elections

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

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

Access to e-services

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

Transparency, data collection

On 12 November 2018, the Draft Implementing Act of the Personal Data Protection Act failed at the final vote in the Riigikogu. The Chancellor had previously drawn the attention of the Riigikogu Constitutional Committee to the fact that between parliamentary readings amendments concerning the Imprisonment Act had been added to the draft without substantive debate and approval (see pages 74–82 of the Draft Act) that would have granted the prison service an unlimited right to collect and retain personal data. Opposition to that intention was also expressed by the Minister of Education and Research in her letter to the Minister of Justice. According to the Draft Act, the prison service would have obtained an unlimited and unsupervised right to collect and retain data on all people (and, in turn, on people connected with them) who either directly or indirectly provide services to prisons or have to apply for authorisation to enter a prison zone. This would have entailed unjustified and uncontrolled interference with the privacy of an unidentified number of people. Persons concerned would have included, for example, teachers, medical staff, ministers of religion, lawyers and consular workers visiting a prison for work-related duties, as well as their next of kin.

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

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

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

Good administrative practice

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

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

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

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

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

References

- https://www.oiguskantsler.ee/annual-report-2019/index.php

Corruption

Regulatory framework

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

Consequences for political parties accepting a prohibited donation

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

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

In-focus section on COVID-19 measures

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

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

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

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

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

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

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

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

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

References

- https://www.riigiteataja.ee/en/eli/517032020002/consolide

Finland

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

Independence and effectiveness of the NHRI

International accreditation status and SCA recommendations

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

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

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

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

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

References

- https://julkaisut.valtioneuvosto.fi/bitstream/handle/10024/161658/OM_2019_24_Ylimpien_laillisuusvalvojien_tehtavanjako.pdf?sequence=1&isAllowed=y
- Annual reports of both the Parliamentary Ombudsman and the Chancellor of Justice.
- Reports of the Constitutional Committee based on the annual reports of the Parliamentary
- Ombudsman and the Chancellor of Justice (since 2014 -).
- Links available upon request. Information available mainly in Finnish and Swedish.

Human rights defenders and civil society space

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

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

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

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

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

References

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

Checks and balances

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

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

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

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

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

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

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

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

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

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

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

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

References

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

Functioning of justice systems

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

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

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

Media pluralism

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

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

References

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

Journalist's right not to reveal the sources

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

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

References

- https://korkeinoikeus.fi/fi/index/ennakkopaatokset/precedent/1576742887583.html

Hate speech, harassment, and journalists' protection

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

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

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

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

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

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

References

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

Access to information and public documents

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

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

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

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

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

Media regulatory authorities and bodies

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

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

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

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

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

References

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

Corruption

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

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

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

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

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

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

In-focus section on COVID-19 measures

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

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

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

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

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

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

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

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

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

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

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

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

References

- https://www.humanrightscentre.fi/
- https://www.oikeusasiamies.fi/en_GB/-/oikeusasiamiehelle-paljon-poikkeusoloihin-liittyvia-kanteluita

France

French National Consultative Commission on Human Rights (CNCDH)

Independence and effectiveness of the NHRI

International accreditation status and SCA recommendations

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

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

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

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

No change has occurred in the regulatory framework applicable to the CNCDH since the last review by the SCA. The CNCDH is accredited with Status A and fully complies with the three key Paris Principles, independence, pluralism and vigilance. This accreditation offers the guarantee that the CNCDH is a credible and independent actor, which provides reliable and concrete information to the human rights international monitoring mechanisms and

takes a critical look at the way France respects its international human rights and international humanitarian law's (IHL) obligations.

The CNCDH's independence is enshrined in Act n°2007-292 of 5th March 2007. Legislative drafts and proposals concerning human rights and international humanitarian law are put before or taken up by CNCDH. The institution's composition (64 individuals and representatives from civil society organisations) reflects the diversity of opinions expressed in France as regards human rights and IHL issues. The CNCDH is dedicated to respect for and the implementation of human rights and IHL in France and combats the violation of civil liberties and fundamental rights. Furthermore, the CNCDH holds four specific mandates as independent national rapporteur: Fight against racism; Fight against trafficking in human beings; Implementation of the UN Guiding Principles on business and human rights; and more recently Fight against anti-LGBTI people hatred. It thus occupies a unique position in the French institutional landscape and contributes to strengthen the rule of law.

References

- Loi n°2007-292 du 5 mars 2007 *relative à la Commission nationale consultative des droits de l'homme*.

Human rights defenders and civil society space

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

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

The CNCDH provides public authorities with independent advice when it seems that legislative drafts and proposals (or practices) violate freedom of expression. It has for instance done so regarding the law adopted in 2018 to address **fake-news** in digital time during election campaigns and alerted about the risks for the freedom of expression, the freedom of the press and the right to information. Likewise, the CNCDH expressed concern about the law proposal to transpose the EU Directive on **trade secrets,** since several

dispositions violate the right to information and freedom of expression and weaken journalists and whistleblowers. The CNCDH pushes for a **better protection of whistleblowers**, in particular because of the prior duty to notify the employer of an offence/act contrary to the public interest or the length of procedures to enjoy whistleblowers status.

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

The CNCDH is also concerned about significant restrictions of the **freedom of assembly and demonstration**, whereas demonstrations are inherent to democratic debate. Particularly worrisome is the use of the normative framework of the state of emergency declared after the terrorist attacks in 2015 to prevent demonstrations of ecologists or trade unionists.

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

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

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

References

- Loi n°2018-1202 du 22 décembre 2018 *relative à la lutte contre la manipulation de l'information*;
- Loi n°2018-670 du 30 juillet 2018 *relative à la protection du secret des affaires*;
- Loi n°2019-290 du 10 avril 2019 *visant à renforcer et garantir le maintien de l'ordre public lors des manifestations*;
- CNCDH, Communiqué de presse du 25 mai 2018, *Lutte contre les* fake news *: des risques pour la liberté d'expression et le droit à l'information*;
- CNCDH, Communiqué de presse du 9 mai 2018, *Secret des affaires : la liberté d'expression et d'information doit rester le principe*;
- CNCDH, *Avis sur le projet de loi relatif à la transparence, à la lutte contre la corruption et à la modernisation de la vie économique*, 26 mai 2016;
- CNCDH, *Opinion on the fight against online hate speech*, 12 February 2015;
- CNCDH, *Les droits de l'homme en France. Regards portés par les instances internationales*, 2017;
- CNCDH, *Rapport sur la lutte contre le racisme, l'antisémitisme et la xénophobie*, 2018;
- CNCDH, *Statement of Opinion on the State of Emergency*, 18 February 2016;
- CNCDH, Communiqué de presse du 10 janvier 2019,*Quand la logique sécuritaire heurte la liberté fondamentale de manifester*;
- *Observations du secrétariat général de la CNCDH relative à la proposition de loi « visant à prévenir les violences lors des manifestations et à sanctionner leurs auteurs* », 20 janvier 2019;
- CNCDH, *Affaire 2019-780 DC (Loi visant à renforcer et garantir le maintien de l'ordre public lors des manifestations). Mémoire d'*amicus curiae *à propos des articles 3, 6 et 7 de la loi visant à renforcer et garantir le maintien de l'ordre public lors des manifestations*, 22 mars 2019;
- CNCDH,*La solidarité n'est pas un délit*, Communiqué de presse du 18 mai 2017;
- CNCDH, *Prix des droits de l'homme de la République française « Liberté, égalité, fraternité »*, Edition 2019, 10 décembre 2019;

Checks and balances

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

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

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

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

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

References

- CNCDH, *Avis sur le projet de loi renforçant la sécurité intérieure et la lutte contre le terrorisme*, 6 juillet 2017;
- CNCDH, *Avis sur le projet de loi renforçant les dispositions relatives à la lutte contre le terrorisme*, 25 septembre 2014;
- CNCDH, *Avis sur l'élaboration des lois*, 15 avril 2010;
- CNCDH, *Note de la présidente au Rapporteur du Projet de loi sur la sécurité publique*, 2 février 2017;
- CNCDH, Café presse sur l'impact de la politique anti-terroriste sur les droits de l'homme et la cohésion nationale : *Cinq ans après l'attaque contre Charlie Hebdo, les droits de l'homme sacrifiés sur l'autel de la sécurité ?*, 22 janvier 2020;
- Colloque de la CNCDH à SciencesPo sur « l'impact des politiques de lutte contre le terrorisme sur les droits de l'homme », 18 novembre 2020;
- French Constitution of October 4, 1958: articles 24 (Parliament), 45 (accelerated legislative procedure), 49.3;
- Loi n° 2019-222 du 23 mars 2019 *de programmation 2018-2022 et de réforme de la justice*;
- Loi n° 2018-778 du 10 septembre 2018 *pour une immigration maîtrisée, un droit d'asile effectif et une intégration réussie*;
- Loi n° 2017-1510 du 30 octobre 2017 *renforçant la sécurité intérieure et la lutte contre le terrorisme*;
- Loi n° 2017-258 du 28 février 2017 *relative à la sécurité publique*;
- Loi constitutionnelle n° 2008-724 du 23 juillet 2008 *de modernisation des institutions de la Ve République*;
- CEDH, 5ème section, arrêt du 30 janvier 2020, *J.M.B et autres c. France*, requête n° 9671/15 et 31 autres;
- CEDH, 5ème section, arrêt du 21 mai 2015, *Yengo c. France*, requête n° 50494/12.

Functioning of justice systems

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

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

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

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

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

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

The CNCDH also pays special attention to **asylum and migrants rights reforms** and considers that significant modifications of asylum procedure brought by the Law of September 10th2018 violate the asylum seekers' rights. This is the case, amongst others, with the development of accelerated proceedings, the reduction of the time to appeal before the National Court for Right of Asylum and the modification of the time-limit to apply for legal aid; which has an effect on the right to an effective remedy.

References

- Loi n°2019-222 du 23 mars 2019 *de programmation 2018 – 2022 et de réforme de la justice* ;
- Ordonnance n°2019-950 du 11 septembre 2019 *portant partie législative du code de la justice pénale des mineurs* ;
- Loi n°2018-778 du 10 septembre 2018 *pour une immigration maîtrisée, un droit d'asile effectif et une intégration réussie* ;
- CNCDH, *Réforme de la justice civile: alerte sur les droits fondamentaux des justiciables*, Communiqué de presse du 8 novembre 2018 ;
- CNCDH, *Avis sur le projet de loi de programmation 2018-2022 et de réforme de la justice*, 20 novembre 2018 ;
- CNCDH, Les droits de l'homme dans les outre-mer, 2018 ;
- CNCDH, *Rapport sur la lutte contre le racisme, l'antisémitisme et la xénophobie*, 2018;
- CNCDH, *Avis relatif à la réforme de la justice des mineurs : premier regard de la CNCDH*, 9 juillet 2019 ;
- CNCDH, *Avis sur la privation de liberté des mineurs*, 27 mars 2018

Media pluralism

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

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

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

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

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

References

- Loi n° 2015-912 du 24 juillet 2015 *relative au renseignement*;
- CNCDH, Communiqué de presse du 25 mai 2018, Lutte contre les fake news : des risques pour la liberté d'expression et le droit à l'information;

Corruption

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

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

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

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

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

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

References

- Loi n°2013-907 du 11 octobre 2013 *relative à la transparence de la vie publique*;
- Loi n°2013-117 du 6 décembre 2013 *relative à la lutte contre la fraude fiscale et la grande délinquance économique et financière*;
- Loi n° 2018-898 du 23 octobre 2018 *relative à la lutte contre la fraude*;
- CNCDH, *Avis sur la probité de la vie publique*, 27 juin 2013;
- CNCDH, *Avis sur le projet de loi relatif à la transparence, à la lutte contre la corruption et à la modernisation de la vie économique*, 26 mai 2016;
- CNCDH, *Communication on Engagement (Global Compact)*, Juillet 2018;
- CNCDH, *Entreprises et droits de l'homme : avis sur les enjeux de l'application par la France des Principes directeurs des Nations Unies*, 24 octobre 2013;
- B&L évolution et Global Compact France, avec la participation de l'Association AD et le soutien de la CNCDH, *Guide pratique. Entreprises, contribuez aux objectifs de développement durable*, 2016;
- GANHRI, *Human rights and the Sustainable Development Goals : enhancing human rights technical cooperation and capacity-building to contribute to the effective and inclusive implementation of the 2030 Agenda for Sustainable Development*, 4 July 2018;
- CNCDH, *Avis sur le développement, l'environnement et les droits de l'homme*, 16 avril 2015;
- CNCDH, *Avis sur le droit à un environnement sain dans les Outre-mer*, 17 octobre 2017;
- CNCDH, *La lutte contre la traite et l'exploitation des êtres humains*, 2015

In-focus section on COVID-19 measures

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

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

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

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

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

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

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

References

- Loi n° 2020-290 du 23 mars 2020 *d'urgence pour faire face à l'épidémie de COVID-19*;
- Loi organique n° 2020-365 du 30 mars 2020 *d'urgence pour faire face à l'épidémie de COVID-19*;
- Loi n° 55-385 du 3 avril 1955 relative à l'état d'urgence;
- CNCDH, *Lettre du Président de la CNCDH au Premier ministre concernant la prolongation de l'état d'urgence sanitaire*, 3 mai 2020;
- CNCDH, *Observations du président de la CNCDH sur le projet de loi sur l'état d'urgence sanitaire*, 19 mars 2020;
- CNCDH, Avis *État d'urgence sanitaire et État de droit*, 28 avril 2020;
- CNCDH, *Avis Une autre urgence : le rétablissement d'un fonctionnement normal de la justice*, 28 avril 2020;
- CNCDH, *Avis sur le suivi numérique des personnes*, 28 avril 2020;
- CNCDH, Lettre n° 1 de l'Observatoire parue le 6 avril 2020;
- CNCDH, Lettre n° 2 de l'Observatoire parue le 15 avril 2020 - la protection de l'enfance;
- CNCDH, Lettre n° 3 de l'Observatoire parue le 21 avril 2020 - le logement;
- CNCDH, Lettre n° 4 de l'Observatoire parue le 24 avril 2020 - les personnes en situation de pauvreté.

Germany

German Institute for Human Rights

Independence and effectiveness of the NHRI

International accreditation status and SCA recommendations

In November 2015, the German NHRI was re-accredited with A status. Among its recommendations, the SCA encouraged the NHRI to advocate for the formalization of a clear, transparent and participatory selection and appointment process f for the GIHR's Board of Trustees and flagged out that government representatives and members of parliament should not be members of, nor participate in that body. The SCA also highlighted the need for the NHRI to receive additional funding corresponding to its additional mandates and encouraged the GIHR to advocate for appropriate amendments to its enabling law that would clarify and strengthen its protection mandate.

Human rights defenders and civil society space

A judgment by the Federal Tax Court of January 2019 has narrowed civil society space through a **restrictive interpretation of the statutory criteria for CSOs to benefit from tax privileges** (as non-profit associations benefitting to the public). Consequently, the ability of a number of organisations to function and proceed with their work in order to actively participate in democratic discourse and social welfare has been affected or at least jeopardized. Many other organisations expect to be affected sooner or later by administrative decisions applying the judgment. The GIHR has been in close contact with the civil society coalition on the issue.

References

- For further details, please see https://www.zivilgesellschaft-ist-gemeinnuetzig.de/ (in German only).

Checks and balances

Two issues can be reported which are linked to checks and balances.

The first is the **insufficient control of arms exports.** The German Government promotes a restrictive policy of arms exports and its internal guidelines on arms exports control prohibit arms exports in the event of armed internal conflicts and where there are reasonable grounds to suspect abuse for internal repression or persistent and systematic human rights violations. They also prohibit exports to countries involved in or threatening to become involved in armed conflicts, or where there is a threat of an outbreak of armed conflict or where existing tensions and conflicts would be triggered, maintained or aggravated by the export. However, in practice the application of these internal guidelines remains deficient and weapons are exported to countries involved in armed conflicts. The GIHR has repeatedly argued for stricter controls of arms exports, in particular by means of a law that would formally bind the Government and not only through internal guidelines. A formal legal basis should also include the duty to provide a reasoned explanation to Parliament. This in turn would enable an informed political discussion on arms exports as a means of security policy providing more overall legitimacy to the policies and decisions involved. The Institute also advocates for more European coherence in regulating arms exports, instead of the current race to the bottom.

In the area of legal protection against covert **surveillance**, as well as intelligence oversight, problems remain particularly in the context of international intelligence cooperation which has become significantly more opaque due to the legalisation and de facto establishment of automated data exchange via joint intelligence databases, such as the European Counter Terrorism Group, which largely elude control by national supervisory bodies, thus, making access to legal protection against intelligence measures almost impossible. Also, oversight of automated access by intelligence agencies to various databases, such as the Central Register of Foreign Nationals, has become more difficult, as the logging of such access is now decentralized. Accordingly, 16 data protection commissioners are in charge of handling oversight instead of the Federal Commissioner.

References

- On arms export: Report of the GIHR to the Federal Parliament on the Development of the Human Rights Situation in Germany 2018 (German full text, English executive summary) and 2019 (follow-up report, German full text, English executive summary).

Functioning of justice systems

International human rights bodies have been recommending for more than two decades that Germany establish **independent complaint bodies for investigating alleged human rights violations by members of the police force**. However, little has been done to establish such independent mechanisms vested with enough resources and broad mandates in each of the 16 Länder. So far, only Rhineland-Palatinate, Baden-Württemberg and Schleswig-Holstein have established independent complaint bodies. In general, the deficits of effective prosecution of police violence nonetheless remain since the established bodies' mandates resemble those of ombudspersons and, thus, lack investigation powers. The GIHR has published two studies on this topic.

Another area where delivery of fair and effective justice meets with considerable obstacles is **racist violence**. The terror acts of the right-wing NSU terror group showed that the police and judiciary in Germany did not sufficiently recognise racist violence. The judicial process as well as several parliamentary committees of inquiry, both on the federal and *Länder*level, uncovered huge structural problems and a widespread institutional racism. The reports published by the committees of inquiry recommended structural reforms of security and law enforcement agencies to improve the effective combating of racist crime.

References

- On complaints bodies for alleged police violence:
  - Eric Töpfer / Tobias Peter, Unabhängige Polizeibeschwerdestellen. Was kann Deutschland von anderen europäischen Staaten lernen?, GIHR Analysis 2017
  - Eric Töpfer, Unabhängige Polizei-Beschwerdestellen - Eckpunkte für ihre Ausgestaltung, GIHR Policy Paper No. 27, 2014.
  - On racist violence: GIHR, Werden die Empfehlungen des NSU-Untersuchungsausschusses des Bundestags tatsächlich umgesetzt?, Position paper 2017.
- On complaints bodies for alleged police violence:
  - Eric Töpfer / Tobias Peter, Unabhängige Polizeibeschwerdestellen. Was kann Deutschland von anderen europäischen Staaten lernen?, GIHR Analysis 2017
  - Eric Töpfer, Unabhängige Polizei-Beschwerdestellen - Eckpunkte für ihre Ausgestaltung, GIHR Policy Paper No. 27, 2014.
- On racist violence:
  - GIHR, Werden die Empfehlungen des NSU-Untersuchungsausschusses des Bundestags tatsächlich umgesetzt?, Position paper 2017.

In-focus section on COVID-19 measures

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

The German Institute for Human Rights acknowledges the effort made by the federal and Länder governments to adopted proportionate measures, which is particularly evidenced by the **transparency** on the reasons for taking specific measures and on the uncertainties underlying the prognoses as well as by the **time-limitations** of the measures taken, which permit and oblige the governments to review the measures taken and their impact. The GIHR also notes that there is a growing awareness of the impact that contact restrictions have and will have on all human rights – civil and political rights as well as economic and social rights. According to polls the majority of the population supports those measures so far. With the increasing discussions on softening the restrictions, this majority is shrinking.

While the concerns of **persons in vulnerable situations** have been raised since the first measures were taken, they have not been systematically integrated into the balancing considerations. For example, states (Länder) have extended the prohibition of visits to persons in long-term care institutions without making it a priority at the same time that these institutions receive protective gear or are supported in strengthening electronic communication for the persons concerned. At the same time, it can be observed that there is an increasing awareness that the right of women and children to be protected against domestic violence and children's right to education must be respected, and that there are concomitant reaction by governments. No comparable broad awareness and government reactions can however be observed with respect to homeless persons and asylum seekers in accommodation centres.

The legal community has been vocal in raising concerns that the hastiness and speed with which laws and regulations have been passed, has resulted in **ambiguous and unclear wording** leading to difficulties in implementation and policing **of the regulations** due to diverging interpretations by individual state agents and state bodies. State governments have concretized the regulations by public explanations as well as by amending the regulations. In particular, concerns have been raised as to whether the *Infektionsschutzgesetz* (Law on Infection Protection) provides a sufficiently clear legal basis for the measures taken, in particular those restricting human rights of persons who are not infected or suspected of being contagious. Moreover, under the amended law, the *Länder*(states) governments are empowered to enact regulations in this respect. Under German constitutional law, such a delegation of powers to the executive must be

sufficiently clear as to content, purpose, and extent. The legal debate as to whether the amended Law on Infection Protection meets this standard is ongoing.

Since the enactment of relevant regulations, courts have upheld a large number of the implementation measures and regulations. However, some **courts**, including the Federal Constitutional Court, have begun to grant interim relief against regulations that are overly broad, especially if they contain an across-the-board prohibition (e.g. of religious services or demonstrations) and do not provide for exceptions in cases where protective measures (physical distance, hygiene, masks) are taken.

The German Institute for Human Rights continues to monitor the situation. We have published a position paper on how human rights must guide policy measures as well as a position paper on the rights of older persons in the Corona pandemic, and a position paper on the right to health of persons with disabilities in the Corona pandemic. The GIHR will continue to produce more detailed reports on various human rights issues, in particular how COVID-19 measures impact the most vulnerable in our society.

References

- GIHR Statement "Corona Crisis: Human Rights Must Guide the Political Response"; further press releases and statements on the rights of homeless persons, older persons, persons with disabilities, children, and refugees' rights are available here (mostly in German)

Greece

Greek National Commission for Human Rights (GNCHR)

Independence and effectiveness of the NHRI

International accreditation status and SCA recommendations

The Greek NHRI was reaccredited with A-status in March 2017. During the latest accreditation session, the SCA recommended more clarity regarding the selection and appointment process of the Commission's members. The SCA also encouraged the NHRI to continue to advocate for an adequate level of funding to fully carry out its mandate.

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

Two major legislative changes took place since the last SCA review.

First, article 38 of Greek Law no. 4465/2017 introduced certain positive changes but also some negative restrictions to the GNCHR's legal officers' employment status. Whereas legal officers could previously renew their 3-year contract indefinitely, provided of course that the GNCHR agreed to it, the 2017 Law unilaterally, i.e. without any previous consultation with the GNCHR and without any justification, introduced a two-times renewal limit, also applying to the legal officers in office.

The **second** major change took place when Greek Law no. 4606/19 was passed. The 2019 Law introduced some significant changes, particularly regarding the composition of the GNCHR. The GNCHR was not consulted during this process, leading to the resignation of the previous GNCHR President, Mr Georgios Stavropoulos, a situation that attracted publicity and the intervention of ENNHRI. There has been, in particular, an unbalanced addition to the GNCHR Plenary of 5 members from the LGBTQI+ community, and 2 more members, in addition to the already existing member, representing the Roma community, in violation of any principle of equality towards other human rights actors-members of the GNCHR having only one vote. The legislative process proceeded without any public consultation, while the previous Government never informed the GNCHR of this process, and despite the contrary unanimous decision of its Plenary, dated 27.11.2018 and its Declaration, dated 28.3.2019, by which the GNCHR requested the immediate withdrawal of the provisions violating the GNCHR's independence. The GNCHR is currently preparing and will soon be proposing to the Greek Legislator a new legal framework in order to offset the above mentioned negative changes.

References

- GNCHR Statement: http://www.nchr.gr/images/English_Site/NEWS/Announcement%20of%20the%20GNCHR%20Presidents%20Resignation.pdf.

Human rights defenders and civil society space

The GNCHR monitors very closely the situation regarding the civil society space and the protection of human rights defenders. In this regard, the GNCHR maintains a very close relation with NGOs and CSOs. Not only prominent NGOs and CSOs form part of the GNCHR Plenary, but the GNCHR also maintains within its premises the Racist Violence Recording Network (RVRN), which was established in 2011 by the GNCHR and the Greek Office of UNHCR, the UN Refugee Agency. Today, RVRN consists of 46 non-governmental organisations and civil society actors, who acknowledge and jointly pursue combating racist violence, as well as all racially-motivated acts on the grounds of race, colour, religion, descent, national or ethnic origin, sexual orientation, gender identity, sex characteristics and disability.

The GNCHR intervenes whenever it considers that there is a shrinking danger for the civil society space (e.g. in 2.11.2017 the GNCHR intervened and condemned the **attack against, and injury of the human rights defender and old member of the GNCHR** Ms Anastasia Tsoukala, whereas in 19.3.2018 the GNCHR issued a statement for the **protection of the freedom of expression,** following the vandalism of a sculpture in Athens and the attacks against employees and actors of the performance of the Acropolis Theater).

Checks and balances

There are issues to be reported concerning the **exercise by the GNCHR of its role in the system of check and balances**, in particular when legislation is enacted.

The GNCHR has repeatedly and publicly criticized the fact that it does not receive the Greek draft laws in advance, and thus it normally does not have sufficient time to comment upon the provisions in detail. This impacts on the effective fulfilment of its mandate. The GNCHR normally takes note of the legislation once uploaded to the official public consultation platform (opengov.gr). Moreover, the time allowed for public consultation is also normally very short.

The GNCHR has recently prepared a detailed report regarding the implementation in Greece of the ECtHR decision Chowdury and others v. Greece (30.3.2017). Given the seriousness of this case, the GNCHR also made use of the Rule 9 of the Rules of the Committee of Ministers for the supervision of execution of judgements.

References

- GNCHR Report: ECtHR, Chowdury and Others v. Greece: Recommendations for the full compliance of the Greek State, available at: http://www.nchr.gr/images/English_Site/TRAFFICKING/GNCHR%20Recommendations%20on%20the%20Manolada%20case.pdf

Functioning of justice systems

The GNCHR has monitored and reported on issues concerning the functioning of justice systems as well as the principle of fair trial in great detail.

By way of example, the GNCHR issued a statement in 30.1.2017 applauding the decisions of Areios Pagos, which is the Supreme Civil and Penal Court of Greece, regarding the non-extradition of the eight Turkish military officers who applied for asylum in Greece following the coup d'état in Turkey.

The GNCHR has also contributed by means of submitting to the Greek authorities and subsequently publishing a series of observations to draft laws potentially restricting access to justice. Indicatively, we could refer to: a) the GNCHR Observations on the Draft Law of the Ministry of Justice, Transparency and Human Rights on «Providing Legal Assistance to Individuals» (July 2016) and b) the GNCHR Observations on the Draft Law of the Ministry of Justice, Transparency and Human Rights «Fees and charges of remedies and procedural acts and court fees» (July 2016).

References

- GNCHR Statement: http://www.nchr.gr/images/English_Site/DIKAIHDIKH/GNCHR_Areios_Pagos.pdf
- GNCHR Observations:http://www.nchr.gr/images/pdf/apofaseis/dikaih_dikh/NomikiVoithia_2016.pdf
- GNCHR Observations: http://www.nchr.gr/images/pdf/apofaseis/dikaih_dikh/Paravola2016.pdf

Media pluralism

The GNCHR has been following quite closely issues as the freedom of speech, the freedom of expression and the promotion and protection of a pluralist media environment.

It has particularly referred to **acts of violence against journalists** during the period of the financial crisis in the UPR and its alternative reports to the Treaty Bodies.

On a positive note, it has also commented upon a Greek Draft Law that introduced some **positive changes to the defamation and compensation regime relating to the media.**

References

- GNCHR Comments on the Greek Draft Law can be found here: http://www.nchr.gr/images/pdf/apofaseis/diakriseis/EEDA_SN_Sumfwno%20Sumbiwshs_askhsh%20dikaiomatvn%20kl.pdf

Corruption

The GNCHR has not yet had the opportunity to deal with the broader theme of corruption and its impact on human rights, however it plans to engage with this issue very soon, particularly in light of its new HRIA methodology.

In-focus section on COVID-19 measures

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

The GNCHR monitors closely the Greek Government's series of measures in response to the COVID—19 pandemic (Acts of Legislative Content, Joint Ministerial Decisions and Circulars that aim to concretize the above provisions), given that they affect directly the enjoyment of human rights in Greece. So far, the measures are generally considered to be necessary and proportional to the aim pursued. That said, the GNCHR remains vigilant in this unprecedented context.

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

Naturally, the GNCHR faces significant challenges due to COVID-19. For instance, it has postponed some planned visits to migrant and refugee reception and accommodation

centres to a later date. That said, the GNCHR deals with the challenge quite effectively. Its personnel works from home and Plenary meetings take place online very frequently (e.g. only in April there have been 3 online Plenary meetings).

Hungary

Commissioner for Fundamental Rights

Independence and effectiveness of the NHRI

International accreditation status and SCA recommendations

The Hungarian NHRI was accredited with A status in October 2014. In October 2018, the SCA decided to defer its decision on the accreditation of the NHRI.

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

The Government has provided new, modern, state-of-the-art **premises** to the Office of the CFR: the CFR is about to move to its new premises this year, presumably in June.

In recent years, the CFR has faced the devaluation of the staff's salaries: the base salary (a sum defined in Act CXCIX of 2011 on Public Servants, and which provides a basis of calculation for the salaries of public servants) has not increased since 2008, thus the salaries of our staff have lost their value considerably over the past 10 years. As of May 2020, however, a new law entering into force regarding the **status and remuneration of the CFR's staff** (Act CVII of 2019) will remedy this problem, providing for a substantial, 30% average pay rise.

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

As of 1 January 2014, Act CVI of 2011 on the Commissioner for Fundamental Rights (CFR Act) and Act CLXV of 2013 on Complaints and Public Interest Disclosures have defined new responsibilities for the Commissioner for Fundamental Rights (CFR) concerning the handling of public interest disclosures. The aim of the new legislation is to support whistleblowers, protect and process their personal data in a closed system if necessary, and provide effective protection for them.

As of 1 January 2015, the CFR acts as National Preventive Mechanism under the Optional Protocol to the UN Convention against Torture (OPCAT). Chapter III/A of the CFR Act provides for detailed procedural rules for this mandate.

Further responsibilities were added to CFR's mandate in 2020: Pursuant to Section 145 of Act CIX of 2019 adopted by the Parliament, the CFR took over the responsibilities of the Independent Police Complaints Board as of 27 February 2020. The procedure on police complaints is conducted by the Ombudsman on the basis of Section 39/F-L of Act CXI of 2011 on the Commissioner for Fundamental Rights, which, similarly to the earlier procedure of the Board, is not an administrative procedure. The reports to be prepared as a result of the Ombudsman's inquiries into police complaints will be followed by an administrative procedure conducted by the police. It is possible to request legal remedy against the decision made as a result of such procedure according to the Rules of Procedure for Judicial Review of Administrative Decisions.

Checks and balances

In accordance with Section 2(2) of the CFR Act, the Commissioner shall give an **opinion on the draft legislation** affecting his/her tasks and competences, on long-term development and spatial planning plans and concepts, and on plans and concepts otherwise directly affecting the quality of life of future generations, and may make proposals for the amendment or making of legislation affecting fundamental rights and/or the expression of consent to be bound by an international treaty. Whenever the CFR finds that a draft is not in line with constitutional or international human rights standards or lacks the necessary consultation with civil and professional organisations, he draws the legislator's attention to these shortcomings. While it is in the Hungarian NHRI's legal mandate to give its opinion on different legislative drafts, our experience in the past years had been that Ministries often failed to send such drafts to the NHRIs for our opinion. However, there seems to be a development in this respect, where in the half year the CFR seems to receive more legislative drafts for its comments. Due to the speeding up of all phases of the process of adoption of legislations, in those cases when we do receive a draft, the deadline for the submittal of opinion is often very short. The yearly reports submitted by the Ombudsman to the Parliament regularly raises attention to these problems.

Functioning of justice systems

The **role and structure of the National Judicial Council (NJC)** has been under debate during 2019 because of the two sharply contrasting views on the constitutional operation of the NJC which resulted in an uncertainty in interpretation that jeopardized legal certainty.

In accordance with the principle of the separation of powers, as well as constitutional requirements of judicial independence, the competence of the NHRI does not extend to the examination of the judicial practice of the courts. Therefore, the Commissioner was not in the position to assess whether the operation of the NJC, which qualifies as a judicial self-governing organ, could be regarded as lawful or not. Consequently, the Commissioner proposed that the provisions of the Fundamental Law of Hungary be interpreted by the Constitutional Court. Therefore, in March 2019, the CFR proposed that the Constitutional Court interpret constitutional provisions on the role and structure of the NJC of the Fundamental Law of Hungary [Paragraphs (5) and (6) of Article 25] to resolve such constitutional law issue concerning the operation of the NJC. In this case, the specific constitutional law issue that could be inquired into in the context of Constitutional Court proceedings was caused by the fact that, according to a signal from the NJC President, some uncertainty of interpretation emerged in relation to the operation of the NJC which jeopardized legal certainty , and in lack of relevant positive statutory provisions, it could be resolved only through the abstract interpretation of the relevant provisions of the Fundamental Law of Hungary. The case is currently pending before the Constitutional Court.

Another concern can be raised as regards the **execution of a national court's judgment** related to the respect of fundamental rights which has been in the focus of debate in Hungary. The reference is to a court ruling ordering for the compensation for school segregation of Roma in Gyöngyöspata. In February 2020 the government refused to pay almost HUF 100 million (EUR 300.000) in compensation, stating it would only pay in kind, that is, by education and training. The deputy ombudsman responsible for the protection of national minorities has launched an inquiry to review the follow-up to the Gyöngyöspata report issued in connection with the previous Ombudsman's inquiry and the implementation of the decisions made in the report. The deputy ombudsman expressed concern regarding recent developments in the case, namely the debates on the rulings on the compensations and the "rising public tension".

Media pluralism

The CFR has no information about insufficient protection of journalists', inadequacy of resources, or inadequate investigations on attacks on journalists.

As regards **access to information**, and in particular **public interest disclosures**, the CFR ensures – through his Office – the operation of an electronic system for disclosing and recording public interest information, also in case of the above mentioned situation. At

present, public interest disclosures can only be made through the electronic system (i.e. on the platform established for this purpose on the Office's website, www.ajbh.hu), due to remote working arrangements during the COVID-19 emergency. The person ("the whistleblower") disclosing the information may follow the dossier relating to his/her disclosure request on the webpage, and may query the status of his/her case (this option/function is available only in Hungarian). In addition to that, the brief excerpt of the disclosure (the so-called "public excerpt"), without personal data, is publicly accessible.

References

- Act CXI of 2011 on the Commissioner for Fundamental Rights (CFR Act, Hungarian acronym: Ajbt.)
- Act CLXV of 2013 on Complaints and Public Interest Disclosures (CPID Act, Hungarian acronym: Pkbt.)

Corruption

The National Service for Protection is the organisation performing internal crime prevention and detection duties with nationwide competence according to Act XXXIV of 1994 on the Police. The Service's general goal is to fight against corruption and organised crime.

A system is in place to ensure the **protection of whistle-blowers in Hungary in relation to disclosure of public interest information**, which ensures in the opinion of the CFR a satisfactory level of protection. The system, relying on an electronic software operated by the CFR, relies on the following key principles:

- Anonymity
  The whistle blower may request that his/her submission be treated anonymously. In this case, the acting body may only access the excerpted version of the public interest disclosure, and any data that would reveal the identity of the whistleblower are removed. Thus, the whistleblower's identity remains hidden, so that he/she would not suffer any disadvantage because of his/her disclosure.
- CFR inquiry into the practice of the acting bodies (CFR Act)
  After the inquiry of the public interest disclosure, the whistle blower may submit a petition requesting the CFR to remedy a perceived misbehaviour if the acting body found his/her disclosure unsubstantiated, or the whistleblower does not agree with

the result of the inquiry, or the acting body did not fully examine his/her disclosure. The CFR can take the following measures:

- It may contact the relevant acting body,
- it may request the body to provide information or submit the documents of the case,
- It may arrange a personal hearing,
- It may perform an on-site inquiry

If, based on his/her inquiry, the Commissioner finds irregularities, he/she may make recommendations for remedying them in the case of those involved, or their superior body.

- Safeguards for whistleblowers considered to be at risk
  According to the CPID Act, with the exception of the actions referred to in Section 3(4) (see 1.2.3.), any action taken as a result of a public interest disclosure which may cause a disadvantage to the whistleblower shall be unlawful even if it were otherwise lawful. A whistleblower is considered to be at risk, except in the case referred to in Section 3(4), if the disadvantages threatening him/her as a result of the public interest disclosure he/she has made are likely to seriously endanger his/her life circumstances, except in the case referred to in Section 3(4).
  Any whistleblower who is a natural person is entitled to legal aid and assistance provided in order to ensure the protection of whistleblowers, as defined in the relevant law, if he/she is likely to be at risk.
  The state provides whistleblowers the aid and assistance defined in Act LXXX of 2003 on Legal Aid, under the conditions defined in the same act.
  In addition, according to Section 206/A of Act II of 2012 on regulatory offences, offence procedures and the system for registering regulatory offences, any person who causes disadvantage to the whistleblower commits an offence (Persecution of the whistleblower). It is the duty and competence of the police to investigate alleged offences.

In-focus section on COVID-19 measures

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

The first cases of the pandemic in Hungary were announced on 4 March. On 11 March, the government declared a state of danger. According to Article 53 of the Fundamental Law of Hungary, in a state of emergency, the government may adopt decrees by means of which

it may suspend the application of certain acts, derogate from the provisions of acts and take other extraordinary measures. (It should be highlighted that it is the government that may end the state of emergency as well.) These decrees shall remain in force for fifteen days, unless the government, on the basis of authorisation by the Parliament, extends those decrees.

A **new emergency law** was enacted which allows the government to make these extensions under the control of the Parliament. Under Section 2 of this new law (Act XII of 2020 on the containment of coronavirus), during this period the Government may, in order to guarantee that life, health, person, property and rights of the citizens are protected, and to guarantee the stability of the national economy, by means of a decree, suspend the application of certain Acts, derogate from the provisions of Acts and take other extraordinary measures.

Also added as a restriction, the Government may exercise its power only for the purpose of preventing, controlling and eliminating the human epidemic, and preventing and averting its harmful effects, to the extent necessary and proportionate to the objective pursued. According to Section 4 the Government also shall regularly provide information on the measures taken to eliminate the state of danger until the measures are in effect at the sessions of the Parliament or, in the absence thereof, to the Speaker of the Parliament and the leaders of the parliamentary groups.

The Parliament, on the basis of Article 53(3) of the Fundamental Law, authorises the Government to extend the applicability of the government decrees adopted in the state of danger until the end of the period of state of danger, but this authorisation is not unlimited. The Parliament may withdraw the general authorisation before the end of the period of state of danger [Para. (2) Section 3].

The new emergency law on the containment of coronavirus also modified Act C of 2012 on the Criminal Code. Section 337 of the Criminal Code shall be replaced by the following provision: "(1) A person who, at a site of public danger and in front of a large audience, states or disseminates any untrue fact or any misrepresented true fact with regard to the public danger that is capable of causing disturbance or unrest in a larger group of persons at the site of public danger is guilty of a felony and shall be punished by imprisonment for up to three years. (2) A person who, during the period of a special legal order and in front of a large audience, states or disseminates any untrue fact or any misrepresented true fact that is capable of hindering or preventing the efficiency of protection is guilty of a felony and shall be punished by imprisonment for one to five years."

A constantly growing collection of guidelines and professional information materials related to COVID-19 have been gathered and published on the CFR website.

The Commissioner and his deputies issued a statement raising attention to the needs of especially **vulnerable persons** in the present circumstances.

The Deputy Commissioner for the protection of national minorities also issued a statement raising attention to the special vulnerability and needs of the **Roma population** in the present situation.

The Commissioner has issued a statement raising attention on the need for state authorities to **monitor child abuses** even during the COVID-19 situation.

The Commissioner ordered a **comprehensive inquiry in retirement homes**. Moreover, he paid a personal visit to some residential institutions: child protection facilities, care homes for people living with disabilities, and penitentiary institutions.

With a view to the **enforcement of patients' rights**, the Commissioner issued a statement regarding the evacuation of in-patient beds ordered in hospitals.

As the NPM, the CFR continues to fulfil his mandate during the COVID-19 crisis, bearing in mind the principle of "do no harm". The CFR has requested information from the Operational Group responsible for the containment of the coronavirus infection, the Hungarian Prison Service Headquarters, the National Police Headquarters, the Ministry of Human Capacities, the Hungarian Directorate-General for Social Affairs and Child Protection concerning the special procedures they have established in relation to the COVID-19 crisis. The CFR inquired also about the technical conditions for ensuring confidential remote communication between persons deprived of their liberty and the staff members of the NPM. The CFR requested the authorities to designate a contact person to be available on short notice and to provide information about the setting up of new and temporary places of detention, such as home quarantines. Furthermore, observing the SPT Advice (CAT/OP/9) on compulsory quarantine for coronavirus, the CFR has visited several home quarantines.

To date the CFR has visited the following places of detention, strategically important police or military centres and border crossing points:

- 14 April, Ipolyság-Parassapuszta Border Crossing Point
- 14 April, Hungarian National Police Headquarters
- 15 April, Záhony-Čop Border Crossing Point

- 15 April, Sátoraljaújhely Strict and Medium Regime Prison
- 15 April, Sátoraljaújhely Border Crossing Point
- 16 April, Kiskunhalas National Prison and Mobile Epidemic Hospital
- 16 April, Tompa-Kelebia Border Crossing Point
- 17 April, Szentendre Police Station and home quarantines
- 17 April, Center of the COVID-19 Operational Group
- 22 April, Bezerédj-Castle Therapy Foundation's Special Home for Children in Szedres
- 22 April, 86th Military Air Base of the Hungarian Army in Szolnok
- 23 April, Letenye Border Crossing Point
- 23 April, Fertőrákos Border Crossing Point
- 23 April, Home for Mentally Disabled Persons in Kéthely
- 23 April, Hegyeshalom Border Crossing Point
- 24 April, two group home units of the Veszprém County Children's Home Center
- 29 April, Nagykanizsa Reformatory of the Ministry of Human Capacities.

The measures necessary to fight the coronavirus outbreak during the state of danger have inevitable **implications for detainees**.

Due to the prohibition of leave and restrictions of visits of relatives in the penitentiary system, the detainees' right to communicate has been restricted. The restriction was compensated by the possibility of extended telephone conversations (partly financed by the institutions), and communicating via Skype. The use of Skype is promoted with the help of a user guide among the detainees and their relatives so that they would get acquainted with online communication forms instead of personal contacts.

The detainees' right to work and right to education are also restricted as they may not work outside or participate in trainings. However, such restrictions do not exceed the necessary extent and are proportional to the aim to fight the outbreak.

Measures taken in response to the COVID-19 have not restricted the CFR's right and capacity to carry out OPCAT visits. In fact, the Commissioner for Fundamental Rights so far carried out OPCAT visits in two detention facilities and a house quarantine. Visits will follow in other facilities as well.

In order to prevent the spread of COVID-19, all visits to hospitals and social care homes are prohibited as of 8 March 2020, followed by the prohibition of visits in child care institutions and in juvenile reformatories as of 17 March 2020. No restriction may affect the patients' dignity. A final farewell is an exception to the prohibition of visits, but the necessary protection shall be ensured also in the event of such visits.

Due to the danger of infection, the CFR, acting as National Preventive Mechanism (NPM) considers the means for **visiting closed hospitals and social care homes** in a way as to avoid the possibility of infection of healthy residents or the nursing personnel from outside. The NPM contacted the Minister of Interior as Head of the Operational Group responsible for handling the coronavirus outbreak in Hungary, and asked him for information regarding data on quarantines and the situation of people affected by such measures. The NPM requested information from the Ministry of Human Capacities, the Social and Child Care Authority, the National Healthcare Services Center, the Head of the Hungarian Prison Service Headquarters, and the Hungarian Police Headquarters in order to become acquainted with the circumstances of the infected persons, as well as with the measures for the protection of the residents and detainees living in institutions under their supervision. The NPM has asked the Nagymágocs Castle Home of the Gesztenyeliget Care Center in Csongrád County, where some elderly persons have become infected with the coronavirus, to give information on the situation of the patients and the protective measures.

The Deputy Commissioner for the Protection of the Future Generations (FGO) issued a statement in early April calling the attention of the public to certain measures related to the **right to a healthy environment**, especially clean air amidst the COVID-19 pandemic. As respiratory symptoms are linked to COVID-19 infections, it is of utmost importance to change certain practices harmful to air quality, especially (i) the burning of green garden waste and (ii) the inappropriate heating practices arising from the burning of household and other types of waste. Both practices result in emission of pollutants that pose a danger to the human respiratory system and can result in more aggravated COVID-19 symptoms. Therefore the FGO has asked the government and local municipalities to take steps to ban such harmful practices and effectively enforce these bans while making sure that people in vulnerable situations are provided adequate materials for heating their homes (wood). Besides being electronically published, this document has also been sent directly to the relevant Ministries by the FGO.

As regards **housing**, the CFR initiated ex officio the extension of the wintertime suspension of evictions during the coronavirus emergency period. The Government decided that the suspension of evictions should remain in place during the period of the state of danger.

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

Due to the lockdown, the CFR has **temporarily suspended personal client service**. However, client service is operating via phone. Working visits to counties – normally organized twice a year – are suspended in order to minimize personal contacts.

Following a decision of the Commissioner, the deadlines given for specific state authorities for giving a response to our requests that are not urgent and that are not regarding COVID-19 have been prolonged.

Following a decision of the Secretary General, the Office's staff is working from home, with full salary.

References

- Government Decree No. 90/2020 (IV.5.) on the modification of certain rules on the prison service with regard to the state of emergency
- Skype felhasználási útmutató fogvatartottak hozzátartozói részére
- https://bv.gov.hu/hu/intezetek/bvszervezet/hirek/3619
- https://bv.gov.hu/hu/node/3592
- Decision No. 13305-8/2020/EÜIG of the National Health Centre
- Decision No. 13305-16/2020/EÜIG of the National Health Centre
- Decision No. 13305-19/2020/EÜIG of the National Health Centre
- https://hvg.hu/itthon/20200329_Koronavirus_Pozitiv_a_tesztje_egy_idosotthon_tobb_lakojanak_is_Csongradban
- https://www.ajbh.hu/en/veszelyhelyzeti-informaciok

Ireland

Irish Human Rights and Equality Commission (IHREC)

Independence and effectiveness of the NHRI

International accreditation status and SCA recommendations

The Irish NHRI was accredited with A status in November 2015. In its recommendations, the SCA encouraged the NHRI to advocate for adequate funding while safeguarding its financial independence.

Human rights defenders and civil society space

In January 2019, the Commission published a policy statement on the Electoral Acts and Civil Society Space in Ireland (2). It outlined concerns that the definition of the terms 'political purposes' and 'third party' in the relevant legislation are overly broad and include a range of Irish civil society organisations (CSOs), and therefore put **constraints on the advocacy functions of CSOs**.

They may be required to comply with the strict requirements of the legislation, which impacts on their ability to carry out their work and seek funding. The Commission stated it's of the view that the work of CSOs in Ireland, and their sources of funding, should continue to be clearly regulated and subject to high standards of scrutiny, transparency and accountability, but that such regulatory measures should avoid placing undue restrictions on wider civil society activity engaging in legitimate advocacy aiming to influence political decision making and policy making, including with regard to human rights and equality issues.

References

- Housing and Planning and Development Bill 2019 (available at: https://www.housing.gov.ie/sites/default/files/public-consultation/files/2019_1030_general_scheme_hpd_bill.pdf)
- IHREC, Policy Statement on the Electoral Acts and Civil Society Space in Ireland, January 2019, (available at https://www.ihrec.ie/app/uploads/2019/01/Policy-Statement-on-Civil-Society-and-the-Electoral-Acts-F-11012019.pdf)
- IHREC, Ireland and the Convention on the Elimination of Racial Discrimination, November 2019, (available at https://www.ihrec.ie/app/uploads/2019/11/IHREC_CERD_UN_Submission_Oct_19.pdf)

Checks and balances

Concerning **right to information and accountability of state bodies**, January 2019, the Commission noted in its submission to the Committee Against Torture that the government has decided against publishing two independent reports that were critical of state bodies on the basis of legal advice which is not publicly available for scrutiny.(1)

The Commission also noted concern in that submission regarding proposed legislation, the Retention of Records Bill 2019, which would impinge on the rights of survivors of industrial and reformatory schools. The Retention of Records Bill 2019 proposes that, on the dissolution of the Commission to Inquire into Child Abuse, the Residential Institutions Redress Board and the Residential Institutions Redress Review Committee, their records will be deposited in the National Archives where they will be withheld from public inspection for a period of 75 years. These records will include administrative records of the institutions, survivors' personal records, and all relevant documents created by State representatives and the aforementioned bodies. The Commission is concerned that, if enacted, the legislation would significantly weaken survivors' rights to their personal information, contrary to international and European human rights norms. It may also inhibit potential future legal redress, frustrate the nation's recognition of its history of institutional abuse, and run contrary to principles of **transparency and accountability**. (2)

References

(1) IHREC, Submission to the UN Committee against Torture on the List of Issues for the Third Examination of Ireland, January 2020, at pp. 12, 29 (available at: https://www.ihrec.ie/app/uploads/2020/01/Submission-to-the-UN-Committee-against-Torture-on-the-List-of-Issues-for-the-Third-Examination-of-Ireland.pdf)
(2) IHREC, Submission to the UN Committee against Torture on the List of Issues for the Third Examination of Ireland, January 2020, at pp. 26 (available at: https://www.ihrec.ie/app/uploads/2020/01/Submission-to-the-UN-Committee-against-Torture-on-the-List-of-Issues-for-the-Third-Examination-of-Ireland.pdf)

Functioning of justice systems

The Commission has raised concerns regarding the **functioning of the wardship jurisdiction** and was recently involved in a case concerning the fairness of procedures in such cases, in its capacity as *amicus curiae*.(1)The case *AC v Cork University Hospital* concerned the detention of a woman with dementia in a hospital because the hospital deemed it was in her best interest and the absence of fair procedures in the application to make her a ward of court. In October 2019, the Supreme Court ruled that the High Court did not follow fair procedures in making the woman a ward of court and emphasised the need for the person to be involved in decisions, which impact directly upon them stating "it is essential that the voice of the individual be heard in the process". The Court raised specific concerns about the absence of legal aid in cases such as these to ensure the person's interests are protected.

In November 2019, in the shadow report on the Convention on the Elimination of Racial Discrimination, the Commission raised concerns over the fact that civil **legal aid** is not available to cases involving social welfare appeals, housing issues, and employment and equality cases.(2) Further, the legal aid scheme does not extend to eviction proceedings, which has a disproportionate impact on Irish Travellers, an indigenous minority ethnic group.

The Commission was also involved, as *amicus curiae*, in a Supreme Court case relating to the **European Arrest Warrants system and the right to a fair trial**. In November 2019, the Supreme Court held that systemic deficiencies in a particular system, where far reaching, could by themselves amount to a sufficient breach of the essence of the right to a fair trial. It held that while the systemic changes in Poland were viewed as serious and grave, they

could not themselves be sufficient to cross the threshold of a real risk of breaching his right to a fair trial.(3)

In July 2019, the Commission welcomed the ratification of the Istanbul Convention, but noted concerns regarding access to justice in that context, including the **lack of provision for children to make applications for protection and safety order**s in their own right, delays in accessing court-ordered expert reports; and the lack of accredited training, regulations or quality assurance mechanisms in place for legal interpretation services.(4)

In July 2019, the Commission also welcomed the decision of Mr Justice Iarfhlaith O'Neill, that survivors of child sexual abuse in National Schools cannot be excluded from the **State's ex gratia payment scheme** because they have not established a 'prior complaint' against their abuser. Mr Justice O'Neill found the State's requirement of a 'prior complaint' for an applicant to the ex gratia scheme to be eligible for a payment is incompatible with *O'Keeffe v Ireland* and Article 13 of the ECHR. The Commission called for the Government to overhaul its ex gratia scheme to ensure effective remedy to those who are being denied justice by State inaction.(5)

References

(1) AC v Cork University Hospital[2019] IESC 73, at p. 149. See also IHREC (2019) Commission Welcomes Supreme Court Ruling Clarifying Individual's Rights and Protections in Ward of Court Case(available at: https://www.ihrec.ie/commission-welcomes-supreme-court-ruling-clarifying-individuals-rights-and-protections-in-ward-of-court-case/)

(2) IHREC, Ireland and the Convention on the Elimination of Racial Discrimination, November 2019, at p. 142, (available at https://www.ihrec.ie/app/uploads/2019/11/IHREC_CERD_UN_Submission_Oct_19.pdf)

(3) IHREC, Human Rights and Equality Commission Welcomes Clarity Set Out in Significant Right to Fair Trial Case, 12 Nov 2019 (available at: https://www.ihrec.ie/human-rights-and-equality-commission-welcomes-clarity-set-out-in-significant-right-to-fair-trial-case/)

(4) IHREC, Statement on the ratification of the Council of Europe Convention on preventing and combating violence against women and domestic violence, July 2019, p. 8 (available at: https://www.ihrec.ie/app/uploads/2019/06/Statement-on-Ratification-of-CoE-Convention-on-Preventing-and-Comating-Violence-Against-Women-and-Domestic-Violence.pdf)

(5) IHREC, Irish Human Rights and Equality Commission welcomes Mr Justice Iarfhlaith O'Neill's interpretation of Louise O'Keeffe's Strasbourg judgment as too restrictive, 8 July 2019 (available at: https://www.ihrec.ie/irish-human-rights-and-equality-commission-welcomes-mr-justice-iarfhlaith-oneills-interpretation-of-louise-okeeffes-strasbourg-judgment-as-too-restrictive/)

In-focus section on COVID-19 measures

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

So far, in response to COVID-19 outbreak, the government has passed two pieces of legislation. The Health (Preservation and Protection and other Emergency Measures in the Public Interest) Act 2020 gives the power to the Minister for Health to regulate for restrictions on travelling and mass gatherings, and gives powers to medical officers and police to detain persons for failing to self isolate. The Act creates new criminal offences for refusing to self-isolate, with punishment of a €2,500 fine or a 6 month prison sentence, or both. The new powers within this Act are time limited.

The second piece of legislation is the Emergency Measures in the Public Interest (COVID-19) Act 2020. Among other things, this Act puts a moratorium on evictions and rent increases, and amends the Mental Health Act 2001. These amendments include provisions to allow for remote hearings of the mental health tribunals for assessments of an order to detain someone, to permit written submissions rather than oral, reduces the required number of people sitting on the tribunals from three to one, and allows for the period for review by a Tribunal to be extended by up to 28 days.

In a letter to the Taoiseach (Prime Minister), the Commission recognised that it can be necessary to take exceptional measures to safeguard the health of the community and the lives of individuals and emphasised that such measures must be necessary, proportionate and non-discriminatory, and their implementation must be informed by human rights and equality principles (1).

The Commission discussed issues relating to COVID-19 and disability with its statutory Disability Advisory Committee.

References

(1) IHREC, Letter to An Taoiseach in relation to the COVID-19 Pandemic, 25 March 2020 (available at: https://www.ihrec.ie/app/uploads/2020/03/IHREC-Letter-to-An-Taoiseach-March-2020.pdf)

Italy

Relevant developments towards the establishment of a National Human Rights Institution

Despite several initiatives over many years, a National Human Rights Institution has not yet been established in Italy. Other state bodies, such as the National Authority (Garante nazionale) for the rights of persons deprived of liberty, carry out important human rights work in the country. However, they do not have a broad human rights mandate and do not fulfil other criteria under the UN Paris Principles to be considered an NHRI.

In November 2019, at the occasion of the Universal Periodic Review (UPR) of Italy, delegations from over 40 countries included in their recommendations the establishment of an NHRI in Italy, in compliance with the UN Paris Principles. As a result, the Italian government reaffirmed its commitment to establish an NHRI. There is currently a legislative proposal being debated before the competent Parliamentary Committee. Multiple actors, including ENNHRI, have been calling for the establishment of an Italian NHRI in compliance with the UN Paris Principles.

In January 2019, ENNHRI addressed the Italian Chamber of Deputies to underline the importance of establishing an NHRI in Italy and how it would differ from other existing national mechanisms. This message was reiterated later that year during a roundtable in Italy, organized by ENNHRI with Amnesty International, which brought together representatives from Italian civil society, European NHRIs and regional organisations.

ENNHRI is closely monitoring developments in the country and stands ready to provide its expertise on the establishment and accreditation of NHRIs to relevant stakeholders in Italy, including the government and legislature The establishment of an NHRI in Italy, in compliance with the UN Paris Principles, will contribute to greater promotion and protection of human rights in Italy.

Latvia

Ombudsman's Office of the Republic of Latvia

Independence and effectiveness of the NHRI

International accreditation status and SCA recommendations

The Latvian NHRI was accredited with A status in March 2015. During its assessment, the SCA encouraged the NHRI to advocate for further guarantees to ensure the tenure of the members of the decision-making body of the NHRI, the protection of the Ombudsman from undue interference from the Parliament, and sufficient funding for the NHRI to carry out its growing mandate.

In-focus section on COVID-19 measures

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

On 16 March 2020, the Latvian government, on its own initiative, informed the Council of Europe pursuant to the **derogation clause contained in Article 15 of the European Convention on Human Rights** that the restrictions adopted due to the state of emergency could potentially exceed the limits already allowed by the European Convention on Human Rights to ensure the legitimate aim of "public health". The Ombudsman of the Republic of Latvia has provided an explanation to the public and politicians that the limitations allowed by the derogation clause contained in Article 15 of the Convention are to be interpreted narrowly, allowing for deviation from obligations, only to the extent that the extraordinary nature of the situation inevitably requires. This does not mean that the Latvian government, using the declared state of emergency, may disproportionately restrict the rights of the population in areas and in ways that are not inevitably necessary to ensure public health - to control the COVID-19 epidemic.

So far, the Ombudsman's Office has received many complaints about issues related to receiving the **downtime allowance**. To support employees and employers, the government has developed criteria for how employees working in companies affected by the COVID-19 pandemic emergency can receive a downtime allowance of 75% of their monthly income, up to a maximum of € 700. The Ombudsman has been very active in expressing opinions and this issue.

The Ombudsman has also expressed the opinion that the state, through local governments, in this emergency situation provides free lunches to those groups of the society that need it the most, or disadvantaged and low-income persons and large families. But the fact that lunches are not provided for those groups who are not among the **most vulnerable groups** does not constitute discrimination.

The ombudsman also focuses on **closed institutions**. In relation to them, the Ombudsman drew the government's attention to the observance of the COVID-19 restriction measures.

There have also been issues of respect for **legal equality** in an emergency.

There has also been public interest in caring for **children** and meeting children with parents they do not live with.

The ombudsman prepared more extensive material for the public on how not to fall into the trap of **human trafficking organizers and fraudsters** during an emergency crisis.

References

- The Ombudsman's statement (in Latvian) on the state of emergency is available here: http://www.tiesibsargs.lv/news/lv/tiktal-ciktal-jeb-vai-arkarteja-situacija-var-but-pamats-cilvektiesibu-ierobezosanai
- Due to too strict criteria for granting downtime allowance, an employee can end up receiving almost nothing(29.04.2020.) In Latvian http://www.tiesibsargs.lv/news/lv/parak-strikto-dikstaves-pabalsta-pieskirsanas-kriteriju-del-darbinieks-beigas-var-sanemt-vien-ciku
- Opinion of the Ombudsman on setting the minimum threshold for downtime allowance(23.04.2020.) In Latvian http://www.tiesibsargs.lv/news/lv/tiesibsarga-viedoklis-par-dikstaves-pabalsta-minimala-slieksna-noteiksanu
- Downtime allowance should receive also available to patent payers and self-employed pensioners(21.04.2020.) In Latvian http://www.tiesibsargs.lv/news/lv/dikstaves-pabalsts-pienakas-ari-patentmaksas-maksatajiem-un-pasnodarbinatiem-pensionariem
- Downtime allowance should be available to all doctors not directly involved in overcoming the COVID-19 crisis, too(07.04.2020.) In Latvian http://www.tiesibsargs.lv/news/lv/dikstaves-pabalstu-jasanem-visiem-medikiem-kas-nav-tiesi-iesaistiti-COVID-19-krizes-parvaresana
- Downtime allowance must also be paid to employees who are recipients of an old-age and retirement pension(30.03.2020.) In Latvian http://www.tiesibsargs.lv/news/lv/dikstaves-pabalsts-jamaksa-ari-darba-nemejiem-kas-ir-vecuma-un-izdienas-pensijas-sanemeji
- Free lunch is not a social patch, or whether everyone and always should receive free lunch (17.04.2020.) In Latvian http://www.tiesibsargs.lv/news/lv/brivpusdienas-nav-socialais-ielaps-jeb-vai-brivpusdienas-jasanem-visiem-un-vienmer

- The Ombudsman draws the government's attention to the observance of COVID-19 restriction measures in closed type institutions(30.03.2020.) In Latvian http://www.tiesibsargs.lv/news/lv/tiesibsargs-vers-valdibas-uzmanibu-uz-COVID-19-ierobezosanas-pasakumu-ieverosanu-slegta-tipa-iestades
- The Ombudsman calls on the Riga City Council not to discriminate between doctors(07.04.2020.) In Latvian http://www.tiesibsargs.lv/news/lv/tiesibsargs-aicina-rigas-domi-neskirot-medikus
- How does the emergency affect childcare and the child's meeting with non-cohabiting parents?(08.04.2020.) In Latvian http://www.tiesibsargs.lv/news/lv/ka-arkarteja-situacija-ietekme-bernu-pieskatisanu-un-berna-tiksanos-ar-vecakiem-kas-nedzivo-kopa
- How not to fall victim to human trafficking or fraud during a coronavirus pandemic?(22.04.2020.) In Latvian http://www.tiesibsargs.lv/news/lv/ka-neklut-par-cilvektirdzniecibas-vai-krapniecibas-upuri-koronavirusa-pandemijas-laika

ENNHRI

Lithuania

Seimas Ombudsmen's Office

Independence and effectiveness of the NHRI

International accreditation status and SCA recommendations

The Lithuanian NHRI was accredited with A status in March 2017. The SCA acknowledged the cooperation of the NHRI with other Ombuds institutions in Lithuania, and encouraged the NHRI to continue, develop and formalise similar working relations with national bodies.

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

Since 23 March 2017, when the Seimas Ombudsmen's Office has become an accredited NHRI (Status "A"), the Seimas (Parliament) of the Republic of Lithuania adopted the Law (entered into force on 1 January 2018) amending Articles 3, 19 and 19(1) of the Law on the Seimas Ombudsmen no. VIII-950 and adding Article 19(2). These defined new areas of competence of the Seimas Ombudsmen in the exercise of the functions attributable to the National Human Rights Institution:

- In promoting the respect for human rights and freedoms and in cooperation with state and municipal institutions, agencies, civil society, social partners, international organisations on the issues of human rights and freedoms, the Seimas Ombudsmen's Office shall perform the following functions:
  to carry out human rights monitoring in Lithuania and to prepare reports on the human rights situation;
- to perform dissemination of information on human rights and public education on human rights;
- to present assessment of the human rights situation in Lithuania to international organisations and to provide them with information in accordance with the obligations established in the international treaties of the Republic of Lithuania;
- to make proposals to state and municipal institutions and bodies on human rights issues;
- to seek harmonization of national legislation with the international obligations of the Republic of Lithuania in the field of human rights;
- initiate investigations into fundamental human rights issues.

References

- https://eseimas.lrs.lt/portal/legalAct/lt/TAD/6a7995b249ed11e89197e1115e5dbece?jfwid=bnp209hfy
- https://e-seimas.lrs.lt/portal/legalActPrint/lt?jfwid=bnp209hfy&documentId=6a7995b249ed11e89197e1115e5dbece&category=TAD

Human rights defenders and civil society space

The Seimas Ombudsmen's Office observes the situation regarding the civil society space and the protection of human rights defenders. In this regard, the SOO maintains a close relation with NGOs and CSOs, which includes both bilateral and multilateral meetings as well as consultations and joint initiatives.

For example in 2019 Seimas Ombudsmen on a regular basis met with public groups, representatives of international rights defenders organisations, members of Lithuanian Trade Union "Solidarity", representatives of other Ombudsmen institutions operating in Lithuania, various non-governmental organisations, representatives of the UN Refugee Agency (UNHCR), the National LGBT rights organisation, etc.

No particular violation of rights and freedoms of human rights defenders or civil society organisations, that could negatively affect their activities, were observed.

It also should be mentioned that in the report on the fulfilment of Lithuania's obligations in implementing the International Covenant on Civil and Political Rights, the Seimas Ombudsman has expressed his opinion on the protection of minors from the negative effects of public information in the field of LGBT rights.

The Shadow Report provided by the Seimas Ombudsman to the UN Human Rights Committee encompassed a number of parts, one of them - Provisions of the law constituting preconditions for discrimination, where the Seimas Ombudsman observed that legal acts of the Republic of Lithuania still contain valid questionable provisions that are potentially incompatible with the protection of human rights, which in some way restrict the rights of minorities:

Constitution of the Republic of Lithuania provides that marriage is concluded by free agreement between man and woman, and Article 4(2)(16) on the Law on the protection of

minors against adverse effects of public information provides that Information that promotes the concept of the formation of a marriage and a family different from that established in the Constitution of the Republic of Lithuania and the Civil Code of the Republic of Lithuania, is considered as information having the negative impact on minors. According to the data of the country's non-governmental organisations, this particular provision of the law often becomes the basis for the restriction of the freedom of expression of sexual minorities. In May 2015 the LGAA (National Association for the Protection of Lesbians, Gay, Bisexual, Transgender and Intersex persons (LGBT)) LGL addressed the National Broadcaster (LRT) on the possibility to broadcasting promotional videos of the Baltic Pride 2013 festival. On 4 July 2013 the LRT replied that these video clips could only be broadcast on a limited time basis and include age indices ("S" adult content) and "N-14" (inappropriate for persons under the age of 14). According to the LRT, these restrictions were necessary because of the aforementioned provision of the law protecting minors from the information that encourages the conception of the formation of marriage differ and from that enshrined in the Constitution of the Republic of Lithuania.

In this context it is worth noting that on 14 December 2017 the Draft law on the amendment of Articles 4 and 6 of the Law on the Protection of Minors against the Detrimental Effect of Public Information No. IX-1067 was registered by the Seimas Member D.Sakaliene, proposing to amend Article 4 (2)(16) by deleting the said discriminatory provision. However, there were no further actions taken.

References

- https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CCPR/C/LTU/4&Lang=en
- http://www.lrski.lt/en/news/682-the-problematic-issues-of-reorganisation-of-imprisonment-system-were-disccused.html
- http://www.lrski.lt/images/dokumentai/Civil-and-political-rights.pdf

Checks and balances

In accordance with the Article 19(8) of the Law on the Seimas Ombudsmen, the Seimas Ombudsmen can recommend to the Seimas, state or municipal institutions and agencies to amend the laws or other statutory acts which restrict human rights and freedoms, thus exercising a **role in the system of checks and balances**. Below are a number of examples that illustrate the work of the Seimas Ombudsmen in this regard:

In February 2020, the Seimas Ombudsman acknowledged that the gaps left in the **regulation of intelligence** pose a particularly high risk of negatively affecting human rights, and therefore it is important to strengthen control over officials. As a consequence, the Seimas Ombudsman recommended the Prime Minister to initiate the amendment of the current Law on Intelligence by setting maximum terms for the application of intelligence methods, conditions for the deletion of information collected, and the possibility for individuals to effectively defend their rights in court.

In February 2020, the Seimas Ombudsman submitted an opinion to the Committee on Human Rights regarding **effective procedure for the application of mediation in family disputes**. In his observations on the changed procedure for the out-of-court settlement of disputes, the Seimas Ombudsman acknowledged the need to improve the provisions of the Law on Mediation, as the current procedural framework is not fully clear and the space in the regulatory procedure left for interpretation can have a particularly negative impact on victims of violence.

The Seimas Ombudsman repeatedly drew the attention of state institutions to the fact that the Compulsory Health Insurance Fund should cover all and not part of convicts, that **access to health care for prisoners** is a national responsibility and that detainees and convicts should be afforded the same quality of health care as the rest of the society. Finally, in January 2020, the Seimas Ombudsmen welcomed the interinstitutional agreement on Compulsory Health Insurance for convicted persons, which was approved by the Seimas. The President has signed Amendments to the Law on Health Insurance that extends the list of persons covered by the Compulsory Health Insurance.

In May 2019, the United Nations (UN) Committee on the Elimination of Racial Discrimination has issued recommendations to Lithuania on the implementation of the International Convention on the Elimination of All Forms of Racial Discrimination, which encouraged Lithuania to intensify its efforts in the integration and education of Roma, the strengthening of civil dialogue, the fight against hate speech, the adoption of the Law on National Minorities, the inclusion of refugees and migrants. The Seimas Ombudsmen's

Office has submitted an alternative report which drew attention to the problems of **Roma integration** in the country, urged Lithuania to take adequate measures to combat the **hate speech** and advocated the adoption of the **Law on National Minorities**.

In April 2019, upon the initiative of the Seimas Ombudsman, representatives of state institutions and non-governmental organisations listened to activity results of the monitoring report of 2018 on implementation of **Social Integration of the Disabled and the UN Convention on the Rights of Persons with Disabilities**. Following the report, the Department for the Affairs of the Disabled highlighted the main weaknesses in the implementation of the UN Convention on the Rights of Persons with Disabilities in the country.

References

- http://www.lrski.lt/en/news/710-the-committee-on-the-elimination-of-racial-discrimination-recommends-ensuring-adequate-funding-for-the-national-human-rights-institution.html
- http://www.lrski.lt/images/Alternatyvi-ataskaita-CEDAW.pdf

Functioning of justice systems

One issue of concern in the area of justice which the Seimas Ombudsmen would like to report on concerns the **inadequate implementation of the review procedure on declaration of incapacity**.

A recent study by the Seimas Ombudsmen revealed that after the ongoing review of the incapacity of individuals, there are still more than 1,600 incapacitated individuals in the country, whose rights have so far been unduly restricted. These particularly puzzling findings and other loopholes in the legal review procedure were presented by the Seimas Ombudsmen's Office in a report in which the Seimas Ombudsman commented on a particularly inefficient implementation of the incapacity review procedure.

While visiting incapacitated persons in places of deprivation of liberty, doubts arose over quality of implementation of the law, which stipulates that court judgments issued until 1 January 2016 regarding the declaration of persons to be incapacitated must be reviewed within two years. After noticing that the rights of the majority of persons in places of deprivation of liberty are still unreasonably restricted, the Seimas Ombudsman decided to find out what were the reasons for the inefficient implementation of the incapacity review procedure.

The investigation revealed that, in fact, only less than half of cases of incapacitated persons were reviewed within the set two-year deadline. The report also notes that caregivers of incapacitated persons were not adequately informed about the ongoing process and objectives of the incapacity review and that municipalities were not prepared to provide the information and assistance they needed at the time. Moreover, the municipalities themselves did not initiate the legal action procedure in the absence of the guardians' duty to apply to the court for review of incapacity. The investigation also revealed that data on incapacitated persons is still processed differently in different municipalities, and the municipalities themselves explained that they had difficulties in obtaining data from the Center of Registers on incapacitated persons throughout the review period. The difficult access to data and the unclear procedure for review of incapacity, which remained for a year, were often cited as one of the main reasons for impeding the proper and timely implementation of the envisaged procedure.

Unfortunately, there is no uniform practise in the country for collecting, pooling and systematizing data on incapacitated individuals, and some municipalities do not collect such data at all. It also should be noted that the State, which delegated additional functions to municipalities during the period of incapacity review, did not foresee or allocate required additional funds, which had a particularly negative impact on the quality of the ongoing review procedure. The investigation also revealed that state-appointed attorneys often did not even visit incapacitated persons, did not meet with them, and the persons had to wait up to a year and a half for designated forensic psychiatrists.

The Seimas Ombudsman drew the attention of the Government and the Ministry of Social Security and Labour to the urgent need for a qualitative review of all court decisions declaring incapacitated persons up to now. It was noticed that during the procedure, the effective protection of the rights and freedoms of incapacitated persons was not ensured, but at the same time it resulted in excessive restrictions on their rights and freedoms.

References

- http://www.lrski.lt/images/Ataskaita-del-socialinio-draudimo.pdf

Media pluralism

The Seimas Ombudsmen's Office drafted and on 30 November 2018 expressed its position on "Freedom of expression by ensuring the **independence of the public broadcaster**". Without considering the particular proposals of the Ad-Hoc Investigation Commission of the Seimas, the Seimas Ombudsman spoke of the need to protect freedom of speech and expression guaranteed by the Constitution and the European Convention for the Protection of Human Rights and Fundamental Freedoms by ensuring the independence of the national broadcaster. In his position, the Seimas Ombudsman noted that Article 10 of the European Convention on Human Rights, which guarantees freedom of expression, includes, inter alia, freedom of the press, radio and television, as there is no democratic society without free and abundant press. The Seimas Ombudsman also noted that the ECHR case Manole and Others v. Moldova stressed the importance of the independence of the statutory public service broadcasters from political and economic impact.

It should be noted that the role of the public broadcaster in democratic societies is exclusive, therefore the European Parliamentary Assembly, the EC Committee of Ministers not once has invited the Member States to establish the functions of the management and supervisory authorities over the public service broadcaster by law, defining the principles of accountability, appointment and dismissal of its members, thus not creating any preconditions to make political and/or economic impact on public service broadcaster. EC Member States should build on the measures and implement all the standards and principles set out in the various Recommendations of the Committee of Ministers on the independence of public service broadcasters, including, legal measures to ensure the editorial independence and institutionalization of the public service broadcaster's autonomy and avoiding its politization.

Summarising, the Seimas Ombudsman emphasised that one should avoid such initiatives that would allow to exert political and/or economic influence on the public service broadcaster, thus breaching Provisions of Article 10 of the ECHR.

References

- http://www.lrski.lt/en/news/670-the-seimas-ombudsman-has-called-the-parliament-to-avoid-any-initiatives-limiting-independence-of-the-national-broadcaster.html
- https://en.delfi.lt/politics/seimas-ombudsman-calls-parliament-to-avoid-initiatives-limiting-independence-of-national-broadcaster.d?id=79874323
- http://www.lrski.lt/images/dokumentai/Concerning-National-Broadcasterpdf.pdf

Corruption

The Seimas (Parliament) of the Republic of Lithuania has adopted a **Law on Whistleblowers**, which lays down the rights and duties of the persons reporting about the infringements in institutions, the grounds and forms of their legal protection as well as the measures of protection, provision of incentives and assistance to such persons for the purposes of creating favourable conditions for reporting about the infringements of the law which pose a threat to or violate the public interest, or for the purposes of prevention and detection of such infringements. The Seimas Ombudsmen's Office contributed to the development of this Law.

References

- https://www.prokuraturos.lt/data/public/uploads/2020/02/1.9-225-praneseju-apsaugos-istatymas-eng.pdf

In-focus section on COVID-19 measures

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

The Government of the Republic of Lithuania has proclaimed the emergency state on 13 March 2020, and it has been extended several times. In respect to the COVID-19 pandemic, the Government of the Republic of Lithuania also adopted a number of restrictive measures. While majority of them are fully acceptable from the human rights perspective, there are also measures that are extremely concerning.

The Seimas Ombudsmen uphold that the severe restrictions enforced by the Government and the measures taken to prevent the spread of the disease **affect the most vulnerable group of people deprived of their liberty**. For this reason the Seimas Ombudsman drew the attention of the Government of the Republic of Lithuania that any restrictions on human rights, even in an emergency, should be carried out imperatively in accordance with the rule of law, the Constitution, the laws applicable in Lithuania and following international obligations in the sphere of human rights. He also called for state and municipal agencies and institutions to follow the recommendations of the World Health Organisation, the SPT, specialists' epidemiologists, as well as the CPT principles for action to be taken in places of detention during the coronavirus (COVID-19) pandemic.

The Seimas Ombudsman also called for compliance with the requirements of legal acts regulating measures for the prevention and control of communicable diseases, according to which it is necessary to update emergency plans, constantly inform employees about the changing situation, reminding them what actions they should take to prevent the spread of the virus. It is also particularly important to comply with general hygiene requirements in order to avoid overcrowding of the residents', provide and prepare isolation rooms as well as to guarantee provision of the necessary hygiene and protection measures to the residents and the staff as well. Moreover, in guaranteeing preventive and control measures against the virus, the dignity of the residents must be respected and their rights secured.

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

Following the decisions of the Government of the Republic of Lithuania to prevent the spread of coronavirus (COVID-19), starting from 13 March 2020 until a separate notice, citizens are served at the Seimas Ombudsmen's Office only remotely. Currently the citizens can launch a complaint of apply for information by regular post, electronic means or by telephone. The Seimas Ombudsmen's Office, as a National Human Rights Institution, continue investigation of complaints, launching of investigations on the Seimas Ombudsmen's own initiative, writing reports, filling questionnaires and in spite of the fact that monitoring of places of detention became challenging to implement, the Seimas Ombudsmen's Office, as an NPM, makes every effort to fulfil its preventive mandate. The Seimas Ombudsmen are determined to continue visits to places of detention during the pandemic to ensure that restrictive measures applied by the authorities do not result in human right violations.

However, all planned seminars, conferences and trainings are postponed due to the closure of all schools and "home office" arrangements in most companies and public authorities as well as social distance requirements.

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

The Seimas Ombudsman conducted an investigation on the alleged **excessive display of power by officers through the use of physical force** against non-opposing persons and the public display of special measures used against them as this issue has raised considerable public concern.

The Seimas Ombudsman identified the emerging practice of denying the **presumption of innocence** when suspects or accused persons are presented as guilty in court or in public,

disproportionately using means of **physical restraint**. In his report, the Seimas Ombudsman notes that the Constitutional Court has emphasized that the presumption of innocence is one of the most important guarantees of implementation of justice in a democratic state under the rule of law. Moreover, it is an integral guarantee of human rights and freedoms. The Seimas Ombudsman drew the attention of the Minister of Justice to the exceptional need to ensure proper implementation of the presumption of innocence in order to prevent suspects and accused persons from being shown at court or in public as guilty by publicly using means of physical restraint against them.

The report also pointed out that international human rights standards recommend that officers record and report on the use of coercion in their activities; however, the findings show that there is still a problem of non-use, misuse, and non-availability of technical video recorders at a time when officers are using violence against individuals. According to the Seimas Ombudsman, such practice of law enforcement officers creates preconditions for the risk of human rights violations.

In his report, the Seimas Ombudsman also paid great attention to the provisions of the Convoy Rules that were interpreted differently during the practice of officers, when convoying detainees the officers used handcuffs, physical and psychological violence even in those cases where the detainee did not oppose or raise danger and complied with lawful instructions or demands of the officer. It was highlighted in the report, that physical force can only be applied after warning of the intention to use it and allowing a person to fulfil the legitimate requirements of an officer. The Seimas Ombudsman drew the attention of the Minister of Justice and the Minister of the Interior Affairs to the need to change the Convoy Rules so as to ensure that the officers, in exercising their right to use special measures, do not exceed their powers and act in accordance with the rule of law.

References

- http://lrski.lt/en/news/780-seimas-ombudsperson-physical-abuse-may-only-be-used-by-an-officer-when-the-person-does-not-comply-with-the-lawful-instructions-or-requirements-of-the-officer-or-otherwise-opposes-the-officer.html

ENNHRI

Luxembourg

Consultative Commission on Human Rights (CCDH)

Independence and effectiveness of the NHRI

International accreditation status and SCA recommendations

The Luxembourgish NHRI was reaccredited with A status in November 2015. The SCA encouraged the NHRI to advocate for an independent and sufficient funding that allows for remunerated full-time members in the NHRI's decision-making body. Moreover, the SCA encouraged initiatives to result in the NHRI's annual report being tabled and debated by Parliament. The SCA commended the CCDH for continuing to produce reports and recommendations, despite the fact that consultation of the NHRI on draft legislation was not systematic.

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

The mission of the National Rapporteur on trafficking in human beings (appointment in April 2014) takes up a large part of work of the CCDH. Nonetheless, the increase in secretariat staff from 3 to 5 (in 2017 and 2020) has allowed the CCDH to carry out all of its tasks and to address new issues on its own initiative.

Human rights defenders and civil society space

As regards the enabling framework for civil society organisations, various NGOs have raised concerns about **respect of privacy standards with regards to existing rules on registration** of non-profit organisations. All non-profit organisations have to be registered and listed in the Luxembourgish Trade and Companies Register. A law from 1928 lists the documents that have to be submitted upon registration, including inter alia a list with the names, addresses and nationalities of the members of the association and specifically foresees that any person interested can have access to this information. This poses a problem in terms of the right to the protection of the private life and personal data of individuals as well as their safety, as anyone can access the aforementioned document on the Luxembourg Business Register website. A legislative proposal amending the law from 1928 has been introduced in 2009 and then again in 2018, but so far, no changes have been voted by Parliament.

Furthermore, in a recently published opinion, the CCDH found that **freedom of expression and access to information** was negatively impacted by a legislative proposal on the national security authority. While this proposal aimed at adapting the national legislation to European and international confidentiality standards, inter alia by introducing criminal sanctions, it did not provide any exceptions for press and whistle blowers (see further below on media pluralism). The CCDH issued an opinion and recommendations to the government in order to ensure a human rights compliant revision of the draft legislation on the national security authority.

Issues concerning the **right to participation** can be reported in particular in the area of business and human rights (BHR), on which the Ministry for Foreign Affairs put in place a working group composed of government, civil society, private sector and national human rights defender representatives. While the CCDH welcomes the creation of this group, it found that the position of civil society and the CCDH is often disregarded or silenced. At the same time, the government is publicly claiming that the decisions of the group are based on a consensus. The CCDH issued a position paper on this matter in order to address the disregard by the working group of civil society's positions. Moreover, it attended the meetings of the BHR working group and issued recommendations. The President of the CCDH also voiced his concerns in numerous press interviews.

Cases of **harassment of activists and human rights defenders** have also been reported. These include the case of a young musician who was sued by right-wing politicians, because of critical views he expressed towards them in a song. While he was acquitted in first instance as well as in the appeal trial, the public prosecution office has been criticised for supporting the claims in the court of first instance and for launching an appeal against the first acquittal, even though it then abandoned its initial stance.

There have also been reports that a company located in Luxembourg has sued human rights defenders because of their claims of alleged human rights violations committed by such company in third countries. There are no mechanisms under Luxembourgish law or in the existing national action plan which protect human rights defenders from strategic lawsuits against public participation.

References

- CCDH opinion on the national security authority from 2019: https://ccdh.public.lu/dam-assets/fr/avis/2019/Avis-PL-Autorite-nationale-Securite.pdf
- CCDH position paper on business and human rights :
- https://ccdh.public.lu/dam-assets/fr/avis/2019/Prise-de-position-Entreprises-et-droits-de-l-Homme-version-finale.pdf
- Information on NGO from Luxembourg being used for their denunciations of HR violations: https://www.sosfaim.lu/en/onnesetairapas/
- Drafts to amend the 1928 law on registration of non-profit organisations:
    - https://chd.lu/wps/portal/public/Accueil/TravailALaChambre/Recherche/RoleDesAffaires?action=doDocpaDetails&backto=/wps/portal/public/Accueil/Actualite&id=7392
    - https://www.chd.lu/wps/portal/public/Accueil/TravailALaChambre/Recherche/RoleDesAffaires?action=doDocpaDetails&id=6054&backto=p0/IZ7_28HHANET20F2A0A91N6L0M0CE1=CZ6_D2DVRI420OES6023P3ARS20004=M/#Z7_28HHANET20F2A0A91N6L0M0CE1/%3E

Checks and balances

The CCDH has identified some instances and issues which may potentially threaten the separation of powers, limit the participation of rights holders and the accountability of State authorities.

One issue concerns the **relations between the judiciary and the public prosecution service** and can be illustrated by the following occurrence. In 2019, members of the Parliament addressed several parliamentary questions to the Police and public prosecution because of serious criticism over the lack of transparency and sufficient legal basis of their databases collecting personal data. In that occasion, the Procureur Général d'État and the President of the Cour supérieure de justice (Highest court of the judicial order in Luxembourg) addressed a common letter to the President of the Parliament criticising its members for the high number of questions asked on this matter. This was criticised among others by the Parliament as an attempt to limit its power.

Concerning **participation and consultation of rights holders** in decision making, the way the constitutional reform launched in 2009 to fundamentally reform and modernise the constitutional text from 1868 raises some concerns. This reform was supposed to culminate in a public referendum, allowing the Luxembourgish citizens to vote for or against the new text of the constitution. However, in November 2019, it was announced that the

fundamental reform, and therefore also the referendum, would be abandoned and the text of the constitution would be amended incrementally over the next years, depriving the citizens of this extraordinary chance for political participation.

Other systemic problems related to participation are worth mentioning.

One is that, as the CCDH has pointed out for some years, the drafts of grand-ducal **regulations, contrary to legislative proposals, are not published**. While in theory, the CCDH can elaborate its opinions on its own initiative or at the Government's request on any regulatory act, it has never been asked by the government for advice on draft regulatory acts and has no access to those until the State Council publishes its opinion, together with the draft, on its website. The CCDH addressed this issue in a recent opinion. Furthermore, the president of the CCDH sent a letter to the Prime Minister in which he asked for the drafts to be made available to the public or at least for the CCDH to receive those directly or indirectly affecting human rights.

Another systemic problem concerns **participation in elections** and is related to the fact that national elections are only open to Luxembourgish nationals, thereby excluding almost half the population residing in Luxembourg from the exercise of the right to vote, thus severely limiting their political participation.

References

- Common letter by the Procureur Général d'État and the President of the Cour supérieure de justice can be found here : https://www.woxx.lu/justice-la-lettre-integrale-au-president-de-la-chambre-des-depute-e-s/
- Criticism of that approach :https://www.wort.lu/fr/luxembourg/ca-chauffe-entre-les-parlementaires-et-la-justice-5da6e62fda2cc1784e34dbe2
- Press article about fundamental reform of the constitution being abandoned:
- https://www.wort.lu/fr/luxembourg/la-grande-reforme-de-la-constitution-abandonnee-5dde28ebda2cc1784e350b1c
- Recent opinion of the CCDH addressing the issue of the non-publication of draft regulatory acts: https://ccdh.public.lu/dam-assets/fr/avis/2020/CCDH-Avis-PRGGD-CommconsinteretsupMNA-final.pdf

Functioning of justice systems

Existing rules on **legal aid** limit in the CCDH's opinion the ability of certain categories of people to access justice. Currently, the financial eligibility for free legal aid is limited to a fixed threshold, which does not take into account for example debts or other expenses a person or family might have. This means that any person, whose income is above that threshold, even by 1 euro, loses entirely the right to free legal aid. This rigid model hinders the access to justice of all the persons whose income exceeds the current threshold, but who still do not have the sufficient financial resources to initiate a legal action or to defend themselves in court proceedings. The government is aware of this problem and has announced a reform of the current legal aid system, which would introduce a new model permitting one to benefit from partial legal aid and the amount would progressively decrease based on the financial resources.

In this context, the CCDH draws attention to the fact that the 2015 law on the reception of applicants for international protection provides for a right to free legal aid for asylum seekers only in relation to disputes concerning the reduction or withdrawal of reception conditions, which the CCDH considers to be a discrimination of asylum seekers and a limitation of their fundamental right of access to justice. The CCDH has raised this issue in various opinions and reports over the years.

Another issue impacting on the quality of the justice system is that for many years, there has been no comprehensive system in place when it comes to the **publication of judgments** by national courts. While the decisions by the administrative courts and the constitutional court have been regularly published, this has not been the case for the judicial courts. While this is slowly changing, all court decisions are still not widely available as the judicial authorities make a pre-selection of important decisions and/or publish summaries of decisions by the court of appeal, the court of cassation and the constitutional court.

Finally, the CCDH was informed of a practice by which national judges verify the identity, and thus also the address, of anyone appearing before the court. This leads to situations in which victims of domestic violence or trafficking of human beings have had to divulge their new address, or the address of the shelter they have been placed in, in front of the defendant, which can pose a great threat to their safety and disregard **victims' rights**. In its 2nd report on trafficking of human beings (THB) in Luxembourg, the CCDH, in its mandate as national rapporteur, addressed the issue of the safety of THB victims and the protection

of their personal data by the judicial authorities and insisted on the importance of raising the awareness of judges.

References

- Link to parliamentary question and statements made by former Minister of Justice on the reform of the law on free legal aid : https://5minutes.rtl.lu/grande-region/laune/a/1153899.html
- Report by the CCDH on reception conditions of asylum seekers in Luxembourg, addressing inter alia the issue of limited free legal aid :
- https://ccdh.public.lu/dam-assets/fr/avis/2018/Rapport-Conditions-accueil-DPI-version-26112018-Version-finale.pdf
- Opinion of the CCDH on the draft legislation on reception conditions of asylum seekers where we addressed the same issue :
- https://ccdh.public.lu/dam-assets/fr/avis/2015/projet-avis-PL-6775-Accueil-final.pdf
- Law on receptions of applicants of international protection from 2015 : http://legilux.public.lu/eli/etat/leg/loi/2015/12/18/n16/jo
- CCDH 2nd report on trafficking of human beings in Luxembourg : https://ccdh.public.lu/dam-assets/fr/avis/2019/CCDH-2e-Rapport-sur-la-traite-des-etres-humains-FINAL-.pdf

Media pluralism

In its opinion on the draft legislation on the national security authority, the CCDH found that freedom of expression and access to information was negatively impacted. While this draft legislation aimed at adapting the national confidentiality legislation to European and international confidentiality standards, inter alia by introducing criminal sanctions for illegal leaks, it did not provide any exceptions for press and whistle-blowers. Journalists of the public service radio station (Radio 100,7), who discovered and informed Parliament of a detected vulnerability in their public database, were prosecuted and the offices of the Radio station were raided by the Police. In the end, public prosecution decided to stop the proceedings due to a lack of evidence. These proceedings however were criticised as they sent a strong negative signal to potential whistle-blowers/journalists to come forward with information relevant for the general public. The CCDH recommended amending the draft legislation on the National Security Authority and providing for sufficient protection for whistle-blowers, informants and journalists (see the section on human rights defenders and civil society space above).

There have also been discussions on pluralism and the independence of public service media (PSM) in Luxembourg. A peer-to-peer review on PSM assessed the management

practices of the Établissement de Radiodiffusion Socioculturelle du Grand-Duché de Luxembourg (ERSL). It found for instance that the fact that the Luxembourg government appoints the President and the eight members of ERSL Board of Directors, approves ERSL's annual accounts and activity reports and sets the budget on a five-year basis, automatically makes ERSL politically dependent, with a risk of politicisation within its Board, even though the spirit of the governance rules is to represent the interests of the community in its broader sense. The Prime Minister responded and vowed to launch a broader debate, among others in Parliament. In February/March 2020, Radio 100,7 adopted a position with several recommendations. It must be noted that there is a draft legislation (avant-projet de loi) on revising the public financial aid for the press/media, which has been welcomed by the President of the Press Council of Luxembourg.

The CCDH found that the recent draft legislation on video surveillance may also have negative impacts on freedom of expression. In its opinion on this draft law, the CCDH voiced particular concerns about the lack of precision of certain provisions and highlighted the risk of a negative impact on journalists, whistle-blowers and informants associated to camera surveillance. The CCDH recommended that these risks should be taken into account by the authorities in charge of performing or supervising video surveillance and of authorising such systems, as well as the introduction of sufficient safeguards in the law.

References

- Link to the CCDH's opinion on video surveillance :https://ccdh.public.lu/dam-assets/fr/avis/2020/CCDH-Avis-PL-7498-Videosurveillance-Version-finale.pdf
- For our opinion on the draft law on the national security authority, see above.
- Discussions on pluralism and independence of public service media : https://www.100komma7.lu/article/aktualiteit/eng-gefor-fir-onofhaengegkeet
- Peer to peer review on PSM values : https://img.100komma7.lu/uploads/media/default/0001/85/2018-report-p2p-ersl-4web_1e3c47.pdf
- 100,7 position with recommendations : https://img.100komma7.lu/uploads/media/default/0002/09/radio-100-7-position-service-public_e2e213.pdf
- Reaction by President of the Press Council of Luxembourg : https://www.100komma7.lu/article/aktualiteit/qualiteit-an-d-redaktioune-brengen

Corruption

Apart from some recent cases of public officials or employees who have been accused of embezzlement of public funds, there have been no major reports on corruption. In general, the CCDH hasn't found any particular evidence of state measures or practices relating to corruption, or significant inaction in response to alleged corruption.

In-focus section on COVID-19 measures

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

The government has declared a state of crisis during which it can take regulatory acts in all matters. This state, prolonged by the Parliament, cannot exceed 3 months. The Constitution requires that the measures taken must remain in line with the principles of proportionality, necessity and adequacy, and must not infringe upon the Constitution or international obligations. These regulatory acts will automatically cease to exist after the state of crisis ended.

According to the CCDH, the most significant impacts of measures adopted in response to the COVID-19 outbreak are the following.

Free movement of persons is largely restricted and pecuniary sanctions have been put in place. However, they lack precision and are open to interpretation. Authorities invite the population to denounce their neighbours and the persons infringing the law, which may fuel hostility among the population.

There have been reports indicating a rise in domestic violence. According to these reports, it is too early to say whether or not this rise is directly linked to the confinement measures. On 14th April 2020, a new helpline (7 days a week, from 12h00 to 20h00) has been put in place by NGOs supported by the government. It is also possible to contact the helpline by sending a text message.

According to some sources, freedom of expression, media freedom and access to information has been limited and is criticised by press associations. The government tends to control and restrict access to information (access of the press to hospitals, access to statistics, etc).

Moreover, these measures have a severe impact on asylum seekers and refugees. The CCDH has received reports that detention centres for asylum seekers have been emptied.

Half of the centres' population has been set free, without authorities having put in place adequate measures to provide for basic services such as housing. Moreover, there have been reports of residents being removed from reception centres because of alleged misbehaviour conflicting with internal rules (for example not respecting midnight curfew). Following criticism of civil society and the refusal of the Police to carry out these evictions, the public administration's policy changed. In some refugee centres, residents do not have access to internet because WIFI is limited to common areas which have been closed to prevent the spread of the virus. This also severely impacts the right to education of children since the education system currently exclusively relies on digital education.

Access to justice is also limited as a result of the fact that numerous court hearings and deadlines have been postponed. Lockdown is also having an impact on lawyers who voiced concerns about their subsistence - the Minister of Labour considers however they do not need further financial assistance.

There are rising data protection concerns regarding mobile applications or the tracking of mobile phones. The Prime Minister seems to be currently opposed to such methods.

The President of the CCDH addressed an open letter to the Prime minister regarding the potential impact on human rights of measures taken to face the COVID-19 pandemic. The CCDH is also collecting information on a daily basis regarding the measures taken and the potential risks for human rights.

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

The CCDH is subject to teleworking requirements which impact on its power to carry out investigations and receive individual complaints. This makes fulfilling its monitoring functions more difficult. Since most measures adopted in connection with the state of crisis are regulatory acts and draft regulatory acts are not published (see above under checks and balances), it is not possible to assess the justification/proportionality of these acts. Most external meetings have been postponed. The CCDH thus heavily relies on the information available from its own members, the press, civil society and the government. It remains in close contact with its own members, civil society and ENNHRI, and regularly holds videoconferences with its members.

References

- First regulatory act declaring measures during state of crisis : http://legilux.public.lu/eli/etat/leg/rgd/2020/03/18/a165/consolide/20200320
- Criticism by President of the Press Council (https://www.rtl.lu/news/national/a/1497780.html) and by the association of journalists (https://www.woxx.lu/crise-sanitaire-et-droit-a-linformation-la-verite-est-la-premiere-victime/)

Malta

Relevant developments towards the establishment of a National Human Rights Institution

On July 2019, the Equality Bill on Human Rights and Equality Commission was presented to the Maltese Parliament, which would establish an NHRI. The Bill is being discussed before the relevant Parliamentary Committees. ENNHRI has supported the establishment of a Maltese NHRI and advised national actors in their efforts.

ENNHRI

Netherlands

Netherlands Institute for Human Rights

Independence and effectiveness of the NHRI

International accreditation status and SCA recommendations

The Dutch NHRI was accredited with A status in March 2014. Among other recommendations, the SCA encouraged the NHRI to advocate for the formalisation of a clear, transparent and participatory selection and appointment process.

The NHRI was up for reaccreditation in March 2020, but the session was postponed due to the outbreak of COVID-19.

Human rights defenders and civil society space

As regards **freedom of assembly**, under the Dutch Public Assemblies Act (wet openbare manifestaties) planned assemblies need to be pre-notified to the public authorities. The intention for this is to be a procedural requirement, i.e. merely to allow public authorities to assess security risks, and make arrangements in time. Such assessment however has, on occasion, also involved mayors checking the actual substantive contents of the planned assembly with a view to fulfilling the procedural requirement and led to a practice where the content has played a role in decision-making. In a recent report the NHRI drew attention to the crucial importance of assemblies that are critical and non-majority in contents and called upon the government to make sure that the Public Assemblies Act ensures the full fulfilment of the right to assembly. This is an issue that is often brought up by international monitoring bodies too regarding the Netherlands, e.g. the Human Rights Committee in its recommendations of July 2019. Even if this risk from slippage of procedural requirements into substantive assessment was acknowledged by the Dutch government in recent evaluations of the relevant law, and ongoing discussions of the government with mayors stress this point, this remains a matter of attention for the Dutch NHRI as long as the system of pre-notification remains in place.

Another issue which may be reported which affects civic space and human rights defenders is the high level of discriminatory remarks online (and offline), which seems to target religious and ethnic minorities, and women – as well as intersectional groups. Persons who express themselves publicly on the rights of these groups (including human rights activists, like activists against Black Pete) are also targeted. This affects people's behavior, including

by having a chilling effect on freedom of expression and participation in public debate (including in the media).

The annual report 2019 by the Dutch NHRI, currently being finalised, focuses on discriminatory behavior in the public sphere (on the street, restaurants, online, in one's area of living, in public transport, etc.) and how this effects the enjoyment of fundamental rights of others (including freedom of expression, respect for private and family life, religious freedom, freedom of movement and of course the right to be free from discrimination). This research shows that this is a severe and persistent problem in the Netherlands, and has an important impact on the enjoyment of fundamental rights. Experiences with discriminatory behavior sometimes result in people not feeling free to express themselves, or to avoid certain places at certain times, to dress differently (incl. religious dress). While the local and national authorities put in place a number of measures to address the issue, including the recent increase of the maximum penalty for hate speech and inciting discrimination and violence (increased from one to two years), more needs to be done. In the report the Dutch NHRI makes several recommendations on how to better protect the proper enjoyment of fundamental rights of everyone in the Netherlands.

References

- https://mensenrechten.nl/nl/publicatie/38662 ("Zolang we het maar eens zijn: Nederlanders over de vrijheid van meningsuiting en demonstratievrijheid" - "As long as we all agree: the Dutch about freedom of expression and the freedom to demonstrate")

Functioning of justice systems

In 2018 in our annual report the focus was on access to justice.

We commented on the government's measures already taken, and plans to do so even more in the future, to economize on the **right to have free (or at subsidized rates) legal assistance**, for instance for asylum seekers. Other organisations have also criticized the government's intended revision of the system on subsidized legal assistance. This resulted amongst others in demonstrations by attorneys (especially in the social domain, such as asylum law) and the call on lawyers from the Dutch Society of Lawyers (Nederlandse Orde van Advocaten) to strike in January 2020. This pressured the government into temporarily providing additional means for subsidized legal assistance. Nevertheless, it will continue with the implementation of the revision of the legal aid system.

We also warned in this report that the continuation of increase of **fees to start a procedure** will have negative consequences for several vulnerable persons and groups and might even result in an actual impossibility for them to have access to justice.

The government has a legal obligation to respond to our Institute's annual report within 60 days. It has thus far failed to do so.

References

- https://mensenrechten.nl/nl/publicatie/5d14b882b55daa48dd78b888(Jaarlijkse rapportage 2018: Toegang tot het Recht – "Annual Report 2018: Access to Justice")
- https://mensenrechten.nl/nl/publicatie/5dbaef86b55daa48dd78bd3a(vervolg brief aan de Vaste Commissie voor Justitie en Veiligheid over gesubsidieerde rechtsbijstand – follow-up letter to "the Permanent Committee on Justice and Security about subsidized legal assistance").
- https://zoek.officielebekendmakingen.nl/kst-31753-190.pdf(brief van de Minister van Rechtsbescherming aan de voorzitter van de Tweede Kamer over Rechtsbijstand – "letter of the Minster on Legal Protection to the chair of the Lower House of Parliament on Legal assistance")

In-focus section on COVID-19 measures

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

As a result of COVID-19 restrictive measures have been put in place to limit the spread of the virus. These have taken the form of both government level measures (such as closure of schools, bars, restaurants) and guidance (such as restricting the number of persons in any gathering, and directives to stay 1.5 meter apart) and a generic model regulation to be adopted simultaneously at the local levels, where most of the relevant competences are laid down (both at the municipalities and the so-called Veiligheidsregio's – Security regions). In combined form these measures limit a wide array of human rights, such as the right to education, the right to housing, the right to property, free movement of persons and freedom of religion.

The NHRI has acted particularly with regard to two aspects of the COVID-19 measures. First, it was involved in pressuring the government to ensure that **critical crisis communication** would also involve a real-time sign language professional to ensure also those Dutch citizens who are deaf could follow instantly. The Dutch NHRI has furthermore

emphasized the need for protection against domestic violence as part of the governments' approach on tackling COVID-19.

Secondly, at the request of the Minister of Health, the NHRI advised about proposals to use a **tracking app** to be installed on smartphones. Such an app would be intended to facilitate assisting health authorities in their law mandated research into the spread of infectious diseases and help them inform citizens who may have come into contact with others who turned out to be infected. In its advice the NHRI asked for attention for the user-friendliness of the app, its possible **discriminatory or stigmatizing effects** if its use by others than public authorities themselves would not be properly regulated and its **accessibility for persons with a disability or a chronic disease** (e.g. readability of the app for deaf people).

Currently, the Dutch government may be developing a new Act on Emergency measures, meant to assure (more) democratic legitimation for the measures mentioned above and the continuation of these measures for a (much) longer time than was expected at the beginning of the COVID-19 crisis .If this will result in a concrete proposition the NHRI intends to publish advice/comments. The NHRI also informs on the human rights aspects of the crisis by other means, like opinions and blogs on its website, academic channels, as well as social media.

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

COVID-19 has made **hearings in person** in equality cases temporarily impossible. There is currently an evaluation ongoing on how and under which conditions (some) hearings could be conducted through digital means.

Another important consequence of COVID-19 has been a **significant decrease in the number of citizens' notifications and complaints** that the NHRI receives.

ENNHRI

Poland

Commissioner for Human Rights

Independence and effectiveness of the NHRI

International accreditation status and SCA recommendations

The Polish NHRI was re-accredited with A status in November 2017. The SCA encouraged the NHRI to advocate for amendments to its enabling legislation to require a pluralistic composition in its membership and staff, and for changes that would guarantee, for Deputy Commissioners and staff of the NHRI stheir protection from legal liability for actions undertaken in good faith in their official capacity. The SCA also underlined the need for the provision of adequate funding to enable the NHRI to effectively carry out its mandate.

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

There have been no major changes in this respect within the national regulatory framework. Both the Constitution and the ordinary legislation ensure the Commissioner's independence from other state authorities. The Commissioner is not a government nominee, he is appointed by the bi-cameral Parliament, the nomination requires the consent of both the Sejm and the Senate. The legislation provides only for a limited accountability of the Commissioner to the Sejm. The Commissioner is obliged to present an annual information on his activities and the human rights situation in Poland. There are very limited grounds to dismiss the Commissioner before the expiry of his term of office. Apart from a voluntarily resignation, they are principally confided to medical reasons.

The political formation in power in Poland since 2015 remains disapproving of the Commissioner's work. The Commissioner is subject to **heavy criticism and pressure** from the ruling political majority and the pro-government media. The work of the Commissioner, his interventions, statements and opinions presented in the legislative process are frequently reported by the public media in a biased manner. For political reasons, the annual budget of the Commissioner's Office **does not safeguard the adequate funding**, corresponding to the scope of competences conferred on the Commissioner.

In this context, it is difficult for the Commissioner to carry out its duties and the impact of its work is very much restricted by the institutional and political environment in which it

operates. Regional mechanisms such as the European Commission's monitoring on the rule of law, may be further built on to have a greater influence on domestic developments in Poland. The Commissioner recognized a constant, supportive interest of European partners in Polish issues. The Commissioner will be appreciative for **further monitoring of the situation in Poland**, ensuring prompt legal and political reactions in cases of subsequent violations of the rule of law and the European standards, making clear statements, analyses and reports, organizing visits to Poland when possible, and meeting both Polish representatives and members of the civil society.

References

- Konstytucja Rzeczypospolitej Polskiej z dnia 2 kwietnia 1997 r., Dz.U. 1997, poz. 78, ze zm. (Constitution of the Republic of Poland od 2 April 1997, Official Journal 1997, No 78, Item 483)
- Ustawa z dnia 15 lipca 1987 r. o Rzeczniku Praw Obywatelskich, tekst jednolity: Dz.U. 2020, poz. 627 (Act of 15 July 1987 on the Commissioner of Human Rights, consolidated text: Official Journal 2020, Item 627)
- https://www.rpo.gov.pl/pl/content/budzet-rpo-vii-kadencji-informacja

Human rights defenders and civil society space

The ruling party has taken measures which indeed **restrict the capacity of NGOs and civil society to operate**. NGOs have **limited access to financial resources**, the available public financing is allocated by the government in a non-transparent and discretionary manner. The politicization of the public sphere also results in a reduction in funding from private actors.

The polarization of the media, and the pro-government stance taken by the public broadcasters limit NGOS' access to the public debate. The pro-government media, which embrace both the public media and some private media report in a manipulative manner on the work of those civil society activists and NGOs whose actions do not correspond to the ruling party ethical, ideological or political attitude. It particularly affects persons and organisations engaged in tolerance issues, LGBT problems and education on human sexuality. **Smear campaigns** by politicians and pro-government media affect a number of other social groups: judges, prosecutors, journalists, teachers, or medical staff.

They are instances **public assemblies** being *de facto* discouraged, e.g. by means of checking by the police of the identity of those involved. There is legislation in force allowing for the bringing a private law action to protect the good name (reputation) of the

Republic of Poland or the Polish Nation. These provisions are of concern from the perspective of the freedom of speech and could be used for political considerations; the action can be brought to court i.a. by a state body, the Institute of National Remembrance.

References

- https://www.rpo.gov.pl/pl/content/rpo-o-wyzwaniach-dla-ngos
- Ustawa z dnia 18 grudnia 1998 r. o Instytucie Pamięci Narodowej – Komisji Ścigania Zbrodni przeciwko Narodowi Polskiemu, tekst jednolity: Dz.U. 2019, poz. 1882 (Act of 18 December 1998 on the Institute of National Remembrance – the Commission for the Prosecution of Crimes against the Polish Nation; consolidated text: Official Journal 2019, Item 1882)

Checks and balances

The separation of powers has been **substantially disrupted**. The political authorities attempt to control the content of judicial decisions by taking **disciplinary and administrative measures against judges**. A number of cases concerning the Polish judiciary have been dealt with by the Court of Justice in the European Union, on the initiative of the courts themselves (references for a preliminary ruling) or of the European Commission (infringement proceedings). A case within the EU mechanism for the protection of Union values (Art. 7 TEU) is pending against Poland before the Council of the European Union.

Law-making in Poland has been distorted. Politically sensitive issues, including those relating to the justice system, are adopted without a proper legislative process and raise serious constitutional concerns. Legislation is often enacted in an unnecessarily expeditious manner, with no proper consultations and without taking into account critical opinions presented by numerous institutions and actors. In such cases, the rights of parliamentary opposition are frequently compromised. The ruling majority hinders the proper analyses of draft legislation, limits parliamentary debate, restricts the possibility of providing sufficient explanation for legislative amendments.

There is **no functioning genuine constitutional review**. The Constitutional Tribunal has been politicized, part of its composition has been established contrary to the Constitution as some members of the Tribunal were appointed to positions to which other judges were lawfully appointed before. Only persons associated with the ruling party are appointed to the Tribunal, including the prominent politicians, who have been actively participating in the introduction of unconstitutional changes in Poland. The Constitutional Tribunal is used

instrumentally to validate unconstitutional legislation (e.g. the Act on the National Council of the Judiciary) and to challenge the rulings of the Supreme Court and the Court of Justice of the European Union.

The political **accountability** as well as criminal responsibility of those in power have become illusory. A government-subordinate prosecutor's office does not take up or discontinue cases that are inconvenient for the ruling party.

Another key issue which relate to the very core of the democratic system of checks and balances and which emerged in recent weeks has been the **organisation of presidential elections**. The ruling majority, contrary to the clear medical reports and opinions, ignoring the threats to the health of voters and members of the electoral commissions, is determined to hold the elections at the original date by universal postal voting, amidst the COVID-19 pandemic, taking into account only its own political interest. There is currently no proper? nor proper legislation in place to hold elections that meet constitutional standards of universal, equal and direct elections, conducted by secret ballot. The freedom of assembly is de facto suspended, which makes electoral campaigning close to impossible. Conducting the elections in the current situation would **violate the right to free and fair elections**, threaten democracy in Poland, and undermine the democratic legitimacy of the person elected in such a defective electoral process.

The Commissioner has been constantly pointing out the above-mentioned problems in numbers submissions to national authorities, including letters to the executive bodies and opinions presented in the legislative process.

References

- Wojciech Sadurski, Poland's Constitutional Breakdown, Oxford 2019
- Laurent Pech, Patryk Wachowiec:1460 Days Later: Rule of Law in Poland R.I.P. (Part I and II), https://verfassungsblog.de/1460-days-later-rule-of-law-in-poland-r-i-p-part-i/, https://verfassungsblog.de/1460-days-later-rule-of-law-in-poland-r-i-p-part-ii/
- Paweł Filipek, Challenges to the Rule of Law in the European Union: the Distressing Case of Poland; Revista do Instituto Brasileiro de Direitos Humanos, No 17/18 (2018)
- Concerning presidential elections: https://www.rpo.gov.pl/pl/kategoria-tematyczna/wybory

Functioning of justice systems

The **threat to judicial independence** is the most serious issue for the Polish judiciary. Since gaining power in autumn 2015, the ruling party have been taking legislative, administrative and de facto actions to take control over the judiciary and, at the same time, to disable effective judicial control over its own activities. The political leadership has placed the **Constitutional Tribunal** and the **National Council of the Judiciary** under its de facto control. The **Supreme Court** was partly taken over by way creation of two new chambers, fully staffed with new members, from those associated with or supported by the ruling party, and nominated by the new National Council of the Judiciary.

The **judges of ordinary courts** are under constant pressure. They are criticized for making judicial decisions that does not meet the expectations of the government, pro-government media are conducting negative campaigns against them, the regime of disciplinary responsibility is activated for political reasons, as well as some administrative measures are put into place, e.g. suspension of a judge, transfer to another judicial department, etc.

Judicial associations and the civil society regularly protest opposes measures taken against judges. A number of initiatives in this area have also been carried out by the Commissioner for Human Rights, who has presented numerous opinions in the legislative process, addressed interventions to the executive bodies, in particular to the Minister of Justice, requested explanations from the disciplinary officers for judges.

The undermining of the independence and impartiality of judges **infringes the very essence of the right to a fair trial** guaranteed by the Polish Constitution, Union law and the European Convention on Human Rights. Thus the **effective judicial protection is at risk** in Poland. The fair trail guarantees of access to an independent and impartial court established by law are the subject of cases considered or pending before the Supreme Court, the Court of Justice of the EU, the European Court of Human Rights. The Commissioner intervenes in these proceedings, in particular by submitting written observations.

References

- "Muzzle Law" – Ustawa z dnia 20 grudnia 2019 r. o zmianie ustawy – Prawo o ustroju sądów powszechnych, ustawy o Sądzie Najwyższym oraz niektórych innych ustaw, Dz.U. 2020, poz. 190

Media pluralism

Political authorities are trying to **control public access to information** and especially the extent of information available to journalists, e.g. by prohibiting judges from providing information in court building, or currently forbidding medical staff from informing about aspects of the COVID-19 epidemic.

Journalists of **government-friendly media are treated more favorably** than other journalists, e.g. as regards accreditation for certain political events, access to information, access to political leadership for comments and interviews.

The **public media** do not respect journalists' standards, present information selectively, in one-sided, unreliable manner, mix information with political commentary, constantly promote politicians of the ruling majority, and present the opposition in an negative way.

The pro-government media are running **defamatory campaigns** against some private media.

References

- https://www.rpo.gov.pl/pl/content/rpo-do-krrit-materialy-tvp-o-tvn-budza-watpliwosci
- https://www.rpo.gov.pl/pl/content/koronawirus-rpo-czemu-rzad-pomija-gazete-wyborcza-w-kampanii-informacyjnej
- https://www.rpo.gov.pl/pl/content/koronawirus-ratowniczka-pogotowia-stracila-prace-za-opisanie-izolacji-kolegow
- https://www.rpo.gov.pl/pl/content/wprowadzone-procedury-w-sejmie-uniemozliwiaja-prace-sprawozdawcom

Corruption

Poland scored 58/100 (annual increase by 2 points) and was ranked 41 among 180 countries in 2019 International Transparency index. The **prosecution's lack of independence** from the executive and political power makes it difficult to investigate and prosecute corruption, especially when the suspected person is linked to the ruling government. A recent example is the investigation into the organisation of the presidential elections during the pandemic and endangering the life and health of many people, initiated by Public Prosecutor Ewa Wrzosek. It was discontinued immediately by the superior prosecutor, only after 2 hours since its launching. The discontinuance was unsubstantiated and decided without any genuine investigative actions being taken in the

case (case no. PR 3 Ds. 589.2020, District Prosecutor's Office Warszawa-Mokotów). Another example is the case of prosecutor Mariusz Krasoń of the District Prosecution Office in Kraków. He was transferred to a different department and then suddenly seconded to the Wrocław District Prosecution Office in relation to him pointing to threats to the independence of the prosecutor's office and indicating the pressure exerted on prosecutors.

References

- https://www.transparency.org/country/POL
- Jakub Kościerzyński, Justice under pressure – repressions as a means of attempting to take control over the judiciary and the prosecution in Poland.Years 2015–2019, Warszawa 2020, https://www.iustitia.pl/images/pliki/raport2020/Raport_EN.pdf
- http://lexso.org.pl/2019/07/07/open-letter-of-the-lex-super-omnia-association-of-prosecutors-to-the-national-prosecutor-on-the-harassment-of-prosecutor-mariusz-krason/
- http://lexso.org.pl/2020/04/24/stanowisko-stowarzyszenia-prokuratorow-lex-super-omnia-w-sprawie-naruszania-niezaleznosci-prokuratorow/
- http://lexso.org.pl/2018/06/07/dobra-zmiana-w-prokuraturze-raport-stowarzyszenia-prokuratorow-lex-super-omnia/

In-focus section on COVID-19 measures

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

The Polish government has adopted **radical measures** to combat the threat of an epidemic, deeply interfering with individual rights and freedoms, including freedom of movement and home restrictions; temporary bans on staying in parks, entering forests, etc. Access to health care for other illnesses has been drastically reduced, access to physicians has been very difficult, numerous planned operations and medical procedures have been cancelled. In general, assembling is not allowed; freedom to religious worship is restricted; right to a fair trial within a reasonable time is limited; private and family life is interfered with; the protection of personal data becomes a problem when collecting information on geo-location of persons; access to education is restricted especially for children who do not have technical means to participate fully in on-line class activities. The Commissioner has made numerous interventions in this area. The lawfulness of some measures was called into question, e.g. the prohibition of movement except for urgent living needs, a complete prohibition of unaccompanied movement of persons under 18 years of age, or quarantine

for persons returning from abroad. No adequate legal basis was indicated for them. The procedure for their adoption was questionable, e.g. adopted by a body other than the one with the authority to do so, introduced at the last minute.

The restrictions are being frequently changed. Many of the measures introduced were drafted in vague and imprecise terms. Many of these can be considered excessive, too broad, unjustified by legitimate needs, disproportionate. They leave a large degree of discretion to the law enforcement officers.

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

The Office of the Commissioner has adapted to the state of the epidemic. About 80% of employees work from home, or on-line, fully performing their tasks. Indeed, citizens' access to the Ombudsman has been made to some extent more difficult, since electronic means of communication, especially e-mail, have become the main form of contact.

References

- https://www.rpo.gov.pl/pl/kategoria-tematyczna/koronawirus-i-epidemia-w-polsce

ENNHRI

Portugal

Portuguese Ombudsman

Independence and effectiveness of the NHRI

International accreditation status and SCA recommendations

The Portuguese Ombudsman was last reaccredited with A status in November 2017. While acknowledging that the selection and appointment process is governed by the Parliament's rules of procedure, the SCA recommended the formalization of the process in relevant legislation. Also, the SCA encouraged the NHRI to advocate for the legal provision for an independent and objective dismissal process of the NHRI's deputies.

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

No significant changes took place.

All guarantees of Independence are still in force.

According to the Constitution (Article 23 (3)) and the Statute (Article 1 (1)), the Ombudsman is an independent State body elected by the Parliament. This means that the Ombudsman cannot receive instructions from any other body, institution or entity, including the Government. The practice confirms the complete respect, namely by public authorities, regarding the independence and integrity of the Ombudsman institution in the performance of its duties.

The Ombudsman's budget is part of the Parliament's budget and the Ombudsman reports its activities annually to the Parliament. However, even as for the relationship between the Ombudsman and the Parliament, it should be underlined that the Portuguese Ombudsman does not incorporate the legislative power – it is neither a parliamentary body, nor an ancillary body to the Parliament.

As far as the avoidance of conflict of interests is concerned, the Statute determines that the appointment as Ombudsman may only fall upon a citizen who, besides meeting the conditions required for being elected a Member of the Parliament (MP), enjoys a well-established reputation of integrity and independence. Moreover, Article 11 of the Statute stipulates that the incumbent shall be subject to the same incompatibilities that apply to court of law judges in office (paragraph 1) and prohibits him/her from holding any position

within the bodies of political parties or associations, as well as from engaging in any public political party activities (paragraph 2).
The Portuguese Ombudsman is also endowed with a set of other important personal, institutional, functional and organisational guarantees, provided for by the law and that cement and strengthen the independence and autonomy of the institution.

References

- Portuguese Republic Constitution
- Legal Statute of the Portuguese Ombudsman
- http://www.provedor-jus.pt/?idc=81

Human rights defenders and civil society space

The Portuguese Ombudsman considers that there are no laws, measures or practices that could negatively impact on civil society space and/or reduce human rights defenders' activities in Portugal.

After the establishment of democracy in Portugal, fundamental rights to freedom of expression (Art.37) , freedom of assembly and of association (Art. 46) , freedom of demonstration (Art. 45), and right to participate in public life (Art. 48) were enshrined as rights, freedoms and guarantees in the Constitution.

Civil society participation gained a strong dynamism in several areas through the foundation of unions and solidarity, humanitarian, cultural, sports and recreation associations. With the entry of Portugal into the then European Economic Community, there was an increase in the number of organisations, namely associations, foundations and cooperatives. In more recent years, Portuguese society has experienced the increase of social movements (organic and inorganic), although less expressive than in other countries.

Portugal has a deep-rooted democracy and it is safe to affirm that the political context doesn't present particular risks to the autonomy and security of NGO's operating in the country and for human rights defenders. However, regarding the economic context – being Portugal a peripheral economy within the EU, and, for that reason, more exposed to negative shifts that may occur in the region – the **availability of public and private funding and the reduced diversity of funding sources** represents a very important challenge for NGOs .

NGOs which are qualified as "cooperation and development NGOs", are especially protected by the Portuguese Law, due to their recognized role in the design and implementation of social, cultural, environmental, civic and economic programs, namely in humanitarian assistance, emergency aid and protection and promotion of human rights. They have a special legal statute.

NGOs which are duly registered may be inspected by the government, namely in what regards the use of public funds and tax obligations. Specific legislation on associations representative of women, migrants, youth, persons with disabilities and involved in environmental protection was also enacted. This recognition is particularly evident in the relevance given to these associations in the establishment of national action plans and strategies that provide concrete measures to fulfil State's responsibilities under the Constitution, international obligations and the law. Some of these plans set forth important tasks and measures for NGOs. There are several examples action plans that considerably rely on the participation of NGOs and in the work developed by human rights defenders in order to accomplish their goals.

Universities enjoy full academic autonomy and freedom of speech is fully protected by the Constitution.

In the Rule of Law Index 2019, Portugal scored 78% of civic participation, 81% of freedom of expression, 86 % of freedom of association. Limits of freedom of expression are enshrined in the Criminal Code, and are limited to hate crimes. As for freedom of association, the Constitution does not allow armed or military associations, nor racists or fascists organisations.

In State of Emergency any limitation of freedom of press must respect the proportionality principle and cannot evolve any form of censorship. Also, the freedom of association of political parties cannot, under any circumstance, be limited.

References

- Provedor de Justiça," Impact on NGO activities, particularly humanitarian efforts targeting refugees and other migrants, of changing criminal law approaches or provisions in Council of Europe Member States", 2019, available at: http://www.provedor-jus.pt/site/public/archive/doc/Criminalisation_of_NGOs_Activities2.pdf
- Provedor de Justiça. "Questionnaire to Special Rapporteur on the situation of human rights defenders", 2018, available at: http://www.provedor-jus.pt/site/public/archive/doc/2018_Human_Rights_Defenders.pdf
- World Justice Project, Rule of Law Index, 2019, p. 124.
- State of Emergency Law, https://dre.pt/application/conteudo/552035

Checks and balances

The Portuguese Constitutional system provides a **strong and serious regime of checks and balances** between the several sovereign branches. The judiciary, through the Constitutional Court, controls the constitutionality of Law. The Government may respond politically before the Parliament. The Parliament may be dissolved by the President of the Republic when it is justified on the grounds of rule of law and the democratic principle, and the Council of State must always be heard. The same applies to the Governments destitution. The Government holds legislative powers (through Decree-Laws), but there are certain subjects there are reserved to the Parliament's legislative competence. The Constitutional Court may declare the constitutionality of governmental acts that have breached this division of competences.

The Portuguese Ombudsman has the competence to **request a constitutionality review of laws** – either enacted by the Parliament or by the Government. It may proceed to such requests either due to breach of a competence norm or legislative processes' norm, or because a certain law may be considered as substantially unconstitutional. The Ombudsman has indeed exercised this competence several times – namely because of substantial reasons (e.g., data protection law and principle of privacy).

Moreover, the Ombudsman has also the competence to make **recommendations to the Parliament.** Also this competence has been used lately, namely as regards possible amendments of laws, on the grounds on fundamental rights.

According to the Portuguese State of Emergency Law, during the declaration of a state of emergency, the Ombudsman remains fully in functions. The Ombudsman is, then,

particularly vigilant as regards any possible abuse of power due to the special scenario were the Executive branch's powers are strengthened.

In the Rule of Law Index, Portugal has the following scores on constraints on Government Powers:

- Limits by legislature – 84%
- Limits by Judiciary – 77%
- Independent Auditing – 76%
- Non-governmental checks – 81%
- Lawful transition of power – 93%

Its global "Rule of Law" rank is of 22/126.

References

- Portuguese Constitution
- Legal Statute of the Portuguese Ombudsman
- http://www.provedor-jus.pt/?idc=81
- Act on the State of Emergency: https://dre.pt/application/conteudo/552035
- Request to the Constitutional Court on data protection in the context of electronic communication systems - https://www.provedor-jus.pt/site/public/archive/doc/2019_08_26_Q_7746_2017_Tribunal_Constitucional.pdf
- World Justice Project, Rule of Law Index, 2019, p. 124.

Functioning of justice systems

The Ombudsman has competence to intervene in what concerns administration of Justice. This encompasses access to courts, legal aid, access to lawyers, delays on judicial procedures, etc. The Ombudsman does not intervene as amicus curiae, nor can it challenge or make any recommendation or suggestion the merits of judicial decisions.

During 2018, the Ombudsman received 488 **complaints** as regards administration of justice. Of these, 276 were related to **delays in justice,** mainly due to the judiciary (there were also complaints as regards Public Prosecution, Solicitors, Insolvency administration, Forensics Medicine). Citizens often complain also about j**ustice costs and denial of legal aid**.

Indeed, one of the more serious problems in Portugal is, as confirmed by the 2019 Rule of Law Index, 2019, **delays in the justice system**. In this context, Portugal was already convicted several times by the European Court of Human Rights for breaching Article 6 of the European Convention on Human Rights. The Ombudsman intervenes, in particular, in cases where there were no doubts as to the unreasonability of the justice delay.

As for the Rule of Law index 2019, Portuguese legal experts pointed out the following achievements as regards Courts' work:

- Accessibility and affordability – 69%
- No improper government influence – 78%
- No unreasonable delay – 42%
- Effective enforcement – 52%

Recently, the Ombudsman has been advocating for an **effective access to justice for migrants who are detained**. Lawyers who had to visit their clients in the detention centres located in the international area of the airport have to pay a fee of 11 euros. The Ombudsman considered that this practice would amount to a breach of the right to access to lawyer, and has developed a dialogue with the airport authority to overcome this obstacle. A solution however could not be found. The right to Justice is also severely impaired in the context of detention of migrants as regards access to Courts to ask for the judicial review of detention. Any deprivation of liberty that lasts for more than 48 hours has to be duly authorized by a judge. However, the practice in these airports is to simply inform the Court, by fax or email, on the detention. The Court authorizes this detention by the same means, without hearing the detainee. The Ombudsman has already claimed as well that this practice may go against the right to justice, namely before UN bodies.

References

- Portuguese Ombudsman Annual Report, 2019, http://www.provedor-jus.pt/site/public/archive/doc/Relat2018_0.pdf
- Alternative Report of The Portuguese Ombudsman on the Implementation of the Convention on the Rights of the Child in the Process of Review of the Fifth and Sixth Periodic Report of Portugal, 2018, http://www.provedor-jus.pt/site/public/archive/doc/Rel_Alternativo_CRC.pdf

Media pluralism

Freedom of Speech and of Press are fundamental liberties deeply guaranteed in the Portuguese Constitution. According to the Study on "Journalists without borders", Portugal ranks the 10th place in the study 2020 World Press Freedom Index, among other 180 countries.

The Portuguese Ombudsman has not intervened in any case as regards freedom of press.

Freedom of expression is classified with an achievement of 81% in the Rule of Law index. Nonetheless Portugal has already been condemned several times by the European Court of Human Rights for sanctions applied for press publications on grounds of the **law on defamation**. The most recent ruling dated September 2019, where Strasbourg Court considered that the Portuguese authorities had not struck a fair balance between the right to freedom of speech and the right to private life.
Also in this context, the UN Human Rights Committee recommended, in 2020, to Portugal to consider decriminalizing defamation and, in any case, resorting to criminal law only in the most serious cases, bearing in mind that imprisonment is never an appropriate penalty for defamation.

References

- 2020 World Press Freedom Index, https://rsf.org/en/2020-world-press-freedom-index-entering-decisive-decade-journalism-exacerbated-coronavirus
- Human Rights Committee, Concluding observations on the fifth periodic report of Portugal, 2020, https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CCPR/C/PRT/CO/5&Lang=En
- ECtHR, Antunes Emídio v. Portugal and Soares Gomes da Cruz v. Portugal (applications nos. 75637/13 and 8114/14)

Corruption

The Ombudsman is part of the National Network for Open Administration, which belongs to the Open Government Partnership (OGP) - a multilateral initiative, formally launched on September 2011 by the Heads of State and Government of eight countries (South Africa, Brazil, United States of America, Philippines, Indonesia, Mexico, Norway and United Kingdom). The OGP aims to push forward for concrete commitments from governments to

promote transparency, empower citizens, fight corruption, and harness new technologies to strengthen participatory democracy. The Portuguese action plan features commitments related to improving citizen control over their data, open legislation, open administrative and environmental data and open contracting.

As for corruption, the Portuguese Ombudsman does not intervene, as this is a matter of criminal responsibility. In 2017, the Portuguese Courts convicted 112 person for having practiced this crime, whereas in 2018 the number of convictions was of 73.

According to the 2019 Rule of Law Index, the following scores were achieved as regards absence of corruption:

- In the executive branch – 66%
- In the judiciary – 88%
- In the police / military – 87%
- In the legislature – 48%

References

- World Justice Project, Rule of Law Index, 2019, p. 124.
- Open Government Partnership, https://www.opengovpartnership.org/members/portugal/

In-focus section on COVID-19 measures

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

On the 18th March 2020, the President of the Republic enacted the first state of emergency declaration. According to the Constitution, the State of Emergency has the maximum duration of 15 days, renewable.

Several fundamental rights were suspended, such as: a) the right to freely move and settle anywhere in the national territory; b) ownership and private economic initiative; c) rights of workers (who can be asked to work in different conditions and to different entities, as it is the case of health sector workers; e) exercise the right to strike insofar as it may compromise the functioning of critical infrastructures or health care units, as well as in economic sectors vital to the production, supply and supply of essential goods and services to the population; f) international circulation; g) right to assemble and demonstrate; h) freedom of worship, in its collective dimension and i) right of resistance. The second state

of emergency declaration added the suspension of the right to learn and teach, authorizing the necessary measures to prevent and combat the epidemic, including the prohibition or limitation of face-to-face classes, the imposition of distance learning by telematics, the postponement or extension of school periods, the adjustment of assessment. Data protection rights were also suspended by this second declaration, but in a very limited manner, as allowing that public authorities can determine that telecommunications operators send their customers written messages (SMS) with alerts from the Directorate-General for Health or other related to the fight against the epidemic.

The State of Emergency has, naturally, reinforced deeply the Executive's branch's powers. The Government has been very active, adopting rapidly several norms. Some of them would require, in normal times, approval by the Parliament. However, since they are aimed at applying the State of Emergency declaration, there is not an unconstitutionality problem. Moreover, the Government has been adopting several measures aimed at protecting the economy, workers and families.

The Ombudsman, as already mentioned, maintains its full activity during the State of Emergency. And it has been particularly vigilant. It has already issued **several recommendations**, namely as regards support to independent workers, or suspension of tax enforcement measures. It has also suggested the enlargement of the family-support work leave for the purpose of providing help to elderly ascendants. It was also one of the first authorities recommending some measures for relieving overcrowding of prisons. The Ombudsman also recommended to the National Health Authorities that quarantines should not be decided at regional level, but rather with national criteria, in order to guarantee the principle of equality.

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

On the 16th March, the Ombudsman Office's staff started to work from home. The transition was gradual and smooth, starting with the most vulnerable persons, followed by parents with children aged below 12 (after the schools' closure) and, finally, almost every worker. The Ombudsperson designated only a "task force" of very limited persons who still work from the Ombudsman Headquarters: besides the Ombudsperson herself, two members of the Cabinet, the two Deputy Ombudsmen, department coordinators, a public relations collaborator and two members of the accounting and staff departments.

All legal advisers that deal with complaints have remote access to their computers and, thus, to the IT program for complaints handling. Therefore, with some minor IT problems, the staff has been coping well with the new scheme. Staff is in permanent dialogue, so they

can share technical difficulties and good practices. As for phone calls, staff have forwarded all phone calls received in their office to their personal cell phones. Whenever they need to speak to the public entities or to complainants, they may call the Ombudsman Office, and the limited staff that remains therein may forward the call to the legal advisers, who may then, in case of need, talk to the complainants. The same is happening with the Hotlines, whose staff are also working from home. However, staff with young children report that it is difficult to have the same productivity while home-schooling children and without domestic help. This situation can be even more difficult when there is only one computer in the household and children need to assist to their classes through internet platforms.

Due to the public health crisis, the National Preventive Mechanism had to cease its monitoring activity. So, currently, visits to all places of deprivation of liberty are suspended. The NPM has been accompanying remotely (by phone, by email) the conditions of detention.

References

- First declaration of the state of emergency: https://dre.pt/application/conteudo/130399862
- Ombudsman Recommendation on prisons: http://www.provedor-jus.pt/?idc=136&idi=1824
- Ombudsman Suggestion on extension to lawyers and solicitors of support measures similar to those of self-employed workers: http://www.provedor-jus.pt/?idc=32&idi=18245
- Communication from the Ombudsman on quarantines decreed by regional bodies, http://www.provedor-jus.pt/?idc=32&idi=18246
- Note of the Ombudsman on exceptional and temporary justified absences motivated by family assistance http://www.provedor-jus.pt/?idc=32&idi=18232
- Ombudsman Suggestion on suspension of tax enforcements: http://www.provedor-jus.pt/?idc=136&idi=18254

ENNHRI

Romania

Romanian Institute for Human Rights

Independence and effectiveness of the NHRI

International accreditation status and SCA recommendations

The Romanian Institute for Human Rights (RIHR) is a non-accredited associate member of ENNHRI. It had been previously accredited with C status, which is no longer a valid accreditation status. The Romanian Institute has a strong promotional mandate and has been addressing a wide range of human rights in Romania.

In 2020, the Romanian Ombudsman (which is not an ENNHRI member and is not accredited) and the Romanian Institute both applied for accreditation. The request for accreditation of both bodies is being processed by the SCA, in accordance with its Rules of Procedures.

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

Law no. 9 of January 5, 2018, for the amendment and completion of Law no. 35/1997 on the organisation and functioning of the **Ombudsman institution**, published in the Official Journal no. 17 of January 8, 2018, and entered into force on January 11, 2018, has modified the framework of existing human rights institutions at the national level as the Ombudsman **extended its mandate** by introducing, in the text of Article 1, the following paragraph: "(1^1) The Ombudsman is a national institution for the promotion and protection of human rights, within the meaning of United Nations (UN) General Assembly Resolution 48/134 of 20 December 1993, through which the Principles of Paris were adopted."

Moreover, a new article 12^1 was introduced, providing that "The department for the defence, protection and promotion of the rights of the child is coordinated by a deputy of the Ombudsman, hereinafter referred to as the Ombudsman for Children".

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

Currently, a new bill amending Law no. 9/1991 on the establishment of the **Romanian Institute** for Human Rights (1) has **entered the legislative procedure** on February 24 in the Chamber of Deputies, as the first chamber notified. On April 23 it has received a

favourable opinion from the Committee for Human Rights, Cults and Minority Issues, **and it was adopted by the Chamber of Deputies on April 30(2). Currently the bill is going through the legislative procedure in the Romanian Senate (3)**. The law is part of the category of organic laws, and, in this situation, the Romanian Senate is the decision-making chamber.

The bill considers the **clarification of the mandate and attributions of RIHR in relation to the recommendations received from SCA in 2011** and also in relation to the recommendations to the Romanian State from the UN mechanisms (4) to ensure that its national human rights institutions fully comply with the Paris Principles and from the Council of Europe Commissioner for Human Rights (5) including clarifications on the competencies of each of its institutions.

Among others, the bill provides at art. 2 (1) that "RIHR aims to promote and protect human rights, in accordance with the Paris Principles adopted by United Nations General Assembly Resolution A/Res/48 of December 20, 1993". Article 3 of the new bill also provides competences in coordinating training programmes in the field of human rights, providing opinions at the request of parliamentary committees on bills or other issues regarding human rights which are examined in the Parliament, conducting research on various aspects in the promotion and respect of human rights in Romania and at international level, according to art. 3. In the elaboration of this bill, the consultations carried out in 2018 between RIHR and the ENNHRI secretariat were also taken into account.

In the light of the mandate provided by Law no. 9/1991, RIHR can provide documentation, at the request of Parliament's committees, on human rights issues in bills and other issues examined in Parliament. During 2019 the Institute has not been notified by parliamentary committees on issues regarding bills or practices that could erode the separation of powers, participation of rights holders, and the accountability of State authorities. However, the Institute carried out its activity of following the legislative process and analysed regulations with an impact on human rights. This activity is the subject of a report on the progress of legislation in 2019, a report that will be published in May 2020. We present below regulations that drew our attention and have been analysed by the Institute.

References

(1) http://www.cdep.ro/pls/proiecte/upl_pck.proiect?cam=2&idp=18371
(2) http://www.cdep.ro/pls/proiecte/docs/2020/cd.70_2020_(v.2).pdf
(3) https://senat.ro/legis/lista.aspx?nr_cls=L266&an_cls=2020
(4) http://docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=6QkG1d%2fPPRiCAqhKb7yhsgirNvmVtlWih6EAP3cRxa2fvnByGzSLQiYaENfauBq7AHQ3e7Quu1cEM8SvLkTQrT1X%2bhjuSrAluCpVoy77fM%2baaWs0vvRddgzjRWx024e
(5) https://rm.coe.int/16806db83b

Human rights defenders and civil society space

The way Romania transposed EU **rules on combating money laundering and terrorist financing** could have an impact on civil society organisations.

Directive (EU) 2015/849 of the European Parliament and of the Council of 20 May 2015 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing, amending Regulation (EU) No 648/2012 of the European Parliament and of the Council, and repealing Directive 2005/60/EC of the European Parliament and of the Council and Commission Directive 2006/70/EC ((Text with EEA relevance) has been implemented at the national level by a set of regulations, the most recent being Law no. 129 of 11 July 2019 on the prevention and combat of money laundering and terrorist financing, as well as to amend and supplement some legal acts. (1)

Directive 2015/889 lays down in Art. 4(2) and 5(3) the possibility for Member States to extend the scope of the directive to prevent money laundering and/or terrorist financing.

By transposing this Directive, by Law no. 129/2019, the state adopted regulations which could lead to a misapplication of European rules. As an example, article 1, paragraph 1 of Law no. 129/2019 is limited to an illustrative, not an exact, list of entities that are subject to the legal provisions. (4)

At the same time, the provisions referring to real beneficiaries, within the meaning of Law no. 129/2019 (article 4) may lead to the possibility of a discretionary identification. The wording of article 4, paragraph 2, of the aforementioned law, which provides that "The concept of a real beneficiary includes at least", may lead to the possibility to infinitely extend the range of real beneficiaries, as well as to the risk of being an impossible task for reporting entities.

The **inclusion of NGOs as reporting entities** although possible under the provisions of art. 5, paragraph 1, letter "i"(5), calls for the adoption of regulations that are necessary to ensure the link with the provisions of Government Ordinance no. 26/2000 on associations and foundations. The clarifications provided by Chapter XI - Provisions regarding the modification and completion of some normative acts, at article 53, are insufficient to fully correlate the two legal acts. If this is not the case, the provisions of Law no. **129/2019** would not be applicable to NGOs, in the absence of a coherent legal framework, as some organisations have already indicated (6).

References

(1) Published in Romanian Official Journal no. 589 of 18 July 2019.
(2) 1. Member States shall, in accordance with the risk-based approach, ensure that the scope of this Directive is extended in whole or in part to professions and to categories of undertakings, other than the obliged entities referred to in Article 2(1), which engage in activities which are particularly likely to be used for the purposes of money laundering or terrorist financing. 2. Where a Member State extends the scope of this Directive to professions or to categories of undertaking other than those referred to in Article 2(1), it shall inform the Commission thereof.
(3) Member States may adopt or retain in force stricter provisions in the field covered by this Directive to prevent money laundering and terrorist financing, within the limits of Union law.
(4) This law sets out the national framework for preventing and combating money laundering and terrorism financing, which includes, but is not limited to, the following categories of authorities and institutions (...)
(5) "other entities and natural persons who market, as professionals, goods or provide services, insofar as they carry out cash transactions whose minimum limit represents the equivalent in lei of 10,000 euros, whether the transaction is executed through a single operation or through several operations that have a connection between them(...)"
(6) https://www.apador.org/ong-urile-intre-dizolvare-si-dosar-penal-din-cauza-unei-legi-ambigue/

Checks and balances

According to the provisions of Article 61 (1) of the Romanian Constitution, the Romanian Parliament is the supreme representative body of the Romanian people and the sole legislative authority of the country. Through legislative delegation, provided by article 115, paragraphs 1-3, legislative power can be passed to the Government under certain limits and on certain fields, established by Parliament. The Parliament may adopt a special law to enable the Government to issue ordinances in fields outside the scope of organic laws. The enabling law shall compulsorily establish the field and the date up to which ordinances may

be issued. If the enabling law so requests, ordinances shall be submitted to Parliament for approval, according to the legislative procedure, until the expiry of the enabling time limit. Non-compliance with the term entails discontinuation of the effects of the ordinance.

A **special enabling law** was adopted in 2019 (Law no. 4/2019) by which the executive was invested with the power to issue ordinances in fields not regulated by organic laws such as public finances and economy, public administration and rural development, transport, European funds and health. According to the explanatory note of Law no. 4/2019, enabling the Government to issue ordinances in fields that do not fall in the scope of organic laws allow the Parliament to ensure the continuation of the legislative process in case of Parliamentary recess. Through legislative delegation, the Government is allowed to legislate for a limited time period and in fields expressly provided by the enabling law. The law was applied until 31 January 2019. In its annual report on the national legislative progress for the year 2019, RIHR draws attention to the fact that, to strengthen the attributions of the legislative power, **delegation should be applied with care in order to ensure the principle of the separation of powers**, which does not imply strict segregation of the powers of the state but balance and cooperation. Under these conditions, legislative delegation should be applied as an exception and for limited periods of time.

Functioning of justice systems

Access to justice as regards data collection and surveillance for national security purposes

One area where issues related to access to justice can be raised is **data collection and surveillance** for the purpose of protecting national security. According to art. 1(5) of the Constitution "In Romania, the observance of the Constitution, its supremacy and the laws shall be mandatory." At the national level, in 2019, the provisions of article 22, par. d), of the Law no. 51/1991 on national security, republished in 2014 (1), were criticised. According to the provisions, "anyone who considers that their fundamental rights or freedoms were violated as a result of the activities specific to the collection of information carried out by intelligence bodies or by those with attributions in the field of national security may address, according to the law, the parliamentary committees or judicial bodies, as follows: [...] d) judicial bodies, by filing complaints and lodge appeals according to the Code of Criminal Procedure.

This provision contravenes the principle of accessibility considering that complaints and appeals provided by the Code of Criminal Procedure refer to certain situations, expressly provided by the Code and they do not refer to aspects on the activities specific to the

collection of information carried out by the intelligence bodies or by those with attributions in the field of national security.

Procedural rights of suspects and accused

Moreover, there are certain delays in transposing the following EU directives on **procedural rights of suspects and accused**, with an impact on access to justice:

- Directive (EU) 2016/343 of the European Parliament and of the Council of 9 March 2016 on the strengthening of certain aspects of the presumption of innocence and of the right to be present at the trial in criminal proceedings (transposition deadline: April 1st, 2018);
- Directive (EU) 2016/800 of the European Parliament and of the Council of 11 May 2016 on procedural safeguards for children who are suspects or accused persons in criminal proceedings (transposition deadline: 11 June 2019);
- Directive (EU) 2016/1919 of the European Parliament and of the Council of 26 October 2016 on legal aid for suspects and accused persons in criminal proceedings and for requested persons in European arrest warrant proceedings (transposition deadline: 25 May 2019).

Access to justice issues in the complaints received by RIHR

Although the mandate of the Institute does not include receiving petitions and carrying out investigations, the aim of the Institute is to ensure a better knowledge of human rights. In that sense, RIHR provides assistance and guidance to petitioners, taking the necessary steps in relation to public authorities/institutions in order to resolve correctly and efficiently any submitted petition. Moreover, RIHR offers guidance in accessing and filling in the application form to the European Court of Human Rights, as well as the way to refer the matter to the competent courts at national level.

4.5% of the written submissions received by the Institute in 2019 referred to aspects on the **access to justice**. The petitions regarding judgments of courts had as object the dissatisfaction of the petitioners regarding: adopted decisions, the way of fulfilling the duties by members of the judiciary and judicial staff, the correctness, independence and impartiality of the magistrates. In the case of petitions notifying acts regarding the poor activity of magistrates, they were forwarded to the competent authority. (2)

Persons deprived of liberty complained of inhumane conditions of detention, abusive behaviour of staff employed in detention centres, arbitrary decisions ordering the transfer from the detention unit where they were assigned to another detention unit, much further

away from the place of residence and family, the inappropriate treatment of detainees in hospitals in detention centres. Also, the persons serving a custodial sentence requested the Institute, pursuant to Law no. 544/2001 on free access to information of public interest, explanations on the requirements to be met in drafting applications to the European Court of Human Rights, as well as on the conditions of admissibility of the application to the European Court of Human Rights.

Both the convicted persons and free citizens submitted petitions to the Romanian Institute for Human Rights whose object consisted in requesting legal assistance and representation before the courts in pending cases. In the assessment of these petitions, in accordance with the mandate assigned by Law no. 9/1991, the Romanian Institute for Human Rights provided consultancy, informing the petitioners on the provisions of Law no. 51/1995 for the organisation and practice of the lawyer's profession.

With regards to the abuses committed by the public authorities in relation to the citizens, the cases of **defective investigation of some crimes or offences** by the local police units, as well as allegations made by litigants regarding **illegal acts committed by the authorities during the trials**, the Institute collaborated with the General Inspectorate of the Romanian Police and with the County Police Inspectorates, redirecting to them the petitions in which these issues were notified.

Starting from 2017, RIHR has created a working group aimed at **preventing and combating violence against women** and the implementation of the CEDAW Committee recommendations following the assessment of the Country Reports no. 7 and no. 8 (including women`s access to justice, strengthening the capacities of judges, prosecutors, lawyers and police officers on the strict implementation of regulations incriminating violence against women). The Working Groups of 2017-2019 were attended by experts in various fields that intersect with the phenomenon of violence (police officers, judges, social workers, psychologists), representatives of the National Agency on Equal Opportunities for Women and Men, as well as NGO`s working in this field (Women`s Association in Romania - Împreună (Together), Romanian Rural Women's Association, ANAIS, SOLWODI - solidarity with women in distress, etc)

Trainings relevant to access to justice offered by the RIHR

During 2019, RIHR organised training sessions on various topics, bearing in mind the activity of law-enforcement authorities. Thus, at the Institute of Studies for Public Order a module on the "**Prevention of torture and inhuman or degrading treatment or punishment**" was held. The participants consisted of staff of Detention and Preventive

Arrest Centres. The course covered four topics: Introduction to Human Rights. Protection instruments, mechanisms and systems, in particular the European Convention on Human Rights. Inhuman or Degrading Treatment or Punishment. European Court of Human Rights case-law. The 8-hour module will be a part of the schedule of classes of the Institute of Studies for Public Order for year 2020, which aims to train 200 participants in 8 months.

Within the series of courses addressed to the staff of the Border Police, initiated as a collaboration with the specialists of the Romanian Institute for Human Rights and three structures of the Ministry of Internal Affairs - General Anticorruption Directorate, General Inspectorate for Immigration and Territorial Inspectorate of Border Police - the RIHR held the training course: **Human rights in the context of illegal immigration**, in three border police inspectorates: Timișoara, Giurgiu and Constanța - Coast Guard. The course included general issues related to the history of human rights, categories of rights, obligations of the authorities, police responsibilities in a democratic system, migrants' rights, analysis of public international law documents, as well as case studies.

The Romanian Institute for Human Rights organised **training courses for lawyers** of the Bucharest Bar Association (February 14 and 21, 2020) on the convergence of the provisions of the Convention for the Protection of Human Rights and Fundamental Freedoms and the Charter of Fundamental Rights of the European Union, as well as the convergence between judgements of the ECtHR and CJEU on cases concerning the protection of fundamental rights and freedoms. Also, during these courses, assessments were carried out on equality and non-discrimination in relation to specific cases. The provisions of the CEDAW Convention on equality and non-discrimination were also taken into account in the presentations.

References

(1) Republished in the Romanian Official Journal no. 190 from March, 18, 2014
(2) By virtue of art. 97, 100 and 101 of Law no. 303/2004, republished, regarding the status of judges and prosecutors, in case the magistrates violate the professional obligations in the relations with the litigants or commit disciplinary offenses, the Superior Council of Magistracy is notified.

Media pluralism

The national framework in the field of media could be improved to ensure the independence of journalists considering a **lack of regulations on the legal statute of journalists**. The National Audiovisual Council is the autonomous administrative authority under parliamentary control that guarantees the public interest in the field of audio-visual communication, regulated by Law no. 504/2002 (1). Law no. 504/2002 does not specifically regulate the legal status of journalists, respectively their rights and obligations that may be taken on and exercised in practising the journalism profession. An important step in this direction was the adoption, in October 2009, at the Convention of Media Organisation, of the Single Deontological Code establishing rules and principles for exercising the specific attributions of the profession. Considering the legal nature of the Convention of Media Organisation (an informal coalition consisting of journalists` and professional`s associations in the media), the document is not mandatory from a legal point of view, as it is a programmatic document. The lack of regulations at the national level on the legal-professional status of journalists may affect, under certain circumstances, pluralism and freedom of the media.

References

(1) Published in the Romanian Official Journal no. 534 from July 22nd, 2002

Corruption

In order to prevent and combat corruption, it is necessary to establish and regulate, through appropriate legal instruments, specialised mechanisms to achieve this goal.

Starting from this legislative requirement, the provisions of Art. 87, paragraph 2 of Law no. 304/2004 on the organisation of the judiciary were the object of a request of review of constitutionality submitted in 2019 by the Romanian Ombudsman. In essence, the legal provisions of art. 87 (2) of Law. No. 304/2004 refer to **eligibility criteria for candidates for prosecutors of the National Anticorruption Directorate** (to be appointed within the national anti-corruption Directorate, prosecutors should have not been disciplinary sanctioned, should have a good professional training, unpaired moral character, at least 6 years of service as prosecutor or judge and declared to have been admitted following a competition organised by the Commission established for this purpose). The Romanian Ombudsman notes that the conditions that candidates must fulfil for the position of

prosecutor do not include, *expresis verbis,* being specialised in the area of corruption acts.(1)

Another step taken at the national level to combat corruption within public administration and business environment was the adoption of Law. 59/2019 amending and supplementing Law. No. 161/2003 on certain measures to ensure transparency in the exercise of public office and standing and in the business environment, the prevention and sanctioning of corruption (2). Law no. 59/2019 introduces art. 77 which regulates, by referring to another provision, **conflicts of interests among presidents and vice-presidents of county councils or local and county councillors**: *"conflicts of interest for the presidents and vice-presidents of the county councils or the local and county councillors are provided in art. 46 of the Law on local public administration no. 215/2001, republished, with subsequent amendments and completions."*. Article 46 of the Law on local public administration no. 215/2001 provides two aspects: (1) a state of incompatibility (the local councillor who, either personally or through a spouse, in-laws or relatives up to and including the fourth degree, has a patrimonial interest in the matter submitted to the local council debates may not take part in the deliberation and adoption of decisions ...) and (2) the sanction corresponding to the incompatibility (the decisions adopted by the local council in violation of the provisions of par. (1) are null and void. The nullity is established by the administrative courts. The action can be lodged by any person concerned). The introduction, through Law. 59/2019, of the state of incompatibility as a category of corruption acts is a positive aspect in the process of preventing and combating corruption, the sanction is too mild; the efficiency of regulations in the field of justice is correlated to a rigorous sanctioning system.

References

(1) http://www.avp.ro/exceptii2019/exceptia12_2019.pdf
(2) Published in the Romanian Official Journal no. 268 of April 9, 2019

In-focus section on COVID-19 measures

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

In the context of the COVID-19 pandemic, national authorities have adopted a set of legislative and institutional measures to address the challenges affecting the functioning of society. Decree no. 195/2020, introduced the **state of emergency** at the national level, and

it established the conditions and limits of restriction of civil rights and freedoms specific to the most important sectors of activity (medical, educational, social, etc.). These measures were maintained by Decree no. 240/2020. The implementation of provisions in presidential decrees is done according to Government Emergency Ordinance no. 1/1999, amended and supplemented as well by Government Emergency Ordinance no. 34/2020.

The impact of the state of emergency at the national level on the rule of law can be observed through the regulations introduced in the field of justice. According to art. 63, para. (1), first thesis of Decree no. 240/2020, during the state of emergency, the court activities continue in cases of utmost urgency. The aim of the measure was to avoid the overburdening of courts; thus, it refers to limiting cases which are not urgent. During the state of emergency all procedural and prescription time limits have also been suspended by operation of law which implies a mitigation on the restriction of rights, if the measures are analysed as a whole. Moreover, from a procedural point of view, the rights to be examined by courts do not become obsolete.

The Emergency Ordinance no. 34/2020 and of Government Emergency Ordinance no. 1/1999 were contested in the Constitutional Court by the Romanian Ombudsman (1) regarding the lack of clarity and predictability of the provision on sanctions adopted to implement measures specific to the state of emergency. According to art. 1 of Emergency Ordinance no. 34/2020, art. 28 of Government Emergency Ordinance no. 1/1999 shall be modified as follows:

(1) Failure to comply with the provisions of art. 9 shall be considered contravention and shall be sanctioned with fine of 2.000 – 20.000 lei for natural persons and a fine of 10.000 – 70.000 lei for legal persons (...).

The military ordinances adopted for the purpose of instating immediate measures to prevent and combat the spread of COVID-19 establish disciplinary, civil, administrative or criminal sanctions **without indicating the acts which may lead to the application of such sanctions**. The use of the general wording "Failure to comply with the provisions of art..... shall be subject to disciplinary, civil, administrative or criminal liability" do not comply with the standards of clarity and predictability that must characterise any legal provision. It is necessary to define the acts that may result in specific sanctions.

Considering the lack of predictability of the legal provisions and the infringement of the principle of legal certainty, law-enforcement agents cannot act on the basis of objective criteria; in the activity of ascertaining disciplinary, civil, administrative or criminal offenses, law-enforcement agents have to resort to their own (subjective) criteria for interpretation

and implementation of the legislation - a fact that is likely to give rise to the discretionary implementation of legal provisions.

The Government could have provided more transparency regarding the measures adopted during the COVID-19 pandemic. The Government Emergency Ordinance no. 34/2020 amending and supplementing Government Emergency Ordinance no. 1/1999 on the state of siege and the state of emergency introduces art. 33(1) according to which *during the state of siege or state of emergency, the legal provisions regarding decision-making transparency and social dialogue do not apply in the case of bills establishing measures applicable during the state of siege or state of emergency or which are a consequence of the establishment of these states*. The principles of decision-making transparency and social dialogue are essential for monitoring the work of public institutions. Having regard to the issues raised in connection to the establishment of the state of emergency at the national level, as reflected above, the RIHR would consider appropriate the adoption at the European level of statements of principle to guide the state activity, in order to comply with the essential conditions of the rule of law.

The RIHR has issued a note regarding the impact of COVID-19 pandemic on human rights and freedoms. It states that national authorities should manage the crisis not only from a strategic and economic point of view but also with due regard for ensuring and protecting everybody's human rights. All measures taken by national authorities should be **legal, proportionate and temporary**. Moreover, special attention should be given to **vulnerable groups**, such as the elderly, women, children, people with disabilities and homeless persons. RIHR also underlines the need for **transparency**, official information and **tackling fake news.** (2)

RHIR received a **request from members of the Parliament (Chamber of Deputies) to submit a report** on the protection of human rights in the state of emergency caused by the pandemic.

The Press agency Mediafax also **requested RIHR to provide an opinion** on the restrictions of movement imposed on older persons which are considered a vulnerable category in the face of COVID-19 as well as on public debates on a potential isolation plan for the next 12 weeks of persons aged 65 years and above (isolation in their houses, relocation to a home or in an institution). RIHR highlighted the importance of respecting the **rights of older persons** according to art. 12 of ICESCR and art. 8 of ECHR. (3)

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

According to Law no. 9/1991, the Romanian Institute for Human Rights has a mandate in providing information, training, research and education for human rights. The main challenges faced during the COVID-19 pandemic by the Institute were mainly in the fields of training and education, which is usually done, as a direct interaction. In order to ensure continuity in these fields, online apps (zoom, Google classroom) have been used. Providing information was also affected in particular with regard to the relations with the public which, for reasons of safety and prevention of the spread of COVID-19 virus, is carried out in the emergency period by specific means such as written correspondence, electronic correspondence, telephone.

References

(1) http://www.avpoporului.ro/exceptii2020/exceptia7_2020.pdf
(2) Please consult RIHR's opinion at http://www.irdo.ro/semnal.php?ideseu=62
(3) Please consult RIHR's opinion at http://www.irdo.ro/pdv.php?ideseu=13

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

It is also to be noted that, in the context of the state of emergency declared over the COVID-19 outbreak, Romania has sent a **notification to the Council of Europe regarding the activation of Article 15 of the European Convention on Human Rights**, thus initiating the procedure for derogation from the European Convention on Human Rights. Although invoking Article 15 does not lead to the suspension of the rights and freedoms provided by the Convention, the adopted measure should be analysed taking into account the principle of proportionality . (1)

References

(1) https://rm.coe.int/16809cee30

Slovakia

Slovak National Centre for Human Rights

Independence and effectiveness of the NHRI

International accreditation status and SCA recommendations

In March 2014, the Slovak NHRI was re-accredited with B-status. While recognising that the NHRI interprets its mandate broadly, the SCA found that the mandate has a strong emphasis on equality and non-discrimination, thus it encouraged the NHRI to advocate for legislative amendments that would clarify its mandate to promote and protect all human rights. The SCA also recommended further security of tenure of the decision-making body of the NHRI and the need to ensure it can operate with sufficient budget.

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

There have not been any significant changes in the environment in which the Slovak NHRI operates that would be relevant for its independent and effective fulfilment of its mandate. Taking into consideration all shortcomings of the establishing law and financing of the Slovak NHRI, it operates independently and effectively to fulfil all its mandates to the fullest.

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

The national regulatory framework applicable to the NHRI has not been changed since the last review by the SCA. The Government of the Slovak Republic adopted a resolution by which, it has undertaken the obligation to draft and submit the laws to the National Council of the Slovak Republic that would bring the Slovak NHRI in compliance with the Paris Principles. The Government of the Slovak Republic has reinforced its intention to do so by accepting all recommendations of the relevant UN committees as well as recommendations received during the Universal Periodic Review in 2019 concerning strengthening the Slovak NHRI, and bringing it in compliance with the Paris Principles.

In 2018, the Ministry of Justice of the Slovak Republic as a ministry responsible for preparation of the law have issued two scenarios. In first, the Ministry of Justice of the Slovak Republic planned to transfer the NHRI mandate to the Public Defender of Rights. In

the second scenario, it planned to strengthen the existing establishing laws of the Slovak National Centre for Human Rights so it can apply for the re-accreditation with status A.

In the end, the Ministry of Justice of the Slovak Republic decided to develop and submit to the national parliament laws extending the existing NHRI mandate of the Slovak National Centre for Human Rights. To ensure that the laws are sufficient to bring the Slovak NHRI in compliance with the Paris Principles, the Slovak National Centre submitted the law proposals to the Office of the Democratic Institutions and Human Rights for review. The Office of the Democratic Institutions and Human Rights evaluated the law proposal and, in its statement, stressed that the law proposal is not sufficient to bring the Slovak NHRI in compliance with the Paris Principles and was concerned by several of its legal provisions. However, the legal proposals submitted to the National Council of the Slovak Republic have not been approved and the law failed to pass in June 2019.

Moreover, these proposals were highly criticised by non-governmental organisations and other stakeholders taking a part in the respective participatory process (inter-ministerial commenting procedure).

As of now, status quo is maintained. The Ministry of Justice has communicated the Centre its intention to re-open the process under the new government but any particular steps have been undertaken yet considering the new government has been formed in March 2020 and is now busy to address the current situation regarding COVID-19.

References

2018 Legislation Procedures (including the comments of non-governmental organisations and other stakeholders):

- https://www.slov-lex.sk/legislativne-procesy/SK/LP/2018/234
- https://www.slov-lex.sk/legislativne-procesy/SK/LP/2018/656
- https://rokovania.gov.sk/RVL/Resolution/17482/1

Human rights defenders and civil society space

The Slovak National Centre for Human Rights have found evidence of practice that restrict the governmental funding to certain civil society organisations based on protected discriminatory grounds, nepotism, and corruption.

In 2018 – 2019, there were multiple cases reported concerning **violation of principle of equal treatment and non-discrimination** regarding various sources of governmental funding under the Office of the Government of the Slovak Republic, Plenipotentiary of the Government of the Slovak Republic for National and Ethnic Minorities, Ministry of Culture of the Slovak Republic or Ministry of Education, Science, Research and Sport of the Slovak Republic. Majority of these funds were established to support civil society organisations, academia and other institutions or have been regularly to support such stakeholders (despite not being predominantly established for such purpose).

According to leading civil society organisations and media outlets, the Office of the Government of the Slovak Republic awarded the funding to media outlets and civil society organisations based on the political affiliation and in exchange for providing support during the parliamentary elections held on 29 February 2020. The Minority Culture Fund established by the Plenipotentiary of the Government of the Slovak Republic for National and Ethnic Minorities distributed funding among civil society organisations based on the nepotism. Even though projects submitted by the respective civil society organisations did not meet requirements of the call, the organisations were awarded funding. It was reported that this was due to being close to the established member of the selection committee.

At the Ministry of Culture of the Slovak Republic, the funds were distributed contrary to the principle of equal treatment. The minister of culture excluded civil society organisations representing LGBTI communities from providing funding, despite the recommendation of the selection committee to fund the proposed project.

Moreover, similar discrepancies were reported by civil society organisations and media regarding the Ministry of Education, Science, Research and Sport of the Slovak Republic that funding for promotion of science and research was distributed by the ministry contrary to the applicable laws. Approximately, seven applicants that received funding did not meet the legal requirements for being awarded the financial funds. According to the reports, these applicants have not been active in the field of science nor research. Plus, it was found out that these applicants are remarkably close to the political party, which nominated the Minister of Education.

The non-transparent and exclusive distribution of funds aiming at supporting civil society organisations has been persisting for many years now. In recent years, the situation has considerably worsened. This practice is caused mostly due to corruption, nepotism and the lack of laws regulating the transparency of operating these funds and programmes. In this regard, the Slovak National Centre for Human Rights have been closely monitoring the situation and provided legal aid to the civil society organisation representing LGBTI community that has been excluded from funding by the Ministry of Culture of the Slovak Republic.

Last but not least, a new amendments of Forest Act were passed in the parliament that are restricting **right of public and civil society organisation to access information** and take a part in a participative processes related to protection of environment as established in Aarhus Convention. As an example, the public cannot fully contribute and express an opinion on logging in forests or cannot participate when any measures concerning extra-ordinary situations in forests are adopted. The Slovak National Centre for Human Rights have been closely monitored this situation and reported on the matter in its annual report.

References

Office of the Government of the Slovak Republic:

- https://www.aktuality.sk/clanok/731692/valovej-dal-pellegrini-30-000-eur-vasaryova-ktorej-zivena-oslavuje-150-rokov-nedostala-ani-cent/
- https://volby.transparency.sk/parlament2020/2020/02/12/slovenka-propaguje-pellegriniho-on-ju-predtym-stedro-obdaroval/

Minority Culture Fund:

- https://domov.sme.sk/c/20820857/mimovladky-kritizuju-pochybne-dotacie-pre-narodnostne-mensiny.html
- https://www.aktuality.sk/clanok/588928/statny-fond-sa-nevie-zbavit-richtera-necha-ho-dalej-rozdavat-dotacie/
- https://www.aktuality.sk/clanok/585234/velka-hostina-dotacie-rozdavali-brat-a-sestra-ziskal-aj-syn/

Ministry of Culture of the Slovak Republic:

- https://dennikn.sk/1469435/ministerka-kultury-zastavila-vsetky-granty-pre-lgbti-organizacie-napriek-odporucaniam-komisie/
- http://inakost.sk/vyhlasenie-k-ministerstvu-kultury/

Ministry of Education, Science, Research and Sport of the Slovak Republic:

- https://domov.sme.sk/c/22020746/ministerstvo-skolstva-rozdelovalo-dotacie-v-rozpore-so-zakonom.html

Forest Act:

- https://www.prezident.sk/article/prezidentka-vratila-zakon-o-lesoch-zakon-o-ochrane-prirody-podpisala/

Media pluralism

Since the death of the journalist Jan Kuciak and his fiancée, there has been a vivid public debate on the **projection of journalists**. Unfortunately, the state failed to adopt any relevant laws or measures to protect journalist against attacks. The investigation of the death of Jan Kuciak has been closely monitored by multiple watchdogs and media. So far, given the process of investigation has been completed and the indictment was submitted to the court. There are four people charged with three capital murders and other related crimes. The criminal trial is not yet completed. However, due to the public pressure, the trial is ongoing even though majority of other trials and court proceedings have been postponed due to the emergency state in the Slovak Republic concerning COVID-19 pandemic. Moreover, the National Criminal Agency and the Police of the Slovak Republic have started to investigate corruption and other crimes that has been linked to the death of Jan Kuciak. As of today, 18 people have been investigated, out of which 13 people are judges.

Apart from this, **practices of some public authorities toward the journalists** are still of concern. It was reported that the Office for Personal Data Protection has been threatening journalists from the Czech Centre for Investigative Journalism. These journalists acquired and published an audio-visual tape picturing a man investigated by the Police Force of the Slovak Republic for murder of Jan Kuciak, corruption, and frauds - Marian Kočner. On the tape, Marian Kočner is talking to the ex-Attorney General about his criminal activities. The Office for Personal Data Protection threatened the Czech Centre for Investigative Journalism by extremely high fine if the source that provided the tape is not disclosed to the data protection authority. The situation has been closely monitored by the Public Defender of Rights who is of an opinion that the Office for Personal Data Protection breached the right to freedom of speech and right to information. It was reported that the director of the Office for Personal Data Protection has been close to Marian Kočner.

It also worth mentioning the recent amendments of press laws that introduced the **right of public authorities to answer to statements or facts concerning them disclosed to the public**. According to the new legal regulations, all public officials and authorities are entitled to reply to any information or articles published in media containing statements of fact about their persons. This right does not only belong to natural persons but also to legal persons. This introduces the obligation of respective media outlet to publish the response of the public official or the authority to challenged statements of fact. For this right to be triggered, it is necessary for the statement to be a true, incomplete or misleading factual claim concerning the honor, dignity or privacy of a natural person or the name or reputation of a legal person by reference to which a person can be accurately identified. This regulation was considered as a threat to the freedom of speech as well as freedom of press.

References

Office for Personal Data Protection

- https://www.vop.gov.sk/ochrana-novin-rskych-zdrojov-je-jedn-m-zo-z-kladn-ch-pilierov-slobody-prejavu
- https://www.tyzden.sk/politika/62398/urad-hrozi-investigativcom-pokutou-jeho-sefka-pracovala-pre-kocnera/

Press Act

- https://slovensko.hnonline.sk/2018125-caputova-podpisala-novelu-tlacoveho-zakona-politici-ziskaju-pravo-na-odpoved

In-focus section on COVID-19 measures

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

The Government of the Slovak Republic has proclaimed the emergency state on 16 March 2020, and it has been extended several times. In respect the COVID-19 pandemic, the Government of the Slovak Republic also adopted several restrictive measures. While majority of them are fully acceptable as they contribute to human rights protection, there are also measures that are extremely concerning.

Firstly, the **right to health** in the context of right to provision of health care was restricted contrary to the Constitution of the Slovak Republic. According to the Constitution of the Slovak Republic, everyone shall have the right to protection of his or her health. The citizens shall have the right to free health care and medical equipment for disabilities since medical insurance under the terms to be laid down by a law. According to the Constitutional Act 227/2002 Coll. on the Security of the State in Time of War, State of War, State of Emergency, as amended does not allow for the right to health to be restricted. In this regard, the Government of the Slovak Republic and the National Council of the Slovak Republic has not adopted any relevant laws and measures that would endanger provision of healthcare. However, political leaders have multiple times urged the healthcare and outpatient facilities to prepare for the COVID-19 patients and to stop providing preventive care as well as carry out any planned surgeries and treatments.

Moreover, the Ministry of Health of the Slovak Republic instructed that urgent care should be provided, especially regarding accidents, oncology patients and deliveries. Unfortunately, this caused a tremendous impact on patient that do not require urgent care, however neglecting a preventive care can have serious consequences such as patients with rheumatics, diabetes, or cardiac problems. Moreover, patients requiring exchange of joints, especially hip joint are restricted from having a surgery. Majority of these patients are living in unbearable pain and their mobility is significantly reduced. However, the most questionable practice introduced by the health facilities in respect to COVID-19 pandemic was complete termination of providing abortion services to women without a health indication. Just for complete picture, as of 22 April 2020, there have been only 13 dead and 231 patients hospitalised with COVID-19 or with suspicion of COVID-19.

Moreover, the situation has been serious in respect to **Roma communities** and their quarantine. In the beginning of the mandate, the Government of the Slovak Republic has set requirements for quarantining towns and certain areas of towns (e.g. streets, communities). However, there have been mass testing and quarantining Roma communities regardless of the habitat (whether livening in dwelling or integrated in cities) as they were proclaimed by the Prime Minister of the Slovak Republic as a ticking bomb. In the beginning, more than 6500 people in multiple locations were put to the quarantine due to 32 Roma tested positive for COVID-19. People who tested positive for COVID-19 were kept with healthy people even though, it was not possible to separate COVID-19 positive Roma from healthy inhabitants. It was reported that the Public Health Authority of the Slovak Republic refused to inform people who were tested about the results and other important information regarding the quarantine, their rights, and next steps. Serious issues concerning supplying people in quarantine with food, basic medicines and other essentials

were reported. The situation is even more concerning considering low-hygiene standards in Roma settlements, limited or no access to drinking water, lack of sanitation and overcrowding of dwellings.

Last but not least, the measures adopted under the COVID-19 emergency pose issues as regards **data protection and privacy**. Laws allowing the Government of the Slovak Republic to have access various data, including data on location sourced by mobile operators and telecommunication companies passed in the National Council of the Slovak Republic. Thanks to this legal regulation, the Government of the Slovak Republic and its bodies, including the Public Health Authority of the Slovak Republic have access to information about calls and messages sent among citizens and their location, so the citizens are monitored without their permission or knowledge.

The Slovak National Centre for Human Rights is closely monitoring the situation and will publish its complex findings in a form of a report in autumn 2020.

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

Up to date, there were no disruption to the functioning of the Slovak National Centre for Human Rights. All educational activities aiming at providing human rights education to pupils, students and adults were postponed due to the closure of all schools and "home office" arrangements in most companies and public authorities. In respect to research activities, the Slovak National Centre for Human Rights have postponed collection of data in the field as well as conducting focus groups. However, when possible, the Slovak National Centre for Human Rights deliver its services online or via phone. When it is not possible, clients are served as usual.

References

- https://www.slov-lex.sk/-/vyhlasenie-nudzoveho-stavu?inheritRedirect=true&redirect=%2Fdomov

Slovenia

Human Rights Ombudsman of the Republic of Slovenia

Independence and effectiveness of the NHRI

International accreditation status and SCA recommendations

The Slovenian NHRI was re-accredited with B status in March 2010. At that time, the SCA recommended the NHRI to advocate for legislative changes to grant it with strong promotional functions. The SCA also encouraged the NHRI to engage with international and regional human rights bodies, and to advocate for sufficient and adequate funding. Since then, the Slovenian NHRI took concrete steps to follow-up with the SCA recommendations. It was scheduled to be re-accredited in March 2020, but the SCA session was postponed due to the COVID-19 outbreak.

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

The **number of the institution's employees** increased from 40 at the end of 2017 to 54 at the beginning of 2017 in order to implement a broader mandate of the Ombudsman (1) and the **financial resources** were strengthened for the same reason and reach 3.150,000 EUR in 2020 (2), which is approximately 30% more than before the adoption of the amendments in 2017.

However, the Ministry of Finance usually sets a specific date in the year after which direct budget users, including the Ombudsman, **must obtain prior consent** from the Ministry of Finance for all procurement of goods and services, even though the commitments are in accordance with the adopted budget (this is also the case in current COVID-19 budget situation). This undermines the full independence of the Ombudsman, brings uncertainty into its operations and hinders implementation of activities in accordance with the adopted budget. Also, if the Government fails to reach an agreement with the Ombudsman, then the draft budget which is submitted for adoption to the Parliament is the budget proposed by the Government, while the Ombudsman's budget proposal is included only in the explanation of it.

Further, the **salaries** of the high officials of the Ombudsman have not been increased since the last accreditation review in 2010, even though the Salary System in the Public Sector Act already in 2007 classified the functions of the Ombudsman, Deputy Ombudsmen and

Secretary-General to lower salary categories than provided by the Human Rights Ombudsman Act.

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

There have been some important developments in the regulatory framework since last SCA review in 2010.

In September 2017, the Parliament adopted amendments to the Human Rights Ombudsman Act, which entered into force on 14 October 2017 (3). The main objective of the amendments was to provide an adequate legal basis in accordance with the Paris Principles, i.e. to **strengthen the mandate** of the Human Rights Ombudsman of the Republic of Slovenia (herein after: the Ombudsman) with the aim to strengthen its general mandate, which includes the promotion and the protection of human rights, human rights education, research and analyses as well as to strengthen international cooperation and reporting. For this reason the Centre for Human Rights, which operates under the auspices of the Ombudsman, and the Human Rights Ombudsman Council were established by the Act. The aim of the Act was also to strengthen the plurality of the Ombudsman through the mentioned Council, which has an advisory role. The Ombudsman also promotes the signature, ratification or accession to human rights treaties to which Slovenia is not yet a party.

The new units of Ombudsman established by law have become operational. Human Rights Ombudsman Council was constituted in June 2018 and held several thematic meetings since then (4), while the Centre for Human Rights became operational in July 2019 (5).

Regarding the **procedure for the selection of the Ombudsman** the President of the Republic in practice prescribed a new requirement (comparable to the selection of the Constitutional Court judges) that a candidate for the Ombudsman has a public presentation at the Office of the President before she or he is proposed to the Parliament for appointment (with a two-third majority of all MPs).

References

(1) http://www.varuh-rs.si/o-instituciji/zaposleni/informator/ (28. 4. 2020
(2) https://www.gov.si/assets/ministrstva/MF/Proracun-direktorat/Drzavni-proracun/Sprejeti-proracun/Sprejeti-2020/Izpisi/SP2020_POS.pdf (28. 4. 2020), p. 1.
(3) Official Gazette of the Republic of Slovenia, No. 54/17.
(4) http://www.varuh-rs.si/o-instituciji/podrocja-dela-varuha/svet-varuha-za-clovekove-pravice/(28. 4. 2020)
(5) http://www.varuh-rs.si/o-instituciji/zaposleni/center-za-clovekove-pravice/(28. 4. 2020)

Human rights defenders and civil society space

In the field of **freedom of association and freedom of assembly** (on COVID-19 restrictions see the relevant chapter below) the legislative framework, measures and practices are in general sufficient. The Ombudsman proposed, however, a legislative amendment, aiming to determine the body for management and decision-making in minor-offence proceedings in a case of violations of the legal provisions that the work of the disability organisations is public.

Regarding **freedom of expression**, the Ombudsman has repeatedly condemned the obvious expressions of the constitutionally forbidden (Article 63) incitement to inequality, intolerance and to violence, even though they could not be attributed to any state body, local self-government body or holder of public authority. In 2019 there was an important development in the criminal **case-law regarding hate speech**: on 4 July 2019, the Supreme Court of the Republic of Slovenia issued a judgment in the case of ref. no. I lps 65803/2012 for a criminal offense under the first paragraph of Article 297 of the Criminal Code – Public incitement to hatred, violence, and intolerance (2). The significance of this judgment of the highest court in the country is in the interpretation of the legal requirement that the conduct has to be either carried out in a manner likely to disturb public order or is threatening, abusive or insulting. According to prior lower court judgment's interpretation, the conduct is only punishable when the public order is "concretely endangered" (also when the conduct is threatening, abusive, or insulting). The Supreme Court stated that the two conditions are set alternatively and not cumulatively and that in case of likeliness of public order disturbance, it is enough that endangerment is only abstract and not concrete..

It is the Ombudsman's persistent recommendation that the National Assembly adopts a **parliamentary code of ethics** and creates tribunals that would respond to individual cases of hate speech in politics worthy of public condemnation (3).

References

(1) Annual Report of the Human Rights Ombudsman of the Republic of Slovenia for 2018, recommendation no. 16(2018), available in Slovenian language at http://www.varuh-rs.si/fileadmin/user_upload/pdf/lp/LP_2018.pdf (28. 4. 2020).
(2) Judgment ref. no. I lps 65803/2012 of the Supreme Court of the Republic of Slovenia, adopted on 4 July 2019, is available in Slovenian language at http://www.sodisce.si/vsrs/odlocitve/2015081111431656/
(3) Annual Report of the Human Rights Ombudsman of the Republic of Slovenia for 2018, pp. 103-104, available at http://www.varuh-rs.si/fileadmin/user_upload/pdf/lp/LP_2018_ENG.pdf.

Checks and balances

Over the years, the Ombudsman has also filed 31 requests for a r**eview of the constitutionality or legality of a regulation or a general act** issued to exercise public powers (1).

The Ombudsman evidences also some occasions of practice of a **lack of consultations**. For example, in November 2019 the Government and its Office for the Protection of Classified Information prepared a proposal of the Act Amending the Classified Information Act (2). The proposal abolished the direct access of Deputy-Ombudsmen to the classified information, while no prior consultations with the Ombudsman were made. The Ombudsman later disagreed with the proposed text; however, the Act was adopted by the Parliament in January 2020 regardless of the Ombudsman's written opposition (3).

The Ombudsman points out that the issues of the **adoption and the use of the Ombudsman's budge**t (see the answer on independence and effectiveness of the NHRI) also erode to some extent a separation of powers: the assessment of the Ombudsman budget proposal should be instead by the Ministry of Finance done by the Parliament, while the requirement to obtain prior consent from the Ministry of Finance for all procurement of goods and services, even though the commitments are in accordance with the adopted budget after the specific date in the year (and this is also the case in current COVID-19 budget situation) is needed, should be made by some other independent authority (i.e. the Court of Auditors).

References

(1) Annual Report of the Human Rights Ombudsman of the Republic of Slovenia for 2018, page 12, available at http://www.varuh-rs.si/fileadmin/user_upload/pdf/lp/LP_2018_ENG.pdf (28. 4. 2020).
(2) See: https://www.dz-rs.si/wps/portal/Home/deloDZ/zakonodaja/izbranZakonAkt?uid=C1257A70003EE6A1C12584FE00613B3B&db=kon_zak&mandat=VIII&tip=doc (28. 4. 2020).
(3) Official Gazette of the Republic of Slovenia, No. 8/20

Functioning of justice systems

The Human Rights Ombudsman Act stipulates explicitly that the Ombudsman may not consider cases, which are subject to judicial or other legal proceedings unless an undue delay in the proceedings or evident abuse of authority is established (1). With regard to the judicial branch of power, operations of the Ombudsman may only extend to the point where they do not encroach on the independence of judges in their judicial work.

Although lengthy court proceedings are not considered as a systematic problem anymore, **slow decision making by the judiciary in some specific cases** is still reported as an issue. In its Annual Report for 2018 the Ombudsman noted a position taken by the Judicial Council that the productivity of courts is decreasing, particularly in (complex) cases in which the time expected for them to be resolved is longer. Creditors highlight lengthy bankruptcy proceedings and related procedures, although the law provides that courts and other state authorities must as a priority address cases in which a debtor in bankruptcy is involved as a party or whose outcome affects the course of bankruptcy proceedings. Particularly problematic is the lengthiness of certain judicial proceedings conducted to compensate the damage suffered by complainants in pre-trial proceedings due to slow judicial decision-making and in which parties should use legal remedies again to expedite judicial proceedings referred to in the Protection of Right to Trial without Undue Delay Act (2).

Free legal aid and the condition for its allocation are regulated by the Legal Aid Act, which entered into force in 2001. Such aid, whose purpose is to realise the right to judicial protection, is provided by district and labour courts, and the social and administrative court. Gaps in the field of free legal aid are filled by certain Slovenian municipalities and non-governmental organisations (e.g. the Botrstvo project – free legal aid managed by the Association of Friends of Youth Ljubljana Most, which is carried out in several towns), and free legal aid is also provided by certain attorneys according to the pro bono principle (3).

The Ombudsman regularly monitors the **execution of the judgments of the Constitutional Court and the European Court for Human Rights** in Slovenia. In its Annual Report for 2018 (4) and during 2019 UPR review (5) the Ombudsman highlighted the unacceptable fact that the Government of the Republic of Slovenia and the legislator do not respond promptly to the decisions of the Constitutional Court of the Republic of Slovenia and fail to draft suitable solutions before the expiry of the deadline for elimination of unconstitutionality. The Ombudsman noted with concern that 13 decisions of this court remain unimplemented (6). The Parliament as a legislator is responsible for eliminating the unconstitutionality in the legislation (with one exception, where the municipality should implement the decision); yet, it is the duty of the Government as the constitutionally appointed proposer of acts to draft legislative proposals on time and submit them to the legislative procedure. At the same time, however, the Ombudsman has welcomed the positive developments regarding the execution of judgments of the European Court of Human Rights by Slovenia, as the number of non-executed judgments has been reduced from 317 in 2016 to 13 at the end of 2019 (7).

References

(1) Official Gazette of the Republic of Slovenia, No. 69/17, Article 24.
(2) Annual Report of the Human Rights Ombudsman of the Republic of Slovenia for 2018, page 182, available at http://www.varuh-rs.si/fileadmin/user_upload/pdf/lp/LP_2018_ENG.pdf (28. 4. 2020).
(3) Ibidem, page 184.
(4) Annual Report of the Human Rights Ombudsman of the Republic of Slovenia for 2018, page 12, available at http://www.varuh-rs.si/fileadmin/user_upload/pdf/lp/LP_2018_ENG.pdf (28. 4. 2020).
(5) Information paper UPR Pre-session for the 3rd cycle of the Universal Periodic Review of Slovenia 11 October 2019, available at: https://www.upr-info.org/sites/default/files/document/slovenia/session_34_-_november_2019/1._human_rights_ombudsman_of_the_republic_of_slovenia_nhri_aditional_information.pdf (28. 4. 2020).
(6) The Constitution Court of the Republic of Slovenia The Report on the Work in 2019, pp. 16-18, available in Slovenian language at: https://www.us-rs.si/media/usrs_letnoporocilo_2019.pdf (28. 4. 2020).
(7) See: https://www.gov.si/podrocja/pravna-drzava-in-pravosodje/izvrsevanje-priporocil-varuha-in-sodb-evropskega-sodisca-za-clovekove-pravice/ (28. 4. 2020).

Media pluralism

The situation in the field of freedom of expression (and media freedom) remains strongly linked to current social developments - both numerically and substantively. Often there are more or less direct expectations of the public that the Ombudsman should react to publicly expressed thoughts or statements, especially of politically exposed persons.

The Ombudsman also follows in general several debates on the issue of a **free and pluralistic media environment** in Slovenia. It needs to be noted at the outset that there is a diverse media space in Slovenia with public radio and television (RTVS) as well as several private radio and televisions, around 10 different daily newspapers, numerous weekly and monthly journals as well as online media and platforms. In Slovenia, in general the legislation and other measures ensure the plurality of the media space (1). However, there have been also some alerts, including at the Council of Europe Platform to promote the **protection and safety of journalists** regarding the situation in Slovenia (2), which includes claimed attacks on RTV, the political interference in editorial autonomy of public broadcasters and threats against some Slovenian journalists, including police **pressure to reveal journalistic sources**. The Government (authorities) respond regularly to such claims (alerts) (3). A dialogue on media freedom in Slovenia remains important as media freedom is at the heart of democracy.

The Ombudsman recommended (4) that the Ministry of Culture, within the scope of its competences, make every effort to determine, with regard to the implementation of the norm on the prevention of the spread of the **hate speech in the media** (Article 8 of the Media Act): 1. a form of protection of public interest (inspections, minor offences control), 2. remedial actions (such as immediate removal of illegal content) and 3. sanctions for the media, which allow hate speech. This recommendation remains unrealized. At the end of 2018, the Ministry of Culture prepared a draft law on amendments to the Media Act, which included, inter alia, an appropriate amendment to the provision prohibiting the promotion of inequality and intolerance in the media (Article 8 of the Media Act) in accordance with the relevant the Ombudsman's recommendations, but this amendment has not yet been adopted.

References

(1) https://www.gov.si/podrocja/kultura/mediji/ (28. 4. 2020
(2) https://www.coe.int/en/web/media-freedom/slovenia (28. 4. 2020).
(3) Ibidem.
(4) Annual Report of the Human Rights Ombudsman of the Republic of Slovenia for 2018, recommendation no. 13(2018) and p. 107, available at http://www.varuh-rs.si/fileadmin/user_upload/pdf/lp/LP_2018.pdf (28. 4. 2020)

Corruption

In Slovenia, the responsible independent institution for combating corruption is the Commission for the Prevention of Corruption (1).

However, the Ombudsman follows the situation, which could have an impact on the field of human rights. In this regard, Ombudsman supports full implementation of the EU Directive 2019/1937 of the European Parliament and of the Council of 23 October 2019 on the protection of persons who report breaches of Union law (2), as well as in general the adoption of a law on the **protection of whistle-blowers** in Slovenia.

References

(1) Commission for the Prevention of the Corruption of the Republic of Slovenia, see: https://www.kpk-rs.si/en/ (28. 4. 2020)
(2) Official Journal of the European Union, L 305/17, 26.11.2019.

In-focus section on COVID-19 measures

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

It is too early to assess the most significant impacts of the measures taken on the rule of law and the proportionality of these measures to the threats posed. There are however, some trends, which may be acceptable and proportional in the epidemic situation; however, the practices should not be further continued once this situation ends.

The Government of the Republic of Slovenia proclaimed epidemic on 12 March 2020 (1), while state of emergency has not been proclaimed in Slovenia. Since then several

administrative (emergency) measures and intervention laws were adopted. So far there have been adopted more than 80 ministerial orders, governmental ordinances or decrees, their amendments and other general administrative acts adopted by various state authorities, which were published in the Official Gazettes of the Republic of Slovenia. These measures, whose impact on fundamental rights is important, were not based on special powers, which would enable the executive to take a large number of measures, but were rather and mostly based on different provisions the Communicable Diseases Act, or of the newly adopted intervention legislation or some other acts. So far, also, seven intervention (emergency) acts were adopted (through an expedited procedure) and entered into force (2), their amendments are already forthcoming. Most of the above-mentioned administrative measures were adopted and published on the same date, while entered into force on the next day (in practice within few hours). While such **accelerated procedures for enacting and modifying governmental orders and of general administrative acts** may be acceptable and proportional in this epidemic situation, such a practice should not continue after the end of pandemic situation. In this situation, it is of vital importance that the government has provided a prompt and effective information campaign aiming to inform the population on the adopted measures as broadly as possible. In such circumstances the Ombudsman established an Ombudsman Informant on adopted measures, which is regularly updated and published on his website (3).

There has been an initiative for a review of legality and constitutionality of the Governmental Ordinance on the temporary general prohibition of movement and public gathering in public places and areas in the Republic of Slovenia, which prohibited the movement outside the municipality of permanent or temporary residence, with some exceptions (i.e. work, care and assistance to the relative). The Constitutional Court temporarily suspended a part of the decree and ordered that the measure should be time-limited, i.e. the government need to evaluate its proportionality at least on seven-day basis (4). However due to the improvement of the epidemic situation the Government issued a new ordinance, which lifted the mentioned prohibition of movement as of 30 April 2020 (5). Further, it has been reported by the Slovenian Press Agency that the Constitution Court confirmed they have received also over **50 different initiatives for a review of constitutionality of other COVID-19 governmental decrees and intervention laws** (6).

The Ombudsman has also urged that it is of crucial importance that the **information** on the COVID-19 measures is made available to everybody, including to persons with disabilities (including deaf and blind), to persons, which have no access to the Internet or television, to national minorities, aliens etc. Most of the measures taken so far are time limited. The Ombudsman urged on several occasions that all measures taken should

respect human rights, be proportional to the threats posed and time limited. However, **some groups are more impacted** by the measures taken. The Ombudsman raised voice in this regard at various occasions, such as regarding the protection of children from families, which are in need of social assistance (including Roma children), especially because of distance learning (as schools are closed), and regarding the need to ensure equal rights to old people, especially those leaving in retirement homes (institutions), people with disabilities, persons deprived of liberty etc (7).

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

Regarding the service to citizens the Human Rights Ombudsman can be contacted by e-mail or toll-free telephone number. Individuals may also seek information related to the spread of the new coronavirus (COVID-19) or seeking to be informed about their rights with regards to measures taken. The experts assist citizens by directing or referring them to other competent institutions if needed or proceed to analyse the problem in more detail and provide written answers. Since the proclamation of epidemic in Slovenia on 12 March 2020 there have been more than **300 initiatives (cases) referred to the Ombudsman regarding the impact of COVID-19 measures** on human rights, fundamental freedoms and human dignity.

Regarding the National Protection Mechanism (NPM) function of the Ombudsman, the Ombudsman is actively engaged with relevant authorities and institutions as well as receives information directly from **persons deprived of liberty** on the situation in institutions, despite the fact that the NPM does not preform the on-site visits in a current situation. The NPM evaluates different measures and gives concrete recommendations.

The measures to prevent the spread of COVID-19 are changing on a daily basis, therefore we assume that they will (continue to) raise many issues. Therefore, the Ombudsman also established a **special COVID-19 website** (8), which includes various information on the adopted measures and legislation, on the opinions of the international organisations (including ENNHRI and GANHRI) regarding the human rights dimension of COVID-19 response, views and opinions of the Ombudsman and other relevant information.

References

(1) Official Gazette of the Republic of Slovenia, No. 19/20 of 12 March 2020.
(2) See: http://www.varuh-rs.si/epidemija-COVID-19/pomembnejsa-zakonodaja/ (28. 4. 2020).
(3) Ombudsman's Informant (Varuhov informator), see in Slovenian language: http://www.varuh-rs.si/koronavirus-epidemija/varuhov-informator-o-sprejetih-ukrepih/?L= (28. 4. 2020).
(4) A Conclusion of the Constitutional Court, No. U-I-83/20-10 of 16 April 2020, Official Gazette of the Republic of Slovenia, No. 58/20 of 24 April 2020, available in Slovenian language at: https://www.uradni-list.si/glasilo-uradni-list-rs/vsebina/2020-01-0843/sklep-o-zadrzanju-izvrsevanja-7--clena-odloka-o-zacasni-splosni-prepovedi-gibanja-in-zbiranja-ljudi-na-javnih-mestih-in-povrsinah-v-republiki-sloveniji-ter-prepovedi-gibanja-izven-obcin-uradni-list-rs-st--3820-in-5120 (28. 4. 2020).
(5) https://www.gov.si/en/news/2020-04-29-14th-regular-session-of-the-republic-of-slovenia/ (7.5.2020)
(6) Slovenian Press Agency (STA), available in Slovenian language at https://www.sta.si/2754480/ustavno-sodisce-prejelo-vec-kot-50-pobud-za-oceno-ustavnosti-vladnih-aktov?q=ust,sod (28. 4. 2020) and https://www.iusinfo.si/medijsko-sredisce/dnevne-novice/262318 (28. 4. 2020).
(7) Positions and Information of Ombudsman (Stališča in obvestila za javnost Varuha): available in Slovenian language at http://www.varuh-rs.si/epidemija-COVID-19/stalisca-in-obvestila-za-javnosti-varuha/(28. 4. 2020)
(8) http://www.varuh-rs.si/epidemija-COVID-19/ (28. 4. 2020)

ENNHRI

Spain

Ombudsman of Spain

Independence and effectiveness of the NHRI

International accreditation status and SCA recommendations

The Spanish NHRI was re-accredited with A status in May 2018. The SCA encouraged the NHRI to advocate for amendments to the establishing law in order to ensure a limit to the Ombudsman's term of office, a pluralist staff composition and a broad and transparent selection process with the direct participation of civil society. The SCA acknowledged the NHRI's level of engagement with the international human rights system and encouraged the NHRI to continue advocating for the provision of adequate funding.

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

According to article 6.1 of the Organic Law, the Defensor del Pueblo (NHRI) is an independent institution. The Defensor is not subject to any imperative mandate, nor receive instructions from any authority and exercises its functions independently. As such, the Defensor, in the exercise of its functions, does not receive instructions from any authority. It is only accountable before the Parliament (art. 3 of the Reglamento). The Deputies to the Defensor are accountable to the Defensor and to the Joint Commission composed of the Chamber of Deputies and the Senate for the relations with the Defensor (art. 3.2 of the Reglamento).

Conflicts of interest

According to article 7 of the Law, the Defensor's position is incompatible with: any other representative mandate; any political appointment or activity; maintaining an active service in any other public administration; being affiliated to a political party or having a managerial position in a political party or union, association or foundation or being employed by any of these; with any position in the judicial or fiscal careers; and with any other professional, liberal, trade or labour nature activity.

Immunity

According to article 6 of the Law, the Defensor, similarly to the Deputies, enjoys legal immunity in the exercise of its functions. The Defensor cannot be detained, investigated,

subjected to disciplinary measures, or legal proceedings due to his opinions or actions undertaken in the exercise of competences that are part of its functions. The Defensor will not be detained in the exercise of its functions, but only for a case of caught in the act. The decision of accusation, detention or trial is to be decided exclusively by the Penal Chamber of the Supreme Court.

The Ombudsman is also a Transparent Institution. The proclamation of the principle of publicity, which is characteristic of advanced democratic systems, seeks to abolish secrecy as a general rule of action for public powers, trying to make the exercise of power transparent.

In democracy, the legitimacy of power rests ultimately on the citizens themselves, as befits the popular sovereignty that our Constitution enshrines in its Article 1. For this reason, it makes sense to make the actions of the public powers known, seen and known by all.

On December 10, 2014, the Preliminary Titles, I and III of Law 19/2013, of December 9, on transparency, access to public information and good governance, came into force for the General State Administration. The Autonomous Communities and Local Entities had one more year, until December 10, 2015, to adapt to their obligations. These titles regulate the subjective scope of application, active advertising, the right of access to information and the Transparency Council. For its part, the provisions of Title II, relating to Good Governance, entered into force the day after the publication of the Law in the Official State Gazette, on December 10, 2013.

The most important aspects of Law 19/2013 are, first, the requirement for active publicity in institutional, organisational, legal, economic, budgetary and statistical matters, and, second, the recognition of the right of access to public information and creating a procedure for exercising it.

With the intention of advancing in this direction, the Institution of the Ombudsman published this transparency section on January 14, 2013, and since then it has been completed with all the contents that have been considered significant for general knowledge, more beyond those required by the aforementioned Law 19/2013, of December 9, on transparency, access to public information and good governance.

The Ombudsman also makes public in its site all the relevant investigations and complaints in real time.

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

RDL 10/2020 recognizes the autonomy of the Ombudsman to issue the necessary instructions and resolutions in relation to its internal organisation and operation, as an essential service during the state of alarm. (second additional provision)

References

- https://www.boe.es/eli/es/rdl/2020/03/29/10/con

Corruption

Progress was made on the state of corruption in Spain since the last decade, as many cases of corruption were brought before the courts which ensured independent review and impactful decisions.

References

- Data repository on corruption proceedings (General Council of the Judiciary) http://www.poderjudicial.es/cgpj/en/Subjects/Transparency/Data-repository-on-corruption-proceedings/General-Information/

In-focus section on COVID-19 measures

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

The epidemic caused by COVID-19 represents a threat of such magnitude that the Government has been forced to decree the state of alarm throughout the country, for an initial period of fifteen days, through Royal Decree 463/2020, of 14 March, which has been extended by several Royal Decrees , until May 11th.

The Ombudsman, as high commissioner of the Cortes Generales for the protection of the rights and freedoms included in the First Title of the Constitution, must supervise the activity of public administrations, even before the declaration of states of alarm, exception or site.

This is because in these exceptional circumstances, the fundamental rights of citizens continue to be equally guaranteed, because democracy is not suspended however difficult the challenge may be.

While all the personnel of the health and emergency services are fighting to the maximum of their strength and capabilities to protect the right to life and to health, any restrictions to other fundamental rights and freedoms shall only be temporary and subject to the principles of necessity and proportionality.

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

Given the declaration of the state of alarm, and the confinement that this entailed, the institution adopted several internal measures that have allowed the institution to ensure continuity of its work and services.

- The teleworking system was adopted in three phases, which has enabled 150 laptop computers to be made available to staff, allowing workers to carry out their activities from home through a secure VPN connection.
- The telephone service has been strengthened to make it easier for people who before the state of emergency (around 30%) to contact us by mail to do so by telephone, as well as by email and the web.
- The minimum services imposed by mail has forced us to make important decisions regarding the admission and processing of complaints. In addition, a broad interpretation of our regulatory Organic Law regarding the admission of complaints is being applied, so that:
    - Complaints in which only name + surname + email are accepted (until now DNI / NIE / PASSPORT and postal address were requested)
    - In the case of people who cannot send complaints by email or via the web, the telephone service staff will transcribe the complaint (this is exceptional and has not yet occurred but is contemplated)
- Processing: During the first week of confinement, everything related to the state of emergency has been processed as a priority.

As of the second week, in addition to processing complaints related to the state of emergency, other complaints are also being processed on important issues, such as scholarships, grants, subsidies, and all the other normal complaints of the institution later and gradually.

References

- Royal Decree 463/2020, declaring the state of alert as a result of the health crisis caused by COVID-19 (full text in Spanish https://www.boe.es/eli/es/rd/2020/03/14/463/con)
- English version web page of the Presidency of the Government publishes the performances carried out by the government https://www.lamoncloa.gob.es/lang/en/Paginas/index.aspx
- The English version of several press releases of the Ombudsman can be found at: https://www.defensordelpueblo.es/en/news/ombudsman-calls-autonomous-communities-improving-health-care-retirement-homes-information-family-members-protection-rights/ April, 24 2020
- https://www.defensordelpueblo.es/en/news/ombudsman-contemplates-possibility-letting-children-outdoors-limited-way-necessary-precautions/April. 17 2020
- https://www.defensordelpueblo.es/en/news/ombudsman-passes-concerns-citizens-coronavirus-crisis-authorities/ April, 3 2020

Sweden

Relevant developments towards the establishment of a National Human Rights Institution

ENNHRI's member in Sweden is the Swedish Equality Ombudsman, which was accredited with B status in May 2011. The SCA noted that the NHRI's mandate is limited to equality matters and stressed the need for a broader mandate to promote and protect human rights. Also, the SCA encouraged the Equality Ombudsman to advocate for the formalization of broad and transparent selection and dismissal process in the relevant legislation.

Recently, the Swedish government took important steps in relation to a proposal for the establishment of an NHRI in Sweden in compliance with the Paris Principles. ENNHRI provided comments on the proposal and stands ready to give further support towards the establishment and accreditation of an NHRI in compliance with the Paris Principles in the country. In view of the ongoing process to establish an institution in compliance with the UN Paris Principles, the Swedish Equality Ombudsman abstained from contributing to this reporting process.

Annex I – Reporting questionnaire/grid

Topic	Questions
Independence and effectiveness of the NHRI	1. Did significant changes take place in the environment in which your NHRI operates that are relevant for the independent and effective fulfilment of your mandate? 2. Did the national regulatory framework applicable to your NHRI change, since the last review by the SCA? Please provide reference to relevant sources:
Human rights defenders and civil society space	3. Has your human rights monitoring and reporting found any evidence of laws, measures or practices that could negatively impact on civil society space and/or reduce human rights defenders' activities? *(eg impacting on freedom of association, freedom of assembly, freedom of expression, and access to information, attacks on human rights defenders, their work and environment)* Did your NHRI take any particular action in this regard? Please provide reference to relevant sources:
Checks and balances	4. Has your human rights monitoring and reporting found any evidence of laws, processes and practices that erode the separation of powers, participation of rights holders, and the accountability of State authorities? *(eg expedited legislative processes, lack of scrutiny or consultation, lack of judicial or constitutional review, non-execution of judgments, non-publication of administrative decisions, increased executive powers or insufficient parliamentary oversight)* Did your NHRI take any particular action in this regard? Please provide reference to relevant sources:
Functioning of justice systems	5. Has your human rights monitoring and reporting found evidence of any laws, measures or practices that restricts access to justice? *(eg independence and impartiality of the courts, effective judicial protection, access to (free) legal aid , fair trial standards, execution of judgments)* Did your NHRI take any particular action in this regard? Please provide reference to relevant sources:
Media pluralism	6. Has your human rights monitoring and reporting found any evidence of laws, measures or practices that could restrict a free and pluralist media environment?

	(eg insufficient protection of journalists' independence, adequacy of resources, inadequate investigations on attacks on journalists) Did your NHRI take any particular action in this regard? Please provide reference to relevant sources:
Corruption	7. Has your human rights monitoring and reporting found any evidence of state measures or practices relating to corruption, or significant inaction in response to alleged corruption, and which could have an impact on human rights? *(eg protection of whistleblowers)* Did your NHRI take any particular action in this regard? Please provide reference to relevant sources:
COVID-19 measures	8. What have been the most significant impacts of measures taken to in response to the COVID-19 outbreak on the rule of law in your country? *(eg emergency measures not time-limited, lack of access to the courts, measures that are not legitimate or proportionate to the threats posed)* Did your NHRI take any particular action in this regard? Please provide reference to relevant sources: 9. What are the most important challenges due to COVID-19 for your NHRI's functioning? *(eg reduced monitoring capacity, reduced delivery of services to citizens)* What are the most important measures taken by your NHRI to continue the fulfilment of your mandate in the COVID-19 context? Please provide reference to relevant sources:
Other relevant areas	10. Are there any other relevant developments or issues you would like to report on, which have impact on the national rule of law environment? Please provide reference to relevant sources:
Suggestions for support	11. Do you have any suggestions for support from regional mechanisms that could help the rule of law situation in your country, as reported above? 12. In particular, do you have any suggestions for support from ENNHRI and/ or regional mechanisms that would help address any negative trends impacting on your NHRI's ability to fulfil its mandate in compliance with the Paris Principles? *(eg enabling environment, regulations, threats)*

Co-funded by the European Union