

Croatia

Ombudswoman of the Republic of Croatia

International accreditation status and SCA recommendations

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

Impact of 2020 rule of law reporting

Follow-up by State authorities

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

References

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

Impact on the Institution's work

The rule of Law has become a significant part of our work and we have been recognized by stakeholders for our work on the issue. For example, civil society organisations' priorities for the Republic of Croatia Presidency of the Council of the European Union included Rule of law issues.

The conference “Just Europe – Strengthening the Rule of Law and Human Rights in Europe” was planned for March 2020. The Ombudswoman, her Deputy and staff were involved. While, due to COVID-19 the in-person conference was cancelled, the event took place in online form, through recorded interventions. The Deputy Ombudswoman took part in it.

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

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

Follow-up initiatives by the Institution

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

References

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

Independence and effectiveness of NHRIs

Changes in the regulatory framework applicable to the Institution

In 2019 a new responsibility was added to the Ombudsman’s mandate with the entry into force of the Law on the Protection of Reporters of Irregularities (Whistle-blowers) on 1 July 2019. The Ombudswoman was granted the mandate of the competent body for external reporting of

irregularities (i.e., protection of whistle-blowers) and the institution has been assigned the task of monitoring the implementation of the Law on Protection of Reporters of Irregularities, including monitoring reports on the internal reporting of irregularities.

As a consequence, in 2020 new Rules of Procedure of the Ombudsman were adopted by the Croatian Parliament, which introduced a new Department within the institution responsible for protection of whistle-blowers. As the Rule of Law Report recognized the need for strengthening of the institution within this mandate, during 2020 one staff member was employed for this mandate.

References

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

Enabling space

The Ombudswoman has observed a worrying trend as regards the Institution's enabling environment. Since 2017, responsible state authorities are acting less and less on the recommendations stemming from the Ombudswoman's annual reports. Hence, in 2019 responsible bodies have acted or were acting on only 20% of the recommendations, which is lower even when compared to the Report from 2015 (29%), which was not accepted by the Croatian Parliament. It is of particular concern that the Government did not comment on as many as 60% of recommendations. A decreasing percentage of the fulfilment of recommendations can be explained by the fact that the Croatian Parliament has not yet discussed 2018 and 2019 Annual Reports (in May 2021, the Annual Reports from 2018, 2019 and 2020 were discussed in the Croatian Parliament).

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

of Interior to ensure unannounced and free access to data on irregular migrants to the staff of the Office of the Ombudsman and the NPM in line with provisions of the OPCAT, Law on National Preventive Mechanism and the Ombudsman Act.

References

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

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

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

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

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

Human rights defenders and civil society space

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

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

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

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

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

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

References

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

Checks and balances

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

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

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

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

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

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

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

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

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

References

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

Functioning of justice systems

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

Complaints related to the work and conduct of judges, as well as the manner in which court proceedings are conducted and decisions made, still show distrust of citizens in their regularity and legality, as well as fear of corruption. At the same time, the Ministry of Justice and Administration (MJA) noted a 21.7% decrease in the number of complaints relating to the work of courts compared to 2019.

In 2020, the Ombudswoman noted a decrease in the number of cases relating to the work of the State Attorney's Office by the 13.88%. They mostly referred to long proceedings, dropping of

criminal charges and similar. At the same time, MJA noted 34% increase in the number of complaints related to the work of State Attorney's compared to 2019.

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

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

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

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

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

References

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

Media pluralism and freedom of expression

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

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

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

The legislative procedure on the draft Law on Electronic Media was sent into legislative started in 2020. During public consultations, the Ombudswoman pointed to the inadequate regulation of the responsibility of editors / publishers for content generated on video sharing platforms, the lack of definition of such platforms, and that the draft is not fully in line with other laws, such as the Anti-Discrimination Act, as the umbrella anti-discrimination law. It is commendable that the draft Law addresses earlier legal gaps relating to the difficulty of establishing responsibility for comments below articles on portals, but there is still a lack of a definition of social media and taking of responsibility for the comments generated there. Therefore, users could remain insufficiently protected from unacceptable content, and could only depend on self-regulatory acts of international Internet companies. An additional problem could be posed by the fake profiles of

commentators, and the CJA believes that the legislator should provide for the portal's responsibility for readers' comments in case it fails to register / identify them. Also, it is of concern that the draft Law does not follow current technological trends in media sector, for example it does not define the "video sharing platform service" or the responsibility of persons for user content generated on those platforms.

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

References

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

Corruption

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

During 2020, employers with at least 50 employees were required to set up a system of internal reporting of irregularities. Persons in charge of internal reporting sent us 26 notifications on received complaints. What can be seen from them is that both the persons filing the complaints and persons responsible for internal reporting do not have sufficient understanding of the Law. Namely, these cases often related to the violations of employment rights, and not of an irregularity that poses a threat to the public interest.

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

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

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

References

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

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

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

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

Even though, the Constitutional Court stated that the Civil Protection Headquarters have a mandate to make these decisions, it pointed out that this does not mean that the decisions of the

Headquarters would not be subject to the control of the executive, legislative and judicial authorities, and that there would be no obstacles for the Croatian Parliament to request a report from the Government on the implementation of measures and work of the Headquarters if it deems necessary.

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

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

During 2020, the Ombudswoman organized a series of online discussions *#Kavazaljudskaprava*, which gathered citizens, experts and representatives of relevant institutions and CSOs, hence providing the opportunity to discuss human rights issues in an open, constructive and inclusive way rights. By the end of the year, we had held four such meetings, in relation to the impact of coronavirus on the most vulnerable groups, youth and challenges they face, environmental protection and climate change, and on the occasion of International Human Rights Day, we hosted the Commissioner for Human Rights of Council of Europe Dunja Mijatović.

References

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

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

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

References

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

