

# State of the Rule of Law in Europe in 2022

## Reports from National Human Rights Institutions

Croatia



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## Croatia

*Ombudswoman of the Republic of Croatia*

### Impact of 2021 rule of law reporting

#### Follow-up by State authorities

As a follow up to the European Commission's Rule of Law Report, Human Rights House (an NGO which unites 8 organisations, also whose representative is a member of the advisory body of the Ombudswoman) organized a public discussion that brought together civil society representatives, representatives of the Ministry of Justice and Public Administration, Constitutional court representatives, representatives of the Government (Governments' Office of the Agent before the European Court of Human Rights), the Ombudswoman and representatives of our institution and representatives of the European Commission. State Secretary of the Ministry of Justice and Public Administration announced that as a follow up to the Rule of Law Report a number of legislative proposals will follow aimed at ensuring the strengthening of independence of judiciary and fight against corruption.

#### References

- <https://www.kucaljudskihprava.hr/2021/12/03/okrugli-stol-vladavina-prava-u-hrvatskoj-izazovi-i-preporuke-u-podrucju-pravosuda-i-drugim-institucionalnim-podrucjima-iz-perspektive-ljudskih-prava/>
- <https://www.ombudsman.hr/en/rule-of-law-in-croatia-challenges-and-recommendations-in-the-areas-of-legislature-and-checks-and-balances-from-a-human-rights-perspective/>

#### Impact on the Institution's work

The rule of law is a significant part of the Ombudswoman's work and the Institution has been recognised by stakeholders for its work on the issues involved.

The Ombudswoman used the 2021 ENNHRI Rule of Law Report to raise awareness on rule of law through its webpage and meetings with relevant stakeholders. Additionally, the European Commission's Rule of Law Report is used as a source of information for our Annual Report for 2021.

Additionally, the Croatian NHRI continues closely monitoring issues in relation to rule of law (judiciary, whistle blowers' protection, media freedoms, human rights defenders, checks and balances and others) and we will include them in its 2021 Annual Report, to be submitted to the Croatian Parliament, and which is being drafted at the moment.

### **References**

- <https://www.ombudsman.hr/hr/download/izvjesce-pucke-pravobraniteljice-za-2020-godinu/?wpdmdl=10845&refresh=6215ffa3e08271645608867>

### **Follow-up initiatives by the Institution**

The Ombudswoman has shared the Rule of Law Report and its findings with members of the Human Rights Council, advisory body to the Ombudswoman as well as with staff of the Ombudswoman's Office. It was also part of the NHRI's meetings with civil society organizations and state administration bodies (in particular in drafting of legislation on social care, law on whistle-blowers' protection and discussions on migration).

Furthermore, the Ombudswoman has organised a conference at the beginning of January 2022 on *30 years of protection and promotion of human rights in Croatia: past, present and future* and one of the panels was focused on state of rule of law in Croatia.

### **References**

- <https://www.ombudsman.hr/hr/30-godina-zastite-ljudskih-prava-u-republici-hrvatskoj-proslost-sadasnjost-i-buducnost/>

### **NHRI's Recommendations to National and European policy makers**

The Ombudswoman suggests including NHRIs more visibly in discussions on the rule of law reporting by European policy makers and providing visible space for NHRI input in the EC Report.

Also, organise a yearly EU level conference on the Rule of Law Report, co-organised by the Commission and ENNHRI, as high level as possible to ensure impact, with strong Commission's participation, with all EU NHRIs and national Government representatives, focusing on the parts of the RoL country reports that specifically pertain to the independence, work and standing of NHRIs, as well as the overall situation across the EU.

## Independence and effectiveness of the NHRI

### International accreditation status and SCA recommendations

The Ombudsman of the Republic of Croatia was last re-accredited with A-status in March 2019 (1).

Among the recommendations, the SCA encouraged the Croatian NHRI to advocate for broad consultation and participation of civil society in the selection process.

The SCA also noted that the Croatian NHRI had recently been mandated with additional responsibilities under the whistle-blower legislation, but that no new funding had been allocated to allow it to carry out these new responsibilities. Therefore, the SCA encouraged the Croatian NHRI to continue to advocate for the funding necessary to ensure that it can effectively carry out the full extent of its mandate, including its newly mandated responsibilities.

Additionally, the SCA noted that the term of office of the Ombudsperson is of 8 years and that the enabling law does not limit the number of re-appointments. The SCA took the view that it would be preferable for this to be limited to one re-appointment.

Finally, the SCA acknowledged that the regional offices in Rijeka was not accessible to persons with disabilities at the time. It encouraged the NHRI to continue to seek a solution of this situation, including by advocating for additional funds to ensure that all its offices are accessible.

### References

- (1) <https://www.ohchr.org/Documents/Countries/NHRI/GANHRI/SCA%20Report%20March%202019%20-%20EN%20.pdf>

### Regulatory framework

The Ombudswoman of Croatia continues to function on a constitutional basis. It has the mandate to contribute to protection of human rights for individuals, including through complaints handling, strategic litigation before courts (only in antidiscrimination and whistle-blowers' protection cases) or taking part in legislative procedures. Furthermore, it provides general legal information to individuals continues to raise awareness and does research.

The national regulatory framework applicable to the Ombudswoman of Croatia has not changed since the 2021 Rule of Law Report. However, due to the obligation to transpose Directive (EU) 2019/1937 of the European Parliament and the Council of 23 October 2019 on the protection of persons reporting breaches of Union law, in 2021 the Government has

commenced the adoption of the new Law on the Protection of the Reporters of Irregularities, which is still ongoing and which foresees an additional broadening of the Ombudswoman's mandate. Representatives of the Ombudswoman's office participated in drafting the new Law as one of the members of the Working Group. Proposals and comments were presented also during the public consultation on the Draft Law, as well as during the further parliamentary procedure since not all of our proposal were accepted during the work of the Working Group.

The Croatian NHRI's regulatory framework is sufficient. During 2021 the new Ombudswoman and subsequently three Deputies have been elected by the Parliament, in line with the regulatory framework. The Law on the Ombudsman from 2012 provides the Ombudsman shall have "a minimum of 3 deputies". However, given a completely new additional mandate was given to the institution since then (in 2019, whistle-blowers protection mandate, which will now extend even further with the new Law transposing Directive (EU) 2019/1937) the Croatian NHRI considers that the need for a fourth Deputy has been established. This is additionally relevant given the regulated structure of the organisation, namely, Ombudswoman's 3 deputies are not just 'deputies' of the Ombudswoman, but are also the only management/supervisory level in the institution other than the Ombudswoman herself (there are no heads of units, heads of departments etc.). While there is no need to amend the existing Law on the Ombudsman, a change in established practice would be beneficial to the effectiveness of the institution.

### **References**

- <https://www.ombudsman.hr/en/new-deputy-ombudspersons-appointed/>
- <https://www.ombudsman.hr/hr/jacanje-zastite-zvzdaca-novi-zakon-o-zastiti-prijavitelja-nepravilnosti-na-prvom-citanju-u-saboru/>

### **Enabling and safe space**

The understanding of the NHRI mandate, its independence and role varies across the system and depends on individual institutions. As previously noted, voting on the Annual Report in the Croatian Parliament, and in particular the negative vote on the annual report which is an assessment of the situation regarding human rights in the country, affects the level of implementation of the recommendations.

Also, some state authorities still perceive the institution to a large extent by its first mandate of the ombudsman (focusing on maladministration) which it has had for 30 years, rather than the newer mandates, including the NHRI mandate. Part of this can be

contributed to a general public lack of awareness and knowledge about human rights, including on the role of NHRIs in promoting and protecting human rights.

Additionally, regarding the NHRI's work on the treatment of irregular migrants - in spite of some positive steps regarding access to information during Ombudsman's (announced and unannounced) visits to police stations, the Ministry of the Interior still continues to deny the Ombudswoman direct access to data in their information system.

In relation to enabling and safe space for NHRI, the Croatian Ombudswoman highlights three issues: 1) that of the importance of timely discussions of our Annual Reports by the Parliament and 2) that of the impact of the Parliament voting on the Ombudswoman's Reports and 3) the currently inadequate premises of the institution.

Firstly, it is important that the Parliament discusses Ombudswoman's annual reports in a timely manner, as the Parliament not debating them in time, but with a considerable delay, makes the findings in the reports less relevant due to the passage of time, as well as negatively impacts the implementation of the recommendations from the annual reports. That was the case with the Ombudswoman's annual reports for 2018 and 2019, which were not debated in 2019 nor in 2020. In 2021, the newly elected Ombudswoman had to present 3 annual reports: Report for 2018, Report for 2019 and Report for 2020 (and additionally 1 Special report) to the Parliament at the same time during a single discussion on all 3 annual reports together.

Secondly, the annual report and particularly the implementation of the recommendations contained therein should not depend on the outcome of the Parliamentary vote on the annual report. Currently several different outcomes of the vote are possible, given there is voting "in favour", "duly noting" and voting "against" the Ombudswoman's annual report. While the results of the negative vote on the annual report do not affect the incumbent's mandate, they impact the reception of the report including and particularly importantly the reception of recommendations by the institutions they are addressed to. At the same time, Ombudswoman's annual reports are not reports on the institution's internal operations/reports on the work of the Ombudswoman for the previous year but an independent overview and assessment of the situation regarding human rights in the country. Therefore, while there should be public scrutiny and accountability of all public institutions and public officials, the vote on the report is a vote on the independent assessment of the situation regarding human rights. We think these assessments should be debated by the Parliament, but should not be subject to a vote, rather they should be always "duly noted".

Finally, the Office of the Ombudswoman still continues to work in the temporary office space, which cannot even accommodate all of our staff, nor our case files (archives) and generally does not meet our needs (no meeting room for instance).

Nevertheless, Croatian NHRI perceives that, in general, it has adequate access to information and to policy makers, also is involved in all stages of legislation and policy making with human rights implications.

In relation to the NHRI's recommendations, the Ombudswoman can issue recommendations in individual cases and through the Annual Report. The addressees of the NHRI recommendations are legally obliged to provide a timely and reasoned reply.

When it comes to individual cases, in line with the Article 27 of the Ombudsman Act the bodies to which recommendation was issued shall notify the Ombudswoman, within the time limit set by her, of the measures undertaken as a result of her recommendation. If the bodies do not notify within the set time limit the Ombudswoman on the measures undertaken or if they do not act in accordance with her recommendation, the Ombudswoman shall inform thereof the body authorised for supervision of that bodies. If the body that conducts the supervision does not notify, within the open deadline, the Ombudswoman shall inform thereof the Government of the Republic of Croatia. In the case of a more serious violation of or threat to the citizens' rights, the Ombudswoman may notify the Croatian Parliament and the public of the failure of undertaking measures in accordance with her recommendation or proposal.

Regarding recommendations issued in annual reports - the Governmental Office for Human Rights and Rights of National Minorities is formally tasked with the systematic monitoring of the implementation of recommendations from the Ombudswoman's annual report. However, currently the Governmental Office is not fulfilling this obligation.

The Ombudswoman on the other hand regularly monitors the implementation of recommendations from the Annual Report. The Croatian NHRI has an obligation from the Ombudsman Act to include in each annual report an assessment on the level of implementation of the recommendations from the last annual report. Data on the level of implementation is collected from responsible bodies at the end of each year, during the preparation of the next Annual Report, so that each Chapter of the Annual Report looks into specific recommendations from previous years in more detail. In addition, as an example of good practice, in cooperation with the Committee on Human and National Minority Rights of the Croatian Parliament, thematic sessions on the implementation of recommendations from the Ombudsman's Annual Report were organized in the past

which gathered representatives of all relevant ministries and governmental agencies and this aided in the implementation.

When analysing NHRI's safe space, it is worth noting that in Croatia measures necessary to protect and support the NHRI, heads of institution and staff against threats and harassment and any other forms of intimidation (including SLAPP actions) are in place. In line with the Article 8 of the Ombudsman Act, the Ombudswoman and her Deputies enjoy immunity as do Members of the Croatian Parliament and the provisions of the Constitution of the Republic of Croatia on the immunity in the Croatian Parliament are applied to them appropriately (Article 76).

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

The Croatian NHRI has taken an action to improve its functioning in compliance with the Paris Principles and Recommendations 021/1 of the Committee of Ministers of the Council on National Human Rights Institutions. In line with those recommendations:

- The institution changed the premises in the regional office in Rijeka to ensure its accessibility.
- Raised the issue of the need on the Government side for the provision of adequate resources corresponding to our extended mandate in relation to whistle-blowers' protection (planned new staff members).
- Raised the issue of the inadequate premises of the institution.
- In the election of the Ombudswoman advocated for a broad consultation and participation of civil society in the selection process, resulting in the fact that during the public hearing in the selection process questions to the candidates could be asked not only by members of the Parliament but also by external members of committees, who are representatives of CSOs and academia. Also, the public hearing was streamed online and is/was publicly accessible.

### **NHRI's recommendations to national and regional authorities**

- Provide the institution of the Ombudswoman with adequate resources (including staff members and deputy) corresponding to broadening of mandate.
- Ensure adequate premises for the work of the institution following the earthquake.
- Debate annual reports of the Ombudswoman in a timely manner and discontinue voting on the annual report on the situation of human rights - the reports should be debated, but should be "duly noted".

- Ensure unannounced and free access to all data, including data in the information system of the police/the Ministry of the Interior needed for our work on protecting human rights of irregular migrants.

## Human rights defenders and civil society space

### Laws and practices negatively impacting on civil society space and/or on human rights defenders' activities

The situation of human rights defenders and civil society space in Croatia has remained equally worrying throughout last year.

During 2021 the National Plan for the Creation of Enabling Environment for Civil Society has still not been adopted, although the last strategic document expired in 2015.

In relation to CSOs access to financial resources, a number of CSOs have reported that there is a lack of funding opportunities for those working on issues of human rights and anti-discrimination, particularly in relation to monitoring and advocacy initiatives. This is partly 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.

When it comes to ESI funds, CSO point to demanding administration of these projects and point to the shortcoming in evaluation, such as giving the support to associations that were among the first to submit their projects. This puts 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.

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

Furthermore, regarding the work of CSOs in the area of migration, in 2021 the High Misdemeanour Court confirmed the judgment of the Misdemeanour court against a volunteer who was found guilty of committing the offense of aiding and abetting the illegal crossing of the state border in line with the Aliens Act and issued a high financial sanction.

In the *ECTHR* judgment *M.H. against Croatia* (1), currently being considered as a possible case for the Grand Chamber, the *ECTHR* presented the important role of NGOs for the protection of migrants rights, which should be viewed as partners in the authorities' efforts to deal with migration challenges.

## References

- (1) <https://hudoc.echr.coe.int/fre?i=002-13480>

### Access to and involvement of civil society actors in law and policy making

When it comes to the participation of CSO representatives in working groups for the adoption of strategic and public policy documents, representatives of associations point out that the number of calls for participation in such activities has increased in recent years. However, they also emphasize that they are often involved with a delay, at a time when the process of drafting the document in question has already begun, as was the case, for example, with the process of drafting EU funding documents for the financial period 2021-2027, when a document has already been drafted and sent to the EC for consultation.

In the context of the legislative procedure, according to preliminary data from the Office for Legislation, a total of 823 consultations were conducted through the e-Consultation system in 2021, in which 274 NGOs participated. Out of a total of 23,476 comments received from all categories of stakeholders through the e-consultation portal, 5,076 were accepted or partially accepted, 6,506 were not, and 1,808, or slightly less than 8%, were not answered.

### Threats and attacks, including strategic litigation against public participation (SLAPPs)

In reference to civic space, in 2021 journalist continued to be faced with SLAPPs, which are referenced in the chapter on Media freedom.

Furthermore, in the 2021 ECtHR judgment *M.H. against Croatia* currently being considered as a possible case for the Grand Chamber recognised that in the migration context NGOs regularly work alongside lawyers and help them establish a connection with persons in need, since they have greater opportunities for contact with such persons. Furthermore, the Court pointed to the important role of NGOs for the protection of migrants' rights, which should be viewed as partners in the authorities' efforts to deal with migration challenges.

### NHRI's role in promoting and protecting civil society space and human rights defenders

The Ombudswoman continues to monitor the situation and has a dedicated chapter on Human Rights Defenders in its Annual Report to the Parliament, as well as number of recommendations on the issue.

In preparation of the 2021 Annual Report the Ombudswoman has sent out an open public call, as well as a large number of specific letters inviting CSOs to contribute to it by sending their data, insights and specifically asking about key challenges to their work (the work on our Annual Report is ongoing).

Additionally, in her media activities the Ombudswoman continues to underline the important role played by human rights defenders. During 2021 the Ombudswoman issued a press statement in relation to media freedom and attacks on journalist during the protest. Furthermore, during a Human Rights Film Festival in December 2021 the Ombudswoman organized a public consultation with civil society organizations – the aim of this consultation was to get a better insight in challenges they face as human rights defenders and to identify key challenges in human rights protection during the year from their perspective. These input from these consultations will be reflected in the Ombudswoman's Annual Report for 2021 which is currently being prepared.

Finally, during the UPR process, the Ombudswoman has included information on the challenges identified, which is reflected in recommendations Croatia received.

### **NHRI's recommendations to national and regional authorities**

- To adopt a new National Strategy for the Creation of an Enabling Environment for Civil Society Development;
- To adopt a new National Programme of Protection and Promotion of Human Rights, which recognizes the role of human rights defenders;
- To continuously undertake activities aimed at the promotion of the UN Declaration on human rights defenders.

### **Checks and balances**

When it comes to checks and balances, the works of National Civil Protection Headquarter was discussed – as they were the key body in making decisions on measures against COVID – 19. Part of the criticism related to the lack of transparency in their decision making and lack of inclusive participation of citizens, civil society and other stakeholders in response to epidemic. Additionally, the criticism related to inadequate inclusion of the Parliaments in relation to COVID measures.

This has all led to the starting of the process of a potential referendum (collection of signatures) , initiated to oppose introduction of COVID certificates and their usage and at curtailing the powers of the Headquarter.

As already stated, the right to participate in public discussion through consultation and participation in decision – making still to be further improved to increase trust of public in the work of institutions.

Furthermore, in relation to the elections, one of our complaints pointed to the lack of remedy in the context of the right to vote. Namely, when the person is not included in Electoral register and finds out that at the voting place, there is no possibility for that persons to enjoy their right.

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 823 consultations that took place in 2021 there were 274 NGOs participating. Through this platform 23.476 comments were received, of which 8% were unanswered by authorities, which is a positive step compared to 2020 when 35% were unanswered. However, CSO representatives still point to the fact that the answers provided by relevant bodies are only formalistic and that there is a lack of other forms of consultations. Additionally, in 2021 the Government sent into procedure 120 laws, out of which 77.5 % went through first and second reading in the Parliament, while 22.5% were adopted through fast-track, urgent procedure. 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.

### **Trust amongst citizens and between citizens and the public administration**

When it comes to the level of trust between citizens and public administration it is not high. Citizens address the Ombudswoman, citing problems in accessing public bodies and services, ranging from inability to contact institutions and lack of response to their submissions, to unethical conduct of public servants as well as irregularities in the procedures conducted in deciding on citizens' rights. Additionally, citizens often complain in regards to exceeding of deadlines. It is also indicative that citizens ask us general questions about how they can get a service or how to protect their right, who they can turn to or complain to, what the procedure should look like and so on, which shows that public service bodies themselves do not provide sufficient information on procedures and services or are simply not responsive. Problems in the functioning of public administration are also recognized by the Government, and the Draft National Plan for the Development of Public Administration from 2021 to 2027, which was in a public consultation during 2021, states that the quality and efficiency of Croatian public administration remains low compared to other EU Member States looking at global governance indicators. According

to the NAP, administrative burdens, repeated searching for data that different public administration bodies have in their records, slowness in resolving (administrative) cases and complicated procedures and regulations are the most common challenges faced by citizens and businesses in the Republic of Croatia.

### **NHRIs as part of the system of checks and balances**

The Ombudswoman regularly takes part in legislative and policy processes. For example, the Ombudswoman took part in a legislative procedure in relation to the new Social Welfare Act. The adoption of the Act has been a long standing recommendation. Also, the new Act, together with other pieces of legislation, introduced a reform of the social welfare system. The Ombudswoman used her previous work and complaints and got involved in public discussion on the proposed text through e-counselling platform. Additionally, as it was a proposal which got a very large number of comments and there were dissonant voices in the public on the direction of the reform, the Ombudswoman organized a public discussion gathering key stakeholders – the Minister and representatives of the Ministry proposing the new Act experts, academia, and providers of social services and users to discuss the proposed solutions. Furthermore, she later took part in the discussion in the committees of the Parliament in both the first and second round of reading, as well spoke publicly/to the media on the issues which the Act is regulating and on the ways forward.

### **NHRI's recommendations to national and regional authorities**

- Ensure various forms of consultations with rights holders, including vulnerable groups;
- Strengthen the capacity of civil servants to monitor impact of legislative initiatives on human rights in the upcoming period;
- Improve the way of providing services to citizens through more intensive digitalization and electronic communication with citizens while at the same time upgrading the "traditional" way of providing services.

### **Functioning of the justice system**

The functioning of justice system in Croatia needs to be improved.

Although in 2021 certain steps have been taken towards better efficiency of the court proceedings and returning the confidence in the judiciary, at the same time the Ombudswoman received a higher number of complaints in this area compared to the previous year. As it could be read from the received complaints the level of citizens' trust in the judiciary is still low. We noticed inappropriate expressions towards the judicial authority

throughout the year, in the complaints we receive , but also in the public space, especially in the period of the election the President of the Supreme Court of the Republic of Croatia.

Furthermore, as in previous years, the Ombudswoman observed the access to justice and judicial protection through the received citizens' complaints, media coverage, communication with various stakeholders such as NGOs, government bodies, through participating in working groups formed to draft proposals for regulations concerning, among others, justice system, and others.

During 2021, the Croatian NHRI received a total of 324 complaints on the judiciary, which is 18.93% more than in 2020. Of that number, 107 related to the work of courts, which is an increase of 13.83%. Most of the complaints, 46 of them, related to abuse of power, then 33 to the length of the procedure, 24 to the outcome of the procedure and 4 to the affairs of the court administration.

In 2021, a total of 23 disciplinary proceedings were initiated against judges, which is 76.92% more than in 2020, 13 sentences were imposed, 3 judges were removed due to disciplinary proceedings and one due to criminal proceedings. The State Judicial Council also approved requests to initiate criminal proceedings against judges and deprive them of pre-trial detention and detention in 3 cases, and in one case on a private lawsuit.

Although the professional position requires judges to refrain from conflicts in public life, due to the atmosphere created in public in relation to the judiciary, judges of the Supreme Court responded with a statement drawing the public's attention that there is a clear line between freedom of expression and legitimate criticism on the one hand and disrespect and undue pressure on the judiciary on the other, pointing out that it is intolerable in a public space to encourage and promote general intrepidity towards judges.

Therefore, while it is necessary to foster the openness of the judiciary to the public, it is also necessary to preserve its independence and resilience against possible attempts of external influences. Thus, when criticizing the judiciary, state officials, the media and the public should do so in a manner that does not jeopardize the constitutionally guaranteed autonomy and independence of the judiciary, respect for personal and family life, dignity, reputation, and honour, as rights guaranteed by the Croatian Constitution.

It is worth noting, however, that in 2021 not all complaints were on the rise. Namely, during the year, the Ombudswoman also received 67 complaints against the work of the state's attorney's office, which is 6.94% less than in 2020. Complaints, as in previous years, were mostly related to dissatisfaction with the decisions of the public prosecutor's office, the lengthiness of its conduct, failure to respond to submissions and complaints, the absence of impartial internal oversight, etc. Some citizens also submitted criminal charges to the

Ombudswoman instead of the public prosecutor's office, or to both institutions, indicating a lack of information regarding proper channels and the Ombudsman's authorities.

Further, out of the total number of complaints received in the area of justice, 79 related to **compulsory enforcement**. Although it has not been referred in the previous ENNHRI rule of law report, complaints in this area are relevant for gaining the broader picture of the situation in the judiciary. Thus, this is an opportunity to also highlight several specificities related to these complaints.

Although the Ombudswoman does not have the authority to act on these complaints, they are important to the NHRI because they indicate difficulties faced by the parties when trying to protect their rights, which also relate to the functioning of the judiciary.

Citizens addressed their institution expressing, among others, dissatisfaction with unnecessary delays of the procedure as well as with the court decisions concerning the merits, rejection of the motion to exclude the judge, as well as forced eviction. Complaints of possible abuse of power in enforcement proceedings were mainly justified by dissatisfaction with court decisions which, however, can be only examined by the higher court in proceedings initiated after the use of remedies.

Although in smaller numbers, we also received complaints sent by parties seeking enforcement, stating they failed to collect their claim recognised in finalised court proceedings and thus questioning the effectiveness of the enforcement proceedings. For example, dissatisfaction was expressed by a citizen whose grandmother had to initiate enforcement proceedings against the state administration body, which, even after being ordered to do so by a final and enforceable court order, did not return the possession of the apartment.

Received complaints often show that citizens are insufficiently familiar with enforcement proceedings, they do not know how to protect their rights or who they should contact, which is why they sometimes fail to use remedies in a timely manner, as it is also indicated by some providers of free legal aid. Considering our institution's authorities, in such cases we provide complainants with the general legal information on the available legal instruments of redress, instructing them to engage a lawyer and, when necessary, providing them with the information how to exercise the right to free legal aid.

Citizens' failure to properly protect their rights in the enforcement proceedings is partly due to frequent legislative changes. Thus, the Ombudswoman has already made a recommendation to the Ministry of Justice and Administration to thoroughly review the current enforcement system and draft a proposal for a new, comprehensive Enforcement

Act, stressing the need to discontinue the practice of partial interventions in enforcement law regulations.

**In the context of the free legal aid (FLA)**, complaints received throughout 2021 largely indicate the same challenges that we reported on in previous years.

The increase in citizens' need for FLA is also evident from the Ministry of Justice and Administration Report on the Exercise of the Right to Free Legal Aid and Expenditure of Funds in 2020 (hereinafter: the FLA Report), published in July 2021, which provides information on the increase in the number of provided primary legal aid by 31.48% in 2020 compared to 2019. However, this trend is not accompanied by an adequate increase in financial resources intended to finance the work of legal aid providers. Thus, in 2021, the amount of HRK 1.985 000,00 (around 263.263,00 EUR) was provided for FLA, which was distributed to 23 providers through a public tender, ranging from HRK 50.000,00 (around 6.631,00 EUR) to a maximum of HRK 95.000,00 (around 12.599,00 EUR) per year. If the maximum amount of allocated funds, which includes fees to lawyers providing FLA and office and overhead costs, is distributed over a period of 12 months, it is evident that the monthly amount that providers have available to provide FLA is HRK 7.916,66 (around 1.050,00 EUR), which is not sufficient to ensure the continuous operation of authorized providers.

According to the FLA Report, associations and legal clinics provided primary legal aid in more than 80% of cases, while the remaining part referred to administrative departments in counties. It is to be expected that the data for 2021 are very similar (*still not received at the time of publication of this report*), given that many citizens approached associations and legal clinics, especially in the earthquake-affected areas. According to the report on the work of the NGO Civil Rights Project (PGP Sisak), during 2021 only 7% of the total legal aid provided was financed through the FLA system.

There is also the problem of the lack of lawyers providing FLA in certain parts of Croatia, which is especially challenging on islands where there are no law offices. In such cases, citizens who are within the FLA system are denied access to redress and in some situations access to court.

It is therefore necessary for the Ministry of Justice and Administration to provide additional funding for providers of free legal aid, in particular in the earthquake-affected areas, as well as to ensure a sufficient number of FLA providers, both of primary and secondary FLA.

## Role of the NHRI in contributing to the effective functioning of the justice system

The institution of Ombudswoman addresses problematic issues in respect to the access to justice and effective judicial protection, primarily by acting on complaints concerning the lengthiness of judicial procedures and abuse of judicial powers, in which cases we can seek the explanation of the President of the Court.

However, other complaints in the field of justice are also important, because although we do not have the authority to act in the individual case, they point to us the general situation in the judiciary, which we report on in the annual report to the Croatian Parliament and can be the subject of initiatives for the improvement of the legal framework and case-law.

As pointed out in a reply to the previous question, in 2021 we acted in a higher number of cases concerning Judiciary than in the previous year which shows that citizens have recognised us as an institution that promotes and protects the rule of law, including the access to justice and effective judicial protection.

When dealing with complaints, some of them pointed to systemic problems, such as the lack of public notaries in certain, more isolated and/or rural parts of Croatia. In addition to handling complaints, the Croatian NHRI also actively participates in the drafting of relevant regulations concerning our mandates providing comments and proposals through public consultations, as well as by participating in working groups.

During 2021, the draft proposal for a National Plan for the Development of the Judicial System from 2021 to 2027 began (further in text: National Plan), with the aim of further reducing the duration of court proceedings, streamlining the judicial network, and modernising the entire judicial system. Representatives of the Ombudswoman's office were members of the Working Group, which actively worked throughout the year to draft the proposal for a National Plan.

The specific objectives of the National Plan have been defined as following: improving the efficiency of judicial proceedings; ensuring transparency, legal certainty, quality and predictability of judicial decisions; developing human resources in the judicial system; modernising infrastructure and improving the level and scope of the use of information communication technologies to automate, digitise and provide e-judicial services; improvement of the quality of the prison system and probation. The National Plan has undergone a public consultation and should be approved in 2022.

In 2021, a draft Law on the Protection of Reporters of Irregularities (further in text: Law) was also drafted and representatives of the Ombudswoman's Office were members of the Working Group in charge for its drafting. This law is essential not only to encourage and

protect reporters of irregularities, but also to restore their trust in the judicial protection of their rights, which is a key precondition for citizens reporting irregularities. Since the institution of Ombudsman has been appointed as the body responsible for external reporting of irregularities since 1 July 2019, our experience has given the opportunity not only to contribute to the implementation of the Directive (EU) 2019/1937 of the European Parliament and the Council of 23 October 2019 on the protection of persons reporting breaches of Union law, but also to highlight the challenges that occurred while applying the current Law, in order to prevent them in future situations after adopting a new Law.

Thus, it has been very important for us to actively participate in the work of this expert working group and make proposals to better regulate the protection of the irregularity/ reporters in the Republic of Croatia. Although the work of the Working Group has ended, we are still actively providing opinions and proposals on draft Law and have presented on three parliamentary committees regarding our opinion on the draft proposed text (currently the first reading has ended and the final draft will be debated in the Parliament soon and it is expected to enter into force in the first part of 2022).

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### **NHRI's recommendations to national and regional authorities**

- Anonymised judicial decisions of all courts should be made public and accessible to citizens as soon as possible in order to improve legal certainty by providing the citizens with the possibility to monitor case law.
- Faster decision making on appeals submitted by citizens against decisions rejecting the application for free legal aid.

## Media freedom, pluralism and safety of journalists

In the opinion of the Croatian NHRI, the situation of media freedom, pluralism and safety of journalists has deteriorated throughout this past year.

In the first pandemic year (2020), journalists were less likely to be exposed to threats and physical attacks, and such excesses were mostly associated with reporting lockdown violations.

However, in 2021 not only the number of threats and attacks on journalists increased, but the motives and causes expanded as well. Although a significant number of attacks were related to media coverage of the COVID-19 virus, there were threats and intimidation towards journalists who were on different work assignments. Also, in addition to hate speech, threats, and physical attacks, in 2021 journalists were increasingly exposed to the so-called Strategic Lawsuits Against Public Participation (SLAPP).

Data published by Platform for the Protection of Journalism and the Safety of Journalists at the Council of Europe, also support the conclusion on the increase in violence against journalists and significant deterioration in their safety in 2021. Namely, while in 2019 the Platform recorded two media threat alerts, one such case was reported in 2020 and as many as eight in 2021.

Practice that continued into 2021, negatively affecting the independence of journalists and the ability to pursue their profession, are SLAPP lawsuits.

SLAPP presents a threat to public debate since intimidated targets, in this case journalists, might start to censor themselves in order to avoid new lawsuits. Such lawsuits have a negative impact on questioning, critically pondering and investigating matters of public interest, which can lead to corruption and other social illegalities and irregularities.

Prosecutors are often public figures, including judges of the national courts, in which cases journalist believe that they are in an unequal and subordinate position in the proceedings due to the inadvertent influence that the prosecutor may have on the judge handling the case. Also, the claims for damages are quite high, which is contrary to the practice of the ECtHR and national Constitutional Court. Therefore, the Ombudswoman holds that it would be useful for the Judicial Academy to provide continuous education of judges related to SLAPP lawsuits with particular reference to the practice of the ECtHR regarding claims in such procedures and their impact on human rights.

In addition to financial exhaustion, the Croatian Institution noticed a negative precedent in the ongoing case before the Croatian court in which, within the framework of the Enforcement Law, the court imposed a temporary measure banning the journalist and the

portal from publishing content, in order to protect the dignity, professional work and achievements of insurance proposers / future prosecutors. The measure is justified by the fact that the continued publication of the content would represent irreparable damage to the insurance applicant whose disputed publications violated the right to honour, reputation and dignity. At the same time, the violation of honour, reputation and dignity can be compensated and is regulated by the Civil Obligations Act.

Besides SLAPP lawsuits and other legal instruments used before the court with the negative impact on the freedom of media, in 2021 individual verbal and physical threats and attacks against journalist due to their professional work were also witnessed.

There were multiple attacks on journalists from several media outlets when reporting from a public gathering of citizens due to the introduction of COVID certificates. Due to subject attacks, the Ombudswoman issued a statement pointing out that one of the preconditions for professionally reporting and fostering the right to freedom of expression is the ability of journalists to do their job without fear of verbal and physical attacks, which is necessary and important in any democratic society.

Although a number of attacks were related to media coverage of the COVID-19 virus, verbal and physical attacks, threats and intimidation were present also against journalists who were on thematically different work assignments. One of such cases concerned online threats of violence against a journalist who allegedly trespassed on the property of a public celebrity in preparation of a work assignment. For pointing out the inadmissibility of hate speech against journalists and in general, the Ombudswoman issued a statement stressing out that we all have a role to play in combating threats and hate speech online. Therefore, it would be useful for the Ministry of Culture and Media to design and conduct a comprehensive media campaign on citizens' responsibility for published content on social networks and electronic portals. There has also been a case of a journalist who received death threats for publishing text that was shocking and offensive to a number of citizens. When acting upon complaints submitted against this journalist, the Council for Electronic Media pointed out the legitimacy of the text that is offensive to a large number of citizens (because used vulgarism for many citizens means profanity and gross insult), since the freedom of expression is one of the fundamental values of modern society and despite rude and offensive speech, it can represent a different way of informing through exaggeration, even profanity.

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## Role of the NHRI in promoting and safeguarding an enabling environment for media and freedom of expression

In its annual report for 2020, the Ombudswoman reported to the public and the Croatian Parliament on the problems of media freedoms, freedom of expression and other related threats to a pluralistic society.

With public announcements published on the official website, the Croatian NHRI continuously point out the problems related to this topic and offer solutions.

The Institution of Ombudswoman also participated in a public consultation related to the adoption of the new Law on Electronic Media.

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## NHRI's recommendations to national and regional authorities

Regarding threats and hate speech to which journalists are exposed, and which can lead to violence towards journalists and media freedom, the Ombudswoman has publicly stated

that such messages are incompatible with freedom of expression. Therefore, at least three conditions need to be met in order to combat hate speech on the Internet.

The first is that the competent bodies react and act within their powers in cases of hate speech, where threats addressed to journalists are considered a more serious form of the criminal offense of threat, for which a more severe punishment is envisaged.

Second is that users of social networks and visitors to the portal show personal responsibility in communication. It is also important that anyone who comes across such messages reports the illegal content.

Third is that the media and profile administrators on social networks remove all unacceptable messages in a timely manner.

## Corruption

The problem of corruption in Croatia has remained at the worrying level last year.

According to Transparency International's Corruption Perceptions Index, the Republic of Croatia ranks 63rd out of 180 countries in terms of corruption perception, 17 points behind the European Union average with its 47 points, and the same indicators were in 2020 and 2019, resulting in no positive progress in this regard. Cases in which the Ombudswoman acted as the authority responsible for external reporting of irregularities indicate that it is still difficult to talk about the culture of reporting irregularities in the Republic of Croatia and that there is still no sufficiently stimulating environment for such activities.

This is particularly evident in those cases where employees regularly point out the irregularities they encounter in their work environment, but their motives and even their personality are questioned, regardless of the seriousness and merit of what they report.

In 2021, more citizens than previous year decided to publicly expose illegalities in the conduct of public figures, pointing to acts of corruption and followed by legal proceedings against some of them, initiated by the reported persons. However, it is a positive fact that such public statements and media attention especially in the period of adoption of the new Law, have prompted other citizens to publicly expose irregularities, and that the media has provided them with sufficient media attention to inform the public in detail about the irregularities they have pointed to.

Nevertheless, it is necessary to ensure that the legal framework for the protection of reporters of irregularities under the Law on the Protection of the Reporters of Irregularities is comprehended by public, especially those who plan to report, so they can adequately protect their rights. Not every situation of whistleblowing is covered by the Law and it is

crucial for every whistle blower to correctly identify the regulations that apply to his/her case so they can seek adequate protection. In this sense, it is important for the application of the Law to a specific case, when an irregularity has been reported and when retaliation has been taken for reporting irregularities, whether the reporting channels as regulated by Law have been used, whether the reported irregularity threatens the public interest, whether the reporting person reports irregularities related to his or her performance of activities with the employer and others.

Since 1 July 2019, the institution of Ombudsman has served as the body responsible for externally reporting irregularities under the Law on the Protection of the Reporters of Irregularities (further in text: Law) and monitors the implementation of the internal reporting channel. Through this mandate, the Ombudswoman monitors and participates in the fight against corruption.

In 2021, the Ombudswoman acted upon 49 cases on externally reported irregularities, out of which 17 were open cases from the previous two years and 32 were newly opened. In relation to these figures, it should be emphasized that reporters often report multiple irregularities with the same employer, so within the same case it is necessary to act on a number of reports of irregularities, each treating individually and proceeding it to the authority responsible for handling the content of the irregularity. In accordance with the received reports of irregularities and information sent by the confidential persons, external reporting of irregularities continues to prevail in the so-called public sector while internal reporting is more represented in private sector.

In relation to the internal reporting channels, confidential persons provided the Croatian Institution with 48 notifications of irregularities received in 2021, which is an increase from the previous year (when 26 notifications were received) most of which related to irregularities within employers in the economy and crafts. According to statistic data, internal reporting of irregularities is less used in the public sector, indicating the possible distrust of the employees that the employers in public sector will eliminate irregularities and that they will receive the required protection.

In 2021, the Ombudswoman witnessed an increasing number of public disclosures of irregularities, which were accompanied by numerous media reports. The reported irregularities mostly referred to the public sector and they related, among others, to the abuse of position and authority in relation to illegal employment, illegal disposal of state property favouring certain natural and legal persons, etc. Some of reporters sought the protection from retaliation in court, while at the same time they have been prosecuted by the individuals they have reported. Most of the court cases are still ongoing as well as the state prosecution authorities' acting upon reports of illegal conduct. It is therefore

necessary to wait for the final court decisions to see how the Law will be applied to specific cases and what will be the outcome of legal proceedings, both those initiated by the reporters and the proceedings brought against them after they have reported and publicly exposed irregularities.

The media also reported on the case of an employee who was fired as a whistle blower 10 years ago and in December 2021 the Constitutional Court issued a decision ruling that his right to the freedom of expression has been violated. This decision of the Constitutional Court is important not only for understanding the protection of the right to freedom of expression when reporting illegal activities, but also for understanding the legal framework for the protection of whistle-blowers even irrespective of/before the entry into force of the Law on the Protection of the Reporters of Irregularities.

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## The role of NHRI in combatting corruption at the national level

The Ombudswoman has been taking multiple action to address the issues raised and promote a strong framework for combating corruption in line with the institution's mandate. As mentioned above, since 2019 Ombudswoman has a mandate as the body responsible for externally reporting of irregularities. Within this mandate, Ombudswoman forwards reports of irregularities to the authorities responsible for handling their content (e.g., the State Attorney's Office of the Republic of Croatia, State Inspectorate of the Republic of Croatia, etc.), protecting the identity of the applicant, as well as the confidentiality of the received information, and monitoring the conduct of these bodies. At the same time, the Ombudswoman protects the reporters of irregularities from retaliation. It is a very demanding mandate that assumes sufficient professional and technical capacities for its successful performance that the Ombudswoman's office still does not fully dispose with.

Therefore, the Croatian Institution, among others, represents a bridge between the reporters of irregularities, who wish to remain anonymous, and the bodies that act on the content of the report.

Due to the obligation to transpose Directive (EU) 2019/1937 of the European Parliament and the Council of 23 October 2019 on the protection of persons reporting breaches of Union law (herein: the Directive) into national law, in 2021 the Government has commenced the adoption of the new Law on the Protection of the Reporters of Irregularities, which is still ongoing. Representatives of the Office of the Ombudswoman participated in drafting the new Law as the members of the Working Group that was in charge for providing proposals of its provisions. They also made proposals and comments during the public consultation on the Draft Law, as well as during the further parliamentary procedure since not all the Institution's proposals were accepted during the work of the Working Group.

Among other points, the Ombudswoman emphasized the necessity to ensure the psychosocial assistance, as well as free legal aid for the reporters (regardless of property census), both primary and secondary, which would be provided by civil organisations and/or in cooperation with the Croatian Bar Association. The need to regulate dissuasive sanctions for employers for misdemeanours regulated by the Law were also pointed out. Further, the Croatian NHRI proposed the obligation of all persons/organisational units of the employer who receive reports of irregularities (e.g. ethics commissioner, dignity

person, various committees and commissions for the examination of petitions/complaints, etc.) to forward the same, especially if they are not authorised to act on it, to a confidential person without delay. The purpose of this proposal is that even those reporters of irregularities who omit to report irregularities to a confidential person, nevertheless, ultimately enjoy protection under the Law.

The purpose of our proposals is creating an effective legal framework for protecting irregularity reporters and preventing ambiguity in the application of the new Law, all with the aim of effectively protecting irregularity applicants and detecting irregularities in the public interest.

Representatives from the Office of Ombudswoman were also members of the Working Group on drafting the Anti-Corruption Strategy for the period 2021-2030.

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### **NHRI's recommendations to national and regional authorities**

Conduct continuous trainings for confidential persons, lawyers, state attorneys, judges, trade union members and potential whistle-blowers on Croatian and EU legal framework on the protection of the reporters of irregularities as well as whistle-blowers in the broader sense (those that are not protected by the Law on the Protection of the Reporters of Irregularities), primarily on the national regulation, the Directive, as well as the relevant and up-to-date case law.

Educate/train journalists on the national and EU legal framework on the protection of the reporters of irregularities and whistle-blowers in broader sense, so they can transmit accurate and adequate information to the public when reporting about reported irregularities.

To take measures to speed up the conduct of judicial proceedings, especially in cases related to corruption and to inform the public continuously and adequately about the initiation, course and outcome of these court proceedings, in order to aid in restoring the trust of citizens in the judiciary and the suppression of corruption.

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

The impact of measures taken in response to COVID-19 on the national rule of law environment in Croatia continued to cause concerns.

During the last year, the government has continued adopting epidemiological measures to prevent the spread of the virus, including those that have affected human rights.. Numerous resistances arose in response to them raising questions about the permissible limits of state interference in the lives of citizens and at the same time the limits of personal freedoms and rights in light of generally accepted scientific facts about the spread of coronavirus and its effects on human health and life.

Looking at the complaints the Ombudswoman received, the main challenges were related to access to the right to health and the way the system was organized, inadequate vaccination and testing capacities, lack of clarity on procedures due to numerous changes, impact of measures on the most vulnerable (eg older persons, Roma, the poor). Additionally, there was lack of clear and targeted communication on why certain measures were introduced (in particular EU COVID digital certificates), sometimes contradictory messages being sent, as well as sometimes unclear criteria for setting in motion certain measures and lack of quality and easily accessible to all information. This all resulted in opposition to measures and decreased trust in the decisions of National Civil Protection Headquarter, resulting in the campaign for referendum on COVID digital certificates.

### Emergency regimes and related measures

Croatia has not introduced an emergency regime, however it has taken a number of measures to address COVID-19, which affected a number of rights such as, for example, freedom of assembly.

The main challenge in 2021 related to the introduction of obligatory use of the COVID certificates first for the employees in the health care and the social welfare sectors, as well as the obligatory use of the COVID certificates or of the other acceptable document for some groups of patients and later for public sector employees, also citizens using their services. The introduction of these measures has once again triggered discussions on whether the ability of citizens to exercise some of their rights conditionally upon the possession of COVID certificates, limits the citizens' human rights and exposes some of them to discrimination. Moreover, it opened up the question of whether COVID certificates are equally accessible to everyone and whether the citizens who do not fulfil the

conditions to be issued COVID certificates due to their health status may be put in a more unfavourable position.

Experience has shown that it is important to inform the citizens in a timely manner about the aims to be achieved by the measure, its planned manner of implementation, possible exceptions as well as the consequences in cases of its breaches, both when it comes to employees as well as the citizens using the services of the institutions in question.

The Ombudswoman has highlighted that a specific, albeit a small, group of citizens must be taken into account – those who cannot get vaccinated due to health reasons.

Furthermore, the position of the persons who cannot get vaccinated and are simultaneously in an unfavourable financial situation is even more challenging, since they cannot cover the cost of the testing, which, in case they live in a remote area, can also include transportation costs. Thus, it is necessary to provide these individuals with both physically and financially available testing, so that they would not be subject to discrimination based on their health and/or financial status.

In public the obligatory use of COVID certificates often gets unjustifiably equated with obligatory vaccination. However, this is grounded neither in law nor in the headquarters' decisions, taking into account the fact that in the Republic of Croatia vaccination is only one of the three possible avenues for fulfilling the conditions to be issued with a COVID certificate.

Finally, a number of protest were organized as a response to measures introduced . There were no incidents of police using force to break up the protests. During the protests, attacks on journalist covering the issue were recorded as well as on medical staff, which the Ombudswoman condemned.

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

The situation in Croatia has been additionally challenging due to the fact that during COVID-19 outbreak two devastating earthquakes – the one in March 2020 which hit Zagreb and the one in December 2020 which hit Sisak-Moslavina county, strongly impacted lives of citizens. Hence, a number of challenges have been identified.

First, the decreased trust in the work of those making decisions, ie. public institutions – which shows how important it is to build trust of citizens prior to such situations.

Furthermore, the communication on why certain measures are taken and explanation of

measures linked to clear criteria are equally important for the increase of trust in them and willingness of citizens to abide by them, which was lacking.

Additionally, certain groups in society were in a more vulnerable position due to their health status or income status for example even prior to the crises, so it is important to be aware of the impact of individual measures on the most vulnerable (e.g. Roma, older persons, poor, persons with disability) and mitigate it.

Finally, in decision-making it is important to consult with right holders in advance, which has been missing in the state response, as the deadlines for consultation were either very short or there was no possibility to influence policy making.

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

The main challenge to the office of the Ombudswoman's work has been related to the destruction of our office space by the earthquake, which means that the Croatian NHRI does not have adequate space to accommodate all its staff. In spite of COVID-19, the NPM visits to places of detention have continued, albeit to a lesser degree. When it comes to the promotional work, many of the NHRI's public events have converted to online or hybrid formats, as a benefit – more easily attracting participants from whole Croatia.

### **Actions taken by the NHRI to promote and protect rule of law and human rights in the crisis context**

The Ombudswoman has worked closely with civil society working in local communities affected by the earthquake. When CSOs set up a Humanitarian Coalition, the Ombudswoman joined as an observer. In cooperation with civil society the Ombudswoman conducted survey with people in vulnerable position to assess main challenges they face and understand how the earthquake affected their position and realization of rights. In cooperation with them, The Ombudswoman also organized field visits to monitor human rights situation. Main finding of this work have also been presented to National Civil Headquarter so that their work can respond to the challenges identified.

### **NHRI's recommendations to national and regional authorities**

- Build trust through timely and better suited communication with citizens.
- When developing measures, take into account the position of the most vulnerable groups.
- Ensure consultation with right-holders in decision making processes.

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## Cyprus

*Commissioner for Administration and the Protection of Human Rights (Ombudsman)*

### Impact of 2021 rule of law reporting

#### Follow-up by State authorities

Further to the information we provided last year, to our knowledge, the main follow up actions taken by the state during the year 2021 to address the issues reported in the 2021 ENNHRI rule of law report and foster a rule of law culture, were the following:

- Further discussions were held before the Parliamentary Committee for Legal Affairs for the finalisation of the draft bills which provides for the establishment of an "Independent Body against Corruption". The passing of the bill has been postponed for 2022. The delay was caused due to ensuing disagreements between relevant stakeholders (including the Cyprus bar Association) regarding the exact competences of the Body to be established. (1)
- The draft bill for the protection of whistle-blowers (which was until recently under discussion in Parliament) was passed into Law in January 2022 (with 49 votes in favour and only 1 vote against). The provisions of the new (comprehensive) law have also transposed into national legislation the provisions of Directive 2019/1937/EC. (2)
- Furthermore, on 29/1/2021, the President of the Republic and the Minister of Justice, announced new measures to combat corruption, which are based on the principals/pillars of "rule of law, transparency and accountability". The new measures announced include: a reform of the judicial system and the penal code; the enhancement of the internal control mechanisms in the Ministries; as well as the promotion of bills that allow for the confiscation of illegal proceedings, prohibit entities from taking part in public procurements if they have been prosecuted for illegal acts, and a bill that provides for transparency in the financial assets of government officials.

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## Impact on the Institution's work

The 2021 ENNHRI Report on Rule of Law, as previous ENNHRI's Reports on Rule of Law, had a positive impact on our work, for the same reasons we cited in our last year's response. Specifically:

- It stressed the important and interlinked relationship that the implementation of the Rule of Law has on the protection of human rights of citizens and, thus, the emphasis and the priority that our Institution, as a NHRI, has to give in the promotion and protection of the Rule of Law in Cyprus.
- It provided an important benchmark to compare/evaluate our work on the respect of Rule of Law in Cyprus, with the work of other NHRIS in Europe.
- It provided to us with an insight to the (similar) challenges that other European NHRIs face in their work (albeit in varying degrees), in relation to the implementation of the Rule of Law in their respective countries, including challenges on the issues of safeguarding their independence and effectiveness.

## Follow-up initiatives by the Institution

During 2021, we undertook a number of actions in relation to the strengthening of the Rule of Law in Cyprus.

These included, firstly, submission of Reports or the issuance of Public Opinions or Public Announcements, on the protection of rights of citizens, especially those belonging to more vulnerable groups. Our interventions often contained specific recommendations to change administrative decisions or practices in accordance with the Law.

Indicative examples of such Reports/Opinions, which focused on the respect of human rights and the principal of non-discrimination, were the following:

- A Report was submitted regarding the handling of a request for transfer to Cyprus of a LGBTI community person who was convicted abroad. In line to Commissioner's recommendations, the applicant was finally transferred to a Cyprus prison.
- In July 2021, we issued a public Statement/Report regarding the phenomenon of hate speech that promotes/incites racism and xenophobia and the specific implications that such speech has when it is expressed online through the internet. In the Statement/Report we cited a number of complaints that we received concerning online hate speech (e.g. online publications and comments and social media posts), which we found to be derogatory and offensive to specific groups of people and contributed to the cultivation of negative stereotypes and hostility against them, on the basis of their origin and/or religion. Amongst the recommendations we made to the Police was to take measures that facilitate the identification, recording and investigation of public statements, publications or posts that constitute extreme hate speech, and, in cooperation with the Law Office of the Republic, promote the effective prosecution of those who have committed relevant offenses. (1)
- In April 2021, and following an episode of vandalism of a mosque in a village in Cyprus, we issued a public Statement in relation to safeguarding the freedom of religion and cultural heritage. The Statement aimed to remind and underline the need to respect the right of religious freedom which includes ensuring and supporting the unobstructed expression of all religious beliefs, in the context of a modern democratic society and in particular in the Republic of Cyprus in the light of our Constitution which explicitly refers to both the Greek Cypriot and Turkish Cypriot communities and other religious groups. (2)
- On October 25, 2021, the Commissioner and Officers of her Office visited the House of Cooperation in the buffer zone, where they met and talked with the two Cameroonians who lived in tents outside, collecting information in order to address it to the competent Authority (Ministry of Interior) exercised her mediation role to achieve a treatment to the best of their interest, on a humanitarian basis.
- In December 2021, another own initiative intervention was submitted, on the occasion of an arson attack on the Buyuk Mosque in Larnaca. Even though from the police investigation was revealed that it was an unfortunate incident (personal and not racist motives of the arsonist), however, given the extent of the issue, it was deemed appropriate and necessary to refer again to the issue of actions aimed at places of worship of any religion and monuments of the cultural heritage of the place. (3)

- In December 2021 we filed a Report regarding the detention conditions at the Menogia Detention Centre for Irregular Migrants, with recommendations on maintaining those detention conditions in line with human rights law and the international standards set by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) (4)
- In December 2021 we filed another Report regarding the need to combat racial incidents in football matches and sports events in general. The Report was filed after we were informed about an incident that occurred, in a first division football match, during which a number of supporters of the home team racially abused with monkey chants a black player of the visiting team. Even though, for the said incident, a fine was imposed against the home team, we reiterated the responsibility of the state to show zero tolerance to racial incidents in sport. (5)
- During 2021 we also made a number of Reports regarding the protection of the rights of Persons with Disabilities, in accordance with the Law and the UN Convention on the Rights of Persons with Disabilities. (6)
- In March 2021, we filed a Report/Statement on the prevention and handling of cases of harassment and sexual harassment in the workplace. (7)
- In December 2021, a Report was submitted regarding gender discrimination at the workplace against women non-commissioned officers (8)

Secondly, further to interventions in the form of Reports/Statements and Announcements, our NHRI has also engaged in the course of 2021 in a number of actions which aimed to raise awareness on human rights issues and/or contribute with our experience on the promotion of the rule of law. Indicative examples of such actions were the following:

- Officers of our NHRI continued to do regular Presentations/Trainings to Police Officers, in cooperation with the Police Academy, on the crucial role of the Police in implementing the Rule of Law, especially the Laws that protect human rights.
- We continued working together with a local NGO on LGBTQI Rights, and other civil society partners, in a Project that aims to promote the political representation and participation in decision making of the LGBTQI+ community. In this framework, we participated in a Working Group that has prepared/finalised an Action Plan on the promotion of LGBTQI Rights, including the strengthening of the relevant institutional and legal framework.
- In 2021, in cooperation with the Office for Democratic Institutions and Human Rights (ODIHR) of the Organization for Security and Co-operation in Europe (OSCE),

we have launched a joint initiative to explore the possibilities that exist for the development and promotion of interagency co-operation between competent public authorities and civil society bodies, in order to more effectively address hate crimes in Cyprus. In the framework of this cooperation, a Working Group has been set up, with the responsibility to define and promote specific actions that will strengthen and improve the national framework which deals with racist crimes and support of the victims. The 1st Meeting of this Working Group was held November 2021, during which, inter alia, we discussed the promotion of a functional definition of what constitutes hate crime and the appointment of prosecutors with more specific competence and knowledge on prosecuting hate crimes. (9)

In 2021, we also organised the following awareness raising campaigns addressed to rightsholders and the general public:

- In March 8, 2021, we launched a Campaign called “Break the Silence” (2021). The Campaign was launched on the same date that an Own Initiative Report was published regarding the prevention and treatment of harassment and sexual harassment in workplace. The campaign started with a press conference, during which the Report as well as the results of a survey regarding sexual harassment in Cyprus were presented. Additionally, the audio-visual material (video and audio) prepared for the campaign, was sent to all radio and television stations and was broadcasted for a long period time and the prepared posters were sent to public sector departments, to be placed in their premises. (10)
- A Campaign to promote the “Equal Participation of Persons with Disabilities in Elections” was launched in May 15, 2021. In this framework, an Own Initiative Report was published regarding the said rights of persons with disabilities. Furthermore, an information leaflet was also prepared and published, containing information about the rights of persons with disabilities according to the UN CRPD Convention, before and during election procedures, for ensuring the equal exercise of their civil rights. The Report and the leaflet were sent to all implicated public authorities, to the representative organizations of persons with disabilities and to the political parties. The information leaflet has been prepared and in audio format as well. (11)
- On December 2021, the Commissioner for Administration and the Protection of Human Rights, in view of the 30th anniversary of the introduction of the Institution of the Commissioner of Administration in the Republic of Cyprus, is organizing an Awareness Campaign for Human Rights. In the occasion of the campaign, among others, short videos/spots were published regarding human rights and the 30-year course that has been carried out so far by the institution of the Commissioner,

through all his/her mandates. the videos/spots are shown free of charge by the television stations. (12)

- With the spread of COVID-19 virus in Cyprus and the restrictions imposed by the State to prevent its spread, our Office, as a human rights defender, has been put on alert in order to intervene and help any possible violation. In view of the above, our Office has been conducting since March 2020, an Awareness Campaign on COVID-19 & Human Rights. (13)
- Within the framework of her responsibilities as the National Independent Authority for Human Rights, the Commissioner has been carrying out since 2020 an information campaign on hate speech and the freedom of expression. More specifically, a special page was created on the Office's website which gathers the most important interventions made by the Commissioner as the National Independent Authority for Human Rights with regard to issues related to hate speech and the freedom of expression. This specific page is being constantly updated. (14)
- The Commissioner, under her mandate as a National Preventive Mechanism prepared, with lawyers of the Association of the Protection of the Rights of Prisoners & Ex-Prisoners a Guide of Prisoner's First Contact. The Guide was prepared after taking into consideration the articles of the existing legislation and the rules and regulations in force, as well as real experiences gained from having contact with persons who remained in custody either as detainees pending trial or convicts in the Central Prisons of the Republic of Cyprus. For the publication of the guide we requested and received the views of the Department of Prisons. This is a guide to inform new detainees / prisoners about their rights, obligations, and rules of safe cohabitation within the prison. The guide aims to answer, in a plain and simple language, some initial simple questions about prisoner's rights. This will be followed by translations into languages understood by foreign prison inmates and will be reissued. (15)
- We also continued to be engaged, and express our views, in discussions held in Parliamentary Committees, as regards the drafting of bills affecting the Rule of Law in matters related to our competences.

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## NHRI's Recommendations to National and European policy makers

We recommend to National and European policy makers:

- Recognise that the rule of law cannot be implemented in an environment that does not provide protection to fundamental human rights;
- To study, and take into due consideration, the findings in ENNHRI's annual rule of law Reports and more generally cultivate the practice of taking into due account the decisions of National Human Rights Institutions, in a way that their recommendations are fully respected;
- To develop a firm and comprehensive legal framework on the basis of which NHRIs in Europe will be set up and function effectively. The said legal framework should lay down certain standards that all NHRIs should meet, across Europe.
- To further safeguard the independence of NHRIs from the Executive and provide effective protection from threats and undue pressure;

## Independence and effectiveness of the NHRI

### International accreditation status and SCA recommendations

The Cypriot NHRI was [accredited](#) with B-status by the Sub-Committee on Accreditation (SCA) in November 2015. During a scheduled review in June 2021, the SCA decided to defer further consideration of the reaccreditation of the institution until October 2022.

In June 2021, the SCA acknowledged the efforts made by the Cypriot NHRI to address the SCA previous recommendations through its activities since its last review.

It also encouraged the NHRI to continue its efforts to promote and protect all human rights, and to continue to strengthen its institutional framework and effectiveness in line with some recommendations.

First, the SCA was of the view that the selection and appointment process for the Commissioner was not sufficiently broad and transparent. It encouraged the Cypriot NHRI to advocate for amendments that would formalize a process with all requirements under the UN Paris Principles and SCA's General Observations. The SCA acknowledged the information provided by the Cypriot NHRI that the safeguards for the selection and appointment of the Commissioner are stronger if compared to other independent public functions in the country.

Further, the SCA encouraged the Cypriot NHRI to strengthen its promotional mandate, while noting that the institution undertakes a wide range of promotional activities in practice, including awareness campaigns and issuance of public statements.

The SCA also called for strengthened adequate funding and financial autonomy to the Cypriot NHRI. It noted that, while the institution has management and control of its budget, budgetary amendments must be approved by the Ministry of Finance. The SCA was concerned that this may restrict the institution's ability to direct its budget to those areas it has identified as most important. The Cypriot NHRI reported that it had not encountered issues in this regard.

In addition, the SCA encouraged diversity in the membership and staff of an NHRI. The SCA recalled that, in the case of single-member institutions such as the Cypriot NHRI, pluralism can be achieved by ensuring staff are representative of the diverse segments of society.

Finally, the SCA noted that the NHRI's legislation was silent on the number of times the Commissioner can be re-appointed, which leaves open the possibility of unlimited tenure. In order to promote institutional independence, the SCA was of the view that it would be preferable for the term of office to be limited to one re-appointment, and encouraged legislative amendments in this regard.

The Cypriot NHRI is scheduled to undergo reaccreditation in October 2022.

### **Regulatory framework**

The NHRI does not have a constitutional basis and its regulatory framework did not change since the 2021 report.

The NHRI has the mandate to contribute to access to justice for individuals, including through complaints handling and legal advice and awareness raising. The NHRI also has competence to launch own initiative investigations on systemic issues of human rights violations and to call and engage in consultations between implicated parties, for the implementation of the Institution's recommendations and the finding of practical solutions to problems that individuals face.

Our NHRI has additional broad competence to also act as: Ombudsman Institution, Equality Body, National Mechanism for the Prevention of Torture, Independent Authority for the Promotion of the Rights of Persons with Disability (in accordance with article 33(2) of the UN Convention on the Rights of Persons with Disabilities), Mechanism for the Monitoring of Forced Returns of irregular immigrants and mandate for examination of Employee terms of employment and human rights violations.

While the existing regulatory framework provides a satisfactory basis for the Cyprus NHRI to function, it could be further strengthened in terms of the capacity of the NHRI to provide legal assistance to individuals whose human rights are violated.

Regarding the Recommendation of the Committee of Ministers of the Council of Europe on the functioning of NHRIs to member States, adopted on 31 March 2021(CM/Rec(2021)1), we would like to note the following:

- **Recommendation 4** (On the process of selection and appointment of the leadership of a NHRI):

According to the applicable legislation (article 3), the Commissioner is appointed by the President, based on the recommendation of the Council of Ministers and with the prior consent of the majority of the House of Representatives, a citizen of the Republic (...), with a high level of education and experience and with the highest integrity, as Commissioner.

Given that Cyprus Republic is a Presidential Republic and not Parliamentary Republic, still the appointment of the Ombudsman-Commissioner depends on prior consent and approval by the majority of the House of Representatives. Because of the fact that the government has not the majority in the Parliament, the approval of the candidate by the Parliament needs the synergies of the political parties. In this way, even though the Commissioner is appointed by the President, based on the recommendation of the Council of Ministers, the final decision is upon the House of Representatives prior consent and approval. During this period of time, from the proposal of the Council of Ministers till the final decision of the Parliament, NGO's and other civil society representatives bring their views before the Parliament members, related to the candidate who has been selected by the Council of Ministries or for any other person whom may thing could be more eligible for the position. The discussions between Parliament members and NGOs/civil society usually lasts for several days as well as the brainstorming and other names of candidates promoted via mass media. Their point of view is taken seriously into consideration by the Parliament before their final decision to approve or to reject the Council of Ministers proposal. This procedure, ensures the full independence of the Commissioner, since the Commissioner is the only Incumbent in Cyprus whose selection must be approved prior by the majority of the Parliament and not directly appointed by the President. Please kindly not that the governmental party does not have the majority of the parliament and thus the appropriate synergies from all the political parties are needed for the candidate to earn the prior approval of the representatives before his/her appointment.

It is very important to underline that Cyprus Republic and the Constitution has a very strict separation of Powers and the necessary prior approval of the appointment of the Ombudsman by the Parliament is the only exception which allows the House of Representatives to have a decisive role on the competence of executive Power.

It is worth be noted that when the term of the Commissioner ends and the position becomes vacant, it is made publicly known. Therefore, every person who is interested in, may express his/her interest for the position either addressed directly to the Council of Ministers or use another way like expressing his /her interest via mass media. In this way, a number of interested persons are brought before the Council of Ministers, from whom which a merit based selection candidate proposed at last to the President of the Republic. The latter has not the right to appoint the candidate before the prior approval of the Representatives in a discussion which it takes place in couple of weeks after the Council of Ministers suggestion.

- **Recommendation no 5** (regarding the dismissal process of the of the NHRI leadership):

According to the relevant Law, the Commissioner (head of the NHRI) is appointed for a term of six years and during that term, he/she may not be dismissed or withdrawn from Office, except for the same reasons and in the same way that judges of the Supreme Court may be dismissed or withdrawn from Office.

- **Recommendation no 6** (regarding the provision to the NHRIs with adequate, sufficient and sustainable resources to allow them to carry out their mandate),

In 2020, the Institution's staff was increased by the recruitment of four (4) new Officers, and more vacant positions have been approved and are expected to be filled in 2022 .It is worth noting that process for filling them has already begun.

The last decade (at least) there is not any restriction to the resources allocated to the Commissioner. Every year, Commissioner's budget is prepared by his/her Office upon their needs and also upon its strategic plan. The proposed budget is approved as a whole by the Parliament via its submission by the Ministry of Finance. This way, the Commissioner is provided with the necessary financial, technical and human resources to fulfil its broad mandate.

The budget includes, among others, the necessary amount for the premises of the Institute, which is housed in a building based on a private contract concluded by the Commissioner with the owner of the building.

Additionally, and regarding to the budget, it is noted that following its approval, the Commissioner has absolute management and control of the appropriated funds, on condition that the limits set for each category of expense are respected.

- **Recommendation no 7** (regarding the NHRIs authority to determine their staffing profile and recruit their own staff):

As we stated in last year's report, in 2019 the Commissioner succeeded the approval by the Council of Ministers and the Parliament of the exclusion of the Ombudsman Office staff to take the governmental exams. The Institution now organizes specialised exams by the Advisory Committee set up by the Commissioner. Those who succeed in the examination are brought before the Public Service Commission and their recruitment is in accordance with the Commissioner's recommendation, based on a relevant assessment of their specific knowledge and experience.

Although, at a later stage, the above decision was mistakenly revoked, the Council of Ministers, by a new decision dated February 17, 2021, reverted back to its original decision and confirmed the exclusion of the Ombudsman Office staff (Officers) to take the general governmental exams. To that purpose, in the Annual Budget , an amount of 18,000 EUR was included for the preparation of specialized exams for the recruitment of new staff.

The final selection for the recruitment of the staff of the Office will henceforth be taking place among candidates who have the academic qualifications the set for employment positions in our Institution and are eligible to apply for the post, without any limitations. Note that, according to a relevant Law in force, 10% of the vacant post are offered to persons with disabilities, when they are candidates,.

Regarding the functioning of our NHRI in compliance with the Paris Principles, please see our answers above, in relation to the comments of the Sub-Committee on Accreditation (SCA) on "selection and appointment" "adequate funding and financial autonomy", and "pluralism".

Regarding the regulatory framework under which our NHRI operates, please also refer to the 2021 ENNHRI Rule of Law Report (under "Changes in the regulatory framework applicable to the Institution").

The Commissioner has already sent a letter to the Ministry of Justice in order to promote the amendment of the Commissioner for Administration and Protection of Human Rights Law so they can reach the full compliance with Paris Principles and, in particular, regarding the term of the Commissioner in order to be renewed only once and not more.

## Enabling and safe space

State authorities have good awareness of the NHRIs' mandate, independence and role.

The NHRI also has adequate access to information and to policy makers, and is often involved in the preparation of legislation and policy making with human rights implications.

The bodies and authorities which are affected by investigations conducted by our NHRI, have a legal obligation to respond to questions/enquiries that we address to them, as well as to present to us relevant documents/evidence. Even though the Law does not indicate a specific timeframe for the said organisations/authorities to respond, a "reasonable" time frame can, and is often set, by our NHRI, depending on the circumstances of each case.

Protection of the head and staff of NHRI against threats and harassment, is provided in the Law which regulates the NHRI's operation (1). Specifically, according to Commissioner for Administration Laws 1991-2014:

- During Commissioner's term of office, he/she may not be dismissed or withdraw from Office, except for the same reasons and in the same way that judges of the Supreme Court may be dismissed or withdraw from Office [article 3(7) (on the ground of misconduct)].
- No legal proceedings may be brought against the Commissioner in relation to any act done by him/her or any opinion expressed by him/her or report submitted by him/her in the exercise of his/her functions, provided that he/she has exercised his functions and powers under the Law, in good faith and within their limits [article 12(1)].
- The Commissioner or any other member of the staff of his/her Office may not be called to testify before a Court or in any proceedings of a legal nature in respect of any matter that has come to his knowledge in the exercise of his/her duties [article 12(2)].

In relation to article 3(7) of the Law, it is noted that the mentioned reasons of dismissal are defined in Articles 133.7(4) and 153.7(4) the Constitution of the Republic of Cyprus, according to which, the Judges may be dismissed only on the ground of misconduct. In such a case, the Attorney General appeals to the Supreme Court and if the appeal is accepted after hearing, the Council of Judges (article 153.8 of the Constitution) decides regarding the removal or not from his/her office.

As mentioned above, in view of the NHRI's broad mandate, and in line with Recommendation no 10 of Council of Europe Committee of Ministers' 2021/1, further additional resources have been allocated to our NHRI to effectively perform our functions.

## References

- (1) Articles 12 and 3(7) of the Commissioner for Administration Laws:  
[http://www.cylaw.org/nomoi/enop/non-ind/1991\\_1\\_3/full.html](http://www.cylaw.org/nomoi/enop/non-ind/1991_1_3/full.html)

## Human rights defenders and civil society space

We consider that overall, the human rights defenders and civil society enjoy a safe space to operate and express their opinions.

We did not find any evidence of laws, measures or practices that could have a negative impact on civil society space and/or reduce human rights defenders' activities, nor we observed evidence of threats and attacks.

Overall, we find that civil society actors are often consulted in law drafting and policy making which is related to the sphere of their mandate.

### NHRI's Recommendations to National and European policy makers

We recommend to national policy makers to continue to ensure respect for freedom of speech, secure financial support for NGO and consult them on draft laws that are related to the sphere of their competences and operations.

## Checks and balances

We consider that, overall, there are structures for checks and balances between each branch of government (executive, legislative and judicial) with individual powers to check the other branches.

However, the delays observed in the completion of court proceedings and the backlog of cases pending before courts (a problem which has been pointed out in a number of international reports), have not, yet, been addressed adequately, negatively affecting the check and balances system of Cyprus.

### Trust amongst citizens and between citizens and the public administration

As we stated in last year's report, the level of trust amongst citizens towards the public administration is low. There is a general perception that the public administration does not function efficiently, and that maladministration is widespread.

The fact that our Institution handles around 2.500 complaints every year, is a further indication of the dissatisfaction that of the Public has towards the public service.

## NHRIs as part of the system of checks and balances

Our NHRI regularly intervenes in cases where we observe violations or limitations in the enjoyment of citizen's human rights, as these are protected by Law.

In most cases our interventions and recommendations are done/submitted through Letters, Reports /Statements and in Public Announcements, reinforcing in this was the national system of checks and balances.

Indicative examples of such interventions are cited above, in the first section concerning follow-up initiatives by the institution on identified challenges affecting rule of law and human rights protection.

## NHRI's recommendations to national and regional authorities

The national system of checks and balances could be further strengthened by:

- The allocation of additional resources to our NHRI, to more effectively and timely perform its mandate, and
- The promotion and introduction of changes in the functioning of the judicial system, that will shorten the time required by Courts to examine cases/appeals against decisions of the Executive or Public Administration.

## Functioning of the justice system

Despite the delays observed in the completion of court proceedings, as already mentioned above and in last year's report, we observe that the judiciary maintains its independence, and does not refrain from reversing unlawful decisions by the Executive and the Public Administration.

## NHRI's recommendations to national and regional authorities

As stated above, we recommend the promotion and introduction of changes in the functioning of the judicial system, that will shorten the time required by Courts to examine cases/appeals that are brought before them.

## Media freedom, pluralism and safety of journalists

We observe that journalists and media enjoy a safe space to fulfil their role and are free to criticize the branches of government and public administration. Our human rights monitoring and reporting did not find any evidence of laws, measures or practices that could restrict a free and pluralist media environment over the past year. Although, there was an incident 2-3 years ago, when the Attorney General began, after accusations by the

Auditor General, an investigation for the criminal prosecution against a journalist of the newspaper "Politis", due to the content of his article in the newspaper. Eventually the relevant accusations were withdrawn and the case did not proceed.

### **NHRI's recommendations to national and regional authorities**

Generally, we recommend national and regional authorities to ensure that a strong legal framework should be implemented across Europe to ensure media freedom, pluralism and the safety of journalists.

## **Corruption**

Despite the existence of checks and balances mechanisms, cases of corruption of public officials are sometimes identified. Furthermore, public opinion polls show that a significant percentage of the public believes that corruption is widespread. (1)

The bill which provides for the establishment of an "Independent Body against Corruption" has not yet been finalized, albeit this is expected to happen in 2022. Procurement rules in Cyprus, are in line with the relevant EU acquis. (2)

Until recently, Cyprus did not have a comprehensive national legislation to protect whistle-blowers and people who reported actions or breaches of the legislation that were harmful to the public interest. The introduction of such a Law in January 2022, already mentioned above in the first section on follow-up initiatives by authorities on identified challenges affecting rule of law and human rights protection, is a positive development.

We are not aware of any other laws or measures relating to corruption and we have not found any evidence of significant inaction in response to alleged corruption, nor did we find concrete evidence of corruption in the framework of investigating individual complaints and cases.

Our NHRI participated and contributed in the discussions that were held in Parliamentary Committees, for the for the establishment of an "Independent Body against Corruption" and the Law for the protection of whistle-blowers.

### **References**

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## NHRI's recommendations to national and regional authorities

We recommend the introduction of a strong legal and institutional framework, especially within the sphere of public administration, which will have internal control mechanisms and will ensure transparency and accountability.

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

The measures that the Government took to contain the pandemic have affected many rights of citizens, especially those who remained unvaccinated. Our NHRI has received a significantly large number of complaints regarding these measures, predominately by people in situations of vulnerability (eg. people with disabilities) and unvaccinated citizens. In some situations, our NHRI considered it necessary to make interventions with recommendations to cancel or modify existing measures.

### Emergency regimes and related measures

Since the outbreak of the COVID-19 Pandemic, the Government took several measures to contain the pandemic, which affected the rights of citizens (e.g. restrictions in movement, and social gatherings, temporary closure of businesses, on line school attendance, mandatory wearing of face mask).

The measures to contain the pandemic are taken with Decrees issued by Minister of Health, on the basis of the Law to Combat Infectious Diseases [Cap 260], and are of a specified duration. Furthermore, these measures are taken after consultation with a scientific advisory committee. The most recent Decree was issued on 27/1/2022. (1)

Currently, no inland restrictions of movement are in place, while schools and businesses are open (operating under certain safety conditions).

Generally, access to places where people gather is available for people who have the so called "Safe Pass", issued to people who are fully vaccinated or were diagnosed with COVID - 19 in the last 90 days or have a recent negative Rapid or PCR test.

However, in view of a new wave of infections and the high transmissibility of the "omicron" variant of the virus, since last December, access to certain places of gathering and/or socializing has been restricted only to people to people who are fully unvaccinated or have been diagnosed positive to the virus in the last 90 days with Covid-19 (such places include: restaurants, bars, theaters, cinemas and stadiums).

Generally, our NHRI's approach to the complaints we received against these measures is to assess whether they were: legally based, time-limited, proportionate and non-

discriminatory. Furthermore, we gave special emphasis to the protection of rights of people in situations of vulnerability.

Specifically, during 2021, our Awareness Raising Campaign on COVID-19 & Human Rights which began in March 2020 in relation to the COVID-19 virus and the protection of human rights, continued. It is noted that in the context of the campaign, a special page was created on the website of our Office which includes links to all the necessary information about the COVID-19 pandemic, as well as our reports/interventions regarding the virus and its impact on human rights in general. (2)

Furthermore, our 2020 interventions regarding COVID-19 pandemic and human rights were included in a special edition that was published in December 2020. (3)

It has to be underlined that during 2020, we were pleased to observe a very high implementation rate of our recommendations regarding ensuring the proportionality and non-discrimination of the measures taken in relation to the pandemic, such as ensuring equal access to education for children with disabilities, the right to maternity during childbirth, the release of a number of prisoners for the decongestion of prisons during the pandemic, etc.

In the context of the mentioned ongoing campaign, a number of Reports and Interventions were also submitted in 2021, underlining the need for the measures taken to be limited to what is absolutely necessary, proportionate, lawful, non-discriminatory and to not violating human rights in any way. Reference to some of our main interventions regarding the pandemic in 2021, is made in the following section concerning actions taken by the NHRI.

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

Our main concerns, regarding the (medium and long-term) implications arising from the COVID-19 outbreak, relate to the effect that the pandemic may have on the people who belong to the most vulnerable groups of the society (e.g. unskilled workers, the elderly, minorities, migrants, persons with disabilities, Roma, detained persons), and, in particular, how it will affect their ability to enjoy equal access to basic social rights (such as employment, welfare support, healthcare (including timely vaccination against COVID-19) and education).

Another concern is the implications that the pandemic may have to the quality of education. School closures or restriction of access to schools or universities premises, long distance education in both secondary and higher education, have a negative effect on the quality of education provided and may hinder young people's academic and professional prospects.

## Actions taken by the NHRI to promote and protect rule of law and human rights in the crisis context

With our contribution to the 2020 and 2021 ENHRI Rule of Law Reports we referred to a number of interventions made by our NHRI regarding measures taken by the State to combat/contain the Pandemic, mainly to ensure the protection of rights of vulnerable groups of people (specifically: people with disabilities, detainees, asylum seekers in Reception Centres and psychiatric patients).

The NHRI was also active to promote and protect rule of law and human rights in the context of the COVID-19 pandemic during 2021. Main interventions included the following.

In January 2021, we submitted an ex officio Report regarding the distance education of children attending the Special Units of Primary Education Schools. Specifically, according to a circular of the Ministry of Education, Culture, Sports and Youth, during the period 11-29 January 2021 the children who attended the Special Units of the Primary Schools, would receive distance education during this period, although in the Special Units of Kindergartens and Special Schools, the children would attend in person. This decision discriminated against children attending the Special Units of Primary Schools, as it was not possible for them to attend classes remotely and, consequently, they were excluded from access to appropriate education tailored to their individual needs. (1)

As noted, the provision of personalized education and the benefits that children receive in Special Units cannot be replaced by distance education. Therefore, the restrictions arising from distance education can lead to unfavorable treatment of children, as the individual needs and special characteristics of children receiving support in Special Units are not

taken into account. Furthermore, given that distance education becomes particularly difficult or impossible for specific children, the decision in question amounts to less favorable treatment and discriminates against children in the Special Units of Primary Schools.

Consequently, without the implementation of the necessary reasonable accommodations, children attending the Special Units are excluded from any form of education.

In our Report, we addressed a recommendation to the Ministry for the immediate review of its decision regarding children with disabilities attending the Special Units of Primary Schools, taking into account the opinion of parents and their representative organizations, so that by taking individualized measures, the education of the children can continue unhindered and any discrimination against them, compared to other children of the same age who are in the same position with them, to be removed. Following our Report, the Ministry implemented the abovementioned recommendation.

In April 2021, a Statement was published in relation to the measures taken to deal with the spread of COVID-19 pandemic in Athalassa Psychiatric Hospital.

In the Statement, we noted that the competent authorities are obliged to take actions to ensure the respect of the human rights, specially of people living in psychiatric facilities who are in a state of confinement, due to compulsory hospitalization, which may lead to recurrence of mental illness.

Furthermore, we recalled that any measures that may be taken to limit the spread of coronavirus on hospital premises should be for a limited period of time and with a view to protecting patients' rights so that they do not end up inhuman or degrading treatment.

The Statement included, among others, recommendations for ensuring respect for the human rights of the quarantined persons, finding ways for such individuals to remain in contact with other persons, providing access to alternative means of communication, as well as providing to them access to open space. (2)

In July 2021, we issued a Statement/Opinion regarding a number of measures that were adopted at the time by the state to combat COVID-19, and their compatibility with human rights law. (3)

The Statement/Opinion was issued after a number of complaints were received against specific measures adopted, including: the obligation to wear protective masks, the requirement for mandatory examination of employees with rapid tests in order to have physical presence at their workplace, the requirement for compulsory examination of high school students via rapid tests in order to return to schools and attend classes in person, the introduction of the SafePass as a precondition to enter crowded places, and the

abolition (from August 1, 2021) of the free provision of rapid antigen detection test (rapid test) to unvaccinated citizens

In our Statement/Opinion recorded and analysed the relevant legislative, jurisprudential and institutional framework, both at international and national level. Emphasis was placed on the provisions of international human rights instruments which protect the right to privacy, equal treatment and non-medical treatment without the consent of the person concerned. At the same time, we cited and analysed the provisions contained in these legal documents, which independently guarantee individuals the collective right to high quality public health, and provide the possibility of imposing legal restrictions on the enjoyment of fundamental freedoms and rights in specific cases, such as the protection of other people's rights and / or the protection of public health and well-being .

Furthermore, we referred to the views of international organizations in relation to the implementation of measures to limit the transmission of COVID-19 so that they are in line with human rights principles, as well as to the views and recommendation of various international scientific organizations, in respect to combatting the spread of the pandemic.

In essence, we stated that, according to the human rights legislation, individual rights may be restricted through special legal provisions which, however, must be in line with the principle of proportionality, have a temporary duration, facilitate a legitimate aim and are absolutely necessary in a democratic society.

Taking everything into consideration, we concluded that there seems to be no other available, and less restrictive ways for the State to implement its positive obligation to safeguard public health.

Notwithstanding the above, we made the following recommendations / suggestions:

- In the context of the positive obligation of the State to protect public health from the pandemic, it must be ensured that all the measures taken to this end are in line with the principles of the human rights that are recalled in the Statement, and in particular, with the principles of necessity, proportionality and non-discrimination, and are of a temporary nature.
- The measures applied should take into account the specific circumstances of people with increased vulnerability (such as low-income people, the unemployed, people with a migration background, etc.), for whom the negative effects of the measures may be greater, compared to the rest of the population.

- The measure of having a SafePass in order to enter crowded places should be not to discriminate in the field of access to essential services and goods (eg. access to medical treatment).
- The decision to abolish the free provision of rapid antigen detection test to certain categories of people should be reconsidered, so that it is in line with the relevant recommendations of the World Health Organization (which recommended the increase of access to free tests) and the EU Fundamental Rights Agency (which stated that diagnostic tests should be universal, accessible, timely and free).

In December 2021 we also issued an Opinion/Report regarding the protocol of operation that was decided by the Cyprus' Technological University, in view of the pandemic. (4)

Our intervention emphasized on the University's decision to allow access to campus and physical presence to lecture rooms and laboratories, only to student who were vaccinated or were diagnosed positive to the virus.

A large number of unvaccinated students complained to us against the controversial decision, claiming that they were unjustifiably discriminated and that their right to access to education was violated.

In the framework of our investigation the written comments/views of the Dean of the University were received.

In our Report under the Commissioner's mandate as Equality Body we concluded that there was a violation of the right of access to education and thus we proceeded with a binding decision, concluding that the controversial decision was not adequately justified by the University, and that, taking all into consideration, the said Decision did not comply with the principals of proportionality and non-discrimination.

As a result, with a binding decision, after a consultation occurred between The Commissioner as Equality Body, the representatives of the affected students and the University Leadership, we recommended that the University's protocol of operation is reconsidered and modified, in line with our recommendations, something that already is being implemented.

The abovementioned binding recommendation of the Commissioner, as well as the relevant report, were formally sent to the Council of Ministers, the Minister of Health, as well as to the Attorney General of the Republic, as the Legal Advisor of the Council of Ministers and the Ministers.

## References

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

As we stated in last year's report, we were able to carry out our operation (including visits and inspections to different institutions, including as National Preventive Mechanism), in accordance with the safety protocols decided by the State. During this period we carried out visits and inspections to Athalassa Psychiatric Hospital, Aradippou Police Station, Menogia Detention Centre for Irregular Migrants and Reception and Accommodation Centre for Political Asylum Seekers in Kofinou.

## NHRI's recommendations to national and regional authorities

We recommend to the authorities to:

- Ensure that any measures taken to combat/contain the pandemic are: based in law, time-limited, proportionate and non-discriminatory.
- Give special emphasis to the protection of rights of people in situations of vulnerability.