

State of the Rule of Law in Europe in 2022

Reports from National Human Rights Institutions

Cyprus



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

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

- (1) <https://www.philenews.com/koinonia/eidiseis/article/955495>
- (2) http://www.treasury.gov.cy/treasury/treasurynew.nsf/page21_gr/page21_gr?opendocument; http://www.cylaw.org/nomoi/enop/non-ind/2017_1_11/full.html

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.

References

- (1) <https://www.pio.gov.cy/coronavirus/uploads/%CE%94%CE%99%CE%91%CE%A4%CE%91%CE%93%CE%9C%CE%91%20%CE%91%CE%A1.%205-2022%20-%20PDF.pdf>
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- (3) <http://www.ombudsman.gov.cy/ombudsman/ombudsman.nsf/All/A0DAB3C222F23E9DC22586B7003427BB?OpenDocument>

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

- (1) [http://www.ombudsman.gov.cy/ombudsman/ombudsman.nsf/All/B7434AEFDD11330AC225865C003890F0/\\$file/54.2021_12012021.pdf?OpenElement](http://www.ombudsman.gov.cy/ombudsman/ombudsman.nsf/All/B7434AEFDD11330AC225865C003890F0/$file/54.2021_12012021.pdf?OpenElement)
- (2) [http://www.ombudsman.gov.cy/ombudsman/ombudsman.nsf/All/2A70E8B74AC751C9C22586C4003E37F8/\\$file/2_564_2021.pdf?OpenElement](http://www.ombudsman.gov.cy/ombudsman/ombudsman.nsf/All/2A70E8B74AC751C9C22586C4003E37F8/$file/2_564_2021.pdf?OpenElement)
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- (4) [http://www.ombudsman.gov.cy/ombudsman/ombudsman.nsf/All/6950E359058C484DC22587AE00429272/\\$file/1832_2021.pdf?OpenElement](http://www.ombudsman.gov.cy/ombudsman/ombudsman.nsf/All/6950E359058C484DC22587AE00429272/$file/1832_2021.pdf?OpenElement)

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.