

State of the Rule of Law in Europe in 2022

Reports from National Human Rights Institutions

Latvia



Latvia

Ombudsman's Office of the Republic of Latvia

Independence and effectiveness of the NHRI

International accreditation status and SCA recommendations

The Ombudsman of the Republic of Latvia was re-accredited with A-status in December 2020.

The SCA was of the view that the selection and appointment process enshrined in the Law was not sufficiently broad and transparent. It noted that the Latvian NHRI has proposed amendments to its enabling law to provide for the advertisement of vacancies and the ability for all interested candidates to submit their application prior to the proposal being made by the members of Parliament. The SCA encouraged the NHRI to advocate for the formalisation and application of a broad and transparent process.

With regard to the provisions on dismissal of the Ombudsman, the SCA took the view that the process does not provide sufficient procedural safeguards to ensure that it could not be undertaken for political reasons. It encouraged the Latvian NHRI to advocate for appropriate amendments to its Law to ensure an independent and objective dismissal process.

Further, the SCA noted that the enabling Law is silent on the number of times the Ombudsman can be re-appointed. It encouraged the Latvian NHRI to advocate for amendments to its enabling law to provide for limits on the term of office.

Finally, the SCA encouraged the NHRI to advocate for the inclusion in its founding legislation of express provisions that clearly establish the functional immunity of the Ombudsman for actions taken in his or her official capacity in good faith.

References

- <https://www.ohchr.org/Documents/Countries/NHRI/GANHRI/SCA%20Report%20December%202020%20-%2024012021%20-%20En.pdf>

Regulatory framework

The Ombudsman Law was amended on 7 January 2021, and the amendments entered into force on 1 January 2022. According to the changes made, a candidate for the position of

Ombudsman may be nominated by no less than 10 members of the Parliament (MPs), the Saeima (previously, no less than 5 MPs were required); the same person may serve as an Ombudsman for a maximum of two consecutive terms (previously, the number of terms was not limited).

In order to strengthen the guarantee of the Ombudsman as an autonomous constitutional entity, in May 2015 the Ombudsman urged the Parliament to consider a proposal to supplement the Constitution of the Republic of Latvia with a new chapter named "Ombudsman". Strengthening the Ombudsman's entity in the Constitution of the Republic of Latvia would protect against undesirable political manipulation; promote the compliance of the national human rights authority with the so-called Paris Principles; strengthen the principle of power-sharing enshrined in the Constitution of the Republic of Latvia; exclude any doubts that the Ombudsman belongs to any state powers. The proposal has not progressed any further yet.

The NHRI continues to contribute to access to justice for individuals, including by handling complaints and providing legal assistance to individuals, engaging in strategic litigation before courts as well as awareness-raising initiatives. The Ombudsman can also conduct research and analyse the situation in the field of human rights, as well as provide opinions regarding the topical human rights issues.

References

- <https://www.vestnesis.lv/op/2021/16.1> (amendments available in Latvian)

Enabling and safe space

Relevant state authorities have good awareness of the NHRIs' mandate, independence and role of the NHRI and the NHRI has adequate access to information and to policy makers and is involved in all stages of legislation and policy making with human rights implications.

Recommendations of the Ombudsman are not legally binding. Yet, the average implementation of Ombudsman's recommendations exceeds 70%.

As regards measures to protect and support the NHRI, heads of institution and staff against threats and harassment, Criminal Procedure Law states that only the Prosecutor General shall initiate criminal proceedings against the Ombudsman. The ombudsman may be held criminally liable or arrested only with the consent of the Parliament. A decision on placing the Ombudsman under arrest, conveyance by force, detention, or subjection to a search shall be taken by a specially authorised Supreme Court judge. If the ombudsman has been apprehended in the committing of a serious or especially serious crime, a

decision on conveyance by force, detention, or subjection to a search shall not be necessary, but the specially authorised Supreme Court judge and the Prosecutor General shall be informed within 24 hours.

References

- <https://likumi.lv/ta/en/en/id/107820-criminal-procedure-law>

Human rights defenders and civil society space

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

Civil society is involved in the legislative processes. Also prompted by the Ombudsman, leading civil society organisations (CSOs) working on public interest issues are invited to participate and intervene in relevant meetings of Parliamentary Committees and Consultation Councils of Ministries. The Ombudsman received no complaints about cases where a CSO wished to participate in a meeting of a committee and was not allowed to do so. In the context of COVID-19, we also observed that the most prominent CSOs participate in Government meetings, and they are given an opportunity to express themselves.

One of the priorities of the Ombudsman for 2022 is to study the involvement of civil society in the work of governments at local level. There are concerns that CSOs participation and involvement in law and policy making is not always respected by local governments as it is at the level of the Parliament and national Government. There are also signs that, at local level, the capacity of CSOs is weaker and local government support for CSOs is itself limited (including in terms of involvement in advisory councils and working groups; consideration of CSOs' proposals; involvement in activity research; support by local governments to CSOs' activities).

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

When the Ombudsman discovers that an issue that affects the interests of a certain group is being discussed in the Parliament or Government, but representation of that group is not ensured in the meeting, we alert the relevant CSOs and encourage them to participate (e.g. at a meeting of the State Administration and Local Government Commission on access to housing for persons with disabilities). This normally ensures that CSOs' representation and participation is subsequently secured. We are particularly attentive to CSOs' involvement and participation in all discussions affecting people with disabilities, building on the principle 'Nothing about us without us'.

The Ombudsman cooperates with various CSOs both in the organisation of thematic events and in reacting to specific cases of possible human rights or good governance violations.

Checks and balances

NHRIs as part of the system of checks and balances

During the last 3 years, the Ombudsman has filed 8 cases in the Constitutional Court. In 2021, for example, he filed a case on personal income tax. The Ombudsman successfully argued that the norms of the law "On Personal Income Tax", insofar as they provide for the application of personal income tax to a performer of economic activity even if the economic activity has been performed at a loss, are contrary to the economic nature of personal income tax and are not fair. On 7 January 2022, the Constitutional Court ruled that the contested provision does not comply with Article 105 of the Constitution.

References

- <https://www.tiesibsargs.lv/news/lv/normas-kas-paredz-ar-iedzivotaju-ienakuma-nodokli-apliekama-ienakuma-noteiksanas-kartibu-saimnieciskas-darbibas-veicejiem-neatbilst-satversmei>

Functioning of the justice system

The Ombudsman had the opportunity to investigate a case on access to court in asylum procedures. While it concluded that the current regulatory framework ensured minimum standards on the right to a fair trial, namely as the case was heard by a first instance court, it also stressed that the fact that such court's decision cannot be appealed poses potential risks for effective access to justice. The Ombudsman therefore highlighted the need to consider improving the regulatory framework so as to provide for the possibility to appeal against decisions of courts of first instance in asylum procedures, as is the case in most European Union member states.

References

- https://www.tiesibsargs.lv/uploads/content/publikacijas/2021_tiesibas_uz_taisnigu_tiesu_patveruma_procesa_1619771993.pdf
- <https://www.tiesibsargs.lv/news/lv/jau-ritdien-tiessaistes-diskusija-par-tiesibam-uz-taisnigu-tiesu-patveruma-lietas>

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

On 21 May 2021 the Ombudsman organized a public discussion with representatives from the Parliament, Administrative Case Department of the Supreme Court, Administrative regional court, Ministry of Interior, Ministry of Justice and the Office of Citizenship and Migration to discuss the possible violations of the right to a fair trial that can derive from the fact that, according to existing rules, decisions by first instance courts in asylum cases cannot be appealed, and cases may be heard solely by written procedure.

Media freedom, pluralism and safety of journalists

Media pluralism

The quality of public media has improved significantly in recent years, and various types of broadcasts are provided (informative, educational, entertaining) on different topics and for different groups of society. Electronic communications providers offer various programmes on Latvian commercial media channels, as well as foreign channels (in English, German, French, Lithuanian, Estonian, Russian).

The pandemic highlighted the huge impact that social media has on society. In social media, a large part of content relates to unverified facts, deliberately distorted facts, and disinformation. There were various public debates on media literacy in the course of 2021 in Latvia and public institutions (e.g., the Ministry of Culture) carried out various campaigns to promote media literacy. (1)

Following the Russian invasion of Ukraine on 24 February 2022, the National Electronic Mass Media Council banned the distribution of many channels in Russian. These decisions were based on the Electronic Mass Media Law, which prohibits hate speech, and propaganda of war and armed conflict. This law also incorporates the requirements of the Audio-visual Media Services Directive, which prohibits propaganda of violence, war, and armed conflict. On a positive note, public media in Russian (rus.lsm), active to date only on the internet, resumed work on terrestrial television. The Ombudsman considers this as a very positive step that will allow people who speak Russian to receive high-quality, objective information in Russian on current developments.

Safety of journalists

During the pandemic, some politicians as well as private individuals and associations engaged in smears against journalists. Disinformation about Covid-19 and vaccines was widespread. When journalists denounced fake news, they often faced verbal and even physical attacks, as well as harassment and persecution.

In several cases, politicians engaged in unconstructive criticism and verbal attacks against public media challenging their position, or sharing different views. For example, after several judgements by the Constitutional Court advancing equality for same-sex couples, the political party National Alliance criticized the media for not reflecting the opinion of the conservative members of public. On another topic, in autumn 2021, a populist member of the Parliament threatened that, if he was in power, journalists would lose their jobs for allegedly failing to accurately reflect the number of demonstrators at a rally.

In February 2022, a court judgment was handed down at first instance against a person who had been harassing for a long time an investigative journalist. On 11 March, Riga City Vidzeme District Court found the accused guilty of persecution of a journalist and punished him/her with temporary deprivation of liberty for two months.

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

The Ombudsman appeared on the Latvian radio program "Doma laukums" (The Dome square) regarding the suspension of several Russian TV channels in connection with alleged violations of electronic media regulations. The Ombudsman emphasized that when the broadcast of several channels is suspended, authorities should make sure that users have access to a range of equivalent and diverse programmes and channels. Upon examining implications of the decision on freedom of expression, the Ombudsman emphasized the need for diversity of opinion in a democratic society, as well as the importance of ensuring respect of gender equality and of countering the spread of hate speech.

The Ombudsman also organised a public debate on "Art - Freedom or the Right to Shock", where it was emphasized that art is one of the forms of expression protected by freedom of expression. Discussions promoted an exchange on the freedom of artistic creation and the readiness of the society to accept the unusual and the different. (2)

References

- (1) National Electronic Mass Media Council of Latvia (NEPLP) Conference "Media literacy. Roadmaps":

<https://www.youtube.com/channel/UCgwiDFWA3tSKwRTDhDwavg>;

National Library of Latvia webinar on media literacy:

<https://www.youtube.com/watch?v=qTII7cp07Qo>;

Association “Latvian Media Ethics Council” online event on the opening of the Media Ethics Month:

<https://www.facebook.com/lmepadome/videos/821030805199620>

and closing event “Challenges of Infodemic: Can and Should We Fight It?”:

<https://www.lmepadome.lv/news/params/post/3370645/latvian-media-ethics-council-invites-to-attend-the-closing-event-of-media-e;>

Baltic Centre for Media Excellence discussion “Comprehensive Approach and Advancement of Media Literacy in Georgia, Latvia, Moldova and Ukraine”:

<https://www.facebook.com/balticmediacentre/videos/607951950441460>

- (2) <https://www.tiesibsargs.lv/news/lv/starptautiskaja-cilvektiesibu-diena-tiesibsargs-rikos-diskusiju-maksla-briviba-vai-tiesibas-soket>

Corruption

On 4 February 2022 the new Whistleblowing Law has entered into force. The law is meant to ensure adherence to EU rules on the establishment of alert channels and protection guarantees for whistle blowers, provided for by the Directive of the European Parliament and of the Council on the protection of persons reporting breaches of European Union law. The new law expands the circumstances in which an alert can be issued and provides that if the whistle blower has a reason to believe that reporting to the competent authorities may have adverse consequences, he or she may decide to rather report on the issue publicly, for example to the media.

References

- <https://likumi.lv/ta/id/329680-trauksmes-celsanas-likums>

NHRI’s recommendations to national and regional authorities

In 2021, the Ombudsman found a breach of good governance in the actions of the State Police when considering a whistle blower’s report. The whistle blower, who had reported alleged violations in the actions of the State Police senior management, was transferred to the same district where later the senior management official who was the object of the report was also transferred. Following the opinion of the Ombudsman, the transfer order of the whistle blower was revoked.

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

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

The Ombudsman acknowledges that the Covid-19 crisis has caused divisions and vulnerabilities in society and has also cast doubt on the rule of law and democracy in Latvia.

Some people questioned the existence of the COVID-19 pandemic, asking the Ombudsman for support and active intervention on their concerns. People also reported various cases where they felt that the government's procedures were not effective and appropriate, or where practices were proving inadequate. The Ombudsman regularly provided his assessment on the admissibility of restrictions, and informed about the legal remedies available to rights holders.

The deterioration of the epidemiological situation in the country and the overload of the healthcare system in the autumn of 2021 are, in the Ombudsman's view, a consequence of the government's failure to take coordinated and collective decisions, and of existing divergences among ministries in various sectors. This prevented the authorities to timely adopt the necessary measures, and led to a situation where the population was eventually faced with particularly significant human rights restrictions. The Ombudsman repeatedly approached the government and the legislature on various issues regarding the management of the COVID-19 crisis, including to alert on the need to improve the conditions for granting support, to ensure closer cooperation with non-governmental organizations and to better communicate and explain relevant decisions to the public.

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

In the spring of 2021, after the revocation of the state of emergency, on-site inspection visits resumed in institutions within the National Preventive Mechanism (NP). A total of 32 visits were carried out by the Ombudsman's office as NPM during 2021. Due to circumstances, the institutions to visit and the timings of the visits were chosen with great care and the visits were carried out in strict adherence to the epidemiological security measures in force, in order not to put the residents of the institutions visited at risk.

On 1 March 2022, on-site consultations were also resumed at the Ombudsman's Office. Until then consultations were available by phone, email, or mail.