



# 2022 Rule of Law Report - targeted stakeholder consultation

contribution by the Human Rights House Zagreb  
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## Introduction

This contribution to the 2022 Rule of Law Report is made by Human Rights House Zagreb, a civil society organization registered in Croatia.

Human Rights House Zagreb is a human rights organization established in 2008 as a network of civil society organizations with the goal of protecting and promoting human rights and fundamental freedoms. HRH's vision is to build a democratic, pluralistic and inclusive society founded upon the values of human rights protection, the rule of law, social justice, and solidarity. Through research, monitoring, advocacy, and education, HRH contributes to the protection, promotion, development, and advancement of human rights and fundamental freedoms. By publishing annual overviews of the state of human rights, thematic reports, and petitions, we help create better laws and public policies.

## I. Justice System

### B. Quality of justice

#### Accessibility of courts (e.g. court/legal fees, legal aid, language)

**Free legal aid** is instrumental in facilitating a right to access the court. Although the current Free Legal Aid Act<sup>1</sup> provides a solid framework, the free legal aid system is burdened with some problems which make access to courts unattainable:

1. **A multiannual funding scheme** for primary free legal aid providers does not exist, thus CSOs and university legal clinics have to apply annually for projects. This causes unnecessary administrative burden and exposes

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<sup>1</sup> Free Legal Aid Act (OG 143/13, 98/19)



providers of free legal aid to financial uncertainty regarding the ability to finance their free legal aid services.

2. The amount for **financing primary free legal aid** (HRK 1.985.000,00<sup>2</sup> - cca EUR 263.640,00 ) is insufficient to provide quality funding of primary free legal aid providers which disables CSOs and university legal clinics from hiring highly qualified legal professionals, since the maximum annual amount available to them amounts to HRK 95.000,00 - cca EUR 12.666,00 per organization.
3. Additionally and linked to insufficient public funding, the **territorial coverage** of free legal aid providers remains uneven (in 2020, providers only covered 12 counties while in the remaining 9 counties there were none or their operation was occasional).
4. The general public remains largely **uninformed** about the right to free legal aid and the avenues how to access and exercise this right.<sup>3</sup>

Above mentioned problems with free legal aid hinder the access to justice for marginalized social groups and citizens with poorer social-economic conditions.

Regarding the **free legal aid in criminal proceedings**, new problems occurred with the 2019 Amendments to the Criminal Procedure Act which transposed the 2016/1919 Directive on Legal Aid. Although introducing a number of positive changes in relation to the right to legal aid for suspects and accused persons, the Amendments contain one major shortcoming: **a right to legal aid is conditioned to the amount of the prescribed sentence**. The Act introduced a new institute “temporary legal assistance funded by the state”, which enables the right to free legal aid to every arrested person, regardless of the criminal offense for which a person was arrested. However, those suspects who have not been arrested can exercise this right only if they are suspected of a criminal offense for which a sentence of imprisonment exceeding 5 years is prescribed. Therefore, **legal framework is discriminatory towards citizens of poorer socio-financial status which consequently leads to inequality of citizens before the law**, and violation of the right of access to court, since the criterion for temporary legal aid is conditioned by the amount of the prescribed sentence.

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<sup>2</sup> Ministry of Justice and Administration, Public tender for financing projects of authorized associations and legal clinic for the provision of primary free legal aid for 2021, link available at: <https://mpu.gov.hr/gradjani-21417/besplatna-pravna-pomoc/javni-natjecaj-za-financiranje-projekata-ovlastenih-udruga-i-pravnih-klinika-za-pruzanje-primarne-pravne-pomoci-za-2021-godinu/21613>

<sup>3</sup> Human Rights in Croatia: Overview of 2020, Human Rights House Zagreb, para 109-112, link available at:

[https://www.kucaljudskihprava.hr/wp-content/uploads/2021/06/KLJP\\_GI2020\\_EN\\_PRIP\\_web.pdf](https://www.kucaljudskihprava.hr/wp-content/uploads/2021/06/KLJP_GI2020_EN_PRIP_web.pdf)



**The right to access to court** and effective judicial protection in **administrative proceedings** is hindered due to the fact that administrative courts seldom adjudicate in full jurisdiction<sup>4</sup>, which consequently affects various administrative proceedings such as asylum protection, cases of conflict of interest/corruption and similar cases. Consequently, access to court and effective judicial protection is not effective because it prolongs the legal uncertainty.

**Digitalisation (e.g. use of digital technology, particularly electronic communication tools, within the justice system and with court users, including resilience of justice systems in COVID-19 pandemic)**

**The e-communication** was introduced in 2020 and it was implemented at all commercial, municipal and county courts and at the High Commercial Court. Even though e-communication is a positive step in the direction of digitalization of courts, this access is still available only to attorneys, court experts, insolvency administrators and legal entities in relation to filing motions to the court and **is not available to citizens who are not represented by an attorney, thus violating their right to access the court.**<sup>5</sup>

C. Efficiency of the justice system

**Length of proceedings**

Having in mind the backlogs and length of proceedings in court cases, **a right to a fair trial within a reasonable time in criminal cases should be particularly considered.** In this regard, the backlog and length of proceedings are notable in **high-level corruption cases** - the majority are not finalized for more than 5 years.

There was no significant progress in the **prosecution of war crimes** and most of the problems still persist. Hearings in a number of criminal proceedings for war crimes have not been scheduled. Problems with the length of evidentiary proceedings (two years and longer) are still present. Hearings often start again as legal deadlines

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<sup>4</sup> Full jurisdiction dispute is a general term that refers to the type of administrative dispute in which the administrative courts are empowered to resolve the matter themselves, i.e. to decide on the right, obligation or legal interest of the party by meritorious judgment.

<sup>5</sup> Human Rights in Croatia: Overview of 2020, Human Rights House Zagreb, para 76, link available at: [https://www.kucaljudskihprava.hr/wp-content/uploads/2021/06/KLJP\\_GI2020\\_EN\\_PRIP\\_web.pdf](https://www.kucaljudskihprava.hr/wp-content/uploads/2021/06/KLJP_GI2020_EN_PRIP_web.pdf)



expire, so witnesses who had already been directly examined several times are called to testify again, which additionally prolongs criminal proceedings.<sup>6</sup>

Besides the violation of a right to a fair trial within a reasonable time, the length of proceedings has a **direct negative effect on the perception of the judiciary** among the citizens.

### **Other - please specify**

The **unavailability of case law** is also one of the important factors influencing public perception of the efficiency of the justice system. Besides the Supreme and Constitutional Courts which publish their judgments **regularly**, most of the county courts' judgments are published only **exceptionally**, while municipal courts' judgments are **almost never published**.

**This has a direct negative effect on the right to a fair trial since it prevents citizens from using existing case law in their cases, and consequently, causes inconsistencies in court practice as well.** According to the Constitutional Court statistics, over 90 percent of complaints to the Constitutional Court (which amounts to over 5,000 to 6,000 cases per year) come through Art. 29 of the Constitution (Art. 6. of the ECHR). These are cases in which the parties either cannot get an insight into the case law of other courts in Croatia or the parties themselves find examples of inconsistencies within the case law, which is a reflection of deep inefficiency and lack of quality of the judiciary.

Problems with inefficiency and lack of quality of the judiciary in Croatia persist for many years. Around half of the 479 ECtHR judgments<sup>7</sup> against Croatia concerns violation of Art. 6 due to the length and unfairness of the proceedings.

Having in mind that the **non-implementation of ECtHR judgments** is a profound sign that human rights, democracy and the rule of law are under threat, as recent figures show, the overall number of Croatian cases which remain pending before the CoE Committee of Ministers for the supervision of the **execution of ECtHR**

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<sup>6</sup> Human Rights House Zagreb, Overview of 2020: Human Rights in Croatia, para 119, link available at: [https://www.kucaljudskihprava.hr/wp-content/uploads/2021/06/KLJP\\_GI2020\\_EN\\_PRIP\\_web.pdf](https://www.kucaljudskihprava.hr/wp-content/uploads/2021/06/KLJP_GI2020_EN_PRIP_web.pdf)

<sup>7</sup> European Court of Human Rights, [https://hudoc.echr.coe.int/eng#{"languageisocode":\["ENG"\],"respondent":\["HRV"\],"documentcollectionid":\["JUDGMENTS"\]}](https://hudoc.echr.coe.int/eng#{). Examples of judgments where violation of Art. 6 has been established: Kirinčić and Others v. Croatia (application number: 31386/17); Idžanović and Others v. Croatia (application number: 67705/14); Petrina v. Croatia (application number: 31379/10).



judgements is 79, out of which 23 have been classified as ‘leading’ cases and 45 as “repetitive cases” (as of 20 January 2022)<sup>8</sup>.

Even in the case of an established violation, **the average time required for the execution of an ECtHR judgment by Croatia is 5 years**. However, the oldest pending leading judgement in Croatia, which concerns the failure to carry out an effective investigation into a racist attack, **has been pending for almost 14 years** (*Šečić case, application number 40116/02*).

In addition, most of the judgments that Croatia has not yet executed relate to judgments in which a **repetitive and identical violation of Article 6 of the Convention was established due to inefficient judiciary and lengthy court proceedings**.

At the moment, **five prominent human rights problems identified in ECtHR judgments remain unresolved**: 1) **Journalists forced to pay crippling and unjustified damages after defamation claims** (*Stojanovic v. Croatia*), pending implementation since 2014; 2) **Police brutality and failures to investigate it** (*V.D. v. Croatia*), pending implementation since 2012; 3) **Failures to reunite parents with their children after custody proceedings** (*Karadžić v. Croatia*), pending implementation since 2006; 4) **Lack of protections against wrongful state surveillance** (*Dragojevic v. Croatia*), pending implementation since 2015; and 5) **Failures to investigate racist attacks** (*Šečić v. Croatia*), pending implementation since 2007.

## II. Anti-Corruption Framework

- A. The institutional framework capacity to fight against corruption (prevention and investigation/prosecution)

**List any changes as regards relevant authorities (e.g. national agencies, bodies) in charge of prevention detection, investigation, and prosecution of corruption and the resources allocated to each of these authorities (the human, financial, legal, and technical resources as relevant), including the cooperation among domestic authorities. Indicate any relevant measures taken to effectively and timely cooperate with OLAF and EPPO (where applicable)**

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<sup>8</sup> Council of Europe, Department for the Execution of Judgements of the European Court of Human Rights, link available at:

[https://hudoc.exec.coe.int/eng#{"EXECDocumentTypeCollection":\["CEC"\],"EXECLanguage":\["ENG"\],"EXECState":\["HRV"\],"EXECIsClosed":\["False"\]}](https://hudoc.exec.coe.int/eng#{)



The new Act on Prevention of Conflicts of Interest<sup>9</sup> entered into force on 25 December 2021 and **it is a step backward in terms of transparency and impartiality**. A new Act did not incorporate provisions on violations of the operating principles, including sanctions as one of the tools for combating corruption which was recommended by the GRECO. Having in mind that the **Commission on Resolution of Conflicts of Interest** is an important anti-corruption body, it is worrying that **it will not be able to perform its primary functions such as preventing conflicts of interest and ensuring respect for the principles of fair, honest, conscientious, responsible and impartial officials** as they are stipulated in the former Art. 5 of the Act on the Prevention of Conflicts of Interest.

#### B. Prevention

**General transparency of public decision-making (e.g. public access to information, including possible obstacles related to the classification of information, transparency authorities where they exist, and framework rules on lobbying including the transparency of lobbying, asset disclosure rules, gifts and transparency of political party financing)**

Regarding public access to information, the ongoing problem of **illegal decisions on denying the right of access to information** is persistent. The public authorities **ignore the standardized practice of the Information Commissioner and the High Administrative Court** which is publicly available. Moreover, a failure to **resolve requests for access to information (silence of the administration)** within the prescribed period is also a notable problem, as well as the frequent **misuse of the provisions of the GDPR** to deny requests for access to information. In more than 60 percent of cases in 2020, public authorities unjustifiably withheld information on the basis of personal data, which has had a negative impact on the right of access to information.<sup>10</sup>

**Measures in place to ensure whistleblower protection and encourage reporting of corruption**

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<sup>9</sup> Act on Prevention of Conflicts of Interest, OG 143/21, link available at: <https://www.zakon.hr/z/423/Zakon-o-sprječavanju-sukoba-interesa>

<sup>10</sup> Human Rights House Zagreb, Overview of 2020: Human Rights in Croatia, para 51, link available at: [https://www.kucaljudskihprava.hr/wp-content/uploads/2021/06/KLJP\\_GI2020\\_EN\\_PRIP\\_web.pdf](https://www.kucaljudskihprava.hr/wp-content/uploads/2021/06/KLJP_GI2020_EN_PRIP_web.pdf)

Act on Protection of Persons Reporting Irregularities<sup>11</sup>, popularly known as the Whistleblowers Act, came into force in July 2019. Following the adoption of the EU Whistleblowing Directive and as an instrument of transposition to the national legislation, the Croatian Government decided **to prepare a new Act on Protection of Persons Reporting Irregularities** which is currently in parliamentary legislative procedure.

Even though the new Proposal transposed the EU Whistleblowing Directive, the gaps remain in the framework to prevent and sanction corruption. Namely, the Whistleblowers Act **does not include the provision of psychosocial support for whistleblowers** which weakens the whistleblower protection system and raises concern that the act will not fulfill its fundamental role which is the protection and support of whistleblowers.

Providing means of assistance to whistleblowers is an essential prerequisite for encouraging their action of reporting irregularities. **The new draft Act includes provisions on the right of whistleblowers to free primary legal aid**, which was included to the draft Act following the process of public consultations in December 2021 and after being emphasized by CSOs and the Office of the Ombudswoman. However, in order to create an adequate and comprehensive whistleblower protection framework, **it is still necessary to ensure access to psychosocial support to whistleblowers as well as strengthen the existing system for the provision of free legal aid** which is burdened by insufficient financial and operational capacities. In this regard, although clearly stipulating a right to free legal aid to whistleblowers, **the proposed Act does not prescribe the obligation to public authorities to allocate additional financial means to providers of free legal aid.**

Additionally, since the possibility of reporting irregularities is unknown to most citizens and they are often discouraged from reporting due to the fear of consequences, **additional emphasis should be placed on promotional activities related to awareness-raising**, providing information, and encouragement to report irregularities.

### III. Media Freedom and Pluralism

#### A. Media authorities and bodies

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<sup>11</sup> Act on Protection of Persons Reporting Irregularities OG 17/19,(*Zakon o zaštiti prijavitelja nepravilnosti NN 17/19*) available at: [https://narodne-novine.nn.hr/clanci/sluzbeni/2019\\_02\\_17\\_357.html](https://narodne-novine.nn.hr/clanci/sluzbeni/2019_02_17_357.html)



### Conditions and procedures for the appointment and dismissal of the head/members of the collegiate body of media regulatory authorities and bodies

Although the new Electronic Media Act entered into force in late 2021, **the procedure for electing members of the Electronic Media Council remains problematic** from the standpoint of political influence since the members **are elected by the simple majority instead of a two-thirds majority**. This shortcoming contributes to the **perception of the Electronic Media Council as dependent on the volition of the Government majority in the Parliament**. Moreover, there is no requirement stipulated in the Act for the inclusion of journalists as members of the Electronic Media Council, as representatives of the journalistic profession.

#### B. Framework for journalists' protection

### Lawsuits (incl. SLAPPs - strategic litigation against public participation) and convictions against journalists (incl. defamation cases) and measures are taken to safeguard against abusive lawsuits

**Frequent lawsuits against journalists and editors for defamation, insult and shaming are continuously concerning**. The fact that claimants include politicians, local self-government units' officials and judges is especially concerning. A survey by the Croatian Journalists' Association in April 2021 counted 924<sup>12</sup> active lawsuits against journalists and the media in Croatia (compared to 905 in 2020). The Journalists' Association highlights that these lawsuits **have a strong impact on the concerned media outlets, threatening, in particular, the existence of smaller, local media outlets and freelance journalists**. Croatian authorities have set up an expert group to advise on policy initiatives to counter SLAPPs. The expert group intends to exchange expertise and good practices as well as establish initiatives to improve the position of journalists facing SLAPP lawsuits, **however, representatives of human rights and other civil society organizations were not included in the work of this expert group**.

### Other - please specify

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<sup>12</sup> Croatian Journalist' Association, Number of HRT lawsuits against journalists and media, link available at:

<https://www.hnd.hr/anketa-hnd-a-u-hrvatskoj-trenutno-aktivno-najmanje-924-tuzbi-protiv-novi-nara-i-medija>



**Domestic courts continued awarding high and disproportionate amounts of damages for insults and public shaming against journalists.** Even though those judgments are non-final, the first instance courts practice is worrying<sup>13</sup>. Notably, in the *Narodni list d.d.* case, ECtHR noted that a domestic court ordered the applicant's company to pay HRK 50.000 of non-pecuniary damages, which is disproportionate to the injury to reputation suffered. As a comparison, and to put in the relation, this amount equals two-thirds of the sum awarded for mental anguish resulting from the wrongful death of a sibling.<sup>14</sup>

According to the poll conducted by the Croatian Journalists' Association in 2021, **the HRT (public broadcaster) filed 35 lawsuits against journalists and editors-in-chief claiming a total value of HRK 78,5 million** in non-pecuniary damages. On the other hand, there are currently 33 active lawsuits filed by 15 judges for a total of HRK 2.212.500,000 just against one media outlet (Hansa Media).<sup>15</sup> **A large number of these lawsuits are aimed at intimidating the media and encouraging censorship and self-censorship among journalists**, and as a result, almost 89% of the surveyed media answered that lawsuits make it difficult for them to do business, while 37% of them find it hard or very hard to deal with the lawsuits. **The latter are usually small and non-profit media for which such lawsuits pose an existential threat.**<sup>16</sup>

**The work of non-profit media in Croatia has been seriously affected by the absence of domestic public funding in combination with delays in the EU funding scheme.** This puts most of the non-profit media journalists into a precarious status and forces non-profit media to reduce the scope of their coverage which has a **negative effect on the promotion and protection of human rights of the most vulnerable groups in Croatian society as well as on investigative journalism in the field of corruption and war crimes.** In 2021 there is still a lack of support for the work of non-profit media and local media outlets. A total of HRK 30 million was planned from the European Social Fund for the financing of community media

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<sup>13</sup> Human Rights House Zagreb, *Human Rights in Croatia: Overview of 2019*, para 54, link available at: [https://www.kucaljudskihprava.hr/wp-content/uploads/2020/04/KLJP\\_godisnjelzvjesce2019\\_ENG\\_web.pdf](https://www.kucaljudskihprava.hr/wp-content/uploads/2020/04/KLJP_godisnjelzvjesce2019_ENG_web.pdf)

<sup>14</sup> See §71 of the *Narodni list d.d. v. Croatia* Judgement.

<sup>15</sup> Croatian Journalist' Association, Number of HRT lawsuits against journalists and media, link available at: <https://www.hnd.hr/anketa-hnd-a-u-hrvatskoj-trenutno-aktivno-najmanje-924-tuzbi-protiv-novinara-i-me-dija>

<sup>16</sup> Croatian Journalist' Association, Number of HRT lawsuits against journalists and media, link available at: <https://www.hnd.hr/anketa-hnd-a-u-hrvatskoj-trenutno-aktivno-najmanje-924-tuzbi-protiv-novinara-i-me-dija>

(non-profit media). The allocation of funds was pending for three years. Finally, in May 2019 the Ministry of Culture launched a call for proposals for only HRK 15 million.<sup>17</sup> In 2020 and 2021 the public call for allocating the second installment of HRK 15 million has not yet been announced.

#### IV. Other institutional issues related to checks and balances

##### A. The process for preparing and enacting laws

#### **Framework, policy and use of impact assessments, stakeholders'/public consultations (particularly consultation of judiciary and other relevant stakeholders on judicial reforms), and transparency and quality of the legislative process**

**The overall quality of civic participation in processes of legislation and policy development is not on an adequate level.** Online public consultations are available through the platform “e-savjetovanja”, **but the quality of participation is hampered by the fact that citizens’ inputs and recommendations are often not genuinely welcome and taken into consideration by public authorities.** Citizen participation in the decision-making process is relatively weak, with most institutions relying exclusively on consulting online and no longer combining consultation methods such as round tables, panel discussions, etc. **Civil society is often involved in consultations only as a formality and consultations are often primarily formal rather than substantive.**

**Almost 18% fewer consultations were held in 2020 than in the previous year.** The Information Commissioner’s report also states that the negative trend of shortening the consultation period has continued, still without adequate justification. In other words, shortening the consultation period has all but become the rule rather than an exception. **Additionally, the quality of report drafting on the conducted consultations is deficient, and all received proposals and opinions are insufficiently documented, especially at the local level.**<sup>18</sup>

Of 762 public consultations conducted in 2020, 70 consultations (9.2 percent) lasted 30 days or more, while the duration of the remaining 692 consultations was shorter,

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<sup>17</sup> Human Rights House Zagreb, Overview of 2019: Human Rights in Croatia, para 61, link available at: <https://www.kucaljudskihprava.hr/2020/04/17/ljudska-prava-u-hrvatskoj-pregled-stanja-za-2019-godinu/>

<sup>18</sup> Human Rights House Zagreb, Overview of 2020: Human Rights in Croatia, para 50-52, link available at: [https://www.kucaljudskihprava.hr/wp-content/uploads/2021/06/KLJP\\_GI2020\\_EN\\_PRIP\\_web.pdf](https://www.kucaljudskihprava.hr/wp-content/uploads/2021/06/KLJP_GI2020_EN_PRIP_web.pdf)



less than the prescribed 30 days. **The system also notes that the average number of consultation days for all acts was only 17 days**, which is even lower than in 2019 (18 average days). Despite the provisions of the Act on Right to Access to Information, which provides for a 30-day deadline for public consultation and the obligation to publish consultation plans that should allow the 30-day deadline to be met, **a number of government bodies continue to hold consultations during a much shorter time with the explanation of urgency of problem-solution/adoption of acts.**

**In 2020, 8 consultations were conducted for the regulatory impact assessment statements (including the subsequent regulatory impact assessment forms) in accordance with the Act on Regulatory Impact Assessment, in the duration of 30 days.** The Act on Regulatory Impact Assessment prescribes the obligation to hold consultations for statements and drafts of law proposals in duration for at least 30 days, with a public presentation of the subject of consultation through round tables, conferences, etc.<sup>19</sup>

**Rules and use of fast-track procedures and emergency procedures (for example, the percentage of decisions adopted through emergency/ urgent procedure compared to the total number of adopted decisions)**

**During 2020, the trend of submitting draft laws for the adoption in urgent procedures has increased.** Out of a total of 138 legislative activities in 2020, 68 (49.28%) acts were adopted in the regular procedure and 70 acts (50.72%) in the urgent procedure. The largest number of urgent procedures was recorded in relation to unplanned legislative activities carried out without an impact assessment. The percentage of implementation of legislative activity plans in the period from 2017 to 2019 has increased and continuously amounted to more than 55%, while in 2020 this percentage has lowered to 42% due to COVID-19 pandemics and natural disasters (earthquakes).<sup>20</sup> **This trend is specifically concerning in relation to enabling citizen participation in decision making which is considerably restricted in urgent legislative procedures.**

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<sup>19</sup> Government of Croatia, Office for Legislation, Report on the implementation of public consultation in adoption procedures of laws, regulations and acts in 2020, October 2021, available at: <https://zakonodavstvo.gov.hr/UserDocsImages/dokumenti/Izvj%C5%A1%C4%87e%20o%20provedbi%20savjetovanja%202020.pdf>

<sup>20</sup> Government of Croatia, Office for Legislation, Report on implementation of the legislative activities plan, July 2021, available at: <https://zakonodavstvo.gov.hr/UserDocsImages//dokumenti//210928%20Izvjescje%20PZA%20VRH%202020%20final.pdf>



**COVID-19: provide update on significant developments with regard to emergency regimes in the context of the COVID-19 pandemic judicial review (including constitutional review) of emergency regimes and measures in the context of COVID-19 pandemic oversight (incl. ex-post reporting/investigation) by Parliament of emergency regimes and measures in the context of COVID-19 pandemic**

Extraordinary circumstances such as those caused by the COVID-19 pandemic pose **an increased danger to the functioning of the check and balances system** due to the tendency to strengthen executive power to the impairment of other branches of government. The response of Croatian institutions, instead of increased oversight of the executive branch, **is characterized by a problematic level of "confidence" in the actions of the Government**, which is largely legitimized by Constitutional Court judgments. The foremost problem is **the retroactive application of the law**, i.e. the post-facto parliamentary legitimacy of epidemiological measures preliminarily introduced by the Headquarters of the Civil Protection as an extended arm of the executive branch without a concretized legislative basis.

In the implementation of parliamentary oversight, the fact that the Parliament requested three reports a year from the Government on the implementation of epidemiological measures is not sufficient and **does not present an effective oversight mechanism**.

As far as judicial review is concerned, **the decisions of the Constitutional Court on COVID-19 are supported by an extremely low level of constitutional review of executive and legislative decisions**. The views of the Constitutional Court are in some respects extremely problematic in the form of setting boundaries at the will of the ruling majority. Contrary to the goals of the rule of law, which in extraordinary circumstances tends to limit the activities of the ruling majority, the Constitutional Court left the decision whether to decide independently or to use a control mechanism of co-decision with the parliamentary minority to the parliamentary majority. **The majority, of course, ruled out the option of parliamentary control and oversight of their decisions related to combating COVID-19 pandemics**.

B. Independent authorities

**Independence, resources, capacity and powers of national human rights institutions ('NHRIs'), of ombudsman institutions if different from NHRIs, of equality bodies if different from NHRIs and of supreme audit institutions**



Regarding the independence of the ombuds institutions in Croatia, it should be highlighted that Ombudswoman for Gender Equality and Ombudswoman for Children **do not have an equal level of independence** as the Ombudswoman (general) since the ombudswomen **can be dismissed from office following the non-acceptance of their annual reports by the Parliament**. Moreover, the independence of the Children's Ombudswoman **is additionally limited** with the **requirement to obtain the parliamentary approval of the annual working plan** of the institution.

Regarding the resources and capacity of ombuds institutions, the Ombudswoman Office (general) should be granted additional resources **to build capacities in order to execute the mandate under the new Act on the Protection of Persons Reporting Irregularities** since here office is designated authority for eternal reporting of irregularities. Additionally, **ever since the 2020 Zagreb earthquake** and damages were done to the main office of the Ombudswoman, the institution is functioning in **inadequate working premises**.

#### D. The enabling framework for civil society

**Measures regarding the framework for civil society organisations (e.g. access to funding, legal framework incl. registration rules, measures related to dialogue between authorities and civil society, participation of civil society in policy development, measures capable of affecting the public perception of civil society organisations, etc.)**

There is an ongoing lack of public initiatives or policies for civil society development that would foster conditions for the work of the civil society in Croatia. **The National Strategy for the Creation of an Enabling Environment for Civil Society Development expired in 2016**. The development of a new strategy has started, but it has not yet been drafted or adopted. **The National Program for Protection and Promotion of Human Rights expired in 2016** and a new one has also not been adopted for the fifth year in a row. The draft of the new plan has been finalized, but it has not reached the stage of public consultation yet.

Although there is, on the executive level, an institutional framework in place for dialogue and consultation with civil society in Croatia which is centered around the **Council for Civil Society Development<sup>21</sup> as an advisory body to the Government, there are many issues hindering the dialogue and consultations processes**. Ever since the convocation of the current Council from May 2020, CSO representatives have limited influence on the decisions adopted by the Council

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<sup>21</sup> Government of the Republic of Croatia, The Council for Civil Society Development, website available at: <https://udruga.gov.hr/the-council-for-the-development-of-civil-society/163>



because a majority of Council members come from various Government departments which limits the opportunities of CSO representatives to influence the priorities of the Council. **Additional problems are irregular sessions of the Council which do not meet regularly and frequently.**

**Negative trends also continued regarding civil dialogue and participation in decision-making.** According to CSOs in Croatia, the overall level of civic participation in processes of legislation and policy development is inadequate. Citizen participation in the decision-making process remains relatively weak, with most institutions relying exclusively on consulting online and no longer combining consultation methods such as round tables, panel discussions, etc. **Civil society is often involved in consultations only as a formality and consultations are often primarily formal rather than substantive.**

**Civil society organizations continue having a high degree of distrust towards domestic institutions that allocate funds from the state budget and European Structural and Investment (ESI) funds.** The application process for CSOs' projects is often too demanding in the administrative sense. The project application phase is also problematic due to the inconsistent implementation of the indicative calendar of public calls for proposals and tenders, as well as due to the overly lengthy evaluation of projects within ESIF calls for proposals. **In addition, the quality assessment method based on the order in which project applications are received (the so-called 'fastest finger first') favors organizations that submitted projects earlier instead of considering the quality of the project proposal as the basic criterion for awarding funds.**

**Short-term forms of financing for projects of civil society organizations negatively affect the work of organizations engaged in long-term advocacy and watchdog activities.** Organizations that provide social services to vulnerable groups face difficulties in terms of the sustainability of their support programs. Delays in announcing and processing calls for project proposals continue to negatively affect the operational capacity of civil society organizations and the turnover of professional staff, whose continuity is crucial for the quality of work in the civil sector.<sup>22</sup>

#### **Rules and practices guaranteeing the effective operation of civil society organisations and rights defenders**

Cases of criminalization of humanitarian and human rights work as well as cases of intimidation, harassment, and disciplining of human rights defenders active in

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<sup>22</sup> Croatia, Human Rights House Zagreb, [Human Rights in Croatia: Overview of 2020](#), April 2021.



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organizations who provide help and support refugees and other migrants have been present in Croatia for the past few years.

As far as civil society organizations are concerned, as in the case of the Ombudswoman, **it is possible to notice difficult access to information and difficult actions in providing assistance to migrants and asylum seekers.** In the judgment of M.H. against Croatia, this was explicitly confirmed by the European Court of Human Rights. According to the legally binding case law of the Court of Justice of the European Union, civil society organizations must be allowed to operate and act "without undue interference by the state", and the criminalization of assistance to asylum seekers is expressly prohibited. In this sense, in the light of the rule of law, the systematic practice of the Croatian authorities in dealing with migrants at green borders, the practice of "pushbacks", disabling asylum applications, and universal treatment of asylum seekers or considered irregular migrants.

Particularly worrying **is the case of Dragan Umičević**, an activist supporting the work of Are You Serious organization, who was sentenced on 14 December 2021 by the High Administrative Court to a HRK 60.000 (cca EUR 7.000) fine for "assisting in illegal border crossing" to the Hussiny family, which represents a worrying example of the criminalization of work of human rights defenders.

It should be noted that there are numerous indicators of institutional coordination and systematic approach in maintaining and covering up inappropriate treatment of migrants, such as the continuing practice of denying the Ombudsman access to information, **preventing or hindering the free action of civil society and independent institutions.** Such non-transparency raises serious doubts about the continuous violation of the human rights of migrants and asylum seekers as a minority in our society, which especially refers to the prohibition of collective expulsion from Art.19 of the Charter, the right to asylum from Art.18 of the Charter and prohibition of inhuman or degrading treatment under Art. 4 of the Charter.

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