

State of the Rule of Law in Europe in 2022



Reports from National Human Rights Institutions

Montenegro



Montenegro

Protector of Human Rights and Freedoms of Montenegro

Impact of 2021 rule of law reporting

Follow-up by State authorities

The Protector, or Ombudsman, of Montenegro has no information on follow-up initiatives by state authorities in relation to challenges to rule of law identified in last year's reporting.

Despite the challenges posed by the second year of the COVID 19 pandemic, the Institution managed to maintain contacts and cooperation thanks to the network platforms on which international gatherings are organized.

Impact on the Institution's work

The 2020 ENNHRI rule of law report served as an opportunity for working and exchanging information with Ombuds institutions regionally and internationally. The report was a useful tool in getting information on the work of other NHRIs and was used to gather best and new practices on how to improve the Institution's everyday work in times of pandemic. Inclusion, participation, transparency in the adoption and planned adoption of norms are, alongside the timeliness and efficiency of the justice system, key elements of a strong rule of law framework. Following the developments in this area, the Ombudsman deputies promoted "Key Challenges in the Rule of Law" at the state and local level.

References

- www.ombudsman.co.me

Follow-up initiatives by the Institution

The Institution has noted the great interest of the media in the work of the NHRI and has observed the highest number of citizens' addresses since the establishment of the Institution. Citizens addressed the Institution in the form of/through consultation, information, referrals, legal advice and complaints. The public was informed through the media and the Ombudsman's website of key opinions and recommendations. The Ombudsman also maintained a high level of transparency regarding the reporting on the activities carried out, through publicly available information published on the Institution's website. The Institution held a large number of meetings (mostly online) with the

civil society sector, regional/international ombudsman institutions and international partners.

Montenegro still needs reforms in the area of rule of law and human rights, and faster progress requires a strengthening of citizens' trust in the institutions of the system. The role of the Ombudsman institution is, among other things, to contribute to the stabilization of the social environment, the reduction of tensions and the implementation of reforms. In order to ease recent tensions, the Protector had several meetings with representatives of the Government, the Assembly, the civil sector and international partners. The Institution participated in the work of the Committee on Human Rights and Freedoms, the Committee on Gender Equality and on the occasion of the presentation of the Annual and Special Reports of the Protector and thematic sessions.

References

- www.ombudsman.co.me

NHRI's Recommendations to National and European policy makers

The Institution recommends the competent authorities to organize a roundtable/conference in cooperation with ENNHRI, Ombudsman Institutions and the Government/Parliament and other relevant actors to present and discuss ENNHRI's Rule of the Law Report in order to raise awareness on the importance of this document at the state level.

Independence and effectiveness of the NHRI

International accreditation status and SCA recommendations

The Protector of Human Rights and Freedoms of Montenegro was accredited with B-status in May 2016 (1).

While noting that, in practice, the NHRI undertakes some promotional activities despite the financial constraints it faces, the SCA encouraged the NHRI to advocate for appropriate amendments to its enabling law to make its promotional mandate explicit.

Further, the SCA encouraged the NHRI to advocate for the formalisation and application of a selection and appointment process that includes requirements to publicize vacancies broadly; maximise the number of potential candidates from a wide range of society groups; promote broad consultation and participation in the process; assess applicants on the basis of pre-determined objective criteria; and select members to serve in their individual capacity.

Additionally, the SCA was concerned that the budgetary resources allocated to the NHRI are insufficient for it to effectively carry out its mandate.

Finally, during the review, the NHRI reported that it may only recruit staff after obtaining a certificate from the Ministry of Finance that funds are available for salaries, even if necessary funds have been approved in the budget. The SCA noted that NHRIs should be legislatively empowered to determine its staffing structure, the skills required to fulfil the NHRI's mandate, set other appropriate criteria (such as diversity), and select their staff in accordance with national law.

References

- (1) <https://www.ohchr.org/Documents/Countries/NHRI/GANHRI/SCA%20FINAL%20REPORT%20-%20MAY%202016-English.pdf>

Regulatory framework

The NHRI has a constitutional basis.

The NHRI has the mandate to contribute to access to justice for individuals, including through complaints handling, strategic litigation before courts, providing legal assistance to individuals and awareness-raising. However, the NHRI points out the need for its regulatory framework to be strengthened to ensure greater independence of the organisation.

The Citizens' Reception Service has been organized in the Institution. The task of the Service is to provide information on the manner of work and functioning of the Institution, on competencies, to assist in the procedure of filing a complaint whenever necessary, to provide information on the course of the procedure, instructions to another competent institution in cases when necessary, etc. Employees of the Institution are in daily contact with citizens seeking legal advice and information. In addition to conversations, they are also given advice on how to exercise their rights. This part of the work is often far from the eyes of citizens, the media, and others who follow the work of the Ombudsman. The number of these interventions, as well as the length of their duration, can never be objectively assessed as it varies depending on the number of parties, reasons for appeal, subject matter, ability to understand the principles of procedure and substantive law applicable, and the parties' knowledge of subject to the intervention of the Protector.

References

- https://www.ombudsman.co.me/docs/Zakon_o_zastitniku_ci_ljudskih_prava_i_sloboda_Crne_Gore.pdf
- https://www.ombudsman.co.me/docs/1652269181_final_izvjestaj_05052022.pdf

Enabling and safe space

Overall, relevant state authorities have good awareness of the NHRI's mandate, independence and role. The increase in the number of complaints filed is certainly an additional challenge and responsibility of the Ombudsman, given that such a growth index is a reliable indicator of public confidence and individual citizen's trust in the work and quality of work of this Institution. Apart from the cooperation in the context of the examination, the handling of complaints and the possible follow-up recommendations addressed to the authorities, the Ombudsman cooperates with public bodies and institutions at several levels.

In accordance with its competence, the Institution also pays great attention to educational and promotional activities. The Ombudsman's officials participate in numerous gatherings, tours and meetings organized by bodies, institutions or competent bodies of all three branches of government - executive, legislative and judicial. The Institution has become recognized for its open and accessible attitude to the various contributing initiatives in the promotion of human rights and freedoms.

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.

The addressees of the NHRI's recommendations are legally obliged to provide a timely and reasoned reply. According to the Law on the Protector, the Ombudsperson shall convey the information on the complaint and its content to the Head or the person managing the authority on whose act, action or failure to act the complaint refers to, for the purpose of taking the statement. The Ombudsperson shall set a deadline that cannot be shorter than eight days for submission of the statement and the required supporting documentation. The Head or the person managing the authority shall be obliged to give a statement and the documentation within the deadline set by the Protector. If the statement does not contain all the required information or the required documentation is not submitted, the Head or manager is obliged to submit an amended statement and required documentation at the request of the Protector.

Overall, the Institution is satisfied with the range of respect and fulfillment of its recommendations. If it notices a sporadic case of non-compliance with a given recommendation or the relevant authority ignores a request of the Ombudsman for a statement, the Ombudsman contacts the higher supervisory authority and generally receives a timely reply. Therefore, the Institution has not identified a generalised problem of lack of implementation of recommendations. If issues arise in individual cases, action is

taken according to the specific circumstances, either through alerting the media, or by mobilising the Government or the Assembly.

References

- https://www.ombudsman.co.me/docs/Zakon_o_zastitniku_ci_ljudskih_prava_i_sloboda_Crne_Gore.pdf

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

The work of the Ombudsman Institution has been increasingly rated by the European Commission as well as by international and domestic partners. In its work, the Institution adhere to the principles of justice and fairness, the practice of the European Court of Justice and international standards and rules.

References

- <https://www.ombudsman.co.me/article.php?id=34483&lang=lat&lang=lat&display=1>

NHRI's recommendations to national and regional authorities

It is necessary to continue to harmonise the legislative framework for the functioning of the Institution with the European Union acquis and international standards.

Other ways to strengthen the independence and effectiveness of the NHRI include:

- ensuring compliance with the recommendations of international bodies regarding the strengthening of administrative capacities, the manner of selecting office holders (with a model that would eliminate the possibility of blocking the process), and strengthening financial independence in accordance with EU, Council of Europe and UN recommendations;
- further strengthen international cooperation, in accordance with the recommendations of relevant UN committees.

Human rights defenders and civil society space

Progress in the field of human rights and freedoms in Montenegro is often driven by the work of the non-governmental sector. The engagement and work of civil society organisations most often encourages positive change, brings innovation and good solutions. This is why projects in cooperation with the civil society sector are generally very well received by regional actors and foreign donors. Civil society actors and media workers

are human rights defenders, who must benefit from the protection and promotion efforts of national and international organizations and institutions active in the area of human rights and freedoms. Civil society also conveys the voice of citizens and the Institution is committed to continue working on raising awareness of the support civil society actors can provide to the state administration, also in terms of improving its efficiency and transparency.

As regards the situation in Montenegro, the Institution believes that there is room for a more intensive involvement of civil society in decision and policy making, for improving the transparency of bodies/ institutions and strengthening the role of the public in the decision-making process. The Ombudsman of Montenegro remains a dedicated partner of civil society organizations, with which he achieved significant cooperation during the reporting year.

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

When it comes to open threats and intimidation of journalists in Montenegro and the region, the Protector's institution maintains that any kind of pressure and threats to media freedom are unacceptable, and calls for all cases to be effectively investigated and prosecuted. Detailed reporting on this can be found in the media chapter below.

References

- https://www.ombudsman.co.me/docs/1652269181_final_izvjestaj_05052022.pdf

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

From year to year, the Institution emphasizes the importance of the role that civil society organizations play in democratic societies, and especially in young and still fragile democracies, where the public administration system continues to establish and embrace the values of civil society. NGOs help the public administration system to function better and provide better services as the system needs to be "awakened" and encouraged to take action. The Institution considers itself a natural partner with both civil society and the media. It particularly values complaints, information and recommendations for action from these actors. In the past year, based on cooperation with NGOs and the media, the Institution has formed dozens of cases.

References

- <https://www.ombudsman.co.me/article.php?id=34492>

NHRI's recommendations to national and regional authorities

National authorities should provide greater financial resources to enable civil society actors to effectively perform their work, ensure better working conditions and increase their protection from attacks through adequate and timely reactions, better employment status, and a safer working environment.

Checks and balances

Trust amongst citizens and between citizens and the public administration

As long as there are complaints from citizens and established violations of rights, it means that the Institution must work to improve the response of the entire public administration system in relation to the exercise of guaranteed rights and freedoms of citizens, while respecting the principles of equality and non-discrimination. The Institution considers it important to speak publicly about cases of bad practice and treatment as it is one of the democratic ways to improve the situation or solve an individual problem.

The Institution wishes to point out that it has previously noticed a worrying trend of violations in its own proceedings. In practice, recommendations will be issued by the Ombudsman to the competent authorities after the investigation procedure for a case is finished. However, the Institution has noticed that competent state authorities will often act proactively without waiting for the procedure before the Ombudsman to be completed and thus, not take into account its recommendations.

NHRIs as part of the system of checks and balances

The Ombudsman engaged in various initiatives aimed at improving the institutional framework of checks and balances.

The Institution has submitted an Initiative for Amendments to the Law on the Constitutional Court of Montenegro as regards the procedural rules governing complaints to the Constitutional Court. The Institution's recommendations included the introduction of a formal legal remedy for speeding up the procedure in cases of urgency, the possibility to file objections, requests, as well as individual claims, with the possibility of accelerated procedures as well as remedies to grant citizens compensation when appropriate. The Ombudsman also issued an opinion on the Draft Law on Amendments to the Law on Public Executors, based on the address of the Chamber of Public Executors of Montenegro. The Constitutional Court of Montenegro is obliged to respect the right to a fair trial established by the Constitution, when it provides protection of the rights

guaranteed by the Constitution and when these rights are violated or denied by any national authorities.

The capacity of the Office to handle complaints and the quality of its decisions continues to improve. In the reporting period, the highest number of complaints addressed to the Institution concerned inappropriate, insulting and hate speech in public discourse, verbal and physical attacks on journalists, civil society activists, politicians and other public figures, the need to ease tensions in society, foster dialogue and tolerance and to strengthen the protection of the rights of children. In 2021, the Institution received approximately 968 cases, most of which related to the work of state administration (40%), another 170 cases on the protection against discrimination and over 210 cases on the protection against torture and almost as much on the protection of children's rights and social protection. These are preliminary data, as the Institution's annual report is being prepared.

By improving the quality of its opinions and follow-up recommendations, the Institution strives to prompt stronger protection of human rights and to anticipate and prevent future violations, also having regard to the standards set by EU institutions, including the Court of Justice of the EU. Despite containment measures adopted in response to the Covid-19 pandemic, the Institution actively organised and participated in meetings and activities in cooperation with public authorities, non-governmental organizations, media and international institutions. The Institution's representatives participated as panellists in dozens of meetings and public gatherings. In order to promote activities but also to communicate with citizens, the Institution has continued to actively use social media, including an Instagram account and a Facebook page intended for children. Interaction with the authorities at the local level was achieved by holding a Protector's Day in several municipalities. The media reports almost daily on the Protector's opinions and recommendations and asks the Protector for comments on the current socio-political situation, thus the views of the Institution are very present and quoted in public.

References

- <https://www.ombudsman.co.me/upravaipravosudje/131.news.html>
- https://www.ombudsman.co.me/docs/1603718086_061020202-inicijativa.pdf

NHRI's recommendations to national and regional authorities

The Institution is aware that there are problems in the adequate application of laws and regulations, especially as regards compliance with international standards. The Institution therefore believe that it is necessary to constantly monitor administrative practices and to ensure proper enforcement human rights and freedoms standards, regardless of the body that applies them.

Functioning of the justice system

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

According to the Law on the Protector, the Ombudsman is authorized to act on complaints related to the work of courts in case of delay in the procedure, abuse of procedural powers or non-execution of court decisions. The Ombudsman is not authorized to change, revoke or annul acts of courts. The Ombudsman may initiate proceedings before the Constitutional Court of Montenegro to assess the conformity of a law with the Constitution and ratified and published international agreements, i.e. the compliance of other regulations and general acts with the Constitution and the law.

As mentioned above, the Ombudsman of Montenegro submitted to the Ministry of Justice an Initiative to amend the Law on the Constitutional Court in order to enable citizens to use legal means to speed up the procedure and protect the right to a trial within a reasonable time before this Court.

References

- https://www.ombudsman.co.me/docs/Zakon_o_zastitniku_ci_ljudskih_prava_i_sloboda_Crne_Gore.pdf

Media freedom, pluralism and safety of journalists

Media freedom is one of the areas in which Montenegro is making slower progress in achieving democratic standards for European integration. This is mainly due to the large number of attacks and various types of pressure on journalists. In unstable and challenging times, journalists are a stronghold of civil society and values, contributing to social cohesion and reducing divisions through truthful and objective information.

In the reporting period, the Protector was frequently approached concerning episodes of inappropriate, insulting and hate speech in the public discourse, verbal and physical attacks on journalists and other public figures, often obstructed in performing their work in public.

The Media Union warned that attacks on journalists were especially intensified in 2021. According to their data, 25 attacks occurred on journalists this year. Media Center NGOs expressed concern over the increasing verbal and physical attacks on journalists in Montenegro. The Media Council for Self-Regulation (MSS) believes that a single regulatory body would help improve the situation in the media in Montenegro, increase the level of professionalism, lead to uniform application of the Journalists' Code and its interpretation and generally improve media status and position in society. The Institution received

information from the Police Administration that they registered a total of 23 events, attacks on journalists and / or media houses in the period from January 1, 2021 to December 31, 2021. Of the 23 reported events, the competent State Prosecutor qualified eight (8) events as a criminal offense prosecuted ex officio, seven (7) events were clarified and the perpetrators prosecuted, while one (1) event was not clarified.

Amendments to the Law on Media (July 2020) brought, among other things, the obligation of the portal to "remove a comment that is obviously illegal content, without delay, and no later than 60 minutes from finding out or receiving another person's report that it is illegal content, as well as to remove the comment that violates the rights protected by law, without delay, and no later than 60 minutes from the receipt of the application. " However, apparently these provisions are still not realised in practice nor has the control of their application.

References

- <https://www.ombudsman.co.me/article.php?id=34113>
- <https://www.ombudsman.co.me/34615.news.html>
- <https://www.ombudsman.co.me/34665.news.html>
- <https://www.ombudsman.co.me/34664.news.html>
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- <https://www.ombudsman.co.me/34597.news.html>
- <https://www.ombudsman.co.me/34578.news.html>
- <https://www.ombudsman.co.me/34575.news.html>

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

When it comes to open threats and intimidation of journalists in Montenegro and the region, the Protector's Institution maintains that any kind of pressure and threats to media freedom are unacceptable and calls for all cases to be effectively investigated and prosecuted. All those who are dissatisfied with the way of reporting, compliance with program standards or believe that their publications violate other rights, should file complaints and use the available procedures before the Media Council for Self-Regulation, Ombudsman bodies the Electronic Media Agency and ultimately the competent courts.

The Protector condemned the threats and insults on journalist Tamara Nikčević and expressed concern over repeated situations of verbal attacks on journalists in public.

Following the obstruction of the work of the TV Vijesti team in Cetinje and in light of information on open threats and intimidation of several journalists in Montenegro (Bursać, Šuković, Antena M) and the region, the Institution specifically condemned the endangering of the security of journalist Tadić Mijović, editor-in-chief of "Monitor" Esad Kocan and journalist of the Public Service Šofranac. Furthermore, since the attack on journalist Sead Sadikovic, the Institution believes that society has not overcome the dangerous climate of intolerance and tendency to violence towards everything it perceives as different from itself or its value system.

The Institution called for all cases to be effectively examined and processed as that is the only way to effectively and decisively deal with the pressures on free journalism. Free journalism is the basis of every free society and as such has no alternatives.

During the year, the Institution had meetings with the Media Union (MU) where it was agreed that it is necessary to maintain and intensify cooperation between the MU and the Ombudsman institution, and thus contribute to improving the human rights situation in the field of media. The Institution often acts ex officio, precisely on the basis of information from the media, which was especially important in the first wave of the Coronavirus.

During the pandemic emergency, journalists were the ones who, through their reporting, contributed to drawing attention to many social and societal implications of the pandemic, especially in the field of human rights and freedoms.

The Protector's Annual report contains a dedicated chapter on media freedom where it will make key observations on this issue. The Protector participated in TV shows on the topic of media freedom, freedom of expression and hate speech. The Institution maintained cooperation with the Media Union, through meetings and exchanges of information.

Following the invitation of the Ministry of Public Administration, Digital Society and Media, the Protector sent instructions for the preparation of the first Media Strategy in Montenegro (2022-2026). In line with its mandate, most of the recommendations were related to the fight against hate speech, and some of the recommendations were related to other factors that contribute to improving the general context of the position of the media and media freedoms.

References

- www.ombudsman.co.me

NHRI's recommendations to national and regional authorities

Recommendations include:

- The proposals to include media literacy within formal education curricula, starting from primary school;
- The renewal of the dialogue within the media community on the establishment of a single self-regulatory body and framework;
- The establishment of a system of continuous media dialogue (annually or several times a year) on the respect of professional standards and ethics, with special reference to hate speech in the media;
- The strengthening of the mechanisms for reporting inappropriate comments and their removal on the portals of registered media in Montenegro (obligation to remove illegal comments within 60 minutes, as provided by the Law on Media, which is still not fully and sufficiently implemented in practice);
- Increased cooperation between media and the competent state institutions so that the media community receives timely relevant information and materials (judgments, analyzes, manuals, etc.) in the media freedom area, and especially current international standards and practices.

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

The NHRI indicated that the overall situation had improved in comparison to last year, in their opinion.

Emergency regimes and related measures

Measures adopted responded to the need or urgency in accordance with the current epidemiological situation. The most restrictive measures, such as the interruption of communication due to the ban on leaving the place of residence or stay, the partial blockade of borders, the ban on movement at a certain time, the ban on commercial activities, primarily the provision of services, the prohibition of communication between local communities, have been phased out by now.

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

It was noted that during the COVID-19 pandemic, the number of reports of domestic violence increased and a large number of children and students faced difficulties in

mastering and following online classes. At one point, the work of the commissions in the field of social and health care was suspended, which limited the exercise of the rights of persons with disabilities and persons with health problems. Women with temporary working positions stood out as a particularly at-risk category as, due to the reduction in the volume of work from various activities, their work was terminated. Although there were certain benefits for working parents due to the suspension of educational institutions and the transition to online teaching, this could also lead to an imbalance in preserving family and professional life. The Protector notes that no benefits were provided for older employees and employees with health problems during the height of COVID -19, in order to reduce the risk of infection.

References

- https://www.ombudsman.co.me/docs/1619074992_izvjestaj_01042021.pdf

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

On 8 December 2021, the main adviser of the National Preventive Mechanism (NPM) has been appointed by the Parliament as Deputy Ombudsman for the Protection of torture, security and National Preventive Mechanism. However, the high rates of COVID infections among the NPM staff during the reporting year prevented the annual visit plan to be achieved: 32 visits were carried out, out of the 40 visits planned. It is nonetheless to be noted that the Plan for 2021 was much more ambitious than the Plan for 2020, under which 20 visits had been planned and achieved.

References

- <https://www.ombudsman.co.me/zastitaiprevencija/articles.html>

Other relevant developments or issues having an impact on the national rule of law environment

NHRI's recommendations to national and regional authorities

With regard to the various issues mentioned in the previous chapters of the report, including the exacerbated impact of Covid-19 measures on vulnerable groups, the Institution's calls for better implementation of its recommendations on the implementation of the UN Convention on the Rights of Persons with Disabilities and the Convention on the Rights of the Child, and the recommendations of ECRI and the Advisory Committee on Minority Rights.