



## 2023 Rule of Law Report - targeted stakeholder consultation

Civil societies organizations' joint submission  
January 2024

### Introduction

This joint contribution to the 2024 Rule of Law Report is prepared by the Human Rights House Zagreb and Centre for Democracy and Law Miko Tripalo with contributions from following civil society organizations from Croatia; [Croatian Journalist Association](#), [Centre for Peace Studies](#), [Rainbow Families Croatia](#), [Zagreb Pride](#), [Udruga RODA](#), [Youth Initiative for Human Rights – Croatia](#), [GONG](#), [Green Action](#), [DKolektiv](#), [Center for peace, non-violence and human rights](#) and [Croatian Platform for International Citizen Solidarity-CROSOL](#).

Human Rights House Zagreb (HRHZ) 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.

Centre for Democracy and Law Miko Tripalo (CMT) is an independent, non-profit policy think tank integrating academic and policy research and public discussion to produce policy solutions and affect policy reforms in the areas of democratization and rule of law. CMT works to broaden public discussions and to encourage better public understanding of complex issues with the goal of carving out a permanent space for non-governmental stakeholders in the policy process. The key factor which sets CMT apart from all other organizations in Croatia is its membership, a relatively small but keen and diverse constellation of civic-minded experts who work towards policy change aimed at strengthening Croatian democracy.

### I. Justice System

*1. Please provide information on measures taken to follow-up on the recommendations received in the 2023 Report regarding the justice system (if applicable)*

The 2023 recommendations did not address the extremely low level of public trust in the Croatian judiciary (the lowest in the EU), as reflected in, among other sources, the Eurobarometer Survey (even though this Survey is too narrow in its scope and biased in its approach.)<sup>1</sup> Regrettably, neither the Government nor the Commission in its recommendations followed up on the proposal of the Venice Commission<sup>2</sup> that, instead of security checks, the government should “develop an alternative strategy to ensure judges’ integrity, based on existing mechanisms.”

<sup>1</sup> As noted in the RoL submission of Centre for Democracy and Law Miko Tripalo (CMT) for 2023:

<https://pravosudje.tripalo.hr/2023/07/07/komentari-centra-miko-tripalo-na-izvjestaj-o-vladavini-prava-u-2022-godini-i-inputi-za-izvjestaj-o-vladavini-prava-za-2023-godinu/>

<sup>2</sup> Opinion on the introduction of the procedure of renewal of security vetting through amendments to the Courts Act, adopted by the Venice Commission at its 130th Plenary Session, March 2022, available at: [https://www.venice.coe.int/webforms/documents/?pdf=CDL-AD\(2022\)005-e](https://www.venice.coe.int/webforms/documents/?pdf=CDL-AD(2022)005-e)

The main causes of the extremely low public trust in judiciary are: lack of effective sanctioning of those judges whose behaviour is below the standards expected by the public; absence of effective accountability mechanisms in general; low transparency in the process of appointing, promoting and disciplining judges by the State Judicial Council (SJC); and limited and delayed publication of court decisions, which are also subject to the rule of complete anonymization that does not respect public interest.<sup>3</sup> Another important factor contributing to low level of public trust in the judiciary are excessively lengthy and ineffective judicial procedures that reflect, among other factors, weak skills of some of the judges.

It should be noted that judicial salaries at first glance are not high in comparison with salaries of judges in some other EU countries, but that Croatia already allocates to judicial budgets a significantly higher percentage of its GDP than the European median and average according to the CEPEJ Evaluation Report 2022. This indicates deeper systemic inefficiencies and structural problems which would need to be addressed in order to create a basis for both efficient work and adequate remuneration of judicial personnel.<sup>4</sup> See also below at Q13.

## **A. Independence**

### *2. Appointment and selection of judges prosecutors and court presidents (incl. judicial review)*

Amendments to the Law on the State Judicial Council (SJC) increased the discretion of this institution in selecting candidates.<sup>5</sup> This was done by increasing the number of points the SJC can grant on the basis of the oral interview, and by increasing the possible distance between the total points of the selected candidate and others who got more points based on all the criteria, including those that the SJC granted on the basis interviews. The Constitutional Court on several occasions ordered the SJC to repeat the procedure as the SJC did not provide sufficient explanation for the selection. Later, it granted compensation to some wronged candidates, without canceling the elections. Civil society organizations point out that in conditions where the public has little trust in the judiciary, increasing the discretionary powers of the SJC will not contribute to strengthening this trust.<sup>6</sup>

### *5. Allocation of cases in courts*

The Ministry of Justice and Public Administration submitted for public discussion proposals for amending the By-law on e-files (Pravilnik o e-Spisu) that regulates the allocation of cases in courts. The proposal will further reduce the scope of random allocation of cases in favour of their circular allocation based on the alphabetical order of judges' names. The circular allocation, which is not stipulated in the Law on Judiciary but was introduced via this by-law, will now apply not only to the several additional categories of cases, but also to all cases older than 5 years, including criminal ones. As presidents of courts do have access to information on which judge is the next on the list for case allocation, and they can choose the moment in which such old cases are reassigned, they will be able to allocate such cases in a fully discretionary manner. The Ministry argued that this innovation will improve the efficiency of courts. The claim is based on the experience of commercial courts, where the efficiency reportedly improved by 3%. This improvement, even if real, seems modest and insufficient to offset the increased risk of abuse.<sup>7</sup>

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<sup>3</sup> On these issues see comments in the sections below as well as CMT's comments in the 2023 submission, which included detailed proposals for strengthening the accountability mechanism and improving transparency of the judiciary:

<https://pravosudje.tripalo.hr/wp-content/uploads/sites/5/2023/09/Follow-up-on-the-recommendations-in-the-2022-Report.pdf>

<sup>4</sup> Strategic suggestions in this regard have been presented by CMT in January 2024 <https://tripalo.hr/strateske-smjernice-razvoja-eu-politika-u-rh/>

<sup>5</sup> For the Amendments to the Law on the State Judicial Council see: [https://narodne-novine.nn.hr/clanci/sluzbeni/2022\\_07\\_80\\_1172.html](https://narodne-novine.nn.hr/clanci/sluzbeni/2022_07_80_1172.html)

<sup>6</sup> Strategic suggestions in this regard have been presented by CMT in January 2024 <https://tripalo.hr/strateske-smjernice-razvoja-eu-politika-u-rh/>

<sup>7</sup> All other comments on the issue of allocation of cases submitted by CMT in the 2023 RoL input remain applicable. See also documents from the Roundtable on the allocation of cases <https://pravosudje.tripalo.hr/2022/10/18/okrugli-stol-kako-se-u-sudstvu-u-republici-hrvatskoj-dodjeljuju-predmeti-u-rad/>

The allocation of some cases in Croatian courts has raised concerns with organizations defending LGBT rights. Judges were excluded from deciding cases concerning LGBT rights just because they participated in Pride Marches and LGBT conferences, while cases concerning LGBT rights are frequently handled by the same judge that systemically issues decisions unfavorable to the LGBT community.<sup>8</sup>

*7. Accountability of judges and prosecutors, including disciplinary regime and bodies and ethical rules, judicial immunity and criminal/civil (where applicable) liability of judges (incl. judicial review)*

A number of civil society organizations have proposed establishing a special office within the Presidency of the Supreme Court that would be authorized to start investigations based on complaints from citizens and which would be entitled to seek assistance from government institutions in these investigations. Based on its findings, the President of the Supreme Court, the only person in the judiciary who has democratic legitimacy, would then submit the case to the State Judicial Council (SJC). Such a mechanism would address the demonstrated unwillingness of presidents of the courts to initiate disciplinary procedures. In addition, disciplinary proceedings against judges should be made public.<sup>9</sup>

In newer developments (until October 2023), the SJC suspended 6 judges because they were under criminal investigation, while an additional one avoided suspension by going into retirement. In December 2023, the media reported that another judge was being investigated by police and prosecutors' office, which raised the number to 8, or about a half of percent of all judges. In all these cases except one, the issue was the abuse of judicial positions for personal gains. In most of these cases the judges involved were already known to the public by either incomprehensible rulings in the past, or behaviours perceived by the public to be below the expected ethical standard. No measures were taken against them by the judicial disciplinary authorities before the state prosecution opened the criminal investigations. It should also be noted that these are cases of the most reckless judges getting involved in direct quid-pro-quo transactions, while more sophisticated abuses remain beyond the horizon of investigating authorities. Some of them are however reported by the media.

Regarding the weakness of accountability mechanisms in regular judiciary, two recent rulings of the Constitutional Court (U-III-4484/2013 and U-III-1289/2019) are notable. The first one describes how local courts can treat an estranged wife of a powerful judge. The second one illustrates how the regular judiciary reacted to a complaint by an attorney that a judge behaved in an unprofessional manner.<sup>10</sup>

The developments following the ruling of the ECtHR from 2012 (Application no. 20883/09) are also notable.<sup>11</sup> The request of the ECtHR to conduct a revision of the case was finally met ten years later, in December 2022, when the prosecution withdrew the indictment of the second accused (who in the meantime spent some 8 years in jail). A month later, the first accused was acquitted because of insufficient evidence. It appears however that the prosecution then filed an appeal. Earlier in this saga, it took the Supreme Court slightly less than 5 years to respond to a previous appeal of the state prosecutor. The latest rulings have not been published.

*8. Remuneration/bonuses/rewards for judges and prosecutors, including observed changes (significant and targeted increase or decrease over the past year), transparency on the system and access to the information*

In December 2023 the Ministry of Justice proposed amendments to the Law on Courts that would address the issue of out-of-courts income-earning activities of judges, particularly those

<sup>8</sup> More information on the case available at: <https://www.dugineobitelji.com/homofobna-presuda-u-slucaju-dugine-obitelji-protiv-vigilare-i-necuven-utjecaj-na-neovisnost-hrvatskog-pravosuda/>

<sup>9</sup> The comments on the issue of accountability of judges that CMT submitted in the 2023 RoL input remain applicable in 2024.

<sup>10</sup> For more information see: <https://www.vecernji.hr/vijesti/za-trostruko-uboistvo-dobio-40-godina-a-sad-je-slobodan-razgovor-iz-zatvorske-bolnice-preokrenuo-neviden-slucaj-1645633>, and <https://www.telegram.hr/politika-kriminal/otkrivamo-novi-mega-skandal-osjeckog-suda-supruga-mocnog-suca-konacno-dokazala-nakon-svada-s-muzem-bespotrebno-su-je-strpali-na-psihijatriju/>

<sup>11</sup> ECHR, CASE OF AJDARIĆ v. CROATIA, (Application no. 20883/09), JUDGMENT, STRASBOURG, 13 December 2011, FINAL.04/06/2012.

that might be seen as creating conflicts of interest. According to the media, three highest judicial officials (President and Deputy President of the Supreme Court, and President of the State Judicial Council) were supportive of the proposal. However, the majority of the Supreme Court judges were not. One of the judges publicly attacked the President of the Supreme Court, which prompted his reply.<sup>12</sup> As of the end of 2023, the outcome of this proposal is unknown. This issue is sensitive for the public perception of the judiciary, given the large backlog of cases and long duration of many procedures.

#### *9. Independence/autonomy of the prosecution service*

The Croatian prosecution service is highly centralized, with the State Attorney General having unlimited powers to allocate and reallocate cases, as well for issuing mandatory instructions to prosecutors. The Head of USKOK, the special anti-corruption office in the State Attorney General Office, was recently forced to resign on questionable grounds.<sup>13</sup> Nobody applied to the announced vacancy, which will now have to be repeated. There are indications that the service, which admittedly started many criminal proceedings against state office holders, is starved of funds. The issue was recently raised by the State Attorney General.

As an example, the County State Attorney's Office in Osijek has a Criminal and Civil-Administrative Department. The Criminal Division conducts investigations and files indictments in war crimes cases. The deputies of the County State Attorney in Osijek, who work on war crimes cases, also work on general crime cases. There is not enough capacity for some deputies to be exclusively allocated to war crimes cases, and others exclusively to general criminality. For USKOK cases, there is not enough insight into which of the County State Attorney deputies represent the indictments.

#### *10. Independence of the Bar (chamber/association of lawyers) and of lawyers*

Bar chambers are fully independent and exclusively empowered to discipline attorneys. The procedures are however non transparent and complicated, proceeding through three stages. In December 2022 the public prosecutors opened a case and arrested the President of the Bar association for being involved in illegal operation of stripping rights of minority shareholders in a private company. The Bar Association soon appointed a new president, but the case adversely affected the public reputation of the profession.

#### *11. Significant developments capable of affecting the perception that the general public has of the independence of the judiciary*

In their work on issues of the judiciary, some civil society organizations have found that there is more public concern about corruptive behavior of some judges and their connections with local and national political elites rather than by somebody encroaching on their independence by issuing them instructions.<sup>14</sup>

After the well-known case of the dismissal of 3 judges of the County Court in Osijek, due to the connection with the criminal case of Zdravko Mamić, new judges were appointed, who up until then worked at the Criminal Department of the Municipal Court in Osijek. As far as it is visible from the media, criminal proceedings are ongoing against all three judges before the County Court in Zagreb.<sup>15</sup>

There are also worrying developments bringing into question the secular nature of the legislative and judicial system, notably the use of Catechism of the Catholic Church and Church doctrine by Judge Travaš in concluding whether statements against LGBT families were

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<sup>12</sup> Available at: [RADOVAN DOBRONIĆ: 'Ako stvarno misli što je napisao u prigovoru, sudac Kos unižava značenje sudačkog rada, sudskih presuda, uloge sudaca i sebe samog' | NACIONAL.HR | online izdanje najutjecajnijeg političkog tjednika](https://www.nacional.hr/vijesti/radovan-dobronic-ako-stvarno-misli-sto-je-napisao-u-prigovoru-sudac-kos-unizava-znacjenje-sudackog-rada-sudskih-presuda-uloge-sudaca-i-sebe-samog) [Predsjednik Vrhovnog suda o izvansudskim aktivnostima sudaca Vrhovni sud Republike Hrvatske \(vsrh.hr\)](https://www.nacional.hr/vijesti/radovan-dobronic-ako-stvarno-misli-sto-je-napisao-u-prigovoru-sudac-kos-unizava-znacjenje-sudackog-rada-sudskih-presuda-uloge-sudaca-i-sebe-samog)

<sup>13</sup> Available at: <https://www.vecernji.hr/vijesti/vanja-marusic-dala-ostavku-na-mjesto-sefice-uskok-a-1673331>

<sup>14</sup> See CMT replies in the accountability section and in the 2023 submission <https://pravosudje.tripalo.hr/2023/07/07/komentari-centra-miko-tripalo-na-izvjestaj-o-vladavini-prava-u-2022-godini-i-inputi-za-izvjestaj-o-vladavini-prava-za-2023-godinu/> .

<sup>15</sup> See: <https://www.index.hr/vijesti/clanak/odgodjeno-sudjenje-mamicu-i-osjeckim-sucima/2529433.aspx>

discriminatory.<sup>16</sup>

Worldviews of judges influence decisions regarding women's reproductive health, especially concerning abortion. Additionally, the absence of judicial practice, lack of understanding of the specificities of women's reproductive health, and expert opinions from licensed gynecologists/obstetricians, some of whom have conscientious objections, further complicate women's access to justice and may influence decisions that are potentially contrary to judges' subjective views.

## **B. Quality of justice<sup>2</sup>**

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

Some civil society organizations noted that unresolved cases of criminal prosecution for war crimes committed on the territory of the former Yugoslavia still hinder victims' rights to truth, justice, and reparations; there is a need for more effective collaboration among public prosecutor's offices in these countries.

The legal system is inaccessible to women whose reproductive rights have been violated due to lengthy and uncertain procedures. The small number of cases in the courts related to reproductive rights compared to the complaints received by civil society organizations and ombudsman offices indicates a lack of trust in the legal system and its inaccessibility. Regarding the mechanisms used to protect rights in the five-year period (from 2016 to 2020), in most cases, women resorted to extrajudicial protection, specifically lodging complaints with ombudsman offices. This points to a lack of confidence in the judiciary, rendering justice inaccessible.<sup>17</sup>

Regarding legal aid, although last year the Ministry of Administration and Justice initiated a 3-year project-based financing for organizations providing primary legal aid, which was previously limited to only 1 year, the system of project-based financing remains insufficient and unsustainable. The allocated funds are low resulting in the organizations having to secure funds from other sources to cover the costs of providing primary legal aid such as the wages of individuals working on this job. Moreover, the competitions for the state financing are irregular and late, forcing organizations to rely on their own resources to keep providing legal aid. For example, the state funds for the provision of legal aid in 2023 were given only at the end of the year due to the competition for funds being initiated only in April of 2023. All these economic insecurities demotivate the needed young legal professionals from working in such jobs.<sup>18</sup>

Moreover, the geographical distribution of organizations that provide primary legal aid in Croatia, which are situated only in some of the big cities and completely absent in 13 counties, often leaves citizens in rural areas without access to free legal aid. This results in those most vulnerable, such as poorer, older and with lower educational level, being *de facto* precluded from accessing primary legal aid. The state does not do anything to incentivize the provision of primary legal aid in such areas. In addition citizens are badly informed about their right to legal aid - they do not know that they have a right to one, that they can contact organizations providing primary free legal aid directly, or the conditions under which free legal aid is given.<sup>19</sup>

Furthermore, the threshold for granting secondary free legal aid remains unchanged, despite

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<sup>16</sup> See: <https://www.dugineobitelji.com/homofobna-presuda-u-slucaju-dugine-obitelji-protiv-vigilare-i-necuven-utjecaj-na-neovisnost-hrvatskog-pravosuda/>

<sup>17</sup> Overview of judicial practice and mechanisms for the protection of women's reproductive rights in Croatia, page 23, Chapter 3.1.1. Practice of Croatian courts regarding violations of women's reproductive rights, available at: <https://www.roda.hr/udruga/projekti/radar/izraden-prvi-pregled-sudske-prakse-i-mehanizama-zastite-reproduktivnih-prava-zena-u-rh.html>.

<sup>18</sup> See chapter on free legal aid in: <https://www.kucaljudskihprava.hr/publikacije/ljudska-prava-u-hrvatskoj-pregled-stanja-za-2022-godinu/>

<sup>19</sup> Ibid.

the significant increases in lawyers' fees<sup>20</sup> and the expected 20% rise in the minimum wage.<sup>21</sup> This results in now even single persons working for a minimum wage not being eligible to receive free secondary legal aid. The strict threshold criteria leave even individuals who work in Croatia while waiting for an international protection request to be resolved, which are one of the most vulnerable groups in the society, ineligible for legal aid.

### *13. Resources of the judiciary (human/financial/material<sup>3</sup>)*

Governmental budgetary expenditure for the judiciary relative to GDP in Croatia are among the highest in the EU, but the salaries of first instance judges until the recent raise were substandard. The only option for these judges to progress on the salary scale is to get elected to higher courts. (For this reason, the comparison of the first instance judge salaries in Croatia with entry level salaries in other EU countries is not appropriate). As of January 2024 there is a white strike of judges underway in an effort by the Association of Judges to compel the Government to fully address the disparities in salaries of judges. Equipment of courts is also often substandard, including the buildings. The paradox of high budgetary costs and low salaries stems from an extremely high number of judges in relation to the population, which reflects, among other factors, the unnecessarily complicated structure of courts and their overall large number.<sup>22</sup>

### *14. Training of justice professionals (including judges, prosecutors, lawyers, court staff, clerks/trainees)*

Civil society organizations working on topic of transnational justice noted that there is a need for training the judiciary (and other public and security personnel) as it relates to issues of transitional justice on "human rights and historical memory, including an examination of comprehensive and accurate accounts of violations committed, on the responsibilities of State institutions, as established by domestic and international courts, and on narratives of victimhood".<sup>23</sup>

The impression exists that many judges are not familiar with the relevant legal provisions related to LGBT rights, especially those of the European Court of Human Rights, as well as some aspects of the Croatian legal framework. In practice, it sometimes happens that appropriate legal terminology (such as sexual orientation and/or gender identity) is not used, and alternative terms are employed. Trainings for judges and state attorneys at the Judicial Academy are conducted periodically, but in the last 2-3 years, there has been no involvement of lecturers from civil society or representatives of any LGBTIQ organizations.

There is a limited understanding among judges concerning LGBT-related matters, such as the narrow interpretation of hate speech, reliance on religious doctrine (like the Catechism), and potential prejudices towards LGBT individuals and families. Additionally, shortcomings have been noted in implementing training programs, particularly the absence of educational initiatives in specific environments or regarding particular topics.

As an example, the County Court in Osijek, as well as the other three courts where civil society organizations monitor war crimes trials (Zagreb, Split and Rijeka), has three criminal departments. No judges adjudicate only cases of general criminality, or only cases of war crimes or only USKOK cases. All judges who judge cases from the criminal law group adjudicate all cases. Judges who come from the Criminal Department of the Municipal Court and work in the Criminal Department of the County Court need additional training, at least as far as war crimes trials are concerned. Education is possible through the work of the Judicial Academy, through the education of CSOs that monitor war crimes, USKOK cases, or monitor the

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<sup>20</sup> Tariff on rewards and reimbursement of expenses for the work of lawyers (Official Gazette No: 138/2023), available at: [https://narodne-novine.nn.hr/clanci/sluzbeni/2023\\_11\\_138\\_1888.html](https://narodne-novine.nn.hr/clanci/sluzbeni/2023_11_138_1888.html).

<sup>21</sup> Government of the Republic of Croatia, Decree on the minimum wage for 2023 (Official Gazette No. 118/18 and 120/21), available at [https://narodne-novine.nn.hr/clanci/sluzbeni/2022\\_10\\_122\\_1874.html](https://narodne-novine.nn.hr/clanci/sluzbeni/2022_10_122_1874.html).

<sup>22</sup> See our more detailed comments in CMT's 2023 RoL submission <https://pravosudje.tripalo.hr/2023/07/07/komentari-centra-miko-tripalo-na-izvjestaj-o-vladavini-prava-u-2022-godini-i-inputi-za-izvjestaj-o-vladavini-prava-za-2023-godinu/>

<sup>23</sup> Report of the Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence, Fabián Salvioli (2022).

application of laws and the rule of law.

The ECtHR has in several judgments recognized the need for training of justice professionals, for e.g. in *Sabalić v. Croatia* case regarding lack of investigation of hate motive and in the group of cases concerning freedom of expression with *Miljević v. Croatia* as a leading case. Civil society organizations have found that while educational activities take place, they lack systematic organization. In addition, they are often not funded from the state budget but rely on funds from EU programs within projects of civil society organizations in collaboration with state bodies. Furthermore, a significant issue is the voluntary nature of these education programs, and it would be preferable if they were mandatory.

*15. Digitalisation (e.g. use of digital technology, particularly electronic communication tools, within the justice system and with court users, procedural rules, access to judgments online*

On issues in digitalization in the judiciary see findings of a recent roundtable.<sup>24</sup>

### **C. Efficiency of the justice system**

#### *18. Length of proceedings*

The measures which were taken to follow-up promises from the NPRR to shorten the length of proceedings included amendments of the Code of Civil Procedure in 2022 which introduced ineffective and unenforceable limitations on duration of proceedings that produced no tangible effect on improvement of speed and effectiveness of judicial proceedings. Moreover, in the context of a series of strikes of judges and judicial staff in 2023, caused by an attempt to pressure the government to raise judicial salaries (and, later, salaries of other staff), the judiciary was paralysed for about three months. This will inevitably lead to a further increase in the delays and backlogs and in public dissatisfaction with the work of the national judiciary. This will undoubtedly be further exacerbated by the white strike of judges in January 2024.

Participating in the public debate on the proposed amendments to the Law on Judiciary via e-Consultations platform, CMT pointed out that the government was not (and today it still is not) publishing statistics on the duration of various phases and the total duration of cases up to finality. For assessing the time-limits proposed by the Government, one would need to know not only the average time-length of various types of cases in recent years but also their distribution. Only on such a basis one could establish whether the categories of cases are well defined and then set reasonable time-limits, including gradual reduction in the future.<sup>25</sup>

Furthermore, the proposed deadlines were at least twice as long as what could be considered reasonable. For example, the time limit for all civil lawsuits in the first instance court was set at three years. Setting such long time-limits would make sense only if exceeding them would automatically trigger a process of identifying the causes and establishing the responsibilities. The proposed amendments however did not envisage any enforcement or other subsequent action.

The average duration of legal proceedings in the field of reproductive rights is just over 9 months, with the longest case lasting 18 years.<sup>26</sup> Considering that exhausting national legal remedies is a prerequisite for seeking protection from the ECHR or the UN, such prolonged proceedings make legal protection not only unavailable in Croatia but also before international courts.

<sup>24</sup> See: <https://pravosudje.tripalo.hr/2022/05/17/okrugli-stol-primjena-informaticke-tehnologije-u-pravosudu/>

<sup>25</sup> See CMT comments in the 2023 submission: <https://pravosudje.tripalo.hr/2023/07/07/komentari-centra-miko-tripalo-na-izvjestaj-o-vladavini-prava-u-2022-godini-i-inputi-za-izvjestaj-o-vladavini-prava-za-2023-godinu/>

<sup>26</sup> For information on procedures in reproductive matters see: <https://www.roda.hr/udruga/projekti/radar/izraden-prvi-pregled-sudske-prakse-i-mehanizama-zastite-reproduktivnih-prava-zena-u-rh.html>.

Rainbow Families Croatia point out that the prolonged duration of legal proceedings, in cases involving them as a plaintiff against government entities, has become a recurring challenge, necessitating the constant requests for expeditious handling. This has several implications. First, it results in increased legal expenses, burdening individuals and families associated with Rainbow Families. Second, it can lead to heightened anxiety and stress within the LGBT community, negatively affecting mental well-being. Finally, it creates a sense of insecurity for members of the community. Individuals and families are left in limbo, unsure about their legal standing and rights. They cannot plan their future, make informed decisions about their families, and fully enjoy their rights. Lack of prompt resolution also hinders the ability of the LGBT community to access services, benefits, and legal recognitions to which the current laws entitle them. It also deters the community's willingness to pursue legal action against discriminatory practices, effectively allowing those practices to persist unchallenged.

Actions on criminal complaints involving pushbacks of refugees and other migrants involved unreasonably prolonged proceedings, often exceeding the six-month legal deadline for the pre-investigation phase to be concluded. Due diligence is lacking, therefore failing to meet the criteria of effective investigations under international and national law. It is important to emphasize that, for cases involving refugee and migrant victims and witnesses, expedited procedures are essential due to their frequent location changes. Over time, locating and identifying the victims becomes increasingly difficult. Furthermore, lengthy procedures and arbitrary detentions are still evident, especially in cases involving pushbacks and torture of refugees and migrants in Croatia. Access to legal remedies in these cases remains extremely difficult and criminal procedures are initiated in cases involving violence, theft, destruction of property etc. seldom leads to an effective investigation according to the criteria established by the ECtHR.

#### ***Other – please specify***

On several occasions civil society organizations pointed out the harmfulness of the current practice in which less than 5% of decisions of the county, i.e., second-level courts are published, and an even smaller percentage of the first-level, municipal, courts.<sup>27</sup> In fact, the current publicly available case law actually consists of a small number of published decisions on the website of the Supreme Court, as well as on private legal portals which charge a fee for access. Moreover, the Supreme court even took a step back and stopped publishing all rulings in cases where individuals sue the government for not ensuring fair adjudication in reasonable time.

There is an uneven practice regarding the conduct of courts in obtaining relevant case law. Namely, a number of courts approve freedom of information requests, while others reject them, stating that such requests do not constitute a requirement within the interpretation of the Freedom of Information Act, and that court decisions do not constitute "information" as defined by this law. In addition, certain courts refer to the Rules of Procedure stating that the parties should prove legal interest when seeking access to court decisions. Certain courts incorrectly, perhaps due to ignorance of the e-Spis system, state that they cannot provide the requested decisions because they cannot search according to the given parameters. A number of courts unfoundedly reject freedom of information requests, while justifying their decisions citing technical difficulties such as insufficient staff, dislocation of files, a large number of decisions that should be obtained and other reasons, all of which in fact unfoundedly prevent requested access to information. Even among courts that adopt applications, there is a difference because

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<sup>27</sup> See: <https://pravosudje.tripalo.hr/2021/12/03/preporuke-centra-miko-tripalo-za-povecanje-transparentnosti-i-odgovornosti-hrvatskog-sudstva/>



certain courts submit anonymized decisions while others do not anonymize them. Also, some of them do not provide minutes, but exclusively court decisions, while others submit both.<sup>28</sup>

In these rulings, the dysfunctional behaviour of parts of the judiciary becomes apparent. The absence of the publication of rulings contributes to the disparity in the case law and makes it difficult for the parties to initiate judicial review, which is permitted if the practice differs between the second-level courts. The deadline for publishing all court decisions set for 2027 is inconsistent with the urgency of the need and should be shortened considerably. Furthermore, lawyers, law professors, and journalists should be granted full access to the existing electronic files of court decisions, which can now only be accessed by judges and officials of the Ministry of Justice.

Furthermore, the existing rule imposed by the Supreme Court that all published rulings must be fully anonymized does not necessarily follow from the General Data Protection Regulation. Several EU countries anonymize court rulings only in cases of justified requests by parties, or in specific cases such as family relations and public security, while other countries acknowledge public interest by exempting the court cases of public interest from the anonymization. The anonymization is also often used by courts to reject access to their decisions and freedom of information requests, claiming that they are lacking resources to perform it. Several CSOs experienced this in 2023 in the implementation of a project when they attempted to get access to SLAP cases through freedom of information requests and were met with sustained refusal from courts. There are proposals therefore that the present decision on the full anonymization of all published decisions be revised.

At the end of 2023, Amendments to the Criminal Law and the Law on Criminal Procedures colloquially known as the “Lex A.P.” were placed in public consultation with the Ministry of Justice and Public Administration, and they will enter the procedure of the Croatian Parliament on 11 January 2024. The proposed amendments introduce a new criminal offence of “unauthorised disclosure of the content of an investigative or evidentiary action” which regulates the issue of disclosure of information from the file in the phase of the criminal procedure in which the public is excluded and access to the file is limited. The amendments stipulate that a judicial official or civil servant in a judicial body, police officer, defendant, lawyer or his trainee, witness, court expert, translator or an interpreter who, during the previous criminal proceedings (which is considered non-public under the law) discloses the contents of investigative or evidentiary proceedings without authorization, intending to make them publicly available, shall be punished by imprisonment for up to 3 years. It provides an exemption to the rule explicitly stating that committing, helping to commit or abetting cannot be committed by a person who performs journalistic work. However, this article does not predict the same for people committing this offence in the public interest. These proposed changes to the law are opposed by some of the judges of the criminal department of the Supreme Court, Croatian Journalists Association, the majority of Croatian legal experts, the Ombudsperson and many CSOs.

## **II. Anti-corruption framework**

Where previous specific reports, published in the framework of the review under the UN Convention against Corruption, of GRECO, and of the OECD address the issues below, please make a reference to the points you wish to bring to the Commission’s attention in these documents, indicating any relevant updates, changes or measures introduced that have occurred since these documents were published.

*19. Please provide information on measures taken to follow-up on the recommendations received in the 2023 Report regarding the anti-corruption framework (if applicable)*

No progress has been made in revising the Criminal Procedure Code and the Law on the Office for the Suppression of Corruption and Organised Crime.

### **A. The institutional framework capacity to fight against corruption (prevention and**

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<sup>28</sup> CMT experience during the implementation of the Fighting SLAPP in Croatian project

## ***investigation / prosecution)***

20. *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 and with foreign authorities. Indicate any relevant measures taken to effectively and timely cooperate with OLAF and EPPO.*

According to the Eurobarometer research May 2023<sup>29</sup>, general perception of corruption is that 96% of interviewees believe that the problem of corruption is widespread in the country. Corruption is present in national public institutions (89%) and in the local and regional public institutions (93%). Based on the events in 2023., particularly dangerous is the area that connects private and public life, e.g. oil company MOL, HEP etc.<sup>30</sup> In that vein, particular attention should be given to anti-corruption measures linked to state owned companies, and to ones owned by the local and regional level. USKOK and EPPO were again very active in 2023<sup>31</sup>, while in Croatia courts continue to be relatively slow in adjudicating corruption-related cases. Particular attention should be given to confiscation of illegally obtained gain. As political white-collar corruption is among main drivers of the negative perception of corruption in Croatia, all measures that are introduced with the intention to prevent conflict of interest and develop the integrity among mentioned stakeholders should be welcomed in 2024. It is of crucial importance to regularly follow-up such measures by the civil sector.

21. *Safeguards for the functional independence of the authorities tasked with the prevention and detection of corruption.*

Civil society organizations have warned GRECO of the continued deterioration of the work of the Commission for the Resolution of Conflict of Interest, which is becoming incapable of performing their administrative duties, which is the result of the amendments of the Law on Conflict of Interest in 2021.<sup>32</sup> This came into focus after Index.hr journalists discovered in September 2023 that Minister of Foreign and European Affairs Gordan Grlić Radman failed to report profits in the amount of 2.11 million euros from his stake in the company Agroproteinka, owned by his family that did business with the Republic of Croatia.<sup>33</sup> In an interview with Jutarnji list journalist Slavica Lukić, the Commission admitted that they had never run the regular verification of the Minister's asset declaration, as established in the Article 27 of the Prevention of Conflict of Interest Act, due to lack of human resources.<sup>34</sup> The regular verification consists of collecting and sharing data and comparing data from the submitted declarations with that acquired from the tax administration and other bodies.

## **B. Prevention**

<sup>29</sup> Available at: <https://europa.eu/eurobarometer/surveys/detail/3052>

<sup>30</sup> For more information on these cases see: <https://total-croatia-news.com/news/great-ina-scandal-explained/>, <https://faktograf.hr/2023/07/14/kako-je-hep-izqubio-milijune-na-trgovini-plinom/>

<sup>31</sup> There were number of cases initiated, including: <https://www.eppo.europa.eu/en/news/conviction-unlawful-favouritism-eppo-case-croatia>, <https://www.eppo.europa.eu/en/news/croatia-epo-carries-out-searches-university-zagreb-probe-subsidy-fraud-and-corruption>, <https://www.eppo.europa.eu/en/news/croatia-29-suspects-arrested-investigation-involving-university-zagreb>, [https://www.eppo.europa.eu/en/news/croatia-two-indicted-subsidy-fraud-and-abuse-office-case-involving-vineyard-and-winery#:~:text=\(Luxembourg%2C%2021%20December%202023\),and%20planting%20a%20vineyard%2C%20co-](https://www.eppo.europa.eu/en/news/croatia-two-indicted-subsidy-fraud-and-abuse-office-case-involving-vineyard-and-winery#:~:text=(Luxembourg%2C%2021%20December%202023),and%20planting%20a%20vineyard%2C%20co-), <https://www.eppo.europa.eu/en/news/croatia-epo-investigates-former-minister-and-ministry-employee-abuse-office-and-authority>, and <https://www.eppo.europa.eu/en/news/croatia-two-officials-city-rijeka-among-five-arrested-suspicion-abuse-office-and-authority>

<sup>32</sup> Available at: <https://gong.hr/en/2023/09/26/gong-warned-greco-the-grlic-radman-case-is-the-final-proof-of-the-euthanasation-of-the-commission-for-the-prevention-of-conflict-of-interests/>

<sup>33</sup> Available at: <https://www.index.hr/vijesti/clanak/otkrivamo-grlicu-radmanu-firma-svake-godine-isplicivala-milijune-kuna-sve-je-sakrio/2494756.aspx>

<sup>34</sup> Interview available at: <https://www.jutarnji.hr/vijesti/hrvatska/sto-nam-je-otkrio-slucaj-grlic-radmana-istina-je-redovite-proviere-imovinskih-kartica-nema-15374985>

*24. General transparency of public decision-making (including rules on lobbying and their enforcement, asset disclosure rules and enforcement, gifts policy, transparency of political party financing)*

Some progress has been made regarding the adoption of legislation in the area of lobbying, with the Law on Lobbying being included in the parliamentary procedure in late 2023.<sup>35</sup> It is expected it will be adopted in early 2024. It includes an obligation to implement a public register of lobbyists, but it is not yet clear how much of the data from the register will be publicly available. There have been criticisms of the Law pointing out that the rules and procedures will be administratively relatively demanding for lobbyists, but much more lenient towards politicians and government officials.<sup>36</sup> Lobbyists will have to report their activities to the Commission for Conflict of Interest.

*26. Measures in place to ensure whistleblower protection and encourage reporting of corruption, including the number of reports received and the follow-up given*

Regarding the protection of whistleblowers, civil society organizations in Croatia continuously emphasize the importance of ensuring methods and forms of assistance available to whistleblowers in order to achieve an effective and comprehensive whistleblower protection system in Croatia. From the existing practice, it is clear that the importance and availability of free legal aid and psychosocial support as separate necessary components of adequate protection of whistleblowers is insufficiently recognized.<sup>37</sup>

In relation to access to free legal aid, it shall be noted that there are no provisions relating specifically to free legal aid for whistleblowers considering that the Whistleblowers Protection Act<sup>38</sup> enables them access to free legal aid under general conditions valid for all citizens in Croatia in all legal matters, which is further regulated by the Act on Free Legal Aid.<sup>39</sup> This means that whistleblowers cannot exercise the right to free legal aid regardless of their financial status and it is only available under certain conditions. In this regard, it is important to allocate sufficient financial resources for providers of free primary legal aid which could expand their activities to providing legal assistance to whistleblowers in order to enable their appropriate training and increase their capacity to perform this role.

The act regulating details of the provision of emotional support for persons reporting irregularities<sup>40</sup> was adopted at the end of September 2023 after a one-year delay. The Act provides emotional, but not psychosocial support and it prescribes very specific conditions for providers, eg. organizations providing emotional support should be registered for at least 3 years and an employed person should have 2 plus years of experience in providing emotional support. It is unclear who those providers will be since newly founded civil society organizations do not meet criteria and existing ones are overburdened and often do not have sufficient capacities to expand their activities to the area of whistleblower protection. For the reasons above, it is unlikely that the current circumstances will enable them to provide adequate support to whistleblowers.

Due to the expansion of the Ombudswoman institution's mandate, the appointment of a fourth deputy responsible for whistleblowers has become a crucial element. The call for appointing the 4th deputy was published in December 2023, however, the deputy has still not been appointed.

For the impact of the new amendments to Criminal Law and the Law on Criminal procedures

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<sup>35</sup> Available at: <https://www.sabor.hr/hr/prijedlog-zakona-o-lobiranju-prvo-citanje-pz-br-579-predlagateljica-vlada-republike-hrvatske>

<sup>36</sup> For example, see: <https://faktograf.hr/2023/11/13/zakon-o-lobiranju-strog-prema-lobistima-blag-prema-politicarima/>

<sup>37</sup> Transposition of the EU 2019/1937 directive on whistleblower protection in Southeast Europe: Challenges and lessons learned, available at: <https://www.kucaliudskihprava.hr/wp-content/uploads/2023/12/Transposition-of-the-EU-20191937-directive-on-whistleblower-protection-in-Southeast-Europe.pdf>

<sup>38</sup> Act on the Protection of Persons Reporting Irregularities (Official Journal 46/22), available at: <https://www.zakon.hr/z/1927/Zakon-o-za%C5%A1titi-prijavitelja-nepravilnosti>

<sup>39</sup> Act on Free Legal Aid (Official Journal 143/13, 98/19), available at: <https://www.zakon.hr/z/286/Zakon-o-besplatnoj-pravnoj-pomo%C4%87i>

<sup>40</sup> Regulation on the Provision of Emotional Support to Whistleblowers (Official Journal 111/2023), available at: <https://zakon.hr/cms.htm?id=58213>

please see more above under efficiency of justice system.

*27. Sectors with high risks of corruption in your Member State:*

- *Measures taken/envisaged for monitoring and preventing corruption and conflict of interest in public procurement*
- *list other sectors with high risks of corruption and the relevant measures taken/envisaged for monitoring and preventing corruption and conflict of interest in these sectors (e.g. healthcare, citizen/residence investor schemes, urban planning, risk or cases of corruption linked to the disbursement of EU funds, other), and, where applicable, list measures to prevent and address corruption committed by organised crime groups (e.g. to infiltrate the public sector)*

In 2023, corruption cases in the energy sector were especially prominent. In 2023, the largest corruption scandal in Croatian history was discovered which included the national oil and gas company - INA.<sup>41</sup> Another case in HEP Group (a national, state-owned electricity and gas company) was discovered in 2023.<sup>42</sup>

*28. Any other relevant measures to prevent corruption in public and private sector*

The media play a large role in the fight against corruption. However, following recent leaks from criminal investigations of two former government officials, the government has submitted amendments to the Criminal code that would criminalize such leaks by officials, attorneys, the accused as well as witnesses.<sup>43</sup> While the amendments do not directly include journalists in that list, there is widespread opinion that such provisions in the law could be used against them as well, as they could be treated as instigators or accomplices in performing the criminal acts. Journalists can also become subject of surveillance and called by police to reveal their sources. Participants in the debate organized by civil society organizations pointed out that the proposed amendments do not in any way respect public interest.<sup>44</sup> The Commission may wish to consider in this context whether the recommendation to increase the efficiency of investigations and prosecution of corruption offenses is specific enough to have material effect.

### **C. Repressive measures**

- 30. Data on the number of investigations, prosecutions, final judgments and application of sanctions for corruption offences (differentiated by corruption offence if possible)<sup>6</sup>, including for legal persons and high level and complex corruption cases and their transparency, including as regards to the implementation of EU funds<sup>7</sup>.*

Regarding criminal cases against judges, see the comments in the section on judicial accountability.

### **III. Media pluralism and media freedom**

- 33. Please provide information on measures taken to follow-up on the recommendations received in the 2023 Report regarding media pluralism and media freedom (if*

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<sup>41</sup> Available at: <https://total-croatia-news.com/news/great-ina-scandal-explained/>

<sup>42</sup> Available at: <https://faktograf.hr/2023/07/14/kako-je-hep-izgubio-milijune-na-trgovini-plinom/>

<sup>43</sup> The Amendments of the Government of the Republic of Croatia from January 2024 are available at:

<https://vlada.gov.hr/sjednice/277-sjednica-vlade-republike-hrvatske/40703>

<sup>44</sup> For more information see: <https://tripalo.hr/okrugli-stol-tajnost-istrage-narusavanje-slobode-medija-i-kazneni-progon-zrtava-okrivljenika-i-branitelja/>

*applicable)*

Since the Rule of Law Report for 2023, regulations on media regulation have remained the same, but with worrying announcements of the future Media Act and amendments to the Criminal Code, which is currently in parliamentary procedure. The government proposed a new criminal offense; "Unauthorized disclosure of the content of investigative or evidentiary actions" (Article 307. a of the Criminal Code). HND believes that this is a brutal attack on the journalism profession and public interest, and the reason for its introduction is an attempt to conceal criminal proceedings against high-ranking government officials from the public.<sup>45</sup>

The Croatian Journalists' Association (HND) is particularly concerned about the tendency to legalize censorship through provisions in the new Law on Media concerning the publication of journalistic content, which grants publishers the right to arbitrarily and without any justification withhold the publication of journalistic content, disregarding the fundamental principles of the journalistic profession. The highly problematic provision is that "it is not allowed in the media to diminish the public's trust in the role of the courts in a democratic society."<sup>46</sup>

Regarding the transparency of media ownership, the Government of Croatia accepted at the end of the year the National Plan for the Development of Culture and Media<sup>47</sup>, which mandated the creation of an online platform with data on media ownership from the register of beneficial owners. However, the existence of secret societies, the creation of which is enabled by the Companies Act, needs to be revised to accomplish this goal.

#### **A. Media authorities and bodies<sup>8</sup>**

*34. Measures taken to ensure the independence, enforcement powers and adequacy of resources (financial, human and technical) of media regulatory authorities and bodies*

In July 2023, the working document on amendments to the Law on Media<sup>48</sup> brought out worrisome plans from the Government of Croatia. According to that document, the establishment of two new bodies is envisaged: Council for Media and Council of Media Experts. The members of the Council for Media will be elected so that the ruling majority has the discretionary power to propose and confirm candidates in the Croatian Parliament, which threatens the independence of the media regulator, which with this election model remains a political body. The Council of Media Experts will have enormous powers and the procedure for electing members of this Council is also not straightforward. However, after HND informed the Croatian Media Minister, Nina Obuljen Koržinek, that the draft bill the Ministry proposed was unacceptable, there was no reply about whether drafting the Law on Media would be continued.

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

At the end of 2021, the government passed a Law on Electronic Media<sup>49</sup> but missed an opportunity to strengthen the independence of regulators. According to the existing laws, the political majority in the parliament elects the president and members of the Electronic Media Council (VEM), a majority of members of the Program Council, and general directors of the public broadcaster (HRT) and the public news agency HINA. The appointment mechanism creates general doubt about the media regulator's and public media's independence.<sup>50</sup> During the adoption of the Electronic Media Act, HND proposed changes that would ensure greater

<sup>45</sup> See: <https://hnd.hr/eng/cja-sends-a-complain-to-the-ombudsman-about-the-announcement-of-prime-ministerplenkovic>

<sup>46</sup> See: <https://www.hnd.hr/eng/cja-working-document-of-new-media-act-unacceptable>

<sup>47</sup> See: [https://min-kulture.gov.hr/UserDocsImages/dokumenti/Nacionalni%20plan%20razvoja%20kulture%20i%20medija/Nacionalni%20plan\\_objava.pdf](https://min-kulture.gov.hr/UserDocsImages/dokumenti/Nacionalni%20plan%20razvoja%20kulture%20i%20medija/Nacionalni%20plan_objava.pdf)

<sup>48</sup> Available at: <https://narodne-novine.nn.hr/search.aspx?upit=Zakon+o+medijima&naslovi=da&sortiraj=1&kategorija=1&rpp=10&qtype=3&pretraga=da>

<sup>49</sup> Available at: [https://narodne-novine.nn.hr/clanci/sluzbeni/2021\\_10\\_111\\_1942.html](https://narodne-novine.nn.hr/clanci/sluzbeni/2021_10_111_1942.html)

<sup>50</sup> See more in the HND's individual submission.

independence of the members of the media regulator from any source of political power. Still, instead of relinquishing the monopoly on staffing in the regulatory body, the government left the Council for Electronic Media in the hands of the political majority.

### *36. Existence and functions of media councils or other self-regulatory bodies*

The procedure for electing members of the Electronic Media Council still remains problematic from the standpoint of political influence since the members are elected by a 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.

Croatia still does not have an independent and comprehensive self-regulatory media council (that would include print media) with the authority and capacity to address media pluralism, raise journalistic and media standards for reporting on vulnerable and marginalized social groups, regulate and sanction hate speech and protect freedom of expression in the media and other areas that are important for media freedoms in Croatia

The Journalists' Council of Honor<sup>51</sup> was established in 1910 by the HND and has 11 members, all journalists and members of the HND. Neither publishers nor the public is involved. The Journalists' Council of Honor supervises the implementation of the Code of Honor. About ten years ago, the HND and the publishers established a media council, only to close it a few years later since publishers were not interested. The fact is that only one or two publishers in Croatia have a Code of ethics for their media outlets. Many media outlets have still not adopted statutes. Even when statutes exist, there are no mechanisms to monitor their implementation, nor the consequences for breaking it. Since the existence of a media statute is, among other things, a condition on which print media are granted tax breaks, there should be an independent mechanism for checking the extent to which the statute's provisions are implemented.

## ***B. Safeguards against government or political interference and transparency and concentration of media ownership***

### *37. Measures taken to ensure the fair and transparent allocation of state advertising (including any rules regulating the matter)*

The advertising decisions are made discretionarily, non-transparently, most often at the will of political leaders, without public tenders and public insight into the purpose of spending that money. The lack of transparency in the allocation of public funds to the media in Croatia is best illustrated by the latest affair (December 2023) that led to the dismissal of Minister of Economy Davor Filipović and his adviser Jurica Lovrinčević.<sup>52</sup> The "Mreža" affair is not an isolated case; it showed what HND has been warning about for years<sup>53</sup> - the capture of the media by state funds. The opposition requested in Parliament that all the advertising contracts of the state-owned companies be published. This was rejected by the ruling majority.

Several CSOs advocate for the introduction of a contract for monitoring the flow and transfer of money to the media from the state and local budgets, as well as from the budgets of the public and state companies. There is also ongoing advocacy for the establishment of a national fund for journalism that would publicly and transparently finance the media according to the profession's rules.<sup>54</sup>

Most local media has been transformed into auxiliary PR tools, instead of having critical discourse towards local government and providing independent information. According to the

<sup>51</sup> See about Journalists' Council of Honor on <https://www.hnd.hr/novinarsko-vijece-casti1?seo=novinarsko-vijece-casti1>

<sup>52</sup> More information available at: <https://www.nacional.hr/donosimo-snimku-lovrincevic-novinaru-za-njega-je-i-to-pola-ozbiljna-lova-nadam-se-da-ce-biti-normalan/>.

<sup>53</sup> For more information see: <https://www.youtube.com/watch?v=Y4gyxt4XhqY>

<sup>54</sup> Available at: <https://hnd.hr/modeli-financiranja-lokalnih-medija>

Electronic Media Act, state administration bodies and public institutions founded by the Republic of Croatia, as well as legal entities owned or predominantly owned by the Republic of Croatia, are obliged to spend 15% of the annual amount intended for the promotion or advertising of their services or activities on TV, radio or online media. The report that VEM submits to the Parliament every year shows that most of those entities bound by this law do not comply with this provision. Namely, there are no sanctions for its violation. On the other hand, according to the research<sup>55</sup> conducted by Ivanka Toma for the Society for the Protection of Journalist Copyrights, for the largest number of electronic media, the most important source of income is local self-government units, with a share of 40 to more than 80 per cent in the budget of the media.

*39. Transparency of media ownership and public availability of media ownership information, including on direct, indirect and beneficial owners as well as any rules regulating the matter*

There was no progress in this section in 2023. There is still a lack of transparency in media ownership, as well as in data collection and supervision procedures. Research conducted by Faktograf<sup>56</sup> showed that there are 11 different types of records about media ownership: five in the Agency for Electronic Media by media types; three types of publication in the Official Gazette, depending on whether it is an obligation based on the Electronic Media Act or the Media Act; database in the Register of Real Owners and, finally, two types of registration in the Croatian Chamber of Commerce, one of which is for the press and the other for all electronic media. In addition to so many records, it is still difficult to get a complete picture of who the owners of some media are, because they are either hidden behind business entities or the publishers do not report the updated ownership structure. The mentioned research showed that there is an alarming number of publishers who have not declared their ownership structure under the regulations, but still get public funds.

The National Plan for the Development of Culture and Media mandated the creation of an online platform with data on media ownership from the register of real owners. However, the existence of secret societies, the creation of which is enabled by the Companies Act, needs to be revised since, in some cases, the legal entity with a secret member according to the Act is not obliged to enter information about that person in the Register of Beneficial Owners. Nevertheless, the new platform announced in the National Plan should enable more accessible data from the Croatian Beneficial Ownership Register, which is now available only through the National Identification and Authentication System (NIAS) on the platform that enables a search only via the company's OIB (unique identifier) or its name. HND believes interested users should be consulted about access and openness to a future media ownership database. The extent of the non-transparency of media ownership in Croatia is best evidenced by the session of the parent parliamentary committee for media on December 7, 2023, where the position of the Republic of Croatia on the European Act on Freedom of the Media was discussed.<sup>57</sup>

**C. Framework for journalists' protection, transparency and access to documents**

*40. Rules and practices guaranteeing journalist's independence and safety, including as regards protection of journalistic sources and communications, referring also, if applicable, to follow-up given to alerts lodged with the Council of Europe's Platform to promote the protection of journalism and safety of journalists.*

The Ministry of the Interior records events related to persons performing journalistic activities,

<sup>55</sup> Ivanka Toma: *Portals in Croatia, a means of information or manipulation?*, available at: <https://dznep.hr/portali-u-hrvatskoj-sredstvo-za-informiranje-ili-manipuliranje/>.

<sup>56</sup> Veronika Rešković: *As many as 11 records, and media ownership is still non-transparent*, available at: <https://faktograf.hr/2023/12/28/cak-11-evidencija-a-vlasnistvo-medija-i-dalje-netransparentno/>.

<sup>57</sup> Available at: <https://www.sabor.hr/hr/press/48-sjednica-odbora-za-informiranje-informatizaciju-i-medije>

but none of these records are publicly available. The only publicly available record of attacks and threats to journalists in Croatia is the one kept by HND within the Safe Journalists project on the [safejournalists.net](https://safejournalists.net) portal. Reports of threats, attacks and threats through the CoE platform sometimes put pressure on the authorities to solve these cases faster. However, the methodology for monitoring threats to journalists on the CoE platform differs from the local one, so a smaller number of cases appear on the platform compared to the HND database. The new Whistleblower Protection Act entered into force in April 2022, with the intention of providing enhanced protection to whistleblowers compared to previous legal solutions.

*41. Law enforcement capacity, including during protests and demonstrations, to ensure journalists' safety and to investigate attacks on journalists*

In September 2023, HND and Trade Union of Croatian Journalists (SNH) signed a cooperation agreement with the MUP, which has two accompanying protocols: a Protocol on the behavior of the police, journalists, and other media workers at public gatherings of public interest, and Protocol on the behavior of the police when learning about a criminal offense committed against the public journalists and other media workers in the performance of work tasks. These two protocols describe the actions of police officers and media workers in situations of public gatherings in the interest of the public in order to prevent attacks and in case of knowledge of criminal acts against journalists and other media workers, with the aim of facilitating the conduct of criminal investigations.<sup>58</sup>

*42. Access to information and public documents by public at large and journalists (incl. transparency authorities where they exist, procedures, costs/fees, timeframes, administrative/judicial review of decisions, execution of decisions by public authorities, possible obstacles related to the classification of information)*

In numerous situations when information should be public within the framework of the Right to Information Act,<sup>59</sup> state and local officials refrain from publishing them, delaying the process by rejecting access, appealing the Information Commissioner's decisions, and sending incomplete answers. In the experience of journalists, officials often let the deadline for response expire and then delay the procedure even further by giving a partial response or providing information not requested. From the Reports on the Implementation of the Right to Information Act,<sup>60</sup> it is evident that withholding information due to personal data protection is the most common reason for restrictions from year to year. According to the current practice of the Information Commissioner, in most such cases, public authorities did not correctly implement the procedure regarding the request for access to information, which resulted in illegal solutions.

Additionally, although the Republic of Croatia has committed itself to the public publication of court decisions, reaching the decisions of the first level of courts is almost impossible. Namely, HND, in cooperation with CMT, is trying to obtain data on court decisions in lawsuits against the media and journalists for defamation of reputation and honor. Some courts sent the data based on a request for the right to access information, some refused the requests while others asked us to prove a legitimate interest in viewing the requested data.

During 2022, civil society organizations faced difficulties in accessing environmental information. For example, for just one piece of information<sup>61</sup> Green Action submitted six freedom of information requests and appeals against the issued decisions over a period of 9 months. However, they still have not received the requested information, and they are awaiting the resolution of the latest appeal in the series.<sup>62</sup> Unfortunately, there was a negative shift in 2023

<sup>58</sup> For more information please see the individual submission of the HND.

<sup>59</sup> See: <https://www.pristupinfo.hr/wp-content/uploads/2018/09/ZPPI-nesluzbeni-procisceni-tekst.pdf>

<sup>60</sup> See: <https://pristupinfo.hr/dokumenti-i-publikacije/izvjesca-o-provedbi-zppi/>

<sup>61</sup> A copy of the letter sent by the Ministry of Economy and Sustainable Development to HEP regarding the Plomin 1 Thermal Power Plant.

<sup>62</sup> The Ministry's explanation was that, "for technical reasons, it no longer possesses the requested information," and the process was transferred to HEP, which, after initial silence, claimed to reject access to information because they could not determine which document was being referred to since the Class and Registration Number of the requested document were not stated in Green Action's request. Such an explanation was an obvious attempt to deny the provision of information, as the request included a whole series of other data that HEP could easily use to identify the document (e.g., the date of sending the document, its purpose, the topic, and the fact that less than a year earlier, HEP had publicly disclosed procurement documentation clearly referring to the mentioned document).



- the Information Commissioner ultimately rejected their appeal due to a technical reason, stating that the authorized person did not sign the appeal, even though they had received such instructions from them via telephone. Such practice is peculiar and an unnecessary limitation on access to information because the environmental information is something that should be accessible to all citizens anyway, regardless of the person making the request on behalf of the organization.

The election of Anita Markić as the new Croatian Information Commissioner in December is extremely problematic since she provided an excuse for the Minister of Justice Ivan Malenica to hide the actual authors of one of the most important laws enacted during the mandate of Prime Minister Andrej Plenković - the Law on Constituencies. Following the Commission for the Prevention of Conflict of Interest, the Information Commissioner has now become another independent institution that has been captured by the ruling party.<sup>63</sup>

With a secret vote in the Parliament, while the majority of the opposition was absent, Markić "overpowered" her opponent Dubravka Bevanđić, the former deputy of the former Information Commissioner Zoran Pičuljan, who has been dealing with the right to access to information for more than a decade, unlike Markić, who has been working in public administration throughout her career, and is currently the head of the Directorate for Political System and General Administration in the Ministry of Justice.

*43. Lawsuits (incl. SLAPPs - strategic lawsuits against public participation) and convictions against journalists (incl. defamation cases) and measures taken to safeguard against manifestly unfounded and abusive lawsuits*

In 2023 the pressure of SLAPP lawsuits on journalists and the media remains high, with at least 945 active cases against journalists and media, with almost € 5.4 million for compensation<sup>64</sup>. This year, 30 media outlets responded to HND's inquiry on the number of lawsuits, and the results show that 26 have pending court cases. Out of a total of 945 lawsuits, 910 refer to lawsuits for compensation of damages due to injury of honor and reputation, which are conducted against publishers, their editors, and journalists based on published texts and articles. Regarding criminal proceedings, nine media reported a total of 35 such proceedings. The Ministry of Culture and Media recently established a working group dealing with the problem of SLAPP. Despite this, there is no official definition of SLAPP in Croatia, nor do the courts separate and classify such lawsuits. The working group still needs to develop a mechanism to prevent such lawsuits. The absence of any limitations on potential civil damages for defamation also contributes to the risks faced by journalists.

The fact that the Constitutional Court of Croatia has aligned its case-law with the standards expressed by the European Court is indeed a positive development. However, in the specific context of Croatia, this development is insufficient to address the core issue identified by the European Court in the Stojanović group cases.<sup>65</sup> These measures relying on the Constitutional Court to remedy the eventual miss-qualifications are of little help for combating the chilling effect on journalism since such a remedy would come too late and under the threat of too high costs to be of meaningful impact for the journalists affected.<sup>66</sup> In relation to criminal proceedings, in 2023 there was no review of legal provisions related to defamation. Although the Judicial Academy reviewed and improved educational materials for the training of judges on Strategic Lawsuits Against Public Participation, currently the number of participating judges and their profiles remain unknown.<sup>67</sup>

***Other – please specify***

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<sup>63</sup><https://gong.hr/en/2023/12/01/the-new-information-commissioner-helped-minister-malenica-hide-the-real-authors-of-the-new-model-of-constituencies>

<sup>64</sup> Available at: <https://www.hnd.hr/eng/cja-s-survey-number-of-lawsuits-against-journalists-and-the-media-is-notlowering-at-least-945-lawsuits-are-active>

<sup>65</sup> Available at: [https://search.coe.int/cm/Pages/result\\_details.aspx?ObjectId=0900001680adfb6](https://search.coe.int/cm/Pages/result_details.aspx?ObjectId=0900001680adfb6)

<sup>66</sup> Ibid.

<sup>67</sup> Ibid.

In Croatia during 2023, there were 10 attacks on journalists, including 2 physical assaults, 2 death threats with severe bodily harm, and 6 other threats directed at journalists. Three attacks targeted men, four targeted women, and three targeted media or groups of journalists. Additionally, 4 instances of pressure or inappropriate statements directed at journalists were recorded. Journalists continue to underreport attacks and threats as they perceive them as part of their job and tend to neglect them.<sup>68</sup>

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

*44. Please provide information on measures taken to follow-up on the recommendations received in the 2023 Report regarding the system of checks and balances (if applicable)*

In 2023, the stagnation in this area continues. The position of the independent institutions, such as the ombudspersons continues to be worrisome, as their recommendations are still implemented insufficiently by the Government and other competent actors. The new information on the systematic approach to implementation of the recommendations of the Ombudsperson is expected after the publication of the Ombudsperson's annual report for 2023.

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

*45. Framework, policy and use of impact assessments and evidence based policy-making, stakeholders'/public consultations (including consultation of judiciary and other relevant stakeholders on judicial reforms), and transparency and quality of the legislative process both in the preparatory and the parliamentary phase.*

Public consultations continue to be held *pro forma*, with only acknowledgement of the comments made by the public. Moreover, the Ombudsperson's Annual Report highlighted a low acceptance rate (21%) of public input in consultations, indicating a lack of genuine consideration for public opinion.<sup>69</sup> Consultations are in practice announced late in the legislative process or during holidays with short deadlines,<sup>70</sup> which weakens the opportunities for participation and harms the quality of public policies and goes against the Aarhus Convention.<sup>71</sup>

As stated in the Information Commissioner's report for 2022, the fact that 50% of required bodies do not adopt and publish a public consultation plan as the first and fundamental step in the implementation of this legal obligation, indicates a permanent need to educate those obligated to implement public consultation.<sup>72</sup> Namely, even when the public authority does not plan to prepare and adopt acts for which there is a legal obligation to conduct consultations in the next calendar year, information about this should be published on the website.

Civil society organizations working in the field of transitional justice are insufficiently involved in consultative processes when creating legislative solutions and legal acts to ensure the implementation of transitional justice mechanisms (truth, justice, reparation, memorialization, and guarantees of non-recurrence). Despite the increasing use of e-consultations as a mechanism for public input, the voices of LGBT communities are not adequately considered. The legislative process often fails to recognize the expertise of individuals associated with LGBT organizations. Whether they are legal professionals, advocates, or community leaders,

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<sup>68</sup> Data provided by Croatian Journalist Association

<sup>69</sup> Ombudsperson's Office, Annual Report for 2022, available at: <https://www.ombudsman.hr/hr/download/izvjesce-pucke-pravoraniteljice-za-2022-godinu/?wpdmdl=15489&refresh=659e7e3a9150d1704885818>.

<sup>70</sup> The Office of the Ombudsperson, Annual report for 2022 – Human Rights Defenders, April 2023. available at: <https://www.ombudsman.hr/hr/branitelji-ljudskih-prava-2/>.

<sup>71</sup> UNECE Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters (Aarhus Convention), available at: <https://unece.org/environment-policy/public-participation/aarhus-convention/text>

<sup>72</sup> While around 75% of public bodies adopt such plans, the track record for agencies is 60% while for public and other institutions is low 13%, see: Povjerenik za informiranje, *Izješće o provedbi zakona o pravu na pristup informacijama za 2022.*, str. 109, available at: <https://pristupinfo.hr/dokumenti-i-publikacije/izvjesca-o-provedbi-zppi/>

their contributions are not accorded the importance they deserve in shaping laws that directly impact the rights and well-being of the LGBTQ+ community. Environmental organizations point out discouraging factors related to the implementation of public discussions in various environmental procedures, such as the ongoing inability to comment on spatial plans online. This further complicates public participation in decision-making of public interest, especially considering that spatial plans represent the initial step in deciding on the possibility of constructing infrastructure in the environment.

Civil society organizations warned the Venice Commission that the new Law on Constituencies was drafted in a non-transparent and exclusive manner, without any consultation with the expert public.<sup>73</sup> The government did not establish an official working group in charge of drafting the new legislation that would have included external experts on electoral issues from academia and civil society. There was no consultation with the wider public during the drafting process which is contrary to the international electoral standards, good democratic practices and the right to public participation. Names of the drafters of the new law were not publicly made available immediately. Following a decision of the Information Commissioner, the Ministry of Justice and Public Administration published the names of the officials from the Directorate for the Political System and General Administration sector within the Ministry, without explicitly stating anywhere that they are the creators of the new election law.<sup>74</sup>

*46. 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).*

It has been observed that, without valid justification, relevant legislative provisions concerning the rights and well-being of LGBT individuals, such as amendments to family law, are sometimes subjected to expedited processes. This has led to instances where crucial legal changes that could positively impact the community are overlooked, necessitating subsequent legal actions to seek alignment with inclusive and protective legislation. The consequences of overlooking inclusive provisions become evident post-implementation, requiring additional legal efforts to rectify the omission. This includes resorting to judicial avenues to address gaps and ensure that laws align with the rights and needs of the LGBTQ+ community.

It is important to highlight concerns regarding the Ministry of the Interior's rapid amendments to the Law on Offenses against Public Order and Peace<sup>75</sup> within a seven-day e-Consultation, opened on 2 April.<sup>76</sup> Despite a directive from the Information Commissioner to extend the public discussion to 30 days, Mol closed the consultation on 9 April, ignoring the request. The government then submitted a fast-tracked proposal for the Law on Offenses against Public Order and Peace amendments to Parliament, facing opposition resistance on 14 April but succeeding in passing it on 19 April under the urgent procedure. The Information Commissioner warned the Minister of the Interior about misinterpreting access to information laws, emphasizing the inadequacy of Mol's justification for the short consultation period and the public's reaction to substantive changes. The Ministry revealed the establishment of an Interministerial Working Group to draft a new law, planning to publish it on the e-consultation portal for 30 days or more. However, the public was unaware of this group, and its members remained undisclosed. Criticism includes the fiscal irresponsibility of changing the law three times in less than a year.<sup>77</sup>

*48. Regime for constitutional review of laws*

In July 2023, Gong submitted to the Constitutional Court a proposal for the assessment of the constitutionality of the decision according to which St. Mark's Square has been closed to the

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<sup>73</sup> Gong.hr, available at: <https://gong.hr/en/2023/06/06/gong-warned-the-venice-commission-about-the-non-transparent-and-unprofessional-new-constituencies-act/>

<sup>74</sup> Ibid.

<sup>75</sup> The Law on Offenses against Public Order and Peace (NN 41/77, 55/89, 05/90, 30/90, 47/90, 29/94, 114/22, 47/23), available at: <https://www.zakon.hr/z/279/Zakon-o-prekr%C5%A1ajima-protiv-javnog-reda-i-mira>

<sup>76</sup> Centre for Peace Studies, [Ministre Božinoviću, pošujite propise ove zemlje!](#), published on 19 April 2023

<sup>77</sup> Centre for Peace Studies, [Ministre Božinoviću, pošujite propise ove zemlje!](#), published on 19 April 2023

public for over a thousand days.<sup>78</sup> The Constitutional Court on 2 January 2024 rejected the proposal with the explanation that the Court was not competent to decide in the procedure. The decision was followed by three dissenting opinions of five Constitutional Court judges and was highly criticized within the expert and broader public in Croatia. The judges warned in their dissenting opinions that constitutional rights to freedom of assembly and freedom of movement were breached by a government regulation, and that rights and freedoms could be restricted only by laws, which is under the jurisdiction of the Croatian Parliament, and not the Government, as prescribed in Article 16 of the Constitution of the Republic of Croatia. Therefore, with the amendment of the Regulation, by indefinitely closing a public square which is not government property but belongs to all citizens of the Republic of Croatia, the Government overtook the jurisdiction of the Croatian Parliament, which never reacted to this breach of the Constitution.

<sup>79</sup>

At the session held on 7 February 2023, the Constitutional Court concluded that the current electoral system based on ten electoral units, determined by the provisions of Articles 2-11 of the Election Constituencies Act, significantly deviates from the principle of equal voting rights, primarily in its substantial aspect, which guarantees the equal voting power of each voter, i.e. the weight of each voice. The Constitutional Court repealed the Election Constituencies Act with the provision that the repealed Act ceases to be valid on 1 October 2023. After this decision, the process of drafting a new Election Constituencies Act was initiated. Even though the new Act was put in the public consultation process from 25 May until 24 June 2023, which fulfilled the obligation from Article 11 of the Act on the Right to Access to Information<sup>80</sup>, the process of drafting the new Act was not transparent as was previously explained. In October 2023, the law was put into the procedure, and the opposition parties announced that they would challenge the constitutionality of the law, because of the circumstances of the drafting procedure not being transparent and in line with democratic standards.<sup>81</sup>

## **B. Independent authorities**

### *49. 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*

The situation regarding the independence of the ombuds institutions in Croatia remains unchanged - 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 following the non-acceptance of their annual reports by the Parliament. Moreover, the independence of the Children's Ombudswoman is additionally limited by the requirement to obtain the parliamentary approval of the annual work plan of the institution.

Due to the expansion of the Ombudswoman institution's mandate, the Commission noted it is necessary to ensure additional resources for efficient operation, including the appointment of a fourth deputy, especially considering the specific horizontal structure of the institution where deputies and the ombudsperson are the only managerial staff (there are no managerial officials such as sector chiefs or service managers). In light of the above, additional resources and the appointment of a fourth deputy responsible for whistleblowers have become crucial elements for improving the functioning of the institution.<sup>82</sup>

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<sup>78</sup> Gong.hr, available at: <https://gong.hr/2023/07/27/gong-zatrazio-od-ustavnog-suda-da-ispita-ustavnost-zatvaranja-markovog-trga/>

<sup>79</sup> Gong.hr, available at: <https://gong.hr/2024/01/03/ako-ustavni-sud-nije-nadlezan-nitko-ne-stoji-na-putu-vladi-koja-krsi-prava-gradana/>

<sup>80</sup> Ministry of Justice and Public Administration, Constituencies Act is again under discussion before the Croatian Parliament. Available at: <https://mpu.gov.hr/vijesti/zakon-o-izbornim-jedinicama-ponovno-u-raspravi-pred-hrvatskim-saborom/27567>.

<sup>81</sup> Available at: <https://www.novilist.hr/novosti/hrvatska/oporba-trazi-ocjenu-ustavnosti-tek-usvojenog-zakona-o-izbornim-jedinicama/>.

<sup>82</sup> Ombudsperson's Office, available at: <https://www.ombudsman.hr/hr/europska-komisija-pozvala-republiku-hrvatsku-da-poboljsa-provedbu-preporuka-pucke-pravobraniteljice/>

As indicated in the Ombudsperson's Annual Report for 2022<sup>83</sup>, National Preventive Mechanism representatives had satisfactory cooperation with the police officers in 2022. However, in the same report, the Ombudsperson repeated a recommendation to the Ministry of the Interior to enable the institution of the ombudsperson to see all the data on the treatment of irregular migrants, including the data found in the information system of the Ministry of Interior. In this regard, the Ombudsperson drew attention to the fact that in the 2022 Report on the Rule of Law, the impossibility of accessing data on the treatment of irregular migrants was pointed out, including direct access to the Information System of the Ministry.<sup>84</sup>

### **C. Accessibility and judicial review of administrative decisions**

#### *51. Transparency of administrative decisions and sanctions (incl. their publication and rules on collection of related data)*

It has been observed that state authorities often provide unclear or marginally relevant responses in their explanations of decisions, leading to a lack of transparency in these critical matters. State authorities fall short of providing clear and concise explanations for administrative decisions related to adoption, foster care, and the recognition of birth certificates for children born abroad to Croatian citizens. This lack of clarity creates legal confusion and hinders a comprehensive understanding of the rationale behind such decisions. The challenge lies also in the tendency of state bodies to provide responses that are not directly relevant to the specific inquiries raised. This practice impedes transparency, as it deviates from addressing the questions' substance, leaving us without the information we need to address the case further.

Environmental protection organizations state that administrative procedures are the prevailing method of resolving disputes in environmental cases. Conducting environmental proceedings before administrative courts continues to be problematic for several reasons. Courts rely solely on the credibility of conducted studies, and the refusal of expert examination and the absence of evidentiary procedures have become established judicial practices. Additionally, administrative adjudication is the last branch of the judicial authority where cases are assigned to judges by the decision of the court president (known as manual instead of computerized, random, and anonymous case assignment), posing a corruption risk and undermining trust in the judiciary.

Another issue raised by civil society organizations is that, according to the law, administrative decisions based on national security or public order grounds mostly do not contain legal and factual reasons.<sup>85</sup> Therefore, this relates to the situation where the assessment that one is a threat to national security is based on classified data collected by the Security and Intelligence Agency of the Republic of Croatia (SIA). Only the data collected by SIA which is not labeled with some level of secrecy can be disclosed in the administrative decision, while the data classified with some level of secrecy will not be revealed. The mere existence of the additional reasons that are connected to the classified data will be mentioned, for example briefly outlining that SIA stated that they have other data which lead to the same assessment, while their reveal could harm the interests of the national security of the Republic of Croatia. Moreover, the immigration authority in the vast majority of cases is not even aware of the grounds for such SIA's assessment since they do not have access to the file. SIA's classified data are labeled with some level of secrecy and they are protected under the Data Protection Law and the Law

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<sup>83</sup> Ombudsperson's Office, Annual Report for 2022, available at: <https://www.ombudsman.hr/hr/download/izvjesce-pucke-pravoraniteljice-za-2022-godinu>

<sup>84</sup> Namely, for effective assessment of the overall state of observed violations of rights and freedoms in the Republic of Croatia, the ombudsperson institution has a special role to, among other things, examine allegations of illegalities and irregularities in the work of state bodies and conduct regular visits to places of deprivation of liberty, to prevent torture and other cruel forms inhuman or degrading treatment or punishment, which includes the treatment of irregular migrants and applicants for international protection.

<sup>85</sup> Article 50 (1.3) of the Law on International and Temporary Protection prescribes that international protection can be annulled "if the person who is granted international protection poses a threat to national security or public order of the Republic of Croatia". Further on, Article 5 (2) of the Law on Foreigners, which is the *ius generalis* in comparison to the Law on International and Temporary Protection, prescribes that in the decision denying or terminating the residence of a citizen of a third country or expelling a citizen of a third country for reasons of national security, the legal provision will be stated without explaining the reasons that were decisive for making the decision.

on Information Security.<sup>86</sup>

*52. Judicial review of administrative decisions:*

*- short description of the general regime (in particular competent court, scope, suspensive effect, interim measures, and any applicable specific rules or derogations from the general regime of judicial review).*

Judicial review of administrative actions typically occurs through an administrative dispute, wherein courts assess the conformity of state administration bodies with legal norms. Article 3 of the Act on Administrative Procedure outlines the scope of administrative disputes, specifying that they pertain to assessing the lawfulness of general acts of local and regional self-government and legal persons with public powers.

Despite this, administrative lawsuits often lack a suspensive effect, becoming effective only in specific cases prescribed by the law. Administrative courts can grant suspensive effect under certain conditions, but the delay in reaching decisions on requested suspensive effect often leaves parties in a legal void. This is particularly problematic in cases involving expulsion orders for third-country nationals, where the absence of an automatic suspensive effect raises concerns about breaching Convention rights, notably Articles 2 and 3. The current legal remedies in Croatia do not align with the standards established by the ECtHR, which emphasizes the necessity of a suspensive effect in cases involving the breach of the *non-refoulement* principle. Furthermore, Article 13 of the EU Return Directive emphasizes the right of third-country nationals to appeal or review return-related decisions with the power to temporarily suspend removal during pending reviews.

*54. Follow-up by the public administration and State institutions to final (national/supranational, including the European Court of Human Rights) court decisions, as well as available remedies in case of non-implementation*

There have been instances where the government of the Republic of Croatia failed to respect or incorrectly implement decisions from these judicial bodies. This includes instances where decisions are either ignored or misinterpreted, deviating from the intended purpose of the ruling and the principles outlined in the Constitution of the Republic of Croatia, EU documents such as the LGBTIQ Equality Strategy, and other international agreements emphasizing equal treatment of all individuals and the right of all families to equal legal standing. Some rulings are not acted upon, leading to a lack of enforcement of legal measures intended to protect individual rights and promote equality. In certain cases, decisions are incorrectly interpreted by the government, undermining the true intent of the court rulings. This misinterpretation can result in policies and practices that deviate from the constitutional principles and international agreements promoting equal treatment for all.

For example, on 29 January 2020, the Constitutional Court issued a decision essentially stating that life partners, both male and female, must be allowed to become foster parents. The Constitutional Court determined that the exclusion or omission of a specific social group from the right to access foster care creates "general discriminatory effects towards same-sex oriented individuals living in life and informal life partnerships, which is constitutionally unacceptable." However, despite the Constitutional Court's decision, during the preparation of amendments to the Foster Care Act at the end of 2021, the relevant ministry and the Croatian government explicitly refused to include life partners.<sup>87</sup> In the explanation rejecting the initiative to include life partners in the list of foster parents, the Ministry of Labor, Pension System, Family, and Social Policy adopted a formalistic and bureaucratic stance.<sup>88</sup> This political decision by the

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<sup>86</sup> This issue was the object of judicial procedures in which Croatia recently lost in front of the European Court of Human Rights, see case *FS v. Croatia*, decided on 5 December 2023: <https://hudoc.echr.coe.int/fre#%7B%22itemid%22:%5B%22001-229317%22%7D>

<sup>87</sup> Available at: <https://www.telegram.hr/politika-kriminal/unatoc-odluci-ustavnog-suda-vlada-uporno-odbija-u-zakon-napisati-da-istospolni-parovi-mogu-udomljavati-djecu/>

<sup>88</sup> The Ministry stated that "the Constitutional Court of the Republic of Croatia did not order amendments to the Foster Care Act; instead, it determined that competent authorities are obligated to interpret and apply the provisions of the Foster Care Act in a

Ministry is unacceptable and discriminatory since, although, in practice, life partners and those in informal life partnerships acquire foster care licenses following the Constitutional Court's decision, their repeated exclusion and omission in the law are deeply humiliating and demeaning. Additionally, it creates a sense of legal insecurity and sends a message to the public that same-sex families are treated as second-class citizens.

Another example, the Law on Health Measures for the Exercise of the Right to Free Decision-Making Regarding Childbirth, enacted in 1978. The Constitutional Court of Croatia, through Resolution U-I-60/1991 (2017), directed the Croatian Parliament to adopt a new law regulating a woman's right to freely decide on childbirth and termination within two years. However, despite six years having passed since then, the law has not been enacted.

At the end of 2023, 28 leading judgments of the European Court of Human Rights against Croatia were pending implementation. This points to systemic problems in the area of respect for and the protection of human rights.<sup>89</sup> Action plans for the implementation of the judgements submitted by the Government often lack targeted and well-tailored measures that would bring positive changes in the legislation and, moreover, in the institutional practice, which is, at least partly, a result of a closed and non-transparent system of creating actions plans that do not rely on the consultations and dialogue with the interested and relevant civil society stakeholders.

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

##### *55. Measures regarding the framework for civil society organisations and human rights defenders (e.g. legal framework and its application in practice incl. registration and dissolution rules)*

Last year's Commission's report also noted that "the preparation of the new National Plan for Creating an Enabling Environment for the Civil Society Development 2021- 2027 has not progressed. This remains the case to date. Even though the process of drafting a new strategic document was initiated in 2021, and the Working Group for drafting the National Plan was established in January 2022, the document was not presented for the public consultations and it is unknown when it will be adopted, making it the seven consecutive years without a fundamental public policy on civil society development."<sup>90</sup>

Furthermore, dysfunctionality, sidelining and overall marginalisation of the Government's Council for Civil Society Development continued in 2023 with only one session of the Council held.<sup>91</sup> Although the elections for the new civil society members of the next iteration of the Council were concluded in time, it took the Government approximately six months to appoint the new Council only at the beginning of 2024. This additionally eroded the possibility for genuine dialogue between the government and civil society and deprived access and opportunity to civil society organisations to participate in decision-making processes relevant to areas of their work.

##### *56. Rules and practices having an impact on the effective operation and safety of civil society organisations and human rights defenders. This includes measures for protection from attacks – verbal, physical or on-line –, intimidation, legal threats incl. SLAPPs, negative narratives or smear campaigns, measures capable of affecting the public perception of civil society organisations, etc. It also includes measures to monitor threats or attacks and dedicated support services.*

In 2023, there is the continuous lack of political support towards human rights defenders and their organisations and are often being pressured or intimidated through media coverage, social networks, comments on media portals - especially those working on protecting and promoting

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manner that will enable all individuals to participate in the public service of fostering under equal conditions, regardless of whether a potential foster parent lives in a life or informal life partnership."

<sup>89</sup> Department for the Execution of Judgments of the European Court of Human Rights, available at: <https://www.coe.int/en/web/execution/croatia>

<sup>90</sup> Human Rights House Zagreb, Human rights in Croatia: Overview of 2022, available at: [http://www.kucaljudskihprava.hr/wp-content/uploads/2023/09/KLJP\\_GI2022\\_Eng.pdf](http://www.kucaljudskihprava.hr/wp-content/uploads/2023/09/KLJP_GI2022_Eng.pdf).

<sup>91</sup> Available at: <https://udruge.gov.hr/istaknute-teme/savjet-za-razvoj-civilnoga-drustva/zapisnici-sa-sjednica-savjeta/144>

HR of migrants and refugees, LGBTIQ+, national minorities, victims of gender-based violence and organisations working on dealing with the past and transitional justice.

Ombudsperson's Annual Report for 2022<sup>92</sup> states that 61% of consulted CSOs encountered obstacles that limit their activities, namely 44% with verbal attacks, harassment, intimidation and smear campaigns, 18% with the criminalization of their work, and 15% with physical attacks or property damage. Obstacles to work cited by CSOs include excessive administrative burden, SLAPP lawsuits and lack of funding for work.

The space for cooperation among civil society organizations working in the field of trust-building and reconciliation in post-conflict communities in the Western Balkans has significantly narrowed with Croatia's accession to the European Union. Instead of Croatia's EU membership leading to a stronger recognition of methods and approaches to building stability and peace in the Western Balkans, civil society organizations are separated by funding mechanisms that distinguish Croatia from other Western Balkan countries, making the process of an inclusive culture of memory, collaboration, and connection, especially among younger generations in the region, exceptionally challenging.

Human rights defenders in the field of transitional justice face unique challenges in their work because advocating for principles of equality and non-discrimination in understanding events from the 1990s does not align with nationalist-oriented political elites and segments of the public who perceive such work as traitorous and contrary to state foundations, making it sometimes exceptionally difficult to achieve an effective positive impact on society.

LGBT advocacy groups have been subject to online harassment and legal threats, impacting their ability to operate without fear of intimidation or backlash. The state has failed to address and persecute threats made both physical or online; such as the burning of effigies during carnivals, that represent the LGBT community.<sup>93</sup>

Concerns persist regarding the pressures exerted by private investors on human rights defenders, as evidenced by the legal proceedings initiated by investors involved in the golf course project on Srđ against Green Action. Since 2010, Green Action has been leading the campaign "Srđ is Ours," together with local and national partners. The legal proceedings have been ongoing since 2017, held outside the association's headquarters. As it is a criminal case, each of the three individuals from Green Action facing charges must have their own lawyer, resulting in significant costs. Not to mention the emotional burden on the activists involved in a trial that seems to be self-serving and whose outcome is unpredictable. In 2023, the three individuals were convicted in the first-instance criminal court, but they appealed to the High Criminal Court, with a hearing scheduled for January 2024.

*57. Organisation of financial support for civil society organisations and human rights defenders (e.g. framework to ensure access to funding, and for financial viability, taxation/incentive/donation systems, measures to ensure a fair distribution of funding)*

The financial framework and conditions for civil society remain inadequate. The National Foundation for Civil Society Development and the European Social Fund are the backbone of the financial support system of the Croatian civil sector. However, there is a general lack of national public funding for programs of civil society organizations working on topics relevant to the functioning of a democratic society. The focus of using the European Social Fund Plus is primarily on supporting civil society organizations that provide social services, with no plans to support critically-oriented advocacy organizations contributing to better public policy management, monitoring reforms in the rule of law, combating corruption, and enhancing transparency. External evaluations suggest that the "Croatian model" of supporting civil society through the European Social Fund in the past period has been a "bad practice example."<sup>94</sup> The state has largely done the opposite of what is needed to support the development of an active,

<sup>92</sup> Ombudsperson's Office, Annual Report for 2022, available at: <https://www.ombudsman.hr/hr/download/izvjesce-pucke-pravoraniteljice-za-2022-godinu/?wpdmdl=15489&refresh=659e7e3a9150d1704885818>

<sup>93</sup> For more information on the incident, see: <https://www.jutarnji.hr/vijesti/hrvatska/skandal-u-imotskom-zapaljena-figura-gay-para-s-usvojenim-djetetom-koje-je-na-celu-imalo-petokraku-iz-prvih-redova-sve-su-gledala-djeca-iz-vrtica-10008700>

<sup>94</sup> Information provided by DKolektiv



influential, and critically-minded civil society.

Furthermore, organizations continue to be burdened with increasing administrative requirements, such as rigidity in implementing reporting and budget changes, which take up a large portion of human and financial resources at the expense of quality of program activities. The financial support for ensuring sustainable administrative, financial, and operational activity for the organisations is not proportional to these increased administrative requirements. The main reason for the lack of financial viability and sustainability lies in the lack of national public funding that would fund long-term programs for civil society organisations working in different areas according to the identified needs. Furthermore, some governmental tenders are allocated according to the 'fastest finger' method - projects get funded according to the time they were received rather than their quality putting organisations with infrastructural difficulties in a less favourable position.<sup>95</sup>

Additional problems with the financial framework include the fact the funds allocated towards CSOs from the state budget have still not recovered to the amounts allocated in 2015, as well as project calls being delayed and the process of selection and payment slow.<sup>96</sup>

Civil society faces demotivation, greater influence on individuals than on the community, and marginalization due to centralized funding. There is also a notable absence of incentive policies for civil society development at the local level, including a lack of local strategies, limited use of public space, lack of structured dialogue, and low participation of CSOs in decision-making.

LGBTIQ organizations observe several indirect efforts to hinder the work, involving financial pressures and reductions in funding. They have faced different challenges in accessing funding for initiatives promoting LGBTQ+ family rights, limiting the ability to carry out impactful projects.

*58. Rules and practices on the participation of civil society organisations and human rights defenders to the decision-making process (e.g. measures related to dialogue between authorities and civil society, participation of civil society in policy development and decision-making, consultation, dialogues, etc.)*

Croatia faces difficulties and challenges that impede the enjoyment of the right to public participation. The involvement of civil society organisations in decision-making and consultation processes is often more formal than substantive, which weakens the opportunities for participation and harms the quality of public policies.<sup>97</sup> The practice of appointing civil society organisations to the working groups and advisory bodies is often non-transparent, while candidates selected through the Council for Civil Society Development are not always the most qualified ones, which sends the message that the Government does not care about civil society participation in decision-making processes in a meaningful way.<sup>98</sup>

The Information Commissioner emphasised the negative trend of shortening the consultation period without explanation. Of particular concern is the fact that shortening the duration of consultations has in most cases become the rule, especially at the local level. In addition to the shortening of the consultation period, there are still cases of reports on conducted consultations not being published and public consultation plans not being adopted or published.<sup>99</sup>

Considering that the process of creating public policies is often carried out in a non-participatory manner, the CSOs are not able to put certain social problems and needs on the agenda for them to be included in civil society funding programs. In addition, delays in announcing and processing project calls have harmed the operational capacity of CSOs and the turnover of professional staff, which is crucial for the quality of social services provision.

The current implementation of structured dialogue through multi-sectoral bodies remains vague

<sup>95</sup> Ombudsperson's Office, Annual Report for 2022, available at: <https://www.ombudsman.hr/hr/download/izviesce-pucke-pravoraniteljice-za-2022-godinu/?wpdmdl=15489&refresh=659e7e3a9150d1704885818>.

<sup>96</sup> Ibid.

<sup>97</sup> Human Rights House zagreb, Human Rights Defenders: Challenges and Obstacles, December 2022, available at: [https://www.kucaljudskihprava.hr/wp-content/uploads/2022/12/KLJP\\_ThematicDefenders1-1-1.pdf](https://www.kucaljudskihprava.hr/wp-content/uploads/2022/12/KLJP_ThematicDefenders1-1-1.pdf)

<sup>98</sup> Ibid.

<sup>99</sup> Information Commissioner, Report on the Implementation of the Act on the Right to Access Information for 2022, March 2023. Available at: <https://pristupinfo.hr/wp-content/uploads/2023/04/1.-Izviesce-o-provedbi-ZPPI-za-2022.pdf?x57830>

and has a very limited impact on decision-making processes. To enhance its effectiveness, it is essential to establish clearer objectives, well-defined roles, and more transparent communication channels within these bodies. It's also crucial to regularly evaluate the outcomes of these dialogues and adjust strategies as needed to ensure that the structured dialogue leads to tangible changes and improvements in policy and practice.

In the context of implementing transitional justice mechanisms, civil society organizations continue, through advocacy efforts, to engage representatives of institutions and high-ranking officials in a more egalitarian approach to memory politics regarding the victims of the 1990s wars, one that does not exclude any group of victims based on their national, ethnic, or any other identity.

The involvement of LGBTIQ organizations in working groups for the development of regulations and laws does exist, but it is very rare and insufficient. Also, these organizations have faced obstacles in participating in decision-making processes related to family law or any family policies, impacting the recognition and protection of LGBT families. Often, our comments and contributions to the public discourse are ignored, and new policies are made without any inclusion of LGBT-relevant themes or topics.

In 2023, there continued to be a deterioration in the relationship between the relevant ministry (MINGOR) and civil society organizations active in the field of environmental and nature protection. Representatives of the institution no longer respond to discussions and other advocacy activities organized by certain environmental organizations. There was a slight improvement at the end of 2023 when a meeting was organized at the initiative of the Green Forum with representatives of MINGOR, discussing environmental impact assessments and other environmental procedures. We hope that similar meetings will be organized in 2024.

## **E. Initiatives to foster a rule of law culture**

*59. Measures to foster a rule of law culture (e.g. debates in national parliaments on the rule of law, public information campaigns on rule of law issues, contributions from civil society, education initiatives, etc.)*

After six years without a fundamental human rights policy, at the beginning of 2023, the Government finally adopted the National Plan for the Protection and Promotion of Human Rights and Combating Discrimination until 2027. Although the plan recognises the importance of improving cooperation with civil society and human rights defenders, the accompanying Action Plan on Human Rights for 2023 did not predict any new measures that would aim to remedy identified problems in the field of public participation, financing of civil society and in other relevant domains. The process of drafting action plans to the National Plan for 2024 and 2025 began in the middle of 2023 with the inclusion of more than 10 representatives of civil society organisations as members of the working group. Unfortunately, the aforementioned action plans for 2024 and 2025 still need to be adopted which halts the implementation of the overall National plan.

It is worth mentioning the government Council for Human Rights as an example of good practice of intersectoral cooperation between the state and civil society. Established in 2021 and chaired by the Vice President of the Government, the Council is composed of representatives of the institutions and three members representing human rights organisations. The Council holds regular sessions and discusses topics relevant to its mandate (e.g. implementation of the Ombudsman's recommendations, hate speech and hate crime issues, etc.). Overall, the Council sessions provided an opportunity for a genuine dialogue on current and relevant human rights issues between decision-makers, decision-makers and independent national human rights bodies (NHRIs).

The government's measures to foster a rule of law culture inadequately include relevant stakeholders from the LGBT community in discussions on human rights and family rights

matters. Parliamentary debates often overlook the perspectives and concerns of LGBT individuals and their families, contributing to a lack of inclusivity in shaping policies and legislation. Public information campaigns rarely address the specific challenges faced by the LGBT community, hindering the development of a comprehensive understanding within society. Contributions from civil society, especially those advocating for LGBT rights, are not consistently acknowledged, limiting the diverse perspectives needed to build an inclusive rule of law culture. Education initiatives lack a focused approach to educating the public about the unique human rights issues faced by the LGBT community, impeding the creation of a genuinely inclusive rule of law culture in Croatia.

### ***Other – please specify***

Croatia does not adhere to the recommendations of international bodies, especially in the context of women's reproductive rights. This is particularly evident in the recommendations continually received by Croatia from international bodies, such as the UN Human Rights Council's special procedures. In the communication addressed to Croatia by the UN, concerns are raised about the government's failure to update the abortion law in line with the Constitutional Court's decision from 2017.<sup>100</sup>

The government has delayed the adoption of new national plans for the protection and promotion of human rights and equality. The previous National Gender Equality Policy, under the responsibility of the Office for Gender Equality of the government, expired in 2015, and a new one was only adopted in 2023., leaving Croatia without this strategic document for 7 years. The National Plan for the Protection and Promotion of Human Rights and the Suppression of Discrimination for the period 2021-2027 was adopted in 2023. LGBTIQ organizations consider both documents to be deficient for protecting and promoting LGBTIQ rights.<sup>101</sup> LGBTIQ organizations were not consulted in the development of either document, and there were no representatives of LGBTIQ associations in the working groups.

In Croatia in 2023, there was no information provided on the implementation of the Digital Services Act (DSA) and especially the allocation of the role of the Digital Services Coordinator (DSC), a body entrusted with numerous authorities among which is the allocation of the trusted flagger status. Only at the end of October, information was found in the media, that the DSC will be entrusted to HAKOM, Croatian Regulatory Authority for Network Industries<sup>102</sup>, a body with possibly relevant technical expertise but no real contact or very limited previous contact with civil society. In this particular case of DSC, HAKOM would benefit from starting to consider their stakeholders differently (because they are usually market-orientated) and take steps to develop normal relationships and horizontal cooperation. Lastly, it is important to remember the role of CSOs in the future AI Act and to prepare the terrain for the cooperation of authorities and civil society in this another important piece of regulation.

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<sup>100</sup> UN letter to the Government of the Republic of Croatia regarding the unavailability of abortion, available at: <https://www.roda.hr/udruga/projekti/radar/pismo-prituzbe-un-a-prema-vladi-rh.html>

<sup>101</sup> For example, National Gender Equality Policy lacks an analytical basis on the rights and needs of LGBTIQ individuals, which could serve as a foundation for the development of measures. Only one measure specifically addresses LGBTIQ individuals. This is Measure 1.6, which aims to "improve administrative processes and make health services more accessible to LGBTIQ individuals." Regarding the National Plan, although it references a national survey on citizens' attitudes toward discrimination from 2016, which identified "sexual and gender minorities" as the second most frequently perceived discriminated group after Roma (11%), the National Plan lacks concrete measures and activities aimed at combating discrimination against LGBTIQ individuals.

<sup>102</sup> Available at: <https://www.vecernji.hr/vijesti/hakom-ce-istrazivati-i-kaznjavati-one-koji-prekrse-zakon-o-digitalnim-uslugama-1719643>



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