

ENNHRI Rule of Law Consultation 2021

Instructions

Responses should highlight significant developments in your country in the areas covered by the questionnaire since January 2020. This should include any relevant updates/follow-up information concerning the issues reported on in the [ENNHRI 2020 rule of law report](#). You may of course skip any questions where you have nothing specific to contribute.

While the questionnaire contains specific questions on the impact of measures adopted to address the COVID-19 pandemic, due attention should be paid to reflect the impact of the pandemic context, as relevant, throughout the questionnaire.

Please be short and to the point. Never exceed the limit of 3,000 characters (i.e. less than a page) per answer. Please draft your replies in English.

Whenever possible, please provide references to relevant sources that can support and/or complement your statements, by listing them under the "References" tab.

Once completed, please send back the document as a word document to linda.ravo@@outlook.com. The deadline to submit your contribution is 2 March 2021.

Institution's details

Full name of the institution in English:

Public Defender of Rights

Name and contacts (email, phone number) of the responsible person:

Zuzana Jarabinská (+420 601 156 187, jarabinska@ochrance.cz)

I. Impact of 2020 ENNHRI rule of law report

1. To your knowledge, has there been any follow-up action or initiative on the part of state authorities to address any of the issues reported on in the 2020 ENNHRI rule of law report as regards your country and/or, more generally, to foster a rule of law culture at national level (e.g. debates in national parliaments on the rule of law, awareness raising/public information campaigns on rule of law issues, etc.)? *(Max 3000 characters)*

We are not aware of such actions or initiatives.

References

Click or tap here to enter text.

2. How has the 2020 ENNHRI rule of law report impacted on your institution's work (for example, with regard to the institution's priorities/strategic planning, the institution's engagement with state authorities, with civil society organisations and/or with regional actors, or the impact on dissemination/awareness of your institution and its work)? *(Max 3000 characters)*

No impact.

If you have taken any specific follow-up initiatives based on the 2020 report (such as dedicated meetings with or briefings to state authorities and/or regional actors, public events, hearings, petitions, follow-up research/reports, cooperation with civil society, awareness raising/dissemination actions, public education/information initiatives), please briefly describe them. If not, please briefly explain why (for example, mandate limitations, lack of capacity/resources, practical hurdles, lack of access to/cooperation with state authorities and/or regional actors). *(Max 3000 characters)*

We have not taken any specific follow-up initiative based on the 2020 report.

References

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3. Would you have any recommendations to ENNHRI or to regional actors on how to further facilitate impacts on the ground of NHRIs' annual rule of law reporting and/or that could more generally support your institution's work to promote and protect the rule of law in your country? *(Max 3000 characters)*

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References

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II. Independence and effectiveness of the NHRI

4. Has the national regulatory framework applicable to your institution changed since the 2020 report? (*Max 3000 characters*)

No.

References

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5. Do you consider that state authorities sufficiently ensure enabling space for your institution to independently and effectively carry out its work (for example, as regards access to the legislative and policy process, or timely response and adequate follow-up to your institution's recommendations, level of cooperation between different human rights actors/bodies)? *(Max 3000 characters)*

Yes.

References

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6. Have significant changes taken place in the environment in which your institution operates that are relevant for the independent and effective fulfilment of your mandate (including, for example, challenges due to Covid-19), and/or are there any other challenges related to the rule of law environment in your country that impact on your institution's functioning? *(Max 3000 characters)*

No.

Has your institution taken any action to address the problematic issues raised and/or to more generally increase your institution's ability to fulfil its mandate in compliance with the Paris Principles and/or the impact of your institution's work? (*Max 3000 characters*)

The Public Defender of Rights took part in the round table concerning the NHRI in the Czech Republic organized by the Government's Representative for Human Rights. In the discussions, the importance of the NHRI in the national context was acknowledged and concrete steps and options leading to the establishment of the NHRI in the Czech Republic were discussed. All stakeholders taking part in the meeting agreed on the importance of the NHRI's work in the national political environment.

References

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III. Human rights defenders and civic space

7. Has your institution's human rights monitoring and reporting found any evidence of laws, measures or practices that could negatively impact on civic space and/or reduce human rights defenders' activities (for example, limitations on freedom of association, freedom of assembly, freedom of expression or access to information; evidence of attacks on human rights defenders, their work and environment; negative attitudes towards/perceptions of civil society and human rights defenders by public authorities and the general public)? (*Max 3000 characters*)

We do not have a legal mandate to conduct such monitoring.

References

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8. Can you briefly describe the initiatives taken by your institution to promote and protect civic space and human rights defenders, including through institutional mechanisms (such as the human rights defender focal points) and/or provide examples of your engagement in this area, including with international and regional mechanism in support of human rights defenders and civil society? *(Max 3000 characters)*

We do not have a legal mandate to perform such activities and initiatives.

References

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IV. Checks and balances

9. Has your human rights monitoring and reporting found any evidence of laws, processes and practices that:
- erode the separation of powers (including, for example, increased executive powers or insufficient parliamentary oversight);
 - limit the participation of rightsholders, including vulnerable groups, and of stakeholders representing them, to legislative and policy processes (including, for example, by the use of expedited legislative processes, lack of scrutiny or consultation, non-publication of regulations);
 - limit access to information from state authorities and to public documents;
 - reduce the accountability of state authorities (including, for example, the lack of effective judicial or constitutional review on state laws, measures or practices);
 - hinder the implementation of judgments of national or supranational courts (including the Court of Justice of the EU and the European Court of Human Rights);
 - impair the independence and effectiveness of independent institutions (other than NHRIs);
 - impact on the fairness of the electoral process.
- (Max 3000 characters)*

Public participation rights in environmental matters: these participation rights are set out especially in the Construction Code, and in the Act on the Protection of the Nature, and the Countryside. However, there is a draft of the new Construction Code currently being discussed in the Chamber of Deputies which attempts to significantly restrict the above-mentioned participation rights. The Public Defender of Rights took part in the stakeholders' consultation prior the presentation of the draft legislation to the Chamber of Deputies and criticized this deficiency several times. Moreover, the Constitutional Court of the Czech Republic announced the decision in the case Pl. ÚS 22/17 concerning the public participation rights in environmental matters on Tuesday 2nd February 2021. The constitutional complaint was filed by a group of Senators in 2017 seeking the abolishment of several legal provisions excluding environmental associations from the participation in many important types of proceedings according to the Construction Code. The Public Defender of Rights intervened in the proceedings in support of the applicants. The Constitutional Court decided that the provisions in question are not unconstitutional, and therefore remain in force.

Involuntary hospitalisation: we have registered issues in judicial decision-making in cases of involuntary hospitalisation. Under normal circumstances, judges deciding these cases tend to personally visit the people in facilities. In some cases, this was not happening during the pandemic, and some judges issued decisions without personally seeing the person. Thus, we intervened and discussed the issue with the Ministry of Justice and representatives of the judiciary.

Access to information: The CRPD team has dealt with the issue of lacking access of people with audial disability to information about covid-19. Since the beginning of the pandemic, the media outlets offered only limited possibilities of spreading information to people with audial

References

<https://www.ochrance.cz/aktualne/tiskove-zpravy-2021/ani-po-nalezu-ustavniho-soudu-nejsou-spolky-ucastniky-rizeni-podle-stavebniho-zakona/>

[https://www.usoud.cz/fileadmin/user_upload/Tiskova_mluvci/Publikovane_nalezky/2021/Pl. US 22 17 na web vctne disentu.pdf](https://www.usoud.cz/fileadmin/user_upload/Tiskova_mluvci/Publikovane_nalezky/2021/Pl._US_22_17_na_web_vcetne_disentu.pdf)

10. Do you consider that state authorities sufficiently foster a high level of trust amongst citizens and between citizens and the public administration? If so, how? *(Max 3000 characters)*

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References

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11. NHRIs are recognised as an important component of the system of checks and balances in a healthy rule of law environment, including by regional actors. Can you provide examples of your engagement as part of the system of checks and balances and/or briefly describe the initiatives taken by your institution to address the problematic issues raised in that respect (including, for example, through participation in legislative and policy processes, litigation and/or interventions before courts, cooperation with regional actors)? *(Max 3000 characters)*

Insufficient legal mandate.

Have you encountered any particular obstacles in that respect (including, for example, mandate limitations, lack of capacity/resources, practical hurdles, lack of access to/cooperation with state authorities and/or with regional actors, insufficient data/inadequacy of data collection system)? *(Max 3000 characters)*

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References

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V. Functioning of justice systems

12. Has your human rights monitoring and reporting found evidence of any laws, measures or practices that restrict access to justice and/or effective judicial protection (including, for example, as regards the independence and impartiality of the courts, the quality and efficiency of the justice system, the professionalism, specialisation and training of judges, the geographical accessibility of courts, access to legal aid, respect for fair trial standards, execution of judgments)? *(Max 3000 characters)*

The only problematic issue we are aware of in this regard are delays in court proceedings. This problem is, however, of a long-term nature and it is mainly a result of the long-term overload of the courts.

More specifically, there are also long-term problems with delays in court proceedings in relation to the work of expert witnesses. The causes of delays are mainly twofold: either there are not enough experts in the field who could prepare the expert opinion, or the experts have delays with submitting their expert opinions. In both cases, it has a negative influence on the length of the court proceedings.

The expert witnesses' agenda has newly been entrusted to the Ministry of Justice. We cannot predict the further developments in this field and how this change will influence it, but we will further monitor this issue.

Has your institution taken any action to address the problematic issues raised and/or more generally promote access to justice and/or effective judicial protection in line with your institution's mandate (including, for example, through legal advice, litigation and/or interventions before courts, through handling complaints concerning the courts and their functioning)? If not, please briefly explain why (for example, mandate limitations, lack of capacity/resources, practical hurdles, lack of access to/cooperation with state authorities and/or with regional actors, insufficient data/inadequacy of data collection system). *(Max 3000 characters)*

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References

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VI. Media pluralism

13. Has your human rights monitoring and reporting found any evidence of laws, measures or practices that could restrict a free and pluralist media environment? (including, for example, as regards insufficient protection of journalists' and media independence, adequacy of resources, evidence of attacks on journalists, their work and environment (including legal harassment), negative attitudes towards/perceptions of journalists and media by public authorities and the general public, protection of journalist sources, independence and effectiveness of media regulatory bodies, transparency of media ownership, disinformation). *(Max 3000 characters)*

Insufficient legal mandate.

References

Click or tap here to enter text.

Has your institution taken any action to address the problematic issues raised and/or more generally promote a free and pluralist media environment in line with your institution's mandate? If not, please briefly explain why (for example, mandate limitations, lack of capacity/resources, practical hurdles, lack of access to/cooperation with state authorities and/or with regional actors, insufficient data/inadequacy of data collection system). *(Max 3000 characters)*

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References

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VII. Corruption

14. Has your human rights monitoring and reporting found any evidence of laws, measures or practices relating to corruption, or significant inaction in response to alleged corruption, and which could have an impact on human rights (including, for example, as regards the protection of whistleblowers, conflicts of interest, procurement rules and their implementation, respect for the principles of good administration)? *(Max 3000 characters)*

Insufficient legal mandate.

Has your institution taken any action to address the problematic issues raised and/or more generally promote a strong framework for combating corruption in line with your institution's mandate? If not, please briefly explain why (for example, mandate limitations, lack of capacity/resources, practical hurdles, lack of access to/cooperation with state authorities, lack of access to/cooperation with regional actors, insufficient data/inadequacy of data collection system). *(Max 3000 characters)*

References

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VIII. COVID-19 measures

15. What are the most significant impacts of the COVID-19 outbreak and the measures taken to address it for rule of law and human rights protection in your country (eg emergency measures not time-limited, lack of access to the courts, limited judicial review (including constitutional review), limited oversight by parliament of emergency regimes and measures taken, disruptions in the activities of the parliaments, measures affecting human rights that are not legitimate or proportionate to the threats posed)? Are you aware of any good practices set in place by state authorities aimed at mitigating these challenges? *(Max 3000 characters)*

During 2020, we have registered several COVID-19 governmental measures which gave rise to doubts regarding their legality or proportionality, such as:

- general prohibition of visits in facilities of social services (i. e. homes for the elderly, children's houses), prohibition of leaving such facility;
- prohibition of presence of fathers at childbirths, or prohibition of parental presence at hospitals with their ill or operated children;
- prohibition of prison visits, then replaced by their limitation to only one person (this meant that minor children could not visit their imprisoned parents as they could not be accompanied by an adult);
- prohibition of the access to the country for foreigners, even for purposes of reunion with their family or closest relatives;
- strict requirements for persons who had to cross state borders on the everyday (or very frequent) basis due to their work, family relations etc. (the prescribed frequency of the regular testing of such persons on COVID-19 was considered particularly problematic);
- access to education for pupils with disability in the light of the distance online learning;
- closing of services for endangered families and children.

We were dealing with all the above mentioned issues; most of the problematic measures were fully or partially repealed (and sometimes replaced by less strict measures).

References

<https://www.ochrance.cz/aktualne/tiskove-zpravy-2020/ombudsman-resi-omezeni-preshranicniho-pohybu-v-dusledku-epidemie/>

<https://www.ochrance.cz/aktualne/tiskove-zpravy-2020/navstevy-v-zarizenich-pro-seniory-v-dobe-epidemie/>

<https://www.ochrance.cz/aktualne/tiskove-zpravy-2020/lide-v-zarizenich-byli-v-dobe-pandemie-covid-19-nekdy-uplne-odriznuti-od-okoli/>

<https://www.ochrance.cz/aktualne/tiskove-zpravy-2020/ve-veznicich-jsou-v-omezenem-rozsahu-opet-povoleny-navstevy/>

<https://www.ochrance.cz/aktualne/tiskove-zpravy-2020/ani-v-soucasne-situaci-nemuze-nemocnice-pritomnost-rodicu-u-ditete-zcela-vyloucit/>

<https://www.ochrance.cz/aktualne/tiskove-zpravy-2020/situace-ve-veznicich-v-dobe-epidemie/>

16. More generally, which long term implications do you see arising from the COVID-19 outbreak and the measures taken to address it for rule of law and human rights protection in your country?
(Max 3000 characters)

It is already possible to guess certain long-term consequences resulting from the covid-19 pandemic. We have registered growth and strengthening of domestic violence and general increase of social-pathologic phenomena in families. Families dealing with this type of violence may suffer its consequences for rather long time.

Another issue is the low accessibility of supportive social services as it may be expected that these are the exact areas in which the state funding might be limited, and the cuts may appear soon. In the grand scheme, as a direct result of long-lasting isolation, we might experience general breakdown of personal or family contacts and ties, something we are already witnessing concerning imprisoned persons who have not had many possibilities of maintaining contact with their close people.

Furthermore, our CRPD team has expressed concerns regarding future employment situation of people with disabilities. The active policy of employment and general support of employment of people with disabilities may face cuts and may not be a priority for many stakeholders in upcoming times. Another of their concerns is the influence of long-distance education of children with disabilities: this type of education may be difficult for many of them, the support of such pupils is not emphasised, and hence, in the future, they may be lag behind.

Also, covid-19 pandemic highlighted and deepened the issues that were already present in the Czech society but neglected. The pandemic may increase the number of people falling into poverty, facing executions, losing their housing without any governmental support, or facing removal of children from families. Another challenge will be to maintain the quality and accessibility of health care system which has been under serious pressure and it is significantly under-funded.

Has your institution taken any action to address the problematic issues raised and/or more generally promote and protect rule of law and human rights in the crisis context, in line with your institution's mandate (such as, for example, dedicated meetings with or briefings to state authorities and/or regional actors, public events, hearings, petitions, follow-up research/reports, cooperation with civil society, awareness raising/dissemination actions, public education/information initiatives)? If not, please briefly explain why (for example, mandate limitations, lack of capacity/resources, practical hurdles, lack of access to/cooperation with state authorities and/or with regional actors, insufficient data/inadequacy of data collection system).
(Max 3000 characters)

We have been vocal regarding the isolation of people in facilities of social services and legality of such measures. We insisted that visiting and leaving these facilities has to be allowed under safe conditions which would combine exercise of fundamental rights with complying to hygienic standards. Regarding prisons, we demanded that prisoners may receive more than only one person as a visit, and that the prisons implement more compensatory measures for the lack of visits (i. e. more phone calls, Skyping).

Furthermore, we expressed our concern regarding the approach of the education system towards children with disability and support of their needs even, and especially, during distance learning. Also, we have investigated the issue of barrier-free access to places where testing or vaccination take place.

In these mentioned areas, we have initiated a dialogue with relevant stakeholders, organised closed meeting, raised practical recommendations and solutions, or released statements for media.

References

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17. What have been the most important challenges for your NHRI's functioning due to COVID-19? More specifically, were you able to carry out/resume visits and inspections to different institutions, including as National Preventive Mechanism? (*Max 3000 characters*)

Most significantly, the pandemic affected the NPM and its possibility to conduct regular visits of facilities where persons are deprived of liberty. During the spring 2020, the monitoring activity was stopped as such and no visits occurred.

Gradually, the monitoring visits were restated, however, under strict conditions. They were not conducted unexpectedly; the facility was usually informed one day in advance in order to prepare the hygienic conditions. In order to reduce the risk of contagion, the NPM team has used protective suits and it has undertaken antigen and PCR testing regularly.

The pandemic also influenced the selection of topics of the visits. It became more crucial than ever to focus on the contact with the outside world or conditions of further deprivation of liberty connected to covid-19 (e. g. locking up patients in quarantine).

A similar situation occurred in case of on-site investigations. In spring, on-site investigations were not possible to perform; during the second wave starting in autumn, the on-site investigations have been generally allowed but we have performed them carefully and with full respect to organisational difficulties public authorities we decided to visit had to face. During such visits, we implement all necessary safety measures.

As to the general functioning of the office, we have been facing the same difficulties like any other institution. We had to adapt to the home office regime (including finding suitable IT solutions), we also had to reduce the official office hours, and there is also an increased morbidity of our employees. Fortunately, these challenges have not paralyzed the functioning of the office and we perform our duties more or less as we have performed them before.

References

https://twitter.com/apt_geneva/status/1361411056321638404?s=04&fbclid=IwAR1DT1xpa2Dh-KUGx-VXMGRSdXPelWDnIWYR4i-JLgDMUJH3L3A7eR-l2sQ

IX. Other relevant areas

18. Are there any pressing challenges in the field of human rights that you came across in your work, or any other relevant developments or issues, that you would like to report on in the light of their impact on the national rule of law environment (including, for example, systemic human rights violations, or systemic gaps in state accountability for unlawful laws, measures or practices)?
(Max 3000 characters)

There are two main issues we would like to make in this section:

The National Human Rights Institution in the Czech Republic

The NHRI has not yet been established in the Czech Republic, and the issue therefore remains open. A round table on this issue took place in 2020 proving that there are many stakeholders who are prepared to support the establishment of the NHRI. The Government's Representative for Human Rights promised to present a legislative proposal concerning the NHRI in a reasonable future.

The Public Defender of Rights' Annual Reports

The Annual Report 2019 has not yet been discussed by the Chamber of Deputies. Therefore, the legislative recommendations addressed to the Chamber of Deputies by the Defender have not been heard so far.

The Annual Report 2018 has been discussed in the Chamber of Deputies and the Chamber of Deputies asked the Government to express its opinion on the recommendations stated in it. However, the Government has not responded yet.

References

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