

# ***EU 2020: DEMANDING ON DEMOCRACY***

*Country & Trend Reports on Democratic  
Records by Civil Liberties Organisations  
Across the European Union*

## ***CROATIA***



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# **Croatia // Centre for Peace Studies (CMS) & Croatian Platform for International Citizen Solidarity (CROSOL)**



- Human rights violations against refugees and asylum seekers persist. Particularly worrying are push-backs at the border to Bosnia Herzegovina. Criticism by international monitoring bodies is ignored.

## **Key concerns**

- Media regulatory body lacks independence, as government controls the process of electing new appointees to the body
- Public trust in media is low and lawsuits against journalists are on the rise.
- The government regularly proposes laws without prior democratic consultations.
- The Ombudswoman's Office lacks resources and capacity and is harassed by the government
- Frequent lawsuits and smear campaigns against civil society actors working on the protection of the rights of refugees and migrants.

## **Media environment and freedom of expression and of information**

### **Media authorities and bodies**

#### *Independence of media regulatory bodies*

The media regulator in Croatia is the Agency for Electronic Media.<sup>1</sup> It was established in accordance with the provisions of the Electronic Media Act (EMA) and performs administrative, professional and technical tasks for the Electronic Media Council<sup>2</sup>, the governing body of the Agency and regulatory body in the field of electronic media.

1 See <https://www.aem.hr/about-the-agency/>

2 See <https://www.aem.hr/en/vijece/>

The Government controls the composition of the Council. It proposes candidates to the Parliament via a public call. So, in principle, it is not fully subject to discretionary decision by the Government. Some of the appointments to the regulatory body are concerning. For example, in the past several years, like in 2019, some appointments came from the same media circles that had previously been doing little to promote non-discriminatory informing and reporting. On the contrary, some members were warned<sup>3</sup> by the same regulatory body for not distancing themselves from discriminatory statements made in the central TV news outlet, which the elected councillor was editing and hosting. This was criticized by the Croatian Journalists' Association (CJA).<sup>4</sup>

In February 2020, the Ministry of Culture proposed a new Draft EMA. Although the CJA was involved in the EMA's working group, the CJA left the group as the Ministry of Culture did not include any of the CJA's proposals in the Draft EMA. These included proposals on election processes of candidates for the Electronic Media Council and other

comments concerning the institution's independence. Other comments and open issues in the Draft EMA regard Article 93, which covers the responsibility of the publisher for the comment section below articles. The report<sup>5</sup> on public consultations<sup>6</sup> concerning the proposed EMA was published beginning of March 2020 but due to the COVID-19 pandemic the Draft EMA was discussed in Parliament only in December 2020. Most of the comments on the Draft EMA were merely "duly noted" and only a small percentage was accepted. Further discussion and adoption is awaited.<sup>7</sup>

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

The CJA Ethical Council is the only self-regulatory body operating within the CJA since its founding in 1910. The council has 11 members elected by the CJA assembly among its members. During the election, special attention is paid to the experience of candidates and the representation of different media and communities. Code of honour, work regulations,

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3 See <https://www.aem.hr/en/vijece/>

4 See <https://www.jutarnji.hr/vijesti/hrvatska/hnd-protiv-imenovanja-katje-kusec-clanicom-vijeca-za-elektronicke-medije-8996345>

5 See <https://esavjetovanja.gov.hr/ECon/EconReport?entityId=13393>

6 See <https://esavjetovanja.gov.hr/ECon/EconReport?entityId=13393>

7 See <https://esavjetovanja.gov.hr/Econ/MainScreen?EntityId=13393>

report procedures and report conclusions are available on the CJA web page.<sup>8</sup>

In the case of minor offences, the CJA Ethical Council can issue a warning to journalists who are members of the CJA, reminding them of their obligations and duties to adhere to ethical and professional standards. In more serious cases, the Council may issue a severe warning of a serious violation of ethical and professional standards. For the most serious offenses that compromise the profession's dignity, the Council may decide to exclude a journalist from the CJA.

### ***Transparency of media ownership and government interference***

The Agency for Electronic Media maintains a register of electronic publications providers<sup>9</sup>, in accordance with Article 80 of the EMA. Natural and legal persons wishing to broadcast electronic media are required to register. This obligation extends to radio program providers, audiovisual service providers and providers of electronic publications, both for- and non-profit.

According to the EMA's legal definition, electronic publications are “editorially designed websites and / or portals that contain electronic

versions of the press and / or information from the media in a way that is available to the general public regardless of their scope.” Prior to the first publication, a natural or legal person must request entry in the register. In 2021, there were 392 electronic publications in the register, but this number does not reflect the real number of electronic publications in circulation. In 2019, the Croatian NGO Center for Peace Studies (CPS) conducted an analysis of internet portals in the context of hate speech, concluding that out of 18 portals only 6 were registered.<sup>10</sup> When publishers are not represented in the register, it is difficult to determine their name and legal form. Also, the regulation and self-regulation of these portals is not possible, because they are not subject to regulations and rules arising from the status of the media or the electronic publication as defined in the EMA.

In terms of media ownership, there is a lack of transparency in data collection and regulation. In accordance with media legislation, media publishers have the obligation to publish information on ownership but there is no clearly defined body that supervises this obligation.

8 See <https://www.hnd.hr/novinarsko-vijece-casti1?seo=novinarsko-vijece-casti1>

9 See <https://www.aem.hr/en/elektronicke-publikacije/>

10 See [https://www.cms.hr/system/publication/pdf/127/Analiza\\_mre\\_nih\\_stranica\\_Protiv\\_mr\\_nje.pdf](https://www.cms.hr/system/publication/pdf/127/Analiza_mre_nih_stranica_Protiv_mr_nje.pdf)

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## **Public trust in media**

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The level of trust in media in Croatia is low. This was demonstrated by a recent quantitative research published by the Friedrich Ebert Stiftung.<sup>11</sup> The study was implemented in August and September 2020 through computer-assisted web interviewing (CAWI) on a nationally representative probabilistic sample of Croatian citizens aged 18 - 74. On the scale from 0 to 10, where 0 means no trust and 10 means absolute trust, the average level of trust in media is 3.39.

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## **Framework for the protection of journalists and other media activists**

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In 2019, the offense of serious shaming was deleted from the Criminal Code, and the offense of insult was further defined in a way that it does not apply to journalists, which represents a positive development. The amendments to the Criminal Code did not decriminalize all crimes against honour and reputation. The following provisions were not amended: Article 149 “Defamation”, Article 349 “Violation of the reputation of the Republic of Croatia” and Article 356 “Violation of the

reputation of a foreign state and international organization”.

The trend of lawsuits against journalists continued in 2020. In October 2020, the CJA warned the public about a new wave of lawsuits against journalists and the media.<sup>12</sup> According to a survey conducted by the CJA, 905 lawsuits were filed as of May 2020.

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## **Freedom of expression and of information**

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As the Rabat Plan<sup>13</sup> suggests, human rights are indivisible and interrelated. This is particularly evident in the discussion on freedom of expression in connection to other human rights, such as protection from discrimination, hostility or violence based on ethnicity, religion or other grounds. Proper balancing of freedom of expression and the prohibition of incitement to hatred is no simple task. This is reflected in the documents of some of the political parties in Croatia that are financed from the state budget or, in other words, by taxpayer’s money.

Neither the Anti-Discrimination Act<sup>14</sup> nor other legislation provide for an obligation to

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11 See [https://www.fes-croatia.org/fileadmin/user\\_upload/Prezivjeti\\_ili\\_zivjeti.pdf](https://www.fes-croatia.org/fileadmin/user_upload/Prezivjeti_ili_zivjeti.pdf)

12 See <https://hnd.hr/hnd-upozorava-na-novi-val-tuzbi-protiv-novinara-i-medija>

13 See [https://www.ohchr.org/Documents/Issues/Opinion/SeminarRabat/Rabat\\_draft\\_outcome.pdf](https://www.ohchr.org/Documents/Issues/Opinion/SeminarRabat/Rabat_draft_outcome.pdf)

14 See [https://narodne-novine.nn.hr/clanci/sluzbeni/2008\\_07\\_85\\_2728.html](https://narodne-novine.nn.hr/clanci/sluzbeni/2008_07_85_2728.html)

suppress public financing of organisations or political parties which promote racism or in any other way incite to hatred. Some political parties on the far-right political spectrum do not even publicise their statutes. For example, Autochthonous Croatian Party of Rights<sup>15</sup> (in Croatian: Autohtona - Hrvatska stranka prava, abbreviation: A-HSP) in their 2020 state directly discriminatory goals. For example: “Persons working against national interests will be expelled from Croatia and will lose their citizenship,” “Various LGBT and other associations that work to destroy Croatian families and peoples will be defunded.” Over the last several years, A-HSP has organized numerous demonstrations against the Serb National Council as the representative institution of the Serb national minority in Croatia. Most of these were explicitly tied with demonstrative burnings of the left-leaning weekly paper Novosti (‘News’), which is published by the Serb National Council, for alleged defamation of Croatia. These public actions are without exception designed to intimidate and draw attention. A-HSP receives 1000

Croatian kuna (HRK) from the local regional self-government units according to the publicly available 2020.

Another far-right party, the Croatian Pure Party of Rights<sup>16</sup> (in Croatian: Hrvatska čista stranka prava, abbreviation: HČSP) also does not publish their statute, but their program is available online.<sup>17</sup> It consists of eleven points with problematic content, for instance towards minorities. They advocate for abolition of the quota of eight members of the Croatian Parliament for minorities. HČSP receives 24000 HRK from the local regional self-government units according to the publicly available financial plan for 2020.<sup>18</sup> In 2019, they received 23150 HRK according to the rebalancing plan for 2019.<sup>19</sup>

Generation of renewal<sup>20</sup> (in Croatian: Generacija obnove, abbreviation: GO) is a relative newcomer to the scene of far-right political parties and is publicly represented by young people. Although not highly visible, the

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15 See <https://www.hrvatskipravasi.hr/>

16 See <http://hcsp.hr/>

17 See <http://hcsp.hr/program/>

18 See <http://hcsp.hr/wp-content/uploads/2020/02/GODISNJI-PROGRAM-RADA-I-FINANCIJSKI-PLAN-ZA-2020..pdf>

19 See <http://hcsp.hr/wp-content/uploads/2020/02/REBALANS-FINANCIJSKOG-PLANA-ZA-2019.pdf>

20 See <https://generacijaobnove.hr/>

party has manifested its ties with anti-immigrant politics in Europe.<sup>21</sup>

## **Other issues related to checks and balances**

### **Process for preparing and enacting laws**

#### *Quality and transparency of legislative process and public consultations*

Legislative procedure in Croatia is characterized by the weak role of the Parliament and dominance of the executive branch which usually submits the laws and other legislative acts, while the ruling majority adopts them regardless of the debate, its arguments and conclusions. Although laws can be proposed by either the government, individual MPs or groups of MPs, deputy clubs and working bodies, a large majority is proposed by the government. Impact assessments and policy analyses are seldom used in a meaningful way and often untransparent and/or unavailable to the public. Public consultations are predominantly held *pro forma*, with relevant government bodies and institutions acknowledging the comments made by the public, but rarely incorporating them in the bills. Consultations are often announced late in the legislative

process or during periods of holidays with short deadlines, so the public has little time to react.

Parliamentary elections were held on 5 June 2020, so the year encompasses two terms of the Parliament. The final part of the 9th term of the Croatian Parliament (from 2016 until mid-2020) finished with the 16th plenary session (15 January - 18 May 2020). During this 5-month period, a total of 193 proposals were voted on, including legislative acts and various technical and procedural decisions, as well as reports. **123 of those 193 (64%)** acts were sponsored by the government. During the second half of the year, the 10th term of the Croatian Parliament was inaugurated. From its beginning on 22 June 2020 until the end of the year, a total of **160 proposals were voted on, and 115 (72%)** of those were sponsored by the government.<sup>22</sup>

#### *Use of fast-track procedures*

Use of fast-track and urgent procedures is widespread and practically standardized practice in the Croatian Parliament despite them being nominally preferred only in extraordinary circumstances (“laws may be enacted under urgent procedure when this is required on particularly justified grounds, in particular pertaining to issues of defence and other important justified state issues, or when this is required to prevent or remedy major

21 See <https://generacijaobnove.hr/1/temeljna-nacela/>

22 See <https://www.sabor.hr/hr/sjednice/pregled-dnevnih-redova>

disturbances in the economy”). During the 16th plenary session of the 9th term of the Croatian Parliament, a total of 144 legislative bills were voted on. **70 of 144 (49%) bills were discussed under urgent procedure.** During the Parliament’s 10th term, (22 June 2020 - ongoing), **90 bills were voted on and 19 of them (21%) were discussed under urgent procedure.**

### *Independent authorities*

Independent authorities, especially Ombud’s institutions, sometimes lack sufficient capacity and powers and there are attempts of pressures on their work by the government’s executive branch.

Regarding the work of the Ombudswoman’s Office, it is important to highlight that the Ombudswoman has been facing serious issues in her work related to migration. In 2020, the Ministry of the Interior continued to deny her access to data during National Preventive Mechanism (NPM) visits, crippling her investigations, even though unannounced visits of detention institutions and free access to data of persons deprived of liberty are key tools at the NPM disposal, according to the national

and international legal duty accepted by the Republic of Croatia.

The Commission for the Prevention of Conflicts of Interest in Croatia has been undermined by the ruling party Croatian Democratic Union (*Hrvatska demokratska zajednica* or HDZ) for years, as well as by some MPs from other/opposition parties. After Commission President Nataša Novaković began questioning the role of Prime Minister Andrej Plenković in the Agrokor affair<sup>23</sup> and investigating a trip from HDZ party officials to Helsinki<sup>24</sup>, the Prime Minister began to publicly criticize her work and refused to send the requested documentation to the Commission. Following that incident, he accused her of conflict of interest in another case and asked for her resignation. Plenković requested that it should be reviewed whether the Commission had any authority to decide on the violation of the general principles of action in the exercise of public office, which is exactly the subject of the recent ruling.

In March 2020, after the start of the COVID-19 induced lockdown, the Administrative Court in Zagreb postponed all hearings, except the Prime Minister’s appeals against the Commission’s decisions. The Administrative Court in Zagreb annulled the decisions of

23 See <https://www.gong.hr/en/good-governance/anti-corruption-policy/letter-to-greco-plenkovic-undermines-the-fight-aga/>

24 <https://hr.n1info.com/english/news/a444407-conflict-of-interest-commission-to-seek-help-from-international-institutions/>

the Commission in two of his cases<sup>25</sup> (first instance): the disputed appointment of the Prime Minister's godfather as an ambassador and the refusal to submit requested documentation on the HDZ's trip to Helsinki. In both cases, the Court concluded that officials could not be sanctioned for violating the principle of operation.

## **Enabling framework for civil society**

### ***Freedom of assembly***

Most of the issues connected to the exercise of freedom of assembly were connected to the various measures designed to contain the COVID-19 pandemic. The restrictions and limitations of the freedom of assembly had a legitimate aim and were largely proportionate to the threat posed by the pandemic, but implementation of certain measures was inconsistent. In addition, some provisions

lacked clear explanations and justification, such as in the decision<sup>26</sup> that bans spending time in public spaces where “more people” may gather. Throughout the year, various measures that restricted public gatherings changed over 20 times, and, according to the Ombudsman<sup>27</sup>, frequent amendments and vague measures and recommendations have led to growing dissatisfaction and fear and undermined trust in institutions, particularly in the Civil Protection Headquarters. At the same time there were exceptions from those restrictions that allowed for certain gatherings to take place. For example, a Civil Protection Headquarters' decision from April 2020<sup>28</sup> restricted the number of participants at all public events to five, but religious gatherings were allowed from 2 May onwards. In addition, the decision on gatherings was changed<sup>29</sup> in order to allow the commemoration of the Remembrance Day in November. The consistency of the Civil Protection Headquarters was called into question. By allowing certain events to take place, other forms of gatherings were put at a disadvantage, although the right to public assembly should be available to

25 See <https://www.telegram.hr/politika-kriminal/upravni-sud-opet-presudio-u-korist-premijera-srusena-je-odlu-ka-povjerenstva-za-sukob-interesa/>

26 See [https://narodne-novine.nn.hr/clanci/sluzbeni/2020\\_03\\_34\\_734.html](https://narodne-novine.nn.hr/clanci/sluzbeni/2020_03_34_734.html)

27 See <https://www.ombudsman.hr/hr/download/izvjesce-pucke-pravobraniteljice-za-2020-godinu/?wpdm-dl=10845&refresh=6038a8291f2261614325801>

28 See [https://narodne-novine.nn.hr/clanci/sluzbeni/2020\\_04\\_51\\_1035.html](https://narodne-novine.nn.hr/clanci/sluzbeni/2020_04_51_1035.html)

29 See [https://narodne-novine.nn.hr/clanci/sluzbeni/2020\\_11\\_122\\_2375.html](https://narodne-novine.nn.hr/clanci/sluzbeni/2020_11_122_2375.html)

everyone under equal conditions, regardless of the assembly's purpose.

### ***Lawsuits and convictions against civil society actors***

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Over the past years, there were cases of lawsuits and convictions against civil society actors and volunteers working on protection of the rights of refugees and migrants. This continued in 2020. The civil society organization Are You Syrious (AYS) had to fight against allegations of illegal conduct. In the case of one of their volunteers, the Ministry of Interior pressed charges<sup>30</sup> for “facilitating illegal migration”, whereby in April 2018 they recommended the highest prescribed penalty, including imprisonment, an 43,000 EUR fine, and the ban of AYS's work. In September 2019, the court found the volunteer guilty<sup>31</sup> on the grounds of “unconscious/inadvertent negligence”, but rejected the recommended penalties, issuing a smaller 8,000 EUR fine. An AYS volunteer approached a police control in March 2018 near the Croatian border to alert police about a family of asylum seekers huddled in a field near Strošinci. At this time, the family, including several small children, had already been on Croatian soil. Part of AYS's activities is to observe such incidents be present until the

refugees meet the police because of the threat of imminent push-backs. The AYS volunteer was accused of giving signals to the family to assist their crossing from Serbia into Croatia. These allegations were proven false by the organisation during the court hearing. AYS has challenged the decision and is awaiting the outcome of the appeal.

In 2020, the Centre for Peace Studies was contacted by several individuals who were charged for “facilitating illegal migration” after giving a lift to refugees and other migrants within the Croatian territory. The court found them guilty on the same grounds as for AYS's volunteer, namely unconscious negligence. It argued that the individuals should have presumed that the person in their car is not residing legally in Croatia and will attempt to cross the border irregularly. In one of the decisions, the judge noted that the defendant should have presumed that the person is an “illegal migrant” based on the person's looks.

### ***Smear campaigns against civil society organisations***

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After the earthquakes that hit Zagreb region in March 2020 and Sisak-Moslavina county in December 2020, there were numerous false

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30 See <https://areyousyrious.medium.com/ays-daily-digest-25-09-18-statement-on-a-unjust-verdict-against-ays-volunteer-b91baab377ba>

31 See <https://www.portalnovosti.com/dragan-umicevic-kazna-meni-je-poruka-drugima>

allegations<sup>32</sup> against human and minority rights organisations and other civil society organisations (CSOs). They were accused of not actively providing humanitarian assistance and relief to the victims. Some media<sup>33</sup> accused CSOs of not helping in the Bania region, without proper research on what the CSOs have been doing in the crisis or asking the accused organisations on their activities.

## Surveillance

There have been recent cases of intimidation of human rights defenders, especially those criticizing the Government's migration policy and those policing migration. On 11 May 2020, a program coordinator's partner working for the AYS received a decision<sup>34</sup> of the Ministry of the Interior revoking the decision granting him asylum in the Republic of Croatia and giving him a deadline of 30 days to leave the EEA. The Ministry of Interior issued this decision arbitrarily to put pressure on her and her partner who was also volunteering for AYS and to circumscribe her work as a human rights defender, primarily for the rights of refugees and other migrants. Croatian police

have harassed AYS programme's partner on multiple occasions. As Front Line Defenders said in their statement<sup>35</sup> in October 2020, "on 9 October 2019, he received a phone call summoning him to the police station at Petrinjska Street No. 30 for an interview allegedly concerning 'the register of persons who have entered the Republic of Croatia'. On 10 October 2019, he arrived at the police station where he was questioned, among other things, about his relationship with Tajana Tadić, people who he met in the Centre for Asylum Seekers, as well as some people he is not acquainted with. In addition, content on his mobile phone was checked by a police officer, without a warrant. During the interview, he was asked by a police officer to meet informally at a cafe and was told that he should help police by providing them with information about other refugees. When he refused, the police officer reportedly started to threaten him with revocation of his refugee status and deportation to Iraq. Following the interrogation, the police officer confiscated his residence permit even though such an action was illegal and returned it only after Tajana Tadić's intervention."

32 See <https://www.portalnovosti.com/pandemija-mrznje>

33 See <https://www.glasistre.hr/kolumna/gdje-su-sada-udruge-koje-inace-ne-prestaju-govoriti-o-solidarnosti-ljubavi-i-dobrosvosti-691123>

34 See [https://www.frontlinedefenders.org/sites/default/files/croatia\\_-\\_ua\\_-\\_tajana\\_tadic\\_-\\_30\\_oct\\_2020.pdf](https://www.frontlinedefenders.org/sites/default/files/croatia_-_ua_-_tajana_tadic_-_30_oct_2020.pdf)

35 See [https://www.frontlinedefenders.org/sites/default/files/croatia\\_-\\_ua\\_-\\_tajana\\_tadic\\_-\\_30\\_oct\\_2020.pdf](https://www.frontlinedefenders.org/sites/default/files/croatia_-_ua_-_tajana_tadic_-_30_oct_2020.pdf)

## ***Access and participation to decision-making process***

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Negative trends connected to participation in decision-making processes have continued in 2020. The 7th assembly of the Council for Civil Society Development<sup>36</sup>, an advisory body to the Government which aims to improve cooperation between the Government and CSOs, was constituted in 2020. In the new convocation of the Council from May 2020, CSO representatives in the Council have limited influence on the decisions brought by the Council because most of its members come from various state institutions.

For example, during the election process for members of the European Economic and Social Committee (EESC) representing civil society (Group III), crude violations of the principle of civil society's self-representation and autonomy were committed by the Government's Office for Cooperation with NGOs which coordinated the process. The voting was held by the Council for the Development of Civil Society, which in itself is violating the principle of civil society self-representation due to its membership which consists of 20 representatives of public authorities (state, regional and local government institutions, agencies and their associations) and 17 representatives of civil society and social partners. EESC Group III representatives were appointed by the election process by means of electronic voting

towards the end of the workday on Friday 29 May 2020, with a tight deadline (Tuesday, 2 June at noon), not allowing for candidate presentations or discussions by the Council. These violations of civil society's autonomy took place despite the fact that the Council members from CSOs had submitted a written proposal for a transparent two-stage electronic election procedure (first round of voting by 17 Council CSO members, followed by confirmation vote of all 37 Council members). This proposal was ignored at the constituting meeting of the Council, held on 20 May 2020 while the head of the NGO Government Office initiated the election procedure that envisioned only one round of vote by all Council members, which is in collision with self-representation principles guiding democratic relations between government and civil society.

Also, since 20 May, the Council did not have valid sessions, as the Government has not yet appointed the new representatives of the public authorities to the Council<sup>37</sup> after the parliamentary elections, despite the requests by CSO representatives to the Council. This has repercussions to participation of CSOs in decision-making processes, as the Council is the body that appoints civil society representatives in various bodies and working groups. For example, it is not possible to carry out the selection of representatives of CSOs in the working groups for the design of programming documents for the EU funds financial

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36 See <https://udruga.gov.hr/highlights/the-council-for-the-civil-society-development/163>

37 See <https://www.gong.hr/hr/aktivni-gradani/civilno-drustvo/imenujte-predstavnik-tijela-javne-vlasti-u-savjet/>

period 2021-2027 that are currently holding their sessions without representatives of civil society.

### **Access to funding**

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Regarding the availability of funds, within the scope of the EU Multi-Annual Financial Framework 2014-20, funding was planned for CSOs in Croatia. Due to a lack of a coherent system, it is difficult to expect compliance with the procedures as well as the opening long-announced tenders.

The Ministry of Foreign and European Affairs' public call for applications for the Program of Cooperation with Civil Society Organizations Dealing with Development Cooperation and Humanitarian Activity Abroad<sup>38</sup> exemplifies the government's failure to comply with tender procedures. After the application procedure finished, the tender was annulled<sup>39</sup> due to "epidemiological circumstances that prevented the implementation of the projects"<sup>40</sup>. The explanation states that "the tender will be opened again when epidemiological conditions allow it" and to encourage organizations "to re-apply with their projects". This means that the working days spent on design, elaboration and

contacting partners are wasted and it will be necessary to re-apply (which also means collecting fresh administrative evidence of the functionality of the applicant organization).

An example of tenders being unforeseeable is the public call within the European Social Fund on combating discrimination announced in November 2019, titled "Combatting Discrimination – a precondition for social inclusion of the most vulnerable groups – Phase 1", with a budget of 22.800.000,00 HRK. It was supposed to be operated by the Ministry of Demography, Family and Social Policy. In the Annual Plan for the Publication of Calls for Proposals of the Operational Programme Effective Human Resources 2014-20<sup>41</sup>, published on 25 February 2020, this operation was placed on the reserve list where it remained after the changes visible from May 2020. This call is only one of the calls that was announced in the plans, but then withdrawn, which puts CSOs in uncertainty, as they cannot plan possibilities for funding.

Also, it is important to note that the institutions operating EU and other funds in Croatia put large, illogical and unnecessary burdens on CSOs in Croatia, which results in serious

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38 <http://www.mvep.hr/files/file/2020/1.-Tekst-Javnog-poziva.pdf>

39 See <http://www.mvep.hr/files/file/2020/2011282001-odluka.pdf>

40 See <http://www.mvep.hr/files/file/2020/2011300950-obrazlozenje.pdf>

41 See <http://www.esf.hr/europski-socijalni-fond/razdoblje-2014-2020/godisnji-plan-objave-operacijaprojekata-esf/>

limitations of their work, as the Croatian NGO Gong described in its analysis in June 2020<sup>42</sup>.

## **Other**

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The Government Office for Cooperation with NGOs of the Government of the Republic of Croatia denied<sup>43</sup> the possibility to journalists to attend the first constitutive session of the Council for Civil Society Development, with the explanation that this is due to epidemiological measures, although the session was held in the Great Hall of the National University Library. Also, there was no possibility of broadcasting the session live via video link, which was standard practice from other locations until then. Since the venue for the session was the hall where the activities related to the EU 2020 Presidency of the Council of the European Union took place in the same period, it is difficult to believe that the broadcasting was impossible.

There has also been no progress regarding the National Plan for Creating an Enabling Environment for Civil society Development. The foreseen duration of the previous Draft Strategy<sup>44</sup> that was jointly drafted in a

participatory process by representatives of institutions and civil society in 2016 was the period 2017-2021.

## **Other systemic issues affecting rule of law and human rights protection**

### **Widespread human rights violations**

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In 2020, reports from different institutions, including Croatian Ombudsperson, national and international NGOs, as well as photographs, videos and medical documentation and testimonies of thousands of victims collected by activists, continue to point to the same direction: systematic, severe violations of refugees and migrants' human rights at Croatian borders and within Croatian territory. This is a serious rule of law issue, as there are no effective investigations or protection mechanisms in place.

Figures for 2020 are deeply worrying. Border Violence Monitoring Network alone reported that 1656 persons have been pushed back

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42 See [https://www.gong.hr/media/uploads/government\\_attacks\\_on\\_civil\\_society\\_in\\_croatia\\_eng.pdf](https://www.gong.hr/media/uploads/government_attacks_on_civil_society_in_croatia_eng.pdf)

43 See <https://faktograf.hr/2020/05/21/savjet-za-razvoj-civilnog-drustva-uveo-socijalno-distanciranje-od-novinarar/>

44 See <https://udruge.gov.hr/istaknute-teme/nacionalna-strategija-stvaranja-poticajnog-okruzenja-za-razvoj-civilnoga-drustva/nacionalna-strategija-stvaranja-poticajnog-okruzenja-za-razvoj-civilnoga-drustva-od-2017-do-2021-godine/3676>

(illegally expelled) from Croatia in 2020.<sup>45</sup> The Danish Refugee Council recorded 16425 illegal expulsions from Croatia to Bosnia and Herzegovina in 2020.<sup>46</sup> CPS filed four criminal complaints against unknown police officers in 2020 who conducted such pushback.<sup>47</sup> Three of these complaints requested an investigation into cooperation between the Croatian police officers and armed men in black who most probably are members of the special unit or the so-called Ministry of Interior's operational action „Corridor“, described in the testimony of an anonymous police officer in 2019.<sup>48</sup>

In July 2020, the Slovenian Administrative Court issued a judgement proving that the national police force carried out an illegal collective expulsion of a man who was chain refouled from Slovenia through Croatia to Bosnia-Herzegovina. The Court found that the Republic of Slovenia violated the applicant's right to asylum, the prohibition of collective expulsions and the principle of non-refoulement by readmitting him to Croatia, from where he was pushed back to Bosnia-Herzegovina.<sup>49</sup>

Despite overwhelming evidence, Croatian State Attorney's Office continues to reject criminal complaints against Croatian authorities, and the Ministry of Interior continuously states that they did not find any misconduct or breaching of the law, without giving any argumentation or showing that an unbiased investigation was conducted. The investigations remain internal (the Ministry investigates itself) and aren't independent. The results of the conducted investigations remain unknown to the public and to the Ombudswoman. Low number of investigations shows unpreparedness of the Government to stop the violence and assure the rule of law, while the lack of independent investigations is further worrying and further undermines the rule of law and functioning of the legal state.

Furthermore, the European Commission awarded the Emergency Assistance grant scheme (EMAS) under the Asylum, Migration and Integration Fund (AMIF) and Internal Security Fund (ISF) to Croatia in 2018, with a requirement to set up an independent monitoring mechanism in order to guarantee

45 See <https://www.borderviolence.eu/launch-event-the-black-book-of-pushbacks/#more-16565>

46 See <https://drc.ngo/our-work/where-we-work/europe/bosnia-and-herzegovina/>

47 See <https://www.cms.hr/en/azil-i-integracijske-politike>

48 See <https://net.hr/danas/hrvatska/zastrasujuca-devijacija-akcije-koridor-policija-sve-dogovara-na-whatsappu-a-poseban-zadatak-u-hvatanju-migranata-imaju-taksisti/>

49 See <https://www.borderviolence.eu/press-release-court-find-slovenian-state-guilty-of-chain-pushback-to-bosnia-herzegovina/>

Croatia's compliance with fundamental rights in its border surveillance activities.<sup>50</sup> The Croatian Government's failure to establish such a mechanism and subsequent cover-up have additionally amplified the need for truly independent border monitoring to be put in place and rule of law to be assured.<sup>51</sup>

### ***Follow-up to recommendations of international and regional monitoring bodies***

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On 19 June 2020, the United Nations' Special Rapporteur on the human rights of migrants and Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment called Croatia to immediately investigate reports of excessive use of force by law enforcement personnel against migrants, including acts amounting to torture and ill-treatment, and sanction those responsible.<sup>52</sup> They said physical violence and degrading treatment against migrants have been reported in more than 60 percent of all recorded push-back cases from Croatia between January and May 2020. The UN Special Rapporteurs were also concerned that Croatian police officers

reportedly ignored requests from migrants to seek asylum or other protection under international human rights and refugee law.

In August 2020, the Council of Europe's Committee for the Prevention of Torture (CPT) visited Croatia to examine the treatment of persons attempting to enter the country and apprehended by the police.<sup>53</sup> In the course of the visit, the delegation held consultations with Ms Terezija Gras, State Secretary of the Ministry of Interior and Mr Zoran Ničeno, Head of the Border Police Directorate. The delegation also met with representatives of the National Preventive Mechanism (NPM) and non-governmental organizations active in areas of concern to the CPT. The delegation also visited several temporary reception centres and informal migrant settlements in north-west Bosnia and Herzegovina where it interviewed and medically examined migrants who claimed they had very recently been apprehended by Croatian law enforcement officials within the territory of Croatia and forcibly returned to Bosnia and Herzegovina.

On 21 October 2020, the Council of Europe Commissioner for Human Rights, Dunja

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50 See [https://ec.europa.eu/commission/presscorner/detail/en/IP\\_18\\_6884](https://ec.europa.eu/commission/presscorner/detail/en/IP_18_6884)

51 See <https://www.theguardian.com/global-development/2020/jun/15/eu-covered-up-croatias-failure-to-protect-migrants-from-border-brutality>

52 See <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=25976>

53 <https://www.coe.int/en/web/cpt/-/council-of-europe-anti-torture-committee-carries-out-rapid-reaction-visit-to-croatia-to-examine-treatment-of-migrants>

Mijatović, published a statement in connection with the latest allegations of collective expulsions of migrants, denial of access to asylum, and the use of extreme violence by Croatian law enforcement officers.<sup>54</sup> In the statement, she reiterated her call on the Croatian authorities to stop pushbacks and border violence and eradicate impunity for serious human rights violations committed against migrants by law enforcement officers. She stressed that they should ensure full cooperation with independent monitoring mechanisms, especially the office of the Croatian Ombudswoman. The Commissioner also called on the Croatian authorities to publish, as soon as possible after it is adopted, the report of the CPT on their rapid reaction visit to the country.

The Croatian Government still hasn't published the Committee's report, contrary to previous practice.

### **Poor crisis coordination**

At the end of 2017, the then-Croatian government passed the Act on The System Of Homeland Security which constitutes the basis for coordination in crisis situations. However, with the outbreak of the pandemic and the Zagreb earthquake that occurred in March 2020, the Coordination for the System of Homeland Security which held its constitutional session in October 2020, had

no significant impact nor role in handling both crisis situations. Instead, measures for containing the epidemic and those related to handling the aftermath of the earthquake have been declared by the national Civil Protection Headquarters. The absence of a coordinated crisis response became even clearer after the catastrophic earthquake on 29 December 2020 in Petrinja, as no fast nor coordinated response to the third crisis occurred. This resulted in a chaotic situation as many citizens rushed to the Sisačko Moslovačka County, which was hit the most by the earthquake, as well as to Zagrebačka and Karlovačka County. One week later, the government managed to establish a second Civil Protection Headquarters to Address the Consequences of the Earthquake Disaster. During this week, emergency services and volunteers overlapped or lacked on the field due to missing coordination and communication. Despite the existence of a law governing the crisis response in disaster situations, Croatia failed to react adequately to three large catastrophe situations, thus risking and endangering human rights and antidiscrimination legislation as well as exacerbating inequalities.

54 See [https://www.coe.int/en/web/special-representative-secretary-general-migration-refugees/newsletter-october-2020/-/asset\\_publisher/cVKOAAoroBOTI/content/croatian-authorities-must-stop-pushbacks-and-border-violence-and-end-impunity?](https://www.coe.int/en/web/special-representative-secretary-general-migration-refugees/newsletter-october-2020/-/asset_publisher/cVKOAAoroBOTI/content/croatian-authorities-must-stop-pushbacks-and-border-violence-and-end-impunity?_ga=2.141111111.141111111.141111111-141111111-141111111)

## Impact of COVID-19

### Emergency regime

Croatia did not declare a state of emergency, but on 11 March 2020, the Law on the Protection of the Population from Infectious Diseases entered into force. The Civil Protection Headquarters, governed by the Law on Civil Protection System, was established by the Croatian Government on 20 February. Various legal experts criticized the amendments to the Law on Civil Protection System proposed in March 2020 because the new Article 22a matches the definition of disaster that already existed in the Law. But the Government and the governing majority in the Parliament deliberately avoided applying constitutional norms, in order to pass the laws by simple and not by two-third majority, which is needed if the state declared state of emergency or if extraordinary circumstances occurred (Art. 17). The legality of the measures brought by the Civil Protection Headquarters was publicly debated because they were brought based on the new Art. 22a of the Law on the Civil Protection System. As a result, several claims for constitutional review were brought to the Constitutional Court.<sup>55</sup> In its decision

in September, the Constitutional Court stated that the decision whether certain freedoms and/or rights will be limited through Art. 16 or 17 of the Constitution is the authority of the Parliament.<sup>56</sup> Therefore, the disputed measures and laws are not unconstitutional because they were not in accordance with Art.17. Also, the Court decided to reject the proposals to initiate procedures for constitutional review of disputed articles of the Law on Civil Protection System and the Law on Amendments to the Law on the Protection of Population from Infectious Diseases, by a majority of 10 constitutional judges. 3 constitutional judges published separate opinions expressing their disagreement with the decision and elaborating their views on the constitutional issues in question.

The Rules of Procedure (RoP) of the Parliament were amended in April in a way that new Art. 293.a was added.<sup>57</sup> It introduced changes such as the possibility of shortening time for discussion and for breaks, limiting the number of MPs present at the session and suspending the right to reply. 35 MPs from the opposition requested the assessment of the constitutionality of the RoP claiming that its amendments limited their right to discussion granted by the Constitution. The Constitutional Court

55 See [https://sljeme.usud.hr/usud/praksaw.nsf/C12570D30061CE54C12585E7002A7E7C/\\$FILE/SA%c5%bdETAK%20-%20COVID-19.pdf](https://sljeme.usud.hr/usud/praksaw.nsf/C12570D30061CE54C12585E7002A7E7C/$FILE/SA%c5%bdETAK%20-%20COVID-19.pdf)

56 See [https://sljeme.usud.hr/usud/praksaw.nsf/C12570D30061CE54C12585E7002A7E7C/\\$FILE/U-I-1372-2020%20i%20dr.pdf](https://sljeme.usud.hr/usud/praksaw.nsf/C12570D30061CE54C12585E7002A7E7C/$FILE/U-I-1372-2020%20i%20dr.pdf)

57 See [https://narodne-novine.nn.hr/clanci/sluzbeni/2020\\_04\\_53\\_1061.html](https://narodne-novine.nn.hr/clanci/sluzbeni/2020_04_53_1061.html)

assessed that the newly introduced measures had a legitimate cause, but, inter alia, it noted that there are possibilities for a different way of organizing the work of the Parliament, which does not limit the rights and duties of the members of the Parliament.<sup>58</sup> The Court concluded that any restriction on the exercise of the rights and duties of the representatives must be objectively and reasonably justified. As this was not the case it decided to repeal the newly added Art. 293.a of the RoP.

### ***Lack of access to the courts and impact on the justice system***

At the end of March 2020, most of the court hearings were postponed for indefinite time and parties were not allowed to enter the court premises. Only lawyers, court appraisers, bankruptcy administrators and legal entities that have become involved in e-Communication were able to communicate electronically with the courts. At the end of April, the Croatian Ombudswoman expressed concern about the consequences of the pandemic, highlighting the situation of parties who, due to the pandemic, cannot use suspensive remedies such as appeals in a timely manner, or who will miss deadlines for private lawsuits.<sup>59</sup> She also underlined the importance of legal aid during the pandemic, as a precondition for

exercising the rights to equal access to justice, fair trial and an effective remedy. In July, after relaxation of the measures regarding the first COVID-19 wave (the second one started in September), no strategies aimed to deal with case backlog or increased litigation due to COVID-19 measures had been adopted. Steps to lift restrictions previously imposed on court proceedings were determined by each court individually. There have been no general instructions or recommendations from the president of the Supreme Court of the Republic of Croatia or the Ministry of Justice which would apply to all courts.

### ***Measures affecting human rights that are not legitimate nor proportionate***

In March 2020, the Government proposed amendments to the Electronic Communications Act which would have provided them with the capacity to monitor the location of every mobile phone in Croatia. The action was supposedly taken for the purpose of limiting the impact of the pandemic, but it revealed a possible flagrant violation of the right to privacy and revealed a strategy to shrink civic space, using the health crisis as an excuse. In an open letter to the public, 44 CSOs reminded of the necessity that all

58 See [https://sljeme.usud.hr/usud/praksaw.nsf/C12570D30061CE54C12586080035A65C/\\$FILE/U-I-4208-2020.pdf](https://sljeme.usud.hr/usud/praksaw.nsf/C12570D30061CE54C12586080035A65C/$FILE/U-I-4208-2020.pdf)

59 See <https://www.ombudsman.hr/hr/omoguciti-ucinkovito-funkcioniranje-pravosuda-i-u-izvanrednim-okolnosti-ma/>

measures adopted by the Government must be effective, but also proportionate, i.e. we cannot allow the damage from the measures to be greater than their benefits.<sup>60</sup> After the pressure of CSOs and numerous other actors, mostly legal experts, the Government dropped the proposal.

### *Shrinking civic space*

The Government of the Republic of Croatia passed a series of measures to preserve employment following the outbreak of the pandemic, inter alia financial compensation for workers paid to their employers. However, Croatian CSOs who employ over 18,000 workers were not included in these measures as these were designed only for for-profit employers.

In December 2020, CSOs active in various fields sent an open letter to the Minister of Labour, Pension System, Family and Social Policy, the Head of the Government Office for Cooperation with NGOs and the Director of the National Foundation for Civil Society Development requesting a change in the date of opening the application for the call for proposals “Strengthening CSOs capacity to respond to the needs of the local community” and to change the problematic method of administering this call.<sup>61</sup> The call was

announced in April as a method of mitigating the consequences of COVID-19 pandemic on CSOs but was published only in December. The most problematic aspect of the call is that it is administered through the “fastest finger” procedure, which means that applications are collected with the opening day until sufficient applications are received to spend the budget, after which the call is closed. This procedure is problematic because the conditions are unfair and do not contribute to the highest quality applications, but to receiving it from those who are the fastest and who score minimum points. Regularity of procedures during which tenders are closed and filled in an incredibly short time is also put into question. Other than the problematic procedure of the fastest finger, the time to prepare the projects was under 30 days and it included the Christmas and New Year holidays. At the end, the competent institutions changed the dates of opening the call, but not its procedure.

Thus, the annulment of long-announced public tenders in combination with insufficient or inadequate public measures for preserving employment in CSOs and mitigating social consequences of the pandemic and earthquakes caused financial shortages in the civil society sector. These shortages can have severe effects on the work of CSOs as many are forced to cut

60 See <https://www.cms.hr/hr/izjave-za-javnost/reakcija-44-udruge-pracenje-svakog-mobitela-u-zemlji-nije-mjera-zastite-od-koronavirusa-nego-nepotrebno-krsenje-ljudskih-prava>

61 See <https://www.cms.hr/hr/novosti/otvoreno-pismo-organizacija-civilnog-drustva-natjecaji-vrijedni-100-milijuna-kuna-koje-udruge-iscekuju-devet-mjeseci-izlaze-s-rokom-za-prijavu-od-10-dana-po-metodi-najbrzi-prst>

costs, which will likely result in job losses and a drop in offered services.

### ***Inequality and discrimination***

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During the distant schooling established after the outbreak of the pandemic, the GOOD initiative, the Serb National Council, the Roma Youth Organization of Croatia and Are You Syrious? warned the government to not leave vulnerable pupils and pupils belonging to ethnic or national minorities behind.<sup>62</sup> Namely, due to the necessity of having the digital equipment and the technical preconditions for following distance schooling. Thus, the initiative warned, socially and economically marginalized pupils were not always in the position to participate in the distance education as the Ministry of Science and Education did not adequately react to the needs of marginalized children as regards their participation in online schooling. Furthermore, pupils attend minority education or those who are not Croatian native speakers were also left behind, since the online and distance learning was not adopted to non-Croatian speaking children. Even though the pandemic made it necessary for the Ministry of Science and Education to react swiftly and digitalise primary and secondary education, it failed to consider the needs of marginalized pupils thus putting them in an unequal position and leaving them and their right to education behind.

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62 See <http://goo.hr/zasto-su-neka-djeca-ostavljena-na-pristojnoj-udaljenosti/>