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**COMMISSION STAFF WORKING DOCUMENT**

**2022 Rule of Law Report  
Country Chapter on the rule of law situation in Croatia**

*Accompanying the document*

**Communication from the Commission to the European Parliament, the Council, the  
European Economic and Social Committee and the Committee of the Regions**

**2022 Rule of Law Report  
The rule of law situation in the European Union**

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## **ABSTRACT**

The process for appointing the President of the Croatian Supreme Court, a challenge raised in the 2021 Rule of Law Report, was concluded. Responding to findings of the past Rule of Law Reports, amendments strengthened the State Judicial Council's and State Attorney's Council's role in the selection of judges and state attorneys, and, as committed in the context of the Croatian Recovery and Resilience Plan, both Councils' resources are being increased. New laws introducing regular security checks on judges and state attorneys conducted by the National Security Agency raised concerns. Criminal proceedings concerning cases of alleged corruption among judges and disciplinary proceedings are ongoing. The level of perceived judicial independence remains very low. The Supreme Court President disseminated a questionnaire for judges to appeal court presidents, which has raised concerns among judges. The justice system extended electronic communication tools and decreased backlogs at higher court instances, but significant efficiency and quality issues remain.

A new Strategy on the Prevention of Corruption for 2021-2030 was adopted in October 2021 to strengthen the prevention of corruption and raise awareness about its harmfulness. While the effective investigation of corruption continued, including on high-level corruption, the number of indictments and final judgments for corruption decreased. The excessive length of criminal proceedings continues to undermine the effectiveness of the anti-corruption framework. The new Law on the Prevention of Conflicts of Interest has strengthened asset declarations and improved the framework on revolving doors. A Code of Ethics was adopted for members of Government, however, a similar one for members of Parliament and detailed rules on lobbying activities remain to be introduced. The new framework on protection of whistleblowers entered into force. On the Government's proposal, Parliament adopted amendments to remove immunity of members of Government for corruption crimes.

The legal framework for media pluralism and freedom guarantees the basic right of freedom of expression and the right to information. There are concerns about the political independence of the Council for Electronic Media and the management of the public service broadcaster HRT. The revised Electronic Media Act updated rules on the transparency of state advertising and media ownership, and on media concentration. However, a need remains to further strengthen the framework on state advertising, including the new public tender procedure, as concerns related to the economic dependence of certain media outlets on state advertising persist. The establishment of an independent, self-regulatory body for the media is being discussed. The professional environment for journalists is impacted by verbal aggressions against journalists, including by politicians. A high number of cases of abusive litigation targeting journalists remains a significant concern. Delays in the processing of requests for information from journalists remain an issue.

The number and duration of public consultations increased, which resulted in more participants providing their comments. Parliament further decreased the use of emergency procedures, but the lack of recording of voting in some remote sessions is still problematic. The Constitutional Court reviewed some emergency measures and has accumulated backlog due to lack of resources. A challenge exists regarding the follow-up to and monitoring of the Ombudsperson's recommendations, and on access to information. While some preparatory steps were taken, the Government has not progressed in adoption of the new National Plan for Creating an Enabling Environment for the Civil Society Development 2021-2027.

## **RECOMMENDATIONS**

In addition to recalling the commitments made under the national Recovery and Resilience Plan relating to certain aspects of the justice system and the anti-corruption framework, it is recommended to Croatia to:

- Reconsider the newly introduced periodic security checks conducted by the National Security Agency on all judges and state attorneys by ensuring their integrity based on other existing mechanisms, taking into account European standards on judicial independence and autonomy of prosecutors and the opinion of the Venice Commission.
- Introduce comprehensive legislation in the area of lobbying, including on persons with top executive positions, and set up a public register of lobbyists.
- Further strengthen the framework for a fair and transparent allocation of state advertising, by establishing clear criteria, good practices and oversight measures to guarantee the effective functioning of the new public tender procedure for local and regional media.
- Address the issue of strategic lawsuits against public participation targeted at journalists, including by addressing the abuse of legal provisions on defamation and encouraging awareness, taking into account European standards on the protection of journalists.
- Ensure a more systematic follow-up to recommendations and information requests of the Ombudsperson.

## **I. JUSTICE SYSTEM**

Croatia has a three-tiered justice system, with courts of general and specialised jurisdiction. The first instance courts of general jurisdiction, dealing with civil and criminal cases, are composed of Municipal courts (34), while the County courts (15) are the second instance courts of general jurisdiction, with some competences as first instance courts. The courts of specialised jurisdiction comprise nine Commercial and four Administrative courts at first instance, and the High Criminal Court, the High Misdemeanour Court, the High Commercial Court and the High Administrative Court at second instance. The Supreme Court deals with all types of cases. The Constitutional Court conducts constitutional review. An independent State Judicial Council ensures the autonomy and independence of the judiciary<sup>1</sup>. The State Attorney's Office (DO) is an autonomous, independent judicial body, acting as the prosecution service, and undertaking legal actions for protection of state property and applying legal remedies for protection of the Constitution and laws. Each State Attorney's Office is headed by a State Attorney. The State Attorney General is the head of the State Attorney Office of the Republic of Croatia (DORH), as the highest state attorney office. The powers over appointment and career of state attorneys and deputy state attorneys rest with the State Attorney's Council, while the powers over representation and management rest with the State Attorney General<sup>2</sup>. The State Attorney's Council is an independent self-governance body tasked with ensuring the autonomy and independence of the State Attorney's Office<sup>3</sup>. Croatia participates in the European Public Prosecutor's Office (EPPO). The Croatian Bar Association is an independent, self-governing professional organisation, which is in charge of disciplinary proceedings regarding lawyers<sup>4</sup>.

### **Independence**

**The level of perceived judicial independence in Croatia continues to be very low both among the general public and companies.** Overall, 20% of the general population and 23% of companies perceive the level of independence of courts and judges to be 'fairly or very

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<sup>1</sup> The State Judicial Council is a judicial self-governance body with 11 members, consisting of seven judges elected by their peers, two university professors of law and two members of Parliament, one of whom is from the opposition. The members of the Council are elected for a four-year term, and can be re-elected only once. The Council is responsible for appointing and dismissing judges and court presidents, deciding on the immunity, transfer and external activities of judges, conducting disciplinary proceedings and deciding on disciplinary responsibility of judges, participating in training of judges and court clerks, adopting a methodology for evaluating judges, keeping the personal records and verifying asset declarations of judges.

<sup>2</sup> Figures 55-57, 2019 EU Justice Scoreboard; Figure 54, 2020 EU Justice Scoreboard, and Figures 55-56, 2021 EU Justice Scoreboard.

<sup>3</sup> The State Attorney's Council is a prosecutorial self-governance body with 11 members, consisting of seven deputy state attorneys elected by their peers, two university professors of law and two members of Parliament, one of whom is from the opposition. The members of the Council are elected for a four-year term, and can be re-elected only once. The Council's mandate includes the appointment and dismissal, deciding on external activities, participating in training, deciding on objections on the evaluations, keeping the personal records and verifying the asset declaration of state attorneys and deputy state attorneys, as well as deciding on transfer, conducting disciplinary proceedings and deciding on the disciplinary responsibility of deputy state attorneys.

<sup>4</sup> The Assembly of the Bar elects, in accordance with the Statute of the Croatian Bar Association, the Disciplinary Court (consisting of at least five members and deciding on more serious violations, and on appeals against Disciplinary Councils' decisions), and the Higher Disciplinary Court (consisting of at least five members and deciding on appeals against Disciplinary Court's decisions), while the Executive Board of the Bar elects Disciplinary Councils (consisting of three members and deciding on less serious violations).

good' in 2022<sup>5</sup>. According to data in the 2022 EU Justice Scoreboard, the perceived judicial independence among both the general public and companies has increased in comparison with 2021 (17% for the general public and 16% for companies), inverting a previously decreasing trend. However, both figures are still lower in comparison with 2016 (28% for the general public and 24% for companies). The main reason cited by the general public and companies for the perceived lack of independence of courts and judges is the perception of interference or pressure from the Government and politicians<sup>6</sup>. More detailed surveys could help to address these issues by examining the specific reasons among the different stakeholders in the justice system behind the continuously low level of perceived judicial independence<sup>7</sup>.

**The process for appointing the Supreme Court President was concluded.** The Constitution requires the President of the Supreme Court to be appointed by Parliament upon a proposal from the President of the Republic. The 2021 Rule of Law Report mentioned that the then on-going process for appointing the new Supreme Court President led to an intense exchange between highest representatives of state authorities, which included repeated negative statements about Supreme Court and other judges. Seized in this appointment process, the Constitutional Court on 23 March 2021 rendered a judgment stressing the importance of cooperation between state authorities<sup>8</sup>. In July 2021, the State Judicial Council published the third public call for candidacies for the position<sup>9</sup>, which successfully led to Parliament's appointment of a new Supreme Court President on 15 October 2021. Informed, in part, by the difficulties in the last appointment procedure, on 11 February 2022, the procedure governing the selection procedure for the Supreme Court President was amended, to clarify procedural steps in order to avoid a future deadlock in the appointment process<sup>10</sup>.

**Amendments strengthened the State Judicial Council's and State Attorney's Council's role in the selection of judges and state attorneys.** As a follow up to the findings of the 2020 Rule of law Report<sup>11</sup>, in March 2021, the State Judicial Council prepared an analysis of

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<sup>5</sup> Figures 50 and 52, 2022 EU Justice Scoreboard. The level of perceived judicial independence is categorised as follows: very low (below 30% of respondents perceive judicial independence as fairly good and very good); low (between 30-39%), average (between 40-59%), high (between 60-75%), very high (above 75%).

<sup>6</sup> Figures 51 and 53, 2022 EU Justice Scoreboard.

<sup>7</sup> The last comprehensive survey of court users and professional was conducted in 2015 on accessibility of the court service, customer service at the court, the conducting of the hearing, the judgment of the court, and the service provided by the lawyer. Figure 45, 2017 EU Justice Scoreboard. See also Figure 49, 2018 EU Justice Scoreboard, Figure 42, 2019 EU Justice Scoreboard, Figure 42, 2020 EU Justice Scoreboard, Figure 37, 2021 EU Justice Scoreboard, and Figure 40, 2022 EU Justice Scoreboard, showing that in 2016-2020, no surveys were conducted.

<sup>8</sup> 2021 Rule of Law Report, Country Chapter on the rule of law situation in Croatia, pp. 3-4.

<sup>9</sup> According to Article 116(2) of the Constitution, the General Assembly of the Supreme Court is to provide its opinion on the candidates. On 2 September 2021, the General Assembly gave broad support (29 votes out of 31 present) to a current judge of the Supreme Court, who did not receive sufficient support in Parliament. General Assembly of the Supreme Court, 2 September 2021.

<sup>10</sup> According to the amendments to the Law on Courts, the State Judicial Council submits to the President of the Republic only timely and complete applications, and the President of the Republic must request the opinions of all relevant bodies (opinion of the General Session of the Supreme Court and the relevant committee of the Parliament) for all valid candidacies. If the President of the Republic does not nominate any of the candidates for the President of the Supreme Court within 15 days of receiving the last opinion from the relevant bodies, or if the proposed candidate is not elected by the Parliament, the Council shall annul the public call and, within eight days, re-initiate the procedure for the election of the President of the Supreme Court by issuing a new public call. Input from Croatia for the 2022 Rule of Law Report, p. 2.

<sup>11</sup> The 2020 Rule of Law Report found that the State Judicial Council and the State Attorney's Council are facing challenges following amendments that reduced their role in selecting judges and state attorneys. As

the law on the selection of judges and proposed changes<sup>12</sup>. Informed on this aspect by the Council's analysis, on the Government's proposal, Parliament on 1 July 2022 adopted amendments<sup>13</sup> to the Laws on State Judicial Council and State Attorney's Council. These amendments increase the number of points that candidates can achieve in the interview with the respective Council and thus expand the Councils' power to select candidates. Other amendments equalise the requirements for all judges applying to become members of the Council, extend the time for temporary secondment of judges (with their consent), harmonise procedural provisions on disciplinary proceedings on the dismissal of judges, introduce a more consistent distinction between appointment and transfer of judges including more regulated transfer process, oblige the tax authority to provide to the Councils the data on judges'/state attorneys' wealth without delay (in view of checking asset declarations), and revise the conditions for the appointment of court presidents by requiring that the candidate is not subject to disciplinary proceedings and lift the existing limitation of two possible appointments (to a maximum of two in a row).

**Criminal proceedings concerning cases of alleged corruption among judges reported in the 2021 Report and disciplinary proceedings are ongoing<sup>14</sup>.** Following allegations of violations by judges of the obligation of impartiality and their acceptance of improper gifts from the suspect in a criminal case before them, the State Judicial Council initiated and concluded several disciplinary proceedings. The State Attorney's Office launched criminal investigations, and the State Judicial Council approved pre-trial detention regarding the judges under investigation. In 2021, the State Judicial Council initiated nearly twice the number of disciplinary proceedings regarding judges compared to 2020, and, in its role acting as a legal safeguard for judicial independence, approved four requests from the State Attorney's Office for pre-trial detentions regarding judges (compared to none approved in 2020), which shows the increased activity of the Council with regard to integrity in the judiciary<sup>15</sup>. By February 2022, the State Judicial Council and State Attorney's Council concluded agreements and was granted access to 14 online registers in order to make verification of assets of judges more efficient<sup>16</sup>. In 2021, the two Councils have not progressed on verification of asset declarations of judges and state attorneys<sup>17</sup>. The IT tools

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regards judges, the 2018 amendments Law on State Judicial Council decreased the number of points that the State Judicial Council can award to candidates based on the interview, which reduced the possibility of the Council to distinguish amongst candidates. 2020 Rule of Law Report, Country Chapter on the rule of law situation in Croatia, pp. 3-4.

<sup>12</sup> 2021 Rule of Law Report, Country Chapter on the rule of law situation in Croatia, p. 6.

<sup>13</sup> Input from Croatia for the 2022 Rule of Law Report, p. 3-5. Public consultation on amendments to both laws took place in April 2022.

<sup>14</sup> The 2021 Rule of Law Report found that the State Judicial Council, Judges' Councils, and investigative authorities are reacting to a series of alleged ethical breaches and disciplinary violations by judges. 2021 Rule of Law Report, Country Chapter on the rule of law situation in Croatia, pp. 6-7.

<sup>15</sup> In 2021, 23 disciplinary proceedings were initiated (13 in 2020) and 13 sanctions including one conditional dismissal, six fines and six reprimands (only one sanction in 2020 – dismissal of a judge). 2021 and 2020 Reports on the work of the State Judicial Council and input from Croatia for the 2022 Rule of Law Report, pp. 5 and 31.

<sup>16</sup> These 14 registers concern various types of property (e.g. movable, immovable, securities).

<sup>17</sup> Until February 2022, the State Attorney's Council had not received any notification about discrepancies between declared and actual assets, but the State Judicial Council reacted to a journalist's research regarding one judge and started verifying the judge's assets in cooperation with the tax authority. Information received from the State Attorney's Council and State Judicial Council in the context of the country visit to Croatia. The 2021 Rule of Law Report found that shortages in human resources of the State Judicial Council and the State Attorney's Councils remained, even if some limited reinforcements had been allocated to verify the

have become operational and the human resources are in place, and the State Judicial Council is planning to conduct both regular verification of asset declarations, covering all judges in one court, and individual checks, in case specific information comes to its knowledge<sup>18</sup>. The same IT tools are also available for use by the State Attorney's Council for verification of asset declarations of state attorneys.

**New laws introducing regular security checks on judges and state attorneys raised concerns.** On 11 February 2022, Parliament adopted amendments to the Law on Courts and the Law on the State Attorney's Office empowering the National Security Agency<sup>19</sup> to conduct security checks on all judges and state attorneys<sup>20</sup>. The laws' explanatory memorandums justified the reform to be 'inextricably linked to the conditions for the proper exercise of judicial function/state attorney function' and stated the reason for reform were high levels of perception of corruption in the judiciary and some individual cases of inappropriate behaviour of judges. The security checks will be conducted every five years, unlike before, when they were only conducted once – before the first appointment of a candidate judge or before a judge was allocated organised crime and corruption cases<sup>21</sup>. The amended laws provide for several procedural safeguards, amongst which that a special panel composed of Supreme Court judges decides on the existence of security obstacles based on the report from the National Security Agency<sup>22</sup>. The introduction of security checks drew criticism from the European Commission stating that the measure could raise concerns in the light of European standards on judicial independence and autonomy of prosecutors<sup>23</sup>. Further

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newly published asset declarations of judges and state attorneys. 2021 Rule of Law Report, Country Chapter on the rule of law situation in Croatia, p. 1.

<sup>18</sup> Information received from the State Judicial Council in the context of the country visit to Croatia.

<sup>19</sup> Security and Intelligence Agency – SOA.

<sup>20</sup> New article 86.a of the Law on Courts and new article 99.a of the Law on State Attorney's Office.

<sup>21</sup> Based on 2015 and 2018 amendments to the Law on the State Judicial Council, the National Security Agency (NSA) has been conducting security checks on every candidate judge before their first appointment at a Municipal, Commercial or Administrative Court, or at the Supreme Court. The Council ascertains, based on report from the National Security Agency, whether a security obstacle exists. The candidate judge can see this report and provide comments to the Council. Judicial review is possible against Council's decision rejecting a candidate. In 2018, the Constitutional Court found that the 2015 amendments comply with the Constitution, as the security checks could assist the Council in selecting the best candidates for appointment. Judgment of the Constitutional Court of 22 May 2018, *U-I-3684/2015*, paras. 13 and 15.

However, when the newly introduced security checks were first applied in practice concerning a candidate for a Supreme Court judge, the Constitutional Court found a violation of the right to fair trial given that the Council did not give the applicant access to the results of the security check. The Court found that the Council failed to give reasons for its final assessment on the existence of security impediments and for preventing the applicant from having access to the security check report. Judgment of the Constitutional Court of 18 December 2018, *U-III-1709/2018*. The repeated appointment procedure before the Council was again reviewed before the Constitutional Court. The Court annulled the Council's decision not to appoint the candidate as a Supreme Court judge due to existence of security obstacles, as Council's vote lacked the necessary majority. The Court also found the Council did not respect the procedure as it did not ask for a supplementary security check to respond to the candidate's evidence opposing the NSA report. Judgment of the Constitutional Court of 17 September 2020, *U-III-2390/2019*, paras. 27-33.

The security checks regarding judges dealing with organised crime and corruption offences ('USKOK' judges) have been introduced with 2010 amendments to the Law on Courts.

<sup>22</sup> For example, other safeguards regarding judges are: the finding of a security obstacle by this Supreme Court panel may only be sanctioned in disciplinary or criminal proceedings; and the availability of legal remedies regarding the security check. However, in case of deputy state attorneys, a panel of five deputy state attorneys appointed by the Council of the State Attorney's Office of the Republic of Croatia decides on the existence of security obstacles, which is not a judicial body.

<sup>23</sup> On 1 December 2021, while the proposed amendments were with the Government before being sent back to the Parliament for second reading, Commissioner Reynders sent a letter to the Minister of Justice, stating



criticism was raised by the Supreme Court<sup>24</sup>, the Association of Croatian Judges<sup>25</sup>, and the European Association of Judges<sup>26</sup>. Both the Supreme Court<sup>27</sup> and the Association of Judges<sup>28</sup> seized the Constitutional Court for a constitutional review of the amendments to the Law on Courts, and on 16 May 2022, the Constitutional Court temporarily suspended the application of the amended law pending its final decision on constitutionality<sup>29</sup>. In an Opinion dated 21 March 2022, the Venice Commission expressed regret that amendments were adopted before this opinion was published, and recommended Croatia to reconsider its approach and develop an alternative strategy to ensure judges' integrity, based on existing mechanisms<sup>30</sup>. While conducting regular security checks on all judges and state attorneys, sensitive personal information will be collected by the National Security Agency outside the regular disciplinary or criminal proceedings and without the safeguards contained therein<sup>31</sup>. It is important that the regime on security checks takes into account European standards regarding judicial independence and autonomy of prosecutors, which provide that 'independence means that the judiciary is free from external pressure, and is not subject to political influence or manipulation, in particular by the executive branch'<sup>32</sup>. Security checks on judges, especially when carried out by an executive body, may constitute such an external pressure<sup>33</sup>. When security/integrity checks are not carried out by self-governing bodies of the judiciary themselves but by an external body, utmost consideration must be given to respecting the

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that the measure could contribute to a generalised suspicion among the public about the judiciary. Considering the sensitivity of such reform, he encouraged the Croatian Government to consult the Venice Commission. The letter also noted that judicial integrity and fighting against corruption within the judiciary are crucial for the rule of law and for the public trust in the judicial system.

<sup>24</sup> The Supreme Court stated that involving the National Security Agency, which is part of the executive, is contrary to the principle of separation of powers and judicial independence. The decision was adopted unanimously. Statement by the General Assembly of the Supreme Court: regular security checks on judges are unacceptable, 29 November 2021. In its earlier opinion on the draft proposal, the Supreme Court did not oppose the introduction of security checks.

<sup>25</sup> Statement by the President of the Association of Judges, 20 October 2021. In its earlier opinion on the draft proposal, the Association in principle did not oppose the introduction of security checks.

<sup>26</sup> The European Association of Judges found that the National Security Agency is part of the executive power and that the introduction of security checks 'opens the door to [its] undue influence brought [...] on the judiciary', and concluded that the measures are not compatible with international and European standards. Opinion of the European Association of Judges on repeated security checks, 7 February 2022.

<sup>27</sup> The decision was adopted unanimously and included a request to Constitutional Court to temporarily suspend the application of article 86.a of Law on Courts. Statement by the General Assembly of the Supreme Court, 14 March 2022.

<sup>28</sup> Statement by the Association of Judges of 7 March 2022.

<sup>29</sup> Decision of the Constitutional Court of 16 May 2022, U-I-2215/2022, U-I-2751/2022 and U-I-2875/2022.

<sup>30</sup> According to the Venice Commission, if the security checks of judges by an executive body were introduced, there is a risk that perceived lack of independence of the judiciary, notably on account of alleged interference or pressure from government and politicians, would even be aggravated. The Venice Commission also found that the reform was not justified and that the existing Croatian legislation already provided for a wide array of mechanisms to ensure integrity of the judicial corpus, for example: (i) annual asset declarations which are checked by the State Judicial Council; (ii) annual assessments by the court presidents (regarding the minimum output and the behaviour of the judge concerned); (iii) the possibility of disciplinary proceedings; (iv) the possibility of criminal liability (judges only enjoy functional immunity); and (v) the existing possibilities for security checks. Venice Commission opinion (CDL(2022)005), paras. 18, 35-36.

<sup>31</sup> The Venice Commission expressed concern that such a measure risks contributing to citizens' lack of trust in the judiciary and in its independence. Venice Commission opinion (CDL(2022)005), para. 36.

<sup>32</sup> Venice Commission, Rule of Law checklist (CDL-AD(2016)007), para. 74. See also Recommendation CM/Rec(2000)19 of the Committee of Ministers of the Council of Europe, para. 11.

<sup>33</sup> Venice Commission opinion (CDL(2022)005), para. 13.

principles of separation of powers and checks and balances<sup>34</sup>. The amendments raise concern, since the security checks would be conducted by the National Security Agency, a body under the control of the executive, and because they would be regular and conducted for all existing judges and state attorneys, not only for candidates before their appointment<sup>35</sup>. On 1 July 2022, Parliament adopted amendments that introduced a new disciplinary offence or a ground for dismissal, in case an existing judge or state attorney would refuse to give consent for the National Security Agency to conduct a security check, respectively<sup>36</sup>.

**A questionnaire for judges disseminated by the Supreme Court President to presidents of all second instance courts raised concerns among judges.** On 9 February 2022, the President of the Supreme Court sent a letter to the presidents of the 20 second instance courts<sup>37</sup> requesting information on the external activities of the court's judges (and their income), their membership in associations, public appearances, the employment at courts of their family members/relatives, and any lawsuits brought by them<sup>38</sup>. The stated reason for the questionnaire was to collect information on the situation on the ground and dispel doubts in the public about the judges' focus of activities. Some of this information is already covered by the State Judicial Council's competences regarding asset declarations<sup>39</sup>. While most addressed judges provided a summary of replies, others publicly objected and contested the competence of the Supreme Court President to ask these questions, of which some interfered with the judges' right to privacy, freedom of association and freedom of expression. The Supreme Court President summarised the results of the survey, and called for developing more precise ethical and legal rules, and for organising a public discussion involving all main judicial stakeholders<sup>40</sup>. It is important that any data collection regarding judges takes into account Council of Europe recommendations regarding judicial independence in relation to external activities and ethics, which provide that judges may engage in other activities<sup>41</sup> but should be guided by ethical principles<sup>42</sup>.

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<sup>34</sup> Venice Commission opinion (CDL-AD(2021)046), para. 16.

<sup>35</sup> From a comparative perspective, in the few other Member States where bodies comparable to the National Security Agency conduct security checks on judges, this happens only regarding candidates or for judges in specific positions. The framework introduced in Croatia is therefore unique in the European Union. Figure 56, 2022 EU Justice Scoreboard. In a few Member States, the National Security agency conducts a security check only once - before the first appointment of a candidate judge, while in a few other Member States, such a check is conducted on candidate judges only upon an explicit request.

<sup>36</sup> Amendments concern the Laws on State Judicial Council and State Attorney's Council.

<sup>37</sup> To 15 County Courts, the High Criminal Court, High Commercial Court, High Misdemeanour Court and High Administrative Court.

<sup>38</sup> More precisely, the questions asked how often judges work as private arbiters, lecturers for private companies/at universities, and how much they would approximately earn per year from these activities. Furthermore, the survey asked about how often judges publish scientific articles or books, whether they are members of any sport or other associations, and whether judges make public statements. Finally, the questions asked whether judges' family members or relatives are employed at any court and whether they are legal professionals, and whether the judges have within last five years submitted any suits against journalists or publishers and for what amount.

<sup>39</sup> Apart from general rules on impartiality and conflict of interest, the legislation does not set any requirements regarding membership in associations for judges, outside the general rules on impartiality.

<sup>40</sup> Letter by the Supreme Court President of 4 April 2022 to the State Judicial Council, Association of Judges, Ministry of Justice and Public Administration, Parliament, Association of Journalists and NGO Miko Tripalo.

<sup>41</sup> To avoid actual or perceived conflicts of interest, their participation should be restricted to activities compatible with their impartiality and independence. Recommendation CM/Rec(2010)12 of the Committee of Ministers of the Council of Europe, para. 21.

<sup>42</sup> Recommendation CM/Rec(2010)12 of the Committee of Ministers of the Council of Europe, para. 21.

## Quality

**Administrative courts were integrated into the unified ICT system and the use of electronic communication increased, but room for improvement remains.** Despite some improvement, considerable room for improvement of Information and Communication Technologies (ICT) for case management and the electronic communication between courts and parties remains<sup>43</sup>. As regards the use of ICT in case management, the first and second instance administrative courts were integrated into the unified ‘e-File’ case management system already used by all other courts<sup>44</sup>. In addition, the ‘e-Communication’ system, which allows the electronic exchange of documents with courts, has been integrated in nearly all courts, except for the criminal department of the Supreme Court, three Municipal Courts, the High Misdemeanor Court, the High Criminal Court, and the criminal and misdemeanor departments of the courts<sup>45</sup>. In 2021, the use of e-Communication with courts further increased, between two and seven-fold (compared to 2020) in some cases<sup>46</sup>. The number of documents sent and received by individual claimants in Commercial and Municipal Court remained low, at around 10 500 in total in 2021<sup>47</sup>. However, while procedural rules have partially been amended to allow for electronic communication<sup>48</sup>, room for improvement remains for communication of courts and prosecution, particularly in criminal proceedings<sup>49</sup>. The publication of first and second instance court judgments, which could contribute to increasing transparency and consistency of case-law, remains very limited<sup>50</sup>.

**Resources of the State Judicial Council and the State Attorney’s Council are being increased.** The 2021 Rule of Law Report found that the State Judicial Council and the State Attorney’s Council had received some temporary reinforcements, but a shortage in human resources remained<sup>51</sup>. The milestone under the Recovery and Resilience Plan required Croatia

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<sup>43</sup> Figures 44-45 and 47, 2022 EU Justice Scoreboard.

<sup>44</sup> The four first-instance Administrative courts and the High Administrative Court were integrated in June 2021. Input from Croatia for the 2021 Rule of Law Report, p. 9.

<sup>45</sup> In criminal cases, the Supreme Court does not yet communicate electronically with lower courts or lawyers/parties. Information received from the Supreme Court in the context of the country visit to Croatia. The three Municipal Courts are Municipal Criminal Court in Zagreb, and Municipal Misdemeanor Courts in Split and Zagreb. Written contribution from the Government following the country visit to Croatia.

<sup>46</sup> This was the case among companies, public notaries, lawyers and court experts, but among the insolvency practitioners and interpreters the increases were smaller, alongside with lower total number of documents that were exchanged by electronic means. Written contribution from Ministry of Justice and Public Administration following the country visit to Croatia.

<sup>47</sup> Supreme Court, 2021 Report, pp. 125 and 127.

<sup>48</sup> To be noted, that further improvements to procedural laws to allow for expansion of electronic communication are on-going. On a proposal from the Commission, the Council adopted the Council Implementing Decision of 16 July 2021 on the approval of the assessment of the recovery and resilience plan for Croatia, under which the Milestone no. 216 states: ‘Amendments to the Criminal Procedure Act allowing the use of ICT in criminal proceedings, including the introduction of remote hearings, the extension of the possibility of giving on-line testimonies for victims of crime, the possibility to communicate with lawyers via a secure video link and the preparation of hearings for accused persons in pre-trial detention, and the introduction of e-communications’.

<sup>49</sup> Figures 41-49, 2022 EU Justice Scoreboard.

<sup>50</sup> Figure 48, 2022 EU Justice Scoreboard. 2021 Rule of Law Report, Country Chapter on the rule of law situation in Croatia, p. 7.

<sup>51</sup> 2021 Rule of Law Report, Country Chapter on the rule of law situation in Croatia, pp. 7-8. As stated in the 2020 Rule of Law Report, the State Judicial Council and the State Attorney’s Council have considerable powers, but their administrative capacity remains very limited. 2020 Rule of Law Report, Country Chapter on the rule of law situation in Croatia, pp. 4-5.

to increase the human resources of both Councils by the end of March 2022<sup>52</sup>. In February 2022, the State Judicial Council functioned with five permanent officials (the State Attorney's Council with four) and two temporary secondments transferred from the Ministry of Justice and Public Administration (one transferred to the State Attorney's Council), and was preparing vacancies for permanent employment of two additional officials (one for the State Attorney's Council), to replace the secondments. These improvements are a step in the right direction to address the administrative capacity of the two independent Councils and ensure their effective functioning, including on verification of asset declarations<sup>53</sup>.

## Efficiency

**The backlogs and length of proceedings continued to decrease at second instance and in the Supreme Court, and mostly increased or stagnated at first instance courts.** The backlogs and length of proceedings remain among the most considerable in the EU<sup>54</sup>. The COVID-19 pandemic adversely affected the efficiency of first instance courts, while second instance and Supreme Court mostly showed improved efficiency. In 2021, the average length of proceedings in the first instance courts remained among the longest in the EU and mostly increased or stagnated, with 1 000 days in litigious commercial cases (the same as in 2020), 982 days in criminal cases at County courts (804 in 2020) and 765 days in criminal cases at Municipal courts (705 in 2020)<sup>55</sup>. The average length of proceedings mostly decreased before the County courts, where litigious civil cases at second instance took only 166 days (233 in 2020), and criminal cases at second instance took 91 days (112 in 2020). At first instance courts, backlogs decreased by 12% in commercial and by 4% in administrative cases (compared to 2020), but continued to increase by 22% in 2021 in litigious civil cases, and by 6% in criminal cases (before Municipal courts). Before County courts, backlogs stagnated in appeal in litigious civil cases and in first instance criminal cases, and but increased by 25% in appeal in criminal cases. Before second instance High Commercial Court and High Administrative Court, the average length of proceedings decreased (from 558 to 363 days, and from 223 to 190 days, respectively), and so did the backlog (by about 25% in both courts). In the Supreme Court, the backlogs decreased by about 8% in civil and 60% in criminal cases<sup>56</sup>. At the end of 2021, the backlog of court cases older than 7 years further decreased (by about 12% compared to end 2020)<sup>57</sup>.

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<sup>52</sup> On proposal from the Commission, the Council adopted the Council Implementing Decision of 16 July 2021 on the approval of the assessment of the recovery and resilience plan for Croatia, under which the Milestone no. 214 states: 'Electronic tools and adequate administrative capacities shall be in operation for the State Judicial Council and the State Attorney's Council, in order to improve the quality of the work of both Councils. Their human resources shall be increased by 50% compared to 2021 baseline (by recruiting at least 4 persons) and the linking the DSV and the DOV to the common land registry and cadastre (ZIS) and tax administration information system, shall be implemented in order to establish an effective mechanism for verifying the asset declarations of state officials'.

<sup>53</sup> See above, under Independence section. 2021 Rule of Law Report found that shortages in human resources of the State Judicial Council and the State Attorney's Councils remain, even if some limited reinforcements have been allocated to verify the newly published asset declarations of judges and state attorneys. 2021 Rule of Law Report, Country Chapter on the rule of law situation in Croatia, pp. 2, and 5-6.

<sup>54</sup> Figures 6-15, 2022 EU Justice Scoreboard.

<sup>55</sup> In first instance litigious civil cases (before Municipal courts) it further decreased to 673 days (826 in 2020). Written contribution from the Ministry of Justice in the context of the country visit to Croatia.

<sup>56</sup> Written contribution from the Ministry of Justice in the context of the country visit to Croatia.

<sup>57</sup> The total number of pending cases older than 7 years before Municipal, Commercial, County and High Commercial courts was 19 064 at the end of 2021. Supreme Court (2022), 2021 Report, p. 44.

## II. ANTI-CORRUPTION FRAMEWORK

The Ministry of Justice and Public Administration is the central corruption prevention body, with a dedicated unit for the coordination and the implementation of the anti-corruption strategy and related action plans. The Ministry of Justice and Public Administration is also the central body for exchanging data on the suppression of corruption. The Council for the Prevention of Corruption<sup>58</sup> and the National Council for Monitoring the Implementation of the Strategy for Combating Corruption, report to the Parliament twice a year. The Office for the Suppression of Corruption and Organised Crime (USKOK) is the specialised prosecutor's office in charge of corruption offences, and the National Police Office for the Suppression of Corruption and Organised Crime (PNUSKOK) is the specialised police department in charge of detecting, and investigating complex corruption-related crimes. The new High Criminal Court began its operation in 2021 as a second instance court in corruption cases prosecuted by the USKOK. The State Commission on Control of Public Procurement Procedures is an independent tribunal responsible for reviewing appeals regarding public procurements. The Ombudsperson's office is managing reports made by whistleblowers.

**The perception among experts and business executives is that the level of corruption in the public sector remains high.** In the 2021 Corruption Perceptions Index by Transparency International, Croatia scores 47/100, ranks 24<sup>th</sup> in the European Union and 63<sup>th</sup> globally<sup>59</sup>. This perception remained relatively stable<sup>60</sup> over the past five years. The 2022 Special Eurobarometer on Corruption shows that 94% of respondents consider corruption widespread in their country (EU average 68%) and 60% of respondents feel personally affected by corruption in their daily lives (EU average 24%)<sup>61</sup>. As regards businesses, 93% of companies consider that corruption is widespread (EU average 63%) and 66% consider that that corruption is a problem when doing business (EU average 34%)<sup>62</sup>. Furthermore, 31% of respondents find that there are enough successful prosecutions to deter people from corrupt practices (EU average 34%)<sup>63</sup>, while 16% of companies believe that people and businesses caught for bribing a senior official are appropriately punished (EU average 29%)<sup>64</sup>.

**The new 2021-2030 Anti-Corruption Strategy aims to strengthen the prevention of corruption and raise awareness on the harmfulness of corruption, while the first implementation plan is in preparation.** The Croatian Recovery and Resilience Plan contains a milestone which required Croatia to adopt a new anti-corruption strategic

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<sup>58</sup> A government advisory body composed of representatives of public institutions and non-governmental organisations.

<sup>59</sup> Transparency International (2022), Corruption Perceptions Index 2021. The level of perceived corruption is categorised as follows: low (the perception among experts and business executives of public sector corruption scores above 79); relatively low (scores between 79-60), relatively high (scores between 59-50), high (scores below 50).

<sup>60</sup> In 2016, the score was 49, while in 2021, the score is 47. The score significantly increases/decreases when it changes more than five points; improves/deteriorates (changes between 4-5 points); is relatively stable (changes from 1-3 points) in the last five years.

<sup>61</sup> Special Eurobarometer 523 (2022). The Eurobarometer data on citizens' corruption perception and experience is updated every second year. The previous data set is the Special Eurobarometer 502 (2020).

<sup>62</sup> Flash Eurobarometer 507 on Businesses' attitudes towards corruption in the EU (2022). The Eurobarometer data on business attitudes towards corruption as is updated every second year. The previous data set is the Flash Eurobarometer 482 (2019).

<sup>63</sup> Special Eurobarometer 523 on Corruption (2022).

<sup>64</sup> Flash Eurobarometer 507 on Businesses' attitudes towards corruption in the EU (2022).

framework by the end of 2021 and to manage corruption risks in priority areas<sup>65</sup>. On 29 October 2021, the Parliament adopted the new Strategy for the Prevention of Corruption 2021-2030. The strategy lists 95 measures to achieve five objectives and will be complemented by three-year implementation plans. The first implementation plan, covering the period 2022-2024<sup>66</sup> is expected to be adopted in the summer 2022 and includes first steps to start implementing most of the measures listed in the Strategy<sup>67</sup>. The Council for the Prevention of Corruption will monitor the triennial implementation plans on the side of the executive branch. This monitoring will be complemented on the parliamentary side through the work of the National Council for Monitoring the Implementation of the Anti-Corruption Strategy<sup>68</sup>.

**While the effective investigation of corruption continued, including in high-level cases, the number of indictments and final judgments for corruption decreased.** Both the specialised police (PNUSKOK) and prosecution (USKOK) report that the cooperation in investigating and prosecuting corruption offences is working well<sup>69</sup>. During the last twelve months, eight financial investigators have been recruited to assist prosecutors with economic and financial crimes<sup>70</sup>. National authorities reported that available resources are considered sufficient and specialised anti-corruption trainings are available online. There are numerous cases reported of high-level corruption cases being taken forward<sup>71</sup>. The 2021 annual report of the State Attorney's Office<sup>72</sup> shows that the number of criminal notifications on corruption slightly increased<sup>73</sup>, as well as the number of investigations<sup>74</sup>. However, in 2021, the State Attorney's Office initiated fewer indictments (69) for corruption than in 2020 (84) and in

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<sup>65</sup> On proposal from the Commission, the Council adopted the Council Implementing Decision of 16 July 2021 on the approval of the assessment of the recovery and resilience plan for Croatia, under which the Milestone no. 231 states: 'The strategy shall include measures to manage corruption risks in priority areas and to meet the following five objectives: i) strengthening the institutional and normative framework for the fight against corruption, ii) increasing transparency and openness of public administration bodies, iii) improving the integrity and conflict of interest management system, iv) strengthening of anti-corruption potentials in the public procurement system, and v) raising public awareness of the harmfulness of corruption, the necessity of reporting irregularities and strengthening transparency'.

<sup>66</sup> Input from Croatia for the 2022 Rule of Law Report, p. 19.

<sup>67</sup> Information received from the Ministry of Justice and Public Administration in the context of country visit to Croatia. The measures include cashless payment of Police fines, upgrade of Police IT equipment, funding for non-profit media, training of judges, prosecutors and court/prosecution management on communication with media, ethics workshops for tax officials, and a nation-wide campaign to raise public awareness of the harmfulness of corruption. Draft of the Action Plan in public consultation.

<sup>68</sup> Input from Croatia for the 2022 Rule of Law Report, pp. 19-20. In a June 2022 hearing before Parliament to examine possible political influence on the work of the State Attorney's Office, its head stated that politicians should refrain from commenting in public on its decisions to take forward a case or not.

<sup>69</sup> Information received from PNUSKOK and USKOK in the context of the country visit to Croatia.

<sup>70</sup> Written contribution received from the State Attorney's Office in the context of the country visit to Croatia.

<sup>71</sup> Examples are listed in State Attorney's Office (2022), 2021 Report, pp. 201-202.

<sup>72</sup> The data that is mentioned in the rest of this paragraph all comes from State Attorney's Office (2022), Report for 2021, pp. 198-199.

<sup>73</sup> In 2021, the State Attorney's Office received criminal notifications regarding 1 366 alleged suspects of corruption offences, representing 71% of the total criminal notifications received by USKOK (up from 1 271 in 2020 and 1 003 in 2019). This shows about 7% increase in the number of alleged suspects compared to 2020. To be noted that more than 90% of these complaints were dismissed and most of them arrived from citizens, while in 10% decision was made to open an investigation.

<sup>74</sup> In 2021, investigations were opened concerning 135 persons, compared to 108 in 2020 and 142 in 2019.

2019 (109). In the same period, the Courts delivered judgments regarding 67 persons, compared to 92 persons in 2020<sup>75</sup>.

**The excessive length of criminal proceedings has increased and continued to undermine the effectiveness of the anti-corruption system.** As noted in past Rule of Law Reports<sup>76</sup>, Courts continued to experience efficiency challenges in adjudicating corruption-related cases<sup>77</sup>. In 2021, criminal cases on average took 982 days before County courts (804 in 2020) and 765 days before Municipal courts (705 in 2020)<sup>78</sup>. In 2021, the length of investigations led by the state attorneys in USKOK slightly increased (also due to complexity of cases and COVID-19 pandemic). In only about 35% of USKOK cases, the investigation was finished within six months or sooner (28% in 2020). In about 40% of cases, the investigation lasted up to one year (35% in 2020), while in the remaining 25% of cases, the investigation lasted up to 18 month or above (35% in 2020)<sup>79</sup>. The Anti-Corruption Strategy envisages that the Criminal Procedure Code and the Law on the Office for the Suppression of Corruption and Organised Crime (USKOK) will be amended, and that the capacity of USKOK will be increased to ensure the completion of proceedings within a reasonable time<sup>80</sup>.

**On the Government's proposal, Parliament adopted amendments to remove immunity of the members of the Government for corruption crimes.** The abolishment of political immunities of Government members was announced in the Government's Programme 2020-2024<sup>81</sup>. The law foresees immunity for all crimes punishable with up to five year imprisonment<sup>82</sup>. On 1 July 2022, Parliament, on the Government's proposal, adopted amendments to remove immunity of members of Government for all corruption offences that are prosecuted *ex officio*, i.e. independent of a complaint. The Anti-Corruption Strategy 2021-2030 foresees an assessment of the existing framework with a view to improve the legislation to fight bribery in international business transactions<sup>83</sup>, which concluded that improvements can be made as to the definition, the liability of legal persons, sanctions and enforcement<sup>84</sup>.

**The rules on asset declarations and on revolving doors have been strengthened in the new Law on the Prevention of Conflicts of Interest.** The 2021 Rule of Law Report found that limited progress had been made on the strengthening of the legal framework on

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<sup>75</sup> Out of the 67 final judgments in 2021, 59 were convictions for corruption (ie. a succes rate of 88%, compared to a rate of 85% in 2020). As regards the sanctions for corruption offences, 36 persons received jail sentences (31 in 2020; out of 36 convictions in 2021, for 20 persons jail sentence was changed into work for the public good)) and 19 conditional sentences (47 in 2020).

<sup>76</sup> 2020 Rule of Law Report, Country Chapter on the rule of law situation in Croatia, p. 12; 2021 Rule of Law Report, Country Chapter on the rule of law situation in Croatia, p. 11.

<sup>77</sup> For example, the Annual report of the Supreme Court for 2020 noted clearance rate of only 78% in relation to cases on corruption and organised crime and the disposition time of 1 425 days in the first instance courts. According to the Report, the reasons lie in an inadequate number of judges (29) working on these cases in an inadequate number of courtrooms (19) preventing the courts to be more efficient. The 2021 Report of the Supreme Court does not contain such data.

<sup>78</sup> Written contribution from the Ministry of Justice and Public Administration in the context of the country visit to Croatia. The data refer to the average duration of all criminal first instance proceedings.

<sup>79</sup> State Attorney's Office (2022), 2021 Report, p. 163.

<sup>80</sup> Input from Croatia for the 2022 Rule of Law Report, p. 27.

<sup>81</sup> Croatian Government, Programme of the Government 2020-2024, p. 45.

<sup>82</sup> Bribery is sanctioned in the criminal code with penalties up to ten years imprisonment, but the penalties for other corruption offences do not all meet this threshold.

<sup>83</sup> Measure 4.1.12.

<sup>84</sup> OECD (2022), Fighting Transnational Bribery in Croatia, Assessment of Legal and Policy Frameworks. The project was supported by the European Commission.

prevention of conflict of interest<sup>85</sup>. Croatia's Recovery and Resilience Plan contains a milestone which required Croatia to revise the conflict of interest legislation by the end of 2021<sup>86</sup>. Accordingly, the new Law on the Prevention of Conflict of Interest entered into force on 25 December 2021<sup>87</sup>. The law further clarified the procedures before the Commission for the Resolution of Conflicts of Interests<sup>88</sup>. Asset declarations have to be submitted once a year by a greater number of obliged entities<sup>89</sup> and certain definitions have been expanded, such as the concept of private gain, which now includes not only material, but also non-material gain<sup>90</sup>. The law introduced a previously missing obligation to declare a conflict of interest<sup>91</sup>. It obliges a person to either remove the conflict of interest or remove themselves from decision-making. The Commission for the Resolution of Conflicts of Interest can now impose higher minimum fines and a new fine has been envisaged for the heads of public bodies who do not submit the required public information, both of which could contribute to more effective investigations<sup>92</sup>. Court judgments clarified that the Commission's sanctioning powers do not extend to violation of "principles of public office", which is notably broader than a conflict of interests<sup>93</sup>. The new law also did not introduce sanctions for such violations, which, according to the Government, are envisaged to be addressed by new ethical bodies<sup>94</sup>. The cooling-off period<sup>95</sup> is extended from 12 to 18 months<sup>96</sup>. Following a first assessment of

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<sup>85</sup> 2021 Rule of Law Report, Country Chapter on the rule of law situation in Croatia, pp. 12-13.

<sup>86</sup> On proposal from the Commission, the Council adopted the Council Implementing Decision of 16 July 2021 on the approval of the assessment of the Recovery and Resilience Plan for Croatia, under which Milestone no. 232 states what the amendments to the Act on the Prevention of Conflicts of Interest shall include, amongst it also that they should extend the scope of the Act in terms of addressees, oblige certain categories of addressees of the law to fill in asset declarations annually and to make declarations within given deadlines, and remedy any potential conflict of interest.

<sup>87</sup> Written contribution from the Government following the country visit to Croatia.

<sup>88</sup> For example, Articles 42-45 of the new law. The decisions of the Commission on Resolution of Conflicts of Interest can be challenged before the High Administrative Court, which should decide within 90 days.

<sup>89</sup> Among the additional obliged entities are the management of publicly owned companies and companies whose majority owners are publicly owned companies, including health care organisations and heads of certain independent bodies, heads or managing boards of institutions, agencies, funds and other institutions who, depending on their competence in framework of their work manage a considerable amount of assets or who are otherwise evaluated as a sensitive to risk of corruption. This should result in about 1 000 more obliged entities. Public access to asset declarations of judicial officials has been enabled via an online application as of 4 January 2021 and steps are taken to improve the verification of these asset declarations. Input from Croatia for the 2022 Rule of Law Report, pp. 22-25.

<sup>90</sup> Article 5(1)8. Additionally, the definition of family member now has a broader definition, which includes life partners, and the definition of business relations now includes all relations with the exclusion of state aid in the event of a natural disaster.

<sup>91</sup> Article 9 of the new Law on the Prevention of Conflicts of Interest.

<sup>92</sup> Written contribution from the Government following the country visit to Croatia.

<sup>93</sup> The decisions of the Commission for the Resolution of Conflicts of Interest have been subject to a number of judgments of the administrative courts and the Constitutional Court. Several judgments concerned the interpretation of article 5 (now article 6, containing principles to which public officials must adhere in executing their public duties) and the possibility for the Commission to impose sanctions on public officials solely on the basis of this provision. On 10 December 2020, the High Administrative Court delivered its judgment on an appeal and, by reference to the provisions in article 5 of the Law on the Prevention of Conflict of Interests, ruled that the Commission does not have the powers to sanction only a violation of principles of conduct of public officials.

<sup>94</sup> See below, paragraph on ethics rules for members of the Government and Parliament. 2021 Rule of Law Report, Country Chapter on the rule of law situation in Croatia, p. 12.

<sup>95</sup> This limitation concerns companies that were supervised by the body in which the official served or conducted business with.

<sup>96</sup> Input from Croatia for the 2022 Rule of Law Report, pp. 24-25.



the draft law before the adoption, GRECO concluded that it appeared to go in the right direction as intended by its recommendations<sup>97</sup>.

**The Government committed to increasing the resources of the Commission for the Resolution of Conflicts of Interest.** The Government stated that in 2022 the administrative and technical capacities of the Commission for the Resolution of Conflicts of Interest, currently consisting of five members and 14 employees, will be strengthened with five additional employees (nine altogether in next three years)<sup>98</sup>. Furthermore, due to the lack of space for new employees, funds are provided for accommodation and equipment for new employees<sup>99</sup>. While its budget increased in 2020, the budget decreased in 2021 to a level comparable to that of 2019<sup>100</sup>. So far, the Commission was able to deliver on instructions and opinions on conflict of interests<sup>101</sup>. With the enlarged circle of officials that have to make asset declarations, the Commission will now have to process nearly the double number of declarations<sup>102</sup>. The Commission reported that, due to a lack of resources, it is only able to do a preliminary, administrative check for all of the asset declarations received. However, it is unable to perform the regular checks required by law, which consist of collecting and sharing data, and comparing the reported data on the assets from the official's submitted declarations with the data acquired from the Tax Administration and other competent bodies in Croatia<sup>103</sup>. A corresponding milestone under the Recovery and Resilience Plan sets out that Croatia will improve the asset declaration information systems by the end of June 2024<sup>104</sup>. A project to improve the application for filling and checking asset declarations, as well as the process of filling in asset declarations itself, is planned<sup>105</sup>. GRECO considers that capacity-strengthening efforts need to continue<sup>106</sup>.

**A Code of Conduct was adopted for members of the Government, but one for members of Parliament is still missing.** A Code of Ethics for state level civil servants is in place since 2011<sup>107</sup>, and Commissioners are appointed in all state and judicial bodies with the task of monitoring the implementation of this Code of Ethics and resolving complaints of unethical behaviour. The Ministry of Interior is developing a new Code of Ethics for Police Officers to

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<sup>97</sup> GRECO Fifth Evaluation Round - Compliance Report, p. 6.

<sup>98</sup> Input from Croatia for the 2022 Rule of Law Report, p. 17 and information received from the Commission for the Resolution of Conflicts of Interest in the context of country visit to Croatia.

<sup>99</sup> Written contribution from the Government following the country visit to Croatia.

<sup>100</sup> The budget was approx. EUR 900 000 (in 2019), EUR 1 million (in 2020) and EUR 850 000 (in 2021).

<sup>101</sup> In the first 45 days of 2022, the Commission for Resolution of Conflict of interests issued around 100 opinions the first month and a half of 2022 (compared to 158 in total in 2021) and more than 110 instructions (compared to 52 in total in 2021).

<sup>102</sup> Written contribution from the Commission for the Resolution of Conflicts of Interest in the context of the country visit to Croatia. According to evaluations, about 10 officials would be needed to deal only with asset declarations. Information received from the Commission for the Resolution of Conflicts of Interest in the context of the country visit to Croatia.

<sup>103</sup> Written contribution from the Commission for the Resolution of Conflicts of Interest in the context of the country visit to Croatia. The Commission initiated 80 regular checks and finished 28.

<sup>104</sup> The Council Implementing Decision of 16 July 2021 on the approval of the assessment of the recovery and resilience plan for Croatia, Milestone no. 241 states: 'The current system for submitting the asset statement of officials shall be improved by allowing for the automatic filling of data from available public sources and improving the preconditions for checking the information contained in the asset statement of state officials and judicial officials'.

<sup>105</sup> Milestone no. 241.

<sup>106</sup> GRECO Fifth Evaluation Round - Compliance Report, p. 6.

<sup>107</sup> Ethical Code of State Officials, Official Gazette 40/201.

replace the existing Code from 2012<sup>108</sup>. Ethics and integrity for state civil servants are embedded as a mandatory subject into various stages of initial and in-service police training<sup>109</sup>. The corresponding milestone under the Recovery and Resilience Plan requires Croatia to adopt Codes of Conduct for parliamentarians and for officials in the executive bodies by the end of 2023<sup>110</sup>. In May 2022, the Government adopted a Code of Conduct for members of the Government and certain officials in top executive functions<sup>111</sup>. It remains to be seen, however, how this Code will be applied. The Code of Conduct is to be enforced by a specific Council, of which only two out of five members are external experts. The Council can also only express itself on compliance with the Code at the request of the official, its immediate superior, or at the request of the Office of the Prime Minister. No developments have been made regarding a code of ethics for members of Parliament.

**An obligation for the local and regional authorities to adopt ethics codes was introduced in the new Law on the Prevention of Conflicts of Interest.** According to Anti-Corruption Strategy 2021-2030, there are 142 Code of Ethics in force in the administrative bodies at local and regional government level, representing only 25% out of 576 local and regional units. The new Strategy aims at improving the situation by 2030. The new Law on the Prevention of Conflict of Interests imposes an obligation on local and regional representative bodies to adopt codes of conducts. It also provides that the local and regional representative bodies need to specify the body to decide on ethical violations at second instance, implying that the first instance decisions should be made by municipal councils<sup>112</sup>. The national authorities are supporting local authorities, including by developing guidelines.

**Comprehensive legislation remains to be introduced in the area of lobbying activities.** The Ministry of Justice and Public Administration set up a working group for that purpose in 2021, which held one meeting so far<sup>113</sup>. The finalisation of the draft new legal act is foreseen by end of 2022<sup>114</sup>. In its latest assessment, GRECO concludes that the recommendation to regulate how persons entrusted with top executive functions engage in contacts with lobbyists and to disclose sufficient information about the purpose of these contacts has not been implemented yet<sup>115</sup>. The milestone under the Recovery and Resilience Plan approved in July 2021 requires Croatia to set up an information system to monitor the implementation of

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<sup>108</sup> GRECO Fifth Evaluation Round - Compliance Report, p. 8.

<sup>109</sup> GRECO Fifth Evaluation Round - Compliance Report, p. 9.

<sup>110</sup> On proposal from the Commission, the Council adopted the Council Implementing Decision of 16 July 2021 on the approval of the assessment of the recovery and resilience plan for Croatia, under which the Milestone no. 234 states: ‘The Code of Ethics for Parliamentarians and officials in the executive will provide guidance on conflicts of interest and other integrity issues.’

<sup>111</sup> Link to the Official Journal: [/eli/official/2022/54/701](#).

<sup>112</sup> Article 4 of the Law on the Prevention of Conflicts of Interest. The fulfilment of this obligation is to be followed by the anti-corruption coordination authority, while the Commission for the Resolution of Conflicts of Interest is tasked with supervising the obligation of municipal council members to declare becoming owners of a company (if above 5%).

<sup>113</sup> The absence of such detailed rules for members of Parliament and top executive functions was already noted in the 2020 Rule of Law Report, Country Chapter on the rule of law situation in Croatia, p. 11, and in the 2021 Rule of Law Report, Country Chapter on the rule of law situation in Croatia, p. 14.

<sup>114</sup> Input from the Croatian Government for the 2022 Rule of Law Report, p. 21.

<sup>115</sup> GRECO Fifth Evaluation Round - Compliance Report, p. 4-5.

national anti-corruption measures by the end of 2025<sup>116</sup>, and the Government also aims to ensure public access to a future register of lobbyists<sup>117</sup>.

**The State Audit Office continued to perform audits on political party financing.** Political actors are obliged to use the Financial Control Information System, an internet-based platform, to submit their financial reports, which are, once submitted, available online on the web page of the State Electoral Commission<sup>118</sup> without restrictions, including names of private and corporate donors. The amounts of annual donations are capped, as are the amounts that can be spent for campaigning, depending on the type of elections<sup>119</sup>. In 2021, the Office carried out a financial audit of six independent Members of Parliament and found one irregularity. It also audited 45 political parties, where most irregularities related to financial statements and accounting operations<sup>120</sup>. Overall, the Office issued 278 recommendations. Of the 178 recommendations given in previous audits, 50% had been implemented<sup>121</sup>. The Office informs the State Attorney's Office on all established violations of the law.

**Legislative amendments entered into force to ensure better protection of whistleblowers.** The new Law on protection of reporters of irregularities was adopted in Parliament on 8 April 2022 and it entered into force on 23 April 2022<sup>122</sup>. According to the proposal for this law, the key changes compared to the previous law relate to the whistleblowers' option to choose between internal and external reporting channels, the explicit prohibition of retaliation against whistleblowers, including sanctioning for such acts, the obligation to provide feedback to the whistleblower on the status of their report, sanctioning of unlawfully revealing the identity of whistleblowers and oversight over implementation by the competent inspectorate. The Ombudsperson is the designated external reporting authority and is envisaged to hire five new people in 2022 for the purpose of implementation of this law<sup>123</sup>.

**Appeals in public procurement procedures, a high-risk area for corruption, remained at a high level.** No new measures were taken in 2021 to mitigate corruption risk in procurement during the COVID-19 pandemic<sup>124</sup>. In 2021, the State Commission for the Supervision of Public Procurement Procedures received 1 157 appeals (requests for review before the State Commission), a slight increase compared to 2020. Improvements to its internal organisation

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<sup>116</sup> Council Implementing Decision of 16 July 2021 on the approval of the assessment of the recovery and resilience plan for Croatia, Milestone no. 237: 'Setting up a new information system / platform to monitor different areas of corruption prevention: (1) protection of whistle-blowers, (2) right of access to information, (3) lobbying, [...]'.  
<sup>117</sup> Input from the Croatian Government for the 2022 Rule of Law Report, p. 21.

<sup>118</sup> The State Electoral Commission of the Republic of Croatia continued to perform supervision of political activities, election campaign financing and financing of referendums according to the Act on the Financing of Political Activities, Election Campaigns and Referendums. Written contribution from the Government following the country visit to Croatia.

<sup>119</sup> The spending limit went up in 2019 from approximately EUR 200 000 to 500 000 and pre-campaign spending is not regulated, which has sparked criticism from civil society. Contribution received from the NGO Gradani organizirano nadgledaju glasanje (GONG) for the 2022 Rule of Law Report.

<sup>120</sup> Information received from the State Audit Office in the context of the country visit for Croatia.

<sup>121</sup> Of these 178 recommendations, 17% were not implemented, and 27% partially implemented or in the process of implementation, and due to non-implementation of activities 6% of recommendations are not applicable. Written contribution from the State Audit Office following the country visit to Croatia.

<sup>122</sup> Written contribution from the Government following the country visit to Croatia.

<sup>123</sup> Written contribution from the Government following the country visit to Croatia.

<sup>124</sup> Input from Croatia for the 2022 Rule of Law Report, p. 28.

processes have further expanded its administrative capacity, which led to a shortening of review procedures<sup>125</sup>. The State Commission is only competent to check the public procedure starting from publication of tender documentation until the award decision becomes final. According to the State Commission, most of the corruption activities occur before the procurement procedure starts and after the contract has been awarded<sup>126</sup>. In some cases, the State Commission can detect certain misconduct during the procedure, connected to corruption risks<sup>127</sup>. In order to improve the detection of corruption in public procurement, the State Commission envisages closer cooperation with the State Attorney's Office<sup>128</sup>. The safeguards for the State Commission's independence, particularly regarding the appointment and discipline of the members of the State Commission, could be further improved<sup>129</sup>.

### **III. MEDIA PLURALISM AND MEDIA FREEDOM**

The Croatian legal framework on media freedom and pluralism is based on the Constitution and sectoral legislation. The legal framework guarantees the basic right for information and the access to public documents. The revised Electronic Media Act was adopted in October 2021, transposing the Audiovisual Media Services Directive<sup>130</sup>, and updating, amongst others, provisions on the transparency of state advertising and media ownership as well as making changes to the rules on media concentration. Preparations to revise the Media Act, the second pillar of the legal framework concerning media and in particular the press, continue. The revision of the Media Act is also expected to improve the framework for the access to information for journalists<sup>131</sup>.

**The revised Electronic Media Act has brought some changes with regard to qualification requirements for the members of the Council for Electronic Media.** The Council is the governing body of the Agency for Electronic Media, the media regulatory authority. While the revision of the Electronic Media Act expanded the tasks of the authority, there have been no major changes regarding its structure or resources. However, the revision includes new professional qualification requirements for members of the Council for Electronic Media<sup>132</sup>. The appointment procedure remains unchanged. Following a proposal

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<sup>125</sup> Written contribution from the State Commission for the Control of Public Procurement Procedures in the context of the country visit to Croatia, and input from Croatia for the 2022 Rule of Law Report, p. 17.

<sup>126</sup> These occur in the phase of preparation of tender documentation and in the execution phase, respectively, see written contribution from the State Commission for the Control of Public Procurement Procedures in the context of country visit.

<sup>127</sup> One example is the State Commission's decision relating to manipulation when submitting bids: <https://pdf.dkom.hr/dokumentit/202110251315428451.pdf>, which was confirmed by the High Administrative Court: <https://pdf.dkom.hr/dokumentit/202202081128113912.pdf>.

<sup>128</sup> Information from the State Commission received in the context of the country visit to Croatia.

<sup>129</sup> This concerns the independence of the body proposing the candidates and deciding on disciplinary measures. Currently, the Government proposes, based on public vacancy, the candidates to Parliament for appointment as members of the State Commission without the involvement of an independent body. Parliament would also decide on potential disciplinary responsibility of the members. Recommendation CM/Rec(2010)12 of the Council of Ministers of the Council of Europe, paras. 66 and 69. According to EU law, the requirement of independence means that the disciplinary regime regarding judges must display the necessary guarantees in order to prevent that the regime is used as a system of political control of the content of judicial decisions.

<sup>130</sup> Complete transposition of the AVMSD was notified to the Commission on 26 October 2021.

<sup>131</sup> Croatia ranks 48<sup>th</sup> in the 2022 Reporters without Borders World Press Freedom Index, compared to 56<sup>th</sup> in the previous year.

<sup>132</sup> In addition to previously existing provisions preventing potential Council' members from being, amongst others, government officials, persons holding an office in the bodies of political parties or having business interests in the media sector, there are now additional qualification requirements for the members to have

by the Government (based on a public call for nominations), the Council members are appointed by simple majority in Parliament for a renewable five-year mandate. This appointment of the body under the control of the parliamentary majority continues to be raised as potentially compromising the political independence of the regulator<sup>133</sup>. The financial independence of the Agency for Electronic Media remains ensured<sup>134</sup>.

**The establishment of an independent, self-regulatory body for the media is being discussed, but lacks consensus among media stakeholders on the way forward.** As described in the 2021 Rule of Law Report, there is currently no independent, self-regulatory media council representing both journalists and the press and news media publishers<sup>135</sup>. The self-regulatory Code of Ethics and the relevant Ethics Council of the Journalists' Association remain limited to the journalists represented and do not include news media publishers. While the Government refers to the establishment of a self-regulatory body for the media as one of the main issues for the revision of the Media Act, there does not yet seem to be agreement on the way forward among concerned stakeholders<sup>136</sup>. Should media stakeholders find consensus, such a body could serve a valuable role in addressing concerns of both journalists and publishers and give a strong, independent representation to the media sector.

**Improvements were implemented regarding the transparency of media ownership.** With the revised Electronic Media Act, the ownership information for audiovisual and digital media on the website of the Agency for Electronic Media now needs to be supported by an extract from the register of ultimate beneficial ownership. Moreover, the revised law requires media service providers to publish information on their ownership structure on their website. Ownership information on print media continues to be collected by the Chamber of Commerce and is published in the Official Journal. Croatia's Recovery and Resilience Plan requires the Government to set up an information system to publish information on ownership of media by the end of June 2026<sup>137</sup>. To follow-up on this milestone, the Government envisages the development of a single public database for all types of media<sup>138</sup>. Stakeholders claim that in certain cases underlying ownership structures remain hidden<sup>139</sup>, as evidenced by reports pointing to issues around the question of ownership in the allocation of

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completed graduate university studies or specialist professional graduate study programmes and who have the expertise, competences and work experience in the field of media, journalism, technology, economy, sociology and law (Electronic Media Act, Article 76 ; Input from Croatia for the 2022 Rule of Law Report).

<sup>133</sup> 2022 Media Pluralism Monitor, pp. 8-11; 2021 Rule of Law Report, Country Chapter on the rule of law situation in Croatia, p. 16, and information received from civil society and journalist's organisations in the context of the country visit to Croatia.

<sup>134</sup> 2022 Media Pluralism Monitor, p. 11 and 2021 Rule of Law Report, Country Chapter on the rule of law situation in Croatia, p. 16.

<sup>135</sup> 2021 Rule of Law Report, Country Chapter on the rule of law situation in Croatia, p. 9.; 2021 Media Pluralism Monitor, p. 16.

<sup>136</sup> Information received from the Croatian Newspaper Publishers' Association, the Croatian Journalists' Association and the Trade Union of Croatian Journalists in the context of the country visit to Croatia.

<sup>137</sup> Council Implementing Decision of 16 July 2021 on the approval of the assessment of the recovery and resilience plan for Croatia, Milestone no. 27: '[...] A database and a system of disclosure of ownership structures and funding sources shall be set up by the Electronic Media Agency, including the creation of a register of obliged entities and the provision of all necessary technical preconditions to enable all media to fulfil their obligations in a simple and efficient manner'.

<sup>138</sup> Input from Croatia for the 2022 Rule of Law Report.

<sup>139</sup> Information received from media stakeholders and journalist's organisations in the context of the country visit to Croatia; Contribution from GONG for the 2022 Rule of Law Report; 2022 Media Pluralism Monitor, p. 13.

radio frequencies<sup>140</sup>. It will still need to be seen whether the changes in the revised Electronic Media Act will be able to ensure full transparency on media ownership. The 2022 Media Pluralism Monitor indicates a medium risk for the transparency of media ownership<sup>141</sup>.

**The reform of the Electronic Media Act includes changes in the framework for media concentration.** The Electronic Media Act lays down detailed rules on the granting of licences and concessions to media service providers. Media service providers are required to notify relevant changes in their shareholder structure (above 1% of the value of share capital). The revision of the Electronic Media Act has ended the prohibition of vertical concentration between broadcasters and operators. A provider of media services and electronic publications whose total annual revenue has reached 40% of all providers is considered to have reached a dominant role in the market, and is then prohibited amongst others from acquiring new licences or concessions and launching new electronic publications<sup>142</sup>. Moreover, the Electronic Media Act continues to set thresholds for cross-media concentration (for example for national broadcasting concessions and publishers of daily newspapers). The Media Act contains further rules for the written press.

**Rules on state advertising in local and regional media were revised, but a need remains to further strengthen the framework, including on the new public tender procedure.** As mentioned in the 2021 Rule of Law Report, stakeholders report that state advertising often undermines the political independence of media outlets, notably at local level<sup>143</sup>. The Electronic Media Act continues to require public authorities and institutions as well as predominately state-owned companies to spend 15% of their annual funds earmarked for the promotion of their services or activities, for advertising in regional or local television or radio programmes or electronic publications<sup>144</sup>. Such entities need to report to the Council for Electronic Media and publish relevant data on advertising on their websites<sup>145</sup>. With the revised Electronic Media Act, funds for promotion by public institutions and state-owned companies need to be distributed based on a public call listing criteria<sup>146</sup>. However, the law does not contain any details regarding these criteria or the related procedure. In particular, there appear to be no safeguards regarding the authority that adopts and implements these criteria<sup>147</sup>. In this regard, it will be important to establish good practices and effective oversight measures to ensure the well-functioning of the new public tender procedure. As highlighted in the 2021 Rule of Law Report, in particular regional and local media outlets are often considered heavily dependent on the advertising from local authorities, creating potential to undermine editorial independence<sup>148</sup>. Some stakeholders reported that state

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<sup>140</sup> Information received in the context of the country visit to Croatia from the Croatian Newspaper Publishers' Association, the Croatian Journalists' Association, the Ministry of Culture and Media and the Agency for Electronic Media.

<sup>141</sup> 2022 Media Pluralism Monitor, p. 12.

<sup>142</sup> Electronic Media Act, Article 65.

<sup>143</sup> 2021 Rule of Law Report, Country Chapter on the rule of law situation in Croatia, p. 9; 2021 Media Pluralism Monitor, p. 17.

<sup>144</sup> Electronic Media Act, Article 38. This obligation applies only to public authorities and institutions as well as predominately state-owned companies that have funds in their budgets to promote their services or activities.

<sup>145</sup> Electronic Media Act, Article 38.

<sup>146</sup> Electronic Media Act, Article 39.

<sup>147</sup> For example, the same public authority, institution or state-owned company could adopt and implement a set of criteria for a given call, which could result in issues regarding the fair and transparent allocation of funds under the call.

<sup>148</sup> Statement of 11 January 2022 by the Trade Union of Croatian Journalists, Support on independence of local media.

advertising (e.g. in the form of sponsoring for conferences or events) may also undermine the political independence of media outlets at national level<sup>149</sup>. The 2022 Media Pluralism Monitor indicates a medium risk regarding the state regulation of resources and support to media sector, stating that “[r]ules on the distribution of state advertising to media outlets are unclear”<sup>150</sup>.

**The framework on public service media contains independence safeguards, but some concerns exist regarding the management of the public service broadcaster.** The public service broadcaster HRT is governed by the Law on the Croatian Radio and Television, which guarantees the independence of HRT from political interference. The law lays down programme principles for the public service broadcaster. HRT and the government sign recurring five-year contracts on the programming of the broadcaster. HRT is managed by a Director General with a five-year term who is accountable to the Supervisory Board. Following a public call by the Supervisory Board, the Director General is appointed by simple majority by the Parliament. Four out of the five members of the Supervisory Board are equally appointed by the Parliament, with an employee representative as the fifth member. Additionally, the Programme Council (consisting of nine members appointed by Parliament and two employee representatives) represents the public interest and monitors the programming activities of HRT. The Supervisory Board reports annually to Parliament on the legality of HRT's activities and financial operation, while the Programme Council reports annually on implementation of the programme. The system gives the parliamentary majority a decisive influence over the public service media which could be a factor potentially compromising the political independence of HRT. In 2021, the then Director General of HRT was dismissed following a corruption investigation, raising questions regarding the effectiveness of safeguards in place regarding the supervision of HRT management<sup>151</sup>. The independent financing of HRT is guaranteed by a monthly fee collected from households, set by the Supervisory Board<sup>152</sup>. The relevant indicator of the 2022 Media Pluralism Monitor on the independence of public service media flags a high risk<sup>153</sup>.

**The legal framework guarantees access to information, but delays in the processing of requests from journalists by public authorities remain an issue.** The Information Commissioner ensures the implementation of the Right of Access to Information Act. Its Office continues to be active to follow-up on access to information requests by journalists. According to the Office of the Information Commissioner, the institution received over 43 complaints from journalists in 2021 (27 of these cases related to failures to resolve requests for access to information within the legal deadline)<sup>154</sup>. Journalist stakeholders flag considerable delays in their requests for access to information. The 2022 Media Pluralism Monitor indicates a medium risk regarding the protection of right to information<sup>155</sup>. The planned revision of the Media Act could provide an opportunity to improve the legal framework for access to information for journalists.

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<sup>149</sup> Information received from GONG in the context of the country visit to Croatia.

<sup>150</sup> 2022 Media Pluralism Monitor, pp. 16.

<sup>151</sup> Reporters without Borders, Croatia; information received from civil society and journalists' organisations in the context of the country visit.

<sup>152</sup> HRT Law, Art. 35.

<sup>153</sup> 2022 Media Pluralism Monitor, p. 17.

<sup>154</sup> Information received in the context of the country visit to Croatia from the Office of the Information Commissioner.

<sup>155</sup> 2022 Media Pluralism Monitor, p. 10.

**While physical aggressions remain limited, there continue to be cases of verbal attacks against journalists, including by prominent politicians**<sup>156</sup>. Since the last report, the Council of Europe's Platform to promote the protection of journalism and safety of journalists has registered eight alerts relating to events in Croatia<sup>157</sup>. For the same period, the Mapping Media Freedom project lists 15 incidents in Croatia<sup>158</sup>. There have been a limited number of physical attacks against journalists covering protests against COVID-19 pandemic measures<sup>159</sup>. Stakeholders indicate that police authorities generally follow-up on cases of violence against journalists<sup>160</sup>.

**Strategic lawsuits against public participation (SLAPP) targeting journalists remains a significant concern**<sup>161</sup>. SLAPP continue to pose a significant financial risk to journalists and have an important intimidating effect on media<sup>162</sup>. A survey by the Croatian Journalists' Association in March 2022 counted 951 active lawsuits against journalists and the media in Croatia (compared to 924 in 2021 and 905 in 2020)<sup>163</sup>. These lawsuits, which often target the journalist personally (not the media outlet), continue to have a strong impact on the concerned media outlets, threatening the existence of smaller, local media outlets and freelance journalists<sup>164</sup>. There continue to be a number of examples of such lawsuits against journalists by politicians or public officials, including judges<sup>165</sup>. Many of the SLAPP cases against journalists are based on charges of defamation, shaming or insult<sup>166</sup>. Stakeholders have repeatedly called upon the Government to address this issue<sup>167</sup>. The expert working group set up by Croatian authorities on SLAPPs held first meetings and a workshop<sup>168</sup>. While involved journalist representatives generally appreciate the setup of this group<sup>169</sup>, more

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<sup>156</sup> Council of Europe, Platform to promote the protection of journalism and safety of journalists, Deputy Mayor of Split Threatens Nikolina Lulic, Editor and Journalist of Slobodna Dalmacija, no. 77/2022; N1 (30.04.2022), Journalists' Association asks president to stop insulting their profession; European Federation of Journalists (15.12.2021), Croatia: fact-checking portal Faktograf.hr threatened with death and lawsuits; Information received in the context of the country visit to Croatia from the Croatian Journalists' Association.

<sup>157</sup> Council of Europe, Platform to promote the protection of journalism and safety of journalists, Croatia.

<sup>158</sup> Mapping Media Freedom, Croatia (as of 13 May 2022).

<sup>159</sup> Council of Europe, Platform to promote the protection of journalism and safety of journalists, Journalists Attacked while Covering Covid-19 Protests, no. 222/2021; Contribution from ENNHRI for the 2022 Rule of Law Report, pp. 19-21; Reporters without Borders, Croatia.

<sup>160</sup> Information received in the context of the country visit to Croatia from the Croatian Journalists' Association and the Trade Union of Croatian Journalists.

<sup>161</sup> Reporters without Borders, Croatia; 2021 Rule of Law Report, Country Chapter on the rule of law situation in Croatia, p. 18-19.

<sup>162</sup> Article 19 (2022), SLAPPs against journalists across Europe, p. 41; Contribution from ENNHRI for the 2022 Rule of Law report, pp. 19-21.

<sup>163</sup> According to additional input received from Croatian authorities: 'Pursuant to the official data of the Ministry of the Justice and Administration, in respect to civil proceedings, during 2021 total of 271 proceedings were initiated in which the defendants are journalists, while in 2020 the number of initiated number of proceedings was 394, in 2019 it was 314, and in 2018 there were 420 initiated civil proceedings.' In addition, official data provided by Croatian authorities indicate that 27 criminal proceedings involving journalists were launched in 2021. Additional input from Croatia for the 2022 Rule of Law Report.

<sup>164</sup> Article 19 (2022), SLAPPs against journalists across Europe, p. 41.

<sup>165</sup> Article 19 (2022), SLAPPs against journalists across Europe, p. 42; Council of Europe, Platform to promote the protection of journalism and safety of journalists, Telegram.hr Editor-in-chief Jelena Valentić Faces New Lawsuit, no. 159/2022.

<sup>166</sup> Article 19 (2022), SLAPPs against journalists across Europe, pp. 41.

<sup>167</sup> 2021 Rule of Law Report, Country Chapter on the rule of law situation in Croatia, pp. 18-19, and 2020 Rule of Law Report, Country Chapter on the rule of law situation in Croatia, pp. 14-15.

<sup>168</sup> Input from Croatia for the 2022 Rule of Law Report, p. 44.

<sup>169</sup> Information received from the Croatian Journalists' Association and the Trade Union of Croatian Journalists in the context of the country visit to Croatia.



concrete action by the Government seems to be required to address this serious concern, both in the legal framework and the practical application. For example, stakeholders propose to decriminalise defamation and to increase the awareness of judges on issues concerning SLAPP<sup>170</sup>. As stated in the Commission Recommendation on SLAPP<sup>171</sup>, changes to the framework should ensure procedural safeguards to grant an early dismissal of manifestly unfounded court proceedings are in place, and that rules applicable to defamation do not have an unjustified impact on the work of journalists and the existence of an open, free and plural media environment<sup>172</sup>.

#### **IV. OTHER INSTITUTIONAL ISSUES RELATED TO CHECKS AND BALANCES**

Croatia has a unicameral parliamentary system of government, in which the Constitutional Court can carry out *ex-post* constitutional reviews, including in concrete cases based on a constitutional complaint. Draft laws can be tabled by any member of the Parliament or the Government. The People's Ombudsperson, with A-status<sup>173</sup>, who is responsible for the promotion and protection of human rights and freedoms and fulfills the role of the National Human Rights Institution, the Information Commissioner, and the Ombudsperson for Gender Equality<sup>174</sup>, which fulfills the role of the equality body, are all independent bodies that play a role in the system of checks and balances.

**The number and duration of public consultations increased, which resulted in more participants providing their comments.** In 2021, public consultation conducted through the central state consultations portal 'e-Consultations' and coordinated by the Government Legislation Office, returned to the usual pre-pandemic level<sup>175</sup>. The average length of consultation also increased to 21 days (17 days in 2020); however, only about 10% lasted more than 30 days. The number of participants and comments increased and more observations were fully/partially accepted<sup>176</sup>. After warnings by the Information Commissioner, the number of comments that remained unanswered dropped to the lowest level since 2018<sup>177</sup>. In August 2021, a two-year project started to bring procedural and functional improvements to the e-Consultations portal, as well as its expansion to local and

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<sup>170</sup> Information received from the Croatian Journalists' Association and the Trade Union of Croatian Journalists in the context of the country visit to Croatia. While the offence of strong shaming was removed from the Criminal Code in 2019, journalists continue to face SLAPP cases based on charges of defamation, shaming or insult.

<sup>171</sup> Commission Recommendation of 27.4.2022 on protecting journalists and human rights defenders who engage in public participation from manifestly unfounded or abusive court proceedings ('Strategic lawsuits against public participation'), C(2022) 2428 final.

<sup>172</sup> The Recommendation also provides for other measures including awareness-raising, training to legal professionals such as judges, support mechanisms to journalists and other targets of SLAPP, as well as data collection, reporting and monitoring.

<sup>173</sup> According to the Principles relating to the Status of National Institutions (The Paris Principles).

<sup>174</sup> It should be noted that the mandate of the Ombudsperson for Gender equality can be terminated if his/her annual report is rejected in the Parliament.

<sup>175</sup> Written contribution from the Information Commissioner in the context of the country visit to Croatia.

<sup>176</sup> In 2021, there were 823 consultations (up from 749 in 2020). In 2021, 8 466 participants (7,211 in 2020) submitted 23 476 comments opinions and suggestions (21 797 in 2020). Among these, about 13% were accepted (8% in 2020), and 9% were partially accepted (7% in 2020). About 28% of comments were not accepted (about 10 p.p. more than in 2020) and to 8% there was no response. Written contribution from the Information Commissioner in the context of the country visit to Croatia and 2021 Report of the People's Ombudsperson, p. 25.

<sup>177</sup> Only 7% in 2021, compared to 34% in 2020, 22% in 2019 and 13% in 2018. Written contribution from the Information Commissioner in the context of the country visit to Croatia.

regional self-government units<sup>178</sup>. The stakeholders consider that online public consultations should not be conducted at the expense of face-to-face discussions on drafts, which have an added value compared to online comments<sup>179</sup>. For business stakeholders, the quality of law-making in general is an important factor for investor confidence and a reason for concern about effectiveness of investment protection for 32% of companies in Croatia<sup>180</sup>.

**Parliament further decreased the use of emergency procedures, but the lack of recording of voting in some remote sessions remains problematic.** In 2021, the Parliament adopted 31% of laws using the urgent procedure, a decrease compared to previous years (51% in 2020, 47% in 2019)<sup>181</sup>. The 2021 Rule of Law Report found that the IT system does not allow for the recording of the votes cast by individual members of Parliament when exercising their duties in parliamentary sessions organised through remote access<sup>182</sup>. The recording of votes cast in remote sessions, publishing of which is important for transparency of the democratic process and accountability of the members of Parliament, remains limited to situations when the parliamentary staff can count the votes manually by counting the hands of deputies participating remotely. As stated in the 2021 Rule of Law Report, Parliament requested the Government to submit to it, three times per year, a report on the effects of the implementation of the Act on the Protection of the Population against Contagious Diseases, as long as the decision on the proclamation of the epidemic remains in force<sup>183</sup>. In 2021, the Government submitted such reports in January, July and September, and in 2022 in February<sup>184</sup>. They were discussed before the Parliament and were adopted by a majority vote.

**The Constitutional Court reviewed certain COVID-19 emergency measures and accumulated backlog due to lack of resources.** Since the start of the COVID-19 pandemic, the Constitutional Court delivered 80 judgments relating to the emergency measures, in which it reviewed five laws and 26 decisions of the Civil Protection Authority<sup>185</sup>, which was empowered by law to issue restrictive measures<sup>186</sup>. For example, on 21 December 2021 the Constitutional Court rejected the proposal for a constitutional review of the Law on Protection of the Population from the Contagious Diseases and the Law on the System of Civil Protection. In its judgment, the Constitutional Court expressed the expectation that in the future the measures taken in this context would contain a written explanation so that the addressees of such measures, as well as the public, are informed of the reasons for adopting a particular measure, and which demonstrate that the constitutional principle of proportionality has been respected<sup>187</sup>. The Court has been addressing its efficiency challenges, and has reduced its backlog compared to 2009. However, at the end of 2021, the backlog still amounted to more than 6 000 cases, most of them constitutional complaints<sup>188</sup>. While the Court resolved more cases in 2021 (compared to 2020), incoming cases increased 30% in the

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<sup>178</sup> Input from Croatia for the 2022 Rule of Law Report, p. 45.

<sup>179</sup> Information received from Human Rights House in the context of the country visit to Croatia.

<sup>180</sup> Figure 55, 2022 EU Justice Scoreboard indicates that '[F]requent changes in legislation or concerns about quality of the law-making process' is the second most stated reason for concern about effectiveness of investment protection for companies in Croatia.

<sup>181</sup> Written contribution from the Parliament in the context of the country visit to Croatia.

<sup>182</sup> 2021 Rule of Law Report, Country Chapter on the rule of law situation in Croatia, p. 21.

<sup>183</sup> 2021 Rule of Law Report, Country Chapter on the rule of law situation in Croatia, p. 21.

<sup>184</sup> Written contribution from Parliament in the context of the country visit to Croatia and input from Croatia for the 2022 Rule of Law Report, pp. 47-48.

<sup>185</sup> Information received from the Constitutional Court in the context of the country visit to Croatia.

<sup>186</sup> 2021 Rule of Law Report, Country Chapter on the rule of law situation in Croatia, p. 20.

<sup>187</sup> Input from Croatia for the 2022 Rule of Law Report, p. 47-48.

<sup>188</sup> Information received from the Constitutional Court in the context of the country visit to Croatia.

same period. The Court currently employs about 40 advisers, and seeks additional financial resources to employ more in order to tackle the backlog<sup>189</sup>.

**On 1 January 2022, Croatia had 25 leading judgments of the European Court of Human Rights pending implementation<sup>190</sup>.** At that time, Croatia's rate of leading judgments from the past 10 years that remained pending was at 25% and the average time that the judgments had been pending implementation was 4 years and 3 months<sup>191</sup>. This figure takes into account the oldest leading judgment, pending implementation for 14 years, which concerns the failure to carry out an effective investigation into a racist attack<sup>192</sup> and was pending as of 1 January 2022 but has since been implemented<sup>193</sup>. On 1 July 2022, the number of leading judgments pending implementation has decreased to 21<sup>194</sup>.

**Challenges exist regarding the follow-up to and monitoring of the People's Ombudsperson's recommendations, and on access to information.** In 2021, a new People's Ombudsperson was elected, alongside with three Deputies. Given her expanded tasks regarding the protection of whistleblowers, financial resources were increased<sup>195</sup>. According to the Ombudsperson, despite some positive steps in 2021 regarding access to information on the treatment of irregular migrants, the Ministry of the Interior continues to deny the Ombudsperson direct access to information in their information system<sup>196</sup>. The law gives the Ombudsperson access to all such types of information and officials employed in the Ombudsperson's Office have the necessary clearance for handling secret data<sup>197</sup>. The

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<sup>189</sup> Information received from the Constitutional Court in the context of the country visit to Croatia.

<sup>190</sup> The adoption of necessary execution measures for a judgment by the European Court of Human Rights is supervised by the Committee of Ministers of the Council of Europe. It is the Committee's practice to group cases against a State requiring similar execution measures, particularly general measures, and examine them jointly. The first case in the group is designated as the leading case as regards the supervision of the general measures and repetitive cases within the group can be closed when it is assessed that all possible individual measures needed to provide redress to the applicant have been taken.

<sup>191</sup> All figures are calculated by the European Implementation Network and are based on the number of cases that are considered pending at the annual cut-off date of 1 January 2022. See the Contribution from the European Implementation Network for the 2022 Rule of Law Report, p. 32.

<sup>192</sup> Judgment of the European Court of Human Rights of 31 May 2007, *Secic v. Croatia*, 40116/02, pending since 2014.

<sup>193</sup> The case has been implemented as of 6 April 2022.

<sup>194</sup> Data according to the online database of the Council of Europe (HUDOC).

<sup>195</sup> By 12% for 2021 and 2022 (compared to 2020). Input from Croatia for the 2022 Rule of Law Report, p. 48. According to the People's Ombudsperson, a fourth Deputy would be needed, especially in light of new competences regarding whistleblowers and considering that the Deputies have management responsibilities. To be noted that no heads of units/departments within the People's Ombudsperson's Office exist. Contribution from the ENNHRI for the 2022 Rule of Law Report, p. 4.

<sup>196</sup> In 2021, the situation improved and Ombudsperson was given access to information on paper during Ombudsperson's visits to police stations (both announced and unannounced), but not to information available in the online information system of the Police (including information on migrants and procedures undertaken). Contribution from the ENNHRI for the 2022 Rule of Law Report, p. 5; information received from the Ombudsperson's Office in the context of the country visit to Croatia.

<sup>197</sup> Information received from the Ombudsperson's Office in the context of the country visit to Croatia. The 2021 Rule of Law Report stated that recommendations of the European Network of National Human Rights Institutions to ensure that national institutional structures, such as the Ombudsperson, are given access to information in order to ensure independent, proper and expeditious investigations, are particularly relevant in the light of the allegations about pushbacks at external borders, with a view to ensuring that fundamental rights are at all times respected. 2021 Rule of Law Report, Country Chapter on the rule of law situation in Croatia, pp. 20-21.

Ombudsperson takes also part in advisory role of the Independent Monitoring Mechanism<sup>198</sup>. According to the Ministry of the Interior, its rules prescribe that police officers cannot provide unauthorised persons with access to the Information System of the Ministry (which would represent a serious breach of official duty) and that the Ombudsperson can request a printout of data from the Information System<sup>199</sup>. Regarding recommendations issued in Ombudsperson's annual reports, the Governmental Office for Human Rights and Rights of National Minorities was formally tasked with systematic monitoring of their implementation and is currently collecting data from a range of government bodies for the purpose of preparing a comprehensive response to Ombudsperson's 2021 Report. According to the Ombudsperson, the Governmental Office was not fulfilling this obligation in the past<sup>200</sup>. In December 2021, the Government established the Council for Human Rights, a new consultative body, which held a first session on Government's response to Ombudsperson's recommendations<sup>201</sup>. In past years, the national authorities, according to the Ombudsperson, fulfilled 26% of recommendations given in the 2018 Report and only 20% of those given in the 2019 Report, a share that increased to 43% of recommendation given in the 2020 Report<sup>202</sup>. Furthermore, the Government did not reply in about 50% of the recommendations given by the Ombudsperson in the 2020 Report (60% of those given in the 2019 Report)<sup>203</sup>. In 2021, the newly elected Ombudsperson had to present before Parliament three annual reports at once, which had not been discussed until then (for 2018-2020)<sup>204</sup> and which, in her view, makes the findings less relevant, and impacts negatively on the implementation of the recommendations<sup>205</sup>.

**While some preparatory steps have been taken, the Government has not progressed in drafting and adopting the new National Plan for Creating an Enabling Environment for the Civil Society Development 2021-2027<sup>206</sup>.** The 2021 Rule of Law Report found that the National Plan, intended to further improve the legal, financial and institutional support system for the activities of civil society organisations, was still under preparation<sup>207</sup>. On 4 February 2022, the Government Office for Cooperation with NGOs took steps to appoint members of the expert working group to draft the National Plan, who are expected to start

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<sup>198</sup> The Advisory Committee of the Independent Monitoring Mechanism comprises representatives of the European Commission, Fundamental Rights Agency, Frontex, EASO, the Ombudsperson, the Ombudsperson for Children, the Ombudsperson for Gender Equality, as well as IOM and UNCHR. Input from Croatia for the 2022 Rule of Law Report, p. 48.

<sup>199</sup> In this regard, the Border Police Directorate has made a template form for receiving requests from the Ombudsperson for printouts from the Information System of the Ministry of the Interior. Written contribution from the Ministry of the Interior following the country visit to Croatia.

<sup>200</sup> Contribution from the ENNHRI for the 2022 Rule of Law Report, p. 6. The Ombudsperson monitors the implementation of recommendations from the Annual Report.

<sup>201</sup> The Council is composed of governmental and non-governmental members, and is chaired by the Deputy Prime Minister. Croatian Government (2022), Press release, Government establishes the Council for Human Rights. The second session on 25 April 2022, also covered the Ombudsperson's recommendation. Croatian Government (2022), Press release, Second session of the Council for Human Rights held.

<sup>202</sup> 2021 Report from the People's Ombudsperson, p. 208-209, and information received from the Ombudsperson's Office in the context of the country visit to Croatia.

<sup>203</sup> Information received from the Ombudsperson's Office in the context of the country visit to Croatia.

<sup>204</sup> Contribution from the ENNHRI for the 2022 Rule of Law Report, p. 5.

<sup>205</sup> Contribution from the ENNHRI for the 2022 Rule of Law Report, pp. 5-6.

<sup>206</sup> 2021 Rule of Law Report, Country Chapter on the rule of law situation in Croatia, p. 22.

<sup>207</sup> 2021 Rule of Law Report, Country Chapter on the rule of law situation in Croatia, p. 22. The National Plan would be a continuation of similar previous strategic documents, namely the National Strategy to create an enabling environment for the development of civil society for 2006 – 2011, and the National Strategy to create an enabling environment for the development of civil society for 2012 – 2016.

work in the autumn<sup>208</sup>. In 2021, the Government Office contracted 94 projects worth approximately EUR 5.7 million from the European Social Fund<sup>209</sup>. The civic space in Croatia is considered to be narrowed<sup>210</sup>. In May 2021, during the campaign for local elections in capital Zagreb, elements of a smear and disinformation campaign against civil society organisations (CSOs) were carried out by certain political parties<sup>211</sup>. According to a stakeholder, the administrative burdens in public tenders and lengthy funding processes put in danger the financial viability of the CSOs sector<sup>212</sup>.

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<sup>208</sup> Input from Croatia for the 2022 Rule of Law Report, p. 50.

<sup>209</sup> Within the call for proposals ‘Strengthening the capacity of Civil Society Organisation to respond to the needs of the local community’. Input from Croatia for the 2022 Rule of Law Report, p. 51.

<sup>210</sup> Rating given by Civicus, Croatia; ratings are on a five-category scale defined as: open, narrowed, obstructed, repressed and closed.

<sup>211</sup> Franet (2022), Country research - Legal environment and space of civil society organisations in supporting fundamental rights – Croatia, p. 3.

<sup>212</sup> Contribution from European Civic Forum for the 2022 Rule of Law Report, p. 4.

As regards funding of CSOs, certain changes have been introduced in recent years, in line with the relevant strategic framework, and partly in response to recent crises (COVID-19 pandemic, earthquakes). The general framework for financing was defined in 2015 Regulation on Criteria, Benchmarks and Procedures for Financing and Contracting Programmes and Projects in General Public Interest Undertaken by non-governmental organisations, which aims at ensuring more systematic financial support for programmes and projects carried out by CSOs. Written contribution from Government following the country visit to Croatia.

## Annex I: List of sources in alphabetical order\*

\* *The list of contributions received in the context of the consultation for the 2022 Rule of Law report can be found at [https://ec.europa.eu/info/publications/2022-rule-law-report-targeted-stakeholder-consultation\\_en](https://ec.europa.eu/info/publications/2022-rule-law-report-targeted-stakeholder-consultation_en).*

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## **Annex II: Country visit to Croatia**

The Commission services held virtual meetings in February 2022 with:

- Agency for Electronic Media
- Association of Judges (Judge Damir Kontrec)
- Bar Association
- Centre for Peace Studies
- Commission for the Resolution of Conflicts of Interest
- Constitutional Court
- Croatian Journalists' Association
- Croatian Newspaper Publishers' Association
- Crosol
- GONG
- Government Legislation Office
- Government Office for Cooperation with NGOs
- HRT – Croatian Radio and Television (General Director and Programme Director)
- Human Rights House
- Ministry of Culture and Media
- Ministry of Justice and Administration
- Office of the Information Commissioner
- Office of the Public Ombudsperson
- Parliamentary National Council for Monitoring Anti-Corruption Strategy Implementation
- PNUSKOK - specialised anti-corruption police
- Secretariat of the Parliament
- State Attorney's Council
- State Attorney's Office (including USKOK-specialised anti-corruption prosecution)
- State Audit Office
- State Commission for Supervision of Public Procurement Procedures
- State Judicial Council
- Supreme Court
- Trade Union of Croatian Journalists

\* The Commission also met the following organisations in a number of horizontal meetings:

- Amnesty International
- Article 19
- Civil Liberties Union for Europe
- Civil Society Europe
- European Centre for Press and Media Freedom
- European Civic Forum
- European Federation of Journalists
- European Partnership for Democracy
- European Youth Forum
- Free Press Unlimited
- Human Rights Watch
- ILGA Europe
- International Federation for Human Rights (FIDH)
- International Press Institute
- Open Society European Policy Institute ( OSEPI)
- Osservatorio Balcani e Caucaso Transeuropa
- Philea

- Reporters Without Borders
- Transparency International Europe