



REPUBLIC OF CROATIA
Ombudsman

Zagreb, 31 October 2019

Formal input for the Eleventh Session of the Open-ended Working Group on Ageing

- Access to Justice

Under the Croatian Constitution, all persons are equal before the courts and state bodies and everyone is entitled to have his/her rights and obligations decided upon fairly and within a reasonable time by an independent and impartial court established by law. Anyone can seek redress before municipal courts, county, and administrative courts, or through mediation, which is a simpler, cheaper and faster way of solving disputes.

However, most older persons do not use the latter possibility – there is a firm perception that protecting one's rights is only possible through traditional court proceedings, and judges rarely refer parties towards mediation, although they have that option throughout the proceedings.

For older persons living in rural and remote areas, reaching the court can be difficult and costly. The judicial reforms of the last decade made courts less accessible, as many of them closed their outposts and moved the judges to bigger cities to cut costs. Some courts are located in older buildings, and while some underwent reconstruction that included ramps and elevators, others are yet to follow. Court and legal fees can be exorbitant, and many older persons rely on legal aid. The institutional framework of the free legal aid system is set up through 20 state administrative offices, with another 25 CSOs that provide it. However, due to delayed government funding, the CSOs scaled down or even completely discontinued providing primary legal aid for most of the year, particularly those working in remote areas. Primary legal aid is remarkably important because it includes procedures before administrative bodies where citizens exercise their rights from the status-related, health and pension insurance and the social welfare system which is of particular importance for older people. Also, in many cases legal counseling about realistic options and possible outcomes of court proceedings could considerably prevent high legal costs. Increased allocations for primary legal aid might, therefore, bring to long-term savings in the free legal aid system and improve its efficiency.

Even with legal aid, accessing justice and remedy requires age-appropriate procedures. In maintenance-until-death cases, vulnerable plaintiffs are left without property or adequate care and face desperate, unsafe conditions during lengthy proceedings. The Ombudswoman heard from a 91-year-old plaintiff who was waiting for an appeal court ruling for over a year.



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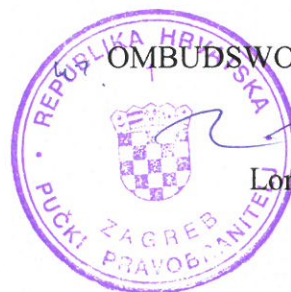
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Despite the evident risks surrounding maintenance-until-death contracts, the Ministry of Justice did not implement the recommendation of the Ombudswoman to expedite all such proceedings and collect data on their duration and the number of plaintiffs that died before the rulings were issued.

However, there are some provisions in the Criminal, Civil and Administrative Procedure Acts that were designed for older persons, to protect their dignity and increase the effectiveness of their access to courts and justice. For example, the Criminal Procedure Act allows for a suspect over 70 to be detained at home (instead of investigative detention), and witnesses can be questioned in their homes, or give testimony through a video call if they cannot respond to the courts summon due to their age. The Civil Procedure Act and the Administrative procedure Act also allow witnesses to give testimony in their homes if they cannot respond to the courts summon due to age or illness.

Despite these provisions, some administrative proceedings have a detrimental effect on vulnerable older persons. Elders who applied for social services, but were denied and filed an appeal, endure delayed administrative procedures in the second instance due to a chronic backlog of cases. The department handling the appeals in the Ministry of demographics, family, youth and social policy is heavily understaffed, and there have been instances of appellate proceedings (that are supposed to be completed in 60 days) lasting up to 3 years. It is of the utmost urgency to create conditions that will allow decisions to be rendered in a reasonable and legally defined timeframe.

In conclusion, provisions that enable older persons with physical access to courts and state bodies are not synonymous with justice and are not enough. Taking into account that older persons often have insufficient financial means for engaging professional legal help, an essential precondition for their effective access to justice is to provide them with comprehensive and accurate information through readily available legal aid. When both policy documents and practice support timely and age-appropriate procedures, only then can older persons enjoy full access to justice.



OMBUDSWOMAN OF CROATIA

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