

DEMOCRACY AND HUMAN RIGHTS

# "SILENT CAPTURE": UNDEMOCRATIC TENDENCIES IN CROATIA

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Unlike other countries where there is a direct attack on institutions by illiberal ruling political forces, there is a "silent capture" of institutions in Croatia, which is confirmed through the analysis of several publicly exposed cases.



Negative trends of institutional development in Croatia have also been confirmed by international indexes which measure democratic development, perception of corruption and the rule of law.



In order to reverse negative trends of "silent capture" of institutions, it is necessary to systematically implement a policy of meritocracy, maintain political pluralism and strengthen the institutions of society, especially civil society, independent media, and the academic community.



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## SUMMARY

With Croatia's entry into full membership of the European Union in July 2013, the pressure to implement institutional reforms intended to improve the country's democratic norms and processes lessened. At the EU level, Croatia is perceived as a stable country with democratic institutions that function more or less properly. On the other hand, citizens in Croatia have very little trust in state and public institutions in general.

There is a 'silent capture' of institutions in Croatia, and this is the basic thesis and message of this analysis. Unlike some other countries where there is a direct attack on the institutions and their capture by the ruling political elites, in Croatia this process is not visible at first glance. Only a deeper analysis of certain administrative areas and institutions can reveal its existence.

International indexes and the analysis of publicly exposed cases confirm the thesis of the 'silent capture' of institutions in Croatia, as well as the negative tendencies of institutional and democratic development in Croatia.

The report records negative trends in several areas, including Constitutional and democratic governance (part 3.1.), Local self-government and (de)centralization (3.2.), Civil society, media, and public consultations (3.3.), and Independent institutions, public appointments, and the new public salary system (3.4.). It presents ten case studies that reveal how entrapment quietly and simultaneously occurs across these areas.

The cases analyzed show there is a trend of 'silent capture' within many institutions in Croatia that often goes under the radar of international reports, especially those that are compiled on the basis of information obtained from the Croatian state administration. Unlike other countries where there is a direct attack on institutions by illiberal ruling political forces (e. g. Hungary, Poland, Russia, Serbia, Turkey, or Italy under the current government), in Croatia this process is more subtle and less visible at first glance. Only the analysis of cases from individual sectors shows that parallel processes are taking place in various sectors. But these processes have the same goal. And that goal is the filling of institutions with 'reliable' people connected

to the ruling party, resulting in the capture of these institutions so that, even without direct political interference, they still make decisions in the service of the ruling party.

The negative trends of silent capture can only be reversed by long-term and systematic work in several parallel areas. It is necessary to systematically implement a policy of meritocracy, according to which the best and most professional candidates will be appointed to public functions and thereby strengthen the independence and autonomy of said institutions (e.g. Constitutional Court, etc.). A mandatory cooling-off period for politicians accepting appointments to public positions should be introduced and should be at least two years.

It is also of the utmost importance to maintain political pluralism wherever possible, both at the level of central state bodies and at the level of local self-government, especially large urban centers which, in accordance with the doctrine of political decentralization, are able to be a democratic counterweight to central state authority. The dominance of one political group at all levels of public governance (central, regional, local) and in all state institutions (parliament, cabinet, president) is not beneficial for the democratic development of society.

Additionally, it is necessary to strengthen the institutions of society, especially civil society, independent media, and the academic community, in order to create a counterweight to state institutions so that social critical awareness can develop smoothly and thus create conditions for limiting political power and framing it into the democratic standards of a developed society.

## 1

## INTRODUCTION

With Croatia's entry into full membership of the European Union in July 2013, the pressure to implement institutional reforms intended to improve the country's democratic norms and processes lessened. At the EU level, Croatia is perceived as a stable country with democratic institutions that function more or less properly. On the other hand, citizens in Croatia have very little trust in state and public institutions in general.

How can this gap in perceptions between the inside and outside view be explained? Precisely in the way that in Croatia there is a 'silent capture' of institutions, and this is the basic thesis and message of this report. Unlike some other countries where there is a visible capture of institutions by their ruling party, in Croatia this process is not clearly visible at first sight. Only a deeper analysis of particular cases show that the silent capture of institutions is at work and the far-reaching negative consequences for the democratic development of the country. In recent years there have been tendencies in Croatia that can be seen as a democratic regression. This is especially visible in the last few years with the adoption of several laws, policies, and the behavior of important institutional actors that have undermined the independence of some vital independent institutions, as well as other institutions and actors across different administrative areas.

This report firstly deals with the international image of Croatia depicted in several relevant indexes that measure the perception of corruption, the state of democracy, and the state of the rule of law at the international, and often global level.

Also, several cases will be shortly presented and analyzed in order to corroborate the main thesis of this report; that is the somewhat hidden and almost invisible at the first glance, ongoing trend of institutional regression and capture that, in the long run, is eroding Croatia's democratic and overall institutional development.

The last section contains a conclusion and several recommendations for improving the state of institutional development in Croatia in the future.

## 2

## INTERNATIONAL INDEXES MEASURING INSTITUTIONAL DEVELOPMENT

When it comes to implementing reforms, Croatia is perceived as a ‘solid student’ at the EU level. According to a report by the European Commission, the analysis of the national reform Programme and Country Specific Recommendations (CSR) for Croatia shows that “... 51% of the CSRs focusing on structural issues from 2019-2022 have recorded at least ‘some progress’, while 47% recorded ‘limited progress’...” (EC, 2023, p. 23).

However, various international indexes in which countries are ranked according to different criteria contain data on Croatia. By looking at these indexes, it is possible to observe the trends marking the institutional development of Croatia. In the following sections, the latest data for several international indexes such as the Corruption Perception Index, Democracy Index, Freedom House Index, Rule of Law Index, as well as the 2024 Rule of Law Report of the European Commission (RLR, 2024) will be briefly presented in order to show the trends that have been visible in Croatia over the last several years.

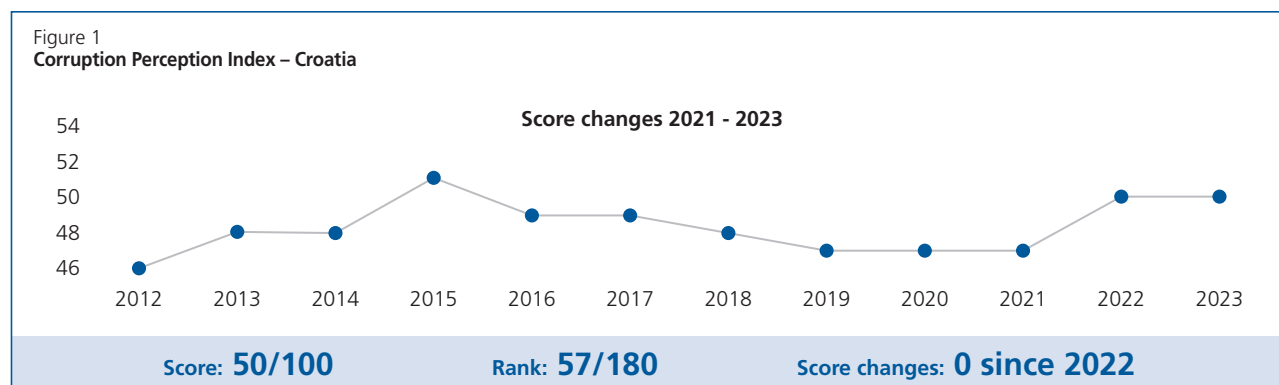
As can be seen in Figure 1, the *Corruption Perceptions Index (CPI)* has seen a slight increase in the past few years. After it was at 47 in 2019, 2020 and 2021, in the last two years, in 2022 and 2023, there is an increase to 50, which is the worst indicator since 2015, when the result of CPI was 51. This indicates somewhat a negative trend regarding the perception of corruption in Croatia in recent years.

Also, the *2024 Rule of Law Report of the European Commission* deals with the theme of corruption in Croatia

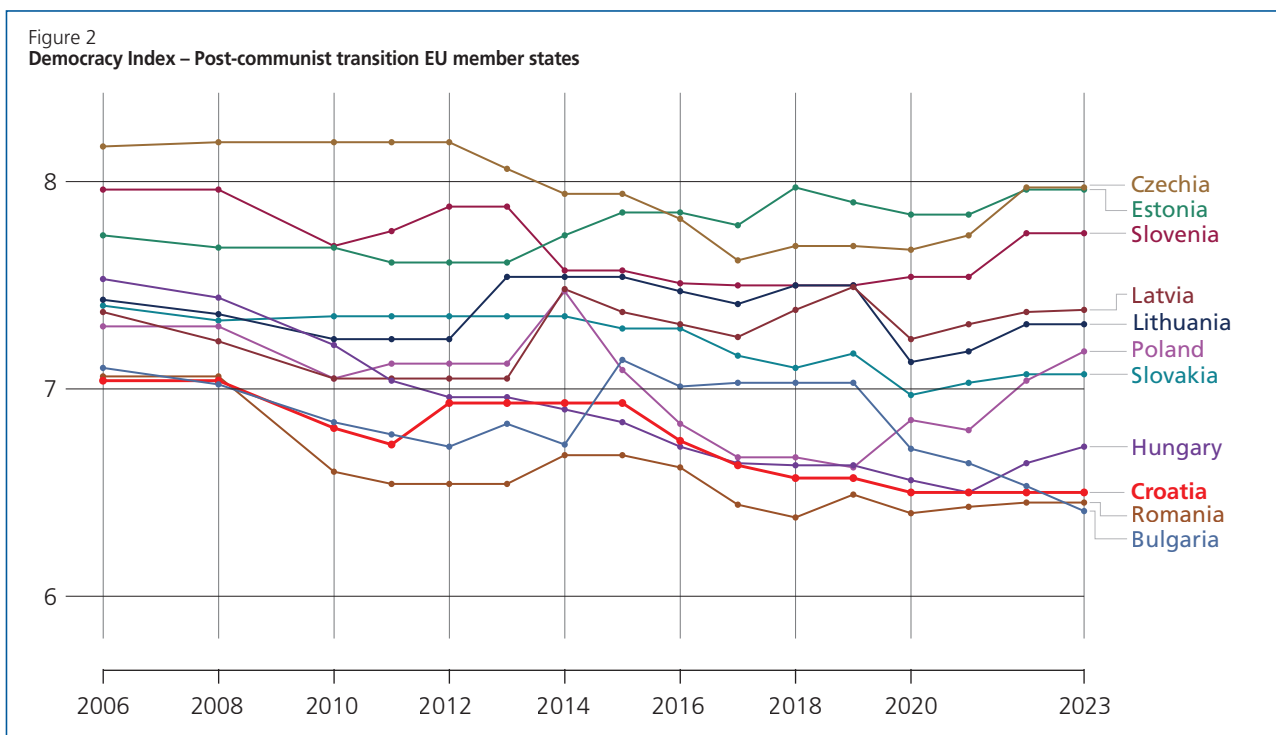
in its second chapter entitled ‘Anti-Corruption Framework’ (RLR, 2024, pp. 12-20). Although the report records numerous legal changes in this field, the perception of corruption is still very high, i.e. significantly higher than the average among EU member states, both in terms of the perception of citizens and business entities. The RLR states: “The 2024 Special Eurobarometer on Corruption shows that 92% of respondents consider corruption to be widespread in their country (EU average 68%) and 60% of respondents feel personally affected by corruption in their daily lives (EU average 27%) ... As regards businesses, 85% of companies consider that corruption is widespread (EU average 65%) and 61% consider that corruption is a problem when doing business (EU average 36%) ...” (RLR, 2024, p. 12).

The data on which the *Democracy Index (DI)* is based also show that Croatia is slowly regressing in its general democratic development. Thus, in the period from 2006 to 2023, there is a visible decrease in the overall rating from 7 to 6.5 (the Index has a range from 1 to 10), which is a decrease of 8 per cent in the monitoring period. As shown in Figure 2, in comparison with the ten post-communist EU member states, Croatia is at the bottom of the ranking, only scoring better in the Democracy Index than Bulgaria and Romania.

Also, according to the *Freedom House index* for 2024, there is a slight decline compared to previous years. Thus, since 2017, when the result was 87/100, there has been a continuous decline in this index (2018 – 86/100, 2019 – 85/100, 2020 – 85/100, 2021 – 85/100, 2022 – 85/100,



Source: <https://www.transparency.org/en/countries/croatia>



Source: <https://ourworldindata.org/grapher/democracy-index-eiu?tab=chart&country=HRV~BGR~CZE~EST~HUN~LVA~LTU~POL~ROU~SVK~SVN>

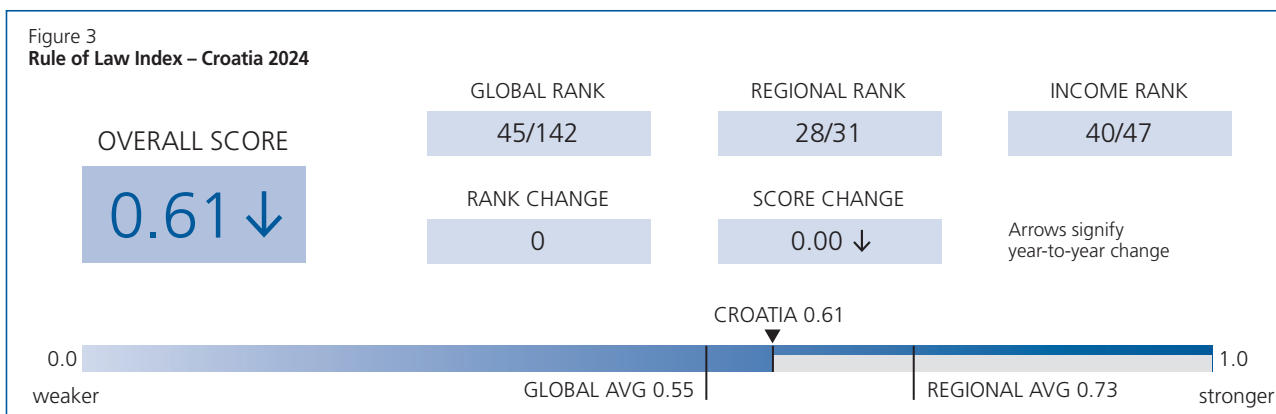
2023 – 84/100). For the year 2024 the value of this index is 83/100 which is the worst result since 2017. Particularly weak ratings are reported in regard to two segments of the index that measure the functioning of the government, namely: Are safeguards against official corruption strong and effective? (2/4) and, Does the government operate with openness and transparency? (2/4).<sup>1</sup>

Furthermore, the data of the *Rule of Law Index (RLI)* also show the cessation of positive trends and a turn towards negative trends in development over the last few years. While Croatia’s overall RLI average (0.61) is slightly better than the global average (0.55), it is significantly worse than the overall regional average, which is 0.73. These overall indicators are visible in Figure 3.

The trends are especially negative when it comes to certain parts of the RLI, such as constraints on government

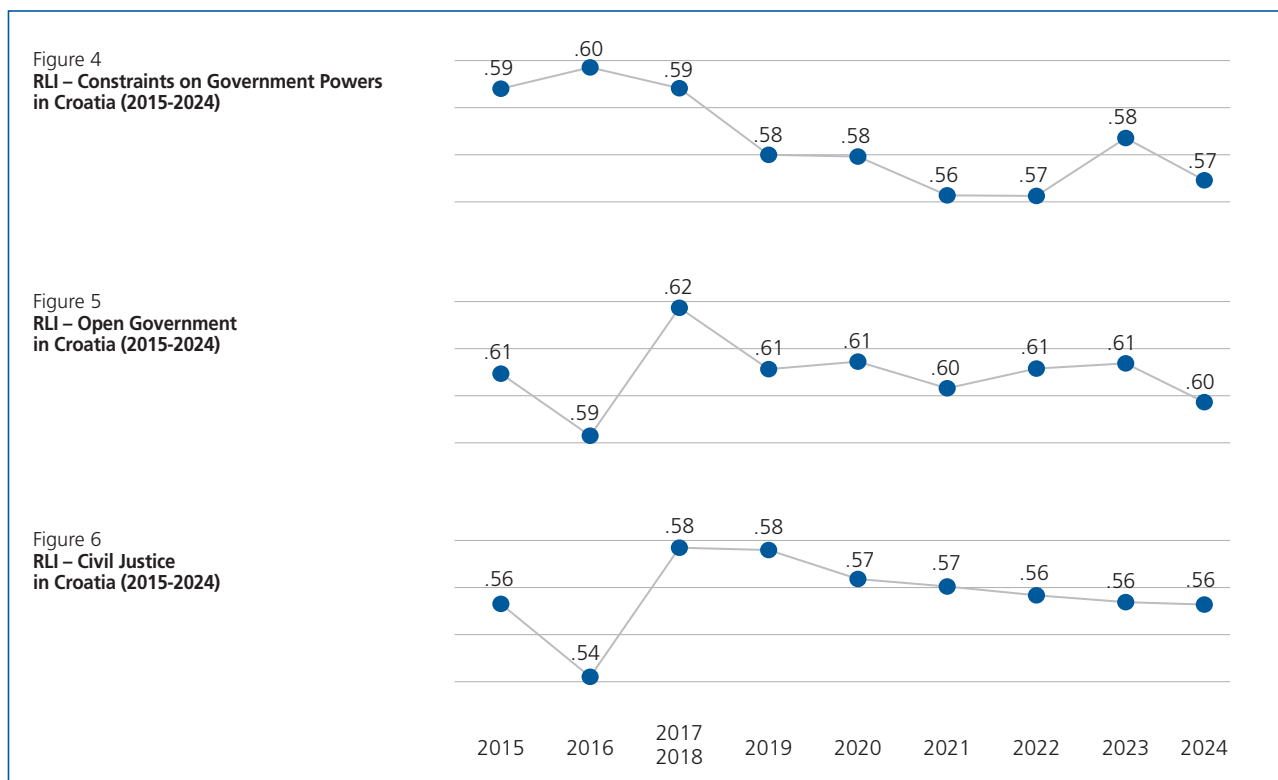
powers (Figure 4), open government (Figure 5) and civil justice (Figure 6). These specific factors of the RLI are described and briefly analyzed in the following sections below.

The factor dealing with Constrains on Government Powers of RLI “... measures the extent to which those who govern are bound by law. It comprises the means, both constitutional and institutional, by which the powers of the government and its officials and agents are limited and held accountable under the law. It also includes non-governmental checks on the government’s power, such as a free and independent press.” As shown in Figure 4, the overall situation in this regard has deteriorated from 2016 until today, with only a slight improvement in 2023, but with the negative trend in 2024 returning.



Source: <https://worldjusticeproject.org/rule-of-law-index/country/2024/Croatia/>

1 For detailed assessment of Croatia check: <https://freedomhouse.org/country/croatia/freedom-world/2024>



Source: <https://worldjusticeproject.org/rule-of-law-index/country/2024/Croatia/Constraints%20on%20Government%20Powers/>  
 Source: <https://worldjusticeproject.org/rule-of-law-index/country/2024/Croatia/Open%20Government/>  
 Source: <https://worldjusticeproject.org/rule-of-law-index/country/2024/Croatia/Civil%20Justice/>

Factor Open Government of the RLI “... measures the openness of government defined by the extent to which a government shares information, empowers people with tools to hold the government accountable, and fosters citizen participation in public policy deliberations. This factor measures whether basic laws and information on legal rights are publicized and evaluates the quality of information published by the government.” Yearly data presented in Figure 5 show the negative trend regarding this factor since 2017/18, with the situation slightly worsening in 2024.

The factor Civil Justice of the RLI “... measures whether ordinary people can resolve their grievances peacefully and effectively through the civil justice system. It measures whether civil justice systems are accessible and affordable as well as free of discrimination, corruption, and improper influence by public officials. It examines whether court proceedings are conducted without unreasonable delays and whether decisions are enforced effectively. It also measures the accessibility, impartiality, and effectiveness of alternative dispute resolution mechanisms.” After the significant increase of the RLI score regarding this factor in 2017/18, the continuous and slightly negative trend can be noticed since then.

Finally, *2024 Rule of Law Report of the European Commission for Croatia* (RLR, 2024) states several improvements, but also risks and shortcomings in the overall situation with the rule of law. The Report addresses four main topics, which according to the European Commission are important for the rule of law in Croatia. These are: several issues regarding the judicial system development, an anti-corruption framework, media pluralism and other institutional issues related

to checks and balances in Croatia.<sup>2</sup> Although there have been numerous changes in the legal regulation in many of the areas analyzed in the report, there are still significant shortcomings when it comes to key aspects of the rule of law in Croatia.

Most of the mentioned international indexes and comparisons show a somewhat worrying trend of institutional development in Croatia in the key aspects essential for the overall democratic development of the country. Besides that, there are specific cases that corroborate the overall assessment of institutional decline in the past few years and which cases will be presented in the following sections of this paper. All this adds support to the critical evaluations that have already been presented and discussed<sup>3</sup> regarding Croatia’s institutional development.

2 Some of the issues mention in the 2024 RLR, especially in its section IV, dealing with other institutional issues related to checks and balances will be addressed as special cases in the following part of this report.

3 “Democratic backsliding in Croatia is based on mastering the key public media service and using financial pressure to silence other critical media. At the same time, it blocks or slows down and administratively burdens the use of European funds that were intended for non-profit media or redirects them to those who express support for the government. The judiciary, which was already weakened during the 1990s, was prevented from developing properly, and it remained one of the key problems of the Croatian political system. The entire process of democratic regression continued with the marginalization, weakening and capture of a whole series of public institutions, independent bodies and organizations directly in charge of limiting the power of the executive, through changes in laws or the appointment of loyal staff ...” (Čepo, 2022, p. 4).



## 3

## SPECIFIC CASES INDICATING THE “SILENT CAPTURE” OF INSTITUTIONS

In the following sections, ten cases that outline undemocratic tendencies in different sectors in Croatia will be briefly presented. Some of the cases have passed under the radar of previously presented international reports and indexes that measure institutional development. Despite this, these cases have, to a greater or lesser extent, reached the media in Croatia and have been the subject of public debate. This is the main reasons why are they included in the report. They are significant to the extent that they are about the further politicization and subtle capture of institutions, i.e. narrowing of the space of freedom of action in certain segments as a result of their significant subjection to political pressure, the negative consequences of which will be felt in the near future. There are other cases that indicate the same negative trends, but these cases have not reached the public to such an extent. However, this does not mean that they do not exist and could not be mentioned in this analysis.

The following ten cases are grouped according to the areas in which they occurred, and each area is considered important area for democratic development and the rule of law in Croatia. These are the areas of Constitutional and Democratic Governance (3. 1.), Local Self-government and (De)centralization (3. 2.), Civil Society, Media and Public Consultations (3. 4.), and Independent institutions, Public Appointments and New Public Salary System (3. 4.).

### 3.1. CONSTITUTIONAL AND DEMOCRATIC GOVERNANCE

#### 3. 1. 1. The dubious practice of removing ministers without parliament approval undermine the rule of law and additionally strengthen the position of prime minister

For a long time, observers have pointed out the constitutionally disputed and legally unfounded situation in which the prime minister independently dismisses ministers without requiring a vote on the dismissal in the Croatian Parliament (see Đulabić, 2017, 2023). The most egregious example of such a practice occurred back in 2017, when four ministers from the coalition party (Most), which then participated in the formation of the parliamentary majority, were ‘dismissed’ in this way. As many as 42 days passed

before new appointments were made in the Parliament (*Hrvatski sabor*), during which time a new parliamentary majority was formed by one of the then opposition parties (HNS) whose new support allowed for the formation of the new majority without the holding of a general election. After that, several other ministers were dismissed in the same way, but this did not arouse much public attention because they were ministers of the ruling party. Also, according the Rules of Procedure of the Croatian Parliament, in the event of the election or replacement of a new minister during the government’s term in office, the discussion of the candidate for minister is not held at a plenary session, even though the Constitution requires that it be so (Art. 112), but only in the parliamentary committee competent for the specific area of the ministry. All this diminishes democratic standards and strengthens authoritarian tendencies within the parliament and government.

In November 2024, the Constitutional Court issued a very short letter concerning the practice of dismissing ministers by an independent decision of the Prime Minister, rather than by a vote of no confidence in the parliament, declaring it to be an ‘established and stable practice’, and not a deviation in the legal and political system. The letter caused further controversy as the Constitutional Court issued this opinion towards the very end of the mandate of 10 of its 13 judges. Additionally, it did not explain its statement with any arguments or support it with expert analysis. The section that presents the explanation and analysis contains only three sentences.<sup>4</sup>

With such an approach, the Constitutional Court abandoned the principle that decisions must be firmly grounded, legally argued, and based on a clear and unambiguous interpretation of the legal regulations from which they are derived. These are the fundamental prerequisites for the establishment of the rule of law in a democratic society.

<sup>4</sup> See additional analysis on the fact-checking portal Faktograf regarding the deficiency of the procedure in which Constitutional court issued a disputed letter – Kristović, 2024.

### 3. 1. 2. Other actions of the Constitutional Court in several cases call into question its objectivity and neutrality and undermine the rule of law

Generally, some of the decisions of the Constitutional Court in recent years have been criticized as being too partisan and ruling only in favor of the ruling party. The actions of the Constitutional Court in several more politically sensitive cases indicate that, on the one hand, this court is self-limiting and refuses to decide when it comes to politically sensitive issues, while on the other hand, it clearly sides with the country's rulers. Such practice undermines its objectivity, even its expertise, and resistance to daily political pressure.

Among the most public cases of the last few years are the decisions concerning the constitutionality of closing Saint Mark's Square to the public, in which case the Constitutional Court declared itself incompetent to decide, thus leaving a gap in terms of legal protection aimed at the protection of some fundamental human rights such as the right to free movement.<sup>5</sup>

There is a serious and expertly argued concern that the Constitutional Court overstepped the limits of its powers when it intervened in the case of the president of the republic's announcement that he would be a prime minister candidate after the parliamentary elections if the opposition won the election. The prompt reaction of the Constitutional Court, which forbade even the mention of the president in the campaign, was interpreted as a blow to the freedom of political activity of a particular political party. Even more serious objections concern the formal-legal issues, such as the issues of form and procedure in which the Constitutional Court issued two simple letters, instead of a formal decision, which is a legally prescribed act that has legally prescribed and obligatory constituent parts (introduction, sentence, explanation of grounds – Art. 27-34 of the Constitutional Law on the Constitutional Court)<sup>6</sup>.

In this context, it is particularly interesting that the Constitutional Court regularly annuls the decisions of ordinary courts and administrative bodies precisely on the grounds of insufficiently clear explanations that point to an arbitrariness in their decision-making, which ultimately results in a violation of citizens' constitutional right to a fair trial.<sup>7</sup> But, as Latin saying goes *Quod licet Iovi, non licet bovi*.

The decision in cases of conflicts of interest prevention (Constitutional Court Decision U-III-673/2018 from July 2, 2019) abolished a series of decisions from regular courts and administrative bodies, and although it did not clearly indicate this, it opened up space for a change in judicial practice, which significantly limited the activities of the Commission for deciding on the prevention of conflicts of interest (for details see part 3. 4. 1. *infra*).<sup>8</sup>

### 3. 1. 3. Regulating electoral districts: serious doubt in the undemocratic practice of gerrymandering

At the beginning of October 2023, amendments to the Act on Electoral Districts for the Election of Representatives to the Croatian Parliament entered into force.<sup>9</sup> The main reason for the changes was to create harmony with the earlier decisions of the Constitutional Court, according to which the electoral districts should have an approximately equal number of voters, which had not been the case.

The law retained 10 existing electoral districts that had long been deemed unsuitable, but intervened in their boundaries in order to meet the criterion of having an equal number of voters in each district. Some of the electoral districts were redrawn in a way that undoubtedly resembles the practice of political *gerrymandering*. In this case the redistricting involved drawing districts in order to help the ruling party maximize its electoral results.<sup>10</sup> This is most clearly visible in the case of replacing the number of inhabitants from one district with the same number of inhabitants from another, with the difference being that some settlements included in the swap between districts are more inclined to vote for the ruling party and in this way significantly strengthen the party's results in elections. This happened with settlements around Rijeka that tended to vote for the opposition and were thus merged into another district in order to reduce their cumulative effect. The same happened with the settlement of Trešnjevka North in Zagreb (which is one of Zagreb's neighborhoods), which was transferred from the 1st to the 6th electoral district, but at the same time the town of Velika Gorica (which is a separate town outside of Zagreb) with approximately same number of inhabitants (where the ruling party is in power) was annexed to the 1st electoral district in order to “fix” the electoral system. However, there is an open suspicion that this was done in order to improve the election results of the ruling party in Zagreb.

5 See Constitutional Court Decision U-II-3503/2023 from December 19, 2023.

6 Constitutional Law on the Constitutional Court, Official Gazette 99/99, 29/02, 49/02. For details see also Đulabić, 2024..

7 Recently, the Constitutional Court clearly stated: “The constitutional right to a fair trial prescribed by Article 29, Paragraph 1 of the Constitution guarantees protection against arbitrariness in the decisions of courts and other state bodies. Explanations of court decisions, i.e. decisions of other competent bodies that do not contain serious, relevant and sufficient reasons for the assessment as given in the decision, point to the conclusion of arbitrariness in the procedural and/or substantive legal sense.” – see Constitutional Court Decision U-III-759/2022 from September 26, 2024, paragraph 7. The same

explanation is contained in some earlier decisions of that court, but with an additional sentence that reads: “In this sense, the explanations of court decisions are extremely important, because the lack of relevant and sufficient reasons for assessments such as those given in the decision is the first and most important sign that points to arbitrary judicial decision-making.” – see Constitutional Court Decision U-III-673/2018 from July 2, 2019.

8 More Constitutional Court decisions could be presented, especially those made regarding the COVID-19 pandemic, but given the nature of this report, we will limit ourselves to those that have attracted considerable attention among the general public.

9 Official Gazette 114/2023

10 See analysis done by the fact-checking portal Faktograf (Despot, 2023).

The amendments of the Law came at the last minute before the expiration of the previous law, which the Constitutional Court declared unconstitutional and repealed in February 2023<sup>11</sup>, but this repeal was scheduled to take effect at a future date (October 1, 2023). At the same time, the Parliament was obliged to adopt amendments to the law that would be consistent with the views the Constitutional Court expressed in the decision in the repeal from February 2023. Additionally, the Parliament needed to take into consideration the views on the matter expressed in its special report on this topic from 2010<sup>12</sup> and a decision on the same topic from 2015<sup>13</sup>.

The fundamental objections to the adopted amendments concern the very process of preparing the legal amendments, which were not transparent and did not involve leading experts (primarily lawyers, political scientists and public administration experts). The second line of objections concerns the content of the amendments themselves. Finally, the third line of objections concerns missing the opportunity for the final regulation of the matter of electoral districts so that they could reflect a positive political and democratic development of the country.

## 3.2. LOCAL SELF-GOVERNMENT AND (DE)CENTRALIZATION

### 3.2.1. Centralization trends in local self-government are undermining the role of local and regional self-government, making it more dependent on the central government.

In recent years there has been a visible trend in the centralization of local self-government tasks that were previously decentralized. This is the case with social services, healthcare, and recently with the management of public property. The main argument in favor of centralization in the aforementioned areas is the increase in efficiency, the improvement of public procurement and better management, which was especially highlighted in the health sector.

With the adoption of the new Law on Social Welfare, which was passed in February 2022<sup>14</sup>, the independence of the county centers for social welfare were abolished and a central institute for social welfare was established under the control of the central ministry responsible for social welfare. This is a turnaround in relation to the decentralization in this sector that has been implemented since 2000/2001. The professional and academic community was extremely critical of the implemented centralization in social care. The

main arguments against the centralization of the system show that it will not solve the fundamental problems faced by the department, which are the “... under capacity of the system, poor working conditions, inter-departmental incoordination, excessive powers and excessive administration, problems of the advancement of professional workers, centralized management of the system, ...” (Marković, 2021).

Also, the previously announced centralization of healthcare was carried out in such a way that the county hospitals and the hospitals of the City of Zagreb became state hospitals whose governing boards are now controlled by the central ministry responsible for health. The fact that some counties (Krapina-Zagorje and Međimurje) and the City of Zagreb have initiated a procedure in front of the Constitutional Court for the evaluation of the constitutionality of such legal changes shows that the situation in healthcare goes against local and regional governments.<sup>15</sup> The fact that at the time the Minister of Health was arrested in November 2024 on suspicion of being a member of a criminal organization and for criminal offenses of bribery and corruption precisely because the procurement of medical equipment in the country's hospitals and institutions are centralized, shows how disastrous centralization in healthcare is for the state of democracy in Croatia.<sup>16</sup>

The above examples show how centralization is disastrous for the system of local and regional self-government, though it is sometimes claimed to increase efficiency. Otherwise, Croatian local self-government is characterized by a relatively weak position in the system of government organization in Croatia. Additional centralization of the already weak local and regional self-government undermines its constitutional role as an instrument of power sharing and a means of limiting central state power.

## 3.3. CIVIL SOCIETY, MEDIA AND PUBLIC CONSULTATIONS

### 3.3.1. The politicization of youth councils: instruments in the hands of major political parties and not for youth democratic participation

At the end of July 2023, amendments to the Law on the Youth Councils (LYC) entered into force<sup>17</sup>, introducing significant innovations in the functioning of youth councils as mandatory advisory bodies in local and regional self-government districts in Croatia. Given that youth councils in local (municipality and town) and regional self-government districts (counties) are appointed by the representative

11 Constitutional Court Decision (*odluka*) U-I-4089/2020 from February 7, 2023.

12 Constitutional Court Report U-X-6472/2010 from December 8, 2010.

13 Constitutional Court Decision (*rješenje*) U-I-4780/2014 from September 24, 2015.

14 Official Gazette NN 18/22, 46/22, 119/22, 71/23, 156/23

15 Given that it is about the so-called ‘communal constitutional lawsuits’ filed due to the violation of the right to local self-government, the Constitutional Court should react within 30 days, but this has not yet been resolved.

16 For detailed analysis on health see Đulabić, 2023c and for general characteristics and problems of local and regional self-government in Croatia see Đulabić, 2022.

17 Official Gazette 83/2023

body of each local and regional self-government district, the Croatian Youth Network<sup>18</sup>, as the umbrella body of young people, has rightly warned that the Youth Council at the national level will be politicized and completely under the control of the ruling party, which has a majority in the county assemblies of most counties in Croatia (MMH, 2024a, 2024b). Although youth councils are not particularly politically influential in democratic governance in Croatia, their politicization and subordination to party interests is additionally worrying because these and other similar forums (e. g. student organizations, party youth groups, etc.) often generate a new generation of the political class in Croatia, which in this way internalizes undemocratic patterns that will likely be perpetuated in the future.

Particularly disputed provisions of that law concern the establishment of the umbrella Youth Council of the Republic of Croatia, which represents the umbrella body of youth and “... acts as a coordinating body of youth councils in the Republic of Croatia that coordinates the work of all youth councils.” (Art. 25.d LYC). Furthermore, members of the Youth Council will be appointed by the constituted county youth councils (Art. 25.a/3 LYC), and the national Youth Council will closely cooperate with the state administrative body responsible for youth in the preparation of measures for youth and the monitoring of their implementation (Art. 25.d LYC).

For the previously mentioned reasons, youth organizations together with 44 opposition parliamentarians in the beginning of February 2024 initiated the procedure in front of the Constitutional Court to assess the constitutionality of the previously mentioned Law on Youth Councils amendments (IUS-INFO, 2024). So far, the Constitutional Court has not resolved this case, so the dubious amendments are still in force, subjecting youth councils to significant party and general political influence at the local and regional level.

### 3. 3. 2. SLAPP remains a continuous attack against the freedom of media and journalism.

Systematic Lawsuits Against Public Participation (SLAPP) remain a serious problem that the Croatian Journalists’ Association and other civil society associations continuously criticize. According to recent data (CMT, 2024), SLAPP lawsuits continue to represent a very big problem for journalists and the media in Croatia. A study conducted on 1,333 final judgments in the period 2016-2023 shows that a large number of analyzed judgments (about 40 percent) have one or more characteristics of SLAPP lawsuits (CMT, 2024, p. 26).<sup>19</sup> Also, the number of active lawsuits against journalists is consistently high. So far, during 2024 there have been a total of 752 active lawsuits against journalists

(data for only first half of the year), while in the previous few years this number was slightly higher (945 in 2023, 951 in 2022 and 905 in 2020) (RLR, 2024, p. 26).

In addition to the number of active lawsuits against journalists, some other characteristics of SLAPP cases should be added to give a full picture of the phenomenon. These include the long duration of such proceedings (usually over 4 years), very high damages awarded for so-called ‘mental anguish’ in SLAPP cases (more than 9,000 euros on average plus additional interest), a large number of judges and politicians appearing as plaintiffs, the imposition of an obligation to publish entire judgments in the event of losing the case, which generates additional costs for the journalists being sued, etc. (CMT, 2024).

The Report on the Rule of Law in Croatia of the European Commission for 2024 points to problems with the functioning of the media, especially the public media service (Croatian Radio and Television – HRT). Although the legal framework that regulates media freedom, pluralism and the right to access information of the public sector is relatively good, there are problems in daily practice. The Report states: “Concerns about the political independence of the Council for Electronic Media and the public service broadcaster HRT persist. HRT also faces criticism regarding potential conflicts of interest. ... While media ownership information is available, some challenges remain as regards ownership transparency. The framework for a fair and transparent allocation of state advertising raises concerns both at national and local level and no steps were taken to strengthen it.” (RLR, 2024, p. 1).

### 3. 3. 3. The formalistic and technically complicated public consultation process

Consultation with the public in the process of adopting laws, bylaws and other documents (e.g. strategies, etc.) is a very important instrument in a democratic society. It ensures additional legitimacy of public policies, creates prerequisites for better preparation and the implementation of regulations, eliminates deficiencies that were not noticed in the process of preparing regulations, and generally democratizes the process of adopting regulations and other public documents. That is why it is important to create a system of public consultations that is simple and enables the participation of a wide range of interested parties in the process.

Although, the new legislation has been in force since the beginning of 2024<sup>20</sup> it seems that the public interest for participation in the public consultation processes has significantly weakened. The new legal framework extended the mandatory consultation period to a minimum of 30

<sup>18</sup> Croatian Youth Network - <https://mmh.hr/>

<sup>19</sup> For the characteristics what constitutes a SLAPP case see CMT, 2024, pp. 7, 8

<sup>20</sup> New Law on Better Regulation Policy Instruments was adopted in the end of 2023 and entered into force in January 2024, Official Gazette 155/2023.

days, introduced a one-stage instead of a two-stage impact assessment process, and introduced some additional legislative improvements (see RLR, 2024, pg. 27.).

The largest number of public consultations in Croatia is carried out via the e-Consultation online portal.<sup>21</sup> Until recently, access to the portal was relatively simple, and allowed practically anyone to participate in public consultations. But it became significantly complicated when it was integrated into the existing e-Citizen system, which made inclusion in the consultation process considerably more technologically complicated. Technical complications will definitely further undermine the number and relevance of comments from the public regarding laws, bylaws and other public documents such as strategies, policy documents, etc.

Data show that the interest for participation in public consultations decreases. In 2023, 6,445 natural and legal persons with a total of 19,991 comments participated through the e-Consultation platform with their suggestions and comments. In 2022, 6,552 natural and legal persons participated in the same procedure with a total of 23,069 comments.<sup>22</sup> However, apart from the mentioned numbers of participants, those concerning the number of accepted comments are more significant. Namely, only 9 percent of comments were accepted and an additional 7 percent were partially accepted. By far the largest number of comments, 84 percent of them fall into one of three categories: 40 percent – not accepted, 23 percent – ‘acknowledged’ and 21 percent – unanswered (Office for Legislation, 2024, p. 16). In her reports for two years already (2023 and 2022), the Ombudswoman has been proposing to the government to increase the number of reasoned responses to comments received, while civil society organizations highlight that “... public consultations continue to be held *pro forma*, with only ‘acknowledgment’ of the comments made by the public ...” (RLR, 2024, p. 28).<sup>23</sup>

If the two previously mentioned factors are taken into account, namely the reduced interest of citizens due to the failure to adopt the majority of comments and the formalistic nature of the entire process, on the one hand, and the increase in technical complexity on the other, it seems that the positive effect of public consultation has been significantly reduced.

## 3.4. INDEPENDENT INSTITUTIONS, PUBLIC APPOINTMENTS AND A NEW PUBLIC SALARY SYSTEM

### 3.4.1. The New Law on conflicts of interest diminishes the role of the Commission for the Prevention of Conflict of Interest

At the end of 2021, the new Law on the Prevention of Conflict of Interest (LPCI) entered into force.<sup>24</sup> The adoption of the law was preceded by an intense public debate in which it was pointed out that the adoption of this law will negatively affect the entire system of fighting corruption and conflicts of interest. It was warned that the new legal framework would have a particularly negative impact on the role of the independent Commission for Deciding on Conflict of Interest (Commission). It is clearly stated that the Commission “... will not be able to perform its primary functions - preventing conflicts of interest and ensuring compliance with the principles of honorable, honest, conscientious, responsible and impartial action of state and public officials from Art. 5 of the current Law on the Prevention of Conflict of Interest. The new Law does not include provisions that would strengthen the Commission and ensure and elaborate the implementation of the principles in the performance of duties ...” (Gong, 2021).

The key objections to the new legal framework concern the narrowing of the Commission’s room for maneuver in the fight against conflicts of interest for several reasons. The first concerns the change in judicial practice due to the judicial control of the Commission’s decisions. The adoption of the new legislation followed after the Commission opened cases against the current prime minister and several ministers from his then Cabinet. This was preceded by a sudden and unexpected change in the judicial practice of the High Administrative Court, which in a rather non-transparent procedure changed its previous legal understanding and significantly limited the authority of the Commission to act preventively in cases of potential conflicts of interests of political officials.<sup>25</sup> The Commission has no longer the authority to issue warnings to active politicians who have violated ethical norms in their work, even though they may not have formally committed criminal offenses, which was previously within the Commission’s power (e.g. in cases of purchasing expensive furniture for office, traveling to a party rally on a government plane, spending summer

21 Portal e-Consultation was established in 2015, had approximately around 60,000 users and can be reached via the following address: <https://savjetovanja.gov.hr/>

22 The largest number of participants in the period 2012-2023 was recorded in 2021, when 8,459 individuals and legal entities participated in the consultation procedures. – Office for Legislation, 2024, p. 13.

23 See additional analysis in Grozdanić, 2024 and RLR, 2024, pp. 27, 28.

24 Official Gazette 143/2021

25 Of course, it should be noted that the High Administrative Court itself claims (HAC Communication, 2024) that the change in the legal understanding of the High Administrative Court is the result of harmonizing with the views of the Constitutional Court presented in case U-III-673-2018, although this could be debated in detail, but the nature of this report does not allow it. Namely, the Constitutional Court clearly stated the following in that decision: “The Constitutional Court points out that this decision does not call into question the authority of the Commission to decide on a conflict of interest, violation of the principles of the official’s actions, as well as on the violation of other provisions of the LPCI ...” – see Constitutional Court Decision U-III-673/2018 from July 2, 2019.



holidays of active ministers on the yachts of controversial entrepreneurs and their sponsorship of ministerial trips to football matches, etc.).<sup>26</sup>

On the same track is the placing of new tasks under the Commission's jurisdiction and the expansion of the circle of those obliged to apply the new law, all without any strengthening the administrative and professional capacity of the Commission to take on these additional functions. Overburdening the Commission with the administration of a significantly increased number of asset reports and the expansion of the circle of those obliged to apply the new law makes it impossible for it to play a more active role in key cases of conflicts of interest.

The danger that, after the adoption of the new law, the Commission will “... become a mere administrative body that will mostly administer reports on assets ...” (Gong, 2021) turned out to be true, because today the role of that Commission is practically invisible to the public, which was not the case in past convocations of the Commission.

### 3. 4. 2. Public appointments of until recently politically active, controversial, unexperienced or completely unknown candidates backed by strong political sponsorship cast a shadow on independent institutions

Several appointments to public positions in recent years have raised suspicions of political patronage. Appointments of leading personnel in institutions that should be politically independent were done under the suspicion of inappropriate political influence. These positions are crucial for the execution of control and policy, especially concerning the executive branch of government.

Appointing politicians to independent institutions immediately after submitting their resignations from a political party or without a clear public and professional profile creates the impression of quietly capturing these institutions and subjecting them to narrow party influence. A kind of cooling-off period of at least two years would be necessary to partially remove the suspicion that these appointments are political.

Perhaps the most controversial case is the recent appointment of a new State Attorney General in February 2024. Although this individual was a judge with many years of working experience in the judiciary, he is also a person who is quite controversial, given that he once held a political

position (assistant minister) in the HDZ led government. This clearly places him on the side of the ruling political party undermining the position's supposed impartiality. In addition, he is criticized for his acquaintances with several people from the high ranking political and business milieu, which are currently on trial for corruption and similar crimes. Furthermore, he is known to the public for criticizing the need for the existence of the Office of the European Public Prosecutor in Croatia. This has been interpreted as the understanding that all cases should be handled by the domestic, not the European, prosecutor's office. Such an understanding, given the perception of the high rate of politicization of the Croatian judiciary, is interpreted in the context of ensuring decisive influence, primarily on the criminal prosecutions of high-ranking political officials.<sup>27</sup>

Additionally, politicians have been appointed to public positions in independent institutions. The vice-president of the State Election Commission was appointed to his position immediately after serving as the state secretary in the Ministry of Justice and Administration. Prior to that position he had been a member of parliament for many years. The same is currently happening in the process of appointing ten judges of the Constitutional Court, in which one of the likely candidates for appointment is a long-time member of parliament from the HDZ and the former Minister of Justice. A few months ago, he suddenly retired from politics, justifying it by wanting to retire in order so that he appeared as a promising candidate for the judge of the Constitutional Court. The same thing happened during the previous election of constitutional judges in 2016.

Also, in important public regulatory agencies such as the Commission for Deciding on Conflicts of Interest or the position of Information Commissioner, persons who are unknown to the general public and who have not particularly distinguished themselves in their public and professional activities have been appointed. All this diminishes the importance of such independent institutions, which are crucial for democratic development and for which research shows that “... ideas of morality, independence, courage and neutrality were given as key success factors of an independent institution.” (Čepo, 2021, p. 42).<sup>28</sup>

It should also be added that the Croatian public administration in general is quite politicized and, apart from formal political positions (ministers, state secretaries), a large number of directors in ministries – which should be the highest professional and politically neutral position in the state administration – are former assistant ministers who

<sup>26</sup> This was based on the article 5 of the previous law which regulated the principles of ethical conduct of public officials.

<sup>27</sup> In October 2024, the public learned of the resignation of two members of the ruling HDZ, just a few days before their arrest. One was the head of a public company (*Hrvatske ceste*), and the other was the mayor (City of Otok) and MP of the ruling HDZ. It was emphasized in the public that they were informed that they would be arrested and that they resigned from their positions in order to reduce the political damage to the ruling party. – see Jakelić, 2024.

<sup>28</sup> However, “... politicians are expected to nominate and elect candidates of unquestionable ethics, i.e. individuals of inviolable morals, regardless of whether they are ideologically close to them or not. The nomination and election process should be tailored in such a way to dissuade bad candidates from candidacy at the very beginning, and encourage the application of the best personnel.” (Čepo, 2021, p. 43).

were politically appointed and who, through public tenders in which the decisive criterion for appointment is an interview with the minister, were simply formally transferred into professional directors in state administration bodies. In addition to these individuals, there is also a large number of political advisers who, in addition to the aforementioned political positions, are also appointed to state administration bodies outside the hierarchical management system, but with great political influence.<sup>29</sup>

### 3. 4. 3. New legislation on salaries in public administration and public services put some important public services (such as higher education) under possible political influence and interference

The new regulation of salaries in the public sector has been enforced from the beginning of 2024.<sup>30</sup> The new system is legally unclear and under-regulated, and applies tools that are inappropriate for public services, which could lead to the further politicization and passivation of the science and higher education system.

The fundamental objections to the new legal regulation of the salary system can be reduced to three groups (Đulabić, 2023b). The first concerns partial solutions and the insufficient regulation of many issues that are not regulated by law, but are left to bylaws. The new law regulates the very complex matter of salary regulation in a huge part of the non-profit public sector, which includes the state administration and public services, with only 32 articles, while most of the key issues are left for a dozen by-laws that were not prepared or passed immediately after the law was adopted. Because of this, great legal uncertainty was created and room was left for political maneuvering in the process of passing these by-laws. The new law envisaged “... a very complex ... salary system in the civil service and public services, in which the main parts of that system remained completely unknown at the time the law was passed. Such a method of regulation creates enormous legal uncertainty and opens up the possibility of breaking through the system, creating unnecessary exceptions in regulations, partial solutions and similar things that are contrary to the proclaimed goal of passing the law, which was ... to regulate the salary system in the civil service and public services in a unique way.” (Đulabić, 2023b).

The second group of objections concerns legal principles that are not sufficiently thought out and are completely inappropriate for certain public service systems, such as higher education. For example, the provisions on evalua-

tion of employees (e.g. university professors, primary and secondary school teachers) in certain public services are unnecessary and even harmful because they create a parallel system of evaluation, given that methods of assessment and evaluation in the education and science system already exist and are prescribed by existing legal regulations. The same is true of a 5 percent limit on how many people can receive the best grades per year.

The third group of objections is focused on solutions that open up space for additional politicization and abuses that can occur in certain public service systems (e.g. secondary and higher education), and are the result of the unsuitability of certain legal institutes for certain public services. The entire system is politicized through the Council for Monitoring and Improving the Salary System in the Civil Service and Public Services, which includes the vast majority of government representatives, very few union representatives, and not to mention other external actors (e.g. academic community, service users, etc.). Finally, the introduced evaluation system in some public services will result in the complete pacification of any criticism and the passivation of employees.

All of the above inspired two trade unions covering the secondary and higher education and science sectors to submit to the Constitutional Court in October 2024 a proposal to evaluate the constitutionality of the provisions of the law concerning the termination of employment contracts in public services.<sup>31</sup>

<sup>29</sup> Currently (November 2024), there are 40 special advisers who are appointed to the central bodies of the state administration and who receive financial compensation for their services (Dimitrijević, 2024). For an analysis of the different status of advisers and other political functions, see Đulabić, 2023a.

<sup>30</sup> Law on salaries in state administration and public services, Official Gazette 155/2023, adopted on December 15, 2023, and in force from the January 1, 2024.

<sup>31</sup> For details see NSZVO, 2024.

## 4

## DEBATE AND CONCLUSION

As shown by the aforementioned international indexes, institutional development trends in Croatia have been moving in a negative direction for the past several years. Politicization has affected many segments of Croatian society and institutions, especially public institutions.

The aforementioned cases show there is a trend of ‘silent capture’ within many institutions in Croatia that often goes under the radar of international reports, especially those that are compiled on the basis of information obtained from Croatian state administration bodies. Unlike other countries where there is a direct attack on institutions by illiberal ruling political forces (e. g. Hungary, Poland, Russia, Serbia, Turkey, or Italy under the current government), in Croatia this process is more subtle and less visible at first glance. Only the analysis of cases from individual sectors shows that parallel processes are taking place in various sectors. But these processes have the same goal. And that goal is strategically placing ‘reliable’ people in institutions, resulting in their capture in the service of the ruling party. It seems that the selection of constitutional judges has also reached an impasse<sup>32</sup>, as it is evident that no agreement can be reached on who will ensure the independence of the institution and its commitment to the rule of law, and not to the ruling elite.

Several more such examples could be cited from different administrative areas, but these cases did not reach the public through the media. But what has been presented is enough to show the trend that has been at work for the last few years, and which is partially outlined also in several international indexes (e.g. CPI, DI, RLR, etc.), which – despite all their methodological and other limitations – still managed to record similar trends during the last few years.

In this way, critical voices that point out negative phenomena and trends of undemocratic development in the public are silenced. Civil society, faced with problems of financing its work, has no energy left to deal with general issues of democratic and social development. A largely silent academic community will also be further silenced through the latest salary policy and bureaucratized evaluation system that is not ap-

propriate for higher education. Amendments to some laws have already silenced some of the country’s independent institutions, such as the Commission for Deciding on Conflicts of Interest, and the latest composition of the Constitutional Court has shown that it is primarily on the side of politics, and not on the side of the Constitution, democracy, and the rule of law. The already weak local self-government has been made additionally dependent on the central government through the policy of centralization and is unable to be an additional lever of the division of power and limitation of the central government, which is its Constitutional role (Art. 4/1).

In order to turn around the existing negative trends, it is first necessary to become aware of the situation regarding the institutional and democratic development of Croatia. Then, it is necessary to work systematically and parallel in several different areas in order to achieve a synergistic effect with key actors who can stop and reverse the negative trends of institutional development.

In this context, it is necessary to maintain political pluralism where possible, both at the level of central state bodies and at the level of local self-government, especially large urban centers which, in accordance with the doctrine of political decentralization, are able to be a democratic counterweight to central state authority. The dominance of one political group at all levels of public governance (central, regional local) and in all state institutions (parliament, cabinet, president) is not good for the democratic development of society, especially a transitional society still burdened by mistrust in institutions, a high rate of politicization of public administration and independent institutions, and corrupt affairs related to high politics that come to the surface every now and then, and often result in the replacement of ministers and other officials accused of corruption and similar affairs.

For a healthy democratic institutional and social development, it is necessary to have developed important segments of the citizenry such as activism, civil society institutions, objective and critical media, as well as other social institutions that will help to ‘shackle the Leviathan’ (Acemoglu & Robinson, 2019) and which will enable the existence of that narrow corridor of liberty between the ever-present danger of slipping into an autocratic way of ruling characterized by partisanship and the politicization of society, on the one hand, or into weak and powerless institutions that are captured by powerful social groups, on the other hand.

<sup>32</sup> The mandate of the 10 judges whose mandate has already been extended by six months expires on December 7, and at the end of November there is still no agreement on the election of new members. It should be noted that the ruling HDZ has clearly communicated publicly that it wants to maintain control over the Constitutional Court (see additional information in Ciglenički, 2024).



## 5

## RECOMMENDATIONS

The negative trends of international indexes can only be reversed by long-term and systematic work on all the elements from which these indexes are composed. Also, in each of the cases presented in this report, it is possible to formulate recommendations that would eliminate the mentioned shortcomings. The observed negative phenomena are also recommendations that the opposite should be done in the future.

Regarding the reduction of the politicization in various public appointments, especially to positions with a public function and to independent regulatory institutions, it is necessary to systematically implement a policy of meritocracy, according to which the best and most professional candidates will be appointed to these functions, and not the most politically suitable. In this process, civil society organizations and the media are especially important, as they can point out the strengths and weaknesses of individual candidates and expose possible scandalous affairs in their past.

As one very concrete action, it is possible to introduce a mandatory cooling-off period for politicians accepting appointments to public positions. It should be included in the regulations that it is not enough that the candidate is not a member of any political party in order to be appointed, but that he or she was not a member of any political party for at least two years before the actual appointment. In this way, it will still be impossible for active politicians to simply resign their membership in a political party and soon after be appointed as ‘experts’ to prominent public positions.

It is necessary to preserve the independence of independent institutions, especially for their members whose mandates will expire in the foreseeable future and will need to be replaced. In these appointments, it is necessary to ensure respect for the merit principle (the appointment of the best and the most professional candidates), not political patronage.

It is also of the utmost importance to maintain political pluralism wherever possible, both at the level of central state bodies and at the level of local self-government, especially large urban centers which, in accordance with the doctrine of political decentralization, are able to be a democratic counterweight to central state authority.

Finally, for democratic development, it is necessary to further strengthen the institutions of society, especially civil society, independent media and the academic community, in order to create a counterweight to state institutions so that social critical awareness can develop smoothly, thus creating conditions for limiting political power and framing it into the democratic standards of a developed society.

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## “SILENT CAPTURE”: UNDEMOCRATIC TENDENCIES IN CROATIA



With Croatia's entry into full membership of the European Union in July 2013, the pressure to implement institutional reforms intended to improve the country's democratic norms and processes lessened. At the EU level, Croatia is perceived as a stable country with democratic institutions that function more or less properly. On the other hand, citizens in Croatia have very little trust in state and public institutions in general. There is a “silent capture” of institutions in Croatia, and this is the basic thesis and message of this analysis. Unlike some other countries where there is a direct attack on the institutions and their capture by the ruling



political elites, in Croatia this process is not visible at first glance. Only a deeper analysis of certain administrative areas and institutions can reveal its existence. The main goal is the filling of institutions with ‘reliable’ people connected to the ruling party, resulting in the capture of these institutions so that, even without direct political interference, they still make decisions in the service of the ruling party. International indexes and the analysis of publicly exposed cases confirm the thesis of the ‘silent capture’ of institutions in Croatia, as well as the negative tendencies of institutional and democratic development in Croatia. The report records negative trends in



several areas, including Constitutional and democratic governance, Local self-government and (de)centralization, Civil society, media, and public consultations, and Independent institutions, public appointments, and the new public salary system. It presents ten case studies that reveal how entrapment quietly and simultaneously occurs across these areas. In order to reverse negative trends of “silent capture” of institutions, it is necessary to systematically implement a policy of meritocracy, maintain political pluralism and strengthen the institutions of society, especially civil society, independent media, and the academic community.

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