



**FRA**

EUROPEAN UNION AGENCY  
FOR FUNDAMENTAL RIGHTS

# STRONG AND EFFECTIVE NATIONAL HUMAN RIGHTS INSTITUTIONS

## CHALLENGES, PROMISING PRACTICES AND OPPORTUNITIES

REPORT



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# Foreword

National Human Rights Institutions (NHRIs) are a vital part of the country-level human rights protection system. By raising awareness, providing advice, monitoring and holding authorities to account, they have a central role in navigating the great human rights challenges of our day – tackling both persistent concerns like discrimination and inequality, and novel issues such as the rights implications of artificial intelligence and of the COVID-19 pandemic.

This report, published 10 years after FRA's first in-depth study on NHRIs, looks at such bodies in the EU, as well as the Republic of North Macedonia, the Republic of Serbia and the United Kingdom of Great Britain and Northern Ireland. It explores relevant developments, challenges to their effectiveness and ways to maximise their impact.

NHRIs promote and protect rights nationally, but also ensure links to regional and international human rights protection mechanisms. Strengthening NHRIs would also help EU Member States deliver on the global 2030 Agenda. In the EU context, they have great potential to contribute more – and more explicitly – including for the upholding of the rule of law and EU values.

The findings in this report underscore that, to fulfil their potential, NHRIs need a clear mandate, independence, adequate resources, and, in their memberships, to reflect our societies' diversity. They also need to comply with the Paris Principles on the independence and effectiveness of NHRIs endorsed by the United Nations.

The European Union Action Plan on Human Rights and Democracy, which addresses the situation outside the EU, commits to supporting NHRIs that comply with the UN principles. We hope that the insights presented in this report will encourage policymakers to stand up for NHRIs within the EU with no less commitment.

**Michael O'Flaherty**  
Director

# Abbreviations and acronyms

<b>A-status NHRI</b>	Paris-Principles compliant NHRI
<b>CRPD</b>	UN Convention on the Rights of Persons with Disabilities
<b>CSO</b>	Civil society organisation
<b>Ecosoc</b>	United Nations Economic and Social Council
<b>ENNHRI</b>	European Network of NHRIs
<b>Equinet</b>	European Network of Equality Bodies
<b>FRA</b>	European Union Agency for Fundamental Rights
<b>Frontex</b>	European Border and Coast Guard Agency
<b>GANHRI</b>	Global Alliance of National Human Rights Institutions
<b>GO</b>	General observation
<b>ICERD</b>	International Convention on the Elimination of Racial Discrimination
<b>IOI</b>	International Ombudsman Institute
<b>NGO</b>	Non-governmental organisation
<b>NHRI</b>	National human rights institution
<b>NMM</b>	National monitoring mechanism (under the CRPD)
<b>NPM</b>	National preventive mechanism (under OPCAT)
<b>ODIHR</b>	OSCE's Office for Democratic Institutions and Human Rights
<b>OHCR</b>	Office of the United Nations High Commissioner for Human Rights
<b>OPCAT</b>	UN Optional Protocol to the Convention against Torture
<b>OSCE</b>	Organization for Security and Co-operation in Europe
<b>SCA</b>	GANHRI's Sub-Committee on Accreditation (of NHRIs)
<b>SDG</b>	Sustainable Development Goal
<b>UNCHR</b>	United Nations Commission on Human Rights
<b>UNDP</b>	United Nations Development Programme
<b>UPR</b>	Universal periodic review (of the UN)

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## Country codes

<b>AT</b>	Austria	<b>EL</b>	Greece	<b>LT</b>	Lithuania	<b>RO</b>	Romania
<b>BE</b>	Belgium	<b>ES</b>	Spain	<b>LU</b>	Luxembourg	<b>RS</b>	Serbia
<b>BG</b>	Bulgaria	<b>FI</b>	Finland	<b>LV</b>	Latvia	<b>SE</b>	Sweden
<b>CY</b>	Cyprus	<b>FR</b>	France	<b>MT</b>	Malta	<b>SI</b>	Slovenia
<b>CZ</b>	Czechia	<b>HR</b>	Croatia	<b>NL</b>	Netherlands	<b>SK</b>	Slovakia
<b>DE</b>	Germany	<b>HU</b>	Hungary	<b>MK</b>	North Macedonia	<b>UK</b>	United Kingdom
<b>DK</b>	Denmark	<b>IE</b>	Ireland	<b>PL</b>	Poland		
<b>EE</b>	Estonia	<b>IT</b>	Italy	<b>PT</b>	Portugal		

# Why this report? Strengthening NHRIs in the EU

This report aims to contribute to strengthening national human rights institutions' (NHRIs') effectiveness and impact in EU Member States and within the EU framework. The report provides an overview of the status and roles of NHRIs in the EU Member States, North Macedonia, Serbia and the United Kingdom. It focuses on developments since the European Union Agency for Fundamental Rights' (FRA's) previous report on NHRIs, in 2010.<sup>1</sup>

The report also offers a comparative analysis, outlining the diverse factors that affect NHRIs' independence and effectiveness and impact, and looks at opportunities for them to address challenges. It highlights the role of NHRIs in the EU. It also indicates promising practices and the potential for greater engagement such as the role of the NHRIs in supporting monitoring of the rule of law and compliance with the Charter of Fundamental Rights of the European Union (the EU Charter of Fundamental Rights).

## What are national human rights institutions?

NHRIs are independent organisations set up by states to promote and protect human rights within their countries. The organisations come in various forms – such as human rights commissions, ombuds institutions – and commonly have multiple mandates. For example, half of the NHRIs covered by this report are also ombuds institutions<sup>2</sup> and 16 have either full or partial equality mandates (for more detail, see Section 1.1.2, 'NHRIs with multiple mandates'). Regardless of their exact structure and powers, they are vital to advancing human rights at the national level.

NHRIs have inherent links to international human rights law, which strengthens their roles and impact, and they are subject to the international minimum standards set out in the Paris Principles.<sup>3</sup> These Principles provide the framework for independence and effectiveness in promoting and protecting human rights. The United Nations (UN) 2030 Agenda for Sustainable Development, specifically Sustainable Development Goal 16 on strong institutions, includes an indicator for NHRIs compliant with the Paris Principles (indicator 16.A.1).

According to the Global Alliance of National Human Rights Institutions (GANHRI), the organisation overseeing the compliance of NHRIs with the Paris Principles, in the general observations adopted by its Sub-committee on Accreditation (SCA): "NHRIs are established by States for the specific purpose of advancing and

defending human rights at the national level, and are acknowledged to be one of the most important means by which States bridge the implementation gap between their international human rights obligations and actual enjoyment of human rights on the ground.”<sup>4</sup>

NHRIs are not, however:

- government organisations
- courts
- research institutions
- non-governmental organisations.

Rather, NHRIs should “be formally entrenched in law and in this way be distinguished from an agency of state, a non-government organisation, or an ad hoc body”.<sup>5</sup>

Consequently, NHRIs have the following characteristics:

- special independent entities established under national law – typically reporting to the national parliament;
- institutions broadly mandated to promote awareness raising and training and protect human rights by monitoring activities and by processing, investigating and reporting individual complaints;
- national bodies advising on and monitoring human rights;
- institutions accredited through an international peer assessment process as complying with the Paris Principles fully (A-status) or partly (B-status);
- organisations mandated to monitor and report nationally and internationally on their state’s human rights performance;
- bodies entitled to participate in the UN Human Rights Council and other international human rights mechanisms.

### **History of NHRIs and the Paris Principles**

The history of the NHRIs<sup>6</sup> is one of growing recognition of national and international human rights structures. While some countries established human rights commissions as early as 70 years ago, it is only in the last quarter of a century that NHRIs became a concept.<sup>7</sup> In 1946, in the context of the work of the recently established UN Commission on Human Rights, the UN Economic and Social Council (Ecosoc) called for member states to establish “human rights committees [...] to collaborate with [the member states] in furthering the work of the Commission on Human Rights”.<sup>8</sup> The resolutions of the UN General Assembly, adopted regularly between the 1970s and 1990s, underscored the importance of NHRIs “maintaining their independence and integrity” to be effective. The UN General Assembly also requested UN human rights services (then the Centre for Human Rights, currently the UN Human Rights Office) to support such developments.

The Paris Principles were drafted at a workshop held in Paris in October 1991 at the request of the UN Commission on Human Rights (UNCHR).<sup>9</sup> Representatives of human rights and ombuds institutions from 24 countries, including nine states covered by this report (Denmark, Finland, France, Ireland, Italy, Netherlands, Spain, Sweden and United Kingdom) attended the workshop.<sup>10</sup> The Paris Principles were adopted by the UNCHR (known as the Human Rights Council since 2006) in 1992<sup>11</sup> and by the UN General Assembly in 1993. The 1993 World Conference on Human Rights in Vienna, “encourage[d] the establishment and strengthening of national institutions, having regard to the ‘Principles relating to the status of national institutions’” – the Paris Principles.<sup>12</sup> This sentiment was echoed at the Vienna + 25 conference, in 2018, which called for “efficient and independent” mechanisms, such as NHRIs.<sup>13</sup> A 1997 Council of Europe recommendation, based on the Paris Principles, called on its member states to establish NHRIs in compliance





with the Paris Principles.<sup>14</sup> Today, NHRIs are systematically involved in a range of UN human rights mechanisms and increasingly so in other international organisations and the EU.

## COMPLIANCE WITH THE PARIS PRINCIPLES

Although they were adopted 30 years ago, the Paris Principles remain the accepted minimum standard for NHRIs. Other instruments are also relevant, in particular for NHRIs with multiple mandates, such as ombuds institutions and equality bodies (see Annex IV, available online, for an overview of relevant standards).

The Paris Principles state that NHRIs should “cooperate with [...] the national institutions of other countries that are competent in the areas of the protection and promotion of human rights”.<sup>15</sup> The NHRIs formed GANHRI in 1993.<sup>16</sup> In that organisation, A-status NHRIs are voting members.<sup>17</sup> There are four regional organisations, jointly covering the globe<sup>18</sup>, and the European Network of NHRIs (ENNHRI) covers Europe. Both GANHRI and ENNHRI provide support to NHRIs and coordinate activities such as annual meetings and joint work.

GANHRI also facilitates NHRI engagement with UN human rights mechanisms and decides on accreditation, speaks on behalf of the institutions and serves as a platform for exchanging experiences and identifying promising practices. The GANHRI SCA does the actual accreditation work with the support of the UN Human Rights Office (Office of the High Commissioner for Human Rights, OHCHR). Accreditation sessions are typically organised twice yearly, during March–May and October–November.<sup>19</sup>

The assessment of compliance with the Paris Principles is based on accreditation by a peer review system, under the auspices of the UN Human Rights Office, under which the GANHRI SCA is composed of one A-status NHRI from each of the four ‘GANHRI regions’ (Africa, the Americas, Europe and Asia-Pacific). Each regional group appoints an NHRI to serve for a three-year, renewable term. At the time of writing (July 2020), the French NHRI serves as the Europe representative on the SCA. The UN Human Rights Office is an observer to the SCA and functions as the secretariat for its work.<sup>20</sup> GANHRI’s Bureau, the management committee, consisting of 16 individuals representing four A-status NHRIs from each of the four regions<sup>21</sup> takes the final decision on accreditation<sup>22</sup> based on the recommendations of the SCA. Rules are in place to ensure that the institutions under review are not represented on the SCA or the GANHRI Bureau.<sup>23</sup>

All A-status NHRIs have to be re-accredited every five years.<sup>24</sup> If an NHRI undergoes changes that may compromise its compliance with the Paris Principles, the SCA may hold a special review.<sup>25</sup> Civil society organisations and other third parties are allowed to submit reports on NHRIs under review to facilitate the SCA’s assessment.<sup>26</sup> The SCA’s assessments of NHRIs are available in the reports of its meetings.<sup>27</sup> An overview of the accreditation of NHRIs in the EU is provided in Chapter 2 of this report.

The SCA formulates general observations (GOs) on the Paris Principles, interpreting and developing these standards based on their accreditation experience, for approval by the GANHRI Bureau. These general observations, alongside the Paris Principles themselves, form the basis of accreditation

decisions. The latest version of the general observations is from 2018, organised under two main headings: ‘Essential requirements under the Paris Principles’ and ‘Practices that directly promote the Paris Principles compliance’.<sup>28</sup> The first part builds on the provisions of the Paris Principles, such as the human rights mandate, pluralism and adequate funding, while the second part looks at tenure, recruitment, state of emergency and quasi-judicial competence.

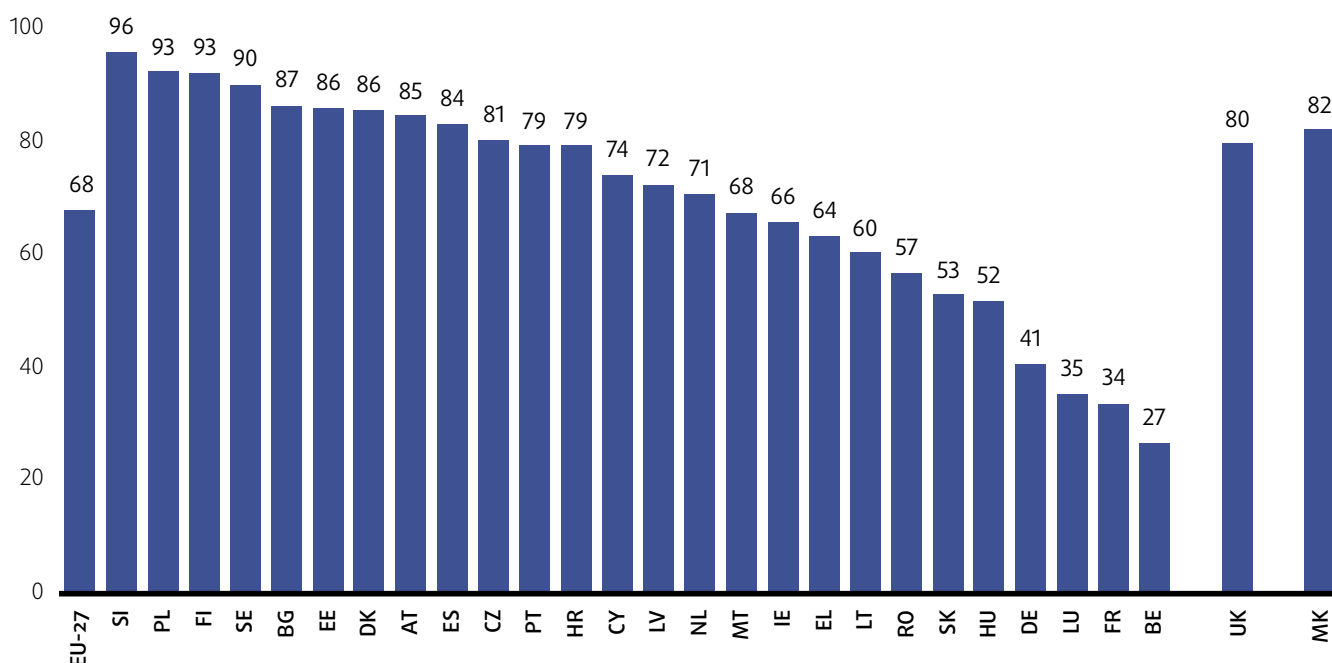
## AWARENESS OF NHRIS IN THE EU

FRA’s 2019 Fundamental Rights Survey – covering the EU-27 (from 1 February 2020), North Macedonia and the United Kingdom – asked about the overall fundamental rights situation in the EU. (FRA has published some of these results, and will publish additional output throughout the year). Over 26,000 people aged 16 years and over were asked about their awareness of various national fundamental rights organisations using the national names of NHRIs, equality bodies and data protection authorities. Overall, 68 % of people have heard of the NHRI in their country. Awareness of NHRIs varies widely by country, from 96 % in Slovenia to 27 % in Belgium (see Figure 1). On average, young people aged 16–29 are 60 % or less aware of the NHRI in their country than older people (68 % or more), and people with severe limitations on their daily activities (such as people with disabilities) are 58 % or less often aware than those with no limitations (70 %). There are no differences between men and women in awareness of the NHRI.

### Notes:

- a Out of all respondents who were asked to complete the section ‘Rights awareness and responsibilities’ of the survey (n = 26,045).
- b For Italy no organisation equivalent to an NHRI was identified.
- c In the case of countries with two NHRIs, the better known was chosen for the survey.
- d The option ‘prefer not to say’ was chosen by less than 1 % of respondents and ‘don’t know’ by at most 2 % in some Member States.
- e Question: ‘Have you ever heard of any of the following? Please respond with the first thing that comes into your head. [NAME OF THE NATIONAL (ACCREDITED) HUMAN RIGHTS INSTITUTION]’.

**FIGURE 1: AWARENESS OF THE RESPECTIVE NHRI, BY COUNTRY (%)<sup>a,b,c,d,e</sup>**



Source: FRA, Fundamental Rights Survey 2019 [Data collection in cooperation with Statistics Netherlands (NL), Centre des technologies de l’information d’Etat (LU) and Statistics Austria (AT)]

## EUROPEAN NETWORK OF NATIONAL HUMAN RIGHTS INSTITUTIONS

In its 2010 report on NHRIs, FRA called for the “establishment of a permanent entity for the European Group of NHRIs that would strengthen regional cooperation” to ensure that NHRIs are able to engage effectively with the UN, the Council of Europe and the EU.<sup>29</sup> FRA also noted that a follow-up to the SCA’s recommendations could constitute a good basis for a regional organisation’s activities “to ensure progressive improvements of NHRIs in Europe.”<sup>30</sup> Subsequently, ENNHRI was created.

ENNHRI brings together 45 members from across Europe, representing one of the four regional networks of GANHRI.<sup>31</sup> Formally established in 2013, it is a non-profit international association governed by Belgian law with its secretariat in Brussels, headed by a secretary-general.<sup>32</sup> ENNHRI provides a platform for collaboration and support as well as facilitating engagement with regional institutions. It does so by assisting in the “establishment and accreditation of NHRIs”; coordinating “exchange of information and best practice”; “[f]acilitating capacity building and training”; “[e]ngaging with regional mechanisms”; and “[i]ntervening on legal and policy developments at the European level”.<sup>33</sup> ENNHRI’s Board is composed of the representatives of four to six A-status NHRIs, elected by a General Assembly of ENNHRI members.<sup>34</sup> The Board members serve for a period of three years, renewable once.<sup>35</sup>

Even before the ENNHRI secretariat was established, NHRIs were strongly engaged in the network and in the work of international organisations (FRA interview with ENNHRI, September 2019). ENNHRI has been instrumental in developing cooperation and solidarity among the institutions and has made progress on a range of human rights issues in the EU (examples are presented throughout this report), using methods including member surveys to assess their needs and preferences. ENNHRI has established working and strategic-level partnerships with the UN, the Organization for Security and Co-operation in Europe (OSCE) and its Office for Democratic Institutions and Human Rights (ODIHR), the Council of Europe and the EU, including FRA (FRA interview with ENNHRI, September 2019).



## Key findings and FRA opinions

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This report looks at the importance of national human rights institutions (NHRIs, or the institutions) in promoting and protecting human rights at both national and EU levels. Given that the overwhelming part of national law- and policymaking is directly or indirectly influenced by EU law, NHRIs – with their broad mandates to promote and protect human rights – could play a greater role in the EU. The report highlights efforts that could be made to strengthen the institutions to increase their impact and efficiency and describes the challenges they face. It identifies ways forward for NHRIs to play a more significant role in the context of fundamental rights protection in the EU.

During the 10 years since FRA, in its first report on NHRIs, examined the institutions as part of the emerging fundamental rights architecture of the EU, the number of Paris Principles-compliant NHRIs has risen from nine to 16, among the current 27 EU Member States. An additional six EU Member States have NHRIs that are not fully compliant with the principles. Consequently, all but five EU Member States (Czechia, Estonia, Italy, Malta and Romania) have NHRIs. Developments are also under way in those five countries to accredit institutions and to achieve compliance with the Paris Principles. An important development since FRA's 2010 report on the institutions is the establishment of the European Network of NHRIs (ENNHRI). This network supports, strengthens and connects NHRIs, providing advice on establishment and accreditation, peer exchange and capacity building, solidarity, and joint engagement with the EU and other mechanisms.

The EU has never legislated on issues dealing with NHRIs but, in its 2014 Regulation (EU) No. 235/2014 of the European Parliament and of the Council of 11 March 2014 establishing a financing instrument for democracy and human rights worldwide, it acknowledged the NHRIs' key relevance by explicitly committing itself to supporting NHRIs in non-EU countries. In addition, the Paris Principles are referenced in the FRA Regulation.<sup>36</sup> An explicit and operational involvement of bodies promoting fundamental rights in the implementation of EU law is included in the proposed revised Common Provisions Regulation for EU funding programmes.<sup>37</sup> NHRIs are regularly referred to in the debate on EU rule-of-law mechanisms. NHRIs could also be more involved in EU strategies and frameworks, in relation to issues such as the application of the Charter of Fundamental Rights of the European Union (the EU Charter of Fundamental Rights) or reporting on the rule of law. The existence of strong, effective and independent NHRIs across all EU Member States is a precondition for achieving their full potential in an EU context.

The FRA opinions are clustered under the following six headings, highlighting key aspects identified in this report.

1. Paris Principles-compliant A-status NHRIs in all EU Member States;
2. Enhanced roles for NHRIs in the EU – independent fundamental rights monitoring;
3. Impactful and secure institutions;
4. Independent NHRIs;
5. Institutions reflecting diversity – in an environment conducive to human rights;
6. Adequately resourced NHRIs.

## PARIS PRINCIPLES-COMPLIANT A-STATUS NHRIS IN ALL EU MEMBER STATES

All EU Member States have committed to establishing NHRIs. As they have a horizontal mandate across all human rights, it is important that NHRIs are better equipped to implement fundamental rights within the narrower scope of EU law. In 1993, the World Conference on Human Rights encouraged the “establishment and strengthening” of NHRIs and called on states and international organisations to allocate more resources to such institutions. The Paris Principles for NHRIs, the foundational document that established the international basis for NHRIs, are also recognised by the United Nations (UN) General Assembly. These principles – as interpreted through general observations by the global accreditation system (GANHRI’s Sub-Committee on Accreditation, SCA) – form the framework for assessing the institutions’ independence and effectiveness. They establish the bare minimum standards necessary for an NHRI to be independent and effective in its work, and they have been systematically referenced in a variety of key international instruments (see Box on ‘Key international instruments’) since 1993.

### Key international instruments and other outputs that refer to the Paris Principles

#### United Nations (UN)

Office of the United Nations High Commissioner for Human Rights (OHCHR), World Conference on Human Rights, **Vienna Declaration and Programme of Action**, 25 June 1993

UN, General Assembly **Resolution 48/134 – Principles relating to the Status of National Institutions** (The Paris Principles), 20 December 1993

UN General Assembly **Resolution 48/121 – World Conference on Human Rights**, 20 December 1993

UN General Assembly **Resolution A/RES/70/1 – Transforming our world: the 2030 Agenda for Sustainable Development**, 21 October 2015

*Sustainable Development Goal (SDG) 16 (“Promote peaceful and inclusive societies for sustainable development, provide access to justice for all and build effective, accountable and inclusive institutions at all levels”) includes in its measurement framework the “[e]xistence of independent national human rights institutions in compliance with the Paris Principles” (indicator 16.A.1).*

Report of the UNs Secretary-General, **A/74/226 – National institutions for the promotion and protection of human rights**, 25 July 2019

UN General Assembly **Resolution 74/156 – National Human Rights Institutions**, 23 January 2020

#### Council of Europe

Council of Europe, Committee of Ministers, **Recommendation No R (97) 14 on the establishment of independent national institutions for the promotion and protection of human rights**, 30 September 1997

*A revised version of this recommendation is expected to be adopted in September 2020, with a reinforced commitment (see, for example, Steering Committee for Human Rights (CDDH), drafting group on civil society and national human rights institutions (CDDH-INST), 6th meeting, March 2020).*

Council of Europe, Committee of Ministers, **Recommendation CM/Rec(2018)11 on the need to strengthen the protection and promotion of civil society space in Europe**, 28 November 2018

Council of Europe, Committee of Ministers, **Recommendation CM/Rec(2019)6 of the Committee of Ministers to member states on the development of the Ombudsman institution**, 16 October 2019



Council of Europe, Venice Commission, **Opinion No 897/2017 – Principles on the Protection and Promotion of the Ombudsman Institution** (Venice Principles), 3 May 2019

## European Union

European Commission, **Recommendation on standards for Equality Bodies, C(2018) 3850 final**, 22 June 2018

## Organization for Security and Co-operation in Europe (OSCE)

OSCE, **Document of the Copenhagen meeting of the conference on the human dimension of the CSCE**, 29 June 1990

### FRA OPINION 1

FRA, recalling its opinion from its 2010 report on NHRIs, considers that all EU Member States should have independent, effective and impactful NHRIs that comply with the Paris Principles to deliver and promote human and fundamental rights more effectively.

The key international instruments on NHRIs, listed above, have been impactful in influencing the establishment and strengthening of NHRIs in the last 10 years. However, while only five EU Member States do not have an NHRI at all, 11 of the 27 Member States still do not have a Paris Principles-compliant A-status NHRI as of June 2020.

It is regularly recommended to EU Member States in contexts such as the UN universal periodic review (UPR) and country assessments by UN treaty bodies and the Council of Europe treaty bodies that they ensure that they have Paris Principles-compliant – A-status – NHRIs. For countries with Paris Principles-compliant NHRIs, improvements are also needed, as pointed out by GANHRI's SCA.

### FRA OPINION 2

Member States that have NHRIs should strive to improve their effectiveness, independence and impact, as recommended by GANHRI's SCA. Member States establishing NHRIs should be guided by GANHRI SCA's general observations to ensure that they are compliant with the Paris Principles. In this respect, Member States can draw on the technical assistance that is provided by ENNHRI, intergovernmental organisations, and the UN Human Rights Office (OHCHR).

ENNHRI has proved to be important when setting up or strengthening NHRIs. ENNHRI's first strategic goal is to support the establishment and functioning of NHRIs in compliance with the Paris Principles in each European country. Accordingly, the network provides technical assistance to state authorities in setting up and strengthening NHRIs in compliance with the Paris Principles, and it provides peer support to newly established institutions to apply for global accreditation in compliance with the Paris Principles.

## ENHANCED ROLES FOR NHRIS IN THE EU – INDEPENDENT FUNDAMENTAL RIGHTS MONITORING IN MEMBER STATES

In an EU context, NHRIs can clearly add value in relation to the realisation of fundamental rights and overlapping values, as regards the monitoring of the rule of law.

Two EU directives stipulate the setting up of equality bodies at national level. A subsequent European Commission recommendation encouraged the EU Member States to strengthen the independence and effectiveness of equality bodies so that they can better carry out their tasks, such as offering independent assistance to victims of discrimination, promoting equality, conducting independent surveys and issuing independent reports and recommendations (Recommendation 1.2).

The recommendation also elaborates on the need for coordination between bodies (Recommendation 1.3).

## Examples of the EU entrusting aspects of implementation of EU legislation to independent bodies

Council of the European Union, **Council Directive 2000/43/EC implementing the principle of equal treatment between persons irrespective of racial or ethnic origin**, (Racial Equality Directive), 29 June 2000

European Commission, **Commission Recommendation (EU) 2018/951 on standards for equality bodies**, 22 June 2018

European Parliament and Council of the European Union, **Directive (EU) 2019/1158 on work-life balance for parents and carers and repealing Council Directive 2010/18/EU**, 20 June 2019

The conclusions of the Council of the European Union on the EU Charter of Fundamental Rights (the Charter) 10 years after it was drawn up, adopted in September 2019, underlined that “independent national human rights institutions, equality bodies and other human rights mechanisms [...] play a crucial role in the protection and promotion of fundamental rights and in ensuring compliance with the Charter.” It encouraged cooperation with these mechanisms and supported them in its mandates, including in the implementation and promotion of the Charter.

With their broad human rights mandate, NHRIs are relevant in the many areas within the scope of EU law where the Charter applies. This includes key issues of EU law (such as asylum and migration, data protection and criminal justice) in which NHRI monitoring of the application of the Charter in the Member States could be reinforced. The institutions can also develop cooperation and support for actors in the Charter’s enforcement components – governments, administrations, legislators, judges and other legal practitioners, law enforcement bodies, civil society organisations and rights defenders – to improve their use and awareness of the Charter.

FRA’s research shows that only four of the 33 NHRIs covered by this report are currently using the Charter systematically, whereas the others indicate that they are not yet making full use of its potential. The institutions consider, however, that overall in their legal and political systems, the use of the Charter appears to be increasing. When asked whether the role of the Charter has increased over the last 10 years – since the Charter became legally binding – in the work of the respective NHRIs themselves, among NHRIs that responded to this question, 16 said that the role had increased, whereas 13 did not see such an increase in the Charter’s relevance for their work. Eighteen NHRIs considered the Charter’s limited scope to be a reason for not using it much. Nearly as many (16) stated that the lack of understanding of the Charter’s added value compared with international instruments, such as the European Convention on Human Rights, or national legal sources (13), was a reason for low levels of Charter use. Thus, the institutions appear mainly to perceive the Charter to be too complex to apply, although only four NHRIs indicated that restrictions in their mandate prevented them from making greater use of the document.



### FRA OPINION 3

The EU could draw more consistently on NHRIs as crucial actors for the implementation of fundamental rights, including by ensuring independent and effective fundamental rights monitoring in the EU Member States. Such reliance on NHRIs should be supported through close and regular relationships with specific NHRIs and ENNHRI in particular. A qualified interaction could be reserved for Paris Principles-compliant NHRIs and ENNHRI. The capacity of NHRIs and ENNHRI to engage effectively must also be ensured by providing sufficient human and financial resources.

Any such involvement must be effected without compromising the independence and effectiveness of the NHRIs, as defined in the Paris Principles. NHRIs do not replace the duty of states to implement fundamental rights, but can provide independent advice and country-specific recommendations and can serve as an independent monitoring mechanism for the state delivery of their fundamental rights commitments.



#### FRA OPINION 4

The EU institutions could establish a more regular exchange with NHRIs. For instance, this could be done in the Council of the European Union, in its working parties on fundamental rights or in other working parties.

A regular exchange of promising practices and challenges related to NHRIs could allow mutual learning on how to best enhance the effectiveness, independence and impact of the NHRIs to make best use of them in an EU context.

In addition, exchange could be had with the European Commission in contexts such as the monitoring of the EU Charter of Fundamental Rights and the rule of law.

According to FRA's research, because of their national focus and established channels with the UN, relatively few NHRIs engage in direct exchange and cooperation with EU institutions; however, ENNHRI has played an important role in improving NHRIs' connection to regional policies and processes, including at EU level. ENNHRI also provides a collective voice for NHRIs across the region, including through establishing regional reports and recommendations that can feed into law- and policy-making processes. Overall, exchanges between NHRIs and the EU could be increased significantly – both in EU processes and in Member States' involvement in EU procedures. An important example is the potential for development of national bodies in the monitoring of EU-funded programmes at national level. Under the current EU funds, programming period 2014–2020, EU legislation requires that, to access EU funding (such as for regional development, cohesion and social issues), Member States must comply with certain conditions (*ex ante* conditionalities), including the capacity to implement EU anti-discrimination and gender equality law and policy, as well as the UN Convention on the Rights of Persons with Disabilities. To monitor implementation, EU law also envisages the possibility of involving national bodies with an equality mandate in relevant monitoring committees at the national level; however, according to FRA's research, very few NHRIs, which are also equality bodies, participated in monitoring committees of EU-funded programmes.



#### FRA OPINION 5

The EU should continue providing resources to NHRIs and ENNHRI to further support their effective contribution to the implementation of fundamental rights and the rule of law in Europe. The European Commission could consider more funding opportunities to help NHRIs develop expertise on the Charter's application at national level. This could facilitate their role in assisting Member States apply the Charter, including in law and policy making and when using European structural and investment funds.

For the next EU programming period, 2021–2027, the current Commission proposal for the revised (so-called) Common Provisions Regulation for EU funds opens up the possibility of involving national bodies responsible for the promotion of fundamental rights. This potential role for entities such as NHRIs in EU-funded programmes is an opportunity to reinforce the implementation of fundamental rights across the EU and to strengthen the role of the institutions and increase their impact on the ground. It is also an opportunity to better integrate international human rights standards into EU law and policy making processes.



The EU can draw further inspiration from the practice of the UN, whereby Paris Principles-compliant NHRIs are granted particular status in terms of participation and contribution to a number of bodies, mechanisms and processes, including the Human Rights Council and treaty bodies. Such opportunities are far reaching in the UN, involving input into country assessments, follow-up procedures, development of standards and the complaints procedures.

## IMPACTFUL AND SECURE INSTITUTIONS

For NHRIs to have a strong impact on human rights, the ability to provide advice to policymakers and law makers is crucial. FRA's research (for a description of the research methodology, see [Annex I](#)) shows that the institutions covered by this report use their annual and thematic reports to flag relevant developments, as well as their potential to engage with governments and parliaments, including during the COVID 19 pandemic; however, while NHRIs usually address their annual reports to parliaments, these are not always the subject of parliamentary discussion, limiting their visibility and impact. Such discussion is obligatory in only a few countries.

NHRIs need to have sufficient powers to make an impact. Strong powers, such as the ability to request government ministers to respond to specific queries, may be rarely used, but their mere existence can provide an NHRI with the necessary authority. The research for this report shows that all of the institutions publish information and data about their activities, providing useful information for both external evaluation and self-assessment. This may include the number of reports produced or other public interventions by NHRIs, the number of recommendations adopted or the number of monitoring missions.

To remain impactful, the institutions need a strong legal basis that provides for their establishment and functioning and guarantees their independence. In line with the Paris Principles, the legal basis of any NHRI should be concerned with its independence, existence, structures, mandates and powers in particular. The research for this report has shown that, while the legal basis for NHRIs in the EU Member States is generally quite strong, based on statutory law adopted by parliament, only 14 institutions are also protected by constitutional provisions.



### FRA OPINION 6

To increase the available analysis and evidence base to check compliance with the Charter when transposing and implementing EU legislation, Member States should consider inviting NHRIs to contribute to relevant procedures. This could be in relation to, for example, compatibility checks and impact assessments.



### FRA OPINION 7

To reinforce the impact of NHRIs, EU Member States could invite such institutions to make recommendations on the fundamental rights implications of draft legislation and policies to improve fundamental rights compliance, including during the state of emergency as recently declared in the context of the COVID-19 pandemic. Parliaments could also have a formalised relationship with NHRIs and ensure that reports by NHRIs addressed to parliament are properly presented and discussed.

EU Member States could ensure that there is a systematic tracking and public reporting of the follow-up and implementation of NHRIs' recommendations. This could include reporting on which recommendations are still pending and at which stage, as well as which recommendations have explicitly been rejected or left without reaction by competent national authorities.

If NHRIs' recommendations are not acted on, there could be effective formal ways for NHRIs to have these addressed by parliament.

## Overview of applicable standards on broad mandate and impact of NHRIs and advice to policymakers on national human rights situation

The Paris Principles state that an NHRI “shall be given as broad a mandate as possible, [...] set forth in a constitutional or legislative text” (UN, **Paris Principles**, ‘Competence and responsibilities’, paragraph 2).

The Paris Principles specify the “responsibility” of NHRIs to prepare ‘reports on the national situation with regards to human rights’ (United Nations, **Paris Principles**, ‘Competence and responsibilities’, paragraph 3(a)(iii)).

The Council of Europe draft recommendation on NHRIs will stipulate that “Member States should provide a firm legal basis for NHRIs, preferably at the constitutional level” (Council of Europe, Steering Committee for Human Rights (CDDH), **CDDH-INST Report 6th Meeting**, Appendix, paragraph 2).

The Council of Europe Draft Recommendation on the development and strengthening of effective, pluralist and independent national human rights institutions (Draft Recommendation on NHRIs’, scheduled to be adopted in September 2020) calls on member states to ensure that NHRIs can “present an annual report before the relevant authorities, including before parliament” (Council of Europe, CDDH, **CDDH-INST Report 6th Meeting**, Appendix, paragraph 2).

The Council of Europe Draft Recommendation on NHRIs specifies that NHRIs should be consulted on issues that affect their mandate (Council of Europe, CDDH, **CDDH-INST Report 6th Meeting**, Appendix, paragraph 2).

The **Belgrade Principles on the Relations between NHRIs and Parliaments** also identify areas in which NHRIs and parliaments should cooperate.

*Inspiration can also be drawn from standards relating to equality bodies and ombuds institutions, particularly considering that many NHRIs have multiple mandates:*

The Council of Europe European Commission against Racism and Intolerance (**ECRI**) **General Policy Recommendation No. 2 on Equality Bodies to combat racism and intolerance at national level (2017)** recommends establishing by constitutional provision or legislation passed by parliament one or more independent equality bodies to combat racism and intolerance (equality body).

The Council of Europe Recommendation on ombuds institutions requires “a firm legal basis [...], preferably at the constitutional level, and/or in a law which defines the main tasks of such an institution” (Council of Europe, CDDH, **CDDH-INST Report 6th Meeting** Appendix, paragraph 2).

The Council of Europe Recommendation on ombuds institutions prescribes a mandate to “propose administrative or legislative reforms aimed at improving the operation of public-service providers and [if recommendations are not acted on] the right, inter alia, to submit a report on such failure to the competent elected body, usually parliament” (Council of Europe, Committee of Ministers, **Recommendation CM/Rec(2019)6 of the Committee of Ministers to member states on the development of the Ombudsman institution**, II, 8(c), 2019).

The **Venice Principles** refer to ombuds institutions being “based on a firm legal foundation, preferably at constitutional level, while its characteristics and functions may be further elaborated at the statutory level” (Council of Europe, Venice Commission, **Venice Principles**, paragraph 2).

The **Venice Principles** stipulate an annual reporting to parliament on “lack of compliance by the public administration”. These principles on ombuds institutions also call for these reports to be made public and to “be duly taken into account by the authorities” (Council of Europe, Venice Commission, **Venice Principles**, paragraph 2).

The Venice Commission’s 2020 Checklist on democracy (Council of Europe, Venice Commission, Parameters on the relationship between parliamentary majority and the opposition in a democracy: a checklist, **CDL-AD(2019)015**, 24 June 2019, paragraph 74).

The **European Commission Recommendation on standards for equality bodies** requires them to “publish independent reports regularly and present them to the public institutions concerned, including the relevant national or regional governments and parliaments where appropriate” (European Commission, C(2018)3850 final, Chapter II 1.1, ‘Mandate of the Equality Bodies’, paragraph 6.)

Related to the legal basis is the need for an NHRI mandate that is broad enough to cover all relevant human and fundamental rights. The mandate should, according to the Paris Principles, be based on the international instruments to which a state is party (Competence and responsibilities, paragraph 3(b)). To highlight the NHRIs role as regards the promotion and monitoring of fundamental rights in an EU context, explicit reference could be made to the Charter and EU law in documents forming the basis of NHRIs' work. FRA's research shows that the Charter is not referred to as a key standard in the institutions' set-up: with the exception of a draft law in Sweden, the documents forming the legal basis of the NHRIs within the EU do not mention the Charter explicitly (see Box on 'Overview of applicable standards').

According to FRA's research, the vast majority of the 33 NHRIs covered by this report have mandates that include monitoring activities. Among the institutions, 28 carry out monitoring activities, such as through inspections of places of detention. Of these NHRIs, 13 do so as an explicit obligation, eight as an explicit possibility and seven on the basis of established practice alone.

Similarly, 29 of the institutions are able to investigate systematic human rights violations and formulate redress recommendations. Of these, 12 do so as an explicit obligation, 10 as an explicit possibility and seven on the basis of established practice alone. Moreover, 27 NHRIs have the power to investigate allegations of systematic human rights violations on their own initiative, as an explicit obligation (10), or possibility (10) or in practice (seven).

A majority of the institutions also have the power to investigate individual complaints of human rights violations and formulate redress recommendations, although here the proportion is lower, with 23 NHRIs (20 as an explicit obligation).

The research for this report shows that all NHRIs monitor and assess follow-up and implementation of recommendations by governments to some extent, with several of the institutions publishing data and information on the acceptance of their recommendations by relevant authorities.

Finally, assessments of NHRIs must look at their real action and impact, beyond mere compliance with the formal aspects of the Paris Principles. FRA's research shows that the institutions measure their impact on the human rights situation, taking the most important human rights issues in society into consideration. Such important issues may be the human rights aspects of the rule of law, migration and integration, environmental and technological changes, equality and hate crime, or the effect of global pandemics on fundamental rights.



## FRA OPINION 8

**For reasons of independence and effectiveness, EU Member States could, when establishing new or strengthening existing NHRIs, ensure a firm legal foundation – ideally secured with a constitutional provision. Changes to the legal basis require prior effective consultative processes, including a strong role for the NHRI itself.**

In addition to having a broad human rights mandate to address all human rights and a clear reference in their mandate to international human rights law (including treaties and interpretations made by the corresponding monitoring mechanisms), the legal basis or equivalent of NHRIs could also reference EU law, the Charter and the jurisprudence of the Court of Justice of the European Union. This will contribute to strengthening links to EU fundamental rights.



## FRA OPINION 9

**EU Member States should ensure that NHRIs are sufficiently resourced to undertake periodic evaluations of the impact and effectiveness of their work, including external evaluations, where necessary. The results of such evaluations must be made public.**

## INDEPENDENT NHRIS

A central element that helps to ensure the independence of NHRIs is the selection and appointment procedures for the members of the decision-making body of the institutions. The accreditation review by the SCA indicates that more needs to be done, including as regards EU Member States. Similarly, dismissal procedures also need to be considered.<sup>38</sup>

The research for this report shows the need to improve the appointment processes of the NHRIs' decision-making bodies to ensure transparency and credibility. Despite great variations in terms of types of bodies and practices between Member States, general lessons can be drawn that are important for all. With reference to the general observations of the SCA and the findings of this report, lessons learned include ensuring an appointment process that is transparent and open to applications, or otherwise considering ways to strengthen the institutions' independence. The independence of NHRIs would be strengthened by candidates being scrutinised by an independent expert committee according to statutory requirements ensuring transparency and merit-based choices. The consideration of candidates could also benefit from parliamentary involvement, such as through advisory hearings.

### Standards on selection and protection of members and staff of an NHRI

The Paris Principles call for "a stable mandate for the members of the national institution, without which there can be no real independence, their appointment shall be effected by an official act which shall establish the specific duration of the mandate. This mandate may be renewable, provided that the pluralism of the institution's membership is ensured." (UN, **Paris Principles**, 'Composition and guarantees of independence and pluralism', paragraph 3.)

The general observations of the SCA note that "members and staff of an NHRI should be protected from both criminal and civil liability for acts undertaken in good faith in their official capacity. [...] While the SCA considers it preferable for these protections to be explicitly entrenched in NHRI legislation or another applicable law of general application, it acknowledges that such protection may also exist by virtue of the specific legal context in which the NHRI operates. It is acknowledged that no office holder should be beyond the reach of the law and thus, in certain exceptional circumstances it may be necessary to lift these protections." (GANHRI, SCA **General Observations**, 2.3).

The general observations of the SCA elaborate on this by stressing that "[i]t is critically important to ensure the formalisation of a clear, transparent and participatory selection and appointment process of the NHRI's decision-making body in relevant legislation, regulations or binding administrative guidelines, as appropriate. A process that promotes merit-based selection and ensures pluralism is necessary to ensure the independence of, and public confidence in, the senior leadership of an NHRI. Such a process should include requirements to '[p]ublicise vacancies broadly', '[m]aximise the number of potential candidates from a wide range of societal groups', '[p]romote broad consultation and/or participation in the application, screening, selection and appointment process', '[a]ssess applicants on the basis of predetermined, objective and publicly available criteria', and '[s]elect members to serve in their own individual capacity rather than on behalf of the organisation they represent'" (GANHRI, SCA **General Observations**, 1.8).

Another important institutional requirement enhancing the independence of NHRIs and protection from some forms of threats is the protection against criminal and civil liability for acts undertaken by the institutions while performing their tasks (functional immunity). The absence of such protection from external influence may lead to the NHRIs not being able to perform their tasks without fear of legal proceedings. The research for this report shows that the leadership of only 16 out of the 33 institutions covered by this study enjoys such immunity, which is extended to the management board in four Member States. In other countries, such as Croatia, the deputy ombudspersons also enjoy the same immunity as the Ombudsman. With regard to staff, protection against such liability is provided in only two Member States.

There are various other forms of threats to NHRIs, including to their leadership and staff, which significantly undermine their work. The Council of Europe Commissioner has reported on some threats against the institutions, including in EU Member States. Threats includes budgetary cuts and interference in the selection and appointment process;<sup>39</sup> therefore, it is important to have in place a strong prevention system. In addition, the UN has recognised the importance of NHRIs in preventing reprisals against civil society organisations.<sup>40</sup> The UN Secretary- General has recently stressed to the General Assembly that states must take measures to prevent pressure on NHRIs.<sup>41</sup>

The Council of the European Union has “underline[d] the necessity of safeguarding an enabling environment for independent national human rights institutions, Equality Bodies and other human rights mechanisms”.<sup>42</sup> The Council of Europe Commissioner for Human Rights has reported on some threats to NHRIs, including in EU Member States.<sup>43</sup>

The research for this report shows that the main challenges to ensuring safeguarding and an enabling environment for NHRIs include cases of harassment of, threats to and attacks on their staff, leadership and premises. Thirteen NHRIs reported that their employees and volunteers had been subjected to threats and harassment due to their work, predominantly in the online setting, within the past 12 months. Another form of threat is an overly negative discourse about human rights issues, which was reported by one third of the institutions.



## FRA OPINION 10

In accordance with the Paris Principles and with reference to the general observations of the SCA, FRA considers that EU Member States should enhance the selection and appointment process of members (leaders) of NHRIs, ensuring greater transparency and processes open to the widest possible range of applicants. Such processes could include independent expert committees and parliamentary involvement.



## FRA OPINION 11

As underlined by the Council of the European Union, EU Member States should ensure a safeguarding and enabling environment for NHRIs and civil society, so that NHRIs are free from threats and harassment. To prevent NHRIs, including their leadership and staff, from threats or other forms of pressure related to the work of promoting and protecting human rights, the EU and its Member States must, in close cooperation with the NHRIs, put in place safeguarding measures, including legislation.

NHRIs, their members and staff must be protected from harassment, attacks or other acts of intimidation as a result of their mandated activities, and any such actions must be properly addressed as a priority by the EU Member States.

## INSTITUTIONS REFLECTING DIVERSITY – IN AN ENVIRONMENT CONDUCTIVE TO HUMAN RIGHTS



### FRA OPINION 12

In accordance with the Paris Principles, EU Member States are encouraged to ensure that the structures and membership of NHRIs capture the diverse nature of society. This can be achieved through the composition of collegiate decision-making bodies, advisory bodies and staff. NHRIs must also be able to conduct regular and constructive engagement with civil society. Reflecting the plurality of society, including marginalised groups, is essential for the credibility and effectiveness of NHRIs.

A pluralistic representation of society within NHRIs and their consultative forums is a Paris Principles requirement, intertwined with their independence. It is an element of critical importance for the effective functioning of NHRIs and their ability to have an impact on the human rights situation on the ground. Each institution should reflect the broader composition of society and also, in its way of working, relate to the broader community, by collaborating with civil society and engaging with those that may otherwise be left behind and not be heard. The Paris Principles refer to the appointment of NHRI members to be “established in accordance with a procedure which affords all necessary guarantees to ensure the pluralist representation of the social forces (of civilian society) involved in the protection and promotion of human rights”. Cooperation with civil society is also an important element of the Paris Principles.

In an EU context, pluralism reflects the respect for cultural, religious and linguistic diversity as laid down in the Charter of Fundamental Rights of the European Union (Article 22) and the Treaty on European Union (Article 2). In addition, the Treaty establishes (Article 10(3)) that decisions in the EU should be taken as openly and as closely as possible to the citizen. In this vein, it appears beneficial if human rights scrutiny takes pluralism in society into account when implementing EU law.



### FRA OPINION 13

EU Member States should consider increasing support for cooperation between NHRIs and cities or regions – with dedicated resources. Such cooperation would not only reinforce human rights locally but also support the awareness of rights. SDG target 16.10 (“ensure public access to information and protect fundamental freedoms, in accordance with national legislation and international agreements”) could be further considered when increasing exchanges of NHRIs with different layers of governance including cities and regions.

The research for this report shows that 15 NHRIs seek to ensure pluralism through the composition of their decision-making collegial bodies – the commission-type institute NHRIs. In addition, FRA’s research shows that the balance between women and men in staff and leadership positions in the institutions is better than it was 10 years ago in both categories.

All NHRIs covered by this report engage with civil society organisations. Almost half of the institutions are obliged to do so, a third have the explicit potential to do so and about a fifth do so as a matter of practice. NHRIs jointly cooperate closely with civil society in the following areas: 31 on awareness raising and human rights education and training, 23 on joint projects and three on other areas. They use a range of forms of communication and cooperation with civil society. Calls for proposals and funding of civil society organisations by the institutions remain a rare practice.

Supplementing the research for this report, FRA conducted a consultation with civil society on its cooperation with NHRIs (for a description of the methodology, see Annex I).

The result of this shows that, while good engagement takes place, it could be diversified in more thematic areas, cooperation could be formalised and extended to cover all areas of work of the NHRI – an element also noted in SCA recommendations.



FRA's research also touched on other forms of inclusiveness. Almost half of the NHRIs covered engage with competent authorities of cities and other local authorities through various forms of cooperation. Three NHRIs have set up offices in different parts of the country to increase their outreach to rights holders or to step up rights promotion. City authorities have benefited from the institutions' expertise on rights, which positively influenced good governance, including engagement of rights holders in of policy-making processes. This includes the area of rights, such as access to justice, right to information, freedoms of religion, conscience, opinion, information and speech, addressing and preventing discrimination through targeted human rights education of public officials, accessibility of services and creation of spaces for diversity.



## ADEQUATELY RESOURCED NHRIS

The Paris Principles on NHRIs, the Venice Principles on ombudsman institutions, the 2019 Council of Europe Committee of Ministers Recommendation on the development of the ombuds institution and the European Commission Recommendation on equality bodies, as well as standards on data protection authorities, all acknowledge that adequate financial and human resources are of critical importance for national institutions to perform their various human rights mandates independently and effectively.

The diverse nature of NHRIs (some also being ombuds institutions and equality bodies) in EU Member States does not allow for easy comparison of their available resources, be it financial or human. While FRA's research indicates a slight overall increase in the budgets of the institutions (mainly related to additional mandates, inflation not considered) in the EU between 2010 and 2019, in some years and for some NHRIs, there were considerable budget cuts. Comparing available data between 2011 and 2019 on the institutions reveals that there has generally been an increase in the number of staff, which, however, must be put in the context of a growing number of tasks.

The research for this report shows that many NHRIs continue to have a very small staff considering their multiple mandates, such as also being an equality body under EU law, a national preventive mechanism under the UN Optional Protocol to the Convention against Torture (OPCAT) and a national monitoring mechanism under the UN Convention on the Rights of Persons with Disabilities.

NHRIs have, under the Paris Principles and international standards, an important role in cooperating with the UN. Cooperation is also essential with regional human rights mechanisms and other regional and national mechanisms – including NHRIs in other countries competent in the areas of the protection or promotion



## FRA OPINION 14

In line with the Paris Principles and recommendations for specialised bodies by the Council of Europe and the European Commission, EU Member States should ensure that NHRIs are allocated financial and human resources at a level that enables operational capacity to deliver their mandates effectively and independently. To this end, timely exchange between NHRIs and policymakers, in the form of pre-budget consultation without prejudice to their independence, could be useful. Any overall budget cuts to public services should not disproportionately disadvantage NHRIs.

Resources should be sufficient for NHRIs to be able to address key human rights issues and implement their functions in an effective manner. This is important in general as well as to reinforce their own expertise on issues such as the Charter. NHRIs must also have the capacity to increase awareness about their mandate and functions with the general public and vulnerable groups.

Resources should also allow NHRIs to cooperate with other institutions with a human rights remit at national level, to ensure coordination and to interact with the UN, the Council of Europe and other international and regional organisations, including EU institutions.

of human rights, as well as other bodies with a human rights remit within the same country.



## FRA OPINION 15

Special attention should be paid to ensuring that each explicit mandate and additional task of an NHRI is endowed with sufficient resources to be carried out effectively and without undermining existing work.

The EU and its Member States must also ensure that additional mandates and additional tasks do not impinge on the effectiveness of the NHRI by disproportionately locking up capacity or indicating strategic choices.

EU Member States should consult NHRIs on any legislative or policy initiatives that impact NHRIs, including mandates and budgets.

For instance, in relation to the Council of Europe, a follow-up to the enforcement of a judgment by the European Court of Human Rights envisages a role for NHRIs. The 2018 Council of Europe Copenhagen Declaration stressed the importance of NHRIs in this regard,<sup>44</sup> and there is a rule established by the Committee of Ministers of the Council of Europe, whereby NHRIs (as well as civil society organisations) may submit views on the execution of judgments.<sup>45</sup> The research for this report indicates the need for coordination and cooperation, as well as for exchange of ideas and learning for NHRIs.



## ENDNOTES

- <sup>1</sup> Although the report is about NHRIs accredited under the Paris Principles, if no such institution exists in a country, other institutions have been included (based on membership of the European Network of NHRIs). As some NHRIs also have other mandates, including that of ombuds institution or equality body, the report refers to such mandates and related standards where appropriate. North Macedonia and Serbia fall within FRA's mandate. At the time the research was carried out and the comparisons finalised, the United Kingdom was still an EU Member State and is therefore included in this report.
- <sup>2</sup> FRA (European Union Agency for Fundamental Rights) (2010), *National Human Rights Institutions in the EU Member States – Strengthening the fundamental rights architecture in the EU (I)*, Luxembourg, Publications Office of the European Union (Publications Office), p. 11.
- <sup>3</sup> United Nations (UN) General Assembly (1993), *Principles relating to the Status of National Institutions (The Paris Principles)* – Adopted by General Assembly Resolution 48/134 of 20 December 1993. The Paris Principles set out a short set of minimum standards for NHRIs, organised under four headings: (1) competence and responsibilities; (2) composition and guarantees of independence and pluralism; (3) methods of operation; and (4) additional principles on the status of commissions with quasi-(judicial) competence.
- <sup>4</sup> GANHRI (2018), *SCA General Observations*, p. 1.
- <sup>5</sup> GANHRI (2018), *SCA General Observations*, p. 1.
- <sup>6</sup> For more detail on conceptual development, see FRA, *National Human Rights Institutions in the EU Member States – Strengthening the fundamental rights architecture in the EU (I)*, Luxembourg, Publications Office.
- <sup>7</sup> Roberts Lyer, K. (2018), 'National human rights institutions', in: Oberleitner, G. (ed.), *International human rights institutions, tribunals and courts*, *International Human Rights*, Singapore, Springer, pp. 1–23; FRA (2012), *Handbook on the establishment and accreditation of National Human Rights Institutions in the European Union*, Luxembourg, Publications Office, pp. 13–17.
- <sup>8</sup> UN Economic and Social Council (1946), *E/RES/9(II)*, p. 521.
- <sup>9</sup> UN Commission on Human Rights (1990), *E.CN.4/RES/1990/73*.
- <sup>10</sup> UN Commission on Human Rights (1992), *E/CN.4/1992/43*, p. 1. One of the rapporteurs at this event had submitted a paper outlining a number of elements required of an NHRI, most of which were included in the final version. See Burdekin, B. (2007), *National human rights institutions in the Asia-Pacific region*, Leiden, Martinus Nijhoff, p. 21, note 32.
- <sup>11</sup> UN Commission on Human Rights (1992), *E/CN.4/RES/1992/54*.
- <sup>12</sup> UN Human Rights Office (1993), *Vienna Declaration and Programme of Action – Adopted by the World Conference on Human Rights in Vienna on 25 June 1993*.
- <sup>13</sup> World Conference on Human Rights (2018), *Vienna + 25: Building trust, making human rights a reality for all*, Outcome of the 25th World Conference on Human Rights, Vienna, 22–23 May, p. 4.
- <sup>14</sup> Council of Europe, Committee of Ministers (1997), *Recommendation No R(97)14 on the establishment of independent national institutions for the promotion and protection of human rights*, 30 September, p. 85.
- <sup>15</sup> UN General Assembly (1993), *Paris Principles*, para. 3(e).
- <sup>16</sup> Originally called the International Co-ordinating Committee of National Institutions for the Promotion and Protection of Human Rights (ICC), changed to GANHRI in 2016. The organisation is a non-profit association governed by Swiss law (GANRHI (2018), *GANHRI Statute*, Preamble).
- <sup>17</sup> GANHRI (2018), *GANHRI Statute*, Art. 24.1.
- <sup>18</sup> GANHRI (2018), *GANHRI Statute*, Art. 31.1; GANHRI (2019), *SCA Rules of Procedure*, Rule 3.1.
- <sup>19</sup> The SCA was scheduled to meet in March 2020 to accredit NHRIs from Estonia and re-accredit NHRIs from Latvia, Netherlands, Serbia, Slovenia and in October to accredit NHRIs from Romania, re-accredit NHRIs from Great Britain [sic], Ireland, Luxembourg, Scotland and defer accreditation of NHRIs from Hungary. See GANHRI for a complete overview for countries other than EU Member States or candidate countries, *Sessions of the GANHRI SCA for 2020*. The March 2020 meeting was postponed because of the coronavirus disease 2019 (COVID-19) outbreak. See
- <sup>20</sup> For details of the accreditation process, see the *GANHRI SCA's website*, including the SCA's *Rules of Procedure* and *general observations*; there is also a *compilation* of the SCA's rules, working methods and a template for statement of compliance that applicant NHRIs must submit. Overall, see GANHRI (2018), *A practical guide to the work of the sub-committee on accreditation (SCA)*, pp. 26–37. See also: *ENNHRI's 2018 handbook on accreditation* (developed with the French NHRI) as well as FRA's *2012 handbook*, which has a separate annex including case studies from NHRIs in the EU. There is also an older UN Human Rights Office *handbook* (1995) and one for the *Asia-Pacific from 2015* (updated 2018), which also includes case studies.

- <sup>21</sup> GANHRI (2018), **GANHRI Statute**, Art. 43.
- <sup>22</sup> GANHRI (2019), **SCA Rules of Procedure**, Rule 2.1.
- <sup>23</sup> GANHRI (2018), **GANHRI Statute**, Art. 12.7; GANHRI (2019) **SCA Rules of Procedure**, Rule 4.8.
- <sup>24</sup> *Ibid.*, Art. 15.
- <sup>25</sup> *Ibid.*, Art. 16. See also GANHRI (2017), **GANHRI Practice Note 2**.
- <sup>26</sup> GANHRI (2018), **SCA General Observations**.
- <sup>27</sup> GANHRI, **SCA Accreditation Reports**, from 2001 to date.
- <sup>28</sup> GANHRI (2018), **SCA General Observations**, Introduction, point 9.
- <sup>29</sup> FRA (2010), **National Human Rights Institutions in the EU Member States – Strengthening the fundamental rights architecture in the EU (I)**, 2010, p. 9.
- <sup>30</sup> *Ibid.*, p. 9.
- <sup>31</sup> European Network of National Human Rights Institutions (ENNHRI), **Annual report 2014**, Brussels, ENNHRI, p. 18; ENNHRI (2013), **ENNHRI Statute**, 2013, Preamble.
- <sup>32</sup> ENNHRI (2013), **Strategic plan 2014-2017**, p. 3; FRA interview with ENNHRI, September 2019.
- <sup>33</sup> ENNHRI, **Operational plan 2019**, p. 3.
- <sup>34</sup> ENNHRI (2013), **ENNHRI Statute**, Preamble; originally called Coordinating Committee but renamed Board in 2019.
- <sup>35</sup> ENNHRI (2013), **Strategic plan 2014-2017**, p. 11.
- <sup>36</sup> **Council Regulation (EC) No 168/2007 of 15 February 2007 establishing a European Union Agency for Fundamental Rights**, OJ 2007 L 53.
- <sup>37</sup> European Commission (2018), **Proposal for a regulation laying down common provisions on [specific EU funds]**, COM(2018) 375 final, Brussels, 29 May 2018.
- <sup>38</sup> See GANHRI (2018), **SCA General Observations**, 2.1.
- <sup>39</sup> Council of Europe, Commissioner for Human Rights (2018), **Paris Principles at 25: National Human Rights Institutions needed more than ever**, 18 December.
- <sup>40</sup> UN Human Rights Council (2019), **A/HRC/RES/42/28**, 1 October.
- <sup>41</sup> UN General Assembly (2019), **A/74/226**, 25 July; UN General Assembly (2019), **A/RES/74/156**, 23 January.
- <sup>42</sup> Council of the European Union (2019), **Council Conclusions on the Charter of Fundamental Rights after 10 years: State of play and future work**, p. 11.
- <sup>43</sup> Council of Europe, Commissioner for Human Rights (2018), **Paris Principles at 25: National Human Rights Institutions needed more than ever**, 18 December.
- <sup>44</sup> Council of Europe (2018), **Copenhagen Declaration**, 13 April.
- <sup>45</sup> Council of Europe, Committee of Ministers (2006), **Rules for the Committee of Ministers, for the supervision of execution of judgments and of the terms of friendly settlements**, Rule 9(2).

# 1

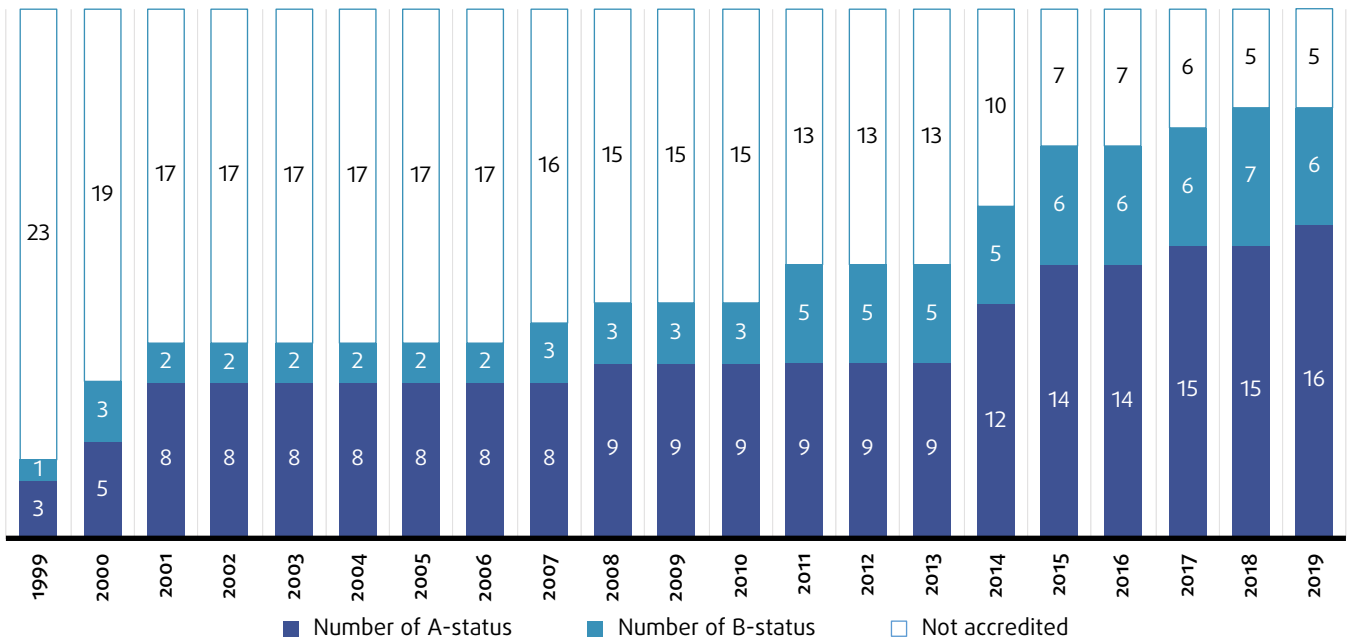
## NHRIS IN THE EU – DIVERSITY AND DEVELOPMENTS

This part of the report provides an overview of developments in establishing NHRIs as well as of the diverse range of NHRIs. It also provides more details on the process of accreditation and notes developments in countries where there is no NHRI or where efforts are made to achieve a Paris Principles-compliant NHRI.

All NHRIs covered by this report have a common role within each national context – to promote and protect human rights. However, the actual nature of the institutions in Europe (and globally) varies tremendously and creates a quite complex array of institutions, including type of institution, such as ombuds institution (or commission), accreditation status, size of budget and staff, and way of operating. NHRIs typically also have several thematic mandates, many of which are integral parts of its mandate, such as monitoring places of detention. In its introduction to the general observations, GANHRI's SCA acknowledges "different NHRI structural models in existence" but confirms that "its General Observations must be applied to every NHRI, regardless of its structural model type."<sup>1</sup> The diversity of NHRIs allows to some extent adjustment for national context and legal tradition, which is important for their effective functioning.

In 2010, FRA called on the Member States to establish NHRIs in all EU Member States.<sup>2</sup> Among the then 27 Member States, 10 had an A-status NHRI and five had institutions with B-status. By 1 January 2020, of the 28 EU Member States, 17 had A-status NHRIs and six had institutions with B-status. Although Bulgaria's ombuds institution was the only NHRI to go from B-status to A-status within the 2010–2020 timeframe, five NHRIs were established in the same decade and obtained A-status, including the Netherlands Institute for Human Rights, which replaced the previous B-status NHRI. Figure 2 provides an overview of the period from the accreditation of the first NHRIs in 1999 to the present, showing the number of countries covered by this report with A- and B-status NHRIs (data for the now EU-27 Member States and excluding North Macedonia, Serbia and the United Kingdom).

**FIGURE 2: NUMBER OF EUROPEAN COUNTRIES WITH A- AND B-STATUS NHRIS**



Source: FRA, 2020 [desk research based on ENNHRI and GANHRI membership accreditation data]

In the last decade, the number of countries worldwide with A-status NHRIs has risen from 65 to 79, and the EU has contributed significantly to this increase.<sup>3</sup>

The EU is clear on the importance of NHRIs to it externally. The EU Action Plan on human rights and democracy commits the EU to supporting Paris Principles-compliant NHRIs.<sup>4</sup> The EU’s annual report on human rights and democracy in the world for 2018 notes that “the EU is increasingly collaborating with [NHRIs] to promote an enabling environment for sustainable development. NHRIs act as accountability mechanisms in implementing the SDGs. Similarly, giving marginalised communities a voice increases the potential for non-discrimination and equal access.” The EU’s most recently adopted human rights guidelines in external action (related to torture) also includes reference to NHRIs.<sup>5</sup> The 2019 guidelines on non-discrimination and external action deal with NHRIs and equality bodies.<sup>6</sup>

Notes: Covers 27 EU Member States only; “not accredited” indicates the number of EU Member States without an accredited NHRI.



Furthermore, internally in the EU, NHRIs are recognised more widely recognised than they were 10 years ago. The European Commission's most recent report on the application of the EU Charter of Fundamental Rights in the EU notes the increasing role of NHRIs in monitoring and awareness raising of and training on the Charter. The Commission concludes that "[t]hey are an important part for the enforcement chain."<sup>7</sup> In addition, the EU's draft justice programme includes references to "national institutions responsible for the protection of human rights".<sup>8</sup> And the 2019 Council Conclusions on the Charter of Fundamental Rights notes that NHRIs, equality bodies and other human rights mechanisms "play a crucial role in the protection and promotion of fundamental rights and in ensuring compliance with the Charter".<sup>9</sup>

## 1.1. DIVERSITY OF NHRIS AT A GLANCE – SITUATION IN 30 COUNTRIES

Of the 30 countries covered by this report, 18 have A-status and seven have B-status NHRIs. The remaining five countries (Czechia, Estonia, Italy, Malta and Romania) are all in the process of establishing an NHRI. In addition, in some of the countries with B-status NHRIs, there are processes under way to obtain A-status, through creating new or strengthening existing NHRIs.

Moreover, there are more accredited institutions than the 25 mentioned above, because the United Kingdom has three institutions (all with A-status) and Bulgaria has two, one with A-status and the other with B-status. A list of institutions giving their full names is provided in Annex II. Thus, there are currently 28 (20 A-status and eight B-status) accredited NHRIs situated in 25 of the 30 countries covered. This report deals with all of these NHRIs – and the developments in the remaining five countries (for an overview of the responding NHRIs, see [Annex II](#)).

### 1.1.1. Types of institutions

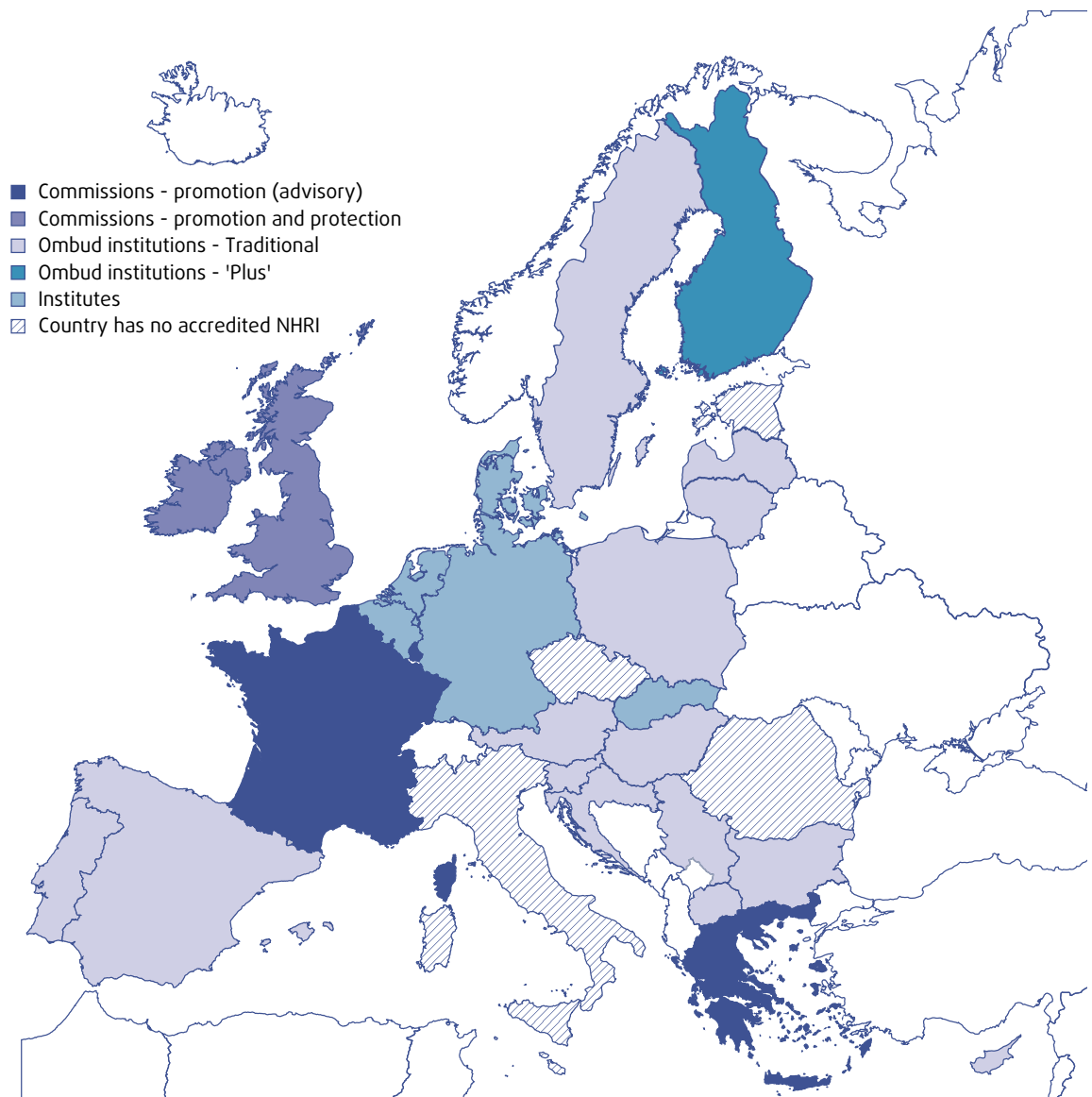
There is a range of different types of NHRIs in the countries covered by this report. There are also different ways in which they could be categorised – the following three types can differentiate them approximately:

1. multi-member institutions (commissions)
2. single-member institutions (often referred to as ombuds institutions) and
3. other types of NHRIs (institutes).

Multi-member institutions are collegiate bodies with a number of commissioners either at the top of the organisation or constituting the organisation as a whole. Ombuds institutions build on the model of parliamentary ombudspersons, typically with a single person heading the organisation. The institutes have a director (or directors) at the top of the organisation, which typically has a management board for more strategic decisions.

Of the 28 A- and B-status NHRIs covered in this report, there are eight commission-type, 15 ombuds-type and five institute-type. The commission-type can be subdivided into two categories, those that predominantly have a promotional "mandate" and those that also have a strong protection mandate (accepting individual complaints or another such monitoring mandate). Two of the five countries with institute-type have such a broader mandate. Ombuds institutions could also usefully be divided into the traditional type, building on the parliamentary ombudsperson model, and a model developed by Finland. In the latter, the ombuds institution mainly focuses on monitoring, inspecting and handling complaints and is supplemented by a structure focusing on promotion, general monitoring and reporting, and cooperation with international or European human rights. Figure 3 provides an overview of the type of NHRIs in the 30 countries covered by this report.

**FIGURE 3: TYPOLOGY OF ACCREDITED NHRIS – COMMISSIONS, OMBUDS INSTITUTIONS AND INSTITUTES**

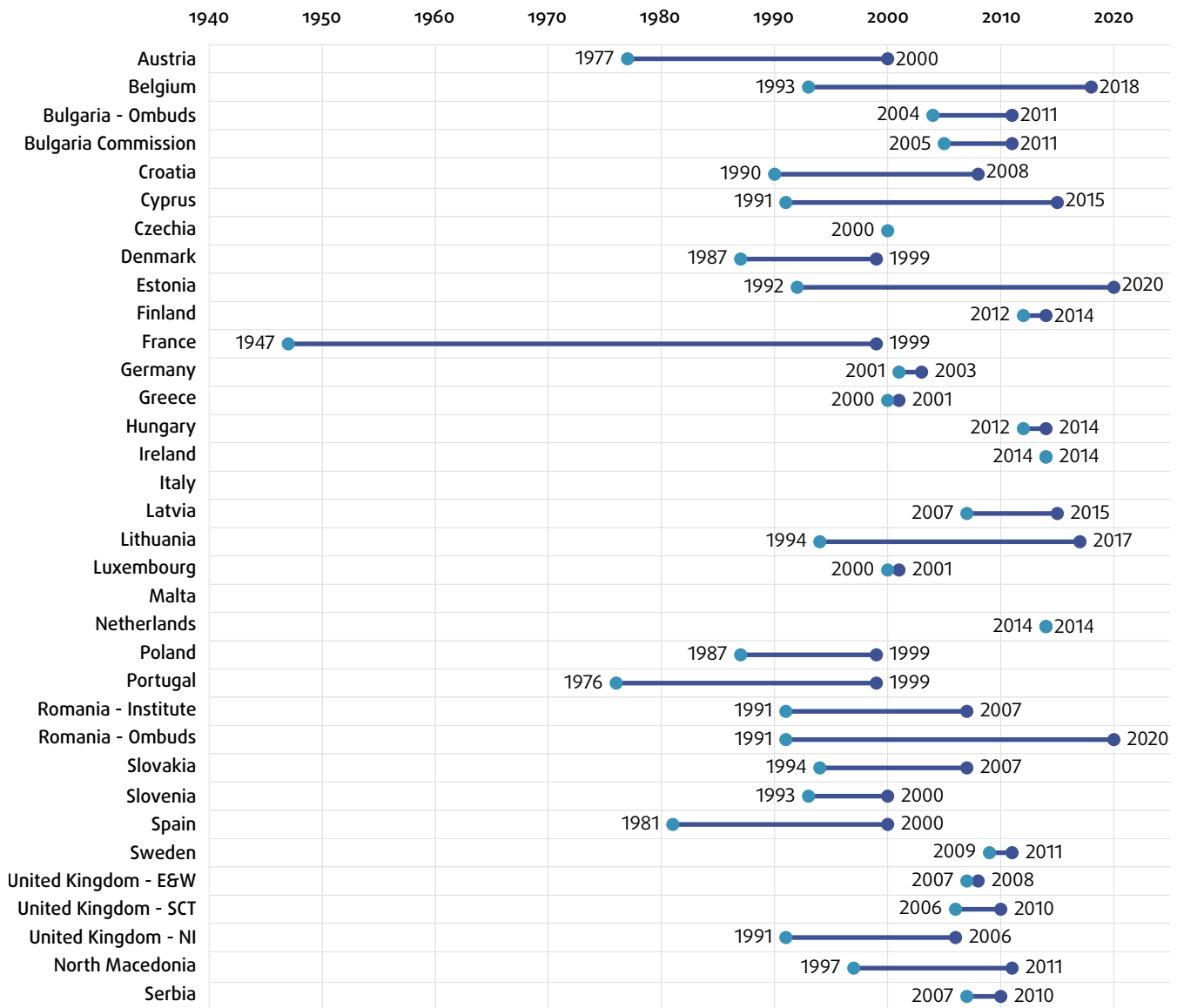


Source: FRA, 2020 [desk research based on ENNHRI data]

Another element of diversity is when and how the NHRIs were established and accredited. Several have their roots in institutions existing before the Paris Principles were adopted. Figure 4 provides an overview of the year of establishment and accreditation for each institution. Some NHRIs have a longer history than indicated in this chart but, if a new organisation has been created on the basis of a previous one, the more recent date is shown. Also included in this overview are Estonia and Romania (Estonia’s Chancellor for Justice and Romania’s Institute for Human Rights and its ombuds institution, the People’s Advocate, are all scheduled for accreditation in 2020) and Czechia (where there are plans to amend legislation with a view to seeking accreditation).

Note: The United Kingdom has three A-status, commission-type institutions. Bulgaria has an A-status ombuds institution, as shown above, but also a B-status commission-type institution.

**FIGURE 4: NHRIS' YEAR OF ESTABLISHMENT AND YEAR OF FIRST ACCREDITATION AT CURRENT ACCREDITATION LEVEL**



Source: FRA, 2020

Notes: The scheduled accreditations in 2020 (Estonia and Romania) have been included. E&W, England and Wales; NI, Northern Ireland; SCT, Scotland.

### 1.1.2. NHRIs with multiple mandates

The diversity of NHRIs is also apparent when it comes to their substantive mandates. In 15 of the 30 countries covered by this report, the NHRIs are of the ombuds-type. This means that they have a core mandate related to maladministration, in addition to their human rights mandate as an NHRI, with much of the work overlapping in practice. However, some ombuds institutions, such as that in Finland, have a strong, even constitutional, human rights mandate as an ombuds institution, not only as an NHRI.

The NHRIs also have specific mandates under EU law and Council of Europe and UN human rights treaties. The requirement under EU law to establish or designate an equality body has in many countries meant that the NHRI also serves as an equality body.

In some countries (Belgium, Bulgaria<sup>10</sup> and Sweden), the NHRI is an equality body (because of its limited mandate it does not have A-status). In the EU-27 Member States, 10 NHRIs are the sole equality body (this is also the case in the United Kingdom). For six others, the NHRI forms part of the equality



**FIGURE 5: INSTITUTIONS MANDATED AS AN EQUALITY BODY UNDER EU LAW**

A-status																																			
B-status																																			
No accredited institution																																			
0 – Contributing (not sole equality body)	Austria	Belgium	Bulgaria – Commission	Bulgaria – Ombud	Croatia	Cyprus	Czechia	Denmark	Estonia	Finland	France	Germany	Greece	Hungary	Ireland	Italy	Latvia	Lithuania	Luxembourg	Malta	Netherlands	Poland	Portugal	Romania – Institute	Romania – Ombud	Slovakia	Slovenia	Spain	Sweden	United Kingdom – E&W	United Kingdom – SCT	United Kingdom – NI	North Macedonia	Serbia	
Equality body		0			0		0	0						0	n / a				0																

Source: FRA, 2020 [based on 33 responses to questionnaire sent to 34 NHRIs, FRA desk research]

body as one of two or more institutions sharing that designation. Figure 5 provides an overview of the situation in the countries covered by this report. It indicates the accreditation status of NHRIs and whether the institutions are mandated as an equality body under EU law or at least contribute to that task (indicated by a circle) alongside other bodies. Countries (and institutions) with NHRIs also serving as equality bodies are indicated in dark purple. If they have a function subsidiary to an equality body (such as a specific equality mandate) this is indicated by a dark purple circle.

▲ Note: E&W, England and Wales; NI, Northern Ireland; SCT, Scotland.

The EU Return Directive requires Member States to “provide for an effective forced-return monitoring system”.<sup>11</sup> FRA has analysed the nature of these monitoring mechanisms and the data are available in an online data explorer and in an overview of the mechanisms in charge.<sup>12</sup> FRA’s research shows that five Member States (Bulgaria, Cyprus, Greece, Latvia and Spain) rely on their NHRIs to monitor the return of migrants. This is also the case for the ombuds institution in Czechia (a member of ENNHRI and working towards seeking accreditation). Similarly, the Human Trafficking Directive calls for a “national monitoring system” and the NHRIs in two EU Member States (France and Luxembourg) have this role.<sup>13</sup>

NHRIs can also have specific mandates under international human rights law. International human rights instruments occasionally require parties to treaties to establish or designate an independent monitoring mechanism, sometimes with reference to the Paris Principles.<sup>14</sup>

The 1965 International Convention on the Elimination of Racial Discrimination (ICERD) allows that a state may appoint “a body within its national legal order which shall be competent to receive and consider petitions from individuals and groups of individuals within its jurisdiction who claim to be victims of a violation of any of the rights set forth in this convention and who have exhausted other available local remedies.”<sup>15</sup> All 30 countries covered by this study are parties to the convention but of these, only Belgium, Luxembourg and Romania have made such a declaration (UN, **Status of Treaties – ICERD**);<sup>16</sup> however, although Luxembourg did make a declaration at the time of ratification of the convention, the body mentioned in that declaration, the Commission spéciale permanente contre la discrimination, no longer exists. While none of the NHRIs have been appointed under the convention, other institutions have been designated in these three countries.<sup>17</sup> The function envisaged by the ICERD is a core function for most NHRIs, even if no declaration under it has been made in that regard.





Similar to ICERD, there are provisions in OPCAT requiring an independent national-level monitoring mechanism.<sup>18</sup> The “national preventive mechanisms” (NPMs), under OPCAT, have certain independence guarantees and ensure gender and diversity criteria and the Paris Principles are to be given “due consideration”.<sup>19</sup> OPCAT also requires the NPMs to be empowered to share information with the UN treaty body set up to monitor the optional protocol (the Subcommittee on the Prevention of Torture, SPT), and states also have an obligation to engage with the NPM on implementation of recommendations and to publish an annual report issued by the NPM.<sup>20</sup> All countries covered by this report are parties to OPCAT, except four (Belgium, Ireland and Slovakia have only signed and Latvia has not even signed).<sup>21</sup> Of the remaining countries, 12 have assigned their NHRIs as NPMs (nine A-status and three B-status), and two non-accredited institutions covered by this study are NPMs (the institutions in Czechia and Estonia).

Similarly, under the UN Convention on the Rights of Persons with Disabilities (CRPD), a treaty to which all countries covered by this report are parties (in addition to the EU itself)<sup>22</sup>, there is an obligation to set up an independent national mechanism, taking “into account” the Paris Principles.<sup>23</sup> In 17 of the 30 countries covered by this report the NHRIs are also national monitoring mechanisms (NMMs) under the CRPD (14 A-status and three B-status); in addition, two non-accredited institutions covered by this study are NMMs (the institutions in Czechia and Estonia), as is Italy’s National Guarantor for the Rights of Persons Detained or Deprived of Liberty, which is not an NHRI. Figure 6 provides an overview of which institutions have which additional mandates.

ENNHRI has a working group on the CRPD with those NHRIs that have a monitoring mandate under the treaty. FRA is an observer of this group. The working group exchanges practices to enhance the monitoring of the CRPD’s implementation and also interacts with regional and international organisations on the rights of people with disabilities. The working group also engages with the EU, focusing on the monitoring mechanism of the EU (the EU is a party to the CRPD).

Note: E&W, England and Wales; NI, Northern Ireland; SCT, Scotland.



**FIGURE 6: ACCREDITATION OF NHRIS AND ADDITIONAL MANDATES UNDER UN TREATIES**

A-status	Austria	Belgium	Bulgaria – Commission	Bulgaria – Ombud	Croatia	Cyprus	Czechia	Denmark	Estonia	Finland	France	Germany	Greece	Hungary	Ireland	Italy	Latvia	Lithuania	Luxembourg	Malta	Netherlands	Poland	Portugal	Romania – Institute	Romania – Ombud	Slovakia	Slovenia	Spain	Sweden	United Kingdom - E&W	United Kingdom - SCT	United Kingdom - NI	North Macedonia	Serbia	
B-status																																			
No accredited institution																																			
0 – Contributing (not sole equality body)																																			
CERD (Art. 14-body)																																			
OPCAT (NPM)								0		0																									
CRPD (NMM)	0									0												0				0		0							

Source: FRA, 2020 [based on 33 responses to questionnaire sent to 34 NHRIs, FRA desk research, and NHRI feedback]

NHRIs are being considered for enhanced mandates in the UN's work in the business and human rights context. The legally binding instrument on business and human rights currently being negotiated might include a role for them. In this context, ENNHRI has also established a working group of NHRIs. See Section 3.3 for further details on reinforced and new powers.

All countries covered by this report are parties to the Council of Europe's Lanzarote Convention (formally the Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse) save Ireland which has only signed the convention.<sup>24</sup> The convention requires parties to establish "independent competent national or local institutions for the promotion and protection of the rights of the child".<sup>25</sup>

Many of the NHRIs exercise specific mandates, as explicitly assigned to them in law or otherwise allocated, on a wide range of topics.

The development of mandates under OPCAT is under discussion for the NHRI in Ireland. In Slovenia, consideration is being given to providing the NHRI with a CRPD monitoring mandate. In Cyprus there is a proposal to assign to the NHRI a special mandate to receive and examine complaints concerning the living conditions of non-EU nationals. In Portugal, discussions on whether the ombuds institution should be given an explicit mandate under the UN Convention on the Rights of the Child are ongoing. In France, the NHRI would find it helpful in making an impact to have a mandate related to the monitoring of the SDGs. In Serbia, the NHRI is seeking a broader mandate to include oversight of court administration.

The overall trend appears to be to assign to NHRIs additional, specific mandates, functions and powers. This is triggered in part by obligations under human rights treaties and EU law but also by more country-specific concerns. Based on the information gathered for this report (see Annex I for an overview of the methodology), there is a clear risk that additional mandates do not come with the required additional resources. Additional mandates might even be in conflict with the NHRI mandate under the Paris Principles. Annex III, available online, includes an overview of mandates by institution.

## 1.2. ACCREDITATION

The diversity of types and mandates of NHRIs poses a challenge for assessing their compliance with the Paris Principles. To do this, the SCA assesses both "law and practice".<sup>26</sup> Practice is assessed by examining whether an NHRI "is effectively fulfilling its mandate to promote and protect human rights" through demonstrable actions. NHRIs should have broad and clear promotion and protection mandates, and neither of the two should be too limited.<sup>27</sup> It is also important that the mandate be sufficiently broad to encompass human rights treaties – not only treaties to which the state is already a party – and that legislation should state this explicitly. Organisational and infrastructural aspects are almost exclusively about lack of sufficient resources, in particular budget size, but are in some cases also about financial autonomy.

In more detail, the SCA reviews cover:<sup>28</sup>

- enabling legislation, rules and policies;
- organisational structure, staff and budget;
- annual and other reports;
- assessments by international human rights monitoring mechanisms;
- the ability of the NHRI to carry out its work effectively and independently, addressing key human rights concerns in the country;
- third-party reports and other such views on the NHRI.

The actual assessments are under a series of headings, which are also reflected in the SCA's general observations on the Paris Principles – the authoritative interpretation and dynamic development of these standards. Two overarching headings are (1) 'Essential requirements of the Paris Principles' and (2) 'Practices that directly promote Paris Principles compliance'. The assessment is also contextual, "tak[ing] into account the totality of an NHRI's circumstances, including the constraints imposed by the context in which it operates, how it exercises its mandate in practice despite these constraints, and the responses provided by the NHRI in relation to concerns raised by the SCA."<sup>29</sup>

Figure 7 provides a simplified picture of the most recent assessments of the NHRIs covered in this report. The light blue-shaded boxes indicate an area of concern raised by the SCA in its assessment report and the numbers in the right-hand vertical column are the total numbers of NHRIs with this issue among the 25. The numbers in the horizontal row at the bottom are the total number of issues raised per NHRI.

As can be seen from Figure 7, working methods and quasi-judicial aspects are not problematic in the countries covered by this report according to the SCA's assessment. Establishment (Finland, in relation to needing clarity between the entities constituting the NHRI) and more than one NHRI in a country (Bulgaria and United Kingdom) are only of concern in one or two countries.

The three main issues are composition, mandate, and organisation and infrastructure. When these areas are broken down in detail, it is clear that composition relates in many instances to an overly narrow selection process for leadership positions in NHRIs. These selection processes are not sufficiently transparent, participatory and formalised, and they constitute the concern most frequently raised by the SCA for all NHRIs globally. A common concern is pluralism and diversity, which needs improvement, especially in single-member institutions such as, typically, ombuds institutions.<sup>30</sup> Issues raised by the SCA in relation to a smaller number of NHRIs, such as independence, tend to relate to immunity. The Paris Principles' requirement for an explicit functional immunity for the leadership of an NHRI has been qualified, given that this does not exist in some legal traditions, but it is still commonly raised as an issue.<sup>31</sup>

Note: E&W, England and Wales; NI, Northern Ireland; SCT, Scotland.

FIGURE 7: OVERVIEW OF CRITICAL POINTS RAISED IN THE SCA'S ASSESSMENTS OF NHRIS

	Austria	Belgium	Bulgaria – Commission	Bulgaria – Ombud	Croatia	Cyprus	Czechia	Denmark	Estonia	Finland	France	Germany	Greece	Hungary	Ireland	Italy	Latvia	Lithuania	Luxembourg	Malta	Netherlands	Poland	Portugal	Romania – Institute	Romania – Ombud	Slovakia	Slovenia	Spain	Sweden	United Kingdom – E&W	United Kingdom – SCT	United Kingdom – NI	North Macedonia	Serbia	
A-status																																			
B-status																																			
No accredited institution																																			
Establishment																																			1
Independence																																			13
Composition																																			27
Organisation and infrastructure																																			18
Working methods																																			0
General mandate																																			23
Quasi-judicial functions																																			0
Stakeholder relations																																			8
NPM-specific																																			8
More than one NHRI / state																																			2
	3	3	4	4	2	4		2		6	4	4	2	3	2		5	1	4		2	5	1	3		5	4	3	2	3	3	6	5	5	

Source: FRA, 2020 [based on compilation of 2019 data by ENNHRI]

All NHRIs are expected to take the necessary steps to pursue continuous improvement and to enhance effectiveness and independence. Even the A-status NHRIs covered by this report have work to do to ensure that they comply fully with the Paris Principles. ENNHRI supports the establishment and accreditation of NHRIs as one of its strategic priorities for 2018–2021 (see the section on ENNHRI on p. 11).<sup>32</sup>

### 1.3. TRENDS IN ESTABLISHING AND STRENGTHENING ACCREDITED NHRIS

Of the 30 countries covered by this report, five – all EU Member States (Czechia, Estonia, Italy, Malta and Romania) – currently do not have an accredited NHRI. In addition to the developments in these five countries, at least three other EU Member States (Belgium, Slovenia and Sweden) are taking initiatives to ensure their NHRIs' compliance with the Paris Principles.

In addition to these initiatives on compliance, there have been a number of significant changes in existing NHRIs, and further changes are under way. Ireland's current NHRI was founded in 2014 through a merger between the equality body and the human rights commission. Similarly, the Netherlands NHRI was established in 2012, and the equality body was transferred to this new entity. The United Kingdom's current NHRI was formed in 2007, bringing together three existing equality commissions with a broad human rights mandate for England and Wales (separate NHRIs exist for Northern Ireland and Scotland). In Sweden, a number of specialised equality ombuds institutions were merged into one in 2009. While mergers can have positive effects, including avoiding gaps between mandates, there are also risks involved, such as lost momentum and impact during transition periods, reduction in total resources allocated and less attention given to specific issues, or compromised independence. Lessons from mergers suggest that they must be carried out with great care.

In **Czechia**, the Public Defender of Rights, which is an ombuds institution, has mandates as an equality body, an NPM under OPCAT and an NMM under CRPD. It also has a mandate related to the forced return of non-EU nationals under EU law as well as in relation to protecting the rights of EU citizens and their families.<sup>33</sup> The ombuds institution has observer status with GANHRI<sup>34</sup> and is a member of ENNHRI.<sup>35</sup>

Recommendations that Czechia establish an NHRI have been made repeatedly in the UN universal periodic review (UPR). In the most recent review, 11 countries recommended this action, including a fellow EU Member State (Denmark), and some of the recommendations even highlighted the ombuds institution as the candidate.<sup>36</sup> The Czech government accepted these recommendations and, in the interactive dialogue during the UPR, the government suggested that its ombuds institution would seek accreditation and that the institution is compliant with the Paris Principles.<sup>37</sup> Discussions are ongoing in the Czech parliament about a legislative change, which would give the ombuds institution a legal basis for seeking NHRI accreditation.<sup>38</sup>

In **Estonia**, the ombuds institution has been designated an NPM under OPCAT and an NMM under CRPD, in addition to having a specific mandate for children. Estonia adopted legislation that gave the Chancellor of Justice (ombuds institution) the responsibilities of an NHRI as of 1 January 2019.<sup>39</sup> The Chancellor of Justice became a member of ENNHRI in 2019 (ENNHRI, **Our Members**) but is not yet a member of GANHRI.<sup>40</sup> Its application for accreditation was scheduled to be assessed in March 2020 (but was postponed due to the COVID-19 measures).<sup>41</sup> However, in 2016, in the context of the UPR, the Estonian government referred to its ombuds institution as covering most of

the functions of an NHRI<sup>42</sup> after over 20 states, including several EU Member States, recommended that it establish a Paris Principles-compliant institution.

In **Italy**, when the 1991 Paris Principles were formulated in Paris, Italy had a draft law in parliament on the establishment of a “national human rights agency”. Italy also had a temporary body – the Italian Commission on Human Rights – set up in the 1980s with a limited mandate, which was represented at the Paris Principles drafting meeting in 1991.<sup>43</sup> Italy committed to establishing an NHRI during its 2014 UPR<sup>44</sup>, and renewed its commitment during the 2019 session.<sup>45</sup> Establishing an independent NHRI has also featured explicitly in Italy’s voluntary pledges as part of its candidacies for the Human Rights Council for the 2007–2010 and 2011–2014 terms<sup>46</sup>; however, for the 2019–2021 term, Italy did not make any reference to establishing an NHRI. At present, there are around 15 committees, observatories, guarantors and commissions in Italy, holding different limited mandates and covering a variety of human rights issues.<sup>47</sup> Two new draft bills, submitted to the Senate and Chamber of Deputies in the second half of 2019, aim to set up an NHRI with a broad human rights mandate.<sup>48</sup> At the time of writing, the two draft bills are jointly undergoing examination in the parliamentary Commission for Constitutional Affairs.<sup>49</sup>

Nevertheless, Italy expressed explicit support for the 2030 Agenda for Sustainable Development and the UPR process.<sup>50</sup> Both of these processes indirectly link to the establishment of an NHRI: the 2030 agenda through SDG 16 on strong institutions and the indicator on Paris Principles-compliant NHRIs, and the UPR through Italy’s acceptance of recommendations in this regard. During its 2019 UPR, Italy received 41 recommendations on the establishment of a Paris Principles-compliant NHRI, including those from eight EU Member States, North Macedonia and Serbia.<sup>51</sup> Beyond international commitments, establishing an independent NHRI features prominently in Italy’s national action plan on business and human rights in which Italy pledges to “fast-track the process towards establishing an independent, Paris Principles-compliant NHRI”. The action plan also commits to “enact in an effective manner the recommendations received and accepted in the context of the [UPR]”.<sup>52</sup>

In **Malta**, the government proposed in 2014 to establish an NHRI (the National Human Rights and Equality Commission) with a broad mandate to promote and protect human rights that aimed to comply with the Paris Principles. It is also envisaged that this body will serve as an equality body under EU law, including dealing with individual complaints concerning equal treatment and discrimination. The proposal was made after wide consultation with public institutions, civil society and other stakeholders, as well as the general public. The draft legislation has also been reviewed by the Council of Europe Venice Commission, at the request of the Maltese government, with rather positive conclusions.<sup>53</sup> The legislative proposal – amended in accordance with the views of the Venice Commission’s opinion – has been debated by the Maltese Parliament.<sup>54</sup>

**Romania** has an ombuds institution (the People’s Advocate), which is also an NPM under OPCAT.<sup>55</sup> It also has an institution (Romanian Institute for Human Rights, founded in 1991) that was accredited in 2007 and re-accredited in 2011 but with a category level (C-status – not in compliance with the Paris Principles) that has been discontinued.<sup>56</sup> The Romanian institute is a member of ENNHRI<sup>57</sup> and an observer in GANHRI.<sup>58</sup>

Changes to the law establishing the Romanian Institute for Human Rights were introduced in 2018 to address concerns raised by the SCA in its latest assessment. These included clarity on status, structure, mandate, pluralistic

composition and cooperation with civil society.<sup>59</sup> The draft law has been adopted by the Chamber of Deputies; however, in 2019, it was rejected by the second chamber (the Senate) of the Romanian parliament. A new draft law on the organisation and functioning of the Romanian Institute for Human Rights is expected to be submitted to the Romanian parliament in 2020.

Romania received several recommendations in its 2018 UPR designed to ensure the existence of a Paris Principles-compliant NHRI.<sup>60</sup> Romania accepted these recommendations and clarified that the ombuds institution will apply for accreditation.<sup>61</sup> Romania is scheduled to have both of its institutions assessed for accreditation in October 2020.<sup>62</sup>

**Belgium** has a B-status NHRI, the Interfederal Centre for Equal Opportunity and the fight against racism and discrimination (Unia), an equality body.<sup>63</sup> In 2019, the Chamber of Deputies of Belgium adopted a draft law on the creation of a federal institution for the promotion and protection of human rights.<sup>64</sup> The legislation references the Paris Principles in relation to its independence (Article 6) and includes several aspects from these principles. The new institution aims to ensure concerted action with existing specialised agencies (Article 3, second indent) and will have a mandate for human rights issues not covered by these other entities – “residual competence” (Article 4(2)). The law creating this institution also includes the potential to set up a collaborative council should there be an interfederalisation of the institution through a cooperation agreement. This would make it possible for the newly interfederalised institution to apply for A-status. The new institution is scheduled to start work during 2020.

In **Sweden**, in addition to its traditional parliamentary ombuds institution, which is also the NPM under OPCAT, Sweden has an NHRI, which does not have a full human rights mandate and is accredited with B-status. It was established in 2009 as an equality body, merging several specialised ombuds institutions (Sweden, Discrimination Act (2008:567)).<sup>65</sup>

A government-appointed national working group on human rights recommended, in 2010, the establishment of an NHRI. At the UPR session for Sweden, in 2015, seven states recommended to Sweden that it consider establishing a Paris Principles-compliant NHRI, including two EU Member States (France and Ireland).<sup>66</sup> The Swedish government accepted the recommendations and confirmed that its strategy on human rights sets out how independent monitoring of human rights at a national level could best be organised.<sup>67</sup> After extensive discussions and preparations, a concrete proposal was submitted to the government in 2018 for the establishment of “Sweden’s national human rights institution”. The proposal includes draft legislation, which envisages the NHRI as an independent agency under the government, and it is suggested that the legislation will enter into force at the beginning of 2021. The legislative proposal has undergone extensive consultation, including input from ENNHRI.<sup>68</sup> A mandate under the CRPD is explicit in the draft text. No references to the Paris Principles are included in the draft but the principles are prominent in the proposal as a whole and clearly influence the content of the text. The EU Charter of Fundamental Rights is an explicit reference point for the envisaged NHRI (Article 1(3)).<sup>69</sup> In the so-called Statement of Government Policy by the Prime Minister in September 2019, it was announced that an independent human rights institution would be established.<sup>70</sup>

In **Slovenia**, the ombuds institution is an NHRI with B-status. The institution serves as an NPM under OPCAT. In 2017, amendments to the Human Rights Ombudsman Act were adopted, aiming to explicitly expand the mandate of the ombudsperson in relation to plurality, effectiveness and general mandate



to address pressing human rights issues and conduct human rights education and research, as well as further strengthening cooperation with civil society.

A Human Rights Ombudsman Council was established in 2018 as the ombuds institution's consultative body, consisting of a president and 16 members – seven representatives of civil society, three representatives of academia, two government representatives, the Advocate of the Principle of Equality, the Information Commissioner, as well as one representative of the National Assembly and one of the National Council. In 2019, a special unit was established within the NHRI, the Human Rights Centre, tasked with promotion, information, education, consultations and analysis regarding human rights. Re-accreditation was scheduled for the March 2020 GANHRI session (but postponed due to the COVID-19 measures).<sup>71</sup>

**Slovakia** has a B-status NHRI, the Slovak National Centre for Human Rights. The centre was established in 1993 by an Act of the Slovak National Council (Government of Slovakia, Act No. 308/1993).<sup>72</sup> According to the Anti-Discrimination Act<sup>73</sup>, the centre also acts as the Slovak equality body. As an NHRI and equality body, the centre performs a wide range of tasks in the areas of both human rights and fundamental freedoms, including the rights of the child. The Slovak government proposed amended legislation in 2019, which would extend the mandate of the centre to become a fully fledged NHRI. The changes anticipated include submitting reports to international organisations and various advisory powers. At the time of writing, the adoption of the Act, following an unsuccessful vote in the parliament in June 2019, is pending.<sup>74</sup>

The ombuds institution in **Bulgaria** deals with equality issues, and there is also a dedicated equality body – the Commission on protection against discrimination. The ombuds institution serves as an NPM under OPCAT. Bulgaria revised its Ombudsman Act<sup>75</sup> with a request by the ombuds institution itself to the OSCE Office for Democratic Institutions and Human Rights (ODIHR) for an opinion in 2017.<sup>76</sup> In 2019, the NHRI went through re-accreditation and was granted A-status.

## ENDNOTES

- <sup>1</sup> GANHRI (2018), **SCA General Observations**, Introduction, point 7.
- <sup>2</sup> GANHRI (2019), **Chart of Status of National Institutions**, 9 May.
- <sup>3</sup> GANHRI (2019), **Chart of Status of National Institutions**, 9 May.
- <sup>4</sup> Council of the European Union (2019), **EU Annual report on human rights and democracy in the world 2018**, pp. 20–21. The EU is also supporting NHRIs, see European Commission (2018), **Annex 11 of the Commission Implementing Decision on the Multi-Annual Action Programme 2018-2020 for the European Instrument for Democracy and Human Rights (EIDHR)**, p. 9. The new EU Action Plan on human rights and democracy 2020–2024 includes support and encourages peer-learning for regional human rights institutions, including independent networks of human rights institutions, with action to support NHRIs in line with the Paris and Venice Principles and to engage them in human rights dialogues. See European Commission (2020), **EU Action Plan on Human Rights and Democracy 2020–2024**, 2020, Annex II, p. 11).
- <sup>5</sup> Council of the European Union (2019), **Guidelines on EU policy towards third countries on torture and other cruel, inhuman or degrading treatment or punishment**, 12107/19, 16 September.
- <sup>6</sup> Council of the European Union (2019), **EU Human rights guidelines on non-discrimination in external action**, 6337/19, 18 March, pp. 17 ff.
- <sup>7</sup> European Commission (2019), **2018 Report on the application of the EU Charter of Fundamental Rights**, p. 21.
- <sup>8</sup> Council of the European Union (2019), **Proposal for a regulation of the European Parliament and of the Council establishing the Justice programme – outcome of the European Parliament’s first reading**, 3 July, p. 15.
- <sup>9</sup> Council of the European Union (2019), **Council Conclusions on the Charter of Fundamental Rights 10 Years: State of play and future work**, p. 11.
- <sup>10</sup> The Bulgarian B-status NHRI is the equality body, while the A-status NHRI is not involved in the equality mandate under EU law.
- <sup>11</sup> **Directive 2008/115/EC of the European Parliament and Council of 16 December 2008 on common standards and procedures in Member States for returning illegally staying third-country nationals**, OJ 2008 L 348, 24 (Return Directive), Art. 8(6).
- <sup>12</sup> FRA (2020), **Forced return monitoring systems – State of play in 28 EU Member States**. FRA (2018), **Effective forced return monitoring systems 2018**.
- <sup>13</sup> **Directive 2011/36/EU of the European Parliament and Council of 5 April 2011 on preventing and combatting trafficking in human beings and protecting its victims**, OJ 2011 L 101 (Human Trafficking Directive), Recital 27; see also Art. 19. A list of “rapporteurs” carrying out the monitoring activities is available at European Commission, **EU Network of National Rapporteurs or Equivalent Mechanisms on Trafficking in Human Beings**.
- <sup>14</sup> GANHRI (2018), **SCA General Observations**, GO 1.3, GO 2.8.
- <sup>15</sup> UN (2016), **International Convention on the Elimination of All forms of Racial Discrimination (ICERD)**, Art. 14(2).
- <sup>16</sup> UN, **Status of Treaties – ICERD**.
- <sup>17</sup> In the case of Luxembourg, a separate equality body called the Centre for Equal Treatment is in charge of racial discrimination issues. However, it derives its mandate from a 2006 law that adopts European Directives 2000/43/EC and 2000/78/EC into Luxembourg’s law, rather than from the ICERD.
- <sup>18</sup> FRA has launched a database and a focus paper related to detention conditions, which includes references to the work of NPMs. For the database, please see FRA (2019), **Criminal Detention in the EU – Conditions and monitoring**. For the report, see FRA (2019), **Criminal detention conditions in the European Union: Rules and reality**.
- <sup>19</sup> Arts. 17 and 18.
- <sup>20</sup> Arts. 22 and 23.
- <sup>21</sup> UN, **Status of Treaties – OPCAT**.
- <sup>22</sup> For an overview of the monitoring mechanism of the EU under CRPD, see FRA, **EU Framework for the UN CRPD**. For the EU Member States, see FRA, **Data explorer**.
- <sup>23</sup> UN, **Status of Treaties – CRPD**; UN, **Convention on the Rights of Persons with Disabilities**, Art. 33(2).
- <sup>24</sup> Council of Europe, **Chart of signatures and ratifications of Treaty 201**.
- <sup>25</sup> Council of Europe (2007), **Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse**, Art. 10(2)(a). For an overview of countries that have in place independent competent national or local institutions for the promotion and protection of the rights of the child, see the **European Network of Ombudspersons for Children**.
- <sup>26</sup> GANHRI (2019), **Rules of Procedure for the GANHRI SCA**, para. 8.1. See also: GANHRI (2018), **A practical guide to the work of the Sub-Committee on Accreditation (SCA)**.
- <sup>27</sup> GANHRI (2018), **SCA General Observations**, GO 1.2.
- <sup>28</sup> GANHRI (2019), **Rules of Procedure for the GANHRI SCA**, para. 8.



- <sup>29</sup> GANHRI (2018), **A practical guide to the work of the Sub-Committee on Accreditation (SCA)**, pp. 15-23.
- <sup>30</sup> The importance of pluralism, especially in single-member NHRIs such as ombuds institutions, is mentioned in GANHRI (2018), **SCA General Observations**, GO 1.7.
- <sup>31</sup> GANHRI (2018), **SCA General Observations**, GO 2.3.
- <sup>32</sup> ENNHRI (2018), **Annual report 2017**, pp. 15-16.
- <sup>33</sup> ENNHRI, **Members – Public Defender of Rights (Czech Republic)**.
- <sup>34</sup> GANHRI, **Directory of National Human Rights Institutions**.
- <sup>35</sup> ENNHRI, **Our Members**.
- <sup>36</sup> UN Human Rights Council (2017), **A/HRC/37/4**, 27 December.
- <sup>37</sup> UN Human Rights Council (2017), **A/HRC/37/4, Report of the Working Group on the Universal Periodic Review – Czechia**, para. 68; UN Human Rights Council (2018), **A/HRC/37/4/Add.1, Report of the Working Group on the Universal Periodic Review – Czechia, addendum**. The establishment of an ombuds institution for children was also discussed.
- <sup>38</sup> The **Senate’s Committee on Foreign Affairs, Defence and Security** held a **Roundtable on Establishing the National Human Rights Institution on 19 September 2019** and concluded that it is desirable to proceed with the legislative changes necessary to establish the NHRI as soon as possible.
- <sup>39</sup> Estonia, Chancellor of Justice Act, Art. 1(10); Estonia, Chancellor of Justice, **NHRI**.
- <sup>40</sup> GANHRI, **Sessions of the GANHRI Sub-Committee on Accreditation (SCA) for 2020**.
- <sup>41</sup> Ibid.
- <sup>42</sup> UN Human Rights Council (2016), **A/HRC/32/7, Report on the Working Group on the Universal Periodic Review – Estonia**, para. 21.
- <sup>43</sup> UN Commission on Human Rights (1991), **E/CN.4/1992/43**, 16 December, para. 234.
- <sup>44</sup> UN Human Rights Council (2015), **A/HRC/28/4/Add.1, Report on the Working Group on the Universal Periodic Review – Italy, addendum**, 12 March.
- <sup>45</sup> UN Human Rights Council (2020), **A/HRC/43/4, Report on the Working Group on the Universal Periodic Review**, March.
- <sup>46</sup> In its candidacy letter for the 2007-2010 term, Italy pledged to “establish the National Independent Commission for the Promotion and Protection of Human Rights and Fundamental Freedoms” (UN General Assembly (2007), **A/61/863**, p. 6). In the *note verbale* presenting its candidacy in 2011, Italy confirmed “its willingness to implement in a timely manner all accepted recommendations, including [...] the commitment to establish a national independent human rights institution in accordance with the Paris Principles” (UN General Assembly (2011), **A/65/733**, p. 7).
- <sup>47</sup> Lajolo di Cossano, F. (2020), ‘L’Autorità nazionale indipendente per i diritti umani in Italia: due recenti proposte di legge’, *Federalismi*, Vol. 3, p. 48.
- <sup>48</sup> Bills AC 855 and AC 1323; Camera dei Deputati, **Agenda dei lavori**, 14 November 2019.
- <sup>49</sup> The two texts are expected to be merged in a single draft bill, which will use AC 1323 as its basis while adopting key tenets from AC 855. Lajolo di Cossano, F. (2020), ‘L’Autorità nazionale indipendente per i diritti umani in Italia: due recenti proposte di legge’, *Federalismi*, Vol. 3, pp. 57-58.
- <sup>50</sup> UN General Assembly (2018), **A/73/72**.
- <sup>51</sup> UN Human Rights Council (2019), **A/HRC/43/4, Report of the Working Group on the Universal Periodic Review – Italy**, December.
- <sup>52</sup> Interministerial Committee for Human Rights (CIDU), **Piano di Azione Nazionale Impresa e Diritti Umani 2016-2021**, p. 10.
- <sup>53</sup> Council of Europe, Venice Commission (2018), **Opinion on the draft act amending the constitution, on the draft act on the human rights and equality commission, and on the draft act on equality**, CDL-AD(2018)014.
- <sup>54</sup> Parliament of Malta, **Bill No. 96 (Equality Bill)**.
- <sup>55</sup> For the membership overview of the International Ombudsman Institute (IOI), see IOI, **IOI Members**.
- <sup>56</sup> No institutions have been accredited with this status since 2011. (GANHRI (2019), **Accreditation status as of 9 May 2019**).
- <sup>57</sup> ENNHRI, **Our Members**.
- <sup>58</sup> GANHRI, **NHRIs Directory**.
- <sup>59</sup> Senat of Romania, **Legislative proposals**.
- <sup>60</sup> UN Commission on Human Rights (2018), **A/HRC/38/6, Report on the Working Group on the Universal Periodic Review – Romania**, 5 April.
- <sup>61</sup> UN Commission on Human Rights (2018), **A/HRC/38/6/Add.1, Report on the Working Group on the Universal Periodic Review – Romania, addendum**, para. 26.
- <sup>62</sup> GANHRI, **Session of the GANHRI Sub-Committee on Accreditation (SCA) for 2020**.
- <sup>63</sup> Established in 1993, the institution was renamed Unia in 2016.

- <sup>64</sup> Belgium, Chamber of Deputies (2019), **Projet de loi portant creation d'un Institut federal pour la protection et la promotion des droits humains**, 3670/012.
- <sup>65</sup> Government of Sweden (2008), **Discrimination Act (2008:567)**.
- <sup>66</sup> UN Human Rights Council (2015), **A/HRC/29/13, Report of the Working Group on the Universal Periodic Review – Sweden**.
- <sup>67</sup> UN Human Rights Council (2015), **A/HRC/29/13/Add.1, Report of the Working Group on the Universal Periodic Review – Sweden, addendum**.
- <sup>68</sup> ENNHRI (2019), **Comments on the proposal for the establishment of an NHRI in Sweden, May**.
- <sup>69</sup> Government of Sweden, The Government Office (2019), Förslag till en nationell institution för mänskliga rättigheter i Sverige [Proposal for a national institution for human rights in Sweden], **Ds 2019:4**.
- <sup>70</sup> Government of Sweden, Prime Minister's Office (2019), **Regeringsförklaringen den 10 September 2019**, p. 18.
- <sup>71</sup> GANHRI, **Session of the GANHRI Sub-Committee on Accreditation (SCA) for 2020**.
- <sup>72</sup> Government of Slovakia (1993), **Act No. 308/1993**.
- <sup>73</sup> Government of Slovakia, Act No. 365/2004 on Equal Treatment in Some Areas and on Protection from Discrimination, and on amendments and supplements of certain acts, as amended.
- <sup>74</sup> Government of Slovakia, **Proposed bill** (Vládny návrh zákona, ktorým sa mení a dopĺňa zákon Národnej rady Slovenskej republiky č. 308/1993 Z. z. o zriadení Slovenského národného strediska pre ľudské práva v znení neskorších predpisov), 10 January 2019.
- <sup>75</sup> Information provided by Bulgarian national liaison officer, during the 23rd meeting of FRA's national liaison officers.
- <sup>76</sup> OSCE Office for Democratic Institutions and Human Rights (ODIHR) (2017), **Opinion on the draft law amending and supplementing the Ombuds institutions act of Bulgaria**.

# 2

## CHALLENGES FOR NHRIS – MOVING FROM ESTABLISHMENT TO IMPACT

The setting up of NHRIs is just a first step – the mere existence of an NHRI is, in itself, not a goal. What is of critical importance is how NHRIs can be effective and impactful when delivering on their *raison d'être*, that is the promotion and protection of human rights. The Paris Principles and the SCA stress that the mandate of NHRIs “should be interpreted in a broad, liberal and purposive manner to promote a progressive definition of human rights which includes all rights set out in international, regional and domestic instruments, including economic, social and cultural rights”.<sup>1</sup>

In this regard, the SCA has provided further guidance on the meanings of the two core responsibilities for NHRIs: “promotion” and “protection”:

*“The [SCA] understands ‘promotion’ to include those functions which seek to create a society where human rights are more broadly understood and respected. Such functions may include education, training, advising, public outreach and advocacy. ‘Protection’ functions may be understood as those that address and seek to prevent actual human rights violations. Such functions include monitoring, inquiring, investigating and reporting on human rights violations, and may include individual complaint handling”.*<sup>2</sup>

NHRIs must have a “willingness to engage with challenging or controversial human rights issues, particularly where this goes against the position of the government”.<sup>3</sup> Responsiveness, strategy and the relevance of their work to the human rights situation on the ground are key factors. This is why it is crucial that an NHRI is given the broadest possible mandate, preferably a constitutional legal basis (as agreed in the international human rights standards), independent leadership selected on merit, functional immunity for leadership and staff, and adequate resources. With these preconditions, an NHRI is able to maintain its impact, even in the most challenging circumstances.<sup>4</sup>

## 2.1. AN ENABLING ENVIRONMENT FOR NHRIS

NHRIs depend on democracy, the rule of law, and good administration and human rights to operate independently and effectively. The Council of the European Union has “underline[d] the necessity of safeguarding an enabling environment for independent national human rights institutions, Equality Bodies and other human rights mechanisms”.<sup>5</sup> The Committee of Ministers of the Council of Europe, in a recommendation on the civil society space, acknowledged the NHRIs as human rights defenders, contributing to an environment of respect for and the active promotion of human rights, democracy and the rule of law in Europe. At the same time, the recommendation highlights that, where human rights defenders face threats, such violations “may indicate the general situation of human rights in the State concerned or a deterioration thereof”.

Civil society organisations also face a number of challenges in this regard, such as “disadvantageous changes in legislation or inadequate implementation of laws; hurdles to accessing financial resources and ensuring their sustainability; difficulties in accessing decision-makers and feeding into law and policy making; and attacks on and harassment of human rights defenders”.<sup>6</sup> Taking stock of these issues, civil society organisations, as is the case for all human rights defenders, “need to be able to exercise their rights fully and without unnecessary or arbitrary restrictions” and states should “fully implement their positive obligations to promote human rights and create an enabling environment”.<sup>7</sup> The leaders and staff of NHRIs should not face any form of reprisal or intimidation. A UN General Assembly resolution formulates this as “including political pressure, physical intimidation, harassment or unjustifiable budgetary limitations, as a result of activities undertaken in accordance with their respective mandates, including when taking up individual cases or when reporting on serious or systematic violations in their countries”.<sup>8</sup>

References to intimidation of and reprisals against the NHRI in Poland, and its Commissioner for Human Rights personally, were included in a report by the UN Secretary-General to the Human Rights Council.<sup>9</sup> Responding to threats to NHRIs in the European region, in 2016 ENNHRI issued guidelines on support for NHRIs under threat. These provide an overview of the options in terms of the support available and clarify the procedures that are followed in such cases (ENNHRI, [Guidelines on ENNHRI Support to NHRIs under Threat](#), 2016).<sup>10</sup> Likewise, the Venice Principles of 2019 highlight the leading role of states in adopting models that strengthen the institution and enhance the level of protection and promotion of human rights and fundamental freedoms in the country. Systematic work, involving collaboration with other



networks, such as those for equality bodies and ombuds institutions, as well as international organisations, has evolved to respond to emerging issues that NHRIs face on the ground.<sup>11</sup>

The research for this report looked into the nature and frequency of physical and verbal threats by state or non-state actors and whether these threats could be linked to any particular issues, such as gender, ethnicity, age, disability, religion or belief, political opinions, (national) minority status, sexual orientation or gender identity. Representatives of NHRIs were asked:

- ‘Have any of your employees/volunteers been threatened and/or harassed (verbal or written, including online) in relation to their work for your body, in the last 12 months?’
- ‘Have any of your employees/volunteers been attacked physically or beaten up, in relation to their work for your body, in the last 12 months?’

In both cases, respondents could choose to answer that this had occurred daily, weekly, monthly, once per year, never or that they did not know. The representatives of the interviewed NHRIs were then also asked the following ‘yes’ or ‘no’ question about threats to the institution as an entity:

- ‘Has your organisation, as a whole, been subject to threats and/or physical, verbal or online attacks, in the last 3 years?’

Then, respondents could choose to elaborate on whether their work on specific issues (gender, ethnicity, age, disability, religion or belief, political opinions, sexual orientation or gender identity, or other) may have prompted the aforementioned threats and attacks, as well as their perceived frequency (daily, weekly, monthly, once per year, do not know).

The responses suggest that a significant number of employees and volunteers had been subjected to threats or harassment (verbal or written, including online) in relation to their work for their NHRI within the previous 12 months (FRA consultation with NHRIs, 2019). More specifically, four out of 31 NHRIs stated that employees or volunteers were threatened or harassed on a monthly basis; one NHRI reported threats or harassment on a weekly basis. A further nine reported this happening closer to once a year. In total, 14 NHRIs reported that their employees and volunteers had been subjected to threats and harassment due to their work within the past 12 months. Four NHRIs did not respond to this question.

On the other hand, 14 NHRIs stated that their employees and volunteers had not been attacked or harassed in the previous year, while a further four answered that they did not know whether this had occurred. With regard to actual physical violence, none of the 31 NHRIs that responded to FRA’s questions reported any instance of physical attacks to their employees and volunteers in the previous 12 months. With regard to threats and attacks (physical, verbal or online) to the NHRIs as a whole, 11 out of 33 NHRIs noted that their organisation had been the victim of such occurrences in the previous 12 months.<sup>12</sup>

NHRIs were also asked whether any of the aforementioned instances of attacks, threats or harassment could be linked to their institution’s work on a range of issues. Focusing exclusively on the responses from NHRIs that had reported being subject to any kind of attacks, threats or harassment to their employees, volunteers or organisation, ‘ethnicity’ was explicitly listed in five out of 18 responses as the likely motivation for at least one attack, threat or episode of harassment in the previous year. The second most frequent answer was ‘political opinions’, mentioned in four out of 18 responses, followed by ‘national minority’ and ‘religion or belief’ in three responses each.

Only one NHRI reported that the premises of the organisation had been attacked (by means of vandalism, graffiti, broken windows, etc.) in the previous three years. Nevertheless, eight of the 27 NHRIs that responded to this section of FRA's questionnaire stated that they had reported incidents, such as threats to the institution's leadership, to the police within the same time frame. One NHRI reported having done so on a monthly basis. Moreover, nine out of 32 NHRIs reported having been the target of negative media reports or campaigns approximately once a year during the previous three years; five NHRIs were targeted on a monthly basis and one on a reportedly daily to weekly basis. Moreover, six out of 31 NHRIs saw their institutions or employees targeted by lawsuits linked to functions performed *ex officio*, which under the Paris Principles should be protected. Of the NHRIs targeted by these lawsuits, two asserted that the lawsuits could be considered attempts to exert pressure on the organisation.

### **ENNHRI's Regional Action Plan to promote and protect human rights defenders and enable democratic space**

At ENNHRI's annual conference in 2018 in Athens, over 100 key human rights stakeholders gathered to discuss the role of NHRIs in enabling democratic space and supporting human rights defenders, including NHRIs. As a follow-up to the conference and the **GANHRI Marrakesh Declaration** on civic space and NHRIs, ENNHRI produced a Regional Action Plan on promoting and protecting human rights defenders and enabling democratic space.

The Marrakesh Declaration was adopted in 2018 at the 13th International Conference on the role of NHRIs in expanding civic space and protecting human rights defenders, with a particular focus on women human rights defenders. The conference gathered together more than 300 representatives from NHRIs and partners across the world. The declaration requested that GANHRI's regional networks develop a regional action plan to support NHRIs implement the Marrakesh Declaration.

### **International human rights actors express support for Poland's Commissioner for Human Rights**

During a January 2019 charity event, a knife attack resulted in the death of the Mayor of Gdansk, Paweł Adamowicz. In response, the Polish Commissioner for Human Rights called for an examination of whether TVP S.A. (Poland's public television broadcaster) had acted in compliance with the principles of fairness and due diligence in its repeated extremely negative reports against the mayor. In response, TVP sued the Polish Commissioner for € 300 000 in damages. The case was dismissed and the broadcaster has lodged an appeal; however, no date for the hearing has yet been assigned.

In June 2019, the UN Human Rights Office's Regional Office for Europe (OHCHR Europe), Equinet (European Network of Equality Bodies), ENNHRI, GANHRI and the International Ombudsman Institute (IOI) released a joint statement in solidarity with the Commissioner and his office's work. The statement called on "all organs of the Republic of Poland to act in line with their State's long-standing international commitments by applying their powers to protect the [Commissioner for Human Rights], including its staff" \*. Furthermore, it reiterated a March 2016 statement by the Council of Europe, OSCE-ODIHR, ENNHRI and OHCHR Europe that described the Commissioner's Office as "a model national human rights institution, especially in terms of its independence and professionalism" \*\*. Before this statement was released, ENNHRI had expressed its "deep concern that recent developments in Poland could negatively impact on the Commissioner for Human Rights' vital role to promote and protect human rights, further to the UN Paris Principles and the Polish Constitution" \*\*\*.

\* ENNHRI, Equinet, GANHRI, IOI and OHCHR Europe (2019), **Joint Statement in support of the Polish Commissioner for Human Rights**, p. 2.

\*\* Council of Europe, ENNHRI, OSCE-ODIHR and OHCHR Europe (2016), **Joint statement from meeting in Warsaw with the Office of the Polish Ombudsman**.

\*\*\* ENNHRI (2016), **ENNHRI renews support for Poland's Commissioner for Human Rights**, 2016.

## 2.2. ENSURING INDEPENDENCE

Ensuring the independence of NHRIs, first and foremost towards governments, is a precondition for their role in effectively promoting and protecting human rights. The way that “independence” is defined for one body can be used as an example for another by analogy.<sup>13</sup> Multiple references to the independence of the NHRIs are included throughout the Paris Principles. As many NHRIs are also ombuds institutions and equality bodies, it is important to also consider standards relevant to such bodies. Independence is also recognised as a core principle for the functioning of ombuds institutions by the Venice Commission of the Council of Europe.<sup>14</sup>

The European Commission, in accordance with Article 13 of the EU Racial Equality Directive, also underlines this in the recommendation on standards for equality bodies, directly linking independence to effectiveness.<sup>15</sup>

EU law requires Member States to have a number of bodies on human rights-related issues that are independent. This includes, in addition to equality bodies, data protection supervisory authorities.<sup>16</sup> The Court of Justice of the European Union has underscored the importance of independence in judgments related to data protection authorities in three EU Member States (Austria, Germany and Hungary).<sup>17</sup> The independence of data protection authorities is expressed in the Charter of Fundamental Rights of the European Union (Article 8(3)), reflecting the Treaty on the Functioning of the European Union (Art. 16(2), last sentence).

### Global Privacy Assembly independence criteria for data protection authorities build on Paris Principles

The **Global Privacy Assembly** has adopted principles for the interpretation of “appropriate autonomy and independence”. The guidelines build on the interpretation of independence and autonomy in the Paris Principles but also on the Council of Europe data protection convention and the General Data Protection Regulation of the EU.<sup>18</sup> The Global Privacy Assembly accreditation dates back to its 23rd international conference in Paris in September 2001. The guidelines state that “the data protection authority must be guaranteed an appropriate degree of autonomy and independence to perform its functions.”

The guidelines also highlight that it is the “combination of both functional and operational factors that help decide whether the autonomy and independence criteria are met”.

*The Global Privacy Assembly (2019), Interpretation of the autonomy and independence criteria, Background Paper; International Conference of Data Protection and Privacy Commissioners (ICDPPC) Working Group (2019), Working Group on the Future of the Conference – Draft report on 2018–2019 activities/2019–2020 forward looking plan – Annex B.*

According to the Paris Principles and their interpretation by the SCA, certain basic elements must be in place to guarantee the institutional independence of NHRIs.<sup>19</sup> This section examines a number of these elements, in particular the nature of the legal basis establishing the institutions, the procedures for selection, appointment and dismissal of their leadership, the security of their tenure, and the protection of members and staff against criminal and civil liability in undertaking their duties. Other issues that affect NHRIs’ independent functioning, such as pluralism (in leadership and staff and through procedures enabling effective cooperation with diverse societal groups) and adequate resources (financial and human) of the institutions, are addressed separately.<sup>20</sup>



### 2.2.1 Strong legal basis for establishing NHRIs

Constitutional guarantees offer enhanced protection for the independence of NHRIs but, at a minimum, the NHRIs have to have their basis in law. The independence of NHRIs can be compromised when established by simple acts of the executive (e.g. decrees or ministerial decisions). As pointed out by the SCA, creating NHRIs and defining their structures, mandate and powers through statutory law adopted by the legislature is a requirement for their independence.<sup>21</sup> As for the institutions covered by this report, none of them is established by acts of government. In most cases NHRIs are established by acts of the legislature, whereas 14 institutions are also protected by constitutional provisions (Figure 8).

### 2.2.2 Independent leadership

Effective and impactful functioning of an NHRI also requires leadership that thinks and acts independently.

#### *Selection and appointment of leadership*

To promote independence and to increase the probability of a leadership that thinks and acts independently, it is crucial to apply selection and appointment processes that are transparent and participatory and promote merit-based choices, as the SCA stressed. The involvement of parliaments in the selection and appointment process, particularly when decisions are taken by qualified majorities that ensure broader consensus, can serve this purpose. However, processes involving parliaments can also result in stalemates for NHRIs – political divisions may prevent decision making or political parties may seek to have their own political nominees appointed.<sup>22</sup>

Other elements for selection and appointment may include the involvement of multiple and diversified actors, such as civil society organisations, trade unions or academia. This involvement can be to appoint members or make proposals to an appointing authority. This is usually the case for NHRIs functioning under collective decision-making bodies and when selection and appointing procedures lie primarily with governments.

In more than two thirds of the institutions covered by this study, parliaments are decisively involved in the process of selecting and appointing the NHRI's leadership, even if in some cases the executive takes the formal decision of appointment or exercises a certain discretion. In the other NHRIs, decision-making bodies are appointed by governmental decision without any decisive involvement of parliament, usually after consultation or following recommendations by relevant non-governmental actors. In one case the NHRI decides for itself about its leadership.

All models of selecting and appointing NHRI leadership have strong and weak points. When selection and appointment of NHRI leadership lies with

*Notes: E&W, England and Wales; NI, Northern Ireland; SCT, Scotland. (\*) Under the umbrella structure of Finland's NHRI, the Parliamentary Ombudsman has its legal basis in the constitution, while the Human Rights Centre is established by law.*



**FIGURE 8: TYPE OF LEGAL BASIS BY STATE AND INSTITUTION – CONSTITUTION OR ORDINARY LEGISLATION**

A-status	Bulgaria – Commission	Bulgaria – Ombud	Croatia	Cyprus	Czechia	Denmark	Estonia	Finland	France	Germany	Greece	Hungary	Ireland	Italy	Latvia	Lithuania	Luxembourg	Malta	Netherlands	Poland	Portugal	Romania – Institute	Romania – Ombud	Slovakia	Slovenia	Spain	Sweden	United Kingdom – E&W	United Kingdom – SCT	United Kingdom – NI	North Macedonia	Serbia
No accredited institution	Austria	Belgium																														
Constitution								*																								
Law								*																								

Source: FRA, 2020 [based on 33 responses to questionnaire sent to 34 NHRIs, and FRA desk research]

the government, the perceived and real independence of NHRIs could be questionable. Nonetheless, a government's decisive role does not necessarily mean that selection and appointment procedures cannot be transparent, participatory or meritocratic. Government discretion can be limited by statutory transparency/procedural and eligibility requirements and decisions can be shaped by nominations by non-state stakeholders, such as civil society, academia, trade unions and other professional associations, or by involving non-state stakeholders and experts in recommending candidates and restricting appointment to people on the shortlist. However, transparent and meritocratic criteria must be maintained irrespective of process.

The SCA reports and observations addressed to each NHRI in the context of their periodical assessment provide useful and customised input and advice to guide the appointment of NHRI leadership. For example, the independence of NHRIs the institutions would be strengthened if candidates for leadership were scrutinised by an independent expert committee in accordance with statutory requirements ensuring transparency and merit-based choices.

#### *Stable and secure tenure of leadership*

Another important element enhancing NHRIs' independence is to ensure stable and secure tenure of adequate duration for the leadership of NHRIs. This also requires protection against arbitrary dismissal. One criterion to assess the adequacy of leadership tenure and duration is to compare it with the tenure duration of the appointing authorities.<sup>23</sup> An NHRI leadership tenure that extends beyond the tenure of the appointing authorities reinforces the NHRI's independence. Another positive step is to make provisions that do not leave the dismissal decision to the discretion of the appointing authorities and limit the grounds for dismissal to those related to the capacity of leaders to carry out their tasks. In this respect the SCA has suggested that NHRI leadership should only be dismissed on grounds and under procedures that are equal to those relating to the most senior judges (GANHRI, **SCA General Observations**, 2018, GO 2.3).<sup>24</sup>

The leadership of the NHRIs covered in this report has at least the same protection against arbitrary dismissal as other people exercising public functions. In some cases they also have enhanced protection, such as a requirement to include parliament or even the Supreme Court in decisions about their dismissal.

Leadership tenure is in particular relevant if parliament is involved in selecting the NHRI's leadership. The leadership tenure exceeds that of the parliament for NHRIs in 17 of the 30 states covered (Austria, Belgium, Bulgaria, Croatia, Cyprus, Czechia, Estonia, Hungary, Latvia, Netherlands, Poland, Romania, Slovenia, Spain, Sweden – and in North Macedonia and Scotland, where the NHRIs' leadership is appointed by government). Leadership tenure is shorter than a full parliamentary term in the case of six NHRIs, while no information was received in two cases. The duration of tenure of the leadership of nine NHRIs is the same as that of parliament, which may imply a dependence on parliamentary majorities.

#### *Protection against criminal and civil liability*

Protection against criminal and civil liability for acts undertaken by leaders or staff of an NHRI while performing their tasks (functional immunity) is essential for independence.<sup>25</sup> This is particularly the case for those – private or public actors – who would like to use legal proceedings to put pressure on NHRIs to act in favour of their interests. However, functional immunity does not mean immunity from prosecution for alleged criminal actions outside



the scope of the NHRI's mandate, for example private criminal actions (such as common assault or domestic violence) or criminal actions within the institution (such as fraud or corrupt conduct). Functional immunity extends only to lawful actions within the scope of the individual's responsibilities under the law governing the institution. Functional immunity does not put NHRI personnel outside the rule of law and does not prevent accountability for unlawful actions.

In 15 countries covered by this report, institutional leaderships enjoy such immunity (Croatia, Cyprus, Czechia <sup>26</sup>, Greece, Hungary, Ireland, Latvia, Netherlands, North Macedonia, Poland, Portugal, Romania (ombuds institution), Serbia, Slovenia and Spain). Such immunity also extends to the management board in four cases (Greece, Ireland, Romania (ombuds institution) and Spain). In other countries, such as Croatia, the deputy ombudspersons also enjoy the same level of immunity as the Ombudsman. With regard to staff, protection against such liability is provided in only two cases (Cyprus and Ireland).

Some NHRIs work in a legal environment where functional immunity is not common and is seen as a privilege that could undermine confidence in the institution. This is also acknowledged and taken into consideration by the SCA. It is "preferable for these protections to be explicitly entrenched in NHRI legislation or another applicable law of general application" but such protection "may also exist by virtue of the specific legal context in which the NHRI operates". <sup>27</sup> In addition, functional immunity seems to be more relevant for NHRIs that are assigned the task of receiving and examine individual complaints. Nevertheless, functional immunity should be seen not as a privilege but as a critical tool to protect NHRIs' independent and effective functioning against those using legal proceedings to exercise pressure, particularly when NHRIs are exercising their monitoring or quasi-judicial functions.

#### *Ensuring pluralism*

Intertwined with NHRIs' independence, as well as with their effectiveness and impact, is how to best ensure a pluralistic representation of society within the NHRIs. Such pluralism includes different societal groups and stakeholders, as well as a variety of different views and opinions. Cooperation with civil society is dealt with in Section 2.4.4.

Pluralism is a primary requirement of the Paris Principles.<sup>28</sup> As the SCA states, pluralism is about the broader, more inclusive representation of society within NHRIs, taking into consideration, for example gender, ethnicity or minority status, as well as social, religious, linguistic and geographic diversity.<sup>29</sup> It ensures that all voices and different approaches are expressed and taken into consideration by NHRIs. This can increase various societal groups' confidence in NHRIs, make the institutions more accessible and increase their outreach to different communities, and it can also bolster their credibility. Thus, it contributes to the NHRIs' perceived and actual independent functioning, as well as underpinning their effectiveness and impact. Cooperation between different social groups with diverse opinions and interests can enhance the courage, responsiveness and relevance of NHRIs to work on urgent human rights situations.

There are many ways to ensure a pluralistic representation of different social forces in NHRIs. The SCA has suggested that this can be achieved, for example, through the composition of their leadership and appointment procedures that encourage active participation of diverse societal groups; through procedures that enable effective cooperation with different societal groups, such as advisory committees, networks or structured and systematic consultations with civil society; or through the composition of their staff, which should reflect diversity in society.<sup>30</sup>

How to ensure pluralism in NHRIs' leadership differs between single-member and collective leadership. In the case of single-member NHRIs, such as ombuds institutions, the challenges are bigger. Establishing advisory committees, networks and other methods of systematic consultation, inclusion and participation with diverse societal groups and civil society, and ensuring appropriate staff composition are all methods able to address pluralism.

Among the institutions covered in this report, 15 seek to ensure pluralism through the composition of their decision-making collegial bodies – the commission-type NHRIs. Figure 9 provides an overview by country and institution. Pluralistic representation is further enhanced in some of these institutions through additional advisory bodies. Such bodies can have a broader scope, as in the case of Denmark and the Netherlands, or a more targeted one, for example in Belgium and the United Kingdom, where advisory bodies are established to deal with issues related to disabilities. In Germany, advisory bodies can also be established on an ad hoc basis for specific topics or projects.

Note:  
E&W, England and Wales; NI, Northern Ireland; SCT, Scotland.



**FIGURE 9: INSTITUTIONS' WAYS OF ENSURING PLURALISM**

	Austria	Belgium	Bulgaria – Commission	Bulgaria – Ombud	Croatia	Cyprus	Czechia	Denmark	Estonia	Finland	France	Germany	Greece	Hungary	Ireland	Italy	Latvia	Lithuania	Luxembourg	Malta	Netherlands	Poland	Portugal	Romania – Institute	Romania – Ombud	Slovakia	Slovenia	Spain	Sweden	United Kingdom – E&W	United Kingdom – SCT	United Kingdom – NI	North Macedonia	Serbia	
A-status																																			
B-status																																			
No accredited institution																																			
Pluralistic body within the NHRI																																			
Additional advisory bodies – broad scope																																			
Additional advisory bodies – narrow scope																																			

Source: FRA, 2020 [based on 33 responses to questionnaire sent to 34 NHRIs, and FRA desk research]

Ensuring pluralism in leadership is more challenging in the case of ombuds institutions. For such NHRIs, advisory bodies are even more relevant. NHRIs with advisory bodies for all aspects of their work exist in Austria, Croatia, Estonia, Finland, Poland, Slovenia, Spain and Sweden. Advisory bodies with a more targeted scope are in place in Czechia (disabilities), Estonia (disabilities and rights of the child), Hungary and Portugal (related to NPM competences) and Serbia (disabilities, older people, gender equality).

No advisory body exists in Cyprus, Latvia, Lithuania or North Macedonia; instead, pluralistic representation of society relies on the composition of the staff, including, for example, the characteristics of the deputy ombudspersons. However, NHRI recruitment procedures usually apply general criteria for hiring staff, as is the case for any other public administration service, which does not necessarily ensure diversity. With respect to the composition of advisory bodies, the pattern is rather common in all NHRIs, with civil society organisations, academia and experts being represented.

## **2.3. ADEQUATE RESOURCES – A GUARANTEE FOR INDEPENDENCE AND EFFECTIVENESS**

The Paris Principles on NHRIs, the Venice Principles on ombuds institutions and the European Commission recommendation on equality bodies all acknowledge that adequate financial and human resources are of critical importance for independence and effectiveness.<sup>31</sup> Financial and human resources reinforce NHRIs' independence and effectiveness by allowing them to define, without any interference by external actors, their priorities and to independently carry out their mandates and activities.

### **2.3.1 Financial resources**

The SCA emphasises that “[t]o function effectively, an NHRI must be provided with an appropriate level of funding in order to guarantee its independence and its ability to freely determine its priorities and activities.”<sup>32</sup> The same principle is also included in the Venice Principles for ombuds institutions: “budgetary allocation of funds to the Ombuds institution must be adequate to the need to ensure full, independent and effective discharge of its responsibilities and functions”.<sup>33</sup>

This principle is also relevant and applicable to those NHRIs that are ombuds institutions. In this respect, it is important that the procedures for adopting NHRI budgets are transparent and participatory, involving parliaments and taking into account the proposals of the institutions themselves. Equally important is that funding is protected against cuts or delays in budget releases that cannot be objectively justified – in view, for example, of generalised cuts in public expenses under adverse financial circumstances – and could be, or be seen as, government retaliating against NHRIs in response to their activity. Moreover, the SCA has underlined the need for any additional mandate and task given to NHRIs to be accompanied by adequate additional resources.<sup>34</sup>

The SCA found that the Croatian ombuds institution was mandated with additional responsibilities under the whistle-blower legislation without any new funding. However, in a positive development, additional funds for employing new staff in line with these additional responsibilities have been allocated for 2020. The SCA has encouraged the NHRI to “continue to advocate for the funding necessary to ensure that it can effectively carry out the full extent of its mandate, including its newly-mandated responsibilities”.<sup>35</sup>

It is not only the level of budget, however, that contributes to the independent and effective functioning of NHRIs. It is also the power to allocate the budget autonomously according to their self-defined priorities. In addition, while regular auditing is required, there should not be any risks of auditing that may undermine the independence of the institutions and unduly question their priorities).<sup>36</sup>

The diverse typology of NHRIs does not allow any easy comparison of their available financial resources. The different mandates, national situations (including the presence in some countries of multiple national human rights-related bodies), civil service rules, costs structures and economic factors mean that such a comparison would not capture the complex reality of different needs on the ground and whether and how these needs are reflected in different NHRI budgets.

Comparing NHRIs' budgets over time with those of other publicly funded national institutions or agencies carrying out functions as independent bodies (such as data protection authorities), could be a valid approach to assessing the appropriate level or adequacy of funds. The type, number and extent of mandates of an NHRI have to be part of any equation. An exchange between NHRIs and policymakers, in the form of pre-budget consultation, is useful – without prejudice to their independence.<sup>37</sup>

FRA's analysis of the data collected for this report from 33 institutions (34 were addressed) is based on a questionnaire and shows that the general trend between 2011 and 2019 seems to be that of a slight increase in the overall budgets of the NHRIs, at least nominally. The data from the NHRIs show, however, that in a number of countries, including Cyprus, Greece, Hungary, Spain and the United Kingdom, there were budget cuts. In most cases these were moderate and due to economic circumstances. In Hungary's case, the 2020 NHRI budget has been increased to reach the 2011 level, before the budget cuts. In the case of the United Kingdom, the cuts were quite considerable, reducing the budget of the Equality and Human Rights Commission from around € 50 million in 2011 to about € 20 million in 2019.

### **Scottish Human Rights Commission pushes for human rights budgeting in Open Government Action Plan 2018–2020**

In the context of pre-budget consultation, the Scottish NHRI requested the Scottish government to make human rights part of its budgetary consideration. The Scottish Human Rights Commission is funded through the Scottish parliament. However, the accreditation committee noted in both 2010 and 2015 that the Commission "faces limitations in terms of its staffing and allocation of resources". Subsequently, the government acknowledged that the NHRI requires more resources to advance its mandate in the current context.

The Commission further recommended that government make "a thorough assessment [...] as to whether sufficient public sector funding is both allocated and spent in ways that support the delivery of national priorities and outcomes, there is a need to for the government to publish data in such a way as to facilitate [budgetary] scrutiny". The use of human rights-based indicators would help to make the connections between law and policy, resourced action and outcomes more explicit\*.

\* *Scottish Human Rights Commission (2019), EHRiC Pre-Budget Consultation Response: Response to the Equality and Human Rights Committee draft budget scrutiny 2020–21 consultation.*

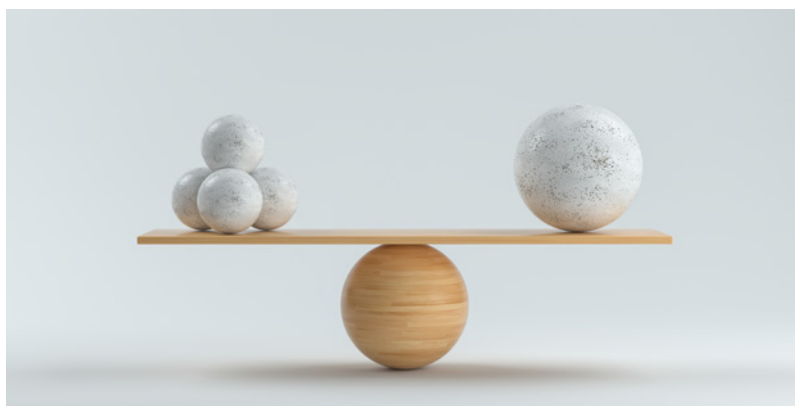
### 2.3.2 Human resources

The Paris Principles require that NHRIs have an adequate number of staff and staff with the appropriate qualifications. Similar to financial resources, this requirement is also included in the Venice Principles and acknowledged by the European Commission recommendation on equality bodies.<sup>38</sup> Lack of sufficient staff weakens the ability of NHRIs to carry out their activities effectively and to deliver on their mandates. The NHRIs should also be free to independently select staff. It is also a concern if a significant number of staff are seconded from branches of the public service. This could have an adverse impact on both the perceived and real independence of NHRIs towards government institutions.<sup>39</sup>

Comparing available data between 2011 and 2019 on the NHRIs reveals that in most cases – with the exception of the Commissioner for Fundamental Rights in Hungary<sup>40</sup> and the Romanian Institute for Human Rights – there has been an increase in the number of staff. This does not mean that all institutions have benefited from this increase or that the institutions under examination have sufficient staff to perform their tasks. Each institution is best placed to make its own assessment of its needs, taking into account the range of their mandates and functions and the corresponding staff at their disposal. It may well be the case that some NHRIs have received additional mandates and functions to the extent that even with the additional staff the total is not sufficient.

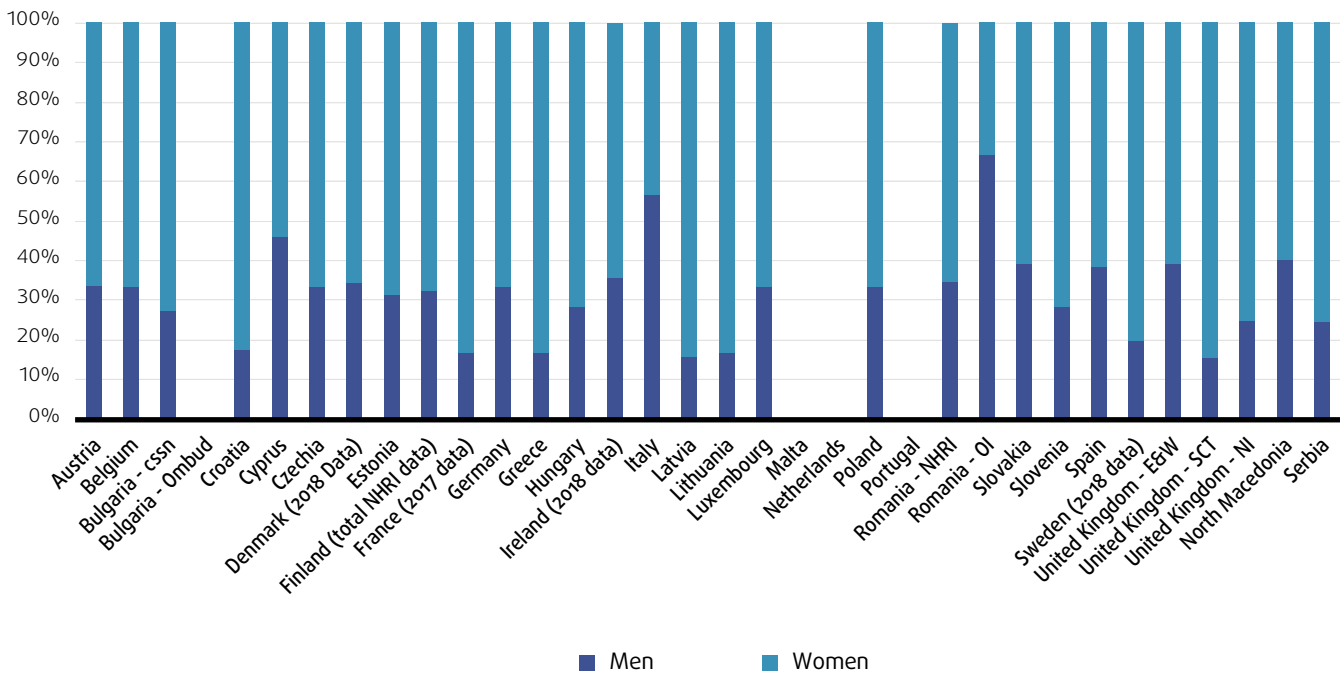
Based on data collected through the questionnaire sent to NHRIs and additional input from FRA's official contacts in the national governments (national liaison officers), the overall trend indicates that states appear to be aware of the need to strengthen human resources and the capacity of NHRIs to carry out their responsibilities in an independent and effective way. It is also encouraging that an average of 95 % of the overall staff have permanent contracts (full-time staff), according to data collected through the questionnaire. Conversely, the number of staff seconded from other branches of public service, and of temporary staff, is very low and probably does not have any serious impact on their perceived or real independence. Exceptions to the rule of employing staff with mainly permanent contracts are the NHRIs in Germany and Greece.

Despite the overall positive trend in staffing of NHRIs, some institutions have an expansion in mandates and functions that might require an even greater increase in staff. There are also NHRIs that have very few staff. In particular, the NHRIs with a predominantly promotional mandate and a large membership of the decision-making body, such as the NHRIs in France and Greece, have fewer staff than NHRIs that are also assigned tasks as ombuds institutions or equality bodies. Figure 10 provides an overview of the gender balance in the staff of the NHRIs. Almost without exception, overall more women than men are employed by NHRIs.





**FIGURE 10: GENDER BALANCE AMONG STAFF OF NHRIS**



Source: FRA, 2020 [questionnaire sent to NHRIs]



**Notes:**

E&W, England and Wales; NI, Northern Ireland; SCT, Scotland. Although 33 of 34 institutions responded to the questionnaire, not all were able to provide sufficient data for this section. For example, the Netherlands’ NHRI provided total figures for full-time equivalent staff not subdivided by gender. The Portuguese ombuds institution opted not to provide figures on its human resources. No data were received from Bulgaria’s Office of the Ombudsman. Malta’s institution is not yet operational, and therefore could not provide human resources-related data. The data obtained were also corroborated through further consultation with, and feedback from, the institutions.

In terms of their leadership, 17 of the 33 NHRIs are led by a woman and 15 by a man, while Belgium’s NHRI is led by design by male and female co-directors.

## 2.4. BROADEST POSSIBLE MANDATE TO PROMOTE AND PROTECT HUMAN RIGHTS

NHRIs need to have a broad mandate to be able to promote and protect human rights adequately. An institution that is overly limited in the scope or nature of its work may not be able to undertake what is required under the Paris Principles and to perform its work effectively.

The two responsibilities of NHRIs are at times mutually reinforcing, but they can also pose difficulties in terms of prioritisation and allocating adequate resources to fulfil them. Although protection is related to dealing with individual cases, complaints and investigations, it also includes inspections and monitoring systemic investigations and redress for the victim. The promotional responsibility is aimed at fulfilling human rights and ranges from education to influencing policy through research, assessment and advice.

The Paris Principles lists a lot of specific functions that NHRIs should perform. Those relating to the responsibility of protecting and promoting human rights should be laid down in law and ensure that the NHRIs have the independence and freedom to choose which functions are exercised or prioritised. The SCA has set out the functions required of the NHRIs: cover both public and private sectors; raise public awareness; make recommendations to public authorities; analyse the human rights situation in the country; and examine public premises and documents and conduct a full investigation into all alleged human rights breaches, including the military and the police.<sup>41</sup>

### 2.4.1 Effective advisory function

The Paris Principles list advising government and parliament among the responsibilities of NHRIs and refer specifically to a number of advice areas.<sup>42</sup> The NHRIs provide advice on their own initiative, at the request of or by

referral from another authority or institution, such as the parliament or a parliamentary committee or the government or a minister. Other triggers of NHRI advice could be a complaint of an actual or threatened violation of human rights or a pattern or system of violation. Advice can be provided in a number of areas, including in relation to legislation and government policies and programmes. While advice is typically addressed to government, it may be directed to any political, social or economic actor and relate to any issue, area or practice of private and civil society organisations and individuals that affect the full enjoyment of all human rights and fundamental freedoms. Importantly, NHRIs' advice, at least to government or parliament, should be carefully considered and followed by a formal reply, which in turn, NHRIs could monitor and report on the progress of implementation. Ideally there would also be a forum for an NHRI to turn to, such as the parliament, when recommendations are not acted on.

All NHRIs covered by this report provide advice in a number of areas (policy, legislation, etc.). The general observations by the SCA specifically mention "annual, special and thematic reports" as a "means by which these bodies can make recommendations to and monitor respect for, human rights by public authorities" – they also mention the need for NHRIs to follow up on their recommendations.<sup>43</sup>

#### Advice to governments

NHRIs that regularly interact with government increase their prospects of having their recommendations accepted and implemented. All institutions covered by this report provide advice to governments – this may be on the basis of an explicit obligation, an explicit possibility or an implicit possibility (possible in practice) (Figure 11).

A common way of ensuring regular interaction with the government is through an annual report. While about half (17) of the institutions covered by this report have an obligation or the potential to prepare an annual report for the attention of government, the remainder (16) do not have such a mandate.

NHRIs have various formal and informal means of liaising and communicating with government. Formal mechanisms include procedures related to the enactment and amendment of laws, whereby the NHRIs may make formal submissions to the government or to the parliament. In terms of informal ways of relating to government, a wide range of mechanisms to promote a fruitful relationship with governments exist, including:

- regular meetings between heads of NHRIs and senior government officials to exchange information;

Note: E&W, England and Wales; NI, Northern Ireland; SCT, Scotland.



**FIGURE 11: NHRIS' ADVICE TO GOVERNMENTS**

	Austria	Belgium	Bulgaria – Commission	Bulgaria – Ombud	Croatia	Cyprus	Czechia	Denmark	Estonia	Finland	France	Germany	Greece	Hungary	Ireland	Italy	Latvia	Lithuania	Luxembourg	Malta	Netherlands	Poland	Portugal	Romania – Institute	Romania – Ombud	Slovakia	Slovenia	Spain	Sweden	United Kingdom - E&W	United Kingdom - SCT	United Kingdom - NI	North Macedonia	Serbia	
A-status																																			
B-status																																			
No accredited institution																																			
Explicit obligation																																			
Explicit possibility																																			
Implicit possibility / in practice																																			

Source: FRA, 2020 [based on 33 responses to questionnaire sent to 34 NHRIs]

- memorandums of understanding that set out the procedures for communications, information exchange and other forms of cooperation between the two;
- working-level links between NHRI staff and civil servants in sections and units of government ministries, departments and agencies with which the NHRI needs regular communication;
- (interdepartmental) committees with representatives of all the ministries, departments and agencies that relate to the NHRI;
- traffic light-coded follow-up on recommendations, with green for complied with, yellow for under way and red for no action taken.

#### *Parliaments*

Parliaments are the cornerstones of national human rights protection systems, “laying the foundation for, and strengthening, the rule of law and its institutions, including the judiciary. [Parliaments] play a critical role in ensuring States’ compliance with their international human rights obligations, and provide oversight regarding the functioning of government and national institutions mandated to promote and protect human rights.”<sup>44</sup> Parliaments are typically also essential in the appointment of members and are responsible for providing funds to NHRIs through the ordinary budgetary processes of Member States. The NHRIs therefore have particular accountability to parliaments. In turn, parliaments should be the principal defenders and protectors of NHRIs, especially where the government is hostile towards them. The relationship between an NHRI and parliament is the most important legal and political one for the NHRI.

### **Belgrade Principles on NHRIs and parliaments**

The Belgrade Principles on the relations between NHRIs and parliaments identify areas in which NHRIs and parliaments should cooperate, including:

- enactment and amendment of NHRI legislation and ensuring the functioning, independence and funding of the NHRI;
- exchange of information and views and provision of advice on human rights issues;
- cooperation in relation to legislation that affects human rights;
- cooperation in relation to international human rights mechanisms;
- cooperation in relation to education, training and awareness raising on human rights;
- monitoring the government’s response to court and other judicial and administrative bodies’ judgments concerning human rights<sup>\*</sup>

<sup>\*</sup> See *UN Secretary-General’s Report on NHRIs to the General Assembly and the Human Rights Council*, **A/HRC/20/9**, 1 May 2012. See also *UN Human Rights Council (2018)*, **A/HRC/38/25**, *Contribution of parliaments to the work of the Human Rights Council and its universal periodic review*, Annex I, 17 May, p. 14.

### **UN draft principles on parliaments and human rights \*\***

The UN Secretary-General has encouraged more proactive engagement of parliamentarians in the work of international human rights mechanisms and called for the development of principles to assist and guide them. Parliaments are uniquely positioned to contribute to closing the gap in implementation between human rights standards and the reality on the ground. Within the context of the UPR, 50–70 % of recommendations require or involve parliamentary action, pointing out areas that need strengthening to bolster NHRIs and national capacities, fostering resilience and creating an environment conducive to addressing the root causes of human rights violations.

<sup>\*\*</sup> *UN Human Rights Council (2018)*, **A/HRC/38/25**, **Contribution of parliaments to the work of the Human Rights Council and its universal periodic review**, 17 May.

An indication of an NHRI's impact is the level of its engagement with the national parliament. Addressing reports to the parliament, having parliamentary debates on NHRI reports, involving the NHRI in deliberations of parliamentary committees and the institution engaging with individual members of parliament are all elements that reflect how the political system perceives the work of an NHRI and its impact.

The Paris Principles clearly elaborate the link between NHRIs and parliaments. The principles state that NHRIs should have the responsibility, for example, for submitting to parliament "opinions, recommendations, proposals and reports on any matters concerning the promotion and protection of human rights". The principles also specify that NHRIs should "promote and ensure the harmonisation of national legislation, regulations and practices with the international human rights instruments to which the State is a party, and their effective implementation; and to encourage ratification of the above-mentioned instruments or accession to those instruments, and to ensure their implementation".<sup>45</sup> The findings of FRA's questionnaire sent to NHRIs show that almost all institutions address their annual reports to parliaments; however, these reports are not always subject to parliamentary discussion, which limits their visibility and impact. Such a discussion is obligatory only in the case of 12 NHRIs (Austria, Croatia, Finland's Parliamentary Ombudsman and Human Rights Centre, Greece, Hungary, Lithuania, Malta – according to its proposed founding regulation, North Macedonia, Portugal, Romania's ombuds institution, Serbia, Slovenia and Spain). In six NHRIs (Belgium, Cyprus, Estonia, Germany, Lithuania and Romania's Institute for Human Rights), a discussion of NHRI reports is not obligatory but usually takes place in practice. In Denmark, reports – if they are to be discussed by parliament – are considered by a standing committee, not in a plenary session.<sup>46</sup>

Parliaments have in some instances been reluctant to acknowledge findings by NHRIs – even refusing to approve annual reports. For example, when assessing her term in office, the outgoing Czech Ombudswoman, Anna Šabatová, emphasised that, if a plaintiff is in the right, the Public Defender of Rights should back that person even if doing so would not earn plaudits in the public arena. During the subsequent debate, she faced criticism from some members of parliament for protecting minorities and "inadaptables", or promoting "New Left" causes and therefore discrediting herself. While some members of parliament defended her work, the discussion of the report on the activity of the institution for the year 2018 did not focus on substance. One member even made a proposal to parliament that the ombuds institution should be abolished – a proposal currently in the formal legislative procedure.

### **Finnish Human Rights Delegation's recommendations for government term 2019–2023**

An interesting example of forward-looking NHRI recommendations to government comes from Finland. The NHRI (specifically, the Human Rights Delegation) published a background paper on Finland's human rights situation that contains recommendations for the promotion of fundamental and human rights during the 2019–2023 government term. The paper lists 37 objectives that would improve the fundamental and human rights situation in Finland.

For instance, targets recommended to government include:

- promoting commitments by regional- and local-level administrative bodies to implement human rights through improved coordination activities and structures at the regional and local levels;
- developing new methods for the prevention of hate crimes related to antisemitism and Islamophobia and widely implementing proposals submitted by the government's working group on hate speech;

- securing the right of the elderly to a dignified life and equal availability of services;
- assessing the cumulative effects of customer fees and deductibles on the socio-economic status of people with disabilities and reducing their negative consequences \*.

### **Bulgarian National Coordination Mechanism on Human Rights**

Both NHRIs in Bulgaria, the ombuds institution and the Commission for Protection against Discrimination, cooperate with the government, offering advice and expertise on various topics. As legislative and strategic documents are discussed and drafted in working groups, both NHRIs are natural participants in these. They are also voting members of national councils on various policies (on the equality between women and men, on the protection of the child, on demographic development, etc.). The ombuds institution and the commission may also submit opinions on bills relevant to human rights upon request of the National Assembly or the Council of Ministers.

The two institutions are members of the National Coordination Mechanism on Human Rights. This aims to improve horizontal coordination among public authorities involved in the implementation of specific national tasks arising from Bulgaria's commitments to international human rights treaties and other human rights instruments.

Both NHRIs have regional structures and work with the local authorities to monitor the level of human rights protection on the ground. They also provide assistance to citizens in communicating with the government and other state institutions.

Furthermore, following recent amendments, the ombuds institution may request parliament to introduce changes to national legislation, if they arise from citizens having approached the institution with related concerns. Amendments may also be proposed to harmonise national legislation with international standards \*\*.

\* *Human Rights Centre, The recommendations of the Human Rights Delegation for the promotion of fundamental and human rights during the 2019–2023 government term (Spring 2019).*

\*\* *Information provided by the Bulgarian national liaison officer, following the 23rd meeting of FRA's national liaison officers, at which the topic of NHRIs advice to governments was discussed.*

In the countries covered by this report, only Croatia, Cyprus, North Macedonia and Slovenia have systems in place that commit the government to conducting a regular review of NHRI recommendations. Czechia (although the ombuds institution is not an accredited NHRI) has a system that to some extent does so.

All NHRIs monitor how their advice is taken up, usually on an annual basis. A variety of practices have evolved, ranging from monitoring systems (offline, online), detailed annual reports, listing recommendations not yet resolved. Follow-up can also include informing the public through press conferences and other media work on the level of implementation of recommendations.

#### **2.4.2 Raising awareness and human rights education at core of mandate**

The United Nations Declaration on Human Rights Education and Training recognised that NHRIs “can play an important role, including, where necessary, a coordinating role, in promoting human rights education and training by, inter alia, raising awareness and mobilising relevant public and private actors”, and encouraged states to promote the establishment, development and strengthening of effective and independent NHRIs to play such a role. <sup>47</sup>

To be effective, human rights education must be responsive to the situation of its target audience. Thus, human rights education needs to successfully combine the role of the NHRI as the promoter and protector of rights – combining education and training with more legal, policy and investigatory work.

The Paris Principles distinguish between raising human rights awareness and education and list both among the responsibilities of NHRIs:

1. “[t]o assist in the formulation of programmes for the teaching of, and research into, human rights and to take part in their execution in schools, universities and professional circles”;<sup>48</sup>
2. “[t]o publicise human rights and efforts to combat all forms of discrimination, in particular racial discrimination, by increasing public awareness, especially through information and education and by making use of all press organs”.<sup>49</sup>

The Paris Principles also provide that NHRIs are to “[a]ddress public opinion directly or through any press organ, particularly in order to publicise its opinions and recommendations”.<sup>50</sup> And, in the context of “cooperation with other human rights bodies”, cooperation with “mass media, as a section of civil society, is a particularly important tool for human rights education”.<sup>51</sup>

NHRIs target their human rights education programmes and activities to maximise their impact. They may target their educational endeavours at very different audiences: parliamentarians and political leaders; civil servants; police and prison officers; community leaders, including religious, minority and indigenous leaders as well as leaders of non-governmental organisations (NGOs); business people; workers; women; children and families; school and university students; members of groups at risk of human rights violation, including people with disabilities and people from minority groups.

The survey of NHRIs conducted for this report looked into how they engage in practice on human rights education in relation to the EU Charter of Fundamental Rights. In particular, the questionnaire sent to the 34 participating institutions featured a section dedicated to the Charter, including a specific question on how the institution uses the Charter with a number of possible answers. In this context, 14 out of the 28 NHRIs that responded to this section of the questionnaire stated that they use the Charter as part of their human rights education work. With regard to raising awareness of rights, all NHRIs stated that they have dedicated activities addressing the general public or targeted audiences.

The challenges that NHRIs experience with regard to fulfilling their function in human rights education include:

- the absence of human rights education strategies at national policy level;
- the fact that human rights education is not prioritised as highly as other priorities within NHRIs;
- the fact that human rights education is budget and human resources intensive, as it requires long-term commitment and multiple skillsets.

Human rights education targets long-term results, and therefore a number of NHRIs have opted to conduct broader awareness-raising campaigns rather than work with specific target audiences, often in partnership with civil society organisations or the media.

## Finnish Human Rights Centre strategic approach to human rights education

In 2014, Finland's Human Rights Centre published a "baseline study" on human rights education. The report explores the extent to which major components of human rights education have been adopted in the education sector and provided several recommendations for further improvement. The Finnish government relied upon the study and its recommendations to produce its National Action Plan for Human Rights and Fundamental Rights (2017–2019), which features human rights education as one of its four major themes.

*Human Rights Centre (2014), **Baseline study on human rights education.***

## Northern Ireland – effectively connecting rights protection and promotion

The NHRI in Northern Ireland, the Human Rights Commission, has a legal duty to promote "understanding and awareness of the importance of human rights in Northern Ireland". To do so, it produces a wide range of video resources and infographics and also collaborates with a broad spectrum of partners, from government agencies to community and voluntary organisations, to ensure that human rights are incorporated into their everyday work. For example, they collaborate with the Northern Ireland civil service to increase knowledge and awareness of human rights throughout all of the government's departments.

*Northern Ireland Human Rights Commission, **Education.***

## Austrian Ombudsman Board's TV show "Advocate for the People"

Since 2002, Austria's NHRI, the Ombudsman Board (AOB), in partnership with the broadcaster ORF, has produced a successful weekly TV show called *Bürgeranwalt* ("Advocate for the People"). \* The broadcast features examples of real-life complaints to the AOB and the solutions found. Through the show, the AOB showcases its work to citizens, thereby raising awareness and increasing its visibility. The show, which airs on national prime-time television every Saturday, is believed to have a significant impact: it is the main way through which Austrians learn about the AOB's existence. \*\*

\* *Volksanwaltschaft (2011), 'Bürgeranwalt' – ORF and ombuds institutions board celebrate 10 years jubilee.*

\*\* *European Parliament (2018), **The role of ombudsmen and petitions committees in detecting breaches of EU law.***

## Slovak National Centre for Human Rights – targeted education

Slovakia's NHRI, the Slovak National Centre for Human Rights, offers human rights education to several target audiences such as students, trade unions, public servants, members of the police, teachers and private companies. While the offer for schools is standardised and focuses on a wide range of key topics in human rights education, the Centre also offers tailored training for groups such as private companies, allowing them to focus on, among other things, bullying and bossing, diversity, rights of people with disabilities, freedom of expression and hate crime or hate speech. In 2018 the centre delivered over 300 training sessions involving 7 635 participants across Slovakia, including thousands of students. The impact and success of the programme was recognised by the Ministry of Finance, which increased the centre's 2019 budget substantially to further support its educational efforts.

*Slovak National Centre for Human Rights (2018), **Annual activity report** (in Slovak); for an example in English, see: Slovak National Centre for Human Rights (2017), **Annual report on activities.***

## Poland's Commissioner for Human Rights participates in rock festival

Poland's NHRI, the Office of the Commissioner for Human Rights, engages in human rights education in several ways. For example, it organises a congress on human rights, featuring over 40 panels and attracting 1 500 visitors. \*\*\* The NHRI also visits local activists and NGOs, as well as students in a different region every month \*\*\*\*. The NHRI has also organised educational seminars on matters such as discrimination and on the ethical and human rights implications of modern technology such as genetic testing. \*\*\*\*\* It also staffed a "human rights tent" at Poland's Pol'and'Rock music festival, where festival goers engaged in social debates, discovered the work of various human rights-related NGOs and institutions such as the ombuds institutions, and learned about human rights issues through productions, shows, board games, dance and workshops. \*\*\*\*\*

\*\*\* *Commissioner for Human Rights (2018), **Second National Congress on Human Rights.***

\*\*\*\* *For example, see Commissioner for Human Rights (2017), **Regional meetings in the Pomorskie voivodeship, 2017.***

\*\*\*\*\* *Commissioner for Human Rights (2017), **Testy genetyczne a prawa człowieka – seminarium RPO w Gdańsku** (in Polish).*

\*\*\*\*\* *Pol'and'Rock Festival (2018), **Rzecznik Praw Obywatelskich na ASP** (in Polish).*



### 2.4.3 NHRIs' monitoring and complaints-handling functions

The SCA general observations reinforce the Paris Principles by stating that “monitoring and engaging with the international human rights system [...] can be an effective tool for NHRIs in the promotion and protection of human rights domestically”.<sup>52</sup> This includes oversight of the human rights situation within the country, or on-site inspection of places where there are reported or suspected risks of human rights violations. In addition, the NHRIs should “not only monitor, investigate and report on the human rights situation in the country” but also “undertake rigorous and systematic follow-up activities”.<sup>53</sup> The protection responsibility may include “monitoring, inquiring, investigating and reporting on human rights violations”, and it clearly includes the function of complaints handling – providing access to justice – as it may be triggered by an individual case.<sup>54</sup> The monitoring functions of NHRIs can be general or more specific such as that related to an NPM.<sup>55</sup>

#### Monitoring – examples from selected countries

The Netherlands' NHRI, the **Netherlands Institute for Human Rights**, has enhanced the impact of its monitoring activities by discussing its findings with the entities monitored. On two occasions – concerning pre-trial detention and age discrimination in job advertisements – the NHRI opted to discuss its findings with the organisations in question, meaning courts and companies, respectively. The institute found this approach to be more effective than simply writing a report based on its monitoring, as the dialogue made it possible to address questions and clarify written findings.

Similar to many other institutions covered by this report, the mandate of **Italy's National Guarantor for the Rights of Persons Detained or Deprived of Liberty** (not an NHRI but included in this study as having some of the functions of an NHRI) includes the power to independently monitor flights for forced returns of foreign nationals, which are organised by Italy and the European Border and Coast Guard Agency (Frontex). The national guarantor can monitor all stages of the forced return operations, which also enables its delegation to offer detailed recommendations pertinent to every phase of the operations. For example, after monitoring a forced return flight of Nigerian nationals in 2018, national guarantor staff recommended that “interpreters or other persons having suitable language skills shall be present during all [joint return operation] phases”, having found that no interpreters or cultural mediators were present. By closely monitoring the operations in their entirety, they were similarly able to gauge the degree of information provided and recommend that “prompt and complete information” be provided to the returnees. They also found that returnees had not been provided with adequate food and drink throughout the whole operation.<sup>56</sup>

In 2011 the NHRI in Greece, the **Greek National Commission for Human Rights** (GNCHR), in partnership with the UN Refugee Agency UNHCR, established the Racist Violence Recording Network (RVRN). The RVRN, which today counts 46 representatives of civil society organisations among its members, focuses primarily on monitoring and recording racist attacks against refugees and migrants in Greece. The resulting qualitative and quantitative data analysis is used to alert authorities to changing trends or escalations in hate crime, while also allowing the RVRN to raise awareness of hate crime and how to adequately combat it. The RVRN also supports victims in reporting incidents and obtaining legal aid. Through the RVRN the GNCHR also organises training for civil society and institutional bodies on identifying, recording and countering hate crime. The network also produces a yearly report containing insights on trends in hate crimes in Greece, attempts by national institutions to deal with racist violence, and recommendations to the institutions to tackle hate crime (FRA, **Racist Violence Recording Network**).

The Irish NHRI, the **Human Rights and Equality Commission**, appointed in 2019 a formal **advisory committee**, made up of a significant majority of people with disabilities, to deliver on its mandate to monitor Ireland's implementation of the Convention on Rights of Persons with Disabilities.

## ENNHRI's Guidance on monitoring migrants' rights at borders

Recognising that the outbreak of coronavirus disease 2019 (COVID-19) has impacted significantly on migrants and NHRIs' work, ENNHRI launched guidance for monitoring migrants' rights at borders. The NHRIs and other actors engaged in monitoring at borders can address common human rights concerns, compare information, exchange ideas on monitoring challenges and promising practices, and propose joint advocacy actions.

*ENNHRI (2020), ENNHRI launches new guidance for stronger monitoring of migrant's rights at borders, 26 March.*

### *Complaints handling – access to justice*



Access to justice is a central issue for NHRIs for two reasons: their monitoring of human rights and ensuring access to justice (e.g. Article 47 of the EU Charter of Fundamental Rights – effective remedy and fair trial) and their direct contribution in facilitating access to justice through information and awareness, or even as quasi-judicial mechanisms.<sup>57</sup> In that effective access to justice enables other rights to be claimed, this issue deserves particular attention – and is also part of the SDGs, as target 16.3 “[p]romotes the rule of law at the national and international levels and ensures equal access to justice for all”.<sup>58</sup> The equal access also underscores the relevance of this topic for equality bodies.

Under the “[a]dditional principles” heading of the Paris Principles, NHRIs “may be authorised to hear and consider complaints and petitions concerning individual situations” and “[c]ases may be brought before it by individuals, their representatives, third parties, non-governmental organisations, associations of trade unions or any other representative organisations.” The global NHRI Nairobi Declaration of 2008 also emphasises “the important role that NHRIs play in ensuring an effective administration of justice, in particular with regard to access to justice” and that the NHRIs should consider receiving cases directly and also assist victims through other mechanisms.<sup>59</sup> The Venice Principles call for ombuds institutions to “preferably be entitled to intervene before relevant adjudicatory bodies and courts”.<sup>60</sup>

It is envisaged that NHRIs will also play a stronger role when it comes to access to justice in some sectoral contexts. The importance of independent mechanisms under the UN Convention on the Rights of Persons with Disabilities is mentioned as an example. Chapter 3.3.2. includes an elaboration on NHRIs' role in the context of human rights and business.

FRA's research, corroborated by answers to the questionnaire, suggests that most NHRIs in the countries covered by this report have mandates that include monitoring activities and complaints handling. Among the NHRIs, 28 carry out monitoring activities (such as inspections of places of detention). Of these NHRIs, 13 do so as an explicit obligation, eight as an explicit possibility and seven as part of established practice.

Similarly, 29 of the institutions are able to investigate systematic human rights violations and make recommendations for redress. Of these, 12 do so as an explicit obligation, 10 as an explicit possibility, and seven as part of established practice. Moreover, 27 NHRIs have the power to investigate allegations of systematic human rights violations on their own initiative as an explicit obligation (10) or possibility (10) or as part of established practice (seven).

**FIGURE 12: NHRIS' POWER TO INVESTIGATE INDIVIDUAL COMPLAINTS OF HUMAN RIGHTS VIOLATIONS**

A-status B-status	No accredited institution																																			
	Austria	Belgium	Bulgaria – Commission	Bulgaria – Ombud	Croatia	Cyprus	Czechia	Denmark	Estonia	Finland	France	Germany	Greece	Hungary	Ireland	Italy	Latvia	Lithuania	Luxembourg	Malta	Netherlands	Poland	Portugal	Romania – Institute	Romania – Ombud	Slovakia	Slovenia	Spain	Sweden	United Kingdom – E&W	United Kingdom – SCT	United Kingdom – NI	North Macedonia	Serbia		
Explicit obligation																																				
Explicit possibility																																				
In practice																																				
No such possibility																																				

Source: FRA, 2020 [based on 33 responses to questionnaire sent to 34 NHRIs]

The majority of NHRIs also have the power to investigate individual complaints of human rights violations and make recommendations for redress, although here the proportion is lower, at 23 institutions (20 as an explicit obligation) (Figure 12). For example, some institutions have this power due to their mandate as equality bodies.



Note:

E&W, England and Wales; NI, Northern Ireland; SCT, Scotland.

The Netherlands' NHRI, the **Institute for Human Rights**, has experienced success with its online reporting facilities (*meldpunten*). Target audiences are encouraged to report any instance of discrimination they may have experienced in specific areas. For example, the institute has asked women to share their experiences with pregnancy-related discrimination or people with disabilities to share their experiences when casting their vote on election day. These centres and dedicated hotlines, and the ensuing reports, have enabled the institute to put issues on the political agenda while also illustrating general observations and recommendations with personal stories and practical examples.\*

\* On pregnancy-related discrimination, see Netherlands Institute for Human Rights (2017), **Zwangerschapsdiscriminatie: vier oordelen en resultaten meldpunt bekend**. On accessible elections, see Netherlands Institute for Human Rights (2019), **Meldpunt geopend voor toegankelijke verkiezingen**.

The NHRI in Cyprus, the **Commissioner for Administration and Protection of Human Rights**, engages in mediatory action, a practice in which written or oral interventions are made to relevant authorities on behalf of vulnerable complainants. This practice has had considerable success. For example, the commissioner has achieved the release from detention of migrants and asylum seekers, their access to basic public services, the removal of names from 'stop lists', and the expedition and positive evaluations of applications for residence permits, citizenship and family reunifications. Through mediatory action, the commissioner has also been able to assist trans people in navigating administrative issues, such as changing their names and genders on official documents or acquiring high school diploma certificates reflecting their new gender identity.

Hungary's NHRI, the **Office of the Commissioner for Fundamental Rights**, does not have local or regional offices, and potential complainants may be unable to reach its premises in Budapest or may struggle with formulating petitions. As a solution, the NHRI has instituted county visits, during which NHRI staff travel to a specific part of the country. Ahead of the visits, the NHRI ensures that there are complaints boxes at strategic locations. In this way, the NHRI can offer a greater number of citizens across the country the chance to submit complaints and receive assistance.\*\*

\*\* For a report from a visit to Komárom-Esztergom county on 5 and 6 December 2018, see Office of the Commissioner for Fundamental Rights (2018), **Work visit by the Commissioner for Fundamental Rights and his two deputies to Komárom-Esztergom County 5-6 December**.

#### 2.4.4 NHRI cooperation and engagement with other national actors: civil society, cities and regions

The SCA general observations state that NHRIs should promote and protect human rights in “cooperation with other human rights bodies” and are encouraged to conduct a “regular and constructive engagement with all relevant stakeholders as essential for NHRIs to effectively fulfil their mandates”. They specifically mention “other domestic institutions established for the promotion and protection of human rights, including sub-national statutory human rights institutions, thematic institutions, [...] civil society and non-governmental organisations”.<sup>61</sup>

##### Civil society

The Paris Principles make specific provision for NHRIs’ engagement and cooperation with NGOs. They give NGOs a privileged status in this way. These provisions are reflected in many of the laws establishing NHRIs that also provide specifically for engagement and cooperation with NGOs.

Through various dedicated questions within its questionnaire, FRA asked the NHRIs about their experience of cooperating with civil society organisations (CSOs). Almost half (15) of the NHRIs are obliged to do so, a third (11) have the explicit possibility of doing so and about a fifth (seven) do so as a matter of practice (Figure 13).

Although the level of engagement across the countries covered by this report varies, all established NHRIs that responded to FRA’s questionnaire engage with NGOs and academia, 23 engage with trade unions, 22 with employers’ organisations, 30 with social and professional organisations, 21 with faith-based, philosophical or non-confessional organisations, and four with other kinds of CSOs. Most of the cooperation occurs through consultations and joint seminars. NHRIs cooperate closely with civil society in the following areas: 31 on awareness raising and human rights education and training, 23 on joint projects, and three on other areas.

NHRIs use a broad range of methods to communicate and cooperate with civil society, ranging from physical meetings to online shared collaborative space between NHRIs and CSOs. Calls for proposals and funding of CSOs by NHRIs remain a rare practice.

To match the NHRIs’ perspective, FRA asked CSOs registered with its Fundamental Rights Platform (720 organisations at the time of the consultation) about their cooperation with NHRIs. This was achieved through a questionnaire provided to the entire platform, which generated answers from 101 organisations. Of these, 49 % reported having cooperated with NHRIs in the last 10 years. The length of period covered, a decade, reduces the relevance of this information for present-day policy, although it is still of interest.

Note: E&W, England and Wales; NI, Northern Ireland; SCT, Scotland.



**FIGURE 13: NHRIS’ COOPERATION WITH CSOS**

	Austria	Belgium	Bulgaria – Commission	Bulgaria – Ombud	Croatia	Cyprus	Czechia	Denmark	Estonia	Finland	France	Germany	Greece	Hungary	Ireland	Italy	Latvia	Lithuania	Luxembourg	Malta	Netherlands	Poland	Portugal	Romania – Institute	Romania – Ombud	Slovakia	Slovenia	Spain	Sweden	United Kingdom – E&W	United Kingdom – SCT	United Kingdom – NI	North Macedonia	Serbia		
A-status																																				
B-status																																				
No accredited institution																																				
Explicit obligation																																				
Explicit possibility																																				
Implicit possibility / in practice																																				

Source: FRA, 2020 [based on 33 responses to questionnaire sent to 34 NHRIs, and FRA desk research]

## Examples of cooperation with civil society

**Denmark's** NHRI has good experience of hosting information meetings for CSOs, linked to the UN reporting cycle to treaty bodies and the UPR. In hosting such meetings it brings CSOs together, aiming to create a space for them to exchange views on the topic in question. The NIHR uses the opportunity to provide information on the reporting process, deadlines for specific forthcoming processes or guidance on and tips for meaningful reporting.

**Slovakia's** NHRI conducted research in 2016 on poverty and social exclusion of older people in cooperation with the NGO Help the Elderly Forum. The study followed up on similar research conducted some years earlier. The results showed positive developments in participation in social and cultural life. Conversely, 90 % of respondents claimed that they did not have sufficient financial resources to fully or partially satisfy their fundamental needs. Similarly to the earlier study, almost every second respondent felt discriminated against, based on their age. The results were presented at several conferences on ageing and the rights of older people and provided data for various human rights reporting.

*Help the Elderly Forum (2016), Research report (in Slovak).*

The aforementioned 49 CSOs were also asked to list their models of cooperation with NHRIs and could provide multiple answers. The most popular models of cooperation included meetings and consultations (both including online) and joint projects, campaigns or seminars.

### *Cities and regions*

NHRIs have cooperated with and in cities and regions or set up offices in different parts of their countries to improve outreach to rights holders or increase the number of avenues for promoting rights. Cities have benefited from NHRIs' expertise on rights, which have positively influenced good governance, including engagement of rights holders as part of the policy-making process, access to justice, right to information, freedoms of religion, conscience, opinion, information and speech, addressing and preventing discrimination through targeted human rights education of public officials, accessibility of services and creating spaces for diversity.

Almost half of the NHRIs engage with cities and other local authorities through various forms of cooperation.<sup>62</sup> Those NHRIs that cooperate with cities and other local authorities use varying degrees of intensity and methods of cooperation. The level of cooperation can therefore be presented on a scale ranging from (1) regional offices, through (2) structured cooperation to (3) outreach and regular contact through visits.

Only three NHRIs report that their regional representations are their only means of collaborating with cities. These are instances in which the NHRI has a central headquarters but also other smaller offices in other major cities or regions. Having regional representations may in fact be a necessity given the geography of the country. The Portuguese ombuds institution, for example, is based in Lisbon but has representation offices in Angra do Heroísmo (Azores islands) and Funchal (Madeira).

More frequently, NHRIs reportedly engage in structured cooperation activities involving local authorities (e.g. prevention of torture), which may include cooperating on long-term projects. The NHRIs may do this through local representatives who cooperate with the respective local authorities but also collaborate with municipalities if the institution does not have a physical presence. The Belgian NHRI, Unia, for example, regularly cooperates with the 13 Flemish municipalities where it has local contact points, while the Protector of Citizens runs a campaign called “Ombudsman Days”, which targets smaller towns and municipalities with awareness-raising events, and presents an annual award to municipalities deemed to have made the most significant contribution to ensuring accessibility for people with disabilities. Examples from Poland and Hungary are provided in text boxes earlier in this report. Similarly, Poland’s NHRI, the Commissioner for Human Rights, which has regional offices and several more advice points, has collaborated with other municipalities on a number of successful activities. Lastly, some NHRIs engage with local authorities through outreach and making regular contact through visits. An example of this is Hungary’s Commissioner for Fundamental Rights, which has no regional offices and engages in regular county visits during which the institution liaises with local municipal authorities and uses their premises as temporary headquarters.

Croatia’s Ombudswoman visited 85 cities and municipalities between 2011 and 2019. These visits included contact with the local authorities, which publicised the forthcoming visits on their websites to increase outreach to the population. Such regular visits can also be undertaken by regional representatives of the institution, as is the case for the Ombudsman of the Republic of North Macedonia. The institutions’ field representatives regularly visit all municipalities in their area, providing citizens with information about their rights and about mechanisms for their protection.

### **Human rights cities and local-level ‘NHRIs’**

Several European cities, such as Graz, Vienna, Utrecht, Barcelona, Lund and Middelburg, have declared themselves to be human rights cities. By proclaiming their commitment to human and fundamental rights, these cities build on human rights to guide municipal policies and action and develop a culture of rights in the municipality to improve the quality of life of their populations. Policies and initiatives include mainstreaming human rights in Vienna’s municipal work (i.e. making human rights part of everyday practice), setting up accountability mechanisms such as Barcelona’s local ombuds institution, annual reporting on human rights to the local council in Graz, or setting up a meeting point between refugees and local residents in Utrecht’s Einstein Plan scheme.

In 2018, a FRA policy lab with a group of human rights cities highlighted the need to strengthen the initiative. As a follow-up, FRA, in 2019, started to develop a framework of commitments for human rights cities in the EU in close cooperation with cities, their networks and other partners such as the Council of Europe and the UN Human Rights Office. The framework is expected to be released in 2021.

## 2.5. MEASURING EFFECTIVENESS AND IMPACT – EVALUATIONS AND ASSESSMENTS

Assessing NHRIs' effectiveness beyond the formal and structural requirements (related to their compliance with the Paris Principles) means assessing their influence on the human rights situation in their respective countries. Measuring this impact is necessary to assess NHRIs' effectiveness and whether they address the most urgent and important human rights issues. It is nevertheless a challenging task that requires consideration of different complementary elements.

All NHRIs publish information and data about their activities ("activity indicators"), providing useful information for both external evaluation and self-assessment. This can include the number of reports produced or other public interventions; the number of recommendations adopted, including proposals for legislative reforms and amendments of draft legislation; the number of complaints received and resolved and of satisfied complainants. Such data may also include the number of monitoring missions, specifically visits to places with an increased risk of rights violations such as detention centres and prisons, mental health institutions or reception centres for asylum seekers, and the number of training sessions provided.

These activity indicators, however, should be complemented by other criteria that help measure the effectiveness and impact of an NHRI, such as assessing the overall human rights situation, developments and any regression. An example of such data could be that collected and analysed by FRA regarding people's experiences of, access to and enjoyment of fundamental rights; however, there are many factors that affect the human rights situation, not just the activities of a particular institution.<sup>63</sup> Nonetheless, NHRIs can analyse data on developments and point to the contribution made and plausible causality. Such assessments could also be used by NHRIs when being evaluated on their performance, for example in the context of the SCA accreditation process. In particular, NHRIs should be able to show how they have contributed to improvements or how they have reacted to backsliding.

The NHRI of the United Kingdom (England and Wales), the Equality and Human Rights Commission, publishes an annual impact report that provides a snapshot of the impact of the institution over the year. The report presents the NHRI's impact in numbers; it also highlights the personal stories of the people behind these numbers and how the NHRI has helped people to enjoy their rights and live better lives.<sup>64</sup>

References to NHRIs' activities, as included in civil society organisations or research reports on the situation of human rights in a country, can also be useful indicators of NHRIs' impact. For example, the NGO network in the Asia-Pacific region, the Asian Forum for Human Rights and Development (ANNI), produces regular evaluations of NHRIs in the area.<sup>65</sup> Taking into consideration such perspectives is important, as they reflect how external actors and various stakeholders in the area of human rights perceive the contribution of NHRIs.



### 2.5.1 Monitoring and publishing data on the implementation of NHRIs' recommendations

An important element for measuring NHRIs' effectiveness and impact is to follow up on the implementation of recommendations. The Paris Principles call on each NHRI to "publicise its opinions and recommendations".<sup>66</sup> The SCA adds that "NHRIs should monitor the implementation of recommendations from annual and thematic reports, inquiries and other complaint handling processes" and encourages the authorities to respond to NHRIs' recommendations and provide information on their implementation in a timely manner.<sup>67</sup> The

European Commission, in its recommendation on equality bodies, also makes it clear that following up on recommendations and legally binding decisions to ensure their implementation is part of the functions and the mandate of equality bodies in the EU.<sup>68</sup>

All NHRIs monitor follow-up and implementation of recommendations to some extent. NHRIs covered by this report publish data and information on the acceptance of their recommendations by relevant authorities, for instance through follow-up on opinions (France), projects (the Netherlands) or special reports (North Macedonia). More frequently, this information is included in annual reports or other communication tools, for example in Austria, Cyprus, Denmark, Finland, Greece, Lithuania, Poland, Portugal, Slovakia and Slovenia.



### 2.5.2 Evaluations and assessments

Evaluations of various kinds are commonplace for all types of organisations, be they financial, administrative or related to impact. GANHRI has also provided global guidance on capacity assessments of NHRIs.<sup>69</sup> Specifically for NHRIs, in the Asia-Pacific region, two types of assessments occur. First, NHRIs undertake periodic external evaluations engaging external consultants with expertise in evaluation in the human rights field to undertake an independent evaluation of performance and effectiveness. Second, the network of NHRIs in that region, the Asia Pacific Forum, coordinates regular expert assessments of the capacity of individual NHRIs at their request. This is a GANHRI initiative, working with the UN Human Rights Office and the United Nations Development Programme (UNDP).<sup>70</sup>

## Annual statements by the NHRI of the United Kingdom (Northern Ireland) – Northern Ireland Human Rights Commission

Each year, the Northern Ireland Human Rights Commission reviews progress by government and public authorities in the implementation of human rights laws and standards. The annual statement published in December each year records progress on meeting human rights standards using a "traffic light system" to show whether or not its recommendations have been implemented, which puts pressure on the authorities to act. Red identifies a subject that requires immediate action and the issue may be an ongoing violation or abuse of human rights. Amber identifies a subject for which initial steps towards an effective response could have already been taken or the need to take action acknowledged by the relevant body. Such actions may have started but are not yet completed. The subject identified requires action by the authorities. Green identifies a subject that has been acknowledged as requiring action and to which the authorities have responded effectively.

*Northern Ireland Human Rights Commission (2019), The 2019 annual statement.*

Other external evaluations include that carried out by the Council of Europe's monitoring body, the European Commission against Racism and Intolerance (ECRI). The sixth round of monitoring reports on equality bodies in the member states, which started in 2018, uses its own standards on equality bodies, but potentially also the 2018 EU recommendations. More generally, UN treaty bodies, special procedures and the UPR serve to, at least, push for Paris Principles-compliant NHRIs even if they rarely engage in any detailed assessment of NHRIs. A specific case is the UN Sub-committee on Prevention of Torture, which has an explicit mandate (see Chapter 1.1.2.), to assess compliance with a state's obligation under OPCAT to designate a national preventive mechanism. These mechanisms, in about half of the EU Member States, are NHRIs. Usefully, some of the expert members of the sub-committee are themselves current or former employees of NHRIs.

In addition, the Council of Europe Commissioner for Human Rights examines the effectiveness and independence of NHRIs in specific countries, providing recommendations to strengthen these institutions, including with regard to their budgets, staffing, mandates and independence.<sup>71</sup>

Yet another example of external evaluations are opinions by the OSCE-ODIHR. For instance, in 2019 ODIHR adopted such an opinion on Slovakia's NHRI.<sup>72</sup> The opinion was triggered by a request from the executive director of the NHRI.

Equinet has initiated a process of setting indicators whereby members can assess themselves.<sup>73</sup> Internal self-evaluations can also be useful, as can peer processes, whereby comparison with another, equivalent organisation, opens up necessary considerations of working methods and priorities. Another important example of self-evaluation is GANHRI's accreditation process and its SCA (described in Chapter 1).

## **2.6. UN, COUNCIL OF EUROPE AND OSCE COOPERATION WITH NHRIS**

NHRIs' cooperation with international human rights bodies is a key requirement of the Paris Principles. Such cooperation allows NHRIs to use their national expertise to assist with international human rights monitoring.<sup>74</sup> The intergovernmental organisations, the UN, the Council of Europe and the OSCE all interact with NHRIs in various ways.<sup>75</sup> The examples given here could serve as inspiration for NHRIs' functions and roles in an EU context.

The UN has a very close relationship with NHRIs through the standing that NHRIs enjoy with various monitoring mechanisms. Regular resolutions by the UN Human Rights Council and the General Assembly emphasise the importance of NHRIs.<sup>76</sup> They typically encourage Paris Principles-compliant NHRIs in all UN Member States and NHRIs to reinforce their activities. For example, in 2019, the UN Human Rights Council adopted a resolution on national policies and human rights, whereby "the important and constructive role that national human rights institutions and civil society can play in the process of drawing up and assessing the impact of national policies aimed at the promotion, protection and full realisation of human rights and fundamental freedoms" was recognised.<sup>77</sup>

The UN human rights monitoring mechanisms regularly recommend that NHRIs be established or improved.<sup>78</sup> For instance, within the framework of the UPR and in the concluding observations of other human rights-treaty monitoring bodies, in the case of Romania, recommendations were made to ensure that there is a Paris Principles-compliant NHRI in that country.<sup>79</sup> More generally on NHRIs, a number of treaty bodies have rules of procedures on engagement with NHRIs.<sup>80</sup>

UN bodies also promote greater participation of NHRIs in the UN system in other ways. The General Assembly itself has called for the participation of NHRIs in the work of the High-Level Political Forum, which oversees the implementation of the SDGs.<sup>81</sup> NHRIs can provide input to the forum on the results of their monitoring of the implementation of the SDGs. GANHRI, as the global network of NHRIs, has been instrumental in advocating for greater opportunities within the UN to maximise opportunities for the international community to receive and act upon information on national human rights situations that NHRIs can offer.

The UN Human Rights Office supports the establishment and strengthening of Paris Principles-compliant NHRIs and serves as the secretariat for GANHRI. The office also briefs UN treaty bodies during reviews on the status and work of the NHRIs. The UN Human Rights Office also shares promising practices among NHRIs, provides legal advice to governments and organises workshops on the Paris Principles and other substantive guidance, including a toolkit on NHRIs, guidance to UN field offices and other publications to support NHRIs' capacity. The tripartite partnership agreement between UNDP, UN Human Rights Office and GANHRI allows the optimisation of resources to support NHRIs by conducting capacity assessments and providing joint capacity support to NHRIs. It supports the strengthening of regional networks of NHRIs, including contributions to ENNHRI through technical and financial support for establishing its secretariat.

The Council of Europe also interacts with NHRIs in a range of ways. In 1994, just 1 year after the recognition of the NHRIs by the UN General Assembly through the Paris Principles, the very first meeting of European NHRIs took place under the auspices of the Council of Europe.<sup>82</sup>

The 1997 Committee of Ministers Recommendation<sup>83</sup>, among others, encouraged Council of Europe member states to establish an NHRI, and the number of NHRIs in member states has grown exponentially since the 1990s. At the beginning of 2020, 36 out of 47 member states of the Council of Europe had established an NHRI; of the 36 institutions, 28 hold an A-status accreditation, reflecting the recognition that strong and independent NHRIs are needed to achieve the realisation of human rights.

## NHRIs' engagement with UN human rights mechanisms

An analysis by GANHRI on the engagement of NHRIs in the EU Member States between 2016 and 2019 (for the UPR, 2012–2016, to include a full cycle for all EU countries) shows that these NHRIs regularly provide “parallel reports” to the UN treaty bodies in preparation for the examination of a country's human rights situation. During the period, accredited NHRIs in the EU made submissions in relation to 60 assessments of EU Member States under the eight relevant treaty bodies. Submissions were made in about two thirds of the opportunities NHRIs had in the period. This amounts to almost 20 reports per year on average, for the period. Reports to the treaty bodies dealing with the rights of people with disabilities and the torture convention were most frequent. Comparing this level of engagement with the global level, it is slightly higher for the EU, at about 60 % for all UN Member States (compared with the report to the UN General Assembly, **A/74/226**, 25 July 2019, paragraph 73). In addition, some NHRIs also provided briefings to preparatory sessions of treaty bodies.

More than half of the accredited NHRIs from the EU submitted reports to the Human Rights Council's UPR when their country was under review. This is slightly higher than the global level, compared with data from 2018–2019 (compared with the report to the UN General Assembly, **A/74/226**, 25 July 2019, Annex II).

*Information based on an analysis by GANHRI, 13 September 2019.*

The adoption in 2019 by the Venice Commission (formally the European Commission for Democracy through Law) – an advisory body of the Council of Europe, of the Venice Principles contributes to the promotion of human rights and the rule of law. The Venice Principles recall in the preamble, that ombuds institutions act independently not only against maladministration (historically the core function) but also against alleged violations of human rights and fundamental freedoms. The preamble also recalls the importance of national and international cooperation between ombuds institutions and similar institutions, such as NHRIs.

Most recently the Council of Europe also revised the Recommendation on the development of the ombuds institution.<sup>84</sup> The revised recommendation, adopted in 2019, makes reference to the Paris Principles and is explicit with regard to the importance of national and international cooperation of ombuds and similar institutions and has extensively emphasised the need for cooperation and dialogue with NHRIs.<sup>85</sup>

The 2018 Copenhagen Declaration, adopted by a high-level conference meeting in Copenhagen on the initiative of the Danish chairmanship of the Committee of Ministers of the Council of Europe, stresses the important role of NHRIs in the implementation of the European Convention on Human Rights.<sup>86</sup> The NHRIs can contribute to the Committee of Ministers in their monitoring of how judgments by the European Court of Human Rights are implemented.<sup>87</sup> NHRIs can also seek to intervene as third parties before the European Court of Human Rights.<sup>88</sup>

The mandate of the Commissioner for Human Rights of the Council of Europe specifically envisages the facilitation of activities by “national ombudsmen or similar institutions in the field of human rights” and allows the Commissioner to act on any information from such institutions that is relevant to his or her functions.<sup>89</sup> The commissioner regularly meets representatives of NHRIs and of other national human rights bodies; uses information provided by them when preparing country visits and in subsequent reports; and organises exchanges of views on important current topics. The commissioner also comments on the situation of NHRIs in specific countries and the need to establish them when they do not yet exist.<sup>90</sup>

The Commissioner for Human Rights of the Council of Europe issued a human rights comment on NHRIs in 2018, with detailed recommendations to states and NHRIs.<sup>91</sup>

All monitoring bodies of the Council of Europe commonly interact with NHRIs when conducting country monitoring. As an example, the Lanzarote Convention on protection of children against sexual exploitation and sexual abuse includes a requirement (Article 10(2)(a)) for parties to have an independent institution for the promotion and protection of the rights of the child, many of which are NHRIs.<sup>92</sup>

Since 2001, ENNHRI (at the time known as the European Group of NHRIs) has had observer status on the Council of Europe Steering Committee on Human Rights and contributes to key human rights issues, such as the rule of law, civic space, business and human rights and migration.<sup>93</sup> ENNHRI has a similar observer status on the Council of Europe Ad hoc Committee on Artificial Intelligence (CAHAI) in the recently established Steering Committee on Anti-Discrimination, Diversity and Inclusion (CDADI).<sup>94</sup>

Other parts of the Council of Europe also engage with NHRIs, for example the Parliamentary Assembly, which makes resolutions such as “Ombudsman institutions in Europe – The need for a set of common standards”, which also relates to NHRIs to some extent.<sup>95</sup> Similarly, the Congress of Local and Regional Authorities of the Council of Europe has, by way of example, a resolution on ombudspersons and regional authorities.<sup>96</sup> The secretariat of the Council of Europe has also dedicated resources to NHRIs.<sup>97</sup> The OSCE supports and engages with NHRIs in various ways.<sup>98</sup> A case in point is the ODIHR-ENNHRI “NHRI Academy”. This annual event, organised in partnership with ENNHRI, and in 2020 in partnership with FRA, aims to increase the capacity of NHRIs.<sup>99</sup>





## ENDNOTES

- <sup>1</sup> GANHRI (2018), **SCA General Observations**, GO 1.2.
- <sup>2</sup> GANHRI (2018), **SCA General Observations**, GO 1.2.
- <sup>3</sup> Keynote address by Dr Kirsten Roberts Lyer, 'The importance of NHRIs', NHRIs Experts Meeting, Vienna, 25–27 June 2019.
- <sup>4</sup> GANHRI (2018), **SCA General Observations**, GO 1.2.
- <sup>5</sup> Council of the European Union (2019), **Council Conclusions on the Charter of Fundamental Rights after 10 years: State of play and future work**, p. 11.
- <sup>6</sup> FRA (2018), **Challenges facing civil society organisations working on human rights in the EU**, Luxembourg, Publications Office, pp. 7–8.
- <sup>7</sup> *Ibid*, p. 7.
- <sup>8</sup> UN General Assembly (2018), A/RES/72/181, **National Institutions for the promotion and protection of human rights**, 29 January, para. 11.
- <sup>9</sup> UN Human Rights Council (2019), **A/HRC/42/30**, 9 September, para. 71, p. 14, pp. 34–35.
- <sup>10</sup> ENNHRI (2016), **Guidelines on ENNHRI support to NHRIs under threat**, 2016.
- <sup>11</sup> ENNHRI (2019), **NHRIs under threat – News**.
- <sup>12</sup> FRA's consultation with NHRIs, 2019. Some NHRIs did not respond to questions concerning harassment, threats or physical attacks experienced by their staff or institutions as a whole. Therefore, in this section, the total number of NHRIs' responses varies, as indicated in the text.
- <sup>13</sup> FRA (2012), **Handbook on the establishment and accreditation of National Human Rights Institutions in the European Union**, Luxembourg, Publications Office, p. 29.
- <sup>14</sup> Council of Europe, Venice Commission (2019), **Principles on the protection and promotion of the Ombudsman institution** (Venice Principles), Opinion No. 897/2017, 3 May.
- <sup>15</sup> European Commission, **Recommendation on standards for Equality Bodies**, C(2018)3850 final, 22 June 2018.
- <sup>16</sup> FRA (2018), **Handbook on European data protection law – 2018 edition**, Vienna, FRA, p. 191.
- <sup>17</sup> Court of Justice of the European Union (CJEU), C-518/07, *Commission v. Germany*, 9 March 2010; C-614/10, *Commission v. Austria*, 16 October 2012; and C-288/12, *Commission v. Hungary*, 8 April 2014. See also FRA (2018), **Handbook on European data protection law – 2018 edition**, Vienna, FRA, pp. 191 ff.
- <sup>18</sup> Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of data and on the free movement of such data and repealing Directive 95/46/EC (*General Data Protection Regulation*).
- <sup>19</sup> GANHRI (2018), **SCA General Observations**, p. 5.
- <sup>20</sup> GANHRI (2018), **SCA General Observations**, GO 1.7.
- <sup>21</sup> GANHRI (2018), **SCA General Observations**, GO 1.1.
- <sup>22</sup> GANHRI (2018), **SCA General Observations**, GO 1.8.
- <sup>23</sup> GANHRI (2018), **SCA General Observations**, GO 2.2.
- <sup>24</sup> GANHRI (2018), **SCA General Observations**, GO 2.3.
- <sup>25</sup> SCA GO 2.3 also specifies the context in which, and the process by which, these protections may be lifted (GANHRI (2018), **SCA General Observations**, GO 2.3). With regard to ombuds institutions specifically, see Council of Europe, Venice Commission (2019), **Venice Principles**, p. 6.
- <sup>26</sup> In Czechia, functional immunity covers only criminal matters.
- <sup>27</sup> SCA GO 2.3 recognises "that in some national contexts, functional immunity is not part of the legal tradition and it may therefore be unrealistic or inappropriate for the NHRI to request that formal legal provisions be adopted". In the context of accreditation under these "exceptional circumstances", the NHRI in question "should provide sufficient information to explain why this is the case given its particular national context" (GANHRI (2018), **SCA General Observations**, GO 2.3).
- <sup>28</sup> The Paris Principles make this abundantly clear. They state that "The composition of the national institution and the appointment of its members [...] shall be established in accordance with a procedure which affords all necessary guarantees to ensure the pluralist representation of the social forces (of civilian society) involved in the protection and promotion of human rights." The principles explicitly encourage ensuring representation of non-governmental organisations engaged in human rights issues or trends in philosophical or religious thought, universities and qualified experts, parliament, and, albeit exclusively in an advisory capacity, government departments (GANHRI (2018), **SCA General Observations**, GO 1.7.)
- <sup>29</sup> GANHRI (2018), **SCA General Observations**, GO 1.7.
- <sup>30</sup> *Ibid*.
- <sup>31</sup> According to the SCA's general observations, "adequate funding by the State" entails at a minimum the provision of "funds for premises which are accessible to the wider community, including for persons with disabilities" which at times "may require that offices are not co-located with other government agencies";

“salaries and benefits awarded to its staff comparable to those of civil servants performing similar tasks in other independent institutions of the State; [...] remuneration of members of its decision-making body (where appropriate); [...] well-functioning communications systems including telephone and internet; a sufficient amount of resources for mandated activities”. Indeed the SCA general observations explicitly state that, where additional responsibilities are delegated to the NHRI, “additional financial resources should be provided to enable it to assume the responsibilities of discharging these functions” (GANHRI (2018), **SCA General Observations**, GO 1.10.)

- <sup>32</sup> GANHRI (2018), **SCA General Observations**, GO 1.10.
- <sup>33</sup> Council of Europe, Venice Commission (2019), **Venice Principles**, para. 21.
- <sup>34</sup> GANHRI SCA (2019), **Report and recommendations of the session of the Sub-Committee on Accreditation (SCA)**, March, p. 9.
- <sup>35</sup> GANHRI SCA (2019), **Report and recommendations of the session of the Sub-Committee on Accreditation (SCA)**, March, p. 9.
- <sup>36</sup> GANHRI (2018), **SCA General Observations**, GO 1.10, and **Venice Principles**, para. 21, p. 5.
- <sup>37</sup> See **International Budget Partnership** for information concerning open budget review.
- <sup>38</sup> Council of Europe Venice Commission (2019), **Venice Principles**, p. 6; **Commission Recommendation (EU) 2018/951 of 22 June 2018 on standards for equality bodies**, OJ 2018 L 164, 1.2.2(2).
- <sup>39</sup> GANHRI (2018), **SCA General Observations**, GO 2.4.
- <sup>40</sup> The decrease in the staff currently employed does not mean a decrease in the number of available posts. Moreover, as of February 2020 the number of the staff actually employed by the Hungarian NHRI was expected to increase because the Independent Police Complaints Board was expected to merge into its institution.
- <sup>41</sup> GANHRI (2018), **SCA General Observations**, GO 1.2.
- <sup>42</sup> UN General Assembly (1993), **Paris Principles**, ‘Competence and responsibilities’, paras 3(a), 3(b), 3(c) and 3(d); see also GANHRI (2018), **SCA General Observations**, GOs 1.2 and 1.5.
- <sup>43</sup> GANHRI (2018), **SCA General Observations**, GO 1.6.
- <sup>44</sup> UN Human Rights Council (2018), A/HRC/38/25, **Contribution of parliaments to the work of the Human Rights Council and its universal periodic review**, 17 May.
- <sup>45</sup> UN General Assembly, **Paris Principles**, 1993, ‘Competence and responsibilities’, paras 3(a), 3(b) and 3(c).
- <sup>46</sup> Romania’s institutions were included as equivalent to NHRIs, even if they are not yet accredited.
- <sup>47</sup> UN General Assembly (2011), A/RES/66/137, **Declaration on Human Rights Education and Training**, Art. 4.
- <sup>48</sup> UN General Assembly (1993), **Paris Principles**, ‘Competence and responsibilities’, para. 3(f).
- <sup>49</sup> UN General Assembly (1993), **Paris Principles**, ‘Competence and responsibilities’, para. 3(g).
- <sup>50</sup> UN General Assembly (1993), **Paris Principles**, ‘Methods of operation’, para. (c).
- <sup>51</sup> GANHRI, **SCA General Observations**, 2018, GO 1.2.
- <sup>52</sup> GANHRI (2018), **SCA General Observations**, GO 1.4.
- <sup>53</sup> GANHRI (2018), **SCA General Observations**, GO 1.6.
- <sup>54</sup> GANHRI (2018), **SCA General Observations**, GO 1.2.
- <sup>55</sup> National preventive mechanisms under the Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment. See, for example, the Preliminary guidelines for the ongoing development of national preventive mechanisms, developed by the Sub-committee on Prevention of Torture and other Cruel, Inhuman or Degrading Treatment or Punishment, and contained in paras 24–29 of its first annual report (for the period February 2007 to March 2008); ENNHRI (2017), **Handbook on monitoring the human rights of older persons and long-term care**.
- <sup>56</sup> National Guarantor for the Rights of Persons Detained or Deprived of Liberty (2018), **Report on the monitoring carried out on the joint return operations (JRO) of Nigerian nationals organised by Italy and co-ordinated by Frontex (19 January 2018)**.
- <sup>57</sup> FRA (2016), **Handbook on European law relating to access to justice**, Luxembourg, Publications Office, p. 48.
- <sup>58</sup> FRA (2019), **Fundamental rights report 2019**, Luxembourg, Publications Office, p. 203.
- <sup>59</sup> GANHRI (2008), **Nairobi Declaration**, 24 October, paras. 19 and 33.
- <sup>60</sup> Council of Europe, Venice Commission (2019), **Venice Principles**, p. 5.
- <sup>61</sup> GANHRI (2018), **SCA General Observations**, GO 1.5.
- <sup>62</sup> In the context of this analysis, two NHRIs were not included for different reasons: Italy’s National Guarantor for the Rights of Persons Detained or Deprived of Liberty, because it is not an NHRI, and Malta’s NHRI because it has not yet been established.



- <sup>63</sup> Carver, R., (2014), **Measuring the impact and development effectiveness of national human rights institutions: a proposed framework for evaluation**, Bratislava, UN Development Programme Regional Centre.
- <sup>64</sup> UK Equality and Human Rights Commission (2019), **Impact report 2018-2019: Tangibly changing lives through our legal powers**.
- <sup>65</sup> Asian Forum for Human Rights and Development (2018), **2018 ANNI Report on the performance and establishment of national human rights institutions in Asia**.
- <sup>66</sup> UN General Assembly (1993), **Paris Principles**, 'Methods of operation', para. (c).
- <sup>67</sup> GANHRI (2018), **SCA General Observations**, GO 1.6.
- <sup>68</sup> **Commission Recommendation (EU) 2018/951 of 22 June 2018 on standards for equality bodies**, OJ 2018 L 164, p. 7.
- <sup>69</sup> UN Human Rights Office, GANHRI and UNDP (2016), **Global principles for the capacity assessment of national human rights institutions**.
- <sup>70</sup> GANHRI, **Tripartite partnership for support to NHRIs**.
- <sup>71</sup> For recent examples of EU countries, see Poland (2016), Germany (2015), Slovakia (2015), the Netherlands (2014), and Austria, Finland, Ireland and Portugal (all 2012). See also the **Council of Europe's Commissioner for Human Rights' website** for a forthcoming report on Bulgaria.
- <sup>72</sup> OSCE-ODIHR (2029), **Opinion on the draft amendments to the Act on establishment of the Slovak National Centre for Human Rights**, Opinion-NR: NHRI-SVK/335/201821[JG].
- <sup>73</sup> Equinet has commissioned a paper on processes and indicators for measuring the impact of equality bodies (Equinet (2024), **Measuring the impact of equality bodies**.) For the full paper, see Crowley, N. (2013), **Processes and indicators for measuring the impact of equality bodies**, Equinet. **The list of indicators on standards for equality bodies' mandate** can be found on Equinet's website.
- <sup>74</sup> UN General Assembly (1993), **Paris Principles**, 'Competence and responsibilities', para. 3(e).
- <sup>75</sup> GANHRI (2018), **SCA General Observations**, GO 1.4.
- <sup>76</sup> UN Human Rights Council (2018), A/HRC/RES/39/17, **Resolution on national human rights institutions**, 28 September; UN General Assembly (2019), A/RES/74/156, **Resolution on national human rights institutions**, 18 December.
- <sup>77</sup> UN Human Rights Council (2017), **A/HRC/RES/35/32**, 11 July.
- <sup>78</sup> Chapter 1 of this report includes details on which mechanisms have called on which countries in this way.
- <sup>79</sup> UN Human Rights Council (2018), A/HRC/38/6, **Report of the Working Group on the Universal Periodic Review – Romania**, p. 12.
- <sup>80</sup> GANHRI (2016), **National Human Rights Institutions and United Nations Treaty Bodies**, p. 12; UN Committee on Enforced Disappearances (2014), **The relationship of the Committee on Enforced Disappearances with national human rights institutions CED/C/6**, 28 October; Roberts Lyer, K., 'National human rights institutions', in: Oberleitner, G. (ed.), *International human rights institutions, tribunals and courts*, **International Human Rights, Singapore, Springer**, pp. 13-14.
- <sup>81</sup> UN Human Rights Council (2018), A/HRC/RES39/17, **Resolution on national human rights institutions**, 28 September; UN General Assembly (2018), A/RES/74/156, **Resolution on national human rights institutions**, 18 December.
- <sup>82</sup> For institutional cooperation and support, see, for example, Council of Europe, **Support to Ombudsperson and anti-discrimination institutions (National Human Rights Institutions)**.
- <sup>83</sup> Council of Europe, Committee of Ministers (1997), **Recommendation (No. R(97)14) on the establishment of independent national institutions for promotion and protection of human rights**. The Steering Committee on Human Rights (CDDH) is currently undertaking a revision of the 1997 recommendation.
- <sup>84</sup> Council of Europe, Committee of Ministers (1985), **Recommendation (No. R(85)13)**.
- <sup>85</sup> Council of Europe, Committee of Ministers (2019), **Recommendation (CM/Rec(2019)6)**.
- <sup>86</sup> Council of Europe (2018), **Copenhagen Declaration**, para. 18.
- <sup>87</sup> Council of Europe (2017), **Rules of the Committee of Ministers for the supervision of the execution of judgments and of the terms of friendly settlements**, 18 January, Rule 9.
- <sup>88</sup> Under Art. 36(2) of the European Convention on Human Rights and Rule 44(3) of the Rules of Court.
- <sup>89</sup> Council of Europe, Committee of Ministers (1999), **Resolution (99)50 on the Council of Europe Commissioner for Human Rights**, 7 May, Arts 3(d) and 5(1).
- <sup>90</sup> See, for example, Commissioner for Human Rights of the Council of Europe (2018), **Report following visit to Estonia CommDH(2018)14**, pp. 25, 28.
- <sup>91</sup> Council of Europe, Commissioner for Human Rights (2018), **Paris Principles at 25: Strong National Human Rights Institutions needed more than ever**, 18 December.

- <sup>92</sup> All 30 countries covered by this study are parties to the convention, save Ireland (only signed in 2007). See Council of Europe, **Chart of signatures and ratifications of Treaty 201**.
- <sup>93</sup> Council of Europe, Steering Committee for Human Rights (CDDH) (2018), **Terms of Reference**, CDDH(2018)01, 8 January. See also CDDH-BU, **57th meeting, 8-9 February 2001**, CDDH-BU (2001), Appendix IV "Request for observer status from the Chair of the European Coordination Group for national institutions for the promotion and the protection of human rights". Engagement of ENNHRI predates its formal establishment. Observer status was first requested by Morten Kjaerum (then director of the Danish NHRI and chair of the European group of NHRIs) in 2000 and approved for the first time in 2001.
- <sup>94</sup> Council of Europe, Ad hoc committee on artificial intelligence (CAHAI) (2019), **Admission of observers to the CAHAI**, CAHAI (2019) 05, 30 October.
- <sup>95</sup> Council of Europe Parliamentary Assembly (2019), **Resolution 2301 (2019)**.
- <sup>96</sup> Council of Europe, Congress of Local and Regional Authorities (2011), **Resolution 327 (2011)**.
- <sup>97</sup> Council of Europe, **Support to Ombudsperson and anti-discrimination institutions (National Human Rights Institutions)**.
- <sup>98</sup> OSCE, **National Human Rights Institutions**.
- <sup>99</sup> OSCE, **NHRI Academy**.



# 3

## WAYS FORWARD: STRENGTHENING NHRIS IN THE EU FRAMEWORK

With the diverse landscape of NHRIs covered in Chapter 1 and challenges to their effectiveness in Chapter 2, this third chapter deals with more concrete opportunities for NHRIs to have more impact in the EU, on the 2030 Agenda for Sustainable Development and through new and reinforced powers.

### 3.1. POTENTIAL AT EU LEVEL

#### 3.1.1. Rule of law and other values in the EU treaties

There are significant roles for NHRIs in the context of the rule of law in the EU – not least in terms of monitoring. They “may contribute crucially to flag[ging] human rights issues during emergency times and assist citizens affected by emergency measures. They may therefore effectively complement parliamentary and judicial control.”<sup>1</sup> That national institutions play a significant role in the context of ensuring the rule of law, particularly in the EU, is also recognised in a variety of documents and statements. For instance, the Finnish EU Presidency in 2019 stressed that “[NHRIs], Equality Bodies, Ombuds institutions, professional and other networks, civil society, academia, citizens and media also play a crucial role. They should be more closely involved in order to create a Union of values for all”.<sup>2</sup> The role of NHRIs and equality bodies was also explicitly recognised by the Council of the EU: “They play a crucial role in the protection and promotion of fundamental rights and in ensuring compliance with the Charter”.<sup>3</sup> Given their role and relevance for rule of law-related challenges, NHRIs need to ensure that they engage with the human rights aspects of the rule of law – which are many and extensive – to be effective promoters and protectors of human rights, even in sensitive areas such as the rule of law. In fact, an independent, well-funded and effective NHRIs can be an indicator in itself of the state of the respect for the rule of law and human rights in a given country.

For instance, NHRIs could contribute to “Article 7 procedures” that seek to determine if “there is a clear risk of a serious breach by [Member States] of the values referred to in Article 2” (Article 7, Treaty on European Union). NHRIs could also be consulted in the fact-finding missions conducted by the European Economic and Social Committee’s Group on Fundamental Rights and the Rule of Law. There are also a number of infringement proceedings initiated by the European Commission against Member States, which have strong elements of the rule of law and fundamental rights, in which NHRIs could be asked to provide input, for instance by the European Commission.

The European Commission has strengthened its rule of law mechanism, with a “Rule of law review cycle” and an annual rule of law report. In relation to the latter, reference is made to “enhanced monitoring” still to be developed, “including in cooperation with national authorities”.<sup>4</sup> Here there is also a clear role for NHRIs, and the European Commission has requested ENNHRI and the NHRIs to contribute.<sup>5</sup> They could also have an important role in the follow-up to the annual rule of law report by triggering a genuine discussion at national

level, including in national parliaments. Moreover, they could contribute to raising awareness of the importance of the rule of law among citizens.

The European Parliament proposed in 2016 the establishment of an “EU mechanism on democracy, the rule of law and fundamental rights”<sup>6</sup> and has since reiterated the need for such an overall mechanism.<sup>7</sup> It recently reappointed a rule of law working group under the Committee on Civil Liberties, Justice and Home Affairs to continue its work under the broader title of “democracy, rule of law and fundamental rights monitoring group”.<sup>8</sup>

In its new strategic agenda for the EU 2019–2024, the European Council stresses that “[t]he rule of law and human rights, with its crucial role in all our democracies, is a key guarantor that these values are well protected; it must be fully respected by all Member States and the EU.” The strategic agenda also commits the EU’s institutions to “work in accordance with the spirit and the letter of the Treaties [by] respect[ing] the principles of democracy, rule of law, transparency and equality between citizens and between Member States. Good governance also depends on the rigorous implementation and enforcement of agreed policies and rules, which must be closely monitored.”<sup>9</sup>

### 3.1.1. EU law and the EU Charter of Fundamental Rights

Closely connected to the EU’s values is the EU Charter of Fundamental Rights. In fact, “Human rights as recognised in the Charter cover most of the values of Article 2 of the Treaty on European Union, including rule of law and democracy.”<sup>10</sup> Binding and part of the EU’s primary law, the EU Charter of Fundamental Rights’ field of application is – in contrast to other instruments such as the European Convention on Human Rights – limited, as it is only binding for the Member States when they are acting within the scope of EU law.<sup>11</sup> Given that a significant part of national law and policy making is directly or indirectly influenced by EU law, a significant part of national norms have to conform with the Charter, as they would otherwise run the risk of being declared null and void or incorrectly applied in a given case.



## Building capacity on the EU Charter of Fundamental Rights

To raise awareness of the Charter at national level, FRA has developed various tools, and in cooperation with NHRIs and equality bodies, organised EU Charter capacity building targeted at civil servants and civil society. \* Since 2017, it has also held training sessions, in partnership with ENNHRI and Equinet. \*\*

\* See FRA, [Resource material on the EU Charter of Fundamental Rights](#).

\*\* FRA (2018), [FRA training for NHRI staff on EU’s Fundamental Rights Charter](#), 2018; FRA (2020), [FRA-Equinet Joint Workshop on the EU Charter of Fundamental Rights](#).

**FIGURE 14: NHRIS' USE OF THE EU CHARTER OF FUNDAMENTAL RIGHTS**

A-status																																			
B-status																																			
No accredited institution	Austria	Belgium	Bulgaria – Commission	Bulgaria – Ombud	Croatia	Cyprus	Czechia	Denmark	Estonia	Finland	France	Germany	Greece	Hungary	Ireland	Italy	Latvia	Lithuania	Luxembourg	Malta	Netherlands	Poland	Portugal	Romania – Institute	Romania – Ombud	Slovakia	Slovenia	Spain	Sweden	United Kingdom – E&W	United Kingdom – SCT	United Kingdom – NI	North Macedonia	Serbia	
Using the Charter																																			

Source: FRA, 2020 [based on 33 responses to questionnaire sent to 34 NHRIs]

Notes:  
*E&W, England and Wales; NI, Northern Ireland; SCT, Scotland. The specific question asked was 'Does the body consider the Charter of Fundamental Rights of the EU when exercising its competences?' Some responders mentioned consulting the Charter in a limited capacity or lacking the resources to make greater use of it, but most treated it as a 'Yes' or 'No' question.*

The EU Charter of Fundamental Rights is increasingly used by courts and other actors in the Member States.<sup>12</sup> Non-judicial bodies, including the NHRIs, appear to acknowledge that they could still make greater use of the Charter.<sup>13</sup> Only four of 33 NHRIs covered by this report (Figure 14) are already using the Charter systematically, whereas the others indicate that they are not yet making full use of its potential. Nevertheless, the number of NHRIs that use the Charter when monitoring human rights, reporting, providing advice or education on human rights, awareness raising or handling complaints and in litigation has grown over the years.<sup>14</sup>

With the exception of a proposed draft law in Sweden (Article 1(3)), the documents forming the legal basis of the NHRIs within the EU do not mention the Charter explicitly.<sup>15</sup> Only seven NHRIs reference EU law more generally in their legal bases. Whereas this formal absence of the Charter in the legal construction of NHRIs is not a surprise, given the fact that many NHRIs were established long before the Charter entered into force, this may create a situation in which the Charter and its relevance are easily overlooked.

When asked to identify the main hindrances to making more use of the Charter, 18 of the NHRIs covered by this report consider its limited scope a disincentive. Nearly as many (16) stated that the lack of understanding of the Charter's added value, compared with international instruments such as the European Convention on Human Rights or national legal sources (13), is a reason for low levels of Charter use, whereas only four NHRIs indicated that it would be restrictions in their mandate that would prevent them from making more use of the Charter.

While recognising that NHRIs do not yet make use of the Charter's full potential, they acknowledge that overall in their legal and political systems its use appears to be increasing.<sup>16</sup> Among the NHRIs interviewed, 18 said they felt that the role of the EU Charter of Fundamental Rights has increased before the national courts over the last 10 years, while 14 also identified such a trend in the area of law making, 11 in the area of policy making and seven in the domain of political and public debate. When asked whether the role of the Charter has increased over the last 10 years in the work of the NHRI itself, among NHRIs that responded to this question 16 said that the role has increased, whereas 13 denied such an increase in the Charter's relevance for their work.

When asked whether they use the Charter most in education or training, in awareness raising, in processing complaints, when advising governments, in litigation before courts or in mediation (Figure 15), the NHRI's advisory work was mentioned most frequently (19 times) as the most relevant area, followed by awareness raising (16), and education or training purposes (14). This might reflect the fact that, in the EU's legal system, national governments and parliament are in need of advice to fulfil their responsibility to guarantee that national legislation, implementing EU legislation, conforms with the

**FIGURE 15: AREAS IN WHICH NHRIS USE THE EU CHARTER OF FUNDAMENTAL RIGHTS**

	Austria	Belgium	Bulgaria – Commission	Bulgaria – Ombud	Croatia	Cyprus	Czechia	Denmark	Estonia	Finland	France	Germany	Greece	Hungary	Ireland	Italy	Latvia	Lithuania	Luxembourg	Malta	Netherlands	Poland	Portugal	Romania – Institute	Romania – Ombud	Slovakia	Slovenia	Spain	Sweden	United Kingdom – E&W	United Kingdom – SCT	United Kingdom – NI	North Macedonia	Serbia		
A-status																																				
B-status																																				
No accredited institution																																				
Education / training																																				
Awareness raising																																				
Processing complaints																																				
Advising governments																																				
Litigation before courts																																				
Mediation																																				
Others																																				

Source: FRA, 2020 [based on 33 responses to questionnaire sent to 34 NHRIs]

Charter. Given that nearly all EU legislation is adopted into national law and implemented by national authorities, the Charter is a key standard for the work of national parliaments and governments. Despite the fact that the majority of national law and policy making is directly or indirectly linked to EU law, national procedural norms on impact assessment and/or legal scrutiny tend not to mention EU law, let alone the Charter, thereby increasing the risk that the Charter is overlooked by national law and policy makers. FRA has called for revisions of the rules to ensure that the Charter is taken into consideration.<sup>17</sup> However, the EU legal system would benefit from a more pronounced role for NHRIs in the context of the Charter.

NHRIs in EU Member States have a special responsibility to recall the obligation of the legislature and the state administration to make sure that all law and policy making falling within the scope of EU law remains fully compliant with the EU Charter of Fundamental Rights. In a way they are the natural “advocates of the Charter” at national and local levels. Admittedly, the question of whether a concrete proposal of national or local law and policy making falls within the scope of EU law is not always easy to determine but tools are available for easily accessing the rich case-law developed by the Court of Justice of the European Union.<sup>18</sup>

The European Commission’s annual report on the application of the Charter highlights the roles of NHRIs and equality bodies in raising awareness of the “Charter rights and ensuring their effective implementation on the ground”.<sup>19</sup> The Council Conclusions adopted on the occasion of the 10th anniversary of the Charter, in October 2019, emphasise the “necessity of safeguarding an enabling environment for independent national human rights institutions, Equality Bodies and other human rights mechanisms”. The Conclusions also note that NHRIs “play a crucial role in the protection and promotion of fundamental rights and in ensuring compliance with the Charter”.<sup>20</sup> There is a very clear consensus that NHRIs are key agents to ensure a vibrant implementation and application of the Charter at national and local levels. As an example of a concrete measure, the Government of Finland issued a memorandum in 2019 on the interpretation and application of the Charter to make it better known among civil servants and to promote and mainstream its active use across the administration by means of training sessions on the content and practical use of the Charter.<sup>21</sup> Such guidance could be developed by NHRIs for themselves. The Polish ombuds institution has referenced the EU Charter in its litigation work: (1) Article 7 (respect for privacy and family life)

▲ Notes: E&W, England and Wales; NI, Northern Ireland; SCT, Scotland. NHRIs were asked to select a maximum of three areas where they most frequently applied the Charter. However, some opted to select more areas. All answers were recorded to avoid making assumptions about which three areas may be the most relevant.



in a request to the Constitutional Court regarding the medical information system (case number K 33/13); (2) Article 8 (protection of personal data) in a general address to the Minister of Health in the context of sensitive data in Poland's medical information system; (3) Article 12 (freedom of assembly and association) in an application to the Constitutional Court regarding the Law on Assemblies (case number K 44/12); (4) Article 20 (equality) in the context of a case before the Constitutional Court concerning the Polish VAT Act and the higher taxation of e-books in relation to traditional books (case currently pending before the Court of Justice of the European Union, case C-390/15); (5) Article 21 (non-discrimination) in a general address to the Minister of Justice regarding the dismissal of notaries at the age of 70; (6) Article 25 (rights of the elderly) and Article 26 (integration of persons with disabilities) in the commissioner's report on the accessibility of public institutions' websites for disabled people.

### **3.1.3. Fundamental rights conditionality for accessing EU funds and the role of NHRIs**

The requirement to take the EU Charter of Fundamental Rights into consideration when allocating EU funds is part of the values of the EU. Such fundamental rights-relevant requirements for Member States to access funds are in place for the programming period 2014–2020.<sup>22</sup> These are known as “conditionalities”, verified before EU programmes are implemented (*ex ante* conditionalities). They relate mainly to Member States having the administrative capacity to implement EU anti-discrimination and gender equality law and policy and also to respect the CRPD. In addition, the 2013 Common Provisions Regulation requires national bodies responsible for the promotion of gender equality and non-discrimination to be involved in committees monitoring the implementation of EU-funded programmes – given the strong focus on gender equality and non-discrimination.<sup>23</sup>

The fundamental rights conditionality system for accessing EU funding is enhanced under the proposal for the new Common Provisions Regulation on major EU funds, including, for example, the European Social Fund Plus (ESF+), the European Regional Development Fund (ERDF) and the Asylum and Migration Fund (AMF).<sup>24</sup> The new system goes beyond the non-discrimination and gender equality dimension to include the whole EU Charter of Fundamental Rights as a horizontal “enabling condition” for accessing EU funds – requiring its “effective application and implementation”. The proposed Common Provisions Regulation also reiterates among the enabling conditions the “implementation and application of the [CRPD] in accordance with Council Decision 2010/48/EC”.

Another significant difference between the current and the new fundamental rights conditionality system is that all horizontal enabling conditions, including the condition on compliance with the Charter, should be monitored and applied throughout the new programming period – not solely *ex ante*. This means, in practice, that not complying with the Charter could affect payments to Member States at any stage in the implementation of EU-funded programmes. In addition, the conditionalities would apply automatically to all programmes and specific policy objectives covered by the new Common Provisions Regulation.

Effective monitoring of enabling conditions for accessing EU funds is not just a matter of formalities but reflects the need to ensure that EU funds are spent in accordance with both the EU legal framework and EU policy priorities and objectives. In this context, the monitoring committees of EU-funded programmes should have a decisive role, explicitly including in their function the fulfilment of the enabling conditions throughout the programming period.

With respect to the EU Charter of Fundamental Rights, the draft revised Common Provisions Regulation also introduces an important new element

from an NHRI perspective on the composition of monitoring committees. It requires Member States to include in the committees “bodies promoting social inclusion, fundamental rights, rights of persons with disabilities, gender equality and non-discrimination” – as partners and taking part in monitoring of disbursement of funds (Article 6, on composition, also Article 34). It is worth noting that, in contrast to the current regulation, the participation – of bodies such as NHRIs – would not be merely of an advisory nature but they would have voting rights and influence decision making.

The potential role of NHRIs in contributing to monitoring Charter compliance of EU-funded programmes – and in preparing Charter-compliant EU-funded national programmes – is an opportunity for NHRIs to promote and realise fundamental rights in the EU and in individual Member States. At the same time, involving the NHRIs in this process would increase their visibility and importance among national stakeholders and in wider society and increase their tangible impact on the human rights situation in their countries. In other words, such involvement has the potential to strengthen the capacity of NHRIs to meet the needs on the ground and strengthen their effectiveness in carrying out their core mandate to promote and protect fundamental human rights.

FRA asked the NHRIs whether they were involved in the current programming period in monitoring committees of EU-funded programmes. With the exception of the NHRIs from Croatia, Cyprus and Sweden, which also perform tasks as equality bodies, all other participants in the study replied negatively. That said, many NHRIs pointed out that involving them in the process of designing and monitoring implementation of EU-funded programmes might also pose risks that need to be addressed. One concern is the risk of facing pressure to hastily examine compliance with the Charter to meet financial objectives or that their input would not be accepted by other members of the monitoring committees and their opinions outvoted. Another concern among NHRIs is whether they have the resources and the expertise to carry out such a task properly. A third issue is the risk that such a role would consume too much of their capacity, compromising the NHRIs regular monitoring work.

These risks have to be properly addressed to achieve a successful implementation of the draft revised Common Provisions Regulation. In that respect, it is necessary to strengthen the independence safeguards of the NHRIs, for example by securing their budget and financial resources against government interference. In addition, Member States will need to ensure that NHRIs involved in the implementation of EU-funded programmes have sufficient human resources and the necessary expertise and capacity. Such involvement should not undermine their capacity to carry out their core mandate and other functions.

Furthermore, the experiences of NHRIs that have served as members in monitoring committees of EU-funded programmes – under their equality body mandate – should be taken into consideration. Lessons learned could be shared with other NHRIs and help them make suggestions to national authorities with a view to establishing effective mechanisms for ensuring compliance with human and fundamental rights-relevant conditions of accessing EU funds.

## NHRIs' involvement in monitoring of funds

Croatia's NHRI, acting in its capacity as an equality body, has been a member of the Monitoring Committee of the operational programmes Efficient Human Resources 2014-2020 and Competitiveness and Cohesion 2014-2020. The NHRI has an advisory role in the committees and does not have the right to vote.

This role gives the ombuds institution the opportunity to share information and to learn about the priorities of its stakeholders. At the same time, it is challenging because the institution does not have a solid working knowledge of the implementation of EU-funded programmes, and very often the committees' discussions are substantive.

As part of meeting the conditionality criteria on anti-discrimination, the ombuds institution delivers, to all civil servants working on EU funds, short courses on anti-discrimination legislation. Albeit very short training sessions (two-hour programme) of an introductory nature, these courses provide an opportunity to raise civil servants' awareness of their obligations under the Anti-discrimination Act and the main challenges some vulnerable groups are facing (e.g. Roma, national minorities, older people,).

### 3.1.4. NHRIs' advice on EU policy- and law-making

NHRIs could play an important role in impact assessments and inter-institutional agreements on better law making at an EU level.<sup>25</sup> EU institutions and bodies dealing with policies and legislation are increasingly consulting ENNHRI, but there is still no formalised, structured or systematic interaction or engagement of individual NHRIs with the EU institutions.

In response to a question on cooperation with EU institutions, in addition to interacting with FRA, 28 NHRIs highlighted their cooperation with other EU institutions, such as the European Parliament or Council of the European Union, 16 mentioned engagement with the European Commission and eight mentioned "other EU agencies" (including, FRA, Frontex and the European Institute for Gender Equality).

Currently, the main means for the EU to ensure compatibility of legislative proposals with fundamental rights is impact assessment.<sup>26</sup> The impact assessment process, a standard practice since 2002, is about gathering and analysing evidence to support policy making – typically in relation to draft legislation. It verifies the existence of a problem, identifies its underlying causes, assesses whether EU action is needed and analyses the advantages and disadvantages of available solutions.<sup>27</sup> In 2009 and 2011, successive Commission staff working papers made the role of fundamental rights in impact assessments increasingly explicit.<sup>28</sup> The EU Charter of Fundamental Rights should be used to assess fundamental rights in the impact assessments.<sup>29</sup> The European Convention of Human Rights and UN human rights conventions should also be taken into account.<sup>30</sup>

As far as fundamental rights are concerned, NHRIs are well equipped to advise the European Commission on national implementation of international and regional human rights standards. Recent Council conclusions emphasise the importance of NHRIs in the EU by stating that the institutions are "play[ing] a crucial role in the protection and promotion of fundamental rights and in ensuring compliance with the Charter".<sup>31</sup> One possibility would be to give (Paris Principles-compliant) NHRIs a privileged role during consultation with stakeholders in the preparation of impact assessments. The European Commission has developed an assessment methodology based on a fundamental rights checklist, which should be used by all Commission departments.

Only a few NHRIs (seven) stated that they have so far engaged in direct exchange and cooperation with the European Parliament, addressing letters on a variety of issues or receiving or conducting visits. At the same time, the European Parliament has recognised how NHRIs could add value in various areas in internal and external EU action in a number of past resolutions.<sup>32</sup> In the context of internal EU action, the following areas were highlighted:

- establishing an EU mechanism on democracy, the rule of law and fundamental rights (DRF). ENNHRI proposed a role for NHRIs on the DRF expert panel<sup>33</sup>;
- managing and regulating EU funds (ESF+<sup>34</sup>, AMF<sup>35</sup>, Protection of the Union's budget<sup>36</sup>; NHRIs' participation in programming, delivering and evaluation, and partnership was encouraged;
- making recommendations on the fundamental rights situation in the EU (between 2004 and 2015), including recommendations on enhanced participation, adequate resources and the establishment of NHRIs<sup>37</sup>;
- the EU's implementation of the CRPD<sup>38</sup>;
- cooperating with FRA on its establishment and inclusion on its management board (in the same period).<sup>39</sup>

Further EU processes that could be considered for regular NHRIs' contribution from NHRIs include the following:

- the European Parliament's annual resolution on the situation of fundamental rights in the EU;
- the European Commission's annual report on the application of the EU Charter of Fundamental Rights;
- advice to EU legislators when preparing and implementing policies and legislation in areas where NHRIs are active;
- raising arguments relevant to the EU Charter of Fundamental Rights when Member States are adopting EU legislation into national law.



### 3.2. 2030 AGENDA AND NHRIS AS INDICATORS UNDER THE SUSTAINABLE DEVELOPMENT GOALS

The UN Agenda for Sustainable Development 2030 and its SDGs is “a global plan for action for people, planet and prosperity”, under the pledge to “leave no one behind”. It is also a plan grounded in international commitments to human rights.<sup>40</sup> While the EU and Member States are committed to implementing the agenda, the NHRIs are envisaged as partners in pursuing compliance with these commitments.<sup>41</sup>

Beyond engaging NHRIs in processes relevant for implementing the SDGs, states committed to supporting their NHRIs so that they meet the requirements of the Paris Principles. This is reflected in the adoption of the global SDG indicator on the “[e]xistence of independent national human rights institutions in compliance with the Paris Principles” (SDG indicator 16.A.1). This indicator is used to assess the target on strengthening national institutions (SDG target 16.A) as part of implementing Goal 16 on promoting peace, justice and strong institutions.

Consequently, not taking the appropriate steps to establish NHRIs where they do not exist, or to support their efforts to acquire and/or maintain A-status, is a failure to implement the SDGs. It is appropriate to recall that 17 of the 28 EU Member States covered by this report have an A-status NHRI, and some other countries are working towards achieving A-status (for more detail, see Chapter 1).

The NHRI roles presented cover a diverse spectrum of functions: from advising governments on approaches to SDG data and monitoring, to cooperation with civil society to capacity-building initiatives across regional NHRI networks.<sup>42</sup> The Mérida Declaration further details the potential role of the NHRIs in this area.<sup>43</sup>

#### 2015 Mérida Declaration

In October 2015, GANHRI (then called the International Coordinating Committee of NHRIs) adopted in Mérida, Mexico, a declaration on the role of NHRIs in implementing the 2030 Agenda and the SDGs. According to the declaration, NHRIs should “provide advice to national and local governments, rights-holders and other actors, to promote a human rights-based approach to implementation and measurement of the Agenda, including by assessing the impact of laws, policies, programmes, national development plans, administrative practices and budgets” (paragraph 17(2)).

The **2015 Mérida Declaration** further highlights the role of NHRIs in promoting a human rights-based approach to implementing and measuring progress on the 2030 agenda and SDGs; contributing to shaping indicators and data collection, for example in collaboration with national statistical offices; monitoring implementation, through innovative approaches to data collection covering vulnerable and marginalised groups; reporting at the national and international levels on implementation; conducting enquiries and investigations of alleged rights violations in the context of developing and implementing the SDGs; and facilitating access to justice, redress and remedy for those experiencing abuse and violation of their rights in the process of development.

*GANHRI (2015), Mérida Declaration on the role of national human rights institution in implementing the 2030 Agenda for Sustainable Development, 10 October.*

FRA asked NHRIs whether they consider the global 2030 agenda and the SDGs when exercising their competences. Twenty NHRIs stated that they do so, but very few referred to a regular and structured involvement in implementing and monitoring the SDGs at their respective national level. These answers confirm FRA's previous conclusion that most NHRIs, equality bodies and ombuds institutions are not yet very active in this field.<sup>44</sup> At the same time, their answers suggest that national authorities rarely involve them in SDG-related processes and structures, such as those responsible for designing, implementing and monitoring SDGs. Moreover, they rarely consult NHRIs when they prepare submissions to the UN voluntary national review process, a mechanism for reporting on the implementation of SDGs.

### **Danish Institute for Human Rights: education for professionals linked to SDGs**

Denmark's NHRI, the Danish Institute for Human Rights, works with state and non-state actors, both locally and at international level, to see human rights education consistently incorporated in education programmes and to provide training and education. The institute focuses on the education of students, but also works with teachers, police officers, healthcare practitioners and others. It has also developed a "learning hub", which provides educational content in six languages for free.

In its international work, the NHRI also trains development agencies and state institutions on human rights and on adopting a human rights-based approach to implementing the SDGs. \*

The NHRI is a member of a broad platform established by the national statistical office with the aim of ensuring relevant and reliable data and the best possible statistical analysis to aid the implementation of the SDGs in Denmark. The NHRI's engagement in this partnership contributes to promoting a human rights-based approach to data and statistical analysis, including disaggregation of data to capture the situation of vulnerable groups with a view to leaving no one behind. \*\*

\* Danish Institute for Human Rights, **Human rights education**.

\*\* Statistics Denmark, **SDG partnership engaging DIHR**.

Mainstreaming SDGs in their work and analysing their data to fit into the SDG framework and processes could also strengthen the relevance and increase the added value of NHRIs' reporting to international organisations and under the European Semester, which mainstreams implementing the SDGs. At the same time, national authorities responsible for designing, coordinating and monitoring national strategies, policies and action plans to implement the SDGs need to recognise that NHRIs have the mandate, functions and powers, as well as the experience of the human rights situation on the ground, to contribute meaningfully to achieving the SDGs.

NHRIs' experience shows that national authorities may consult NHRIs when preparing or reviewing their SDG strategies, policies and action plans (e.g. Romania); include NHRIs in bodies that observe SDG implementation (Slovakia); include them in stakeholder consultations when preparing their voluntary national reporting, issuing general opinions, highlighting the human rights standards and the most important recommendations for the SDGs (Hungary); or establishing collaboration between statistical offices and NHRIs (Denmark, Hungary and Scotland).<sup>45</sup>

NHRIs can also take their own initiatives to support compliance with the SDGs. For example, they can address human rights-related recommendations to governments. They can also compile yearly reports on the implementation of the SDGs in their country, as the Institute for Human Rights in the Netherlands



did in 2019.<sup>46</sup> Germany's Institute of Human Rights, moreover, "has published an analysis comparing SDGs with recommendations received by Germany from UN human rights treaty bodies over the past few years".<sup>47</sup>

### 3.3. REINFORCING POWERS AT NATIONAL LEVEL

Among the opportunities to strengthen NHRIs are increasing powers but also ensuring that they have the powers they need to undertake their functions effectively. Some powers may never be used, but the existence of such powers is essential for an NHRI to be effective in its monitoring activities.

#### 3.3.1. NHRIs' intervention in court proceedings and *amicus curiae* submissions

The Paris Principles do not specify any powers related to NHRIs' potential to intervene in court proceedings. This could be a powerful tool to ensure that the views of an NHRI are being seriously considered in key cases before the



courts. The general observations of GANHRI's SCA elaborate in the context of quasi-judicial NHRIs – with a mandate to deal with complaints – possible mandates that would allow the NHRI to refer findings to courts for adjudication, to refer complaints not falling within its jurisdiction to another mechanism and to seek enforcement by courts of its decisions in relation to complaints.<sup>48</sup>

The Venice Principles, in the context of investigations, provide for ombuds institutions to "preferably have the power to challenge the constitutionality of laws and regulations or general administrative acts [and] preferably be entitled to intervene before relevant adjudicatory bodies and courts".<sup>49</sup> The European Commission Recommendation on standards for equality bodies, recalls "that independent assistance to

victims can include granting equality bodies the possibility to engage or assist in litigation, in order to address structural and systematic discrimination in cases selected by the bodies themselves because of their abundance, their seriousness or their need for legal clarification. Such litigation could take place either in the body's own name or in the name of the victims or organisations representing the victims, in accordance with national procedural law."<sup>50</sup>

FRA enquired about the extent to which NHRIs covered by this report have the powers to intervene in proceedings before constitutional or equivalent-level courts at national level. The aim was to clarify whether an NHRI has this potential, in law or practice and, if in law, if it is explicit or even an obligation under the NHRI's mandate. In 11 of the 30 countries, no mandates for intervention in constitutional court proceedings existed. The NHRIs in three countries had the potential to do so in practice (Belgium, Denmark, France and Hungary).

Sixteen of the NHRIs surveyed have a mandate that allows them to intervene but does not oblige them to do so (Austria, Czechia, Estonia, Hungary, Ireland, Italy, Latvia, Netherlands, North Macedonia, Portugal, Romania's ombuds institution, Slovakia, Slovenia and all three United Kingdom organisations). A further three NHRIs even have an obligation to intervene (Malta, Poland and Spain) (Figure 16).



**FIGURE 16: NHRIS' POWERS TO INTERVENE IN COURT PROCEEDINGS**

A-status																																				
B-status																																				
No accredited institution	Austria	Belgium	Bulgaria – Commission	Bulgaria – Ombud	Croatia	Cyprus	Czechia	Denmark	Estonia	Finland	France	Germany	Greece	Hungary	Ireland	Italy	Latvia	Lithuania	Luxembourg	Malta	Netherlands	Poland	Portugal	Romania – Institute	Romania – Ombud	Slovakia	Slovenia	Spain	Sweden	United Kingdom – E&W	United Kingdom – SCT	United Kingdom – NI	North Macedonia	Serbia		
Explicit obligation																																				
Explicit possibility																																				
In practice / after approval by court																																				
No such possibility																																				

Source: FRA, 2020 [based on 33 responses to questionnaire sent to 34 NHRIs]

FRA also looked at *amicus curiae* submissions by NHRIs. Only two have an explicit obligation to submit *amicus curiae* briefs to judicial authorities; however, a further nine have an explicit possibility to do so and nine more can do so in practice. The remaining 13 do not have the power to submit *amicus curiae* briefs to judicial authorities (Figure 17).

▲  
Note: E&W, England and Wales; NI, Northern Ireland; SCT, Scotland.  
▼

**FIGURE 17: NHRIS' 'FRIEND OF THE COURT' (AMICUS CURIAE) POWERS**

A-status																																					
B-status																																					
No accredited institution	Austria	Belgium	Bulgaria – Commission	Bulgaria – Ombud	Croatia	Cyprus	Czechia	Denmark	Estonia	Finland	France	Germany	Greece	Hungary	Ireland	Italy	Latvia	Lithuania	Luxembourg	Malta	Netherlands	Poland	Portugal	Romania – Institute	Romania – Ombud	Slovakia	Slovenia	Spain	Sweden	United Kingdom – E&W	United Kingdom – SCT	United Kingdom – NI	North Macedonia	Serbia			
Explicit obligation																																					
Explicit possibility																																					
In practice																																					
No such possibility																																					

Source: FRA, 2020 [based on 33 responses to questionnaire sent to 34 NHRIs]

### NHRI guidelines on engaging with European Court of Human Rights

ENNHRI has developed a guide to third-party intervention before the European Court of Human Rights (ECtHR). The guide is based on the experience of NHRIs in Europe, both through individual third-party interventions to the ECtHR as well as collectively as part of ENNHRI.

Publication forthcoming in 2020.

### 3.3.1. Facilitating access to justice in new areas

As already discussed under the section 2.4.3 on NHRIs' monitoring function, it is envisaged that they will play a greater role when it comes to access to justice. The NHRIs provide access to justice in many contexts, not least when they also have a mandate as an equality body under EU law. EU equality law prescribes that "judicial and/or administrative procedures [...] for the enforcement of obligations [...] are available to all persons" (Racial Equality Directive, Article 7).<sup>51</sup> Other EU equality instruments – the Employment Equality Directive, the Gender Goods and Services Directive and the Gender Equality Directive (employment and occupation), recast, include similar references.<sup>52</sup> FRA has published studies on access to justice and equality bodies<sup>53</sup> and also data protection authorities and remedies.<sup>54</sup>

NHRIs can contribute to improving access to justice in various ways: as quasi-judicial mechanisms, by taking up cases, through strategic litigation and by monitoring other mechanisms. This can be by analysing shortcomings and necessary improvements, providing support and advice to victims or through inquiries or hearings with groups that otherwise would be unlikely to make complaints, such as people with disabilities or homeless people.

One context that would be relatively novel for NHRIs is business and human rights. The legally binding UN instrument on business and human rights currently being negotiated might include a role for NHRIs. The most recent draft refers to adequate national monitoring mechanisms (Article 14)<sup>55</sup> and a draft optional protocol proposes that such mechanisms should be based on the Paris Principles and that the state should ensure its independence, gender balance, adequate legal staff, necessary resources and "required knowledge and expertise" (similar requirements to OPCAT; see Chapter 1.1.2 of this report).<sup>56</sup> The draft protocol proposes a mandate for these mechanisms that includes awareness raising, cooperation with mechanisms in other countries, responding to enquiries from victims and making recommendations (Article 3) and also competence to request information on and from businesses (Article 4). Competence to receive complaints may also be considered (Article 6). Both the main instrument and the protocol envisage not only states but also "regional integration organisations" – such as the EU – as potentially becoming parties (Articles 17 and 14, respectively). At the most recent negotiations on the instrument, the fifth meeting, in October 2019, ENNHRI participated, as did two NHRIs in EU Member States (Denmark and Germany).<sup>57</sup>

NHRIs have engaged with the topic of business and human rights since 2010, following the adoption of the Edinburgh Declaration. The Organisation for Economic Co-operation and Development (OECD) has cooperated with NHRIs in this regard since 2012.<sup>58</sup> The UN Working Group on Business and Human Rights in 2019 conducted a global survey of NHRIs on their involvement in access to remedy in cases of business abuse of human rights.<sup>59</sup>

## A role for NHRIs in the context of business and human rights

In 2017, at the request of the Council of the European Union, FRA issued an opinion on the topic of access to remedy in cases of business abuse of human rights. The agency emphasised the importance of non-judicial mechanisms in this context and appropriate standards to guarantee their efficiency and effectiveness. The opinion calls on Paris Principles-compliant NHRIs to be part of a comprehensive system for access to remedy (Opinion 13).

*FRA (2017), Improving access to remedy in the area of business and human rights at the EU level, Opinion 1/2017, 10 April.*

In 2019, FRA issued a focus paper pointing out recurrent issues in access to remedy in the area of business and human rights, noting reduced prospects of seeking remedies, particularly when cross-border situations extending outside the EU are concerned. With regard to NHRIs, the focus paper notes “[the] role of non-judicial mechanisms, such as National Human Rights Institutions or Ombud institutions, that can support victims – not only in accepting cases but also in providing support and advice, and possibly taking cases before judicial mechanisms”.

FRA (2019), **Business-related human rights abuse reported in the EU and available remedies**, Focus paper.

## EU criminal procedural law – guidance for NHRIs

An EU-funded research project, coordinated by the Ludwig Boltzmann Institute of Human Rights in Vienna, engaged with NHRIs and other experts to develop a guidebook entitled *Strengthening the rights of suspects and accused in criminal proceedings – The role of National Human Rights Institutions*. The guide provides reasons for greater reliance on EU law in the work of NHRIs, in particular in their monitoring work on issues related to procedural rights in criminal proceedings. \*

\* Ludwig Boltzmann Institute (2019), **Guidebook: Strengthening the rights of suspects and accused in criminal proceedings – The role of National Human Rights Institutions**.

## 3.4. HELPING THE EU AND MEMBER STATES TO FACE EMERGING HUMAN RIGHTS CHALLENGES

NHRIs need to remain relevant to be effective. Challenges linked to the emergence of artificial intelligence and climate change are example of issues in which the NHRIs could be increasingly engaged. The EU Charter of Fundamental Rights includes provisions related to privacy and data protection, on non-discrimination (Articles 7, 8, 21), of importance when it comes to artificial intelligence, and on environmental protection (Article 37). International human rights law instruments have similar provisions or have interpreted related provisions to encompass these rights.

### 3.4.1. Artificial intelligence: challenges and opportunities

Technological developments in the area of machine learning and artificial intelligence (AI) are changing the way we live. Decisions and processes affecting everyday life are increasingly automated, based on data. This has the potential to affect a wide range of fundamental rights. While the rights to privacy and protection of personal data and to non-discrimination are most often discussed, there are also potential consequences for the rights to the freedoms of expression, assembly and association, to the rights of specific groups such as children or older people, and to good administration and effective remedy rights. <sup>60</sup>

For NHRIs, AI poses both opportunities and challenges. At the policy level, there are opportunities to contribute to the many discussions concerning the use and potential regulation of AI that are under way at European and national levels. <sup>61</sup> Many of these raise fundamental rights issues, including – in the EU context – those identified in the ethics guidelines on AI and policy and investment recommendations for trustworthy AI prepared by



the European Commission High-level Expert Group on Artificial Intelligence<sup>62</sup>, as well as the Commission's White paper on artificial intelligence.<sup>63</sup> The Council of Europe's Ad hoc Committee on Artificial Intelligence is also looking at the possibility of a legal framework for AI based on human rights standards.<sup>64</sup>

One of the key priorities emerging from these documents is how to establish effective enforcement mechanisms and access to justice for individuals negatively affected by decisions taken with the involvement of AI. This reflects the difficulties posed by the opacity and complexity of many automated decision-making systems, which can make it difficult to understand how an algorithm made a specific decision and to access the information necessary to challenge it. NHRIs' independence, expertise across the full range of fundamental rights and – in some cases – experience of handling complaints makes them well placed both to contribute to policy discussions about how to ensure the fundamental rights-compliant development, deployment and enforcement of AI tools and to play a role in any future regulatory framework.

In operational terms, AI-based tools could potentially facilitate NHRIs' work, for example if they can support the identification of possible human rights violations. Understanding the potential fundamental rights implications of AI technologies and effectively handling related complaints is likely to challenge NHRIs in both familiar and new ways.

- The large number of individuals potentially affected by algorithmic decision making could result in more complaints being submitted to NHRIs, with consequences for human and financial resources.
- Individuals may not be aware that data about them is being processed by algorithms, creating difficulties in exercising the right to effective remedy. The NHRIs could consider engaging in awareness raising in this area.
- NHRIs may lack the expertise necessary to understand how algorithms work and make decisions about individuals. This suggests a need either to increase internal digital literacy or to develop networks of experts who can be consulted as necessary.
- Strong collaboration across different actors, institutions and disciplines will be necessary to take a holistic approach to AI. This includes cooperation with bodies with existing oversight functions related to artificial intelligence, for example data protection authorities.

The European Commission's independent High-Level Expert Group on Artificial Intelligence has made recommendations calling for an "auditing mechanism" for AI systems to help identify "harmful consequences generated by AI systems, such as unfair bias or discrimination".<sup>65</sup> The experts also underscore the risk of violations of obligations under international human rights law in relation to AI (Recommendation 1.4) and cybersecurity (Recommendation 20.1). There is a clear role for NHRIs – and equality bodies – in this context, given their independent standing and expertise on human rights.

## Eye on digitalisation and AI

The NHRI in the **Netherlands** has adopted the subject “digitalisation and human rights” as one of the core topics of its Strategic Plan 2020–2023. Among its objectives are to demonstrate how digitalisation has several implications for human rights, beyond privacy and data protection. For example, the programme will highlight the right to equal treatment, focusing on potential labour market discrimination that may manifest itself through the use of digital recruitment processes.

The NHRI in **Sweden**, the Equality Ombudsman, supervises compliance with the Discrimination Act. Should the Ombudsman obtain information about AI-relevant circumstances, for example through media, civil society or individual complaints, it will assess the circumstances to see whether they involve a breach of the Discrimination Act. In that case the Ombudsman may consider initiating supervision. Supervision could in principle also concern AI-relevant situations.





### 3.4.1. Responding to the COVID-19 pandemic

The various measures taken to respond to the pandemic have significant implications for several fundamental rights, including the right to life, the right to health, the prohibition of discrimination, the right to liberty and security, respect for private and family life, freedoms of thought, conscience and religion, freedom of expression and information and freedom of assembly and association, among others, as emphasised by FRA in its April 2020 Bulletin on the coronavirus pandemic.<sup>66</sup> NHRIs in the EU, North Macedonia, Serbia and the United Kingdom have responded swiftly and proactively to the measures adopted in response to the COVID-19 pandemic, such as declaring a state of alarm and restricting movement and social contact, in the

full scope of their respective mandates. All NHRIs have found ways to ensure business continuity while complying with national anti-COVID-19 measures. Croatia's NHRI, whose premises were damaged and rendered unusable during the 22 March earthquake in Zagreb, shifted to a home office set-up while continuing to fulfil its mandate in full. Despite the challenges faced, on 1 April the Ombudswoman submitted her annual report to parliament.<sup>67</sup>

## Addressing COVID-19

The NHRI in **Finland** has reacted swiftly to the COVID-19 measures, creating a web page that explains the legislative changes and their impact on the implementation of human and fundamental rights.\*

The NHRI in **Poland** has created a landing page on its website collecting all NHRI activities related to the pandemic and to its monitoring of the government's response to COVID-19.\*\*

The NHRI in **Luxembourg** addressed an open letter to the Prime Minister. It welcomes the daily efforts of the government to ensure that the entire population is protected during this difficult period, informing about its task of monitoring developments and ensuring to what extent limitations on fundamental rights and freedoms are necessary and proportionate to what is required by the situation and reminding that "human rights constitute a clear and indispensable framework for the government to guarantee a fair balance between the protection of public health and the respect of fundamental rights and individual freedoms."\*\*\*

\* Finland, Human Rights Centre (2020), **COVID 19**.

\*\* Poland, Commissioner for Human Rights (2020), **Koronawirus i epidemia w Polsce**.

\*\*\* Luxembourg, CDDH, **Lettre ouverte du président de la CCDH au Premier Ministre**.



**FIGURE 18: NHRIS' RESPONSES TO COVID-19 AND THE EMERGENCY MEASURES (UP TO 24 APRIL 2020)**

A-status	Austria	Belgium	Bulgaria – Commission	Bulgaria – Ombud	Croatia	Cyprus	Czechia	Denmark	Estonia	Finland	France	Germany	Greece	Hungary	Ireland	Italy	Latvia	Lithuania	Luxembourg	Malta	Netherlands	Poland	Portugal	Romania – Institute	Romania – Ombud	Slovakia	Slovenia	Spain	Sweden	United Kingdom - E&W	United Kingdom - SCT	United Kingdom - NI	North Macedonia	Serbia
"At a glance" overview of measures in response to COVID-19 on websites																																		
Ensured business continuity																																		
Increased focus on rule of law																																		
Increased focus on raising awareness of rights																																		
Advising policymakers																																		

Sources: ENNHRI, 2020 [COVID-19 and Human Rights]; and FRA, 2020 [desk research]

The NHRIs have developed a number of additional ways to continue to fulfil their mandates. Figure 18 provides an overview of different types of NHRIs' responses to COVID-19 measures. Out of the 34 NHRIs surveyed by ENNHRI and FRA, 16 published on their websites comprehensive overviews of the fundamental rights implications of the measures implemented in their respective Member State to counter the spread of COVID-19, while 24 explicitly focused on the rule of law implications of the measures. Poland's Commissioner for Human Rights, for example, on 23 April 2020 contributed to a European Parliament Committee on Civil Liberties, Justice and Home Affairs (LIBE Committee) hearing on the rule of law in Poland, connecting the issues of judicial independence and national anti-COVID-19 measures.<sup>68</sup> Others, such as Bulgaria's ombuds institution and Denmark's NHRI, have explained through their websites the contexts and ways in which some rights may be temporarily suspended in the interest of public health, calling for emergency measures to be proportional and limited in time and scope.<sup>69</sup> Similarly, 22 NHRIs increased their efforts to raise awareness of fundamental rights under emergency social isolation measures, for example through Q&A sections on their websites, as in the case of the Austrian Ombudsman Board or the Netherlands' NHRI.<sup>70</sup>

▲ Note: E&W, England and Wales; NI, Northern Ireland; SCT, Scotland.

Twenty-one NHRIs have offered advice to policy makers, including open letters addressed to governments or ministers, as in the case of Ireland's NHRI, the Irish Human Rights and Equality Commission, and the United Kingdom's Equality and Human Rights Commission, or Luxembourg's NHRI.<sup>71</sup> Almost all NHRIs covered in this report have raised concerns through their websites and social media about at least some of the aforementioned human rights-related implications of the current pandemic and of anti-COVID-19 measures on people in detention, older people, children or people with disabilities. They have also raised concerns about the ways in which Roma and other national minorities or the homeless may be disproportionately affected and about the increase in cases of domestic violence in times of social isolation, among others. For example, the Hungarian Commissioner for Fundamental Rights and his deputies, early on in the crisis, issued an explicit recommendation "that relevant policy makers consider setting up a task force to provide extraordinary protection and support to vulnerable groups, in particular to help disadvantaged children and their families" and offered their expertise to this end.<sup>72</sup>



## **FRA collects data on impact of COVID-19 pandemic on fundamental rights**

The agency is collecting and analysing relevant data and information on the impact on people's fundamental rights of the measures taken by EU Member States in response to the outbreak of COVID-19.

A series of **monthly bulletins**, starting in April 2020, illustrates the impact of government measures on a variety of areas, including impact on daily life, such as work, education and freedom of movement; the situation of vulnerable groups; racist and xenophobic incidents; and disinformation and data protection.

The agency has also set up a dedicated **page on its website** bringing together all its work on the fundamental rights implications of the pandemic and the measures to contain it.

## ENDNOTES

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- <sup>4</sup> European Commission (2019), **Strengthening the rule of law within the Union – A blueprint for action**, COM(2019) 343 final, Brussels, 17 July 2019.
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- <sup>14</sup> ENNHRI (2019), **Implementation of the EU Charter of Fundamental Rights: Activities of National Human Rights Institutions**.
- <sup>15</sup> Government of Sweden, The Government Office, **Förslag till en nationell institution för mänskliga rättigheter i Sverige** [Proposal of a national institution for human rights in Sweden], **Ds 2019:4**.
- <sup>16</sup> ENNHRI (2019), **Implementation of the EU Charter of Fundamental Rights – Activities of National Human Rights Institutions**.
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- <sup>21</sup> FRA (2019), **Fundamental rights report 2019**, Luxembourg, Publications Office.
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- <sup>29</sup> Compare with EU-level assessments; see European Commission, **Better Regulation Tool 28, Fundamental rights & human rights**.
- <sup>30</sup> *Ibid.*
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- <sup>37</sup> See for example: European Parliament, **P8\_TA(2015)0286 – Situation of fundamental rights in the EU (2013-2014)**, para. 14.
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- <sup>70</sup> Austria, Volksanwaltschaft (2020), **Volksanwalt Walter Rosenkranz Beantwortete Fragen Zur Corona-Krise**, April 2020; The Netherlands, Netherlands Institute for Human Rights (College voor de Rechten van de Mens) (2020), **Coronavirus en mensenrechten: enkele vragen en antwoorden**, March 2020.
- <sup>71</sup> Irish Human Rights and Equality Commission (2020), **Letter to An Taoiseach in relation to the COVID-19 Pandemic**; United Kingdom, Equality and Human Rights Commission (2020), **Human rights and equality considerations in responding to the coronavirus pandemic**.
- <sup>72</sup> **Office of the Commissioner for Fundamental Rights (2020), Communication from the Commissioner for fundamental rights of Hungary and his deputies**, Budapest, 26 March.

# Annex I: Methodology

The information contained in this report was collected through primary and secondary sources, (qualitative and quantitative).

## PRIMARY SOURCES

### Quantitative

- Questionnaire sent to NHRIs
- Questionnaire sent to FRA's Fundamental Rights Platform – civil society
- Results for awareness of NHRIs from the Fundamental Rights Survey

### Qualitative

- Interviews with NHRIs
- Interview with ENNHRI
- Interview with GANHRI
- Interview with Equinet
- Expert meeting with representatives of NHRIs
- Advisory board on NHRIs report

## SECONDARY SOURCES

- Desk research

FRA staff collected data through questionnaires and interviews of the then 28 EU Member States and the two accession countries falling within FRA's mandate – North Macedonia and Serbia. This was carried out between April and September 2019. The NHRIs or equivalent institutions<sup>1</sup> with membership of ENNHRI, for those Member States with no NHRI in place, responded to a questionnaire and were interviewed. A total of 34 NHRIs received FRA's questionnaire; 33 responded, although some NHRIs opted to not answer all sections of the questionnaire. Additional desk research was conducted during the same period. The NHRIs and the national liaison officers conducted data verification of the draft report in January 2020.

The advisory board to the report, which included two independent experts, Kirsten Roberts Lyer, Associate Professor, Central European University, and Chris Sidoti, Adjunct Professor, Australian Catholic University, and representatives of ENNHRI, Equinet, the IOI, the Council of Europe, the European Commission, the UN Human Rights Office, OSCE-ODIHR, the Advisory Panel of FRA's Fundamental Rights Platform and GANHRI provided valuable feedback on the initial data analysis, key findings and draft report.

Over 100 civil society organisations from FRA's Fundamental Rights Platform (FRP) responded to a targeted online consultation on the cooperation between NHRIs and civil society. The platform is FRA's channel for cooperation and information exchange with civil society organisations active in the field of fundamental rights at the national, grassroots, European or international level.

FRA held a three-day NHRIs experts meeting in June 2019,<sup>2</sup> which brought together representatives of NHRIs to verify and contextualise data and information. Given the topic, it was important to get the view of governments on the data presented in the report. A meeting in October 2019 with FRA's contacts in government, its national liaison officers, offered an opportunity for exchange views on the topic of NHRIs providing policy advice to governments. A draft version of this report was shared with the national liaison officers in December 2019, for comment. FRA also shared a draft version of the report with the NHRIs themselves to verify data and information supplied.

FRA also took into account relevant work by the Council of Europe, the European Commission, the UN Human Rights, OSCE-ODIHR and the Organisation for Economic Co-operation and Development (OECD) throughout the entire duration of the report's preparation (January 2019 to February 2020).

FRA consulted and received information from ENNHRI, Equinet, GANHRI and the IOI throughout the entire duration of the project.

FRA has also actively engaged in a wider debate on the situation of NHRIs, equality bodies and ombuds institutions, including by attending a number of conferences and meetings, such as a joint Council working group meeting of the Working Party on Fundamental Rights, Citizens' Rights and Free Movement of Persons and the Working Party on Human Rights under the Finnish EU Presidency (2019), and through public statements, interviews and speeches by FRA's director.

The report underwent internal and external review processes, in line with the agency's project design and implementation and quality control procedures. The cut-off date for the report was 16 March 2020.

<sup>1</sup> See Annex II for a List of NHRIs (or nearest equivalent) interviewed or consulted for the report.

<sup>2</sup> FRA (2019), [Europe's NHRIs gather at FRA](#), 25 June.

# Annex II: List of NHRIs (or nearest equivalent) included in report

Country	Name of institution – English	Name of institution – national language(s)
Austria	Austrian Ombudsman Board (AOB)	Volksanwaltschaft (VA)
Belgium	The Inter-federal Centre for Equal Opportunity and the fight against racism and discrimination (Unia)	Unia – Centre interfédéral pour l'égalité des chances et la lutte contre le racisme et les discriminations/Unia – Interfederaal Centrum voor gelijke kansen en bestrijding van discriminatie en racisme/Unia – Interföderalen Zentrums für Chancengleichheit und Bekämpfung des Rassismus und der Diskriminierungen
Bulgaria	Commission for Protection against Discrimination	Комисия за защита от дискриминация
Bulgaria	Ombudsman of the Republic of Bulgaria	Омбудсман за Република България
Croatia	Ombuds institutions of the Republic of Croatia	Ručki pravobranitelj, Republika Hrvatska
Cyprus	Commissioner for Administration and Protection of Human Rights (Ombuds institutions)	Επίτροπος Διοικήσεως και Προστασίας Ανθρώπινων Δικαιωμάτων
Czechia	Public Defender of Rights	Veřejný ochránce práv
Denmark	Danish Institute for Human Rights	Institut for Menneskerettigheder
Estonia	Chancellor of Justice	Õiguskantsler
Finland	Finnish NHRI – Human Rights Centre	Ihmisoikeuskeskus
Finland	Finnish NHRI – Parliamentary Ombudsman of Finland	Eduskunnan Oikeusasiamies
France	National Consultative Commission on Human Rights	Commission Nationale Consultative des Droits de l'Homme
Germany	German Institute for Human Rights	Deutsches Institut für Menschenrechte
Greece	Greek National Commission for Human Rights (GNCHR)	Εθνική Επιτροπή για τα Δικαιώματα του Ανθρώπου (ΕΕΔΑ)
Hungary	Office of the Commissioner for Fundamental Rights	Alapvető Jogok Biztosának Hivatala
Ireland	Irish Human Rights and Equality Commission	Coimisiún na hÉireann um Chearta an Duine agus Comhionannas
Italy	National Guarantor for the Rights of Persons Detained or Deprived of Liberty	Garante nazionale di diritti delle persone detenute o private della libertà personale
Latvia	Office of the Ombudsman of the Republic of Latvia	Latvijas Republikas Tiesībsarga birojs
Lithuania	The Seimas Ombudsmen's Office of the Republic of Lithuania	Seimo kontrolierių įstaiga
Luxembourg	Consultative Human Rights Commission of Luxembourg	Commission consultative des Droits de l'Homme du Grand-Duché de Luxembourg
Malta	The Human Rights and Equality Commission	Il-Kummissjoni dwar id-Drittijiet tal-Bniedem u l-Ugwaljanza
Netherlands	Netherlands Institute for Human Rights	College voor de Rechten van de Mens
Poland	Commissioner for Human Rights (previously known as Human Rights Defender)	Rzecznik Praw Obywatelskich
Portugal	Portuguese Ombuds institutions	Provedor de Justiça
Romania	Romanian Institute for Human Rights	Institutul Român pentru Drepturile Omului
Romania	People's Advocate Institution	Instituția Avocatul Poporului
Slovakia	Slovak National Centre for Human Rights	Slovenské národné stredisko pre ľudské práva
Slovenia	The Human Rights Ombudsman of the Republic of Slovenia	Varuh človekovih pravic Republike Slovenije
Spain	Ombuds institutions of Spain	Defensor del Pueblo
Sweden	Equality Ombudsman	Diskrimineringsombudsmannen
North Macedonia	Ombudsman of the Republic of North Macedonia	Народен правобранител на Република Северна Македонија
Serbia	Protector of Citizens of the Republic of Serbia	Заштитник грађана
United Kingdom	Equality and Human Rights Commission	Equality and Human Rights Commission
United Kingdom – Northern Ireland	Northern Ireland Human Rights Commission	Northern Ireland Human Rights Commission
United Kingdom – Scotland	Scottish Human Rights Commission	Scottish Human Rights Commission









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# PROMOTING AND PROTECTING YOUR FUNDAMENTAL RIGHTS ACROSS THE EU —

National Human Rights Institutions (NHRIs) are a vital part of the country-level human rights protection system. This report, published 10 years after FRA's first in-depth study on NHRIs, looks at such bodies in the EU, as well as the Republic of North Macedonia, the Republic of Serbia, and the United Kingdom of Great Britain and Northern Ireland. It explores relevant developments, challenges to their effectiveness and ways to maximise their impact.

The findings in this report underscore that, to fulfil their potential, NHRIs need a clear mandate, independence, adequate resources, and, in their memberships, to reflect our societies' diversity. They also need to comply with the Paris Principles on the independence and effectiveness of NHRIs endorsed by the United Nations.



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