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BACKGROUND PAPER

HUMAN RIGHTS AND EQUALITY INSTITUTIONS IN EUROPE:

BALANCE BETWEEN CENTRALISATION AND FRAGMENTATION?

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Background paper

Human rights and equality institutions in Europe: Balance between centralisation and fragmentation?

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Foreword

This research was commissioned by the Finnish Human Rights Centre in 2021 to serve as background information for a report on the Finnish human rights structures that was undertaken by the Human Rights Centre in parallel.[1]

The idea for both studies was born out of my concern for the fragmentation of the Finnish human rights and equality structures. There was a need to better understand the international and European standards relating to the human rights, equality and specialized bodies and the impact of the standards at the national level. I had also seen over the years that the UN Paris Principles and the concept of national human rights institution (NHRI) was not well known at least in Finland. Thus, the emphasis is on the UN Paris Principles and NHRIs in this report.

The two reports are independent but closely interlinked. The necessary linkages between the two were ensured by frequent discussions and close coordination between the two researchers and drafters of the reports, Elina Hakala from the Finnish Human Rights Centre and Lora Vidovic, an independent consultant.

The four country examples we chose for this report serve only to illustrate the different models that exist in different countries in Europe and are not comprehensive. They also do not intend to review or evaluate the actors in question in any way.

This study benefits from the long professional career and experience of Lora Vidović. Lora has herself been an Ombudswoman and leader of an NHRI, the Chair of ENNHRI, a Bureau member of GANHRI and a member of the Management Board of the EU Fundamental Rights Agency. She has first-hand experience and knowledge of the international standards, their impact and the varying local contexts. I am very grateful for Lora for having given us so much of her time and expertise during this project. The staff of the Human Rights Centre has been inspired and learnt so much from the discussions and cooperation with Lora.

I have enjoyed the time I have spent with Lora on debating the topic of this research, but also other human rights issues. My hope is that both this and the Finnish report contribute to strengthening of the human rights architecture and better protection and promotion of human rights of all.

Sirpa Rautio
Director, Human Rights Centre

1 The Finnish Human Rights Centre's study on human rights actors will be available in English in 2023. The Finnish version of the study is available at https://www.ihmisoikeuskeskus.fi/julkaisut2/ihmisoikeuskeskuksen-julkaisut/ and Swedish version at https://www.manniskorattscentret.fi/publikationer/manniskorattscentrets-material/.

1 Introduction

Institutional human rights and equality structures in European states are often diverse, comprised of different institutions, agencies and bodies. It is widely recognised that those structures are important actors in a democratic state based on the rule of law, respect for human rights and good administration. They have substantially changed national, regional and global human rights and rule of law architecture in the past 25 years, positioning themselves as a necessary element of human rights governance.[2]

These structures can be divided into three main types: national human rights institutions (NHRIs), ombuds institutions and equality bodies. While in some states there are broad, consolidated multi-mandated institutions with limited institutional fragmentation, in others there can be many separate institutions with mandates limited to certain vulnerable groups or geographic areas. It is also common that the mandates and functions of all institutional types are cross-related and overlapping, with different limits to their structures, powers and competencies. Additionally, the authorities responsible for the protection of personal data envisaged by European law are substantively and institutionally in a unique position.

To guide their development and proper functioning and to support their role in strengthening democracy, rule of law and human rights, a number of soft law standards and mechanisms have been established over the years. Amongst them, the UN Paris Principles, relating to the status of the national human rights institutions (Paris Principles)[3] are internationally recognised to have the most prominent role. Other existing standards that relate to the work of NHRIs include the recent Council of Europe (CoE) Recommendation on the development and strengthening of effective, pluralist and independent national human rights institutions.[4]

Regarding ombuds institutions, standards include the Council of Europe Principles on the Protection and Promotion of the Ombudsman Institution (the Venice Principles)[5] which, by vir-

2 Glušac, Luka: A Critical Appraisal of the Venice Principles on the Protection and Promotion of the Ombudsman: An Equivalent to the Paris Principles?, *Human Rights Law Review*, 2021, p. 21-53.

3 *Principles Relating to the Status of National Institutions* (the Paris Principles), General Assembly Resolution 48/134, 1993, A/RES/48/134.

4 Council of Europe, Committee of Ministers, *Recommendation CM/Rec (2021)1 of the Committee of Ministers to Member States on the development and strengthening of effective, pluralist and independent national human rights institutions*, 2021.

5 European Commission for Democracy through Law (Venice Commission): *Principles on the Protection and Promotion of the Ombudsman Institution (the Venice Principles)*, 2019, CDL-AD (2019) 005.

tue of a UN General Assembly resolution from 2020[6], have a global standing.

The establishment of equality bodies is currently envisaged by the (legally binding) EU Equal Treatment Directives. However, these do not provide any standards for the effective and independent functioning of the equality bodies. Therefore, soft law standards have been developed, such as the 2018 European Commission against Racism and Intolerance General Policy Recommendation (ECRI GPR) No. 2: Equality Bodies to Combat Racism and Intolerance at National Level[7] and the Commission Recommendation on Standards for Equality Bodies.[8]

Notwithstanding the many non-binding standards, there is no clear recommendation as to the preferred set-up at the national level. It is up to the states to determine the kind of institutional structure they wish to put in place. In some countries the model chosen is centralised while in others there is fragmentation with several different human rights and/or equality actors.

Human rights and equality bodies are included in a broad range of activities at the international and regional level, including research and policy developments. This is particularly evident through the work of the European Union Agency for Fundamental Rights (FRA), which has published several important pieces of research aiming at strengthening the fundamental rights architecture in the European Union (EU).[9] In the CoE, NHRIs have a permanent observer status in the Steering Committee for Human Rights (CDDH) and are included in the inter-ministerial conferences on the reform of the European Convention on Human Rights (ECHR) system. In the context of the Organisation for Security and Cooperation in Europe (OSCE), NHRIs are part of the accountability framework as participating states pledged to facilitate the establishment and strengthening of independent institutions in the area of human rights and the rule of law.[10]

The academic literature on the NHRIs is rather limited as this topic seems to have been neglected in the research. This report builds on the available knowledge and looks closely at the standards that encompass their establishment and functioning. Our interest is in certain aspects of the standards and criteria – such as their independence, broad mandate, and the engagement at the international and regional levels – being crucial for their effectiveness.

Furthermore, we examine other types of institutions – the ombuds institution, the specialised ombuds institution, equality bodies and data protection authorities – as they co-exist and function in the same space and their work is often connected to and complementary to that of NHRIs.

The strengths and weaknesses of both centralised and fragmented systems will be analysed. We examine in particular if the fragmen-

6 General Assembly, *The role of Ombudsman and mediator institutions in the promotion and protection of human rights, good governance and the rule of law*, 2020, A/RES/75/186.

7 European Commission against Racism and Intolerance: *General Policy Recommendation No. 2: Equality Bodies to Combat Racism and Intolerance at National Level*, 2018, CRI (2018)06.

8 Commission Recommendation of 22.6.2018 on standards for equality bodies, 2018, C(2018) 3850 final.

9 For example: *National Human Rights Institutions in EU Member States, Strengthening the Fundamental Rights Architecture in the EU*, 2010; *Handbook on the Establishment and Accreditation of National Human Rights Institutions in the European Union*, 2012; *Strong and Effective National Human Rights Institutions, Challenges, Promising Practices and Opportunities*, 2020; *Equality in the EU 20 years on from the initial implementation of the Equality Directives*, 2021.

10 OSCE, *Document of the Copenhagen Meeting of the Conference on the Human Dimension of the CSCE (Copenhagen Document)*, 1990, para. 27, available at https://www.osce.org/files/f/documents/9/c/14304.pdf.

tation of institutions affects their resilience to pressures and if it impacts on the effectiveness of overall human rights and equality promotion and protection at the national level.

In addition, certain aspects of institutional infrastructure in four European countries (Croatia, Poland, Norway and Germany) will be looked into, to learn from their experiences by way of example.

Finally, as this background research informs and contributes to a study on fundamental and human rights actors in Finland, several linkages with the Finnish institutional set-up will be drawn.

Methodologically, this research is based on a desk study of available academic literature and policy developments, as well as existing international and regional binding and soft law standards.

This is supported by semi-structured interviews and discussions with relevant stakeholders. These include representatives of the FRA, the Office of the High Commissioner for Human Rights (OHCHR), the International Ombudsman Institute (IOI), the European Network of Ombudspersons for Children (ENOC), the European Commission's Directorate-General for Justice and Consumers (DG JUST), the European Network of National Human Rights Institutions (ENNHRI), the Global Alliance of National Human Rights Institutions (GANHRI), the European Network of Equality Bodies (Equinet), the OSCE Office for Democratic Institutions and Human Rights (ODIHR) and the Council of Europe Commissioner for Human Rights, as well as representatives of institutions from Croatia, Poland, Germany and Norway.

2 National Human Rights Institutions

National Human Rights Institutions are state bodies with a constitutional and/or legislative mandate to promote and protect human rights and funded by the state.[11] In contrast to classical ombuds institutions, which have a mediatory role rather than a general role of shaping national human rights policies, NHRIs also have an important preventive role.[12] In this chapter, we will first look into the international and regional standards set forth to guide the establishment and effective functioning of NHRIs. Later, we will examine certain criteria that are guiding their work, namely their independence and broad mandate. Finally, we look at the engagement of NHRIs and their impact at the international, regional, supranational and national level, showcasing their added value and distinction from other types of human rights and equality bodies.

2.1 International and regional standards guiding the establishment and functioning of NHRIs

The UN Paris Principles set out the minimum international standards for the roles and responsibilities of NHRIs; however, they do not set out the requirements for the institutional structure or model of NHRIs as that is the prerogative of each state.[13] This is also stipulated in the Vienna Declaration and Programme of Action, recognising that states have the right to choose the framework that best suits their needs at a national level, subject to international human rights standards.[14]

Globally, the dominant models of NHRIs are human rights commissions accounting for more than half of the NHRIs, and ombuds institutions. There are also consultative and research bodies

11 OHCHR: *National Human Rights Institutions, History, Principles, Roles and Responsibilities*, United Nations, New York and Geneva, 2010, p. 13.

12 de Beco, Gauthier: National Human Rights Institutions in Europe, *Human Rights Law Review*, vol. 7, no. 2, 2007, p. 332.

13 *The Paris Principles* (n 3), para. 12.

14 *Vienna Declaration and Programme of Action*, Adopted by the World Conference on Human Rights in Vienna on 25 June 1993, para 36, available at: https://www.ohchr.org/en/professionalinterest/pages/vienna.aspx

as well as "hybrids" that make up a small number of NHRIs.[15] Looking at the European institutions, out of 38 accredited ENNHRI members, 27 are ombuds institutions[16], eight are commissions[17] and two are institutes[18] while 21 also act as equality bodies.[19]

The remaining two, those of Finland and Norway, are unique. We will look at Norway's example in more detail in Section 5.4. In Finland, the NHRI is comprised of the Finnish Human Rights Centre and its Human Rights Delegation, both established in 2012, and the Parliamentary Ombudsman established already in 1919. These three together form the (one) Finnish NHRI.

In addition, many NHRIs have in recent years been given additional mandates, for example, forced returns monitoring, whistle blower protection, national preventive mechanisms (NPMs) or national monitoring mechanisms (NMMs).

The UN Paris Principles set out six main criteria for NHRIs: broad mandate based on universal human rights; autonomy from the government; independence guaranteed by statute or constitution; pluralism, including through membership and/or effective cooperation; adequate resources and adequate powers of investigation.

Importantly, with the support from OHCHR, NHRIs have created GANHRI, the Global Network of Human Rights Institutions. GANHRI is a representative body comprised of all NHRIs worldwide and which works through its Geneva-based Head Office. It co-operates closely with four regional networks: the European Network of National Human Rights Institutions (ENNHRI), the Asia-Pacific Forum (APF), the Network of African National Human Rights Institutions (NANHRI) and the Americas,[20] as well as partners from UN and civil society.

The main distinctive characteristics of NHRIs compared with other human rights and equality bodies is that they have a broad mandate to promote and protect human rights and that they are regularly assessed against the criteria set forth in the Paris Principles.

This internationally recognized peer-based procedure is so far the only official accreditation system that aims to assure institutions' independence, effectiveness, broad mandate and pluralism, key prerequisites for their proper functioning. The procedure is performed, with the support of OHCHR, by GANHRI's Sub-Committee on Accreditation (SCA). The SCA reviews and accredits NHRIs, which are in compliance with the UN Paris Principles, based on the 1993 Vienna Declaration[21] and as outlined in the GANHRI Statute,[22] the SCA's Rules of Procedure[23] and the SCA General Observations.[24]

NHRIs are reviewed based on their own statement of compliance accompanied by sup-

15 OHCHR (n 11), p. 15.

16 These are (as of September 2022): Albania, Armenia, Austria, Bosnia and Herzegovina, Bulgaria, Croatia, Estonia, Georgia, Latvia, Lithuania, Moldova, Poland, Portugal, Russian Federation, Serbia, Slovenia, Spain and Ukraine (Status A); Azerbaijan, Cyprus, Hungary, Montenegro, North Macedonia (Status B); Czech Republic, Sweden and Kosovo (not accredited).

17 These are (as of September 2022): France, Great Britain, Greece, Ireland, Luxembourg, Northern Ireland, the Netherlands, Scotland ('Status A').

18 These are (as of September 2022): Denmark and Germany, 'Status A'.

19 These are (as of September 2022): Albania, Belgium (Unia), Bosnia and Herzegovina, Croatia, Cyprus, Czech Republic, Denmark, Georgia, Great Britain, Hungary, Ireland, Kosovo, Latvia, Montenegro, Netherlands, North Macedonia, Slovakia, Turkey and Ukraine.

20 GANHRI is established in 1993 as the International Coordinating Committee of National Institutions for the promotion and protection of human rights (ICC) and change its name in 2017. More information about GANHRI is available at https://ganhri.org/.

21 *Vienna Declaration* (n 14), para. 8.6.

22 *GANHRI Statute*, version adopted at the General Assembly on 5 March 2019, available at: https://www.ohchr.org/EN/Countries/NHRI/Pages/SCA-Rules-of-Procedures.aspx.

23 GANHRI Sub-committee on Accreditation, *Rules of Procedure for the GANHRI Sub-committee on Accreditation*, [amended version adopted on 4 March 2019].

24 GANHRI, General Observations of the Sub-Committee on Accreditation, 21 February 2018.

porting documentation. Additional information might also be provided by third parties, most often civil society organisations.[25] Furthermore, the SCA conducts an interview with the leadership of the institutions so that clarifications and further information can be obtained.

All the NHRIs that hold 'A' status are subject to re-accreditation on a five-year cyclical basis. However, the SCA Rules of Procedure also allow for a special review as well as urgent suspension of status in exceptional circumstances.[26]

Based on the accreditation procedure, a distinction is made between institutions that are fully compliant with the Paris Principles ('A' status) and those that are partially compliant with them ('B' status).

As of July 2022, GANHRI is composed of 119 members: 89 'A' status accredited NHRIs and 30 'B' status accredited NHRIs,[27] while ENNHRI comprises of 31 'A status' and 8 'B status' institutions.[28] All of the four NHRIs included in this report (Croatia, Norway, Germany and Poland), as well as the Finnish National Human Rights Institution, are 'A status' institutions.

Accreditation confers credibility and legitimacy to the NHRI, both nationally, and internationally. The SCA decision has significant implications for the NHRI and its ability to operate at the international level, including the participation rights at UN fora, as well as at the domestic level.[29]

As regards the actual process, academic literature and the NHRIs themselves have recognised that the accreditation process has been improving and strengthened in many ways, for example, by allowing broad opportunities for CSOs to participate and contribute their information and observations. Information from the UN human rights system is also systematically used.

Even more importantly, the process has been strengthened by GANHRI's continuous work on the Rules of Procedure as well as by progressive but strict SCA interpretation of the UN Paris Principles, contributing to a robust process with strong credibility.[30] This is particularly the case when the SCA makes the decision to downgrade an institution from status 'A' to 'B' in case it has failed to maintain full compliance since the last accreditation.

Such was the case with Norway, when the Norwegian Centre for Human Rights (NCHR) was downgraded in 2012 when the SCA assessed it as not fully compliant with the Paris Principles,[31] as described in more detail in Section 5.4. This was taken by the Norwegian government to be an opportunity to establish a new independent institution. Following such developments, Norway's NHRI was established in 2015 and in 2017 it received 'A status' accreditation. This is a clear example of how the accreditation process and the SCA recommendations - even when it recommends downgrading an institution - can have a very positive impact on the strengthening of the institutional human rights framework, particularly when taken up by national decision makers.

25 GANHRI Statute (n 22), Art. 6.1 and 6.7.

26 Ibidem., Art. 15, 16.2. ,18.2, 18.4.

27 The full list of NHRIs and their accreditation status is available at https://ganhri.org/membership/.

28 The full list is available at http://ennhri.org/our-members/.

29 de Beco, Gauthier, Murray, Rachel: *A Commentary on the Paris Principles on the National Human Rights Institutions*, Cambridge University Press, 2015, p. 18.

30 Brodie, Meg: Progressing Norm Socialization: Why Membership Matter. The Impact of the Accreditation Process of the International Coordinating Committee of National Institutions for the Promotion and Protection of Human Rights, *Nordic Journal of International Law*, 80 (2011), p. 151.

31 International Coordinating Committee of National Institutions for the Promotion and Protection of Human Rights: *Report and Recommendations of the Session of the Sub-Committee on Accreditation* (SCA) Geneva, 19 - 23 November 2012, p. 19.

Representatives of other institutions interviewed for this research confirmed the supportive role SCA recommendations can play in further strengthening their institutions. For example, when reaccredited as an 'A status' NHRI in November 2017, the SCA commended the efforts of the office of the Polish Commissioner for Human Rights (CHR) in discharging his mandate effectively despite the challenging political context in which it operates. As issues of concern, the SCA noted the promotional mandate, pluralistic composition, functional immunity, and adequate funding.[32] All of these shortcomings were also recognised by the CHR, as particularly the issue of immunity and resources had been continuously used to impose political pressure on the institution.

Likewise, 2019 SCA recommendation to reaccredit the Ombudsman of the Republic of Croatia (ORC) as 'A-status' institution noted that the selection procedure for the ombuds should be improved by including broader consultations and more involvement of civil society; it encouraged the Ombudsman to continue advocating for adequate funding, including funding for the accessibility of its offices to the most vulnerable. As regards the term of office being eight years, the SCA was of the view that it would be preferable to limit it to one reappointment in order to promote institutional independence. These recommendations were welcomed by the Ombudsman and were considered to support the further strengthening of the office.

In 2015, the SCA recommendation regarding the German Institute for Human Rights (GIHR) concerned shortcomings in the selection and appointment procedures, political representation in the GIHR, the lack of functional immunity of its decision-making body and the guarantees of tenure. The SCA encouraged the GIHR to strengthen its protection mandate and emphasised that an appropriate level of funding is necessary, especially for the new mandates and tasks to guarantee its independence and its ability to freely determine its priorities and activities.[33]

When re-accrediting the Finnish NHRI with 'A status' in 2019, the SCA encouraged it to continue to expand the monitoring of places of detention and to work on business and human rights. Furthermore, while understanding that the government bill establishing the Finnish NHRI is a source of law in Finland, it encouraged the Finnish NHRI to continue to advocate for legislative amendments that clearly stipulate its existence as one NHRI with three components, in compliance with the Paris Principles. As regards funding, while recognising the increase, the SCA emphasised that an NHRI must be provided with an appropriate level of funding to freely determine its priorities and activities and ensure the gradual and progressive realisation of the improvement of the NHRI´s operation. Finally, the SCA emphasised the importance of also submitting the Finnish Human Right Centre's (FHRC) annual report to the Parliament in addition to the Parliamentary Ombudsman's report to have a complete account of the work of the Finnish NHRI.

In the interviews, the representatives of NHRIs highly appreciated the role of ENNHRI and its Working Group on Accreditation during the preparation of the statement of compliance. Peer support and the exchange of information between institutions provided valuable guidance in preparing strong applications.

However, despite the progress made, it is recognised that the accreditation process

32 Global Alliance of National Human Rights Institutions (GANHRI): *Report and Recommendations of the Session of the Sub-Committee on Accreditation* (SCA), Geneva, 13–17 November 2017.

33 International Coordinating Committee of National Institutions for the Promotion and Protection of Human Rights: Report and Recommendations of the Session of the Sub-Committee on Accreditation (SCA), Geneva, 16–20 November 2015, p. 14–18.

needs further strengthening. This can be achieved in several ways: internally, financially and politically.

Internally, efforts to strengthen the accreditation process are ongoing, primarily by continuing to clarify its Rules of Procedure and updating General Observations. Thus, GANHRI itself can directly contribute to its clarity and transparency. Its role can be made stronger, particularly as regards its support to the SCA and the chairperson in drafting and reviewing documentation. In that regard, formalising a permanent supporting structure (in addition to the one provided by OHCHR) and allocating it with permanent staff and resources in the GANHRI Head Office specifically dedicated to accreditation could be a way forward. Importantly, GANHRI strategic plan has identified key strategic priorities towards strengthening support to NHRIs and the accreditation process.

Furthermore, additional resources would allow for more SCA-sessions in view of the increasing number of NHRIs, which the SCA should be able to review and accredit in a timely manner. Additional financial resources would be needed to support the travel-related costs of the SCA members attending two (or more) weekly meetings in Geneva every year. Inspiration for this could be found in financing the travelling costs of the Treaty Body Members attending their meetings. SCA members currently need to finance the participation costs themselves, enabling only well-resourced institutions to apply for membership, putting others in an unequal position. Furthermore, as the working language of the SCA is English and the documentation is submitted in all UN working languages, there is an obvious need to provide translations. The current use of languages limits the scope of NHRIs that can be elected due to their language skills.

The uniqueness of the accreditation peer process is also reflected in the fact that it is supported by OHCHR. This support has been crucial for the regular work of the SCA during the sessions and in their preparation. However, the process should be continuously strengthened by providing sufficient resources and skilled staff to assure the continuation of the SCA's institutional memory.

Particularly important is political support for the work of the SCA. This is reflected in the implementation of its recommendations that can directly influence change and bring impact on the ground. This is regardless of the achieved status as even those NHRIs that are accredited as 'A status' receive recommendations that continue to set higher expectations, thus raising the bar even further. This also concerns, among other actors, the states they are addressed to, which are called upon (together with the NHRIs themselves) to work on their implementation. An important role in this regard can also be taken on by the Treaty Bodies, which can include the SCA recommendations in their Concluding Observations. With the involvement of the NHRIs, SCA recommendations can also be used to formulate recommendations through the Universal Periodic Review process.

Another issue that merits further discussion is how to use the accreditation process to go beyond the UN Paris Principles in improving of the effectiveness of the NHRIs. For example, Murray argues that they rely too much on legalism and do not sufficiently look at how institutions can be used as resources for others and how much attention they pay to the most vulnerable.[34]

Continuing to use the UN Paris Principles as a reference in developing new regional and international frameworks brings renewed and added value to their already strong standing.

An example of that can be found in the work of the Council of Europe, which has offered long-standing support to NHRIs (includ-

34 Murray, Rachel: National Human Rights Institutions. Criteria and factors for assessing their effectiveness, *Netherlands Quarterly of Human Rights*, Vol. 25/2, 2007, p. 194.

ing the 1997 Recommendation on NHRIs)[35].

This culminated in 2021 with the adoption by the Committee of Ministers of the Recommendation No. R (2021) 1 on the development and strengthening of effective, pluralist, and independent national human rights institutions. Even though the new Recommendation overlaps with the Paris Principles to a certain extent, it goes a step further and brings significant added value. Namely, by clearly giving preference to the constitutional basis of an NHRI's establishment (I.2); by establishing that NHRIs are strengthened if they have unfettered access to all premises, individuals, and information and if they are involved in policymaking and legislative processes; and by clarifying the role of NHRIs vis-a-vis justice systems (II.3).

The Council of Europe Recommendation also clearly recognises NHRIs as human rights defenders and asks Member States to secure and expand a safe and enabling space for NHRIs and protect them against threats and harassment (III.13). It emphasises their importance in respect for human rights and vis-à-vis the rule of law and democracy, and it underlines the importance of effective cooperation and assistance, including through ENNHRI and other regional and international bodies. Furthermore, as recognised by the Council of Europe's Human Rights Commissioner, the added value of this instrument can particularly be observed in its recommendation that the governments, within the Committee of Ministers, examine its implementation within five years.

In the context of the European Union, despite the clear political support and cooperation of EU institutions and agencies with NHRIs and ENNHRI (as will be analysed in more detail later in the report), there is an obvious gap in either legal or soft law EU standards regarding the establishment and functioning of the NHRIs in EU Member States.

This is clearly a missed opportunity to further strengthen both institutional matters as well as human rights and the rule of law agenda at the national and supranational level.

2.2 The independence and broad mandate of NHRIs

Both the UN Paris Principles and the Council of Europe Recommendation attach the utmost importance to independence as a crucial prerequisite for an effective NHRI. It is also widely recognised in academic literature that de jure and de facto independence from governments at all levels is a crucial condition and the most important and fundamental principle of functioning for the effectiveness of every NHRI.[36] By being established as an independent state institution – but not a state representative, NGO nor an international organisation – in her study, Roberts argued that NHRIs occupy a '4th space'[37].

If an institution is not independent, or not perceived to be independent, it is highly unlikely that it will be effective and have real impact. Therefore, NHRIs must be guaranteed autonomy from the government and stability in the exercise of their mandate. This encompasses the freedom to work and comment on any human rights issues as it sees fit, with sufficient human resources and other resources to fully carry out the mandate.[38]

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

36 For example, see Reif, Linda C.: Building Democratic Institutions: The Role of National Human Rights Institutions in Good Governance and Human Rights Protection., *Harvard Human Rights Journal*, 13, 2000, p. 7; De Becco, Murray (n 29), p. 82; Roberts, Kirsten: The Role and Functioning of the International Coordinating Committee of National Human Rights Institutions in International Human Rights Bodies, in Wouters, Jan, Meuwissen, Katrien, (eds.), *National Human Rights Institutions in Europe, Comparative, European and International Perspectives*, Intersentia, 2013, p. 226.

37 Roberts, ibid., p. 227.

38 OHCHR (n 11), p. 39.

Independence can be defined and determined according to several criteria. First there must be legal autonomy, preferably constitutional, allowing the institution to act independently. Furthermore, there needs to be operational autonomy, that is, freedom from any outside influence and freedom to investigate and access any information.

There must also be functional immunity from civil and criminal proceedings for acts performed by NHRIs in an official capacity. Financial autonomy allows for sufficient resources, staff, premises and a separate budget line over which it has absolute management and control, not being a part of having a link to the budget of a government ministry.[39]

Indeed, restricting or decreasing resources for the operation of the NHRIs, or adding new mandates and tasks without providing sufficient resources, has been one of the most common ways of attempting to limit their effectiveness and independence. For example, this was the situation in Poland in recent years.

Finally, a very important aspect of ensuring independence is ensuring it through the methods and criteria of both the appointment and dismissal procedures and the security of tenure. The leadership of NHRIs should be personally independent and be able to act in a pressure-free environment[40]. In fact, as Reif put it in her study, the less likely it is for the government to remove the members of the NHRI, the more likely it is that the NHRI be perceived as independent.[41]

This was particularly evident in Croatia in 2016 when parliament rejected the ORC's Annual Report for 2015, but the legal guarantees for the security of tenure prevented the early dismissal of the ombuds. Parliament's rejection of the Annual Report was seen as strong political pressure that, being fruitless, strongly contributed to the perception of the ombuds institution's independence, thus further strengthening its resilience, as well as its credibility.

In addition to the appointment and dismissal procedures for the leadership of the NHRIs, in the SCA's General Observations, the recruitment and retention of NHRI staff are also seen as necessary for compliance with the Paris Principles. NHRIs need to be legislatively empowered to determine the staffing structure and all of the appropriate criteria for staff selection. The recruitment process should be at the sole discretion of the NHRIs, and it should be provided with sufficient resources to permit the employment and the retention of the staff.

All of the requirements for the institutional independence are set forth in the UN Paris Principles. However, as de Beco and Murray argued, it is much more than that as the concept of institutional independence has still not been sufficiently and clearly defined. Even compliance with the Paris Principles may not guarantee NHRIs' de facto independence. Namely, key to its institutional independence definition may be perceptions, and much may depend on the personality of the individuals holding the top positions at the NHRIs.[42] Gliszczyńska-Grabias and Sękowska-Kozłowska even saw the influence of the individuals holding the office as being equally important to the institutional framework as 'they draw from a large scope of autonomy in deciding on their priorities and interventions'.[43]

39 Ibid., p. 41.

40 de Beco, Gauthier, Compliance with the Paris Principles and the ICC Sub-Committee on Accreditation, in Wouters, Jan, Meuwissen, Katrien, (eds.): *National Human Rights Institutions in Europe, Comparative, European and International Perspectives*, Intersentia, 2013, p. 249.

41 Reif: Building democratic institutions (n 36), p. 25.

42 de Becco, Murray (n 29), p. 83.

43 Gliszczyńska-Grabias, Aleksandra, Sękowska-Kozłowska, Katarzyna: NHRI in Poland: As good as it gets?, in Wouters, Jan, Meuwissen, Katrien, (eds.): *National Human Rights Institutions in Europe, Comparative, European and International Perspectives*, Intersentia, 2013, p. 81.

Furthermore, there needs to be an institutional culture of independence which can be beneficial for the institutional resilience, particularly when leadership changes. Strong, independent institutions are amalgams of strong and independent leadership and administration as proactive and recognised leaders can only take on urgent (and sensitive) issues in the public domain with adequate support of the office's structure. This is also supported by academic research as studies have linked the de facto independence of an institution to strong leadership and the effective management of resources.[44]

The Paris Principles also require that NHRIs have as broad a mandate as possible to promote and protect all human rights.[45] Such a mandate enables NHRIs, having an overall view of the human rights situation in a country, to help ensure that national human rights policies are preventive, coherent and consistent in order to provide authorities with a general human rights perspective.[46]

However, a broad mandate needs to be accompanied by appropriate powers as well as by resources that are sufficiently strong to enable its accomplishment effectively. Otherwise, adding new mandates without providing sufficient resources is seen as weakening of the institution, making it more difficult to spread the resources between existing and new functions.

This was the case in Croatia as the NHRI struggled to secure resources for the new mandates, particularly the National Preventive Mechanism and whistle-blowers' protection. This was also the case in Germany, as reflected in the abovementioned 2015 SCA recommendation. In Finland, the new NPM-mandate given to the Parliamentary Ombudsman resulted in no additional resources given despite the requests. Similarly, the Finnish NHRI was designated the UN CRPD 33.2 National Monitoring Mechanism in 2016 and received minimal resources for the new function: only one expert post for the FHRC.

Having a broad mandate is also what differentiates NHRIs from other institutions, particularly specialised ombuds institutions that work on the promotion and/or protection of certain and specific vulnerable groups. It is therefore desirable that the jurisdiction of the institution is defined precisely, not only for the efficiency of its work, but also to avoid jurisdictional conflicts and overlaps with other state institutions.[47] This is one of the issues lying at the core of discussions on the centralisation versus fragmentation of human rights institutions that will be looked at in more detail in Chapter 4.

The UN Paris Principles provide a non-exhaustive list of NHRI's responsibilities, such as submitting opinions, recommendations, proposals and reports on any matter concerning the promotion and protection of human rights; promoting and ensuring the harmonisation of national legislation, regulation and practices with international human rights instruments, encouraging their ratification; and cooperating with the UN.

An important segment of the NHRIs' broad mandate is human rights promotion. It includes several components, such as human rights education and training, public awareness and the media, publications and community-based initiatives. The tasks of promoting and providing human rights education are inextricably linked, aiming to forge a human rights culture.[48] NHRIs also facilitate communication between exist-

44 Spencer, Sarah, Harvey, Colin: Context, institution or accountability? Exploring the factors that shape the performance of national human rights and equality bodies, *Policy & Politics*, vol. 42, no. 1, p. 91.

45 The Paris Principles (n 3).

46 de Beco: National Human Rights Institutions in Europe (n 12), p. 341.

47 Reif: Building democratic institutions (n 36), p. 25.

48 de Beco: National Human Rights Institutions in Europe (n 12), p. 356.

ing human rights actors, civil society, academia and the state, and they foster national debate on sensitive issues by channelling them to the general public.[49] The UN handbook on NHRIs states that communication is part of strategic planning and should be closely integrated into it.[50] Therefore, both the leadership and staff should be skilled in communication and media relations as that can have a significant role in the external perception of the NHRI.

2.3 NHRIs engagement at the international, regional, supranational and national level

Having structurally and functionally fully independent NHRIs, duly accredited to be compliant with the UN Paris Principles, combined with de facto and perceived independence and a broad mandate, all provide NHRIs with credibility and esteem in international, regional, supra-national and national fora, thus highlighting human rights issues that need to be tackled.

In the UN fora, NHRIs have been accepted as individual actors with a position separate from the state and with participation rights that go beyond those of NGOs.[51] At the UN Human Rights Council (HRC), 'A status' NHRIs are considered reliable partners as they can be regarded as functioning independently from their government. They do not have voting rights, but are able to attend Council proceedings, submit written statements, make oral interventions immediately following their government, participate in debates on each agenda item and organise parallel events on any issue of interest to them. Furthermore, the Council has adopted several resolutions on NHRIs,[52] encouraging Member States to, inter alia, establish and strengthen NHRIs that are compliant with the UN Paris Principles, provide them with autonomy and independence, and protect them against reprisals and intimidation.

The same participation rights that are granted to NHRIs that are compliant with the Paris Principles are not extended to 'B status' institutions or those having a thematic mandate – such as specialised ombuds, sub-national institutions or those that are not compliant for other reasons – even though they might have information relevant for the Council.[53]

In addition, the Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment[54] and the UN Convention on Rights of People with Disabilities (UN CRPD)[55] both created a role for NHRIs of monitoring and implementing treaty obligations. Despite not being specifically mentioned in other UN human rights treaties, the interaction of treaty bodies with NHRIs fits within their functions, and in their general comments and concluding observations, they encourage state parties to establish and strengthen NHRIs that are compliant with the UN Paris Principles.

49 Ibid., p. 341.

50 OHCHR (n 11), p. 60.

51 Meuwissen, Katrien: NHRI Participation to United Nations Human Rights Procedures: International Promotion Versus Institutional Consolidation?, in Wouters, Jan, Meuwissen, Katrien, (eds.): *National Human Rights Institutions in Europe, Comparative, European and International Perspectives*, Intersentia, 2013, p. 269.

52 See for example Human Rights Council, *Resolution adopted by the Human Rights Council on 28 September 2018 39/17. National human rights institutions*, A/HRC/RES/39/17.

53 Meuwissen, Katrien, Wouters, Jan: Conclusion: Towards a Better Understanding of European NHRIs in a Multi-Layered Human Rights System, in Wouters, Jan, Meuwissen, Katrien, (eds.): *National Human Rights Institutions in Europe, Comparative, European and International Perspectives*, Intersentia, 2013, p. 301.

54 *Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, United Nations, Treaty Series, vol. 2375, p. 237.

55 *Convention on the Rights of Persons with Disabilities*, United Nations, Treaty Series, vol. 2515, p. 3.

Overall, the engagement of NHRIs with treaty bodies is seen as one of the most active areas of cooperation. Some of the treaty bodies have adopted policies on cooperation with NHRIs and developed a practice of inviting accredited NHRIs to participate across public and private meetings, with a view to ensuring their contributions. Treaty bodies systematically call on states to establish or strengthen NHRIs in line with the Paris Principles. At the same time, most treaty bodies accept a variety of sources of information, including from other national bodies such as specialised institutions that are not in compliance with the Paris Principles, leaving the question of their functioning in a reliable and independent manner somewhat open.[56]

NHRIs also regularly participate in a Universal Periodic Review (UPR), as more than half of the accredited NHRIs from the EU submitted their reports when their country was under review.[57] They also have participation rights at the UN Open-ended Working Group on Ageing.

Finally, as regards the recognition of NHRIs in international fora and their role in preserving democracy and pluralism in societies, it is important to recall that Goal 16 of the UN Sustainable Development Goals (SDGs) is 'to promote peaceful and inclusive societies for sustainable development, provide access to justice for all and build effective, accountable, and inclusive institutions at all levels'. Namely, its Target 16.a is to strengthen relevant national institutions, and the existence of independent national human rights institutions in compliance with the Paris Principles is identified as the indicator 16.a.1. Furthermore, 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.[58]

56 Meuwissen (n 51) p. 283.

57 FRA, *Strong and Effective National Human Rights Institutions* (n 9) p. 69.

58 Ibid.

At the regional level, support for NHRIs by the Council of Europe is long-standing, the first regional meeting of European NHRIs dating back to 1994.[59] There is a continuous cooperation and involvement of NHRIs and ENNHRI in different Council of Europe mechanisms and processes, such as, inter alia, the CDDH and the European Committee on the Prevention of Torture (CPT). For example, as an observer to the drafting committee, the GIHR significantly contributed to the Council of Europe Convention on Preventing and Combating Violence Against Women and Domestic Violence (the Istanbul Convention).[60] That resulted in the explicit recognition of NHRIs in Article 7 of the convention.

NHRIs are key stakeholders in ensuring the effective implementation of the European Convention on Human Rights at the national level, as expressed in the high-level political declarations of the Council of Europe on the reform of the European Court of Human Rights, including Interlaken, Izmir, Brighton and Copenhagen.[61] They have acted as *amicus curiae*, submitted third-party interventions before the European Court of Human Rights and have an important role regarding the execution of judgments.[62]

Recently, the need for the strong engage-

59 Adams, Bruce: NHRI and their European Counterparts: Scope for Strengthened Cooperation and Performance towards European Human Rights Institutions, in Wouters, Jan, Meuwissen, Katrien (eds.): *National Human Rights Institutions in Europe*, *Comparative*, *European and International Perspectives*, Intersentia, 2013, p. 139.

60 *Council of Europe Convention on preventing and combating violence against women and domestic violence*, Council of Europe Treaty Series – No.210; Adams (n 59), p. 140.

61 More info can be found at https://www.echr.coe.int/Pages/home.aspx?p=basictexts/reform&c= and http://ennhri.org/our-work/topics/democracy-and-rule-of-law/.

62 ENNHRI published a Guide for NHRIs wanting to submit Third Party Intervention, available at: http://ennhri.org/wp-content/uploads/2020/10/Third-Party-Interventions-Before-the-European-Court-of-Human-Rights-Guide-for-NHRIs.pdf/.

ment of NHRIs is confirmed by the above-mentioned Recommendation (2021), asking Member States to strengthen the meaningful cooperation of NHRIs (and ENNHRI) with the Council of Europe.

Finally, working with independent NHRIs is a continuing priority for the Council of Europe Commissioner for Human Rights who sees them as key partners in order to better understand the national context. In 2018, on the occasion of the 25th Anniversary of the Paris Principles, the Commissioner issued a Human Rights Comment on NHRIs, emphasising that they are 'needed more than ever'; recognising their contribution; seeing them as backstop against attacks on democracy, rule of law and human rights; and observing with concern the pressures and threats some of the institutions are under.[63] Systemic cooperation between Commissioner's Office and NHRIs may serve as a positive example of how the potential of independent national structures can be tapped into.

There is also continuing engagement and cooperation between NHRIs, ENNHRI and the OSCE and in particular ODIHR. Already the 1990 Copenhagen Document states that participating states will 'facilitate the establishment and strengthening of independent national institutions in the area of human rights and the rule of law'.[64]

Since then, ODIHR has significantly contributed to supporting and capacity building NHRIs, including through its flagship NHRI Academy which, in cooperation with ENNHRI, has since 2014 annually gathered senior staff of NHRIs from the region around most urgent human rights issues. Other ODIHR activities to support the work and independence of NHRIs include capacity building and providing legal expertise to set up new NHRIs in participating states and organising expert meetings to facilitate the sharing of experience among NHRIs.[65] Particularly significant are activities aiming to support NHRIs under pressure and the very recent ODIHR's Guidance Tool on Strengthening the resilience of NHRIs and Responding to Threats.[66]

In the context of the EU, the recognition of the NHRIs has been increasing as well. As Wouters, Meuwissen and Barros noted, NHRIs can connect multiple layers of the EU internal and external human rights architecture by delivering expert advice on human rights, spreading information that can be used by the EU in its multi-faceted human rights promotion and protection, monitoring the implementation of European and international human rights instruments or even monitoring EU development policy in third countries.[67]

This has been particularly evident in recent years and through the Rule of Law Mechanism that carries key importance in connecting and strengthening links between human and fundamental rights, rule of law and democratisation in the EU and in Member States.[68] It represents an annual dialogue between the Commission, the Council, and the European Parliament,

63 Council of Europe Commissioner for Human Rights Comment: *Paris Principles at 25: Strong National Human Rights Institutions Needed More Than Ever*, Strasbourg 2018, available at: https://www.coe.int/en/web/commissioner/-/paris-principles-at-25-strong-national-human-rights-institutions-needed-more-than-ever/.

64 Document of the Copenhagen Meeting (n 10), para. 27.

65 More info can be found at: https://www.osce.org/odihr/national-human-rights-institutions/.

66 *Strengthening the Resilience of NHRIs and Responding to Threats, Guidance Tool*, OSCE ODIHR, 2022., available at: https://www.osce.org/odihr/524340/.

67 Wouters, Jan et. al., The European Union and National Human Rights Institutions in Wouters, Jan, Meuwissen, Katrien (eds.): *National Human Rights Institutions in Europe, Comparative, European and International Perspectives*, Intersentia, 2013, p. 188.

68 More information can be found at: https://ec.europa.eu/info/policies/justice-and-fundamental-rights/upholding-rule-law/rule-law/rule-law-mechanism_en.

together with Member States as well as with national parliaments, civil society, and other stakeholders.

Its integral part is the Rule of Law Report which monitors developments covering four pillars: the justice system, the anti-corruption framework, media pluralism and other institutional issues related to checks and balances. NHRIs (as well as ombudsperson institutions) are explicitly recognised as an 'important topic' and intrinsic part of 'checks and balances', being at the core of the rule of law.[69] At the same time, they, as well as ENNHRI, are important sources of information.[70]

The role of ENNHRI in this regard should be particularly recognised as it collected information from all NHRIs in EU member states and compiled it into *State of the Rule of Law in Europe*, clearly showcasing the contribution by NHRIs in monitoring and advancing the rule of law across Europe.[71]

For example, in the *2020 Rule of Law Report*, the country chapter on Croatia stated that: 'The institution [the ombuds institution / NHRI] has been gaining in reputation based on professionalism, resistance to politicisation and good results. However, the ombudsperson's office is lacking capacity, particularly on new powers related to whistle-blowers, and requires additional support in human resources.[72] The 2021 report's chapter on Croatia continues to strongly support the institution, particularly regarding the access to information, 'in order to ensure independent, proper and expeditious investigations.[73]

Likewise, the 2020 country chapter on Poland emphasises that the ombuds institution (an 'A status' NHRI) plays an important role in defending the rule of law and is referenced as a source of information throughout the report.[74] The 2021 country chapter on Poland goes even further in clearly stating that 'Throughout 2020 and 2021, the Ombudsperson has continued to play a key role as a rule of law safeguard', also recognising its aggravated position due to an increasingly heavy workload and a continuous

69 Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, *2020 Rule of Law Report, the rule of law situation in the European Union*, COM (2020) 580 final, Brussels, 30.9.2020.

70 European Rule of Law mechanism: *Methodology for the preparation of the Annual Rule of Law Report*, p .3, available at: https://ec.europa.eu/info/sites/default/files/2020_rule_of_law_report_methodology_en.pdf.

71 ENNHRI, *State of the rule of law in Europe, Reports from National Human Rights Institutions*, 29 June 2020, available at http://ennhri.org/wp-content/uploads/2020/06/ENNHRI-State-of-the-Rule-of-Law-in-Europe-June-2020.pdf/.

72 Commission Staff Working Document, 2020 *Rule of Law Report, Country Chapter on the rule of law situation in Croatia*, Accompanying the document Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, 2020 Rule of Law Report, The rule of law situation in the European Union, SWD/2020/310 final. Brussels, 30.9.2020, p. 16.

73 Commission Staff Working Document, 2021 Rule of Law Report, Country Chapter on the rule of law situation in Croatia Accompanying the document Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, 2021 Rule of Law Report, The rule of law situation in the European Union, SWD/2021/713 final. Brussels, 20.7.2021., p. 22.

74 Commission Staff Working Document, 2020 Rule of Law Report, Country Chapter on the rule of law situation in Poland Accompanying the document Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, 2020 Rule of Law Report, The rule of law situation in the European Union, SWD/2020/320 final, Brussels, 30.9.2020.

trend of reducing the budget since 2016.[75]

In the case of Finland, the 2021 country chapter is not so elaborate about the country's NHRI specifically. It only stated that the FHRC and the Parliamentary Ombudsman, together with the Chancellor of Justice, play an important role in the system of checks and balances, but it does not elaborate further.[76] It also fails to mention the fact that the Parliamentary Ombudsman is part of the Finnish NHRI, together with the Human Rights Centre, when describing the legal reform on the division of tasks between the Ombudsman and the Chancellor of Justice.

Similarly, the 2021 country chapter on Germany states that the GIHR and the Federal Anti-Discrimination Agency contribute to upholding fundamental rights.[77] The lack of stronger recognition of NHRIs in Finland and Germany probably also reflects the situation of the rule of law in both countries and the themes covered. No mention at all is made of other human rights and equality bodies in the country chapters.

The role of NHRIs and ENNHRI is further recognised by the European Parliament when dealing with the European Commission's *2020 Rule of Law Report*. It recalls the importance of independent NHRIs and ombuds bodies that are in full compliance with the Paris Principles (as well as that of equality bodies) in preserving EU citizens' rights and ability to defend the rule of law, particularly drawing attention to the Polish Commissioner.[78]

A step forward can be observed at the 2022 Rule of Law Reports particularly as regards the specific recommendations to Member States, to assist them in their reforms.

Establishing NHRIs (in accordance with the UN Paris Principles) or strengthening already existing independent institutions, is recommended to Italy, Lithuania, Malta, Romania, Slovenia and Czech Republic. In addition to that, the country chapter on the rule of law situation in Poland again clearly recognizes the importance of the Polish Commissioner for Human Rights, who is not only explicitly recognized to "play a key role as a rule of law safeguard, despite limited resources", but is also taken as a continuous an reliable source of information throughout the Polish chapter.[79] Likewise,

75 Commission Staff Working Document, 2021 Rule of Law Report, Country Chapter on the rule of law situation in Poland, Accompanying the document Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, 2021 Rule of Law Report, The rule of law situation in the European Union, SWD(2021) 722 final, Brussels, 20.7.2021., p. 28.

76 Commission Staff Working Document, 2021 Rule of Law Report, Country Chapter on the rule of law situation in Finland, Accompanying the document Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, 2021 Rule of Law Report, The rule of law situation in the European Union, SWD(2021) 711 final, Brussels, 20.7.2021, p. 12.

77 Commission Staff Working Document, 2021 Rule of Law Report, Country Chapter on the rule of law situation in Germany, Accompanying the document Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, 2021 Rule of Law Report, The rule of law situation in the European Union, SWD(2021) 706 final, Brussels, 20.7.2021, p. 15.

78 European Parliament 2019–2024 Report on the Commission's 2020 Rule of Law Report (2021/2025(INI)), Committee on Civil Liberties, Justice and Home Affairs, A9-0199/2021, 9.6.2021, para 30, p. 16.

79 Annex to the Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, 2022 Rule of Law Report, The rule of law situation in the European Union, COM(2022) 500 final, Luxembourg, 13.7.2022;
Commission Staff Working Document, 2022 Rule of Law Report, Country Chapter on the rule of law situation in Poland, Accompanying the document Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, 2022 Rule of Law Report, The rule of law situation in the European Union, SWD(2022) 521 final, Luxembourg, 13.7.2022.

in 2022 Report on Croatia, the NHRI's role is strongly recognized with the recommendation that the Government should ensure a more systematic follow-up to the recommendations and information requests of the Ombudsperson.[80]

As regards Finland, the European Commission has not made any recommendation relating to the NHRI. But the report has recognized the Human Rights Centre's work on strengthening the cooperation of fundamental and human rights actors based on the Centre's recent report, which shows that the structures are fragmented, with partially overlapping tasks, which can create confusion for the rights-holders.[81]

NHRIs in some member states also have a role in monitoring the use of various EU funds. This role has been recently strengthened by the European Commission's legislative proposal for a Common Provisions Regulation COM (2018) 375, which refers to partnership with bodies promoting social inclusion, fundamental rights, gender equality, non-discrimination, and the rights of people with disabilities. For example, the Finnish Human Rights Centre is one of the partners invited by the ministries administering funds to participate as an expert in the monitoring committees tasked to monitor the use of EU funds in the programming period of 2021–2027.

However, the new role, which is potentially an important new rule of law task for NHRIs, has not been met with additional resources or support, not by the EU or nationally. Therefore, ENNHRI has expressed concern, calling on the European Commission and the FRA to ensure consultation with NHRIs to enable timely EU guidance and support for NHRIs when taking up this role.[82]

In addition to the abovementioned, a key progress when it comes to the EU recognition of the NHRIs, is the European Commission Strategy on the application of the EU Charter of Fundamental Rights (the Charter) and related Council conclusions that reflect NHRIs as key national actors in this area.[83]

Finally, despite addressing the situation outside the EU, it is worth mentioning that the European Union Action Plan on Human Rights and Democracy also commits to supporting NHRIs that comply with the UN principles, showcasing again the EU's recognition and support of independent human rights institutions. In its 2014 regulation, 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, which has been done ever since through the NHRI:EU project.[84]

However, as already noted above, it must be recognised that in its engagement, the EU relies on the NHRI's accreditation status and

80 Commission Staff Working Document, 2022 Rule of Law Report, Country Chapter on the rule of law situation in Croatia, Accompanying the document Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, 2022 Rule of Law Report, The rule of law situation in the European Union, SWD(2022) 511 final, Luxembourg, 13.7.2022.

81 Commission Staff Working Document, 2022 Rule of Law Report, Country Chapter on the rule of law situation in Finland, Accompanying the document Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, 2022 Rule of Law Report, The rule of law situation in the European Union, SWD(2022) 526 final, Luxembourg, 13.7.2022.

82 Opportunities and Limits for NHRIs, 2022, available at: https://ennhri.org/news-and-blog/nhris-monitoring-eu-funds/.

83 Charter of Fundamental Rights of the European Union, 2012, C 326/393.; European Commission, Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, Strategy to strengthen the application of the Charter of Fundamental Rights in the EU, COM(2020) 711 final, Brussels, 2.12.2020.

84 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, 2014, OJ 7/85.

that there are no European, soft law or binding rules or recommendations regarding the NHRI's set-up and functioning that are addressed to EU Member States. The lack of a legal basis in the EU law can be a limiting factor to the stronger support that the EU could offer to NHRIs compared with national bodies with an EU legal basis, such as equality bodies or data protection authorities and their networks.

The potential for EU cooperation and involvement could be further developed through more regular exchanges between EU institutions and NHRIs and especially with the Council of the European Union and its working parties as well as with the European Commission when monitoring the Charter. It could also be strengthened by providing more funding opportunities and resources for the effective implementation of fundamental rights and the rule of law, and even more consistent reliance on NHRIs and ENNHRI as sources of reliable and credible information.

The latter is certainly the case as regards the cooperation of NHRIs and ENNHRI with the EU's Fundamental Rights Agency (FRA), which is both a natural and important EU interlocutor for NHRIs.

The FRA has devoted significant work to supporting and strengthening the recognition and impact of NHRIs. For example, its 2020 report showed that the number of NHRIs compliant with the Paris Principles in the EU is growing; however, not all EU members have established the NHRI, and not all the institutions that are established fulfil the required criteria.[85] Therefore, the FRA calls on Member States to establish and strengthen independent, effective and impactful NHRIs that are compliant with the Paris Principles and calls on the EU to more consistently draw on the potential of NHRIs as crucial actors in the implementation of fundamental rights, supporting them with funding opportunities and sufficient resources. It also recognises the importance of the implementation of NHRIs' recommendations at a national level and their consistent involvement in policy and legislative developments.[86]

To a large extent, the increased visibility and recognition of NHRIs in the European fora, both in the EU and the Council of Europe, can be attributed to the efforts of ENNHRI, representing European NHRIs. It prioritises raising awareness of the role of NHRIs in promoting and protecting human rights, as well as engaging with relevant actors.[87] Its strategic core objectives are devoted to having more NHRIs compliant with the Paris Principles, the more effective promotion and protection of human rights, and a strong and sustainable network.

This is also well recognised by the actors themselves, particularly the Council of Europe Commissioner for Human Rights, FRA, and the EU DG JUST, as well as other institutions interviewed for this research. The support that ENNHRI provides to NHRIs – including support in facilitating engagement with international and regional fora – significantly contributes to their overall strengthening and amplifying voice, even at the national level. At the same time, it connects them by facilitating peer support and the exchange of information between the institutions.

All efforts to engage, exchange information, strengthen capacities and other activities of international, regional and EU stakeholders (as well as NHRIs themselves) only have meaning if they are implemented and achieve impact at the national and local levels, and most importantly – at the individual level of all people, but particularly the most vulnerable. NHRIs that receive complaints can often become more aware of the results achieved, for example, through the feedback from complainants or in the follow up to the implementation of specific recommendations in individual cases.

85 FRA, Strong and Effective National Human Rights Institutions (n 9) p. 25.

86 Ibid., p. 12.

87 More information about ENNHRI's work in this regard can be found at: http://ennhri.org/our-work/nhri-recognition/.

How international and regional human rights standards are implemented in the everyday lives of rights holders is the ultimate rationale for NHRIs' existence.

The same logic can be applied bottom up. By being in touch with the human rights challenges that people face in their everyday lives, either through complaints or cooperation with NGOs and other civil society partners, NHRIs can upscale their individual recommendations to general and systemic policy advice directed towards decision makers at all levels: from local and municipal levels to national, European and international levels. In practice, this is how NHRIs become bridge builders between individuals and governments, between civil society and governments, and towards the international community.

To be able to do that, and in fulfilling the Paris Principles' criteria, it is essential that they reach out to communities, particularly the most vulnerable. Depending on the national contexts, those would likely include national and ethnic minorities, poor people, migrants, older people, people with disabilities, LGBTI and other communities. NHRIs should communicate with them, collect information and monitor the situation, so that they build trust, respect and credibility.

Improving accessibility can take place through a variety of outreach activities, such as opening regional offices, as was the case in Croatia in 2014 and 2015. In addition to the regional presence, prioritising fieldwork, strong media (including social media) presence, and issuing newsletters and similar publications have resulted in a more than 30% increase in the complaints received between 2012 and 2020[88] and above average awareness of the institution amongst the general population in Croatia (79%).[89,90]

Likewise, the outreach activities of the Polish CHR – such as cooperation with local communities, active citizens and social organisations – as well as regional consultations, pointing out problems that were previously unnoticed in public debate, strongly contributed to its stronger visibility and higher recognition in the public eye, both domestically and in Europe.

However, one must bear in mind that, as Roberts clearly recognised, NHRIs are not a 'cure-all' that can improve global human rights standards.[91] They face significant expectations at all levels and, at the same time, the actual improvement of the human rights situation on a national level is very complex, dependent on a variety of actors, and it cannot be attributed to any single actor. Expectations of what they can achieve should be realistic and observed in the context of political, social and economic circumstances and they should be interdependent on other established mechanisms and structures.[92]

While NHRIs try to implement all the criteria of their independent and effective work by monitoring, reporting, communicating, recommending, advising and engaging with other actors, they also often face sharp criticism (not always constructive and well-intentioned) arising from different perspectives, even political perspectives, questioning priorities or simply considering that they are not doing enough. When this is coupled by limited (or even weakening) resources, it is quite clear that their effectiveness and legitimacy might be hampered.

88 Izvješće pučke pravobraniteljice za 2016, Zagreb, 2017., p. 3; Izvješće pučke pravobraniteljice za 2020, Zagreb 2021, p. 4; both available at: https://www.ombudsman.hr/hr/izvjesca-puckog-pravobranitelja/.

89 FRA, Strong and Effective National Human Rights Institutions (n 9) p. 8.

90 More about ORC outreach and other activities in the period 2013–2021 can be found at https://www.ombudsman.hr/en/en-2013-2021/.

91 Roberts (n 36) p. 244.

92 Murray (n 34) p. 191.

This is where synergies can be found. This is precisely why NHRIs need strong support from national actors, and even more from the EU, regional, and international actors. This support might be symbolic (even given by means of social media messaging), it might be political if coming from the top EU or UN officials, it might be legal (when included in wording of regional and international instruments) or it might be provided through funding opportunities. All the same, it needs to be unequivocal and aim to recognise their role and maximise their effectiveness and impact.

3 Other human rights and equality bodies

As noted above, in addition to NHRIs, due to different cultural, historical, and political contexts at the national level, a variety of other human rights and equality institutions, bodies and agencies have been established. In some countries, these are working in parallel with each other, while some have opted for more centralised, multi-mandated bodies. However, the main aim of them all is to support the stronger implementation of human rights and equality norms. In this chapter, we will look into the most common of them: ombuds (that are not NHRIs) and specialized ombuds institutions, equality bodies and data protection agencies.

3.1 Ombuds institutions

Ombuds institutions are globally established in more than 140 states at national, regional or local levels, and they have different competences. As these institutions have been adapted into the legal and political systems of respective states, like NHRIs, there is no standardised model of an ombuds institution. In fact, many of the already established ombuds institutions have extended their legal mandates and are also accredited as NHRIs. In this chapter we will look at the specificities of the self-standing ombuds institutions in Europe that are not accredited NHRIs.

The Council of Europe has been active in advocating for strong and independent ombuds institutions since the 1970s. However, in 2019, the European Commission for Democracy through Law (the Venice Commission) adopted the Principles on the Protection and Promotion of the Ombudsman Institution (the Venice Principles) that set up the most comprehensive ombuds-related checklist ever compiled.[93] Referring to the Paris Principles, the Venice Principles filled in the void that existed in terms of the lack of standards and guidance for these ombuds institutions that are not NHRIs.

The 25 Venice Principles can be grouped into six categories: the establishment, status, and institutional model; appointment and the terms of office; immunity and the security of tenure; mandate and powers; independence; and reporting. However, independence is the ultimate feature and the core principle of Ombudsman institution, cutting across all the other categories.

The Ombudsman independence can relate to several criteria, such as having a stable mandate, appointment and dismissal procedures, an adequate budget, accountability and reporting procedures. The Venice Principles therefore state that the Ombudsman shall be elected or appointed according to procedures

93 Glušac (n 2) p. 23.

that strengthen (to the highest possible extent) the authority, impartiality, independence, and legitimacy of the institution and that he or she shall not, during his or her term of office, engage in activities incompatible with independence or impartiality nor be given or follow any instruction from any authorities. The essential criteria for being appointed Ombudsman are high moral character, integrity and appropriate professional expertise and experience, including in the field of human rights and fundamental freedoms. The Ombudsman should have sufficient and independent budgetary resources, to ensure full, independent and effective operations while the financial audit of its budget should not take into account the choice of priorities in the execution of the mandate. Furthermore, the Ombudsman, the deputies and the decision-making staff should enjoy functional immunity.

In many countries, ombuds institutions have evolved over time and have taken the approach of working not only on the legality of public authorities' decisions, but also on the protection of human rights in its wider sense, as well as human rights promotion.[94] As Reif described it: 'At its core, the ombudsman is an institution designed to monitor illegality, unfairness, and injustice in public administration. In this sense, breaches of human rights laws, whether domestic or international obligations, have always been part of the ombudsman's mission. It has long been recognized that even the classical ombudsman plays a role both in human rights protection and in the implementation of a state's domestic and international human rights obligations.[95]

This is well recognised by the Venice Principles, which state that Ombudsman is an institution that acts not only against maladministration, but also against alleged violations of human rights and fundamental freedoms. Therefore, those ombuds institutions that fulfil the criteria set forth by the Paris Principles can become NHRIs, as explained in more detail above. In addition, many classical ombuds institutions were given multiple mandates and were entrusted with specific human rights issues, for example child rights, privacy and the prevention of torture.[96]

Further to the Venice Principles, the United Nations General Assembly has adopted a Resolution on the role of Ombudsman and mediator institutions in the promotion and protection of human rights, good governance and the rule of law, uplifting them to the global standards for Ombudsman institutions. Furthermore, to fill in existing gaps within the framework of the IOI, a voluntary mechanism – an approach – of peer review is introduced, undertaken by fellow ombuds offices, to help assess areas of the effectiveness and functioning of institutions upon their own request.[97] This brings added value and particular importance to those ombuds institutions that do not fulfil the conditions set forth by the Paris Principles. However, thus far this system has not become robust and structured as it is only conducted upon request and not regularly, it does not provide accreditation nor does non-compliance with the Venice Principles' criteria have any further implications.

94 Reif (n 36) p. 21.

95 Reif, Linda C.: The Transplantation and Adaptation: The Evolution of the Human Rights Ombudsman, *Boston College Third World Law Journal*, vol. 31, no. 2, Spring 2011, p. 281.

96 Ibid., p. 271.

97 International Ombudsman Institute, Guide to Peer Reviews, IOI Best Practice Paper – Issue 4 – April 2020, available at https://www.theioi.org/publications/ioi-best-practice-papers.

3.2 Specialised ombuds

Some states have decided to establish specialised ombuds institutions to add particular significance to the promotion and protection of particularly vulnerable groups, such as ombuds for children, ombuds for people with disabilities and gender-equality ombuds. Even though they carry the name of ombuds, implying the fulfilment of all criteria as recognised in internationally accepted standards, their legislative and organisational set-up varies in different states and their mandate is not broad but limited to a particular societal group or issue. Therefore, thematic human rights institutions are not NHRIs and cannot be deemed to be Paris Principles compliant.[98]

3.2.1 Ombuds for children

The most common example of a specialised ombuds is an ombuds for children, a role first established in Norway in 1981.[99] This is not surprising as children are recognised as one of the most vulnerable groups in society and children are in contact with and can be negatively impacted on by authorities in many ways.[100] UNICEF sees an ombuds for children institute as a public institution established to independently monitor, promote and protect children's rights, not setting a preference for a specialised or more general type of institution. The establishment of independent children's ombuds or children's commissioners – whether broad-based and established within an NHRI or a thematic body – to promote and monitor the implementation of the UN Convention on the Rights of the Child[101] is also strongly supported by the UN Committee on the Rights of the Child (CRC) in the General Comment on the Role of Independent National Human Rights Institutions in the Promotion and Protection of the Rights of the Child (CRC GC No. 2).[102]

Recognising that the Paris Principles provide a framework for the establishment and overall functioning of an NHRI, CRC GC No. 2 argues that children's human rights should be given special attention in an independent NHRI.[103] Furthermore, while recognising that specialist independent human rights institutions for children, ombuds or commissioners for children's rights have been established in a growing number of states' parties, it warns that considerations must be given to ensure the effective allocation of the available resources and points out that the 'development of a broad-based NHRI that includes a specific focus on children is likely to constitute the best approach', adding that it should include in its structure 'either an identifiable commissioner specifically responsible for children's rights, or a specific section or division responsible for children's rights'.[104] Importantly, despite what the organisational structure is, the CRC puts a strong focus on the principles of the independence and effectiveness of the child rights institutions in regard to monitoring, promoting and protecting children's rights, as well as to the cooperation of all existing human rights institutions.[105]

98 Reif, Linda C.: The future of thematic children's rights institutions in a national human rights institution world: The Paris Principles and the UN Committee on the Rights of a Child, *Houston Journal of International Law*, vol. 37, no. 2, Spring 2015, p. 437.

99 More about the institution can be found at https://www.barneombudet.no/.

100 Reif, Linda C.: The Ombudsman and the Protection of Children's Rights, *Asia Pacific Law Review*, vol. 17, no. 1, 2009, p. 28.

101 Convention on the Rights of a Child, United Nations, Treaty Series, vol. 1577, p. 3.

102 Committee on the Rights of the Child, The Role of Independent National Human Rights Institutions in the Promotion and Protection of the Rights of the Child, 6, UN Doc. CRC/GC/2002/2, Nov. 15, 2002.

103 Ibid. para. 5.

104 Ibid. para. 6.

105 Ibid., para. 7.

It can also be observed that the CRC, in the title and throughout the text of GC No. 2, consistently uses the term *national human rights institution* when elaborating the standards it proposes, drawing linkages between the Paris Principles and independent child rights institutions and emphasising the importance of encompassing all children's human rights stemming from the CRC and other international human rights instruments. Such wording might suggest that the CRC does set up a preference regarding the institutional model.

Even though the basic framework for the establishment of an independent office to specifically promote children's human rights can be found in the Paris Principles, the CRC does not mention nor establish a process similar to accreditation which would assess institutional independence and other requirements. Regardless, the Paris Principles can serve as an inspiring model in fulfilling the required criteria of independence from the government, particularly in the legislative framework, and operational and financial autonomy, as well as in appointment and dismissal procedures. However, as already noted in Section 2.3, lacking a stronger framework can potentially result in shortcomings, including shortcomings in their engagement and cooperation with UN agencies and human rights mechanisms for the child rights institutions that are not accredited NHRIs, leaving the question of their independence and reliability open.

At the UN level, the establishment of an 'ombudsman or similar independent organ, which would ensure that the status, rights and interests of young persons are upheld' is also encouraged by the UN Guidelines for the Prevention of Juvenile Delinquency (the Riyadh Guidelines).[106] Likewise, the Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse (the Lanzarote Convention) calls on Member States to 'set up or designate' independent competent institutions for the promotion and protection of the rights of the child.[107] The Council of Europe has been very supportive towards child rights institutions, as reflected in its child-rights strategies since 2006 and particularly in the Strategy for the Rights of the Child (2016–2021)[108] which strongly relies on ombuds for children as important stakeholders, as sources of information and as partners in the implementation of children's rights, not setting up a preference regarding the specific institutional model.

The key functions of children's rights institutions are to promote children's rights, to monitor, to advocate and to encourage child participation, as well as to respond to complaints and protect children's rights. However, not all institutions have the mandate to carry out all of the abovementioned functions and priorities vary from one country to another, depending on the historical and overall political and societal context. In that regard, it should be ensured that their jurisdiction is broad enough to cover all the authorities that regularly come into contact with children, including immigration, social services, justice, health, education, the police.[109]

At the European level, independent child rights institutions are brought together by ENOC, which gathers 44 institutions in 34 countries within the Council of Europe, 22 of

106 United Nations Guidelines for the Prevention of Juvenile Delinquency (the Riyadh Guidelines), A/RES/45/112, 1990, para. 57.

107 Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse, Council of Europe Treaty Series No. 201, Art. 10.

108 Council of Europe Strategy for the Rights of the Child (2016-2021), *Children's human rights*, Council of Europe, March 2016, available at https://edoc.coe.int/en/children-s-rights/7207-council-of-europe-strategy-for-the-rights-of-the-child-2016-2021.html.

109 Reif, The Ombudsman and the Protection of Children's Rights (n 100) p. 49.

which are EU countries.[110] The ENOC Statutes (2020)[111] make a distinction between full and associate membership of the network according to set criteria. Accordingly, full membership is only open to independent children's rights institutions that are established through legislation approved by parliament, which provides for their independence; that have the function (established through legislation) of protecting and promoting children's rights; that have no legal provisions limiting their ability to set their own agenda or prevent them carrying out core functions; and that have staff who are exclusively concerned with the protection and promotion of children's rights.[112]

In stating these criteria, the ENOC Statutes reference the Paris Principles, as well as the ENOC Standards for independent children's rights institutions, annexed to the statutes. From the outset, ENOC recognises that not all members meet them; however, they are seen as aspirational to those who do not meet the standards and they aim to encourage parliaments and governments to improve the conformity of the status of existing institutions. Taking inspiration from the Paris Principles, the ENOC Standards are in fact an 'unofficial summary of the key implications of the Paris Principles, relating them, where appropriate, to children's human rights in particular'.[113] Accordingly, they elaborate on competence and responsibilities, composition and independence, methods of operation, hearing and considering complaints, designing human rights institutions for children and responding to complaints from children and their representatives. Of course, even though, as stated in the statutes themselves, not all institutions fulfil the criteria, the above-mentioned standards – albeit a soft and lacking system of external assessment or accreditation – can serve as an additional tool in advocating for stronger and more independent child rights institutions at the national level. By doing so, they can also contribute to stronger implementation, monitoring, promotion and protection of children's rights.

As for the countries we looked at in this research, all but Germany have established separate ombuds for children institutions, as will be described in more detail in country chapters below. Germany, however, has a particular arrangement, having been entrusted with a mandate to monitor the implementation of the CRC into the GIHR, which is not member of ENOC. In Finland, there are two human rights institutions dealing with children's rights: the Ombudsman for Children has a promotional mandate while the Parliamentary Ombudsman – part of the Finnish NHRI – deals with complaints, including complaints from children. However, only the Ombudsman for Children is a member of ENOC.

3.2.2 Other ombuds institutions

Some European states have also established other ombuds institutions dealing with specific vulnerable groups in society. For example, self-standing ombuds for persons with disabilities are established in Croatia, Austria and Malta. This can be seen as a requirement stemming from Article 33.2 of the UN CRPD which requires state parties to designate or establish a framework, including one or more independent mechanisms to promote, protect and monitor implementation of the convention (NMM). By doing so, state parties should take into account the Paris Principles, thus clearly implying that this task should be granted to an NHRI.

However, in cases where specialized ombuds institutions are already established, it is more likely they would be awarded with the

110 More information about the ENOC and its work and membership can be found at: www.enoc.eu.

111 The European Network of Ombudspersons for Children, Statutes as amended November 2020, available at http://enoc.eu/wp-content/uploads/2021/04/ENOC-Statutes-amended-Nov2020-FV.pdf.

112 Ibid., Article 4.

113 Ibid, Annex A, ENOC's Standards for independent children's rights institutions, para. 2.

NMM mandate, instead of a broad NHRI. At least this is the case in Croatia, despite the fact that the Ombudsman for Persons with Disabilities is not NHRI, nor is it officially designated as the NMM. It receives complaints regarding the decisions of public authorities, fulfilling the competence of a classical ombuds institution. At the same time, it also operates as an equality body being the country's competent authority regarding discrimination on the ground of disability, and as such, it is a member of Equinet.

Specialised bodies, such as the Ombud for Equal treatment in Austria, the Equal Opportunities Ombudsman in Latvia, the Equality and Anti-Discrimination Ombud in Norway, the Equality Ombudsman in Sweden, the Non-Discrimination Ombudsman and Ombudsman for Equality in Finland, carrying the name of Ombudsman, operate as equality bodies, having a mandate to promote equality and combat discrimination, as described in more detail below.

Thus, the work of specialised institutions dealing with specific vulnerable groups and specific human rights issues can be seen as examples of interlinked work on human rights, anti-discrimination and, in some cases, even maladministration. Even though they are not Paris Principles compliant and there is no robust system for assessing their reliability and independence (apart from drawing inspiration from the Paris Principles), they can still benefit from standards – albeit weak – guiding the establishment and strengthening of the equality bodies that will be analysed in the next chapter.

3.3 Equality bodies

Even though institutions dedicated to promoting equal treatment and tackling discrimination – equality bodies – were already established in some European countries in the 1960s and 1970s, the EU Member States' obligation to introduce them only came in 2000[114]. Namely, in 1999, by virtue of the Treaty on the Functioning of the EU (TFEU),[115] the Council of the European Union was allowed to adopt the legislation to combat discrimination on six grounds: sex, racial or ethnic origin, religion or belief, disability, age or sexual orientation.[116] Soon after this, in 2000, the Racial Equality Directive (Directive 2000/43/EC)[117] was adopted, requiring the establishment of a body or bodies for the promotion of the equal treatment of all persons without discrimination on the grounds of racial or ethnic origin.

A similar obligation to designate equality bodies was introduced for discrimination on the grounds of sex with the EU Gender Equality Directives: Article 12 of the Gender Goods and Services Directive (2004/113),[118] Article 20 of the Gender Recast Directive (2006/54)[119]

114 Kadar, Tamas: Equality Bodies: A European Phenomenon, *International Journal of Discrimination and the Law*, 2018, Vol. 18(2–3), str. 145.

115 Consolidated Versions of the Treaty on European Union and the Treaty on the Functioning of the European Union, OJ 2012/C 326/01.

116 TFEU, Article 19(1).

117 Council Directive 2000/43/EC implementing the principle of equal treatment between persons irrespective of racial or ethnic origin, OJ 2000, L180/22.

118 Council Directive 2004/113/EC of 13 December 2004 implementing the principle of equal treatment between men and women in the access to and supply of goods and services, OJ 2004, L373/37.

119 Directive 2006/54/EC of the European Parliament and of the Council of 5 July 2006 on the implementation of the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation (recast), OJ 2006, L204/23.

and Article 11 of the Self-Employed Directive (2010/41).[120] Accordingly, equality bodies are established in all EU Member States, not only to tackle discrimination on the grounds of race and ethnic origin, and gender, as the directives require, but also to tackle discrimination based on other grounds, the grounds often exceeding the six discrimination grounds listed in the TFEU.

When looking at best practices in the establishment of equality bodies, Crowley and Gaspard saw three main factors: independence, effectiveness, and accessibility.[121] Similarly to the independence of NHRIs, *independence* here is seen as the ability to allocate resources, make decisions regarding staff, determine priorities and exercise powers autonomously. *Effectiveness* on the other hand requires adequate resources, functions, competences and powers. Finally, equality bodies should be *accessible* to victims of discrimination with regard to their premises, online and telephone services, outreach activities and other similar and flexible arrangements. Lahuerta elaborated further and distinguished three layers of a Responsiveness Framework for the institutional design of equality bodies: at a general level, there should be de jure and de facto independence, as well as enough resources. At the bottom level, equality bodies should be accessible and have a support service for alleged victims. At the top level, there is systemic action and coordination.[122]

However, despite the initial European Commission proposal to guarantee structural, constitutional independence when establishing an equality body, the Equality Directives ensured that equality bodies would only have functional independence as their competences include providing independent assistance to victims of discrimination, conducting independent surveys, publishing independent reports and making recommendations on any issue relating to discrimination.[123,124] In that regard, some countries set up equality bodies as an integral part of a ministerial department, leaving a doubt, as de Witte observed, about if an organ which is integrated in the government administration will act entirely independently in performing its tasks.[125]

Therefore, it is not surprising that – due to such a broad margin of appreciation within European law, as well as historical, political and other reasons – at the time of their establishment, the setup of equality bodies in the national institutional architecture varies. In some Member States they are connected to previously existing NHRIs – adding to them a new mandate, powers and resources – while some are established as self-standing bodies only mandated to deal with equality and non-discrimination. In addition, some Member States have established two or more equality bodies to deal with discrimination based on different discrimination grounds. However, the dominant trend is the establishment of multi-ground equality bodies, despite the fact that many Member States have established a small number of single-ground ones.[126]

120 Directive 2010/41/EU of the European Parliament and of the Council of 7 July 2010 on the application of the principle of equal treatment between men and women engaged in an activity in a self-employed capacity and repealing Council Directive 86/613/EEC, OJ 2010 L180/1.

121 Crowley, Niall, Gaspard, Anne: Minding Equality Bodies, *Juridikum* 3/2018, p. 327.

122 Lahuerta, Sara Benedí: Equality Bodies: Advancing towards more responsive designs?, University College Dublin Working Papers in Law, Criminology & Socio-Legal Studies, Research Paper No. 5 / 2021, forthcoming in the *International Journal of Law in Context* [accepted version], p. 6.

123 Kadar (n 114), p. 146.

124 Race Directive (n 117), Art. 13.

125 De Witte, Bruno: New Institutions for Promoting Equality in Europe: Legal Transfers, National Bricolage and European Government, *The American Journal of Comparative Law*, Winter 2012, Vol. 60, No. 1, *Evolutions in Antidiscrimination Law in Europe and North America*, (Winter 2012), p. 66.

126 Crowley, Gaspard (n 121), p. 324.

Finland is an example of particularly fragmented equality structures. There are two separate equality bodies: the Non-Discrimination Ombudsman and the Equality Ombudsman. While both only have functional independence and are structurally connected to the Ministry of Justice, they differentiate when it comes to the scope of their mandates.

The Non-Discrimination Ombudsman deals with cases based on the open list of grounds envisaged in the Non-Discrimination Act,[127] while its other mandates are scattered in different laws. The primary law is the act on the Non-Discrimination Ombudsman[128] which establishes the ombuds institution and mandates it to supervise the compliance with the Non-Discrimination Act in order to promote equality, prevent discrimination and, more specifically, to perform the function of the National Rapporteur on Trafficking in Human Beings.[129] The Aliens Act[130] further mandates it with the monitoring of the rights of foreign nationals[131] and the enforcement of removals from the country.[132] With the adoption of the Ombudsman for Older Persons Act[133] it will share some of its resources with this newly established specialised ombuds body (which is not an equality body itself). If all of that is not enough, the Non-Discrimination Ombudsman received a new task to act as a Rapporteur on Violence against Women.[134]

On the other hand, the Gender Equality Ombudsman is established by the Gender Equality Ombudsman Act, tasked with supervising the Act on Equality Between Women and Men.[135] It deals with the grounds for gender, gender identity and gender expression; promoting equality between woman and men; and improving the status of women, particularly in working life.[136] To make things in Finland even more complex, the Non-discrimination Act envisages that some of the supervision powers against discrimination are given to the National Non-Discrimination and Equality Tribunal and the occupational safety and health authorities.[137]

On the other end of this spectrum, Germany has only established one equality body, the Federal Anti-Discrimination Agency, by virtue of the General Equal Treatment Act (AGG).[138] The case of Croatia showcases a certain balance as, in addition to the multi-mandated NHRI which is the central equality body, three other bodies (the Ombudsman for Persons with Disabilities, the Ombudsman for Children and the Ombudsman for Gender Equality) work on anti-discrimination issues, and all of these except the Ombudsman for Children are members of Equinet.

Such a large variety of equality bodies can be divided into those that mainly focus on promotional work and providing advice, those that focus on investigating and deciding cases based on complaints and those that have a mix of these powers.[139] Many equality bodies have additional functions and powers; for example, they initiate and support litigation or deliver decisions on discrimination cases with legally

127 These are: age, origin, nationality language, religion, belief, opinion, political activity, trade union activity, family relationships, state of health, disability, sexual orientation or other personal characteristics, Section 8 of the Non-Discrimination Act, 1325/2014.

128 Laki yhdenvertaisuusvaltuutetusta 1326/2014.

129 Ibid., Sec. 3.

130 Ulkomaalaislaki 301/2004.

131 For example, ibid., Sec. 208 and 209.

132 Ibid., Sec. 152b.

133 Laki vanhusasiavaltuutetusta 753/2021.

134 Laki yhdenvertaisuusvaltuutetusta 1326/2014.

135 Act on Equality between Women and Men, 609/1986.

136 Ibid., Sec. 1.

137 Non-discrimination Act, 1325/2014, Sec 18.

138 Allgemeines Gleichbehandlungsgesetz vom 14. August 2006 (BGBl. I S. 1897).

139 Kadar (n 114), p. 147.

binding effect.[140] These differences, however, may result in different levels of protection against discrimination in different Member States, a gap that the setting up of standards for equality bodies was trying to overcome.

In December 2017, the European Commission against Racism and Intolerance adopted ECRI GPR No. 2: Equality Bodies to Combat Racism and Intolerance at National Level.[141] Building on the Paris Principles, ECRI recommends that Member States establish equality bodies to combat racism and intolerance by constitutional or legislative provision, passed by parliament. GPR No. 2 puts strong emphasis on the principle of independence, demanding they are de jure and de facto independent, separate legal entities outside the executive and legislature, and have the necessary competences, powers and resources.[142] Equality bodies, according to ECRI, should function free of political interference by any actor and should not be given instructions. Their independence should be assured by appointment, status and dismissal procedures for persons holding leadership positions and by a separate budget line, subject to the annual approval of parliament.

Regarding the mandate, ECRI recommends that the equality bodies that form the multi-mandate institutions have, inter alia, their mandate explicitly set out in legislation and appropriate human and financial resources allocated to it.[143] In Member States that have different equality bodies, their competences and powers should be levelled up and co-ordination should be ensured to address overlaps, enable joint action and optimise the use of resources; there should be a common interpretation of the anti-discrimination legislation and coordinated use of competences and powers.[144] Their functions should include the promotion of equality, the protection against discrimination and strategic litigation, they may decide on complaints and should have powers to obtain evidence and information. GPR No. 2 also puts emphasis on the promotional role, recommending that equality bodies have a communication strategy to support awareness raising and are involved in dialogue with stakeholders, particularly civil society organisations. As regards the monitoring of the implementation of GPR No. 2, it is in the hands of ECRI during (and limited to) the constructive dialogue with Member States.

In 2018, the European Commission adopted a Commission Recommendation on 'Standards for equality bodies',[145] setting out measures to help improve their independence and effectiveness. Like the GPR No. 2, they relate to the national equality bodies mandate, functions, and independence, as well as coordination and cooperation. The Commission Recommendation underlines the importance of functional independence by providing independent assistance, conducting independent surveys and by publishing independent reports. However, it goes one step further and, albeit softly, recommends that Member States 'consider such elements as the organisations of those bodies, their place in the overall administrative structure, the allocation of their budget, their procedures for handling resources, with particular focus on the procedures for appointing and dismissing staff, including persons holding leadership positions. Such consideration should be without prejudice to Member States' particular national organisational structures'.[146]

140 FRA, *Equality in the EU, 20 years on from the initial Implementation of the Equality Directives*, Publication Office of the European Union, Luxembourg, 2021, p. 59.

141 European Commission against Racism and Intolerance, GPR No. 2: Equality Bodies to Combat Racism and Intolerance at National Level, adopted on 7 December 2017, CRI (2018) 06.

142 Ibid., Sec. I.2.

143 Ibid., Sec. 7.a.b.

144 Ibid., Sec. 9.

145 Commission Recommendation (EU) 2018/951 of 22 June 2018 on standards for equality bodies, OJ 2018, L167/28.

146 Ibid., Section 1.2.1. (2).

To address the gap in the monitoring of the standards and to identify any necessary improvements to the status and work of equality bodies, in 2019 Equinet developed sets of indicators[147] relating to mandate and the independence of the equality bodies that are currently being tested by institutions on a voluntary and confidential basis.

In March 2021 the European Commission took stock of the current situation regarding equality bodies across the EU and the implementation of the Racial Equality Directive and the Employment Equality Directive, issuing a Report[148] supported by the document entitled Staff Working Document on Equality Bodies and the implementation of the Commission Recommendation on standards for equality bodies (SWD).[149]

The Commission Recommendation on SWD provides an in-depth insight into the establishment and functioning of equality bodies in the EU Member States. As regards independence, the SWD recognises that even though almost all equality bodies are de jure independent, this does not guarantee de facto independence, particularly when they are established as a part of a ministry. The European Commission perceives this as a *structural weakness* that might be mitigated by strong leadership and internal rules.[150] This has implications for budgetary independence (in allocating and managing funds, not being pre-determined by goals and directions set by a ministry etc.), leadership (appointment by the government or parliament, dismissal etc.) and accountability. Furthermore, even though in many countries where equality bodies are established within government structures, they do enjoy functional independence, granting them structural independence may be beneficial to building resilience in cases of potential political interference and 'in less consensual political climate'.[151]

Since the SWD clearly recognises that, even though the recommendation serves as a common standard for the effective and independent functioning of equality bodies, its limited and unequal level of implementation still hinders some equality bodies in effectively exercising their role, which leads to different levels of protection against discrimination across the EU. Therefore, the fact that the European Commission will propose new legislation to strengthen the role of equality bodies by the end of 2022 is certainly welcomed.

This process started in July 2021, when the European Commission launched an initiative to adopt new legislation aiming at strengthening equality bodies by setting binding minimum standards on how they operate in all grounds of discrimination and areas covered by EU equality rules. It would be limited to extending their mandate (to the grounds and fields covered by the Employment Equality Directive and Gender Equality Directive in the field of social security) and strengthening their role. The European

147 https://equineteurope.org/what-are-equality-bodies/standards-for-equality-bodies/.

148 European Commission, Report from the Commission to the European Parliament and the Council on the application of Council Directive 2000/43/EC implementing the principle of equal treatment between persons irrespective of racial or ethnic origin ('the Racial Equality Directive') and of Council Directive 2000/78/EC establishing a general framework for equal treatment in employment and occupation ('the Employment Equality Directive') COM/2021/139 final.

149 Commission staff working document, 'Equality bodies and the implementation of the Commission Recommendation on standards for equality bodies Accompanying the document Report from the Commission to the European Parliament and Council on the application of Council Directive 2000/43/EC implementing the principle of equal treatment between persons irrespective of racial or ethnic origin' ('the Racial Equality Directive') and of Council Directive 2000/78/EC establishing a general framework for equal treatment in employment and occupation ('the Employment Equality Directive'), COM(2021) 139 final, Brussels, 19.3.2021.

150 Ibid., p. 16.

151 Ibid., p. 19.

Commission also stresses that this new legislation must not lead to the opening of discussion on amendments to other provisions of any of the existing equality directives, which is important in light of possible attempts to, under the guise of this initiative, weaken the already existing levels of standards. The proposed directive is planned for the fourth quarter of 2022.[152]

Finally, as Kadar noticed, specific inspiration for granting full independence to equality bodies in European law may also be found in standards relating to similar institutions, such as data protection agencies, which largely resemble those of the Paris Principles[153] that will be further analysed in the next section.

3.4 Data protection authorities

Under EU law, data protection is a distinct fundamental right, recognised in both primary and secondary legislation. Namely, the right to personal data protection is provided for in Article 16 of the TFEU, which also affirms that compliance with data protection rules must be subject to the control of independent supervisory authorities. In addition, the Charter explicitly raises the level of this protection to that of a fundamental right in EU law by Article 8 which affirms the right to personal data protection, refers to key data protection principles and requires an independent authority to control the implementation of these principles.

Giurgiu and Larsen pointed out that the European right to the protection of personal data builds on three main pillars: the obligations of data controllers, the rights of data subjects and the role of data protection authorities (DPAs).[154]

Article 16 of the TFEU served as a legal basis for the adoption of the comprehensive reform of data protection rules in 2016, that is, the General Data Protection Regulation (GDPR)[155] and the Data Protection Directive for Police and Criminal Justice Authorities.[156] These legal acts contain rules to ensure accountability as they require independent supervision of the European data protection law.

In addition to Article 8(3) of the Charter which prescribes that compliance with rules regarding the protection of personal data shall be 'subject to control by an independent authority', the GDPR requires that Member States establish supervisory authorities, empowered to perform their tasks and exercise their powers with complete independence, recognising this as an essential component of the protection of the processing of personal data.[157] The required independence of supervisory authorities, as envisaged by the GDPR,

152 https://ec.europa.eu/info/law/better-regulation/have-your-say/initiatives/13098-Equality-bodies-binding-standards_en

153 Kadar (n 114) p. 154.

154 Giurgiu, Andra, Larsen, Tine A.: Roles and Powers of National Data Protection Authorities Moving from Directive 95/46/EC to the GDPR: Stronger and More 'European' DPAs as Guardians of Consistency?, *2 Eur. Data Prot. L. Rev.* 342 (2016), p. 342.

155 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 personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation), OJL 119/1, 4 May 2016.

156 Directive (EU) 2016/680 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data by competent authorities for the purposes of the prevention, investigation, detection or prosecution of criminal offences or the execution of criminal penalties, and on the free movement of such data, OJ L 119, 4 May 2016.

157 GDPR (n 155) Art. 117.

strongly resembles the principle of independence in the Paris Principles. They should be provided with the necessary financial and human resources, premises and infrastructure; they should have a separate, public annual budget. Furthermore, independence has to be reflected in their specific organisational structure and can be limited to the control of monitoring mechanisms regarding their financial expenditure or to judicial review.[158] The distinction from the Paris Principles lays in the provision that members of the supervisory authority should be appointed either by parliament, government or a head of state; however, it is also required that the appointment procedure is transparent and that members should act with integrity and refrain from incompatible occupation.[159]

The data protection authorities' specific powers and tasks are also enumerated and include, among others: monitoring and promoting data protection at the national level; advising data subjects and controllers, as well as the government and the public at large; handling complaints and assisting data subjects with alleged violations of data protection rights; and supervising controllers and processors. They have the power to intervene, if necessary, by warning, reprimanding or even fining controllers and processors; by ordering data to be rectified, blocked or deleted; by imposing a ban on processing or an administrative fine; or by referring matters to court.[160]

158 Ibid., Art. 118.

159 Ibid., Art. 120.

160 Ibid., Art. 122-132.

The directive on the protection of personal data, being a special data protection regime for law enforcement and criminal matters, must equally comply with the requirements of the Charter. Therefore, it also requires the functioning of the supervisory authority, allowing Member States to entrust the tasks to an already existing authority, established under the GDPR.[161] The importance of independent supervision for data protection law has also been acknowledged in case law.[162]

As noted earlier, the protection of personal data has significant value in EU law, being positioned in Article 16 of the TFEU provisions as having general application. However, so do the principles of equality and non-discrimination, by virtue of Articles 8, 9 and 10. Therefore, following the example of establishment and the requirements for the effective work of DPAs, there seems to be no argument against envisaging the same level of institutional requirements in EU law for the equality bodies and NHRIs. Doing so would also invalidate the argument that data protection has a special position in the hierarchy of EU law.

161 Directive (EU) 2016/680 (n 156) Art. 76.

162 FRA, Handbook on European data protection law, Luxembourg, Publication Office of the European Union, 2018, p. 189; see also Giurgiu, Larsen (n 154), p. 342.

4 Towards a more efficient implementation of human rights: The centralisation or proliferation of institutions with more fragmentation?

Considering the evolution of the human rights infrastructure at the national level – accompanied with a lack of coherent and decisive international, regional or supranational guidance – it is not surprising that the discussion around the centralisation, as opposed to the proliferation, of human rights and equality institutions is reoccurring in many states; however, this has had different results.

For example, Great Britain's Commission for Equality and Human Rights was established by the 2006 Equality Act, combining three pre-existing bodies: the Commission for Racial Equality, the Equal Opportunity Commission and the Disability Rights Commission (accredited as an NHRI in 2008).[163] Similarly, the Irish Human Rights and Equality Commission, established by the Human Rights and Equality Commission Act 2014, merged the former Irish Human Rights Commission and the Equality Authority into a centralised national human rights and equality institution.[164] In Norway, in 2006, the Gender Equality Ombud, the Gender Equality Center and the Center for combating ethnic discrimination were merged into a single Equality and Anti-Discrimination Ombud, with a clearly expressed intention of establishing one strong equality body that would work in all protected grounds, including multiple discrimination, in all areas in society.

Most recently, in 2020, the Hungarian Equal Treatment Authority (ETA) was abolished, and their duties assumed by the Commissioner for Fundamental Rights (CFR). This merger raised concerns by some NGOs, particularly because there had been no public consultations or impact assessment carried out about the reform and the ETA was perceived as an independent public actor monitoring, for example, the rights of LGBTQI people in Hungary.[165]

The CoE Commissioner for Human Rights also issued a statement emphasising that while 'member states have some discretion to organise their national human rights structures as they see fit, it is crucial that in doing so they respect fundamental principles agreed on at international level, especially the need to guarantee and respect the independence and effectiveness of such bodies', adding that the 'Equal Treatment Authority is a well-functioning institution, which has rendered important decisions for the fight against discrimination over recent years, whereas the Ombudsman institu-

163 Cardenas, Sonia: Chains of Justice, The Global Rise of State Institutions for Human Rights, University of Pensilvania Press, 2014, p. 298.

164 https://www.ihrec.ie/about/who-we-are/.

165 https://www.ilga-europe.org/resources/news/latest-news/ilga-europe-alarmed-hungarian-parliaments-moves-abolish-national-equal.

tion's re-accreditation as a Status A-Institution [...] was deferred in October 2019'.[166]

These concerns have certainly materialised as, in its report, the SCA recommended downgrading the Hungarian CFR to 'B status' due to concerns regarding the lack of sufficient independence, manifested in several ways. Namely, the CFR has not effectively engaged in and publicly addressed all human rights issues, including those related to vulnerable groups and politically sensitive issues; the CFR has not spoken out in a manner that promotes and ensures the respect of all human rights, democratic principles and the strengthening of the rule of law in all circumstances; the selection process is not sufficiently broad and transparent; the interaction with the international human rights system is limited; and cooperation with civil society can be improved.[167] This example clearly shows how a merger of institutions in a contentious political climate might be instrumentalised and contribute to a weakened protection and promotion of human rights, particularly the rights of the most vulnerable.

In Sweden, in 2009, four anti-discrimination ombuds were merged into a new body, the Equality Ombudsman body. Despite that, the Swedish institutional framework is still not centralised as there is the Office of the Parliamentary Ombudsmen, which has an advisory and consultative function as regards the correct application of the law,[168] as well as Swedish National Institute for Human Rights, finally confirmed in legislation in June 2021.

Contrary to that, the 2011 initiative to merge Croatian specialised ombuds institutions (for children, for persons with disabilities and for gender equality) with a constitutionally established Ombudsman/ 'A status' NHRI faced significant rebuke by civil society and was eventually abandoned with the passing of the 2012 Ombudsman Act which, instead of a merger, imposed an obligation for the four separate institutions to formally cooperate.[169]

In other states, new bodies and institutions are being established and added to the already existing structures with limited mandates, functions and resources. For example, in 2020, Norway established the Ombud for Older People,[170] an 'independent national government body' that promotes the interests of older persons in relation to the public and private sectors and follows the development of the situation of older persons throughout society.[171] However, it is arguable whether this entity can even be considered a human rights institution stricto sensu when it declares that it promotes interests instead of human rights and when it is established within the government's structure.

Similarly, in Finland, in 2021, a new act relating to the ombuds for older persons has been adopted following a consultative process but without prior needs assessment. It is set up as a functionally independent authority with a promotional mandate in connection with the Non-Discrimination Ombudsman.[172] This distinct nature already sets the limits of its independence, as also reflected in the government's proposal that it will not only share

166 https://www.coe.int/en/web/commissioner/news-2020/-/asset_publisher/Arb4fRK3o8Cf/content/commissioner-urges-hungary-s-parliament-to-postpone-the-vote-on-draft-bills-that-if-adopted-will-have-far-reaching-adverse-effects-on-human-rights-in-?inheritRedirect=false&redirect=https%3A%2F%2Fwww.coe.int%2Fen%2Fweb%2Fcommissioner%2Fnews-2020%3Fp_p_id%3D101_INSTANCE_Arb4fRK3o8Cf%26p_p_lifecycle%3D0%26p_p_state%3Dnormal%26p_p_mode%3Dview%26p_p_col_id%3Dcolumn-1%26p_p_col_count%3D1/

167 GANHRI, Report and Recommendations of the Virtual Session of the Sub-Committee on Accreditation (SCA), 14-24 June 2021, p. 13.

168 https://www.jo.se/en/About-JO/History/.

169 Ombudsman Act, Official Gazette 76/12, Art. 32.

170 Lov om Eldreombudet (eldreombudsloven), LOV-2020-06-19-80.

171 Ibid., Art. 3

172 Laki vanhusasiavaltuutetusta, supra note 133, Sec. 1, 3.

administrative and office space services with the Non-Discrimination Ombudsman but also communication functions.[173]

Murray pointed out that, when establishing new institutions, there has to be a balance and the situation must be weighed up against already existing institutions and gaps in protection that cannot be filled by other institutions.[174] Carver also noticed that deciding to have a fragmented or centralised system is a pragmatic decision.[175] In that regard, strategic and comprehensive processes by the government often seem to be absent, as the case of Finland shows.

Consequently, instead of building a more resilient institutional framework, progressive fragmentation that lacks a strategic approach may potentially have a negative impact on the overall realisation of the human rights in a country. Therefore, finding that balance between a too centralised or overly fragmented system in dynamic and ever-changing national contexts is a difficult but necessary task and inevitably subject to contextualisation at the national level.

Arguments for more centralised (as well as for more fragmented) structures lie on both sides of this discussion, as do arguments concerning the different strengths and weaknesses of both arrangements. What benefits would the establishment of the new institutions or the merging of the existing institutions bring? Factors that governments take into consideration are often budgetary; however, in any human rights discussion, budgetary factors should not take precedence over the effectiveness of all the institutions concerned. Other factors include functional and efficiency considerations, political attitudes and the influence of the international standards.[176]

Central to the discussion on which system – a centralised or fragmented – is more efficient, is to ask whether the rights of particularly vulnerable groups in society (women, LGBTQI, ethnic minorities, people with disabilities, children, older people, to name but a few) will be *better* monitored, promoted and protected if they are tackled by an institution that focuses specifically on one of these groups or by being included in a larger, multi-mandated institution.

Some of the most important arguments for the specialisation of human rights and equality institutions are that they clearly reflect priorities in the protection and promotion of certain vulnerable groups and have the expertise and the resources (albeit often very limited) to focus on the specific issues within their mandate. They certainly bring more visibility to the vulnerable group they are mandated for. This has certainly been the position of NGOs and different interest groups in many countries when advocating for their establishment or advocating against the merger of specialised institutions into an institution with a broader mandate.

However, and as Carver rightly pointed out, if having more institutions means that rights are better protected, should states continue to add them, and until when?[177]

In recent years many new tasks and functions have been envisaged or are being discussed that could be set up as new institutions or added as new tasks to the existing ones. In addition to already existing NPMs and NMMs, these are, for example, anti-corruption and whistleblowing mandates, independent border monitoring, preventing violence against women, combating trafficking in human beings and monitoring the use of artificial intelligence. But establishing separate institutions would

173 Hallituksen esitys eduskunnalle laiksi vanhusasiavaltuutetusta HE 82/2021, pp. 17–18.

174 Murray (n 34) p. 200.

175 Carver, Richard: One NHRI or Many? How Many Institutions Does It Take to Protect Human Rights? – Lessons from the European Experience, *Journal of Human Rights Practice*, Vol 3, Number 1, Oxford University Press, 2011, p. 1.

176 Reif, The future of thematic children's rights institutions (n 98) p. 437.

177 Carver (n 175) p. 1.

strongly contribute to the further fragmentation of the human rights and equality framework and become a never-ending process. This may be the case for Finland, where the discussion on the next new specialised ombuds for persons with disabilities has gained strength following the establishment of the Ombudsman for Older Persons in 2021.

In a fragmented system, numerous challenges occur, hampering the efficient and comprehensive promotion and protection of human rights and equality. The most obvious are gaps in protection that either stem from gaps in legislation or are due to the institutional interpretation of the norm.

Looking from the perspective of rights holders, it is likely that a fragmented system comprised of several institutions with limited mandates will create confusion as to the best-placed competent authority in cases of complex human rights issues (for example, the issues of a mother of a Roma child with disabilities).

Likewise, our research showed that there are cases of jurisdiction overlaps which are not only confusing but can potentially be very problematic (for example, if two institutions issue different opinions on the same issue), contributing to the lack of systemic coherence. This is particularly the case in the complaints-handling institutions. The example of Croatia shows that while there are a number of these overlaps (e.g. the Ombudsman for Children and the Ombudsman for Persons with Disabilities are both in charge of issues relating to children with disabilities); the ORC body, being the central equality body, would deem itself competent for issues relating to ethnic discrimination against children or to multiple discrimination, even if one of the multiple grounds is dealt with by a specialised ombuds etc.

The issue of different opinions was at stake in a recent case in Finland when the Parliamentary Ombudsman decided that the national authorities had discriminated against people over 65 years old when they were given the Astra Zeneca vaccination against Covid-19 without being given the choice of another vaccine that was available for others.[178] The Non-Discrimination Ombudsman, in her statement to the Parliamentary Ombudsman, found no discrimination. While the case was decided by the Parliamentary Ombudsman, not by the Non-Discrimination Ombudsman, the differing views of the two ombuds institutions could lead to confusion within the general public as well as amongst stakeholders.

To overcome situations like this, it is crucial to establish systemic cooperation between institutions, another potentially contested issue in a more fragmented system. In order for the overall human rights and equality institutional framework to function in a comprehensive manner, to assure its effectiveness and to avoid the duplication of work, as well as gaps in protection, the cooperation between institutions is *conditio sine qua non*.

While in Croatia this is a legally established obligation, following the unsuccessful attempt to merge all ombuds institutions (as will be described in more detail in Section 5.2), in Poland there is no such obligation. However, the CHR has the obligation to undertake activities at the request of the Ombudsman for Children.[179] In Finland, the interviews revealed that the cooperation between the institutions is traditionally good, and all of the human rights, equality and specialised bodies cooperate in the context of the Human Rights Delegation, a pluralistic organ of the FHRC of which they are all members.

Practical experience shows that cooperation in fact largely relies on the leadership of the institutions, which might be problematic, particularly when leadership changes. While in Croatia cooperation is emphasised by all stakeholders to be very good, in Poland it relies more on the

178 Decision by Deputy Ombudsman Maija Sakslin on 23.7.2021, reference EOAK/34322021.

179 Act on the Commissioner for Human Rights, Journal of Laws Dz.U. of 2014, intem 1648., Art. 9

technical exchange of information and less on the cooperation of the institutions in regard to sensitive issues such as anti-discrimination and LGBTI issues.

There are other risks involved with a diverse and fragmented system. For example, institutions sometimes create a culture of competition amongst themselves, competing for public attention, resources, interesting cases and similar factors, which might negatively affect their cooperation and overall impact and effectiveness.

Also, lacking a strategic approach in the design of the overall framework, the mandate of a newly established institution might be perceived, or even exercised, in a manner that de facto limits the mandate of an already existing and broader institution, while not having the accompanying powers and resources of that institution.

In addition, designing several smaller institutions with a narrow and limited mandate impacts on their development and growth – expectedly, they remain small, with limited resources and powers, such as powers related to complaints handling and access to information. Finally, it is more difficult, or unlikely, to have an overall and comprehensive overview of the human rights and equality issues in a system that puts significant emphasis on specific vulnerable groups and loses 'the big picture'.

While in fragmented systems each institution has its own normative framework, which might diverge significantly from the constitutional, to the government's ordinance, in a more centralised system there is a coherent legal framework and consistent powers regarding all vulnerable groups. Overcoming the challenges of protection gaps and/or overlaps in a more centralised system, particularly in cross-related issues, as well as the sharing of best practices, can be better addressed and maximised by institutional resources.

Therefore, it is not surprising that one of the most significant threats from the point of view of a specialised institution is that of merging with an institution that has a broad mandate.[180]

There are very few academic articles looking into these issues. For example, Carver is of the opinion that the centralised model will be more effective provided that it has guarantees that particular vulnerable groups will not be neglected and will receive an appropriate level of priority and that it is likely that there will be greater authority and influence from the more centralised institution vis-à-vis the government and other bodies.[181] The latter argument can also be extended to the institutions' relations with other stakeholders, particularly the media, the general public and, in the case of complaints handling institutions, complainants. Along the same lines of argument and with regard to children's rights institutions, Reif added that the Paris Principles, becoming dominant in the human rights community, subtly discourage states from establishing or retaining separate national-level thematic institutions.[182]

Similarly, the 2010 FRA Report on NHRIs implies a preference for more centralised organisations, emphasising 'a clear need to adopt a more comprehensive approach to human rights at the national level, with efforts and resources focused on key institutions – such as a visible and effective overarching NHRI that can act as a hub to ensure that gaps are covered and that all human rights are given due attention'.[183]

Noting all of the strengths of more centralised institutions with broad or multiple mandates, our research showed that one of their weaknesses may be found in the lack of effective internal processes for cooperation between

180 Reif, The future of thematic children's rights institutions (n 98) p. 452.

181 Carver (n 175) p. 3.

182 Reif, The future of thematic children's rights institutions (n 98) p. 437.

183 FRA, *National Human Rights Institutions in the EU Member States, Strengthening the fundamental rights architecture in the EU*, Publication Office of the European Union, Luxembourg, 2010, p. 9.

mandates. Further, having separate mandates does not make the institution immune to internal competition when it comes to prioritising issues, visibility opportunities and, not least, competing for resources.

Another issue central to this discussion is the independence, which is crucial in any analysis of the effectiveness of institutional models. Concerning NHRIs, this is regularly assessed against the Paris Principles, as already explained in Chapter 2. The same cannot be concluded for other types of institutions – while (to a certain extent) the Venice Principles have established a peer review (a process which still needs to establish its relevance) for the equality bodies, there are still no assurances of their organisational independence, making them more succumbed to external pressures. This is also strongly connected to the leadership of any institution as the poor leadership of a single institution can have deleterious consequences for the human rights protection system as a whole.[184]

This inevitably leads to the question of resilience – faced with political pressure or insufficient budgetary resources, both types of structures (centralised as well as fragmented structures) face significant challenges. While it is true that smaller, less resourced, specialised bodies are easier targets and more prone to attempts to weaken their functions, particularly if they deal with politically sensitive issues, if similar attempts are made against a multi-mandated NHRI, it affects all of its mandates and functions. Similarly, the recent ODIHR Tool on NHRIs Resilience states that excessive divisions and specialisations – the 'atomisation' of human rights and equality structures – puts resiliency at risk.[185]

Having all that in mind, the available academic literature, as well as our research, showed that when looking into the strengths and challenges of both centralised systems with institutions that have broad or multiple mandates and those of fragmented systems, with many smaller institutions with limited mandates, the weight does somewhat prevail in the direction of stronger, more centralised systems: they are often better resourced, have stronger legal (or constitutional) mandates and offer a comprehensive overview of the overall human rights situation, with limited gaps in protection and a clear position in the eyes of the rights holders. At the same time, in such institutions the lack of prioritisation when it comes to certain issues may leave some of the vulnerable groups in society demanding more monitoring, protection and promotion. Therefore, the decision of whether or not to establish a new institution lies in the hands of the political decision makers and their priorities.

184 Carver (n 175) p. 9.

185 ODIHR; Resilience Toolkit (n 66) p. 39.

5 National human rights structures in the selected European countries: Examples from Poland, Croatia, Germany and Norway

5.1 Poland

The Commissioner for Human Rights (CHR) in Poland has probably been subject to most academic comparative research of all European ombuds institutions.[186] It was the first of its kind in Central and Eastern Europe having been established by the Act on the Commissioner for Human Rights in 1987. Subsequently, it was included in the 1989 Constitution and strengthened in the 1997 Constitution.[187] Although it was created as a classical ombuds institution, it also has a strong human rights mandate.[188] It has been an 'A -status' NHRI since 2008, an NPM since 2008 and an equality body since 2011.

In his historical analysis of the Polish CHR, Finkel particularly recognised the Commissioner's credibility and the recognition it has in the public eye, being perceived as the main and sometimes only defender of ordinary Poles, putting forward the question of whether 'Poland simply has an ombudsman-friendly political culture?'[189] More recently, Gliszczyńska-Grabias and Sękowska-Kozłowska added that the CHR's role in a democratic society was reinforced by the development of its mandate and practice, and profited from the image of persons holding this office who were usually outstanding legal experts.[190]

The CHR investigates citizens' complaints, supervises the activities of the state apparatus and can appeal to the Supreme Court and the Constitutional Tribunal to request an abstract constitutional review of legal acts and clarification of laws. It has the right to conduct independent investigations; the supervised bodies are required to provide the CHR with access to all their records and documents and to respond to any actions taken. In the CHR's functions, the CHR is perceived as a controller of the wider notion of legality – not only that of national and European law but also in reference to compliance with international soft law standards. However, the strongest impact has previously been achieved through litigation before the Constitutional Court.

The main competence of the CHR is to handle complaints regarding human rights violations by public authorities. This is seen as a significant strength as it provides an overview of the human rights situation in the country. The same competence does not fully relate to its anti-discrimination mandate as it lacks the legal power to handle the cases against private

186 For example: Finkel, Evgeny: The Authoritarian Advantage of Horizontal Accountability: Ombudsmen in Poland and Russia, *Comparative Politics*, April 2012, Vol. 44, No. 3; Reif (n 36) p. 39; Gliszczyńska-Grabias, Sękowska-Kozłowska, (n 43) p. 61–80.

187 Constitution of the Republic of Poland of 2nd April 1997, Dziennik Ustaw No. 78, item 483.

188 Reif (n 36) p. 40.

189 Finkel (n 186), p. 300, 302.

190 Gliszczyńska-Grabias, Sękowska-Kozłowska (n 43) p. 62.

entities; however, he can pass the information to the relevant state authorities so that a resolution can be found.

The CHR has legal autonomy and constitutional assurances of independence, crucial safeguards (legal provisions) regarding appointment and dismissal procedures and full independence from the government.[191] However, adequate funding and sufficient resources are also necessary, both for the implementation of all of the institution's mandates and for safeguarding its independent position. Indeed, the budgetary considerations have often been a method for applying external pressure upon the institution. This has been particularly obvious in recent years as the Office, and the Commissioner himself, was under fierce governmental pressure for its work on sensitive issues, such as LGBTQI issues and the rule of law. This has resulted in a strong manifestation of solidarity and support by relevant European and international stakeholders, emphasising that the independence and effectiveness of NHRIs must be preserved, and inviting Polish authorities to ensure respect for international standards.[192]

Poland's human rights infrastructure is not among those described as very fragmented. Apart from the CHR, there is the Commissioner for Children's Rights and the Inspector General for the Protection of Personal Data. The Commissioner for Children's Rights was established by the 1997 Constitution and the Act on Ombudsman for Children in 2000.[193] It does not have all of the powers of the CHR, such as the ability to initiate proceedings before competent authorities or to appeal against court's final judgments and administrative decisions.[194] It handles complaints and can take own initiatives. It can visit places relevant to children's rights without prior notice and it has unlimited access to information and documentation. As regards its independence, the Commissioner for Children's Rights has similar legal assurances as those of the CHR when it comes to appointment and selection procedures, budgeting and reporting to the Parliament. However, despite the de jure independence of the Commissioner for Children's Rights, the de facto independence has been put into question. The public statements of the current Commissioner for Children's Rights, primarily oriented towards the promotion and safeguarding of traditional family values and undermining the rights of LGBTQI children, raised concerns in the media and in civil society, following which, ENOC was informed and took appropriate action.

The Personal Data Protection Office was established by the by the 2018 Act on the Protection of Personal Data,[195] ensuring the application of EU law. The competent supervisory authority in personal data protection is the President of the Office, appointed and recalled by the Sejm upon the consent of the Senate of the Republic of Poland.[196] The requirements for the position are similar to those of the CHR, with the distinction that the requirements of the CHR are more developed and detailed and the CHR has a five-year mandate, while the president's mandate is four years.

191 Ibid., p. 63.

192 For example, in May 2021 the large coalition of partners (ENNHRI, OSCE ODIHR, the OHCHR–Regional Office, Equinet, GANHRI and the IOI) issued a joint statement of in support of the Polish NHRI; see also the ENNHRI Statement on 15 April 2021 and the ENNHRI Statement endorsed by the OHCHR – Regional Office, the IOI and Equinet in 2016.

193 Dziennik Ustaw o Rzeczniku Praw Dziecka of 2000 (tekst jednolity Dz.U.2017.922 z t.j.).

194 Rogalska-Piechota, Agata: The Ombudsman for *Children in Poland: A model for Namibia?*, 2009, available a:t https://www.kas.de/c/document_library/get_file?uuid=29c804a3-1b71-f691-1229-ec724c5e4334&groupId=252038.

195 Act of 10 May 2018 on the Protection of Personal Data [unified text – Journal of Laws of 2019, item 1781].

196 Ibidem., Art. 6.

5.2 Croatia

Unlike the Polish human rights infrastructure, the Croatian human rights infrastructure is somewhat neglected in academic research, with the exception of the work of Carver[197] and Aviani.[198] The central institution is the Ombudsman of the Republic of Croatia (ORC) established by the Constitution, which stipulates that the ombuds shall be a commissioner of parliament responsible for the promotion and protection of human rights and freedoms, and that anyone may lodge a complaint to the ombuds if they deem that his or her constitutional or legal rights have been threatened or violated as a result of any illegal or irregular act by governmental bodies and the civil service, local and regional self-governmental bodies or bodies vested with public authority. It may also be vested with certain powers with regard to legal and natural persons.[199]

The functioning of the institution and the election of the ombuds are regulated in more detail by the Ombudsman Act.[200] The mandate of the institution was extended in 2008 when it became the central equality body, pursuant to the Anti-Discrimination Act,[201] in 2013 it became the National Preventive Mechanism.[202] In 2019, the mandate was further extended for it to become the competent body for the protection of whistle-blowers by the Act on the Protection of Persons Who Report Irregularities.[203] ORC has been an 'A status' NHRI since its first accreditation in 2008 (subsequently confirmed in 2013 and 2019).

In addition to the ORC, three specialised ombuds institutions were established: the Ombudsman for Children,[204] the Ombudsman for Gender Equality[205] and the Ombudsman for Persons with Disabilities.[206] Their formal cooperation is ensured by virtue of the Ombudsman Act which stipulates that they are obliged to mutually cooperate in the promotion and protection of human rights in accordance with the principles of compatibility, mutual respect and efficiency.[207] Further to that, in 2013, the Agreement on Mutual Cooperation was signed, which provides a framework for the planning of joint activities, performance in individual cases and inspections, holding of meetings, joint appearance in public, cooperation with the media and cooperation in drafting reports and analysis, as well as in educating staff.[208]

Being the country's NHRI, the ORC is compliant with the Paris Principles. Regarding its independence, it is granted with strong legal assurances, primarily when it comes to the dismissal of the head of the institution. Namely, the ombuds shall be relieved of duty before the expiration of the term of office upon his or her request if, due to a change in the circumstances he or she no longer fulfils the requirements for appointment, if he or she is prevented from performing duties for a period of over six months or if he or she does not perform his

197 Carver (n 175).

198 Aviani, Damir: Kontrola uprave putem pučkog pravobranitelja, *Zbornik radova Pravnog fakulteta u Splitu*, god. 53, 1/2016.

199 Constitution of the Republic of Croatia, Official Gazette 56/90, 135/97, 08/98, 124/00, 28/01, 41/01, 55/01, 76/10, 85/10, 05/14, Article 93.

200 Ombudsman Act, Official Gazette 76/12.

201 Anti-Discrimination Act, Official Gazette 85/08, 112/12.

202 Act on National Preventive Mechanisms against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Official Gazette 18/2011, 33/15.

203 The Act on the Protection of Persons Who Report Irregularities, Official Gazette, 17/13.

204 Act on Ombudsman for Children, Official Gazette 73/2017.

205 Act on Ombudsman for Gender Equality, Official Gazette 82/08, 69/17.

206 Act on Ombudsman for Persons with Disabilities, Official Gazette 107/2007.

207 Ombudsman Act (n 200), Art. 32.

208 https://www.ombudsman.hr/wp-content/uploads/2021/09/Sporazum-o-meduinstitucionalnoj-suradnji-pravobraniteljskih-institucija.pdf.

or her duty according to this act.[209] This provision was extremely important in 2016 when the Croatian Parliament rejected the Ombudsman's 2015 Annual Report. This was perceived as political pressure on the independence of the ombuds institution, particularly as the same Report was unanimously adopted in parliamentary committees. Nonetheless, and due to the strong guarantees in Article 14 of the Ombudsman Act, the ombudswoman continued her work.

The same year, the Croatian Parliament rejected the Ombudsman for Children's 2015 Annual Report. However, due to the fact that the Law on the Ombudsman for Children sees this as one of the grounds for dismissal, the ombudswoman for children was dismissed and a new one was appointed. This was followed by amendments to the Act on Ombudsman for Children in 2017, which even further limited the institutions' functional independence by provisions that the Ombudsman for Children has to submit a special report at the request of the Croatian Parliament, especially if this report also becomes the grounds for the dismissal of the head of the institution.

As regards the other two ombuds institutions, their respective legislation contains the same provision that the incumbent will be dismissed in the case where the Annual Report is rejected by Parliament, resulting in both a de jure and de facto lack of independence.

As noted in Chapter 4, in 2011 there was a motion to merge all specialised ombuds institutions with the constitutional ORC which was not successful, largely due to the lack of support from civil society and strong resistance coming from specialised ombuds. As all of these institutions generally enjoy public support, this proposal has not reoccurred so far.

Being Croatia's 'A status' NHRI, the ORC has strongly engaged with international and European partners. The ombudswoman was elected as a chair of ENNHRI (2016–2019), as an ENNHRI and GANHRI board member for two terms (2016–2021) and as an FRA Management Board Member (2015–2018). The former deputy (and now Ombudswoman) has been elected as Equinet chair for two terms (2018–2022) and has been a member of ECRI since 2014. In addition, its engagement has also been strong in the context of the IOI and in diverse NPM initiatives.

It has also strongly prioritised engagement with civil society at national and local level, including engagement through the Council for Human Rights and the network of NGOs, which are the institutions' anti-discrimination contact points at the local level. This complemented other outreach efforts and activities, primarily the opening of the three regional offices but also systemic cooperation with authorities and civil society at the local level through visits, meetings, participation in events and similar means.

Equally important has been the development of a communication strategy which included proactive communication with the media and general public through diverse channels. All of these things have resulted in the above-average recognition of the institution (79%) by the general public.[210]

As regards data protection, the Croatian Personal Data Protection Agency, established in 2003, is the only independent public supervisory authority in Croatia within the meaning of the GDPR and the Act on the Implementation of the General Data Protection Regulation.[211] Its tasks are in line with GDPR requirements, and de jure independence is assured by Article 4 which regulates that it is an independent public authority, responsible for its work to the Croatian Parliament. However, despite the fact that the Director and the Deputy Director are appointed and relieved of duty by parliament,

209 Ombudsman Act (n 200), Art. 14.

210 FRA, Strong and Effective National Human Rights Institutions (n 9) p. 8.

211 Zakon o provedbi Opće uredbe o zaštiti podataka, Narodne novine, No. 42/2018.

the role of the government in both processes (but particularly dismissal) is very strong. Overall, the legal independence assurances for the agency are significantly weaker than those of the ORC. Following the controversial appointment of its Director in 2020, it is not surprising that the agency lacks perceived de facto independence, as reported in the media.[212]

5.3 Germany

Germany's institutional framework on human rights and equality institutions is somewhat specific. This is largely due to historical reasons. There is a broadly shared understanding in Germany that human rights and equality cases should be brought to the court instead of to a quasi-judicial institution. Thus, Germany does not have an ombuds institution (at the federal level) that would receive complaints regarding the violation of legal rights vis-à-vis public authorities and maladministration. Also, the German Institute for Human Rights and the Federal Anti-Discrimination Agency do not have a complaint-handling mandate.

The German Institute for Human Rights (GIHR) was established in 2001 on the basis of the Bundestag's decision. Since 2015, the Law on the Legal Status and Mandate of the German Institute for Human Rights (DIMRG)[213] constitutes its legal basis. It is one of the few NHRIs in Europe that is established as an institute, having a broad membership and a strong focus on research.[214] The GIHR is an 'A status' NHRI, with its last SCA re-accreditation in 2015.

In the GIHR, significant importance is attached to systematically monitoring human rights, one of the key functions of NHRIs, considered as part of the protection mandate and as also recognised by the SCA in its latest recommendations.

In 2009, GIHR became the NMM in accordance with Article 33.2 of the CRPD. Since 2015, it has been entrusted with the task of monitoring the implementation of the Convention on the Rights of the Child and has established the Monitoring Mechanism for this purpose. The two monitoring mechanisms help promote awareness of the rights of persons with disabilities and children's rights, they provide advice on interpreting the conventions, and exchange information and experiences with NHRIs in other countries. They also inform the UN CRC and the CRPD about the national implementation of these conventions. Finally, the mechanisms work closely with civil society organisations, government bodies, research institutions and with persons with disabilities, children and young people themselves.[215]

Recently, the GIHR has been working on a project funded by the Federal Ministry for Family, Seniors, Women and Youth to set up a monitoring system for two CoE conventions, one on the trafficking in human beings and one on violence against women. The purpose has

212 For example: https://www.tportal.hr/vijesti/clanak/prijavili-hrvatsku-bruxellesu-zbog-novog-celnika-azop-a-20200612, https://www.telegram.hr/politika-kriminal/tko-je-buduci-novi-sef-vaznedrzavne-agencije-u-struci-je-nepoznat-promijenio-je-4-stranke-pise-knjige-o-jamesu-bondu/, https://www.jutarnji.hr/kultura/knjizevnost/hrvatski-james-bond-on-je-borna-vitez-njegovo-oruzje-je-prsten-pecatnjak-na-kojem-je-hrvatski-grb-s-prvim-bijelim-poljem-i-mora-spasiti-zadar-10335934, https://www.vecernji.hr/vijesti/oporba-protiv-prijedloga-da-zdravko-vukic-postane-sef-agencije-za-zastitu-osobnih-podataka-1402324.

213 Gesetz über die Rechtsstellung und Aufgaben des Deutschen Instituts für Menschenrechte, DIMRG), Bundesgesetzblatt Teil I (Federal Gazette Part I) 2015, p. 1194.

214 OHCHR (n 11) p. 19.

215 More information is available at https://www.institut-fuer-menschenrechte.de/.

been to develop the concept and methodology for the monitoring mechanisms, which would be entrusted to the GIHR.

While the two current monitoring mechanisms of the GIHR are based on two thematic human rights conventions, the GIHR considers them as part of their overall human rights protection mandate. In addition, synergies and common methodologies can be found when different monitoring mandates are entrusted to an NHRI. Thus, the view of the GIHR is that if an international treaty requires independent monitoring, the task should be given to the GIHR.

In addition to monitoring activities, the GIHR focuses on strengthening the implementation of fundamental and human rights through constitutional law interpretation and submitting amicus curiae briefs to the Federal Constitutional Court. It advises the government on draft legislation, issues policy papers and legal analysis, conducts the training of professionals, and provides documentation and library services.[216] The GIHR is also strongly engaged in regional and international cooperation, leading GANHRI as its chair between 2016 and 2019.

As regards anti-discrimination, Germany's equality body is the Federal Anti-Discrimination Agency, established by the General Equal Treatment Act,[217] through which four EU equality directives are also implemented. Its main tasks are to provide advice on discrimination, undertake research and report to the Bundestag. It does not have structural independence as its head is appointed by the Federal Ministry for Families, Seniors, Women and Youth as proposed by the Federal Government.

Data protection authorities are established at federal and state levels. The German Federal Data Protection Authority is in charge of enforcing the GDPR for the federal government and private telecommunication services, while for any other private sector controller, 16 state DPAs are established.

5.4 Norway

Norway is a country with a rather fragmented human rights and equality infrastructure. Besides having a Parliamentary Ombudsman, it also has a status 'A' NHRI, an Ombudsman for Children, an Ombud for Older People and the Equality and Anti-Discrimination Ombud.

The first NHRI in Norway was the Norwegian Centre for Human Rights (NCHR) established in 1999 and affiliated with the University of Oslo, accredited as 'A-status' institution at the time. However, recognising that it was not Paris Principles compliant, in 2011 the SCA recommended the deferral of its decision, due to the intention of the NCHR to develop a strategy for the establishment of compliance with the Paris Principles.[218] Subsequently, in 2012 the SCA recommended that the NCHR be accredited 'B status', recognising that, despite its efforts, the NCHR was not operating fully in compliance with the Paris Principles.[219]

Following these developments, the Storting decided to establish a new institution, organisationally subordinate to parliament and administratively linked to the Parliamentary Ombudsman, by virtue of the Act on Norway's national

216 Rudolf, Beate: Human Rights in Germany – A View from Germany's National Human Rights Institution, *International Journal of Legal Information*, 44, no. 1, Spring 2016, p. 53.

217 Allgemeines Gleichbehandlungsgesetz vom 14 August 2006 (BGBl. I S. 1897).

218 International Coordinating Committee of National Institutions for the Promotion and Protection of Human Rights, Report and Recommendations of the Session of the Sub-Committee on Accreditation (SCA) Geneva, 23–27 May 2011, p. 19.

219 International Coordinating Committee of National Institutions for the Promotion and Protection of Human Rights, Report and Recommendations of the Session of the Sub-Committee on Accreditation (SCA) Geneva, 19–23 November 2012, p. 19.

institution for human rights (NNHRI).[220] In 2017 the SCA recommended it is accredited with A-status, noting that improvements in legislation would further strengthen its mandate, engagement and independence.[221]

This example clearly illustrates the positive role the SCA recommendation can have. The process of accreditation helps to improve and strengthen human rights infrastructure at the national level. An integral part of this process is the political willingness of the government to follow the SCA recommendation to create a legal and operational institutional framework that fulfils all the required criteria. The long-term effects are twofold. It strengthens the accreditation system itself and builds its credibility, and precisely because of the downgrade and determined political will to learn from it, the national institutional framework gets stronger.

The NNHRI does not receive complaints from citizens, which is the task of the Parliamentary Ombudsman. It provides 'professional knowledge and guidance and advice' to the authorities regarding their human rights obligations, monitors national human rights situation, works on human rights promotion and education, and acts as a bridge-builder between government and civil society.[222] As regards their monitoring activities, their methodology and systematic procedures have been developed, reliable sources have been identified and a tool for monitoring has been developed. Monitoring has become an important activity for the NNHRI, in addition to its strong focus on providing legal analysis and advice. As regards data and indicators, cooperation with the Statistical Office of Norway has been developed recently.

As regards cooperation between the Parliamentary Ombudsman and the NNHRI, initially it was quite limited. However, in recent years the Parliamentary Ombudsman has started to issue special reports, especially within its NPM mandate. The NNHRI has been able to draw from them in its own work on monitoring and advocacy thus creating more synergies and cooperation between the two. The co-operation with other specialised ombuds institutions was reported to be good and the approach of the NNHRI is to cooperate with others, when it can bring added value to their work on human rights. The utility of the new Ombud for Older People, the establishment of which was seen as mainly political, was somewhat in doubt due to its limited mandate and size.

The Parliamentary Ombudsman is established by the Constitution[223] and the Parliamentary Ombud Act.[224] Its main task is handling complaints regarding maladministration. Since 2014 it has a mandate of being the National Preventive Mechanism. The Parliamentary Ombudsman has put more emphasis on promotional work both on specific issues connected to complaints handling and on more general topics.[225]

As for the specialised institutions, the Norwegian Ombudsperson for Children is the first such institution, established in 1981, as it was recognised that children's rights need advocacy and promotion. The Act Relating to the Ombudsperson for Children assures the ombuds institution's functional independence in performing its duties. However, organisationally it is placed within the structures of the ministry, which approves its budget. The ombuds 'promotes children's interests in society and monitors the development of children's upbringing conditions' – wording that clearly omits the human

220 Act on Norway's national institution for human rights, LOV-2015-05-22-33.

221 GANHRI, Report and Recommendations of the Session of the Sub-Committee on Accreditation (SCA), Geneva, 13-17 March 2017, p.14.

222 https://www.nhri.no/om/

223 Kongeriket Norges Grunnlov, LOV-1814-05-17.

224 Lov om Stortingets ombud for kontroll med forvaltningen (sivilombudsloven), LOV-2021-06-18-121.

225 More info available at: https://www.sivilombudet.no/en/.

and children's rights approach. The same is the case with the very recently established Ombud for Older People, as already described in Chapter 4.

The Norwegian equality body is the Equality and Anti-Discrimination Ombud, established by an act relating to equality and prohibition against discrimination[226] in 2006, following a merger of three more specialised institutions, as already described in Chapter 4. Despite declaring that it does not follow instructions from the government, its structural independence is limited as it is organisationally placed and financed within the Ministry of Children and Equality.[227]

The same lack of structural independence can be argued regarding the DPA. The GDPR was transposed to the Norwegian legal system in 2018 by virtue of the Personal Data Act.[228] The competent authority to oversee it was given to the already existing Norwegian Data Protection Authority, an independent organ administratively subordinate to the Ministry of Local Government and Modernisation. However, according to the Personal Data Act, the agency cannot take instructions from the government.[229]

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226 The act relating to equality and a prohibition against discrimination (Equality and Anti-Discrimination Act), LOV-2017-06-16-51.

227 More information can be obtained at https://equineteurope.org/author/norway_ombud/.

228 Lov om behandling av personopplysninger (personopplysningsloven), LOV-2018-12-20-116.

229 Ibid., Art. 20.

6 Conclusions

The diversity of human rights and equality bodies in European states is a given. It is a reflection of historical, social and political developments at the national level. Thus, despite similarities, there are no examples of institutional frameworks being the same in two or more countries. While in some countries the structures are somewhat centralised, such as in Poland, the examples of Norway (and Finland) illustrate the other end of the spectrum with strong fragmentation. In both countries a variety of bodies are working on different human rights and equality issues with different levels of de jure and de facto independence, scopes of mandate and competences.

While specialised institutions may bring the skills, expertise and visibility to tackle gaps in the promotion and protection of the human rights of the most vulnerable groups in society, our research shows that they also (due to their limited mandate) often encounter challenges in dealing with multi-sectoral issues and lack resources. In more fragmented systems, gaps as well as overlaps in protection are often encountered when it comes to certain issues, adding to the confusion of citizens, as well as other stakeholders. This can further be magnified if the institutions lack systemic cooperation.

In addition, the independence of smaller institutions in fragmented systems is often weakened by political considerations and legal arrangements as to their establishment and prioritisation of issues, as well as by budgetary considerations.

NHRIs – provided they are sufficiently resourced and comply with the Paris Principles – can be a solution to some of these challenges. Preferably established on a constitutional basis, either with broad mandate or being multi-mandated, they have a more comprehensive overview of the human rights and equality situation in their jurisdiction. With legal assurances for their full independence, they are more resilient when faced with political, budgetary or other threats and have a stronger and more authoritative position towards the government and other stakeholders. Perhaps most importantly, from the perspective of rights holders, consolidated and more centralised institutions are easier to approach, particularly when it comes to complex and inter-related human rights and equality issues.

However, this is not to say that only centralised institutions are efficient and fulfil their purpose. This relies on many factors and circumstances that supersede the aims of this research.

Therefore, to have a comprehensive overview of the human rights and equality situation at the national level, to avoid both gaps and overlaps in protection and to assure the implementation of human rights and equality stand-

ards at the national level, governments should aim to find a balance between an overly centralised system and a too fragmented system.

Provided that all the institutions have a legal base clearly setting their mandate, assuring their full independence and sufficient resources, the ideal and most resilient framework seems to be the one that prioritizes the issues that vulnerable groups in society face while keeps in mind the overall human rights and equality situation and ensures systemic cooperation.

However, political will at the national level is subject to ever-lasting change and often there is a lack of awareness of international and regional standards, both when it comes to human rights and equality and when it comes to the requirements of the institutional set-up. Looking at the respective standards for NHRIs, ombuds, equality bodies and other institutions, the Paris Principles and the accompanying SCA accreditation process form the most established, robust and reliable system for ensuring institutional independence and efficiency, together with the other required criteria. Other standards – namely the Venice Principles regarding the work of ombuds institutions that are not NHRIs, the ENOC Standards when it comes to ombuds for children and ECRI's and Equinet's Standards for Equality Bodies – reflect the Paris Principles, all drawing inspiration from them. While the 2020 CoE Recommendation on NHRIs does go a step further in certain ways, it is the robust system of accreditation that makes the biggest difference.

Therefore, it is encouraging that the EU has initiated the adoption of the binding legislation that would strengthen equality bodies by setting minimum standards on how they are set up and operate.

Following such a development, the inevitable question of how to fill the current gap when it comes to the lack of binding EU standards for NHRIs remains open. Such standards would create binding obligations for states to comply with, as well as EU enforcement mechanisms (including the launching of infringement procedures) for lack of compliance.

Considering the strong and well-recognised need to closely connect human rights and the rule of law in the EU, this would be a highly desirable development that would further strengthen both human rights implementation and institutional independence at the national level, also contributing to stronger engagement at the level of the EU.

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