

ENNHRI's Opinion on the proposed Establishment of an Ombudsman for Entrepreneurs Rights within the Structure of the Moldovan NHRI

Summary

Following the presentation of a draft law for the amendment of the structure and mandate of the People's Advocate of the Republic of Moldova (Moldovan NHRI), ENNHRI underlines the importance of respect for the [UN Paris Principles](#) and calls on the Moldovan Parliament to carefully consider the following requirements:

- Any change to the legislative provisions affecting NHRIs, including those affecting the composition of the appointment body, requires a prior effective consultation with all parties concerned with a strong role for the NHRI itself.
- Any extension of the mandate of an NHRI, such as the addition of a competence over legal entities, including businesses, must not undermine its ability to promote and protect the human rights of individuals, including in relation to corporate-related human rights abuses.
- Changes to the structure, mandate or functions of an NHRI must not adversely affect the independence, effectiveness of the NHRI and public confidence in its leadership body.

Substantial changes to the mandate, structure and functions of an NHRI may affect its compliance with the [UN Paris Principles](#) and trigger a Special Review by GANHRI's Sub-Committee on Accreditation (SCA) under the [accreditation process](#).

ENNHRI was requested to present an Opinion on the establishment of a Business Ombudsman within the structure of an NHRI, on the basis of applicable international standards and regional practices.

The Opinion will focus on the application of the [UN Paris Principles](#) and [SCA General Observations](#), but will also consider other relevant applicable international standards, including the Council of Europe Recommendation of the Committee of Ministers on NHRIs ([CM\(2021\)22](#)), the Council of Europe [Venice Principles](#) on Ombudsman Institutions, the [Belgrade Principles](#) on the relationship between NHRIs and parliaments, and the [Edinburgh Declaration](#) on the role of NHRIs in addressing Business and Human Rights. In addition, ENNHRI has conducted a consultation among its Members to gain insights on regional practices regarding institutions dealing with entrepreneurs' rights.

Background

The Office of the People's Advocate of Moldova is an A-status National Human Rights Institution, [lastly accredited](#) in May 2018, as in full compliance with the [UN Paris Principles](#).

The Moldovan NHRI has requested ENNHRI's Opinion in relation to the draft law for amending some normative Acts relating to the institution (CDL-REF(2021)013), hereinafter "the draft law", which would introduce an "Ombudsman for entrepreneurs' rights" within the Office of the People's Advocate.

According to the draft law, the new Ombudsman for Entrepreneurs would be established within the NHRI structure, but would be autonomous from the People's Advocate, following the model of the existing Ombudsman for Children. The new Ombudsman would have the mandate to ensure the observance of the "rights and legitimate interests of entrepreneurs" by public authorities, private entities and individuals. For the purpose of carrying out its mandate, it would be entrusted with a set of powers, such as monitoring, receiving and handling complaints regarding violations of the rights of entrepreneurs, cooperating with different bodies and authorities, and filing legal actions in the courts. It would be supported in its missions by a specialised sub-division within the NHRI's Office.

To nominate the new Ombudsman of Entrepreneurs' Rights, the draft Law is also proposing to enlarge the composition of the Special Parliamentary Committee responsible for the selection of the People's Advocates. The Special Committee is currently composed of members of the Committee on Human Rights and Interethnic Relations and of the Committee on Legal Affairs, Appointments and Immunities, and the proposal would include members of the Committee on Economy, Budget and Finance.

The [Venice Commission](#) and [OSCE-ODIHR](#) have respectively issued an opinion on the draft law upon request from the Moldovan NHRI.

1. Prior and effective consultation of stakeholders

No prior consultation has been held with the Moldovan NHRI or with civil society organisations on the changes proposed by the draft law. According to the informative note accompanying the draft law, public consultations appear to have been focused on economic actors and public authorities in the economic sphere, such as the Ministry of Economy and Infrastructure and the State Chancellery.

A recent Recommendation of the Council of Europe Committee of Ministers ([CM\(2021\)22](#)) on NHRIs stresses that Member States should ensure an enabling legal framework and a conducive

institutional and public environment for NHRIs to carry out their activities effectively for the protection and promotion of all human rights and fundamental freedoms and co-operate with them.

Changes to the legislative provisions affecting the structure and mandate of an NHRI require a careful consideration of whether the legislation is compatible with the [UN Paris Principles](#) and prior effective consultation with all relevant concerned stakeholders, particularly with the NHRI itself. This is necessary to ensure that the independence and effectiveness of an NHRI is not negatively affected.

The [Belgrade Principles](#) also state that, during the consideration and adoption of possible amendments to the founding law of a NHRI, parliaments should scrutinize such proposed amendments with a view to ensuring the independence and effective functioning of such institution and carry out consultation with the members of NHRIs and with other stakeholders such as civil society organisations.

Accordingly, the Moldovan NHRI, in parallel to other stakeholders such as civil society actors, should be consulted during the legislative process and should be able to submit its recommendations in relation to the establishment of an Ombudsman for Entrepreneurs' Rights within its structure.

2. Compatibility with NHRIs' broad human rights mandate

Any extension of the mandate and jurisdiction of the NHRI must not compromise the legitimacy and identity of the institution, whose core mission should remain that of promoting and protecting human rights.

Pursuant to the [UN Paris Principles](#), an NHRI shall be given as broad a human rights mandate as possible. The [SCA General Observations](#) state that an NHRI's mandate should be interpreted in a broad, liberal and purposive manner to promote a progressive definition of human rights which includes all rights set out in international, regional and domestic instruments, including economic, social and cultural rights. This gives effect to the principle that all rights are universal, indivisible, and interdependent.

As stated in the [Edinburgh Declaration](#), the protection of individuals against corporate-related abuse, including by facilitating access to justice for victims, should form an integral part of the mandate of NHRIs' to protect human rights. The ability of NHRIs to deal with business and human rights issues should not be hampered by the extension of its mandate such as to encompass the

“legitimate interests of entrepreneurs”, especially due to a lack of clear definition of what this concept entails.

The mandate of the Moldovan NHRI already allows for entrepreneurs, as any individual, to seek support of the NHRI in matters pertained to human rights and alleged violations. The mandate of NHRIs can encompass situations pertaining to legal entities, including businesses, as long as it is sufficiently anchored on human rights.

On the other hand, entrusting the NHRI with a competence over undefined concepts such as “entrepreneurs’ rights and legitimate interests” could create a risk of conflict with the core mandate of the NHRI (the promotion and protection of human rights), especially when the NHRI is called to defend individuals from corporate-related human rights abuses. This scenario should be avoided to ensure that the focus on the human rights mandate of the NHRI is maintained.

The consultation conducted by ENNHRI among its Members showed that while bodies that protect entrepreneurs’ rights exist in Georgia, Poland and Ukraine, they are not embedded within the same institution as the NHRI.

The Armenian NHRI constitutes an exception in the European context in that it is directly vested with a mandate for the protection of the interests of small and medium-sized business against maladministration and has a specialised Division within its structure for this purpose, although it falls under the direct authority of the Human Rights Defender, who must prioritise the human rights mandate.

3. Guarantee of independence, effectiveness and public confidence

The draft law is also bringing amendments that would have an impact on other elements of the functioning of the Moldovan NHRI, including the composition of the appointment body, funding and internal operations which may ultimately affect the guarantee of independence, effectiveness of the NHRI and public confidence in its leadership body.

Under the UN Paris principles, and the related [SCA General Observations](#), the selection and appointment process are crucial to guarantee the independence of an NHRI and public confidence in its senior leadership. The selection and appointment process should be open, transparent, merit-based, and placed under the control of an independent and credible body, involving open and fair consultation with NGOs and civil society. Changes in the composition of the appointment body need to be carefully considered in the light of this requirement.

In the [2018 SCA report on Moldova](#), the budget of the Office of the People’s Advocate was reported as insufficient to carry out its mandate. The [SCA General Observations](#) and the [Venice](#)

Principles stress that institutions must be adequately funded to ensure full, independent and effective discharge of its responsibilities and functions. The SCA emphasizes that, where an NHRI has been mandated with additional responsibilities, such as designation as the NPM, it must be provided with the adequate funding to effectively fulfil these duties. Insufficient resources can render an NHRI ineffective or limit it from reaching its full effectiveness and any additional mandate should be adequately funded.

Changes to the mandate and functions of an NHRI should not have detrimental effects on its internal operations. There should be a clear division of tasks between office holders in order to avoid difficulties regarding day-to-day management and the decision-making process.

4. Review of Compliance with UN Paris Principles

Compliance with the UN Paris Principles is regularly assessed by SCA through the accreditation process. A-status accreditation demonstrates that an NHRI is in full compliance with the UN Paris Principles, meaning that it operates independently, with expertise, impartiality and accountability on a wide range of issues.

The SCA may initiate a Special Review where it appears that the circumstances of an NHRI may have changed in a way that affects compliance with the UN Paris Principles, such as when the enabling law of the NHRI has been amended significantly, and where consultation has not been had with all relevant stakeholders, including the NHRI.

In light of the above, ENNHRI calls on the relevant authorities to assess the proposed amendments in full consideration of the applicable international standards and initiate an effective consultation with the Moldovan NHRI and other relevant stakeholders as soon as possible.

ENNHRI is available for any further clarification on the applicable international standards. For more information, contact Gabriel Almeida at the ENNHRI Secretariat (Gabriel.Almeida@ennhri.org).

About ENNHRI

ENNHRI, the European Network of National Human Rights Institutions, brings together 45 members across Europe to enhance the promotion and protection of human rights in the region. The Office of the People's Advocate of the Republic of Moldova is a member of ENNHRI.