

Ruslan Stefanchuk

Chairman of the Verkhovna Rada of Ukraine

Copy for reference to: Volodymyr Zelenskyy, President of Ukraine

3 June 2022

RE: Concerns regarding protection of human rights and rule of law in Ukraine, following the dismissal of the Ukrainian Parliament Commissioner for Human Rights

Dear Chairman of the Verkhovna Rada of Ukraine,

We write to express our serious concerns following the summary dismissal of the Ukrainian Parliament Commissioner for Human Rights by the Verkhovna Rada of Ukraine on 31 May 2022, resulting in the lack of a functioning National Human Rights Institution (NHRI) in Ukraine. We regret strongly that, contrary to the advice of several international actors, the dismissal did not respect international standards.

We note with alarm that in the absence of a Commissioner the Office of the Ukrainian Parliament Commissioner for Human Rights (Ukraine's NHRI) cannot currently carry out its functions to promote and protect human rights, including in relation to human rights monitoring and reporting, and the treatment of individual complaints and support, in the context an active conflict.

Transitional arrangements must urgently be put in place to ensure the institution can continue its activities, including its mandate and function to protect the rights of all people in Ukraine, and address the high incidence of human rights violations. We recommend that a 'Representative' or senior staff member of the NHRI takes the position *ad interim*, with full powers, until a new Commissioner is appointed.

We also call on the Ukrainian Parliament to take steps to ensure that the selection and appointment process of a new Commissioner follows pre-established procedures, as well as respecting the requirements under the UN Paris Principles. This involves an open, transparent, participatory, and merit-based selection and appointment process to ensure the independence of the institution.

The exceptional and challenging circumstances faced by Ukraine make it even more important that its NHRI can work in an effective and independent manner. Indeed, an independent and

effective NHRI has been recognised by the European Union and Council of Europe as a requirement and indicator of respect for the rule of law.

We call on you and the international community to implement urgent actions to ensure the continuity of the work of the NHRI, in full compliance with the UN Paris Principles. In the annex to this letter, we detail our concerns and the actions that must be taken to ensure the promotion and protection of human rights in Ukraine.

ENNHRI and GANHRI remain available to clarify the applicable standards and to cooperate on this matter.

Your sincerely



Sirpa Rautio

ENNHRI Chair
Director of the Finnish Human Rights Centre



Maryam Al Attiyah

GANHRI Chairperson
Chair Qatar NHRC

This is an open letter and has been made public on GANHRI's and ENNHRI's websites.

Annex:

The dismissal of Commissioner Denisova, contrary to international standards

As recalled in our letter of 31 May 2022, the dismissal of the Head of an institution such as the Ukrainian Parliament Commissioner for Human Rights – which acts as an Ombuds and NHRI – is subject to standards at regional and international level. They are in place to ensure a stable and independent mandate for the institutions, free from undue political interference.

We regret that the Ukrainian Parliament disregarded our earlier concerns – which were shared by other credible actors such as the [UN Human Rights Office in Ukraine](#), the [Council of Europe Commissioner for Human Rights](#) and a group of [civil society organizations](#) – that the dismissal would be contrary to international standards. As detailed in our letter, applicable standards require that the grounds for dismissal are clearly defined in law and based on serious grounds of misconduct or incompetence, in accordance with fair procedures ensuring objectivity and impartiality, and should be supported by a decision of an independent body with appropriate jurisdiction.

The dismissal of the Ukrainian Commissioner did not respect those requirements. This could have a chilling effect on the functioning of independent public bodies in Ukraine, and potentially impact on the perceived or actual independence of the new Commissioner.

Lack of functioning NHRI to promote and protect human rights in Ukraine during conflict

The dismissal has immediate and serious consequences on the institution's ability to promote and protect human rights in Ukraine. To our knowledge, under the current legislative provisions, the institution is unable to perform its activities without a Head in-post.

Among the negative consequences, we are informed of the substantial restriction of on-site human rights monitoring across Ukraine, the termination of the hotline for citizens to submit complaints or receive support, and impacts on the institution's staffing. The ability of the institution to receive information and report on war crimes, and other human rights violations during the conflict, is also severely disrupted or has ceased.

Such impacts on an institution like the Ukrainian Parliament Commissioner for Human Rights represents a loss for human rights, democracy, and the rule of law in Ukraine. For Ukrainian citizens and those living in Ukraine, the institution is a key actor in ensuring respect and protection for their rights and accountability for when violations occur. In addition, the international community can no longer rely on the work of the Ukrainian NHRI to receive credible information on the human rights situation on the ground.

Need to ensure transitional arrangements while preserving independence

The dismissal of the Commissioner is also concerning due to the lack of transitional arrangements in place. In these circumstances, the impacts above will be felt for an unspecified period, and could have long-lasting impacts on the institution.

As laid out in ENNHRI's [Opinion on Transitional Arrangements](#), provisions should be in place to maintain the permanency and institutional independence of NHRIs following the end of term or dismissal of Heads of NHRIs. The most common transitional arrangement in European countries for internationally accredited NHRIs of the Ombuds-type is that the Head of the NHRI continues in office until a new individual has been selected, appointed, and/or taken oath. Alternatively, it is common that a Deputy Head or senior staff of the NHRI takes the position *ad interim*, until a new Head is in function.

In most countries, the need to ensure transitional arrangements also comes from the principle of continuity of public services. This has been reaffirmed by a recent Recommendation of the Committee of Ministers ([CM/Rec\(2019\)6](#)) applicable to Ombuds Institutions. The Recommendation states that "arrangements should be in place so that the post of the head of any Ombudsman institution does not stay vacant for any significant period of time". Moreover, in one of its expert opinions, the Office for Democratic Institutions and Human Rights (ODIHR) of the Organization for Security and Co-operation in Europe (OSCE) advised that members of the decision-making body of an NHRI should remain in office until a successor is appointed, in order to guarantee a proper transfer of duties and ensure the continuity of the institution ([Opinion NHRI-ISL/301/2017](#)).

This understanding has also been applied by the GANHRI Sub-Committee on Accreditation ([SCA](#)) during the accreditation of NHRIs. For example, in a [case](#) concerning a long transition period between the end of term and appointment of a new Head of NHRI, the SCA referred to the need to "maintain the permanency and institutional independence" of the NHRI and affirmed that the institution "must seek to operate in compliance with the legal provisions through which it was created".

We call on the Ukrainian Parliament to urgently put in place transitional arrangements that will allow the institution of the Ukrainian Commissioner for Human Rights to carry out its mandate. Such transitional arrangements should never compromise the institution's factual or perceived independence. We recommend that a Deputy or senior staff of the NHRI takes the position *ad interim*, until a new Head is in function.

Ensuring an open, transparent, participatory, and merit-based selection and appointment

We strongly encourage the Ukrainian Parliament to initiate the process for the selection and appointment of a new Parliament Commissioner for Human Rights.

The Ukrainian Parliament must ensure that this process will follow pre-established procedures, and respect the requirements under the UN Paris Principles, including the cornerstone principles of independence and transparency. This must be done in a formalised, clear, transparent, and participatory manner. The assessment of applicants must be on the basis of pre-determined, objective and publicly available criteria, which promotes the merit-based appointment of candidates. We strongly encourage you to ensure consultation with and participation of civil society organizations in this process. We underline in particular GANHRI SCA's [recommendations](#) during the reaccreditation of the Ukrainian Parliamentary Commissioner for Human Rights.

The appointment of the Head of the NHRI, without a clear, transparent, merit-based and participatory selection and appointment process, could severely impact on the independence, effectiveness, and public confidence in the Ukrainian Commissioner for Human Rights.

Next steps

ENNHRI and GANHRI strongly support the institution of the Ukrainian Commissioner for Human Rights. The Ukrainian NHRI is internationally [accredited](#) with A-status, which testifies its full compliance with the UN Paris Principles. This international recognition may be called into question following the dismissal of the Commissioner and the subsequent impact on the institution's ability to perform its activities. Disregarding international standards during the selection and appointment of the new Commissioner would be taken very seriously by the international community. Independent and effective NHRIs are indicators of the respect for the rule of law in a country, as recognised by the European Commission, and are considered carefully when considering accession to the European Union.

We urgently call on the Parliament to ensure the institution's effective and independent functioning during the transitional period. Special attention should be paid to the retention of staff and the continuity of the Ukrainian NHRI's essential functions. A senior staff member of the Ukrainian Commissioner would be ideally placed to ensure continuity of the institution's activities.

We also call on all relevant authorities to ensure that the selection and appointment of a new Commissioner follows an open, transparent, participatory, and merit-based procedure.

ENNHRI and GANHRI remain available to further clarify the applicable standards and to cooperate on this matter.