

Executive Summary

National human rights institutions (NHRIs), as independent, state-mandated bodies with a broad human rights mandate, play a key role as pillars for the respect of human rights, democracy, and rule of law. The extent to which a state has in place an NHRI in line with the Paris Principles is regarded by international and regional bodies as indicative of the state's respect for the rule of law and, more broadly, for checks and balances.

Within the European Network of National Human Rights Institutions (ENNHRI) – a network connecting all NHRIs across the EU and the Council of Europe region – European NHRIs have deepened their strategic engagement in regional rule of law mechanisms through joint rule of law reporting, with a view to contributing to efforts at national and regional level to strengthen the rule of law, human rights and democracy across Europe.

European NHRIs' joint reporting provides information on the extent to which NHRIs are enabled to independently and effectively fulfil their mandate and thus contribute to the national systems of checks and balances. Moreover, the information and analysis shared by NHRIs concerning the human rights situation on the ground – one of the core elements of NHRIs' legal mandate – helps to create a more accurate picture of the rule of law environment in each state. As such, NHRIs' joint reporting helps to make a comprehensive assessment of the level of respect for the rule of law at national level and contributes to efforts by regional actors to address rule of law challenges in the region.

The sustained consideration of NHRIs' and their submissions within international and regional monitoring processes, including the European Commission's annual reports on the rule of law in the EU and annual progress reports on Enlargement and Eastern Partnership countries, confirms the importance of NHRIs' role in the rule of law architecture. It also reaffirms the significance of strengthened cooperation among and with NHRIs to achieve positive change for the rule of law, human rights and democracy across the region.

The aforementioned recognition has driven further support for the development, strengthening, and protection of and co-operation with NHRIs. Such support is reflected in important regional initiatives, for instance the 2021 Council of Europe Committee of Ministers Recommendation on NHRIs and the European Commission's revised Strategy for the effective implementation of the Charter of Fundamental Rights. At the same time, the positive impact of European NHRIs' joint rule of law reporting is confirmed in two different

ways. NHRIs mention numerous follow-up initiatives, both on the side of state authorities and of institutions themselves, while giving feedback that reporting exercise has triggered progress in tackling challenges and increased their engagement on rule of law issues.

Challenges to the rule of law across Europe in 2021: NHRIs' perspectives

This report is the result of the third joint rule of law reporting cycle conducted by European NHRIs through ENNHRI. It brings together the country rule of law reports developed by ENNHRI members and offers an overview of trends, challenges, and recommendations developed by ENNHRI on the basis of the country reports received.

Key findings

The trends which emerge from ENNHRI members' reporting on developments in 2021 reveal that not much progress was made to address issues affecting national rule of law environments across Europe. This was also reported by NHRIs in previous years. Persisting challenges include the following:

- **A variety of issues are negatively impacting on the independence and effectiveness of NHRIs in a number of countries**, especially a lack of access to and cooperation by national authorities in legislative and policy-making processes for NHRIs. There is also an unsatisfactory level of implementation of NHRIs' recommendations. In some countries, this could be due to insufficient awareness among state authorities of NHRIs' mandate and functions. While some NHRIs were given new competences, the expanded mandates were sometimes not accompanied by (efforts to provide) sufficient financial resources to perform them. Some ENNHRI members also warned about changes in their regulatory framework that may negatively influence their work and operations, while no substantial legislative developments were recorded in EU countries without an accredited NHRI but a new institution will start functioning in Sweden. In certain countries, ENNHRI members also reported pressure, smears and actions by authorities that threatened the continuity of their heads of institutions' positions and ability to perform their role. Others regret the lack of adequate measures and rules on immunity to ensure NHRIs' independence and protection against attacks and intimidation. In this context, the newly adopted [Council of Europe Committee of Ministers Recommendation 2021\(1\) on "the development and strengthening of effective, pluralist and independent NHRIs"](#) provides important impetus to further the establishment of and an enabling environment for strong and independent NHRIs in each European country.

- **Human rights defenders (HRDs) and civil society organisations (CSOs) are operating in worsening conditions.** This year's report reveals a deterioration of the enabling environment for HRDs and CSOs. In many countries across the region, CSOs and HRDs continue to be the target of attacks and harassment, including legal harassment and Strategic Lawsuits Against Public Participation (SLAPPs), by public authorities and law enforcement. Those working on sexual and reproductive rights, LGBTI+ rights, rights of migrants and asylum seekers, and environmental protection are particularly affected. ENNHRI members in a number of countries across the region raise concerns about laws restricting civic space and CSOs' activities, as well as laws criminalising HRDs' activities, in particular in the area of migration. Restrictions to freedom of assembly and measures adopted in response to the COVID-19 pandemic were again reported as having a strong impact on civic space. Furthermore, some ENNHRI members regret the limited efforts of state authorities to ensure CSOs' access to and involvement in law and policy making. Against this background, NHRIs reported that they actively engaged with HRDs and CSOs to address human rights challenges and to step up their work for better protection of HRDs.
- **Severe challenges affect the national systems of checks and balances in a number of European countries.** These often relate to the way governments have been handling the crisis situation triggered by the COVID-19 pandemic, and include the persistent use of emergency legislation, as well as concerns over the legality of the use of emergency powers and the necessity and proportionality of restrictions on fundamental rights and freedoms. Furthermore, issues were reported with low quality law- and policy-making, including in terms of impact assessments, transparency of public consultations and access to information. A number of ENNHRI members also warn about gaps in accountability, maladministration by public authorities, and challenges affecting the judicial and constitutional review of laws. Many deplore the negative impact on the level of public trust in authorities and on the independence of monitoring bodies. In this context, ENNHRI members are mobilising to advise on and advocate for better adherence to democratic and human rights standards, more transparent and inclusive law-making, and improved access to information of public interest.
- **Obstacles to the effective functioning of justice systems persist in many countries across Europe,** with several ENNHRI members sharing concerns over laws and practices that limit the independence of courts and judges. These include flawed procedures for applying for and filling judicial posts, and threats to the independence of national councils of the judiciary. ENNHRI members report dissatisfaction and distrust in the justice system, including due to the impact of the excessive length of proceedings and the lack of adequate resources. Reports by ENNHRI members also expose issues

affecting access to justice and fairness of proceedings, including a lack of transparency of decision-making in courts and persisting gaps in legal aid. At the same time, they report that efforts are too limited to improve the way justice is delivered in areas such as anti-discrimination, asylum and migration and in criminal proceedings, and to accommodate the needs of children, persons with disabilities, racialised groups, and victims of crime in the judicial process. Moreover, NHRIs regret the failure to implement judgments in a timely and effective manner, including those of regional courts. Numerous examples are provided of NHRIs' contributions to the effective functioning of justice systems, including through strategic litigation, complaints handling, awareness raising, advice on reforms, and initiatives to promote access to justice among vulnerable groups.

- **A decline in media freedom and pluralism across Europe**, which ENNHRI members associate with increasing political pressure on media, high risks of market concentration, a lack of transparency of media ownership, and a worrying increase in threats and attacks against journalists and media outlets, including by public authorities. These encompass physical attacks (including police violence), verbal attacks, smear campaigns, and legal harassment (including SLAPPs). Furthermore, ENNHRI members in a number of countries alerted about laws disregarding the balance to be struck between the protection of freedom of expression and information and competing rights and interests; as well as there being few efforts to ensure balanced democratic debate, free from hate speech and racialised narratives.
- **Concerning corruption levels and persisting gaps in whistle-blower protection**, which were met with an increasing mobilisation of NHRIs advocating for stronger anti-corruption frameworks and for the effective implementation of rules on whistle-blower protection.
- **Serious challenges to the rule of law and human rights protection continue to arise from measures taken to address COVID-19**. This not only includes the persisting impact on checks and balances, but also the medium- and long-term impact of the crisis on the enjoyment of fundamental rights and freedoms. The right to health, other socio-economic rights, and the right to equality and non-discrimination are among the most affected. NHRIs have been helping to monitor and address the challenges, prompting action by state authorities, and engaging in awareness raising with rights holders - for instance on available remedies and support schemes.
- **The national rule of law environment in a number of European countries continues to be affected by systemic human rights violations**, in particular as regards the right to equality and non-discrimination, the right to liberty, and socio-economic rights. This

is also reflected in the failure to implement the judgments of the European Court of Human Rights and the Court of Justice of the EU in a timely and adequate manner.

Recommendations to European and national policy makers

With a view to supporting progress in addressing the most pressing challenges affecting the national and European rule of law and human rights environment, this report contains a number of key recommendations addressed to European institutions and governments. They include:

1. Ensure **independent and effective NHRIs** in each country, by:
 - working towards **implementation of the international standards and recommendations on NHRIs**, including the UN Paris Principles (and associated accreditation reports of the GANHRI Sub-Committee on Accreditation) and the [Council of Europe Committee of Ministers' Recommendation 2021\(1\)](#);
 - securing the **establishment of NHRIs** in compliance with the Paris Principles in those countries where an NHRI does not yet exist;
 - ensuring **functional immunity and merit-based and pluralistic selection** of heads of institutions to protect NHRIs against threats, pressure and coercion;
 - providing NHRIs with **adequate resources** - including additional financial and human resources - when expanding NHRIs' mandates and functions, while securing NHRIs' **financial independence**;
 - enabling NHRIs to carry out their mandate, including through providing **access to information and through timely consultation** on the human rights implications of draft laws and policies;;
 - ensuring **effective consideration and implementation of NHRIs' recommendations**, including by making it a legal obligation for all addressees of NHRI recommendations to provide a reasoned reply within an appropriate time frame by developing processes to facilitate effective follow-up of NHRI recommendations in a timely fashion, and by ensuring reporting by authorities on their implementation of NHRIs' recommendations;
 - **fostering awareness about NHRIs' role and functions** among public authorities, stakeholders, and the general public.

2. Respect and protect **civic space and human rights defenders**, by:

- ensuring a **framework for the protection of HRDs**, including better monitoring of threats and attacks and the provision of measures to promptly investigate incidents and prosecute perpetrators, including when they are state authorities;
- taking steps to **protect civil society organisations and HRDs from the abuse of laws or procedural laws which result in legal harassment**, including undue prosecutions and SLAPPs;
- **evaluating existing laws and practices affecting civic freedoms, civil society organisations and HRDs** and revising rules resulting in undue restrictions, in particular as regards rules on registration and dissolution, reporting and transparency obligations, and the exercise of civic freedoms such as freedom of peaceful assembly and freedom of expression and of information;
- **securing a conducive legal and policy framework** to enable civil society organisations and HRDs to carry out monitoring activities and humanitarian and advocacy work;
- securing an **enabling financing framework** and eliminating any undue obstacles to accessing funding, including from foreign sources;
- ensuring **better involvement of civil society and HRDs in law and policy making**;
- **fostering awareness** among public authorities, stakeholders and the general public about how the work of civil society organisations and HRDs is relevant to the rule of law and human rights protection.

3. Safeguard and strengthen **checks and balances systems**, by:

- **reinforcing human rights impact assessment procedures and tools**, including by better leveraging the role of independent expert bodies such as NHRIs, to ensure full alignment and compliance of national laws and policies with international and regional human rights standards;
- **improving public consultation practices** at all stages of law-making procedures, paying particular attention to ensuring meaningful representation and participation of vulnerable and marginalised groups, and organisations representing their interests;
- **ensuring increased accountability of public authorities**, including by improving audit and control procedures, better monitoring the exercise of law enforcement powers, and ensuring that media and civil society actors have access to information;

- **addressing existing shortcomings in the judicial review of acts by public authorities**, including as regards the implementation of decisions by constitutional and regional courts.
4. Ensure fair and effective **justice systems**, by:
- **strengthening the independence and impartiality of courts**, including by means of ensuring transparent and fair systems for judicial appointments and the allocation of cases and by strengthening the independence of national judicial councils;
 - **improving the efficiency of justice systems**, through adequate human and financial resources as well as measures to tackle systemic delays in court proceedings in full respect of the right to have access to a court and to a fair trial;
 - **facilitating access to justice and ensuring compliance with fair trial standards for vulnerable groups** such as children and juveniles, migrants and asylum seekers, victims of trafficking, victims of discrimination and racist violence, and persons with disabilities, also by accommodating as appropriate their specific needs during proceedings;
 - **improving courts' accessibility**, including by ensuring a rational but fair distribution of courts, reducing the costs of proceedings, and improving legal aid systems;
 - encouraging **closer and better cooperation of judicial authorities with NHRIs**, also with a view to a more systematic implementation of their recommendations.
5. Safeguard **media freedom and pluralism** and freedom of expression and information, by:
- ensuring that national legal frameworks include **adequate sanctions, including by means of criminal law, for threats and attacks against journalists and media actors** by private or public actors and take measures to **regularly monitor and record**, and **promptly investigate and prosecute**, such threats and attacks;
 - **protecting journalists and media outlets from the abuse of laws or legal harassment**, such as SLAPPs;
 - **better protect media independence**, including by **strengthening independent media authorities**, preventing and addressing **political and economic pressure** on media and **improving journalists' and media actors' working conditions**;
 - **safeguarding the pluralism of the media market**, by means of measures to ensure **transparency of media ownership** and to prevent and address **market concentration**;

- **fostering free and balanced public debate, by ensuring access to public service media content without discrimination, countering disinformation, hate speech and illegal content** in full respect of freedom of expression and information, and by **promoting media literacy and adherence to professional standards and ethics** by all journalists and media;
 - ensuring a **regular and transparent dialogue between state authorities, media actors and press freedom organisations** to tackle identified challenges in media freedom, pluralism and journalists' safety;
 - **evaluating, in consultation with media actors, existing laws and practices affecting the exercise of freedom of expression and information** and repealing or revising rules resulting in undue restrictions, in particular as regards defamation laws, other forms of criminalisation of speech, data protection, rules on secrecy, rules on disinformation and illegal content;
 - ensuring **free access to data and information of public interest**, the **protection of journalistic sources** and the **protection of whistle-blowers**.
6. Strengthen the **anti-corruption framework**, by:
- **revising and strengthening the legal framework to prevent and fight corruption**, in particular high-level corruption and integrity issues, and better leverage in this context the advisory role of NHRIs;
 - **strengthening capacity of anti-corruption bodies and judicial authorities** to investigate and prosecute corruption, and foster cooperation among them and between them and other independent actors, including - in accordance with their national mandates - NHRIs;
 - **improving whistle-blower protection frameworks** and ensuring the implementation of relevant rules on the ground, including through consultation with NHRIs on possible relevant roles.
7. Address and mitigate the **impact of COVID-19 and response measures on rule of law and human rights protection**, by:
- ensuring the **legality and democratic oversight of restrictive measures** in situations of public health emergency;
 - securing **thorough human rights impact assessments and a regular evaluation of restrictive measures in force**, and seeking in this context the advice and guidance of NHRIs and other independent actors;

- when planning, designing and implementing responses and mitigating measures, paying increased attention to **challenges faced by vulnerable and marginalised groups**;
 - integrating in recovery and resilience plans specific actions to **address the impact of the pandemic on socio-economic rights**;
 - **supporting the efforts of and cooperating with independent monitoring bodies -including NHRIs, civil society organisations and HRDs** - to monitor, report on and contribute to addressing challenges to rule of law and human rights protection.
8. Address **structural human rights issues** affecting the rule of law environment, by:
- **ensuring timely and effective implementation of judgments by regional courts**, namely the European Court of Human Rights and the Court of Justice of the EU;
 - **ensuring compliance of laws and practices with international and regional human rights standards**, including the ECHR and the Charter of Fundamental Rights of the EU;
 - ensuring **timely and effective implementation of recommendations** by international and regional monitoring bodies, as well as independent authorities including NHRIs;
 - ensuring **meaningful consultation with NHRIs and civil society organisations** when drafting or revising relevant laws and policies;
 - **strengthening authorities' awareness and knowledge of potential human rights violations and their capacity to identify and tackle these**, in particular in the context of law and policy making, as well as law enforcement;
 - promoting and supporting **awareness raising and civic education initiatives** on human rights, democracy and the rule of law, also in synergy and cooperation with NHRIs.

Supporting NHRIs' efforts to monitor, protect and promote the rule of law

International and regional actors are in a key position to facilitate and support NHRIs' engagement and efforts, and thereby strengthen the impacts on the ground of NHRIs' rule of law monitoring and reporting. As already stressed by ENNHRI in previous reports, this requires prioritising the strengthening of fully independent and effective NHRIs in each State; supporting NHRIs' work in their countries so as to make sure state authorities

constructively engage with them and take action to implement their recommendations; and investing to enable NHRIs to contribute effectively to efforts by EU and other regional bodies to advance human rights, rule of law and democracy in Europe.

The impact assessment conducted by NHRIs as part of this year's reporting cycle allowed the formulation of a number of **more targeted key recommendations addressed to regional actors to facilitate and support NHRIs' engagement and efforts on rule of law issues**, and in particular the European Commission, to:

- anchor monitoring and reporting in a broad concept of the rule of law that reflects interlinkages with human rights, access to justice as well as democracy more generally;
- strengthen the preventative function of reporting exercises, while acting firmly on already identified violations and threats, including through funding conditionality and enforcement action where applicable;
- organise regular regional and national dialogues on the rule of law, involving ENNHRI and NHRIs.

The recommendations call on national authorities to:

- increase the transparency and participatory nature of follow-up action, including by enhancing engagement with key stakeholders such as NHRIs and civil society (for example through dedicated working groups and regular dialogue);
- support the effective and wide dissemination of rule of law reports by regional actors, including the European Commission, as well as by NHRIs and ENNHRI.

European NHRIs remain committed to continuing and deepening – both individually and collectively through ENNHRI – their strategic engagement within international and regional rule of law mechanisms. Alongside this, they remain committed to continuing to use their promotion and protection roles to engage with national actors to prompt progress in addressing the challenges identified. In this context, besides carrying on its work to support the establishment, strengthening and protection of NHRIs across the region, ENNHRI will continue coordinating a regular joint rule of law reporting exercise by its members, further promote NHRIs' impactful involvement in regional policy and law-making processes, and create opportunities for capacity building, mutual learning, enhanced solidarity and cooperation among NHRIs.