



European Network of
National Human Rights Institutions

Implementing the Council of Europe Recommendation on National Human Rights Institutions: The State of Play

Establishment of NHRIs



Cross-regional analysis for each principle of the Council of Europe Recommendation on NHRIs

In line with the operational paragraphs of CM Recommendation 2021/1, CoE Member States envisage to ensure that the Principles set out in the appendix to the Recommendation are implemented in relevant domestic law and practice (OP 2). Member States, furthermore, are recommended to evaluate on a regular basis the effectiveness of the measures taken in the implementation of the appendix to the Recommendation (OP 5). Accordingly, to facilitate follow-up to the CM Recommendation on NHRIs, [ENNHRI's baseline study](#) provides a cross regional analysis of the implementation of each CM Principle on NHRIs developed in CM Recommendation 2021/1, each time setting out the key challenges and good practices that emerge.

In line with the CM Recommendation (OP 4), the cross-regional analysis dedicates specific attention to ensure that the CM Principles are interpreted in line with the recommendations and General Observations of the Global Alliance of National Human Rights Institutions (GANHRI) Sub-Committee on Accreditation (SCA). Moreover, attention is also paid to how the CM Principles on NHRIs reflect other regional standards and recommendations from CoE bodies that are relevant for multi-mandated NHRIs, such as the [Venice Principles on Ombuds-Institutions of the Venice Commission](#) or the [ECRI General Policy Recommendation No.2 on Equality Bodies](#).

Explore the Key Findings for CM Principles Related to the Establishment of NHRIs



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Establishment of NHRIs

Establishment of an NHRI Accredited in Compliance with the Paris Principles (CM Principle 1)

CM Principle 1 encourages Member States to establish NHRIs and ensure that they are accredited and function in full compliance with the Paris Principles. This fundamental Principle is also taken up as the first Operational Paragraph of CM Recommendation 2021/1 which, quite forcefully, recommends that governments of Member States ‘take all necessary measures to establish, and when established, maintain and strengthen an independent NHRI in accordance with the Paris Principles’. The Operational Paragraph adds that, in this context, States can draw on technical assistance such as that from ENNHRI, and other regional and international bodies to build on existing good practice.

The European NHRI landscape is the most diverse in the world, and NHRIs of different types exist, including ombuds-type NHRIs, commission-type NHRIs and institutions with a typical focus on delivering advice.¹ In many European countries, NHRIs are built on previously existing institutions such as equality bodies, or ombuds with a mere maladministration mandate. Accordingly, (and as further developed under CM Principle 3) virtually all NHRIs in Europe are multi-mandated institutions, with a broad mandate to promote and protect human rights (‘NHRI mandate’), in addition to more specific mandates.

At regional level, there is an **overall positive trend** towards more and stronger NHRI established and accredited in Europe. Currently, 28 Council of Europe Member States have an NHRI accredited with A-status indicating full compliance with the Paris Principles and eight Member States (Azerbaijan, Belgium, Hungary, Montenegro, North Macedonia, Slovakia, Sweden and Türkiye) have NHRIs that are accredited with B-status, indicating partial compliance with the Paris Principles. Currently, ten states do not have an NHRI accredited in compliance with the Paris Principles (Andorra, Czech Republic, Iceland, Italy, Liechtenstein, Malta, Monaco, Romania, San Marino and Switzerland). In four of the ten countries without internationally accredited NHRI (Andorra, Czech Republic, Liechtenstein, and Romania), an institution is in place which is an ENNHRI member, indicating the intention of the institution to become internationally accredited. Indeed, currently **all CoE Member States indicate the intention to set up an NHRI** and concrete steps towards such establishment are visible in the large majority of CoE Member States.

¹ Further: OHCHR, ‘National Human Rights Institutions: History, Principles, Roles and Responsibilities’, [here](#).

Positive developments can be identified in a number of states. For example, several **existing institutions have applied for accreditation**. In Sweden, the Swedish Institute for Human Rights applied for accreditation in April 2023, while the Swedish Equality Ombudsman indicated that it wishes to relinquish its B-status accreditation status once the Institute is accredited. In addition, the Romanian Institute for Human Rights and the Romanian ombuds-institution have applied for accreditation. However, the Romanian Institute for Human Rights reports that there have been no significant legislative developments to its enabling legislation. Such a revision in the future could lead to stronger compliance of its institutional framework with the UN Paris Principles and facilitate the Institute's request for accreditation. In Liechtenstein, while the institution is not yet accredited, the enabling law foresees the Liechtenstein Association of Human Rights (LHRA) to be an NHRI in compliance with the Paris Principles, and the Board has decided to seek accreditation in the near future.

Additionally, states have taken steps to **strengthen existing institutions with a view to bringing them into closer compliance with the Paris Principles**, including in the context of ensuring future accreditation. This includes, for example, in Andorra, where national authorities have indicated a willingness to further develop the Ombudsman institution, including through strengthening its role and broadening its competences so that the institution's legislative functions and activities more closely resemble those of an NHRI (Venice Commission 2022). Further, in the Czech Republic, national authorities are acting to strengthen the functions of the Public Defender of Rights, through draft amendments aiming to bring the institution's enabling legislation into closer alignment with the Paris Principles. Importantly, the institution has been involved in and consulted in this process.

Moreover, in states **where no NHRI exists, national authorities have taken steps towards the establishment of an NHRI**. In Switzerland, in 2021, the National Council approved a bill on the establishment of an NHRI, which entered into force in January 2023. The Swiss Human Rights Institution had its [founding assembly](#) meeting on 23 May 2023, which approved its statutes and elected its first Board. The Swiss Institution is expected to become fully operational later in 2023. In addition, the Icelandic government has appointed a ministerial Working Group to explore possible avenues towards the establishment of an NHRI in Iceland and to work on a legislative proposal. At the end of 2021, the newly re-elected government included the establishment of an NHRI in its coalition agreement.

At the same time, while there is an overall trend towards more and stronger NHRIs being established and accredited across the region, **in some states, steps towards the establishment of an NHRI in compliance with the Paris Principles have been less substantive**. This includes in Italy and Malta, where proposals on the establishment of

an NHRI have been discussed but remain pending over several years without adoption. In Monaco, an Ombuds-type institution exists; while ENNHRI has been in touch with the institution to gather more information about its work and intention to apply for accreditation, there have been no concrete developments in this regard. In San Marino, with regards to the recommendation of the UN Human Rights Committee which called on national authorities to establish an NHRI in conformity with the Paris Principles, the state indicated that it is exploring steps toward the creation of an NHRI in the country.

Strong Enabling Legislation, Preferably Through Constitution (CM Principle 2)

The requirement for an NHRI to be established by a strong legal basis serves as a safeguard for the institution's independence, the permanency of its mandate, and its effective functioning. Indeed, the Paris Principles call for NHRIs to be provided 'as broad a mandate as possible, which shall be clearly set forth in **a constitutional or legislative text**, specifying its composition and its sphere of competence'.

CM Principle 2 further encourages states to provide a firm legal basis for NHRIs including one which defines the mandates and functions of institutions, guarantees their independence, and provides them with the means necessary to accomplish their functions effectively. The CM Principle includes an **explicit preference for the legal basis to be entrenched at the constitutional level**. The additional emphasis on establishment at the constitutional level is echoed by the [Venice Principles](#).

The establishment of an institution through alternative means, for example, through an executive decree or regulation, can raise concerns. Unlike legislative or constitutional texts, instruments of the executive are open to modification or annulment without the need for legislative scrutiny, whereas it is important that any amendment to an NHRI's enabling legislation be reached through broad support and consent by the legislator. Therefore, the existence of a strong legislative or – preferably – constitutional basis, can act as a safeguard for the continuity of an NHRI's effective functioning and mandate. Moreover, it can contribute to preventing undue interference by the government and the risk of the institution's mandate being undermined or amended without proper legislative consideration.

While all accredited NHRIs in the region are established by either a legislative or constitutional act, a **positive trend is that, in approximately half of the states covered by the baseline, NHRIs' legal basis is embedded in the constitution**. This includes in Albania, Armenia, Austria, Azerbaijan, Bosnia & Herzegovina, Bulgaria, Croatia, Estonia, Finland, Georgia, Hungary, Kosovo*, Ireland, Lithuania, Moldova, Montenegro, North Macedonia, Poland, Portugal, Serbia, Spain and Ukraine.

In addition, in several states, guarantees of the NHRI's independence are explicitly included in the constitutional text. For example, in Poland, provisions ensuring

independence in the selection and appointment of the head of institution are entrenched in the Constitution. In Croatia, the Constitution guarantees functional immunity for the head of institution. Further, the Armenian Constitutional Law on the Human Rights Defender includes provisions that prohibit reductions to the institution's budget, ensuring its independent and effective functioning.

Further, NHRIs themselves have called for the state to strengthen their regulatory framework, by entrenching the NHRI's role in the constitution. This includes for example, the NHRIs of Luxembourg and Latvia.