



European Network of
National Human Rights Institutions

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

The situation in Montenegro



Montenegro Country Report

Overview

Name of NHRI and mandate:

- Protector of Human Rights and Freedoms of Montenegro (PHRF)
- NHRI, Ombuds-institution, NPM and Equality Body

Sources:

- NHRI: [ENNHRI, State of the Rule of Law in Europe in 2022, Montenegro Country Report](#)
- Sub-Committee on Accreditation: [SCA Report May 2016](#)
- CoE Independent Bodies: [ECRI Report on Montenegro \(2017\)](#)

Good practices and improvements:

- **CM Principle 3§5: contribute to an effective justice system:** The Protector of Human Rights and Freedoms (PHRF) has been empowered to investigate complaints as well as to initiate and participate in court proceedings. Furthermore, ECRI (2019) reports positive legislative amendments giving the ombudsman the right of investigating complaints, giving opinions and recommendations on concrete cases of discrimination, providing advice to plaintiffs and initiating court cases or appearing as intervener.

- **CM Principle 9: reasoned and timely reply to NHRI's recommendations:** The addressees of the NHRI's recommendations are legally obliged to provide a timely and reasoned reply. The NHRI has the right to set a deadline of minimum eight days within which the managing authority has an obligation to reply. Echoing ECRI (2017) findings, the NHRI points out a general satisfaction with the level of the recommendation's implementation.
- **CM Principle 12: awareness of the NHRI:** In line with ECRI's findings (2017), the awareness about the institution's mandate and role has increased and the NHRI reports good awareness and regular participation in meetings organized by public bodies and institutions of the government branches.

Key areas where improvement is needed:

- **CM Principle 1:** the Protector of Human Rights and Freedoms of Montenegro (PHRF) is a **B-Status** institution. Hence, it is deemed not fully compliant with the Paris Principles.
- **CM Principle 4: selection and appointment of leadership:** while the PHRF reports a change in practice, including discussion by the President of the proposed candidates with civil society, in line with the finding of the SCA (2016), the current process enshrined in law for election of the leadership is not sufficiently broad and transparent. Moreover the NHRI also emphasizes the need for the Ombudsman to be elected following wider consensus and discussions, rather than a simple majority in the Parliament.
- **CM Principle 6,10 & 11: adequate and independent resources, including for additional mandates:** echoing the SCA (2016) and ECRI (2017), the PHRF faces financial constraints, including for additional mandates such as the NPM mandate, and limited independence in directing its budget. Especially, the current staff hiring process limits its freedom to appoint staff, which is possible only after obtaining a certificate from the ministry of Finance. Moreover, the protracted lack of permanent accommodation hampers the Institution's independence, accessibility and standing.

Specific findings per Principle

The tables below include data on the assessment of the implementation of each Principle (i.e. the individual parts) within the Recommendation from three sources: the National Human Rights Institutions, the Sub-Committee on Accreditation of GANHRI and the Council of Europe independent bodies. Overall, the findings are considered in four overall groups: the establishment of NHRIs; the strengthening of NHRIs; a safe and enabling environment for NHRIs; and cooperation with and support for NHRIs.

I. Establishment of NHRIs

Principle 1	Member States should ensure that NHRIs are in place and that they are established, accredited and function in full compliance with the Paris Principles
Assessment of implementation by Sub-Committee on Accreditation (SCA) of GANHRI	<i>SCA Report May 2016, p. 17</i> ‘The SCA recommends that the PHRF be accredited with B status.’
Principle 2	Member States should provide a firm legal basis for NHRIs, preferably at the constitutional level, and/or in a law which defines the mandates and functions of such institutions, guarantees their independence and provides them with the means necessary to accomplish their functions effectively, both at national and international levels, bearing in mind existing standards and recommendations on NHRIs, in particular the Paris Principles and their interpretation developed by GANHRI’s Sub-Committee on Accreditation.

<p>Assessment of implementation by the NHRI</p>	<p>ENNHRI State of the Rule of Law in Europe in 2022, p.3</p> <p>‘The NHRI has a constitutional basis.’</p> <p>ENNHRI State of the Rule of Law in Europe in 2022, p. 5</p> <p>‘It is necessary to continue to harmonise the legislative framework for the functioning of the Institution with the European Union acquis and international standards.’</p> <p><i>Information Provided by the NHRI in 2023</i></p> <p>According to the Constitution of Montenegro and article 81, the Law of Protector of Human Rights and Freedoms of Montenegro ("Official Gazette of Montenegro", no. 42/2011 and 32/2014), The Law on prohibition of discrimination</p> <p>6. PROTECTOR OF HUMAN RIGHTS AND LIBERTIES</p> <p>Article 81</p> <p>The protector of human rights and liberties of Montenegro shall be independent and autonomous authority that takes measures to protect human rights and liberties.</p> <p>The protector of human rights and liberties shall exercise duties on the basis of the Constitution, the law and the confirmed international agreements, observing also the principles of justice and fairness.</p> <p>The protector of human rights and liberties shall be appointed for the period of six years and can be released from duty in cases prescribed by the law</p>
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II. Strengthening of NHRIs

<p>Principle 3.1</p>	<p>Member States should ensure that the mandate given to NHRIs to protect and promote human rights is as broad as possible and in full compliance with the Paris Principles and that it allows them, inter alia, to:</p> <ul style="list-style-type: none"> - monitor and analyse the human rights situation in the country, publish reports on these findings and address recommendations to public authorities at national, regional and local levels and, when applicable, to private entities, and present an annual report to the relevant authorities, including before parliament, for its consideration.
<p>Assessment of implementation by the NHRI</p>	<p><i>Information provided by the NHRI in 2023.</i></p> <p>Article 2 Law on Protector of Human Rights and Freedoms of Montenegro</p> <p>The Protector shall autonomously and independently, on the principles of justice and fairness, take measures to protect human rights and freedoms, when those are violated by the act, action or failure to act of state bodies, state administration bodies, bodies of the local self-government and local administration, public services and other holders of public powers as well <i>as</i> measures to prevent torture and other forms of inhuman or degrading treatment or punishment and measures for protection from discrimination</p> <p>Article 35 defines recommendation</p> <p>The Protector shall convey the information on the complaint and its content to the Head or the person managing the authority on whose act, action or failure to act the complaint refers to, for the purpose</p>

	<p>of taking the statement and shall set a deadline that cannot be shorter than eight days for submission of the statement and the required supporting documentation.</p> <p>The Head or the person managing the authority shall be obliged to give a statement and the documentation referred to in the paragraph 2 of this Article within the deadline set by the Protector.</p> <p>If the statement referred to in paragraph 2 of this Article does not contain all the required information or the required documentation is not submitted, the head or the person managing the authority is obliged to submit an amended statement and required documentation, on the request of the Protector.</p>
<p>Principle 3.2</p>	<p>Member States should ensure that the mandate given to NHRIs to protect and promote human rights is as broad as possible and in full compliance with the Paris Principles and that it allows them, inter alia, to:</p> <ul style="list-style-type: none"> - freely address public opinion, raise public awareness on human rights and carry out education and training programmes;
<p>Assessment of implementation by the NHRI</p>	<p><i>ENNHRI State of the Rule of Law in Europe in 2022, pp. 1-2</i></p> <p>'The public was informed through the media and the Ombudsman's website of key opinions and recommendations. The Ombudsman also maintained a high level of transparency regarding the reporting on the activities carried out, through publicly available information published on the Institution's website. [...]</p> <p>The Ombudsman's officials participate in numerous gatherings, tours and meetings organized by bodies, institutions or competent bodies of all three branches of government - executive, legislative</p>

	<p>and judicial. The Institution has become recognized for its open and accessible attitude to the various contributing initiatives in the promotion of human rights and freedoms.</p> <p><i>Information Provided by the NHRI in 2023</i></p> <p><u>Article 21 Law on Protector</u></p> <p>The Protector deals also with the general issues of importance for the protection and promotion of human rights and freedoms and cooperates with organizations and institutions dealing with human rights and freedoms.</p> <p>The European Commission Montenegro Report 2022 states: "The Ombudsperson's Office continued to be perceived as the institution with the best impact and trust regarding the promotion and protection of citizens' rights. The views of the institution are often quoted in the media. The Office's capacity to handle complaints and the quality of its decisions continued to improve."</p>
<p>Assessment of implementation by Sub-Committee on Accreditation (SCA) of GANHRI</p>	<p><i>SCA report May 2016, p. 17</i></p> <p>'The enabling law of the PHRF provides for a limited promotion mandate. [...] The SCA is of the view that a NHRI should be legislatively mandated with specific functions to both promote and protect human rights[...]The SCA encourages the PHRF to advocate for appropriate amendments to its enabling law to make its promotional mandate explicit.'</p>
<p>Assessment of implementation by CoE independent bodies</p>	<p><i>ECRI Report on Montenegro 2017, p. 27 (Para. 80)</i></p> <p>'Various interlocutors stated that the Ombudsman's crucial role in tackling discrimination became more visible and praised its constructive dialogue with civil society.'</p>

<p>Principle 3.3</p>	<p>Member States should ensure that the mandate given to NHRIs to protect and promote human rights is as broad as possible and in full compliance with the Paris Principles and that it allows them, inter alia, to:</p> <ul style="list-style-type: none"> - fully address all alleged human rights violations by all administrative authorities, other relevant State entities and, when applicable, private entities
<p>Assessment of implementation by the NHRI</p>	<p><i>Information provided by the NHRI in 2023.</i></p> <p>Article 28</p> <p>The Protector shall be the Institutional Mechanism for protection from discrimination. The Protector, with consent of a discriminated person, shall act and take measures for protection from discrimination, in accordance with this Law and specific Law governing the prohibition of discrimination. Acting of the Protector in cases of discrimination by physical or legal entities shall be applied</p>
<p>Principle 3.4</p>	<p>Member States should ensure that the mandate given to NHRIs to protect and promote human rights is as broad as possible and in full compliance with the Paris Principles and that it allows them, inter alia, to:</p> <ul style="list-style-type: none"> - have unfettered access to all relevant premises, including places of deprivation of liberty, and to all relevant individuals, in order to be able to carry out a credible examination of all issues covered by their mandate and to all relevant information, subject to possible restrictions stemming from the protection of other rights and legitimate interests and with due respect for the confidentiality of information obtained;

<p>Assessment of implementation by the NHRI</p>	<p><i>Information provided by the NHRI in 2023.</i></p> <p>In 2022, NPM carried out a total of 40 visits and absolutely fulfilled the Plan for 2022. By the end of 2022, through the completed reports, 65 new recommendations were made, 78 recommendations were repeated, 3 recommendations were partially fulfilled and 32 previously given recommendations were completely fulfilled.</p> <p>Article 25</p> <p>The Protector shall be the National Preventive Mechanism for the protection of persons deprived of their liberty from torture and other cruel, inhuman or degrading treatment or punishment (hereafter referred to as: the prevention of torture), in accordance with the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatments or Punishments. In order to perform certain duties for the prevention of torture that require specialized knowledge, the Protector shall form a working body consisting of experts in the relevant fields. The act on creation of the advisory body referred to in paragraph 2 of this Article shall determine the tasks and manner of operations of that body.</p> <p>Article 25b</p> <p>Prevention of torture includes the following:</p> <ul style="list-style-type: none"> - visiting authorities, institutions or organizations in which are or could be placed persons deprived of their liberty and persons with a restricted movement, in order to increase the level of their protection from torture and other cruel, inhuman or degrading treatment or punishment; giving recommendations to the competent authorities, institutions and organizations to improve the treatment of persons deprived of their liberty and the conditions in which they are
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	<p>staying, or the prevention of torture and other cruel, inhuman or degrading treatment or punishment; giving opinions on laws and regulations for the protection and promotion of human rights and freedoms of persons deprived of their liberty and persons with a restricted movement; Cooperation with the United Nations Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment Persons deprived of their liberty, as prescribed by the provisions of this Law, shall be persons under any kind of retention, detention, imprisonment or placement under the supervision of an authority, who cannot abandon such place at their own will.</p>
<p>Principle 3.5</p>	<p>Member States should ensure that the mandate given to NHRIs to protect and promote human rights is as broad as possible and in full compliance with the Paris Principles and that it allows them, inter alia, to:</p> <ul style="list-style-type: none"> - monitor existing and draft policies and legislation with human rights implications before, during and after their adoption in order to advise the State about the impact of such policies and legislation on human rights and on the activities of human rights defenders, including by making relevant and concrete recommendations.
<p>Assessment of implementation by the NHRI</p>	<p><i>Information provided by the NHRI in 2023.</i></p> <p>In the period from September 2022 to December 2022, a representative of the Ombudsman was a member of the Working Group for the development of the Criminal Sanctions Enforcement Strategy 2022-2026 and the Action Plan for the Implementation for 2022-2023. During the preparation of this important strategic document, the Ombudsman made a measurable contribution through concrete recommendations based on previously given opinions and NPM findings of the Ombudsman, vis-à-vis the respect for the human rights of prisoners, constant revision of the legal framework, further strengthening of the application of laws and by-laws, creation of better material conditions for</p>

	<p>prisoners, improvement of health care, reform of rehabilitation work with prisoners through education, resocialization and work engagement - in line with the best practices of implementation of the CPT standards in the field of prison institutions.</p>
<p>Principle 3.6</p>	<p>Member States should ensure that the mandate given to NHRIs to protect and promote human rights is as broad as possible and in full compliance with the Paris Principles and that it allows them, inter alia, to:</p> <ul style="list-style-type: none"> - contribute to an effective justice system for all, through awareness-raising measures and facilitating access to rights and remedies and, as applicable, by providing legal assistance, being a party before the courts or, when applicable, receiving individual complaints;
<p>Assessment of implementation by the NHRI</p>	<p><i>ENNHRI State of the Rule of Law in Europe in 2022, p. 3</i></p> <p>'The NHRI has the mandate to contribute to access to justice for individuals, including through complaints handling, strategic litigation before courts, providing legal assistance to individuals and awareness-raising.'</p> <p><i>ENNHRI State of the Rule of Law in Europe in 2022, p.9</i></p> <p>'According to the Law on the Protector, the Ombudsman is authorized to act on complaints related to the work of courts in case of delay in the procedure, abuse of procedural powers or non-execution of court decisions. The Ombudsman is not authorized to change, revoke or annul acts of courts. The Ombudsman may initiate proceedings before the Constitutional Court of Montenegro to assess the conformity of a law with the Constitution and ratified and published international agreements, i.e. the compliance of other regulations and general acts with the Constitution and the law.</p>

	<p><i>Information Provided by the NHRI in 2023</i></p> <p>In 2022, a total of 97 cases from the field of justice were accepted. The largest number of cases were concluded due to lack of jurisdiction or for the reason that the request requested a review of the legality of the decision. Then the suspension of the proceedings, the reason for which is mostly because the violation was eliminated during the proceedings before the Protector.</p> <p>Recommendations were given in the cases in which a violation of rights was established. In a certain number of cases, no violation of rights was established, the examination procedures were also concluded with an indication, while a small number of cases were concluded by administrative merger with other cases, because it was about the same factual and legal basis.</p> <p>The Ombudsman submitted an Initiative to amend the Law on the Constitutional Court of Montenegro, taking into account the negative consequences that the delay in procedures can have an international reputation and state costs.</p> <p>Initiative for amendments to the Law on Civil Procedure and Proposals of Ombudsman on amendments to the Law on Free Legal Aid were accepted</p>
<p>Assessment of implementation by CoE independent bodies</p>	<p><i>ECRI Report on Montenegro 2017, p. 9</i></p> <p>‘The Protector of Human Rights and Freedoms (Ombudsman) has been empowered to investigate complaints as well as to initiate and participate in court proceedings.’</p> <p><i>ECRI Report on Montenegro 2017, p. 13 (Para.13)</i></p> <p>‘In its first report, ECRI recommended that the authorities give the Ombudsman investigative powers or the specific right to initiate, and participate in, court proceedings, in line with GPR No.7. Following legislative amendments in 2014 , the competences of the Ombudsman were expanded to include, inter alia, investigating complaints, giving opinions and recommendations on concrete cases of</p>

	<p>discrimination, providing advice to plaintiffs and initiating court cases or appearing as intervener. ECRI is pleased to note that the powers of the Ombudsman are now in line with its GRP No. 2 on specialised bodies to combat racism, xenophobia, antisemitism and intolerance at national level and § 24 of its GPR No. 7.'</p>
<p>Principle 3.7</p>	<p>Member States should ensure that the mandate given to NHRIs to protect and promote human rights is as broad as possible and in full compliance with the Paris Principles and that it allows them, inter alia, to:</p> <ul style="list-style-type: none"> - encourage the signature, ratification of and accession to international human rights treaties and contribute to the effective implementation of such treaties, as well as related judgments, decisions and recommendations as well as to monitor States' compliance with them.
<p>Assessment of implementation by the NHRI</p>	<p><i>ENNHRI State of the Rule of Law in Europe in 2022, p.13</i></p> <p>'The Institution's calls for better implementation of its recommendations on the implementation of the UN Convention on the Rights of Persons with Disabilities and the Convention on the Rights of the Child, and the recommendations of ECRI and the Advisory Committee on Minority Rights.'</p> <p><i>Information Provided by the NHRI in 2023</i></p> <p>The Protector implements the project "Support to independent monitoring of the UN Convention on the Rights of Persons with Disabilities (UNCRC)", whose goal is to create an independent monitoring mechanism under the auspices of the institution of the Protector, with a particularly pronounced concept of inclusion of the civil sector that advocates the rights of persons with disabilities.</p>

<p>Assessment of implementation by Sub-Committee on Accreditation (SCA) of GANHRI</p>	<p><i>SCA report May 2016, p. 20</i></p> <p>‘The SCA acknowledges the PHRF is a member of various regional human rights organizations and has engaged with the international human rights system. However, there is no specific legal provision for the PHRF to engage with these systems, or to encourage ratification or accession to international human rights instruments. [...] The SCA encourages the PHRF to continue its engagement with the international human rights system, and to advocate for changes to its enabling law to mandate it with explicit responsibility to encourage ratification or accession to international instruments.’</p>
<p>Principle 4</p>	<p>The process of selection and appointment of the leadership of a NHRI should be competence based, transparent and participatory, in order to guarantee the independence and pluralist representation of these institutions. It should also be based on clear, predetermined, objective and publicly accessible criteria.</p> <p>The duration of the appointment should be clearly set out in the founding legislation, so that the leadership posts of the NHRI do not stay vacant for any significant period of time.</p>
<p>Assessment of implementation by the NHRI</p>	<p><i>Information provided by the NHRI in 2023.</i></p> <p>In relation to the earlier procedure for proposing the Protector, the current practice has changed. After announcing a public call for nominations of candidates for the Protector and consultations with authorized representatives of scientific and professional institutions, whose main activity is the protection of human rights and freedoms, the President of Montenegro discussed with them the enviable biographies of the eight proposed candidates and sent a proposal to the Parliament of Montenegro that for the protector of human rights and freedoms of Montenegro will be appointed Siniša Bjeković.</p>

	<p>The NHRI further reports that it is important that there is a wider consensus of discussion and a wider list of candidates for the election of the ombudsman, which was the case during the election of the last Ombudsman</p>
<p>Assessment of implementation by Sub-Committee on Accreditation (SCA) of GANHRI</p>	<p><i>SCA report May 2016, pp. 17-18</i></p> <p>'In accordance with article 95 of the Constitution, the Ombudsman is elected by a majority vote of Parliament based on a proposal of the President. In accordance with article 7 of the Law, in proposing candidates for election as Ombudsman, the President shall undertake consultations with scientific and specialized institutions and NGOs whose core activities involve human rights and freedoms. The SCA is of the view that the process currently enshrined in the Law is not sufficiently broad and transparent. In particular, it does not: - require the advertisement of vacancies; - establish clear and uniform criteria upon which all parties assess the merit of eligible applicants; and - specify the process for achieving broad consultation and / or participation in the application, screening, selection and appointment process. [...]The SCA encourages the NHRI to advocate for the formalization of a process that includes the abovementioned criteria.</p>
<p>Assessment of implementation by CoE independent bodies</p>	<p><i>ECRI Report on Montenegro 2017, pp. 27-28 (Para. 84)</i></p> <p>'In 2011, the joint Venice Commission and OSCE/ODIHR Opinion recommended that the Ombudsman is elected (and dismissed) by a qualified – not simple - majority in Parliament, so as to strengthen his/her independence. The same concern was also pointed out by the Council of Europe Commissioner for Human Rights in 2014 and the UN in 2015. ECRI notes that the latest amendments adopted in 2014 regarding the Ombudsman's Office did not contain any provision concerning such elections. ECRI also takes note of the accreditation in 2016 of the Ombudsman to the International Coordinating Committee of National Institutions for the Promotion and Protection of Human Rights under Status B. ECRI recommends that the authorities amend the legislation concerning the election</p>

	<p>and dismissal of the Ombudsman to further strengthen its independence and to ensure public confidence in the institution.’</p>
<p>Principle 5</p>	<p>To ensure independence, the enabling legislation of a NHRI should contain an objective dismissal process for the NHRI leadership, with clearly defined terms in a constitutional or legislative text. The dismissal process should be fair and ensure objectivity and impartiality and should be confined to only those actions which impact adversely on the capacity of the leaders of NHRIs to fulfil their mandate.</p>
<p>Assessment of implementation by the NHRI</p>	<p><i>Information provided by the NHRI in 2023</i></p> <p>The function of the Protector or the Deputy shall cease before the expiration of the time for which he/she is appointed in the case of</p> <ol style="list-style-type: none"> 1) resignation; 2) loss of citizenship; 3) meeting the conditions for retirement; 4) dismissal. <p>The Protector or the Deputy shall be dismissed from the function if he/she:</p> <ol style="list-style-type: none"> 1) is convicted of a non-suspended prison sentence or for the offense that makes him/her unworthy of performing the function;

	<p>2) is deprived of his/her working capacity by a final decision;</p> <p>3) becomes a member of a political organization;</p> <p>4) is performing other public function or professionally is engaged in other activity.</p> <p>The reasons for cessation of function or dismissal shall be communicated to the Parliament by the Protector, the Deputy or competent working body of the Parliament.</p>
<p>Principle 6</p>	<p>Member States should provide NHRIs with adequate, sufficient and sustainable resources to allow them to carry out their mandate, including to engage with all relevant stakeholders in a fully independent manner and freely determine their priorities and activities.</p>
<p>Assessment of implementation by Sub-Committee on Accreditation (SCA) of GANHRI</p>	<p><i>SCA report May, 2016, p. 17</i></p> <p>‘However, the SCA notes that in practice the PHRF undertakes some promotional activities despite the financial constraints it faces.’</p>
<p>Assessment of implementation by CoE independent bodies</p>	<p><i>ECRI Report on Montenegro , 2017, p. 13</i></p> <p>‘its budget constitutes a separate title within the state budget.’</p> <p><i>ECRI Report on Montenegro 2017, p. 27</i></p> <p>‘According to the Law on State Budget for 2017, there are almost no financial resources to conduct research activities with a view to producing and publishing pertinent information for promoting awareness among the general public, as set out in Principle 3 of ECRI’s GPR No. 2.’</p>

<p>Principle 7</p>	<p>NHRIs should have the authority to determine their staffing profile and recruit their own staff, as well as sufficient resources available, in order to fulfil their mandate, so as to permit the employment and retention of staff and to ensure that they receive adequate training.</p>
<p>Assessment of implementation by the NHRI</p>	<p><i>ENNHRI State of the Rule of Law in Europe in 2022, p. 5</i></p> <p>ways to strengthen the independence and effectiveness of the NHRI include: ensuring compliance with the recommendations of international bodies regarding the strengthening of administrative capacities, the manner of selecting office holders (with a model that would eliminate the possibility of blocking the process), and strengthening financial independence in accordance with EU, Council of Europe and UN recommendations;</p> <p><i>Information provided by the NHRI in 2023</i></p> <p>The employment, rights, obligations and responsibilities of employees in the Services are decided upon by the Protector in accordance with the law governing the rights, duties and responsibilities of civil servants and state employees, as well as in accordance with the approved budgetary funds.</p> <p>Notwithstanding paragraph 1 of this Article, when deciding on employment of a Chief Advisor to the Protector or Advisors to the Protector, the Protector is not obligated to obtain a certificate of secured funding from the minister responsible for the budgetary activities.</p>
<p>Assessment of implementation by Sub-Committee on Accreditation (SCA) of GANHRI</p>	<p><i>SCA report May 2016, p. 18</i></p> <p>'While the PHRF reports that it has management and control of its budget, the public procurement process requires the approval of the Ministry of Finance each year. The SCA is concerned that this</p>

	<p>may restrict the ability of the NHRI to direct its budget to those areas it has determined are most important.'</p> <p><i>SCA report May 2016, p. 19</i></p> <p>'The SCA notes that the PHRF has not recruited its full staff complement of 33, and that the NHRI has plans to recruit more staff in 2017. The recruitment is conducted by the Human Resources Management Authority, including the advertising of vacancies and the evaluation of candidates. The Protector has indicated that these requirements undermine its autonomy and independence. Further, the PHRF reports that it may only staff positions after obtaining a certificate from the Ministry of Finance certifying that funds are available for salaries, despite the fact that the necessary funds have been approved in the budget. '</p>
<p>Assessment of implementation by CoE independent bodies</p>	<p><i>ECRI Report on Montenegro 2017, p. 27</i></p> <p>'Significant progress has been made in solving the persistent understaffing of the Ombudsman's office. The full staff of 33 persons, which was foreseen in its internal regulation (Rulebook), has been recruited and there are plans to employ more staff in 2017. Recruitment, including the advertising of vacancies and the evaluation of candidates, however, is conducted by the Human Resources Management Authority. ECRI was informed that even if the Ombudsman conducts interviews with candidates, the selection process, particularly the ranking rules under the Law on Civil Servants, limits its freedom to appoint its own staff, and is not in line with Principle 5 § 2 of ECRI's GPR No. 2. Despite the increase in staff, ECRI considers that the number of posts in the departments dealing with human rights and anti-discrimination issues is rather limited.</p> <p><i>ECRI Report on Montenegro, 2017, p. 27 (Para.84)</i></p> <p>'ECRI recommends that the authorities further strengthen the capacity of the Ombudsman to carry out its antidiscrimination mandate effectively. This should include, inter alia, freedom to appoint its</p>

	own staff and sufficient funding to provide for additional human resources and to promote awareness-raising, including conduct of research and field activities.'
Principle 8	Member States should ensure that NHRIs enjoy adequate access to information and to policy makers and legislators , including timely consultations on the human rights implications of draft legislation and policy strategies.
Assessment of implementation by the NHRI	<i>ENNHRI State of the Rule of Law in Europe in 2022, p. 4</i> 'The NHRI has adequate access to information and to policy makers and is it involved in all stages of legislation and policy making with human rights implications.'
Assessment of implementation by CoE independent bodies	<i>ECRI Report on Montenegro 2017, p. 28 (Para.87)</i> 'In late 2014, the Ministry of Human and Minority Rights adopted a Rulebook obliging public institutions to keep evidence on discrimination, including these grounds, and send it to the Ombudsman. This information is used to prepare a special section in the annual report of the Ombudsman, which is submitted to the Parliament. ECRI was informed that despite this obligation, the collection of data remains problematic and the Ombudsman does not always receive the relevant information.'

<p>Principle 9</p>	<p>Member States should implement the recommendations of NHRIs and are encouraged:</p> <ul style="list-style-type: none"> - to make it a legal obligation for all addressees of NHRI recommendations to provide a reasoned reply within an appropriate time frame, - to develop processes to facilitate effective follow-up of NHRI recommendations, in a timely fashion and - include information thereon in their relevant documents and reports.
<p>Assessment of implementation by the NHRI</p>	<p><i>ENNHRI State of the Rule of Law in Europe in 2022, pp. 4-5</i></p> <p>'The addressees of the NHRI's recommendations are legally obliged to provide a timely and reasoned reply. According to the Law on the Protector, the Ombudsperson shall convey the information on the complaint and its content to the Head or the person managing the authority on whose act, action or failure to act the complaint refers to, for the purpose of taking the statement. The Ombudsperson shall set a deadline that cannot be shorter than eight days for submission of the statement and the required supporting documentation. The Head or the person managing the authority shall be obliged to give a statement and the documentation within the deadline set by the Protector. If the statement does not contain all the required information or the required documentation is not submitted, the Head or manager is obliged to submit an amended statement and required documentation at the request of the Protector. Overall, the Institution is satisfied with the range of respect and fulfillment of its recommendations. If it notices a sporadic case of non-compliance with a given recommendation or the relevant authority ignores a request of the Ombudsman for a statement, the Ombudsman contacts the higher supervisory authority and generally receives a timely reply. Therefore, the Institution has not identified a generalised problem of lack of implementation of recommendations. If issues arise in</p>

	<p>individual cases, action is taken according to the specific circumstances, either through alerting the media, or by mobilising the Government or the Assembly’</p> <p><i>Information provided by the NHRI in 2023</i></p> <p>In the Annual Report for 2022, 576 cases, i.e. 58.83% of the total of 979 complaints, were closed after the investigation procedure.</p> <p>Of that number, in 94 cases (9.60%) no violation of rights was found.</p> <p>In 327 cases or 33.40% it was determined that there was a violation of rights, of which in 89 cases the violation was eliminated during the investigation procedure, and for that reason the procedure was suspended. In the remaining cases, the violations were not eliminated during the examination procedure, so the Protector issued opinions in 238 cases with 658 recommendations to the competent authorities and other entities for the elimination of the established violations of rights, leaving a suitable deadline for this.</p>
<p>Assessment of implementation by CoE independent bodies</p>	<p><i>ECRI Report on Montenegro 2017, p. 27 (Para.82)</i></p> <p>‘ECRI was informed that the recommendations of the Ombudsman are almost always followed, although it is not a quasi-judicial body. This demonstrates the importance that is accorded to its decisions, including by public institutions and the authorities. It is therefore necessary to ensure that the Ombudsman has sufficient capacity to fulfil its mandate and particularly to ensure timely and quality follow-up on reported cases of discrimination.’</p>

<p>Principle 10</p>	<p>When member States grant NHRIs additional competences to perform functions foreseen by international conventions in the field of human rights, such as the United Nations Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and its Convention on the Rights of Persons with Disabilities, the NHRI should have access to sufficient resources to develop the capacity to effectively discharge its functions, including having appropriately qualified and trained staff.</p>
<p>Assessment of implementation by the NHRI</p>	<p><i>Information provided by the NHRI in 2023</i></p> <p>During 2022, the Ministry of Finance released funds to the Protector in the amount of €706,267.91, and total funds spent for the functioning of the Institution amounted to €669,877.91, of which:</p> <ul style="list-style-type: none"> 411 Gross wages and contributions at the expense of the employer 552,840.76 412 Other personal income 5,127.61 413 Expenditure for material 15,274.92 414 Expenses for services 50,824.84 415 Current equipment maintenance 4,865.03 419 Other expenses 13,579.80 441 Equipment expenses 26,784.91 4318 Other transfers 580.00

	Total: 669,877.87
Assessment of implementation by Sub-Committee on Accreditation (SCA) of GANHRI	<p><i>SCA report May 2016, p. 18</i></p> <p>'The SCA notes that the mandate of the PHRF has expanded in recent years to include responsibility as the NPM under OPCAT and to provide for an anti-discrimination mandate. While the PHRF has some additional funding for these mandates, the SCA is concerned that the budgetary resources allocated to the PHRF are insufficient for it to effectively carry out its mandate.'</p>

III. Safe and Enabling Environment

<p>Principle 11</p>	<p>Member States should ensure that NHRIs can operate independently, in an environment which is conducive to them carrying out their mandate in an effective manner and in a climate of impartiality, integrity, transparency and fairness.</p>
<p>Assessment of implementation by the NHRI</p>	<p><i>ENNHRI State of the Rule of Law in Europe in 2022, p.3</i></p> <p>‘However, the NHRI points out the need for its regulatory framework to be strengthened to ensure greater independence of the organisation.’</p> <p><i>Information provided by the NHRI in 2023</i></p> <p>In 2022, the Institution's accommodation and work space will be fully utilized. It was previously secured additional work space for the operation of new mechanisms, through the procedure of public procurement of the lease of that space which was carried out by the Administration for Cadastre and State Property. Thus, the standard that the Protector, as The National Torture Prevention Mechanism has a physically separate workspace within the Institution. In the coming period, there is a need to expand the work space due to the planned employment.</p> <p>However, we remind the public that the institution of the Protector of Human Rights and Freedoms of Montenegro is still not provided permanent accommodation, and that this problem occurs year after year, which directly leads to the question is only the functioning of the Institution. This is due to the fact that from the aspect of the progress of the Institution in terms of obtaining a better status in the international system for the protection of human rights and freedoms, among other things it is necessary to provide permanent accommodation, all in accordance with the Paris Principles as a guarantee of independence.</p>

<p>Assessment of implementation by CoE independent bodies</p>	<p><i>ECRI Report on Montenegro 2017, p. 27 (Para. 84)</i></p> <p>'The need to enhance the independence of the Ombudsman has been emphasised by various bodies'</p>
<p>Principle 12</p>	<p>Member States should foster awareness and the co-operation of all relevant public authorities in relation to the mandate, independence and role of NHRIs, including through training and awareness-raising activities.</p>
<p>Assessment of implementation by the NHRI</p>	<p><i>ENNHRI State of the Rule of Law in Europe in 2022, p. 4</i></p> <p>'Overall, relevant state authorities have good awareness of the NHRI's mandate, independence and role [...]</p> <p><i>ENNHRI State of the Rule of Law in Europe in 2022, P. 8</i></p> <p>'Interaction with the authorities at the local level was achieved by holding a Protector's Day in several municipalities. The media reports almost daily on the Protector's opinions and recommendations and asks the Protector for comments on the current socio-political situation, thus the views of the Institution are very present and quoted in public.'</p> <p><i>Information provided by the NHRI in 2023</i></p> <p>Together with the United Nations Refugee Agency (UNHCR), we conducted a project that resulted in the "Analysis of the actions of state authorities in relation to asylum seekers and persons who have expressed their intention to apply for international protection in our country".</p>

With the support of UNICEF, we implemented the project "Promotion of children's rights with special reference to violence", in order to promote, improve and protect the rights of the child. One of the components of the project is implementation of promotional activities related to "Respecting the rights of the child in the digital environment."- General Comment No. 25 of the UN Committee on the Rights of the Child"

The report "The impact of measures to prevent the spread of the Covid-19 virus on mental health" was prepared and presented health of children in Montenegro". Research on this topic has shown that the Covid-19 pandemic presents additional risk that leads to mental health problems in children. The report was prepared with support of UNICEF-

In cooperation and with the support of the Council of Europe, the sector for protection against discrimination conducted visits of Roma settlements in all Montenegrin municipalities where they exist. The aim of the visit and discussion with the local population was to identify the problems faced by this population, after which a report will be drawn up and recommendations will be made to the competent authorities for improvement condition.

With partners from the EU Delegation, the Council of Europe and the Civic Alliance, the Protector is International Human Rights Day - December 10.

<p>Principle 13</p>	<p>Member States should take all measures necessary to protect and support NHRIs against threats and harassment and any other forms of intimidation, including through ensuring functional immunity. Any cases of alleged reprisals or intimidation against NHRIs, their membership and staff, or against those who co-operate or seek to co-operate with them, should be promptly and thoroughly investigated and the perpetrators brought to justice.</p>
<p>Assessment of implementation by the NHRI</p>	<p><i>Information provided by the NHRI in 2023.</i></p> <p>Article 12 law on Protector.</p> <p>The Protector, his/her Deputy, Chief Advisor to the Protector and Advisor to the Protector cannot be held responsible for the opinion or recommendation he/she provided in performing the function, i.e. for acting in accordance with the responsibilities and powers prescribed by this law during the mandate or during the employment relationship.</p>
<p>Principle 14</p>	<p>Member States should ensure that confidential information collected by NHRIs in the context of their mandate is privileged and is not unduly made public.</p>
<p>Assessment of implementation by the NHRI</p>	<p><i>Information provided by the NHRI in 2023.</i></p> <p>According the Rules of Procedure of the Protector of Human Rights and Freedoms of Montenegro</p> <p>Confidentiality of proceedings</p>

	<p>Article 43</p>
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	<p>Based on the principle of confidentiality of the proceedings, the Protector may withhold access to case files participants in the procedure or other persons.</p>
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IV. Co-operation and Support

<p>Principle 15</p>	<p>Member States should take effective measures to enable NHRIs to communicate and co-operate with, in addition to the various levels of administration in the member States, in particular:</p> <ul style="list-style-type: none"> a. counterpart institutions, where appropriate through networking and exchange of information and practices, as well as through regular meetings such as those taking place within the framework of ENNHRI and GANHRI; b. civil society stakeholders, in particular non-governmental organisations and human rights defenders, who should enjoy easy and safe access to NHRIs as part of an enabling environment; c. other human rights structures, including regional, local and/or specialised institutions, notably Ombudsman institutions and equality bodies and their respective networks, where appropriate through jointly organised activities; d. international and regional organisations working in related or similar fields.
<p><i>No information</i></p>	