



European Network of  
National Human Rights Institutions

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

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**The situation in Poland**



# Poland Country Report

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## Overview

### Name of NHRI and mandate:

- Polish Commissioner for Human Rights (CHR)
- Multi-mandate NHRI. Also: ombuds-institution, NMM and NPM.

### Sources:

- NHRI: [ENNHRI, State of the Rule of Law in Europe in 2022, Poland Country Report](#)
- Sub-Committee on Accreditation (SCA): [SCA Report November 2017](#); [SCA Report March 2023](#)
- CoE Independent Bodies: [CoE Commissioner for Human Rights, letter to the Prime Minister \(2018\)](#); [CoE Commissioner for Human Rights, letter to the minister of Foreign Affairs \(2020\)](#); [CoE Commissioner for Human Rights, Report on Poland \(2019\)](#); [CPT Country Report on Poland \(2017\)](#);

### Good practices and improvements:

- **CM Principle 1: establishment in compliance with the Paris Principles:** The Polish Commissioner for Human Rights is an NHRI accredited with A-status (re-accreditation: March 2023).
- **CM Principle 2:** strong mandate, **embedded in the Constitution**, including broad powers and independence guarantees.

- **CM Principle 3.4: addressing all human rights violations:** The Commissioner is entitled to request a hearing or presentation of files of the wide variety of public bodies, including at local level. While the mandate does not cover private entities, the Commissioner may start investigations with entities which execute in a functional sense some aspect of public power entrusted to them.

### Key areas where improvement is needed:

- **CM Principle 4: selection and appointment:** In line with an intervention from the Council of Europe Commissioner for Human Rights (2020), and an ENNHRI Opinion at request of the Polish NHRI (2020), the enabling legislation of the NHRI should be amended to ensure that the post for the head of institution does not remain vacant for an extended period, and the independence, effectiveness and continuity of the NHRI's work is ensured.
- **CM Principle 6 and 10: adequate funding, including for additional mandates:** While the budget improved somewhat in the second half of 2021 and 2022, the NHRI reports, in line with recommendations of the SCA (2017) and CPT (2017), that its budget is still not adequate to carry out the full breath of its mandate.
- **CM Principle 3, 5, 9 and 12: cooperation with authorities and follow up to NHRI recommendations:** While a legal obligation for relevant state authorities to timely follow-up the NHRI recommendations and requests is in place, the NHRI reports its findings and recommendations are not taken into account in practice by relevant authorities, such as the Constitutional Tribunal, and some authorities even question the mandate of the NHRI.
- **CM Principle 13: duty to support and protect NHRI from threats:** In line with the recommendations of the SCA (2017), the enabling legislation of the CHR should be amended to provide for functional immunity for the Ombudsman's Deputies and staff. Further, following letters from the CoE Commissioner for Human Rights (2020), national authorities should act to support and protect the CHR from threats and harassment.

## 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

<b>Principle 1</b>	Member States should ensure that NHRIs are in place and that they are established, accredited and function in full compliance with the Paris Principles
<b>Assessment of implementation by the NHRI</b>	<i>Information provided by the NHRI in 2023.</i> The Office of the Commissioner for Human Rights has been accredited 'A' status since 1999.
<b>Assessment of implementation by Sub-Committee on Accreditation (SCA) of GANHRI</b>	<i>SCA Report November 2017, p. 27</i> 'The SCA recommends that the CHRP be reaccredited with A status.' <i>SCA Report March 2023, p. 17</i> The SCA recommends that the CHRP be reaccredited with A status.

<p><b>Principle 2</b></p>	<p>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>
<p><b>Assessment of implementation by the NHRI</b></p>	<p><i>Information provided by the NHRI in 2023.</i></p> <p>The NHRI is embedded in the constitution.</p> <p>The Commissioner for Human Rights was entrenched in the Constitution of the Republic of Poland of 2 April 1997. It was established by the Commissioner for Human Rights Act of 15 July 1987. Article 210 of the Constitution provides that the CHRP shall be autonomous and independent from other state bodies and shall be responsible only before the Sejm (lower chamber of the parliament) as stipulated by the Law.</p> <p>Article 211 of the Constitution provides that the CHRP shall not be subject to criminal liability nor deprived of liberty without the consent of the Sejm; that the CHRP may not be detained or arrested, except when caught in the act of committing an offense and if his detention is necessary to ensure proper course of the proceedings; and that the detention shall be immediately notified to the Marshal of the Sejm, who may order immediate release. Article 7 of the Act reflects this provision, and also outlines details regarding the submission of a motion of consent to the Marshal of the Sejm to hold the CHRP criminally liable for an offence.</p>

	<p>Art. 80 of the Constitution creates a legal basis for every person to make a complaint to the Commissioner for Human Rights to seek his/her aid to protect human rights and freedom which might be infringed by public authorities.</p>
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## II. Strengthening of NHRIs

<p><b>Principle 3.1</b></p>	<p>Member States should ensure that the <b>mandate</b> given to NHRIs to protect and promote human rights is <b>as broad as possible and in full compliance</b> with the Paris Principles and that it allows them, inter alia, to:</p> <ul style="list-style-type: none"> <li>- <b>monitor and analyse</b> the human rights situation in the country, <b>publish reports</b> on these findings and <b>address recommendations</b> to public authorities at national, regional and local levels and, when applicable, to private entities, and present an <b>annual report</b> to the relevant authorities, including before parliament, for its consideration.</li> </ul>
<p><b>Assessment of implementation by the NHRI</b></p>	<p><i>Information provided by the NHRI in 2023.</i></p> <p>Article 1(2) of the Act provides that the Commissioner for Human Rights shall safeguard the liberties and human and citizen’s rights as set forth in the Constitution and other normative acts, including the guard of implementation of the principle of equal treatment. According to Article 16(1) of the Act: In connection with the cases examined, the Commissioner can present to the relevant agencies, organizations and institutions opinions and conclusions aimed at ensuring efficient protection of the liberties and rights of a human and a citizen and facilitating the procedures such cases may involve.</p> <p>In this regard, the Commissioner constantly monitors the human rights situation in Poland and makes recommendations to the authorities. He also frequently prepares reports on specific issues, such as the report published in 2021 on the observance of human rights during the pandemic COVID-19.</p>

Article 19 (1) of the Act, as well as article 212 of the Constitution, states that the Commissioner shall annually inform the Sejm and the Senate on his/her activities and on the observance of human and civil freedoms and rights.

The Act also states that as part of its reporting obligations, the Commissioner shall submit to the Sejm and the Senate a report on his/her activities in the area of equal treatment and results thereof (Article 19(1)1)); a report on the observance of the principle of equal treatment in Poland (Article 19(1)(2)); and conclusions and recommendations on activities required to ensure the observance of the principle of equal treatment (Article 19(1)(3)).

The Commissioner's information is made public (Article 19(2)) and it may submit to the Sejm and the Senate specific matters resulting from the Commissioner's activities (Article 19(3)). At the request of the Marshal of the Sejm, the Commissioner shall provide information or take action on specific matters (Article 19(4)).

The printed version of the annual report is disseminated via mail to all MPs, to relevant NGOs and discussed with respective members of government on a regular basis. The annual report is also posted on the website of the Commissioner.



<p><b>Principle 3.2</b></p>	<p>Member States should ensure that the <b>mandate</b> given to NHRIs to protect and promote human rights is as <b>broad as possible and in full compliance</b> with the Paris Principles and that it allows them, inter alia, to:</p> <ul style="list-style-type: none"> <li>- <b>freely address public opinion, raise public awareness</b> on human rights and <b>carry out education and training</b> programmes;</li> </ul>
<p><b>Assessment of implementation by the NHRI</b></p>	<p><i>Information provided by the NHRI in 2023.</i></p> <p>The Commissioner and his office staff regularly speak to the media on topical human rights issues. The Commissioner's website provides key information on citizens' rights and freedoms. For example, guides on the exercise of rights were published during the pandemic COVID-19.</p> <p>The Commissioner's office also organises lectures for, among others, participants in the European Judicial Training Network, during which the Commissioner's competences and relevant issues concerning the rule of law are presented.</p>
<p><b>Assessment of implementation by Sub-Committee on Accreditation (SCA) of GANHRI</b></p>	<p><i>SCA Report November 2017, p. 27</i></p> <p>The Constitution and the founding law mandate the CHRP with some responsibility to promote human rights. However, this mandate does not cover the full range of functions that a NHRI should undertake in exercising its promotional mandate.</p> <p>The SCA encourages the CHRP to continue interpreting its mandate in a broad manner and to advocate for amendments to its enabling legislation to give it a more comprehensive mandate to promote human rights.</p>

	<p><i>SCA Report March 2023, p. 17</i></p> <p>The mandate provided to the CHRP as per the Constitution and its enabling law does not explicitly set out the full range of functions that an NHRI should undertake in exercising its promotional mandate.</p> <p>The SCA notes the information provided by the CHRP that, following the broad formulation of the CHRP's mandate, in Article 208 para. 1 of the Constitution, the CHRP has in practice engaged in a range of activities to promote human rights, including through the establishment of the Center of Societal Projects, which seeks to promote human rights and freedoms.</p>
<p><b>Principle 3.3</b></p>	<p>Member States should ensure that the <b>mandate</b> given to NHRIs to protect and promote human rights is as <b>broad as possible and in full compliance</b> with the Paris Principles and that it allows them, inter alia, to:</p> <ul style="list-style-type: none"> <li>- <b>fully address all alleged human rights violations</b> by all administrative authorities, other relevant State entities and, when applicable, private entities</li> </ul>
<p><b>Assessment of implementation by the NHRI</b></p>	<p><i>Information provided by NHRI in 2023. See also legal obligations under Principle 9.</i></p> <p>Article 1(2) of the Act and Article 208 (1) of the Constitution provide for the CHRP's general mandate to safeguard human and civil freedoms and rights, including the implementation of the principle of equal treatment, as set forth in the Constitution and other Acts.</p> <p>According to Article 13(1) of the Act the Commissioner is entitled to request a hearing or presentation of files of each case conducted by the supreme and central state administration bodies, government bodies, bodies of cooperative organizations, social, professional and socio-professional and the</p>

	<p>bodies of organizational units with legal personality as well as local government bodies and local government organizational units.</p> <p>This allows the Commissioner to fully address all alleged human rights violations.</p> <p>The mandate of the CHRP does not cover acts and omissions of all private sector entities, but only those performing public tasks. The Commissioner may, however, examine the activities of bodies or institutions whose statutory duties include the realisation of rights and freedoms from this point of view, i. e. whether they are fulfilling the obligations incumbent on them by law in this respect, and thus whether they are responding appropriately to infringements of these rights and freedoms by private sector entities. This applies particularly to those private bodies and entities which execute in a functional sense some aspect of public power entrusted to them.</p>
<p><b>Principle 3.4</b></p>	<p>Member States should ensure that the <b>mandate</b> given to NHRIs to protect and promote human rights is as <b>broad as possible and in full compliance</b> with the Paris Principles and that it allows them, inter alia, to:</p> <ul style="list-style-type: none"> <li>- have <b>unfettered access to all relevant premises</b>, 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;</li> </ul>
<p><b>Assessment of implementation by the NHRI</b></p>	<p><i>Information provided by NHRI in 2023. See also legal obligations under Principle 9.</i></p> <p>According to Article 8 (2) of the Act the Commissioner regularly checks the manner of treating detained persons. When performing the task referred to in Article 8, passage 2, the Commissioner is</p>

	<p>also entitled to: 1) record sound or image in places in which persons deprived of their liberty are present, with prior approval of the persons who shall be recorded,</p> <p>2) meet with persons deprived of their liberty, without the presence of other persons as well as with other persons who he believes may provide essential information.</p> <p>The Commissioner performs the function of a visiting authority in any case against tortures and other inhuman or degrading treatment or punishment (National Preventive Mechanism) as defined by the Optional Protocol to the Convention against torture and other cruel, inhuman or degrading treatment or punishment (OPCAT).</p>
<p><b>Principle 3.5</b></p>	<p>Member States should ensure that the <b>mandate</b> given to NHRIs to protect and promote human rights is as <b>broad as possible and in full compliance</b> with the Paris Principles and that it allows them, inter alia, to:</p> <ul style="list-style-type: none"> <li>- <b>monitor existing and draft policies and legislation</b> with human rights implications before, during and after their adoption in order to <b>advise</b> the State about the impact of such policies and legislation on human rights and on the activities of human rights defenders, including by <b>making relevant and concrete recommendations</b>.</li> </ul>
<p><b>Assessment of implementation by the NHRI</b></p>	<p><i>ENNHRI, State of the Rule of Law in Europe in 2022, p. 2</i></p> <p>The CHR cooperation with state authorities remains difficult, [...] as well as the CHR's inability to obtain information on planned bills.</p> <p><i>[...] p. 6</i></p> <p>The CHR's has the chance to present opinions on the compliance of the drafts with human rights standards only at the parliamentary stage, usually already at the second stage of the legislative</p>

	<p>procedure, i.e. voting in the Senate, which, in practice, rarely proves to be effective, especially due to the possibility of the Sejm to reject the amendments adopted by the Senate by a simple majority voting.'</p> <p>Despite the above limitations, the Commissioner regularly submits opinions on draft laws relevant to the protection of human rights. It is up to the Commissioner to decide in this regard.</p> <p>According to Article 16 (2) of the Act the Commissioner may approach the relevant agencies with proposals for legislative initiative, or for issuing or amending other legal acts concerning the liberties and rights of a human and a citizen.</p>
<p><b>Principle 3.6</b></p>	<p>Member States should ensure that the <b>mandate</b> given to NHRIs to protect and promote human rights is as <b>broad as possible and in full compliance</b> with the Paris Principles and that it allows them, inter alia, to:</p> <ul style="list-style-type: none"> <li>- <b>contribute to an effective justice system</b> 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;</li> </ul>
<p><b>Assessment of implementation by the NHRI</b></p>	<p><i>ENNHRI, State of the Rule of Law in Europe in 2022, p. 9</i></p> <p>'The CHR in 2021 has continuously taken part in the legislative process and proceedings before the Constitutional Tribunal which were relevant for lawful the organisation of the judiciary in Poland.'</p> <p>The Commissioner has the power to join proceedings before administrative and civil courts and to bring cassation appeals in criminal cases. This enables him to support citizens in the exercise of their right to a court. The Commissioner may also file extraordinary appeals to the Supreme Court against final court judgments. The Commissioner is entitled as well to bring cases before the Constitutional</p>

	<p>Court (so- called abstractive motion) and to join constitutional review procedures initiated by citizen's constitutional complaints or cases initiated by other subjects (court's legal questions, cases brought by a group of deputies, with the exception of motion brought by the President of the Republic before signing the law in question) in cases concerning constitutionality of legal norms which may violate human rights of freedoms.</p>
<p><b>Assessment of implementation by CoE independent bodies</b></p>	<p><i>CPT Report on Poland 2019, p. 62</i></p> <p>'In the establishments visited, the applicable legal framework appeared to be duly followed, patients were aware [...] to make complaints inside and outside the institution, including to the Ombudsman.</p>
<p><b>Principle 3.7</b></p>	<p>Member States should ensure that the <b>mandate</b> given to NHRIs to protect and promote human rights is as <b>broad as possible and in full compliance</b> with the Paris Principles and that it allows them, inter alia, to:</p> <p>- <b>encourage the signature, ratification of and accession</b> to international human rights treaties and <b>contribute to the effective implementation</b> of such treaties, as well as related judgments, decisions and recommendations as well as to <b>monitor States' compliance with them.</b></p>
<p><b>Assessment of implementation by the NHRI</b></p>	<p><i>Information provided by the NHRI in 2023.</i></p> <p>The Commissioner continuously monitors ratification of and accession to international human rights treaties.</p> <p>Among other things, the Commissioner drew attention to the provisions of the Refugee Convention in the context of the events on the border with Belarus.</p>

	<p>The Commissioner continuously participates in meetings of the Team for the European Court of Human Rights operating at the Ministry of Foreign Affairs. This team coordinates the implementation of ECtHR judgments concerning Poland.</p>
<p><b>Principle 4</b></p>	<p>The process of <b>selection and appointment of the leadership of a NHRI</b> 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><b>Assessment of implementation by the NHRI</b></p>	<p><i>ENNHRI, State of the Rule of Law in Europe in 2022, p. 2</i></p> <p>On 15 April 2021, the Constitutional Tribunal of Poland delivered a judgement declaring Article 3, paragraph 6 of the Act on the Commissioner for Human Rights of Poland, which provides that the Commissioner shall remain in office until the new office-holder is appointed, unconstitutional. Although in practice the danger of a potential lack of the ombudsman in office ceased with the election of the present ombudsman, the fact that the principle of continuity of service of the CHR as the national human rights institution has been successfully challenged before the Constitutional Tribunal can still have some negative effects on human rights protection in analogous situations in the future.'</p> <p><i>Information provided by the NHRI in 2023</i></p> <p>Article 2 of the Act stipulates that the Commissioner may be a citizen of Poland who has outstanding legal knowledge, professional experience and high authority owing to their moral attributes and sensitivity to social issues.</p>

Article 3 (1) of the Act provides that the CHRP is appointed by the Sejm at the request of the Marshal (speaker) of the Sejm or a group of 35 deputies and shall be approved by the Senate (upper chamber of the parliament). Article 3 (2) of the Act provides that the procedure of nominating candidates is determined by a resolution of the Sejm.

Pursuant to that Resolution of the Sejm of the Republic of Poland of 30 July 1992, the Speaker of the Sejm shall refer the motion to appoint a Commissioner to the competent Sejm committee for its opinion, where the candidatures are discussed. The committee subsequently submit its opinion on the motion to the Speaker and a print containing the committee's opinion is delivered to the deputies of the Sejm. The Commissioner for Human Rights shall be appointed by absolute majority of votes. If the Sejm reaches a final resolution, the motion for the appointment is forwarded to the Senate for its approval.

Article 3 (5) provides that if the Senate does not approve the appointment of the Commissioner, the Sejm shall appoint another person to the position of the Commissioner, and the provisions of article 3 (1-4) shall apply accordingly.

The procedure of the appointment is transparent, and that the whole appointment procedure is usually covered by the media and is subject to public discussion on the candidates in which civil society organisations and NGOs might engage.

The law does not require the advertisement of vacancies nor does it specify a process to maximize the number of potential candidates from a wide range of societal groups to ensure pluralist representation, and it does not describe how applicants are assessed on the basis of pre-determined, objective and publicly available criteria.



	<p>In practice, however, before the end of the term of the CHRP media provide for a broad discussion about potential candidates envisaged by the Deputies and interview these candidates on their views and expertise concerning major human rights issues in Poland. Such media coverage includes many media outlets representing various political and social views which results in a broad public debate about suitability of the candidates. The Act of 15 July 1987 on the Commissioner for Human Rights establishes following criteria for candidates: legal knowledge, professional experience and high authority owing to their moral qualities and social sensitivity. These criteria are being assessed not only within the appointment procedure in the Parliament but is also subject to public debate. That is why also the candidates may be proposed by groups of NGOs or sought among members of academia.</p> <p>The Law does not formalize civil society participation/consultation in the selection process. Despite that, the civil society and NGOs sector is actively participating in the debate concerning appointment procedure, be it by commenting on it in media or through their public communication channels or by proposing their own candidates. Vivid public debate about the last appointment procedure have resulted in establishment of a few common initiatives of NGOs, one of them including over 120 Polish associations and foundations ("Nasz Rzecznik" initiative) which continues to campaign even after the appointment in the general debate about the functioning of the CHRP Office.</p>
<p><b>Assessment of implementation by Sub-Committee on Accreditation (SCA) of GANHRI</b></p>	<p><i>SCA Report November 2017, p. 28</i></p> <p>In 2012, the SCA noted that the Act does not require a pluralistic composition of the CHRP, including representation of ethnic or minority groups, women, and persons with disabilities. The SCA notes that the CHRP has provided information about the gender balance and presence of persons with disabilities amongst its staff. The SCA also acknowledges that the CHRP states that it is prohibited by law from inquiring about citizens' ethnic, religious or other background, but reports that its staff is inclusive of members of these groups. [...]The SCA encourages the CHRP to advocate for amendments to its enabling legislation to require a pluralistic composition in its membership and staff'</p>

*SCA Report March 2023, p.18*

The SCA notes that Article 3 (6) of the Act, according to which the Commissioner shall hold the position until it is taken over by a newly appointed Commissioner, ceased to be effective on 16 July 2021, pursuant to the Polish Constitutional Tribunal judgment of 15th April 2021 (case K 20/20) which found that the Commissioner cannot exercise his/her functions after the expiry of the 5 year term.

The SCA notes that it is necessary that the constitutional or legislative text is set out the NHRI's mandate, as well as the composition of its leadership body. This requires, but is not limited to, the inclusion of complete provisions on the NHRI's appointment mechanisms, terms and conditions of office, mandate, and powers. The SCA considers this provision to be of central importance in guaranteeing both the permanency and independence of the Institution.

The SCA recommends that the CHRP advocates for changes to its enabling law to ensure that the position of the Commissioner for Human Rights does not remain vacant after the mandate of a Commissioner expires and that the selection and appointment process is launched in a timely manner.

The CHRP also informed the SCA that in the context of the selection process of a new Commissioner, there is wide media coverage about potential candidates, and that, in practice, civil society and NGOs actively participate in the debates related to the appointment procedures.

However, the Act does not require the advertisement of vacancies, nor does it specify a process to maximize the number of potential candidates from a wide range of societal groups to ensure pluralist representation. Also, the Act, does not describe how applicants are assessed on the basis of pre-determined, objective and publicly available criteria. Finally, the Law does not formalize civil society participation/consultation in the selection process.

The SCA is of the view that it is critically important to ensure the formalization of a clear, transparent, and participatory selection and appointment process of the NHRI's decision-making body in relevant legislation, regulations or binding administrative guidelines, as appropriate. A process that promotes

	<p>merit-based selection and ensures pluralism is necessary to ensure the independence of, and public confidence in, the senior leadership of an NHRI.</p> <p>The CHRP informed the SCA of the gender balance among its staff, and of the presence of more than six per cent of persons with disabilities amongst in its staff composition, in line with the relevant national legislation. The CHRP notes that it is prohibited by law to process sensitive personal data such as ethnic background.</p> <p>The SCA notes that_The CHRP administrative regulations do not require a pluralistic composition of the CHRP staff, including representation of ethnic or minority groups and women.</p>
<p><b>Assessment of implementation by CoE independent bodies</b></p>	<p><i>CoE Commissioner for Human Rights 2020, p.1</i></p> <p>I note that the current Polish Ombuds has continued to exercise his functions since the expiry of his mandate on 9 September 2020 to bridge the gap to the election of his successor, as explicitly provided for by Poland's Act on the Commissioner for Human Rights. However, on 17 September some members of the Polish parliament (the Sejm) went before the Constitutional Tribunal to challenge the conformity of these transitional arrangements with the Polish Constitution. I also note that the parliamentary majority has not yet put forward its own candidate for the position of Polish Ombuds and that a vote scheduled in the Sejm last week on a candidate backed by a large number of civil society organisations has been postponed sine die.</p> <p>the constitutional challenge and the delays in the process of selecting a new Ombuds have created a serious risk that the Polish Ombudsman institution may be left without a head of institution for an unknown period of time. I am particularly concerned that this may hamper the continuity and effective functioning of this important constitutional body. I should like to recall in this context that, under the Venice Principles, states are obliged to protect their Ombudsman institutions effectively from any threats or action aiming at or resulting in the suppression of the Ombudsman institution or in any hurdles to its effective functioning</p>

	<p>[...]</p> <p>I would point out that, in accordance with international standards and under Polish law, the person selected should be a candidate with relevant professional expertise and high moral authority and integrity, while the election should be public, transparent, objective and merit-based</p>
<p><b>Principle 5</b></p>	<p>To ensure <b>independence</b>, the enabling legislation of a NHRI should contain an <b>objective dismissal process for the NHRI leadership</b>, 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><b>Assessment of implementation by the NHRI</b></p>	<p><i>Information provided by the NHRI in 2023.</i></p> <p>Article 7 of the Act provides that 1. The Sejm removes the Commissioner before the end of the term of office, if he or she:</p> <ol style="list-style-type: none"> <li>1) renounced performing the duties,</li> <li>2) became permanently incapable to perform obligations as a result of illness, disability or lower strength – observed with a medical certificate,</li> <li>3) made an untrue lustration statement, observed with a final and binding court decision.</li> </ol> <p>2. The Sejm removes the Commissioner before the end of the term of office also if the Commissioner defected from the oath made.</p> <p>3. The Sejm shall adopt a resolution on removal of the Commissioner in the case specified in passage 1, item 1, at the request of the Marshal of the Sejm.</p> <p>4. The Sejm shall adopt a resolution on removal of the Commissioner in cases specified in passage 1,</p>

	<p>item 2, and in passage 2, at the request of the Marshal of the Sejm or a group of at least 35 deputies with a majority of at least 3/5 votes in the presence of at least half of the statutory number of deputies.</p>
<p><b>Principle 6</b></p>	<p>Member States should provide NHRIs with adequate, sufficient and sustainable resources to allow them <b>to carry out their mandate</b>, including to engage with all relevant stakeholders in a fully independent manner and freely determine their priorities and activities.</p>
<p><b>Assessment of implementation by the NHRI</b></p>	<p><i>ENNHRI, State of the Rule of Law in Europe in 2022, p. 2</i></p> <p>‘The cuts made to the CHR budget over the last years limits the CHR’s capacity and ability to act effectively for the protection of fundamental rights. The financial situation of the CHR has partially improved in the second half of 2021 due to a budgetary subsidy accorded by the parliament. However, the means of the Office of the CHR remain not sufficient to fully exercise its missions.’</p> <p><i>Information provided by the NHRI in 2023</i></p> <p>There are reports of a lack of appropriate additional resources provided to the CHRP to carry-out the NPM function. Regularly, since SCA recommendation of 2017, the Commissioner for Human Rights asks the parliament for additional resources and staffing to be assigned to the Office of the HRC as regards the NMP function. In 2022 the Office budget was increased. However, the positive change is still not yet sufficient. Therefore the Commissioner again has asked the parliament to support staffing of the NMP Department in the Office of HRD within the 2023 budget.</p>

<p><b>Assessment of implementation by Sub-Committee on Accreditation (SCA) of GANHRI</b></p>	<p><i>SCA Report November 2017, pp. 28-29</i></p> <p>'The CHRP reports that it does not have adequate resources to effectively fulfil its mandate, including as the NPM[...]The SCA encourages the CHRP to advocate for the funding necessary to ensure that it can effectively carry out its mandate.</p> <p><i>SCA Report March 2023, p. 19</i></p> <p>The SCA has noted the information provided by the CHRP that its budget is insufficient to effectively carry out the full breadth of its mandate, including as the National Preventive Mechanism under the Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment.</p> <p>The SCA emphasizes that, to function effectively, an NHRI must be provided with an appropriate level of funding in order to guarantee its independence and its ability to freely determine its priorities and activities. It must also have the power to allocate funding according to these priorities. In particular, adequate funding should, to a reasonable degree, ensure the gradual and progressive realization of the improvement of the NHRI's operation and the fulfillment of its mandate.</p>
<p><b>Assessment of implementation by CoE independent bodies</b></p>	<p><i>CPT Report on Poland 2019, p. 10</i></p> <p>'It appeared from the discussion that the main issue of concern for the Ombudsman's Office and the NPM was the budget (as voted by the Parliament) which was currently insufficient to cover the operational needs of the NPM. Moreover, the budget had been diminishing in recent years, which had obliged the Ombudsman to reduce the NPM's activities.'</p> <p><i>CPT Report on Poland 2019, p. 11</i></p> <p>'As already stressed by the CPT in the report on the 2013 visit, a further increase in resources (both human and financial) would be required for the Polish NPM to perform efficiently the role of a</p>

	<p>national monitoring mechanism of places of deprivation of liberty, capable of carrying out regular and unannounced visits to all types of such places throughout the country. In the light of the information that its delegation received during the 2017 visit, the Committee cannot but reiterate its recommendation that steps be taken to increase significantly the resources made available to the National Preventive Mechanism.'</p>
<p><b>Principle 7</b></p>	<p>NHRIs should have the <b>authority to determine their staffing profile and recruit their own staff</b>, as well as <b>sufficient resources</b> 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><b>Assessment of implementation by the NHRI</b></p>	<p><i>Information provided by the NHRI in 2023.</i></p> <p>Article 20. of the Act provides that:</p> <ol style="list-style-type: none"> <li>1. The Commissioner shall perform the Commissioner’s duties with the assistance of the Office of the Commissioner for Human Rights.</li> <li>2. The tasks and organization of the Office shall be set forth by its statute to be conferred by the Commissioner.</li> <li>3. The Commissioner may appoint up to three Commissioner’s deputies. The Commissioner may recall the Commissioner's deputies.</li> <li>4. The Commissioner shall determine the scope of responsibilities of the Commissioner’s deputy (deputies).</li> <li>5. Respective regulations on the employees of government offices shall apply to the Deputy Commissioner and employees of the Office of the Commissioner for Human Rights.</li> </ol>

<p><b>Assessment of implementation by CoE independent bodies</b></p>	<p><i>CPT Report on Poland 2019, p. 11</i></p> <p>‘Staff-wise, the available finances were only sufficient to pay salaries to 12 NPM employees and it was not possible to enlarge the pool of experts for the NPM Expert Committee set up in 2016 (the purpose of which was to provide the NPM with the professional – including medical – expertise it needed)’</p>
<p><b>Principle 8</b></p>	<p>Member States should ensure that NHRIs enjoy <b>adequate access to information and to policy makers and legislators</b>, including timely consultations on the human rights implications of draft legislation and policy strategies.</p>
<p><b>Assessment of implementation by the NHRI</b></p>	<p><i>ENNHRI, State of the Rule of Law in Europe in 2022, p. 2</i></p> <p>The CHR cooperation with state authorities remains difficult, including due to the authorities’ refusal to react on general statements and to take CHR’s comments and recommendations into account, as well as the CHR’s inability to obtain information on planned bills.’</p> <p><i>Information provided by the NHRI in 2023</i></p> <p>The Commissioner cooperates with other public bodies. For example, every year he proposes audit topics to the Supreme Audit Office. Some ministries inform the Commissioner for Human Rights of planned draft laws. However, this practice should be extended to all draft laws related to human rights.</p>
<p><b>Assessment of implementation by CoE independent bodies</b></p>	<p><i>CoE Commissioner for Human Rights Report on Poland 2019, p.10</i></p> <p>‘Having regard to the complexity, scale and systemic importance of the legislation affecting the composition and work of the Supreme Court, any future legislative changes should be carefully</p>



	<p>considered, ensuring full transparency of the process, and be undertaken in thorough consultation with representatives of the Supreme Court, members of the judicial community, the Polish Ombudsman, and other relevant actors.'</p>
<p><b>Principle 9</b></p>	<p>Member States should <b>implement the recommendations of NHRIs</b> and are encouraged:</p> <ul style="list-style-type: none"> <li>- to make it a legal obligation for all addressees of NHRI recommendations to provide a reasoned reply within an appropriate time frame,</li> <li>- to develop processes to facilitate effective follow-up of NHRI recommendations, in a timely fashion and</li> <li>- include information thereon in their relevant documents and reports.</li> </ul>
<p><b>Assessment of implementation by the NHRI</b></p>	<p><i>Information provided by the NHRI in 2023.</i></p> <p>According to Article 14 of the Act, after investigating the case, the Commissioner may address a request to the body, organization or institution in whose activity he found a violation of human and civil rights and freedoms; such a request may not infringe on judicial independence. In line with the Article 15 of the Ombudsman's Act, in such a request the Ombudsman formulates opinions and conclusions as to the manner of settling the case, and may also demand initiation of disciplinary proceedings or application of official sanctions. The body, organization or institution to which the request has been addressed are obliged to inform the Commissioner without undue delay, but not later than within 30 days, of the actions taken or the position taken. If the Ombudsman does not share this position, he may request the appropriate superior unit to take appropriate action.</p>

Moreover, according to the Article 16 of the Ombudsman’s Act, the Commissioner may submit to the competent authorities assessments and proposals aimed at ensuring effective protection of human rights. Article 17 of the Ombudsman’s Act states that such addressee is obliged to cooperate with the Ombudsman and provide him with assistance, in particular:

- 1) provide access to files and documents;
- 2) provide information and explanations requested;
- 3) provide explanations regarding the factual and legal basis for their decisions;
- 4) respond to the general assessments, comments and opinions of the Ombudsman.

*ENNHRI, State of the Rule of Law in Europe in 2022, pp. 1-2*

‘The issues raised in last year’s report remain unaddressed. These include the tendency of the authorities and relevant bodies, including the Constitutional Tribunal, not to take into account the opinions expressed by the CHR on key issues relevant for civil rights and freedoms and the rule of law.

*ENNHRI, State of the Rule of Law in Europe in 2022, p. 12*

The NPM found that most of the monitoring bodies’ recommendations have not been implemented. Among the greatest concerns are the failure to take action with regard to fundamental safeguards against torture for persons in police custody and persons deprived of their liberty and with regard to the long-standing recommendations to ensure decent detention conditions.

*Information provided by the NHRI in 2023*

The implementation of the Commissioner’s recommendations is differentiated and fluctuates in time. The statistic of implementation of those recommendations can be found in the annual information of the Commissioner presented to the parliament and to the public. Annually the level of implementation is not lower than 20% of the cases, however in some of the areas and some years

	<p>this level is higher, or even much higher. At the same time trends mentioned above have not changed significantly.</p>
<p><b>Assessment of implementation by Sub-Committee on Accreditation (SCA) of GANHRI</b></p>	<p><i>SCA Report March 2023</i></p> <p>The CHRP reported some challenges in its engagement with parts of the Government in relation to recommendations and other communications from the CHRP on certain human rights issues.</p> <p>HRI, as part of their mandate to promote and protect human rights, should undertake follow up action on recommendations and should publicize detailed information on the measures taken, or not taken, by public authorities in implementing specific recommendations or decisions.</p> <p>Public authorities are encouraged to respond to recommendations from NHRIs in a timely manner, and to provide detailed information on practical and systematic follow-up action, as appropriate, to the NHRI's recommendations.</p>
<p><b>Principle 10</b></p>	<p>When member States grant NHRIs <b>additional competences</b> 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 <b>have access to sufficient resources to develop the capacity to effectively discharge its functions</b>, including having appropriately qualified and trained staff.</p>

<p><b>Assessment of implementation by the NHRI</b></p>	<p><i>Information provided by the NHRI in 2023.</i></p> <p>The Commissioner holds the function of the independent monitoring body of the implementation of rights of persons with disability under the provisions of the UN Convention on Rights of Persons with Disabilities.</p> <p>The Commissioner also performs the role as National Preventive Mechanism under the Optional Protocol to the Convention against torture and other cruel, inhuman or degrading treatment or punishment (OPCAT).</p> <p>Commissioner's budget should cover expenses resulting from his additional competencies</p>
<p><b>Assessment of implementation by CoE independent bodies</b></p>	<p><i>See also information provided under Principle 6 with regards the NPM mandate.</i></p>

### III. Safe and Enabling Environment

<p><b>Principle 11</b></p>	<p>Member States should ensure that NHRIs can <b>operate independently</b>, in an environment which is conducive to them carrying out their mandate in an effective manner and in a climate of <b>impartiality, integrity, transparency and fairness</b>.</p>
<p><b>Assessment of implementation by the NHRI</b></p>	<p>See Principle 2</p>
<p><b>Principle 12</b></p>	<p>Member States should <b>foster awareness</b> 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><b>Assessment of implementation by the NHRI</b></p>	<p><i>ENNHRI, State of the Rule of Law in Europe in 2022, p. 3</i></p> <p>‘Despite some minor incidents, the authorities have allowed for CHR’s continuous mission in the area [around the Eastern borders], however some of the state organs (National Chief of Police) have been questioning the prior status of CHR mandates with relation to the newly passed bill reforming the law on the protection of the national border and excluding, by this, the exemption of CHR’s staff members from restrictive measures provided for in it.’</p> <p>See also information provided regarding national authorities cooperation with the CHR under Principle 9.</p>

	<p><i>Information provided by the NHRI in 2023</i></p> <p>Some public institutions inform citizens about the possibility of reporting a case to the Commissioner for Human Rights. The Commissioner is also often invited to attend Senate commission meetings and also by other bodies on human rights issues.</p>
<p><b>Assessment of implementation by CoE independent bodies</b></p>	<p><i>CPT Report on Poland, 2019</i></p> <p>‘The Ombudsman is also automatically informed of any incident involving a police officer and resulting in death or serious injury, as well as cases when there is prima facie suspicion of an unjustified use of force and means of coercion.’</p>
<p><b>Principle 13</b></p>	<p>Member States should take all measures necessary <b>to protect and support NHRIs</b> against threats and harassment and any other forms of intimidation, including through ensuring <b>functional immunity</b>. 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><b>Assessment of implementation by the NHRI</b></p>	<p><i>Information provided by the NHRI in 2023</i></p> <p>There are no provisions in the Act or the Constitution on functional immunity for the Deputy Commissioners and staff members of the CHRP. However, following functional interpretation of Article 20 para. 1 of the Commissioner for Human Rights Act of 15 July 1987, according to which ‘The Commissioner shall perform the Commissioner’s duties with the assistance of the Office of the Commissioner for Human Rights’, Deputies and other staff members of the Office of the Commissioner are authorised to perform on behalf of the Ombudsman the tasks and activities provided for in the Act. The employees of the Office of the Commissioner shall exercise his/her and their actions shall be treated as those of the Commissioner him/herself. Such interpretation has been</p>

	<p>confirmed in the jurisprudence and case-law, i.a. in the judgment of the Constitutional Tribunal of 19 October 2010 (case K 35/09) in which the Office of the Commissioner has been defined as a professional body of the Commissioner, lacking legal and constitutional self-existence, and must therefore be regarded as a dependent entity, situated next to a constitutional organ of the State.</p>
<p><b>Assessment of implementation by Sub-Committee on Accreditation (SCA) of GANHRI</b></p>	<p><i>SCA Report November 2017, p. 28</i></p> <p>'Article 211 of the Constitution provides that the Commissioner shall not be subject to penal liability nor deprived of liberty without the earlier consent of Parliament. In 2012, the SCA noted that the officers, including Deputy Commissioners, and staff of the CHRP do not enjoy similar protections. The SCA encourages the CHRP to advocate for amendments to its enabling legislation to protect the Deputy Commissioners and staff members of the CHR from legal liability for actions undertaken by them in good faith in their official capacity.'</p>
<p><b>Assessment of implementation by CoE independent bodies</b></p>	<p><i>CoE Commissioner for Human Rights, 2018</i></p> <p>Lastly, my mandate obliges me to share with you my concern regarding the repeated public accusations levelled in recent times against the Polish Ombudsman by some politicians, including members of the Government, claiming that he is engaging in political activity or even calling openly for his dismissal. I would be most grateful if I could count on your leadership in helping to discourage such verbal attacks in future. The independence and the effectiveness of the Polish Ombudsman, an institution accredited at the highest level by the Global Alliance of National Human Rights Institutions, must be preserved, and the Polish authorities should do their utmost to support and protect the office and the office-holder.</p> <p><i>Commissioner for Human Rights, Letter to Minister of Foreign Affairs 2020, p.1</i></p> <p>the delays in the process of selecting a new Ombuds have created a serious risk that the Polish Ombudsman institution may be left without a head of institution for an unknown period of time. I am particularly concerned that this may hamper the continuity and effective functioning of this</p>

	<p>important constitutional body. I should like to recall in this context that, under the Venice Principles, states are obliged to protect their Ombudsman institutions effectively from any threats or action aiming at or resulting in the suppression of the Ombudsman institution or in any hurdles to its effective functioning.</p>
<p><b>Principle 14</b></p>	<p>Member States should ensure that <b>confidential information collected</b> by NHRIs in the context of their mandate is <b>privileged and is not unduly made public</b>.</p>
<p><b>Assessment of implementation by the NHRI</b></p>	<p><i>Information provided by the NHRI in 2023.</i></p> <p>According to Article 13 (2 and 3) of the Act of the Commissioner for Human Rights:</p> <p>2. In any cases constituting confidential information with the clause "secret" or "top secret" providing information or allowing the Commissioner to inspect files is done on the terms and in the mode specified in regulations on the protection of secret information.</p> <p>3. The Commissioner may refuse to disclose the full name and other personal data of the complainant, also to public authorities, if he believes it is necessary to protect the individual's freedom, rights and interest.</p>



## IV. Co-operation and Support

<p><b>Principle 15</b></p>	<p>Member States should <b>take effective measures to enable NHRIs to communicate and co-operate</b> with, in addition to the various levels of administration in the member States, in particular:</p> <ul style="list-style-type: none"> <li>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;</li> <li>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;</li> <li>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;</li> <li>d. international and regional organisations working in related or similar fields.</li> </ul>
<p><b>Assessment of implementation by the NHRI</b></p>	<p><i>Information provided by the NHRI in 2023.</i></p> <p>The Commissioner cooperates with NGOs on a daily basis.</p> <p>The Commissioner's Office also holds regular meetings with representatives of the 'Our Commissioner' initiative, which brings together representatives of various NGOs. During these meetings, important social issues concerning social policy, women's rights and the rights of persons</p>

	<p>with disabilities are discussed. The regularity of these meetings makes it possible to identify current problems and enable the Commissioner to respond quickly.</p>
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The Commissioner is a member of ENNHRI and GANHRI.

