



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 Portugal



Portugal Country Report

Overview

Name of NHRI and mandate:

- Portuguese Ombudsman/*Provedor de Justica* (PDJ) s
- Multi-mandate NHRI, also: ombuds-institution, NMM and NPM

Sources:

- NHRI: [ENNHRI, State of the Rule of Law in Europe in 2022, Portugal Country Report](#)
- Sub-Committee on Accreditation (SCA): [SCA Report November 2017](#)
- CoE Independent Bodies: [ECRI Report on Portugal \(2018\)](#); [CPT Report on Portugal \(2019\)](#)

Good practices and improvements:

- **CM Recommendation 1: establishment of an NHRI in compliance with the Paris Principles:** The Provedor de Justica (PDJ) is an NHRI accredited with A-status.
- **CM Recommendation 2 and 3: the PDJ has a strong constitutional mandate, including independence guarantees and strong powers,** such as with regards access to information, contributing to an effective justice system, and engaging on relevant draft policies and legislation including by requesting a constitutional review.
- **CM Recommendation 8 and 9: access to information and follow up of NHRI recommendations:** The enabling legislation of the PDJ includes strong provisions to ensure that national authorities are required to cooperate with and respond to the requests of the NHRI. Further, it enshrines an obligation for addressees of the PDJ's recommendations to provide a reasoned and timely response. The

Ombudsperson may, at any time, by her own initiative, address the parliament, on the grounds that public administration authorities are failing to implement recommendations or refuse to cooperate with the Office of the Ombudsperson.

- **CM Recommendation 11 & 13: guarantees of independence:** The enabling legislation of the PDJ provides strong safeguards for the NHRI's independence, including that the institution cannot receive instructions from other bodies, as well as guarantees of functional immunity for the Ombudsman. Additionally, the PDJ reports that in practice, there are no systematic threats of harassment against the NHRI.

Key recommendations which require improvement:

- **CM Recommendation 4: selection and appointment:** In line with the recommendations of the SCA (2017), the enabling legislation of the PDJ should be amended to ensure the selection and appointment process for the head of institution is transparent, participatory and assessed on the basis of competence-based publicly available criteria.

Specific findings per recommendation

The tables below include data on the assessment of the implementation of each recommendation from three sources: the National Human Rights Institutions, the Sub-Committee on Accreditation of GANHRI and the CoE independent bodies. The recommendations themselves 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	<p><i>SCA Report November 2017, p. 29</i></p> <p>'The SCA recommends that the PDJ be re-accredited with A status.'</p>
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.

Assessment of implementation by the NHRI	<p><i>ENNHRI, State of Rule of Law in Europe in 2022, p. 1</i></p> <p>'The Portuguese Ombudsman continues to function with a constitutional basis'</p> <p><i>Information Provided by the NHRI in 2023</i></p> <p>The enabling law can be found in Article 23 of the Constitution of the Portuguese Republic specifically addresses the Ombudsperson under Title I (General Principles) of Part I (Fundamental Rights and Duties).</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>ENNHRI, State of Rule of Law in Europe in 2022, p. 2</i></p> <p>‘The Ombudsman reports its activities annually to the Parliament.’</p> <p><i>ENNHRI, State of Rule of Law in Europe in 2022, p. 5</i></p> <p>‘Pursuant to Article 38 of the Statute on the Ombudsman, recommendations are addressed and notified to the bodies competent to remedy the illegality or injustice at stake.’</p> <p><i>Information Provided by the NHRI in 2023</i></p> <p>Non-fulfilment of the recommendations must be duly justified. If recommendations are not attended and whenever the Ombudsperson does not receive due cooperation, she may address the hierarchical superior or the Ministry responsible for the subject-matter. In cases of municipalities, the Ombudsperson can address the local assembly. The Ombudsperson has a mandate to address the Parliament at any time, and on its own initiative, on the grounds that public administrative authorities are failing to implement its recommendations or refuse to cooperate with the institution.</p>

	<p>In general, recommendations and remarks by the Ombudsperson are well received and followed by their addressees. However, sometimes state authorities do not give timely responses to the Ombudsperson's requests.</p> <p>The Ombudsperson has focal points in the various addressed entities (municipalities, government bodies), in order to streamlining responses.</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>Information Provided by the NHRI in 2023</i></p> <p>In 2022, the Ombudsperson participated in the opening of the Annual Meeting for the Evaluation of the Activity of Commissions for the Protection of Children and Young People. Also in 2022, the institution was present at the opening session of the Seminar on Juvenile Justice. Interns were also received, for the acquisition of knowledge in this area and collaboration in the activities developed by the institution.</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>The Ombudsperson fully addresses all alleged human rights violations by all administrative (public or private) authorities. Where the circumstances so require, the Ombudsperson may decide to issue statements or to publish information concerning the conclusions reached in the proceedings or any other matter related to its activity, using, if necessary, the State-owned media for that end, and benefiting in any event from the legal regime governing the publication of official statements (Article 35 (2) of the Statute).</p>
<p>Assessment of implementation by CoE independent bodies</p>	<p><i>ECRI Report on Portugal 2018, p. 17 (Para.24)</i></p> <p>‘The Ombudsman, appointed by parliament, is an independent constitutional organ with a broad mandate to protect human rights, including the right to equality and non-discrimination.’</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>ENNHRI, State of Rule of Law in Europe in 2022, p. 15</i></p> <p>'Visiting activities of the National Preventive Mechanism have been taking place in person. Also, on-site visits following the submission of a complaint are allowed.'</p> <p><i>ENNHRI, State of Rule of Law in Europe in 2022, p. 7</i></p> <p>The Ombudsman has significant powers of investigation to examine matters falling within its scope of competence.'</p> <p><i>Information Provided by the NHRI in 2023</i></p> <p>Resulting from Article 20 of the Statute, the Ombudsperson is granted unfettered access to all relevant premises with or without prior notice. This encompasses all central and local services of public administration, including prisons and military domains. Also private entities entrusted by law or by contract with public powers are required to grant access. Finally, private entities providing services of general interest are also under this duty to grant access to their premises to the Ombudsperson. Pursuant to Article 29 of the Statute of the Ombudsperson, all authorities falling within the scope of action of the Ombudsperson (as established in article 2 (1)) must cooperate with her, providing all clarifications and information requested. The entities must provide access to</p>

	<p>documents and procedures and perform inspections as per the Ombudsperson request. This duty does not compromise legal regimes on state secrecy and determined by the need to ensure the protection of public interests. The Ombudsperson may set a deadline for urgent requests, and may order the presence of individuals in certain places to fulfil the duty of cooperation, under the penalty of disobedience.</p> <p>Also, pursuant to Article 30 of the Statute, the Ombudsperson may order any citizen to make depositions, under the penalty of disobedience.</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>ENNHRI, State of Rule of Law in Europe in 2022, p. 7</i></p> <p>‘The Portuguese Ombudsman has the competence to request a constitutionality review of laws – either enacted by the Parliament or by the Government.’</p> <p><i>Information Provided by the NHRI in 2023</i></p> <p>The Ombudsman has the competence to make recommendations to the Parliament.</p>

Abstract review of constitutionality and legality (Article 281 (1), of the Constitution of the Portuguese Republic and Article 20 (3) of the Statute of the Ombudsperson can be triggered by the Ombudsperson.

The Ombudsperson is asked for her opinion within the legislative process on sensitive topics regarding fundamental rights or in subject areas where there has been a previous relevant action of the Ombudsperson.

Pursuant to Article 20 (1) (c) of the Statute of the Ombudsperson, the Assembly of the Republic may request the Ombudsperson for the submission of a written opinion on any subject matter related to her activity.

Pursuant to article 23 (3) of the Statute of the Ombudsperson, she may be requested to participate at sessions of parliamentary committees to address any given topic (draft legislation, reporting on fundamental rights violations; providing insight on issues regarding malfunction of public services, etc.). Pursuant to the same provision, she may also participate at sessions of parliamentary committees any time she sees fit.

The participation of the Ombudsperson at sessions of parliamentary committees takes place on a regular basis, normally upon request of the committee.

The insight of the Ombudsperson is mostly appreciated and taken into account.

Abstract review of constitutionality and legality (Article 281 (1), of the Constitution of the Portuguese Republic and Article 20 (3) of the Statute of the Ombudsperson can be triggered by the Ombudsperson.

Both individuals and civil society actors such as NGOs often make use of the constitutional right to complain to the Ombudsperson, in order to address their concerns regarding actions or omissions in the exercise of public powers, which they perceive as giving rise to illegality or unfairness and ultimately to breaches of fundamental and human rights.

As mentioned in the 2022 ENNHRI rule of law report, the Ombudsperson referred to the Constitutional Court a set of rules governing municipal elections, considering that they breached

	<p>fundamental rights of citizens to take part in political life and public affairs of the country as protected by the national Constitution. The request concerned participation by ordinary citizens in the electoral process.</p> <p>The Constitutional Court agreed with the Ombudsperson and delivered its ruling in April 2021 (Decision no. 247/2021). Shortly before the decision was announced, the law was already in the process of being amended by Parliament clarifying the submission of applications by groups of citizens electing and ensuring appropriate procedures for holding elections for the bodies of local authorities.</p> <p>Also, in 2022, the Ombudsperson requested the Constitutional Court to review the constitutionality of Article 6 of Law 27/2021, of May 17 (approving the Portuguese Charter of Human Rights in the Digital Age). While acknowledging that there is a duty to protect individuals against disinformation, the Ombudsperson considered that enabling the national media regulatorily authority to initiate proceedings against individuals was in breach of freedom of expression. The legislator revoked the provision shortly after the Ombudsperson submitted the request to the Constitutional Court (Law 15/2022, August 11).</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>ENNHRI, State of Rule of Law in Europe in 2022, pp. 1-2</p> <p>The Portuguese Ombudsman’s mandate allows him to contribute to access to justice by handling individual complaints against the administrative authority responsible for processing applications for legal aid, and by participating in awareness-raising initiatives.’</p> <p>The Ombudsman also has competence to request for abstract constitutionality review. The mandate does not include the NHRI’s engagement in strategic litigation before the courts.</p> <p>ENNHRI, State of Rule of Law in Europe in 2022, p. 8</p> <p>The Ombudsman powers of inspection and monitoring can only be exercised with regard to administrative dimensions of the activity of courts.</p> <p><i>Information Provided by the NHRI in 2023</i></p> <p>Under Article 22 (3) of the Statute, any complaints relating to judicial activities which, due to their very nature, do not fall outside the Ombudsman’s scope of activities shall be dealt with through the High Judicial Council, the High Council of Public Prosecution and the High Council of the Administrative and Fiscal Courts, as applicable. In addition to the articulation with superior councils, in proceedings concerning children's rights, with a view to safeguarding the superior interest involved, the Ombudsman also intervenes with the Portuguese Central Authority (Directorate-General for the Administration of Justice - DGAJ), whenever the collection of alimony abroad is at stake. Also, when the Child Support Fund is triggered, the Ombudsman intervenes with the Social Security Financial Management Institute (delays in the processing of benefits).</p>
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<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>Information Provided by the NHRI in 2023</i></p> <p>Article 1 (2) of the Statute of the Ombudsperson specifies states that the Ombudsperson may also be designated as the National Human Rights Institution in charge of monitoring the implementation of international human rights instruments.</p> <p>Article 1 (3) states that the Ombudsperson shall guarantee the cooperation with alike institutions and with the European Union and international organizations in the field of the protection and promotion of fundamental and human rights.</p> <p>By being recognized as a National Human Rights Institution, accredited with A Status, in full compliance with the United Nations Paris Principles, the Ombudsperson simultaneously functions as a link between the Portuguese system and the United Nations international system for the promotion and protection of human rights.</p> <p>The Office of the Ombudsperson, in the capacity of NHRI, is entitled to attend, with observer status, the plenary meetings of the Portuguese Government's National Human Rights Committee - an inter-ministerial coordination body, under the supervision of the Minister of Foreign Affairs, which is responsible to guarantee that the Government fulfils its obligations under the international human</p>

	<p>rights system. Once a year, a plenary meeting is open to civil society representatives. In 2022, the meeting took place in December and covered the topic of mental health and human rights.</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>ENNHRI, State of Rule of Law in Europe in 2022, p. 2</i></p> <p>The Statute determines that the appointment as Ombudsman may only fall upon a citizen who, besides meeting the conditions required for being elected a Member of the Parliament, enjoys a well-established reputation of integrity and independence. Moreover, Article 11 of the Statute stipulates that the Ombudsperson shall be subject to the same incompatibilities that apply to court of law judges in office (paragraph 1) and prohibits him/her from holding any position within the bodies of political parties or associations, as well as from engaging in any public political party activities (paragraph 2).</p> <p>The mandate of the Ombudsman is a 4-year mandate with the possibility of one re-election only for an equal period. The Ombudsman remains in office until replaced by its successor.’ - Article 6(2) of the Statute of the Ombudsperson.</p>

Information Provided by the NHRI in 2023

In Portugal, there is no open call for applications for the selection and appointment of the Ombudsperson. The selection and appointment process is governed by the Rules of Procedure of the Assembly of the Republic (Portuguese Parliament), in compliance with the relevant provisions of the Constitution and of the Statute of the Ombudsperson.

It should be noted that under Article 257 (b) of the Rules of Procedure of the Assembly of the Republic (Portuguese Parliament), the election of the Ombudsperson takes place after a mandatory hearing by the competent parliamentary committee. During this hearing, the candidate makes a presentation sharing her views about what would be her priorities as Head of Institution. MPs are given the floor to make comments, ask questions and also to make a public assessment of the candidate's resume, qualifications, experience and if she meets the guarantees of independence to take office. Experience shows that the integrity of the selection and appointment process is complied with. The main reason for this to happen lies in the required qualified majority for the election. Article 163 (h) of the Constitution of the Portuguese Republic establishes a qualified majority (so called 'double majority') for the election by parliament of the Ombudsperson: a majority that is at least equal to two thirds of all MPs present and greater than an absolute majority of all MPs in full exercise of their office.

<p>Assessment of implementation by Sub-Committee on Accreditation (SCA) of GANHRI</p>	<p><i>SCA Report November 2017, pp. 29-30</i></p> <p>'Article 5(1) of the enabling law provides that the Provedor is elected by Parliament with a two-third (2/3) majority of the members present. The SCA acknowledges that the PDJ reports that the selection and appointment process is governed by Parliament's Rules of Procedure, which provide for the ability of groups of between ten (10) and twenty (20) members of parliament to nominate candidates, and for public hearings with the candidates. However, the SCA is of the view that the selection process currently enshrined in the enabling 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.</p> <p>The SCA encourages the PDJ to advocate for the formalization and application of the selection process for the Provedor that would meet the above requirements.</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>ENNHRI, State of Rule of Law in Europe in 2022, p. 3</i></p> <p>'The Ombudsman is independent and can only be dismissed in the cases and due to the reasons expressly provided by law, which are: death or permanent physical incapacity; loss of eligibility requirements; supervening incompatibility; or voluntary resignation.'</p>

	<p><i>Information Provided by the NHRI in 2023</i></p> <p>Article 23 (3) of the Constitution of the Portuguese Republic states that «The Ombudsperson is an independent State body and the Assembly of the Republic shall appoint him for the period laid down by law».</p> <p>Article 7 of the Statute of the Ombudsperson establishes guarantees of independence. It also establishes that the Ombudsperson shall be removed from office only according to an exhaustive list of clear and reasonable conditions established by law. The latter are enumerated in Article 15 (1): death or permanent physical incapacity; ex post failure to meet the eligibility requirements; breach of regulations regarding the incompatibility of post and mandate; resignation. Only the Assembly of the Republic (Portuguese Parliament) has the power to establish whether the circumstances that would call for the statutorily allowed early removal from office exist (Article 15 (2)).</p> <p>In Portugal, only the Ombudsperson is elected by Parliament. This process is governed by the Constitution and by the Statute of the Ombudsperson.</p> <p>The two Deputy Ombudspersons are not elected. They are appointed on discretion of the Ombudsperson among people with a suitable university degree and verified reputation of integrity and independence (Article 16 (1) of the Statute of the Ombudsperson).</p>
<p>Assessment of implementation by Sub-Committee on Accreditation (SCA) of GANHRI</p>	<p><i>SCA Report May 2017, pp. 30-31</i></p> <p>Article 16(1) of the Statute provides that the Provedor may, at any time, dismiss the deputies chosen. The Statute is silent on the ground and process for such a dismissal. The SCA encourages the PDJ to advocate for appropriate amendments to its law to provide for an independent and objective dismissal process for the deputies.'</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 the NHRI</p>	<p><i>Information Provided by the NHRI in 2023</i></p> <p>Regarding Budget, the NHRI reports no complaints. The recent reform of the internal structure was all about restructuring and establishing new working methods and procedures in order to meet increasing solicitations.</p> <p>The Government has been very cooperative, also at the financial level. The recent reform of the internal structure of the Office of the Ombudsperson (Decree-Law no. 80/2021, of 6 October) was also helpful in this regard.</p> <p>According to article 15 (2), the NPM is now a separate department of the Office of the Ombudsman. It is run by a Department Coordinator and has a dedicated staff composed of two elements (visitors). Also, it has a separate budget.</p> <p>Under the terms of the Article 43 (1) and (2) of the Statute (Law no. 9/91, of 9 April; see also the state budget law for 2023, Law no. 24-D/2022, of December 30), the Office of the Ombudsperson shall have an annual budget prepared in compliance with the Law governing the internal structure of the Office of the Ombudsperson. The budgetary appropriations of the Office of the Ombudsperson shall be contained in the Parliament's budget. There is a specific separate line for the Office of the Ombudsperson and budget processing is done in a twelve months basis. The annual budget for 2023, is €11,200,000, divided between €6,225,433 (current expenses) and €4,974,567 (capital expenses). NPM mandate has a separate budget, of € 40,000, for 2023. This budget is considered</p>

	<p>adequate to engage with all relevant stakeholders in a fully independent manner and freely determine their priorities and activities.</p> <p>The structure and functioning of the National Prevention Mechanism are defined by its own regulation.</p> <p>The reform has enabled the Mandate Holder to define more suitable working methods, allowing the Office of the Ombudsperson to focus on those subject areas which are facing substantial systemic deficiencies and/or are affecting the most vulnerable members of society. A new triage unit has also been established, which is expected to help deal with the increasing number of complaints in an efficient manner.</p> <p>The two main goals of the reform – prioritization and a timely response to citizens – have been achieved.</p>
<p>Assessment of implementation by CoE independent bodies</p>	<p><i>CPT Report on Portugal 2019, p. 8</i></p> <p>‘At the time of the 2019 visit, the National Preventive Mechanism (NPM) within the Ombudsman’s Office effectively consisted of one person (the Coordinator) who was supported by staff members from other departments within the Office whenever carrying out monitoring visits. The CPT is not convinced that this is the best way to ensure an optimal functioning of the NPM. In this connection, reference is made to the report of the United Nations SPT on its May 2018 visit to Portugal, in which it made a series of recommendations to bolster the standing of the NPM, including the necessity to allocate it additional resources. Such resources are essential for the NPM to fulfil its preventative role, notably by paying closer attention to the actions of law enforcement officials when carrying out visits to places of deprivation of liberty.</p> <p>The CPT would like to be informed of the resources provided to the Ombudsman’s Office for 2020 and 2021 to ensure that the NPM can fulfil its mandate properly.’</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>Information Provided by the NHRI in 2023</i></p> <p>Article 21 (1) of the Law governing the internal structure of the Office of the Ombudsperson (Decree-Law no. 80/2021, of 6 October) states that all members of the units and departments of the Office of the Ombudsperson (Department/Unit Coordinators and Department/Unit Advisors) are appointed by the Ombudsperson and shall be preceded by a public call for applications.</p> <p>Article 21 (3) states that the applications shall be reviewed by a selection committee composed by the Ombudsperson and the two Deputies, and may also include other members of the Office of the Ombudsperson as well as external elements.</p> <p>By the end of 2022, an open, transparent and merit-based recruitment process was launched in full compliance with this procedure. The selected candidates already started working in May 2023.</p>
<p>Principle 8</p>	<p>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.</p>
<p>Assessment of implementation by the NHRI</p>	<p><i>ENNHRI, State of Rule of Law in Europe in 2022, pp. 3-4</i></p> <p>The Ombudsman carries a special identification card issued by Parliament which allows access to all services of the central, regional and local administration as well as to civil and military services under its supervision.</p>

Information Provided by the NHRI in 2023

Pursuant to Article 20 of the Statute, the Ombudsperson is granted unfettered access to all relevant premises with or without prior notice. This encompasses all central and local services of public administration, including prisons and military domains. Also private entities entrusted by law or by contract with public powers are required to grant access. Finally, private entities providing services of general interest are also under this duty to grant access to their premises to the Ombudsperson. The Head of Institution, the Deputies, the coordinators and all advisors working for the Office of the Ombudsperson carries an official identity card with special clearance granting unfettered access to all mentioned premises (article 14 (2) of the Statute of the Ombudsperson and Article 34 (2) of the Law governing the internal structure of the Office of the Ombudsperson (Decree-Law no. 80/2021, of 6 October).

Pursuant to Article 29 of the Statute of the Ombudsperson, all authorities falling within the scope of action of the Ombudsperson (as established in article 2 (1)) must cooperate with her, providing all clarifications and information requested. The entities must provide access to documents and procedures and perform inspections as per the Ombudsperson request. This duty does not compromise legal regimes on state secrecy and determined by the need to ensure the protection of public interests. The Ombudsperson may set a deadline for urgent requests, and may order the presence of individuals in certain places to fulfil the duty of cooperation, under the penalty of disobedience.

Also, pursuant to Article 30 of the Statute, the Ombudsperson may order any citizen to make depositions, under the penalty of disobedience.

The provisions predicted in Article 29 (1) and (2) of the Statute shall not prevail either over the legal restrictions with respect to the confidentiality of judicial investigations or over the higher interest of the State, when duly justified by the competent bodies, in issues relating to security, defence or international relations.

	<p>Usually, the Ombudsman stipulates, in writing, a time limit of 30 days for the fulfilment of a request, but it may determine a time limit of no less than 10 days for urgent requests.</p> <p>The Ombudsman shall be entitled to summon any worker or representative of any of the addressed entities by means of a request addressed to the competent hierarchical authority, or any incumbent of anybody subject to his control to appear 'in-person' at his Office, or at any other place it may indicate based on the circumstances, so as to obtain the requested cooperation.</p> <p>Unjustified non-compliance with the duty to cooperate established in this article by a worker or a representative of any of the addressed entities, shall constitute a crime of disobedience, notwithstanding the applicable disciplinary proceedings. Currently, no lack of response is flagged, as a systemic shortcoming, but the Ombudsperson has focal points in the various addressed entities (municipalities, government bodies), in order to streamlining responses.</p>
<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 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.’</p> <p>The entities addressed by the recommendations must state their position within 60 days from the reception of the recommendation. Non-fulfilment of the recommendations must be duly justified. If recommendations are not attended and whenever the Ombudsman does not receive due cooperation, him/her may address the hierarchical superior or the Ministry responsible for the subject-matter. In cases of municipalities, the Ombudsman can address the local assembly. If the public administration does not attend to the Ombudsman’s recommendations, him/her can address the Parliament.</p> <p>In general, recommendations and remarks by the Ombudsman are well received and followed by their addressees.</p> <p><i>Information Provided by the NHRI in 2023</i></p> <p>Under Article 38 (6) of the Statute of the Portuguese Ombudsperson (Law no. 9/91, of 9 April; see also article 240 of the Rules of Procedure of the Assembly of the Republic (Portuguese Parliament), the Ombudsperson may, at any time, by her own initiative, address the Assembly of the Republic, on the grounds that Public Administration authorities are failing to implement her recommendations or somehow refuse to cooperate with the Office of the Ombudsperson.</p>
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<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>See Recommendation 6 for NHRI findings since 2021 reform, addressing also the NPM structure and budget.</i></p>
<p>Assessment of implementation by CoE independent bodies</p>	<p><i>See Recommendation 6 for CPT (2019) findings with regards the NPM mandate.</i></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 Rule of Law in Europe in 2022, p. 2</i></p> <p>According to the Constitution (Article 23 (3)) and the legal Statute (Article 1 (1)), the Ombudsman is an independent State body elected by the Parliament. This means that the Ombudsman cannot receive instructions from any other body, institution or entity, including the Government. The practice confirms the complete respect, namely by public authorities, regarding the independence and integrity of the Ombudsman institution in the performance of its duties.'</p> <p><i>ENNHRI, State of Rule of Law in Europe in 2022, p. 2</i></p> <p>The Portuguese Ombudsman is also endowed with a set of other important personal, institutional, functional and organisational guarantees, provided for by the law and that cement and strengthen the independence and autonomy of the institution. See further information on these guarantees also under recommendation 13.</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 Rule of Law in Europe in 2022, p. 4</i></p> <p>'The relevant state authorities have good awareness of the NHRIs' mandate, independence and role of the NHRI.</p> <p><i>ENNHRI, State of Rule of Law in Europe in 2022, p. 5</i></p> <p>'According to the Statute of the Ombudsman the heads and staff of the Portuguese Ombudsman are considered public authorities and all other authorities must cooperate with them to ensure the performance of their duties.'</p> <p>See also information provided under recommendations 8 and 9 on legal obligations to provide assistance to and respond to the recommendations of the Ombudsman.</p> <p><i>Information Provided by the NHRI in 2023</i></p> <p>The Office of the Ombudsperson acts as promoter of civil society's knowledge on fundamental and human rights and remedies available, by exercising his/her human rights education and awareness-raising mandate. Relevant initiatives under this provision include (i) decisions and positions taken by the Ombudsperson in the context of handling individual complaints, which always strive to clarify the content of fundamental/human rights, (ii) of providing specialized information and advice (iii) organizing and participating in seminars, conferences and lectures on human/fundamental rights, (iv) publishing studies and reports, (v) posting of information on the Ombudsperson's website and (vi) active press relations.</p> <p>As stated in ENNHRI Rule of Law Report of 2022, the relevant state authorities have good awareness of the NHRIs' mandate, independence and role of the NHRI. The practice confirms the complete</p>
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	<p>respect, namely by public authorities, regarding the independence, integrity and credibility of the Office of the Ombudsperson in the performance of its duties.</p> <p>The Portuguese Ombudsperson maintains a close cooperation with the Parliament. According to Article 20 (1)(c) of the Statute, the Ombudsperson may submit written opinions, of any matter falling within the scope of its activity, upon request of the Parliament. Besides that, the Ombudsperson is regularly invited to participate in the work of parliamentary committees. In 2022, she was in Parliament several times for committee hearings on draft legislation related to human rights.</p>
<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>ENNHRI, State of Rule of Law in Europe in 2022, p. 3</i></p> <p>‘The Ombudsman is not civil nor criminally liable for the recommendations, remarks or opinions issued in the course of his/her functions. The Ombudsman cannot be arrested nor detained without prior authorisation of Parliament, except for crimes punishable with prison of more than three years and when caught committing the offense (flagrante delicto). If criminal proceedings are brought against the Ombudsman, Parliament will decide on the suspension of the mandate, except in the cases referred to above. While imprisoned the mandate is automatically suspended.’</p> <p><i>ENNHRI, State of Rule of Law in Europe in 2022, p. 5</i></p> <p>‘The Portuguese Ombudsman confirms that there are no systematic threats, forms of harassment or intimidation to the Ombudsman heads and staff. The independence and integrity of the Ombudsman institution in the performance of its duties is generally respected.’</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>With respect to her mandate in handling individual complaints, it should be noted that the identity of the complainant is kept confidential, upon request (Article 25 (5) of the Statute of the Ombudsperson).</p> <p>The Ombudsman strictly observes the rules resulting from the legislation in force on data protection, in particular article 35 of the Constitution of the Portuguese Republic and the legal and normative provisions in force and applicable, namely Regulation (EU) 2016/ 679, of the European Parliament and of the Council, of April 27, 2016, on the protection of personal data.</p>

IV. Cooperation 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>Assessment of implementation by the NHRI</p>	<p><i>Information Provided by the NHRI in 2023</i></p> <p>The Office of the Ombudsperson, in the capacity of NHRI, is entitled to attend, with observer status, the plenary meetings of the Portuguese Government’s National Human Rights Committee. Once a year, a plenary meeting is open to civil society representatives. In 2022, the meeting took place in December and covered the topic of mental health and human rights.</p> <p>The State has recognized the key role of NGOs in the design, development and implementation of policies regarding the promotion and protection of human rights. This recognition is particularly evident in the relevance given to NGOs in the establishment of sectorial national action plans that</p>

provide concrete measures to fulfil the State's responsibilities under the Constitution, international obligations and the law.

There are several examples of action plans that considerably rely on the participation of NGOs and in the work developed by human rights defenders in order to accomplish their goals. To give an example, in 2021, the Portuguese Government set up the Working Group on Preventing and Combating Racism and Discrimination, with the mission of delivering a final report with contributions and recommendations for public policies on preventing and combating racism and ethno-racial discrimination, the composition of which included several representatives of NGOs. The Office of the Ombudsperson was heard in the context of the drafting of the final report, having participated in a meeting of the Working Group and having the opportunity to exchanged views with all members. Throughout 2022, the Portuguese authorities reinforced the funds allocated to the co-financing of NGO for Development, namely on Education for Development Projects to promote educational approaches and debate on themes that cut across development issues - such as human rights protection, social justice, environmental defense, economic and social sustainability, as well as interculturality, and promotion of gender equality.

The Portuguese Ombudsperson is a Member of the Network of Ombudspersons and National Human Rights Institutions of the Community of Portuguese-Speaking Countries, currently chaired by the Ombudsperson of Angola.

At a global level, the Ombudsman is a member of the Global Alliance of National Human Rights Institutions (GANHRI), which, in the context of the United Nations, assumes, among others, the responsibility for the accreditation of National Human Rights Institutions (NHRIs). It is also a member of the European Network of National Human Rights Institutions (ENNHRI) which more closely monitors and supports NHRIs operating in the countries of the European continent.