



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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**Safe and enabling environment  
for NHRIs**



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

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

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

## Explore the Key Findings for CM Principles Related to Securing and Expanding a Safe and Enabling Environment for NHRIs

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## Securing and Expanding a Safe and Enabling Environment for NHRIs

### NHRI Independence Through Climate of Impartiality, Integrity, Transparency and Fairness (CM Principle 11)

CM Principle 11 highlights that Member States should ensure 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.

As reflected in [SCA General Observation 1.9](#), issues can emerge when governments do not respect NHRIs' independence in structure, composition, decision-making and method of operation. For example, the SCA General Observations indicate that **government representatives and members of parliament should not be part of the decision-making bodies of NHRIs** as this can impact on both the real and perceived independence of the NHRI. Where this would be the case, and when such presence would be assisting the NHRI in fulfilling its mandate, NHRIs' legislation and practice should still clearly ensure that such persons can only participate in an advisory capacity, and not as part of the decision-making of the NHRI.

An issue in this respect persists with regards Germany, where the SCA (2022) has recommended the voting rights of the members of parliament in the Board of Trustees of the NHRI to be abolished, as well as Luxembourg, where a high-ranking government representative sits on the NHRIs' decision-making body. Still, in both countries, the A-status accreditation of the NHRIs indicates that such presence of government representatives on the decision-making body does not fundamentally undermine the capacity of the NHRIs to carry out their human rights mandate independently. As is further elaborated under CM Principle 13, **challenges emerge in practice rather from actions and behaviour of state authorities and other actors which intend to undermine the independence and effectiveness of NHRIs.**

**Most fundamental challenges emerge, though, when an NHRI needs to function in a wider climate where checks and balances and respect for rule of law are not respected.** A culture of respect for human rights, democracy and rule of law is vital for NHRI mandates, powers and roles to be effective in practice. This is especially so in view of the fact that an NHRI generally does not have any binding decision-making powers and its effectiveness and independence ultimately depend on the state authorities' decisions, and the extent to which those are taken through transparent, fair and impartial decision-making processes, including effective engagement with NHRIs (also further under CM Principle 8). Importantly, thus, a strong and independent NHRI has become internationally recognised as an indicator for healthy rule of law and such

NHRIs play an important role in safeguarding and addressing threats to the rule of law.<sup>1</sup> Vice versa, a threat to the independence and effectiveness of an NHRI, is recognised as presenting a wider threat to rule of law, democracy and rule of law.<sup>2</sup> When no separation of powers is in place in a country, or when separation of powers is on the decline in a country, the NHRIs' enabling space in such countries will be affected, possibly impacting also their effectiveness and independence.

### Fostering Awareness and Cooperation of State Authorities with NHRIs (CM Principle 12)

CM Principle 12 provides that Member States should foster awareness and co-operation of all relevant public authorities in relation to the mandate, independence and role of NHRIs, including through training and awareness-raising activities. This Principle reflects the importance of a conducive institutional ecosystem around an NHRI for it to carry out its mandate effectively. This relates to **two connected aspects: an overall awareness of what an NHRI is and does; and (a stance of) factual cooperation with NHRIs by state authorities.**

Overall, the cross-regional analysis indicates that authorities' awareness and cooperation with NHRIs is **good and is further increasing**. To an extent, this positive finding can also be conceived as a natural correlate of the gradually longer existence of NHRIs across CoE Member States, and authorities becoming gradually better aware of their unique added value. In Liechtenstein, for example, the Liechtenstein Association of Human Rights reports that increased awareness is facilitated through annual discussion with the government about the role and competences of the institution, while once per term, members of all national parties of the parliament exchange views with the institution. In each case, 'it takes two to tango': both the attitude of other state authorities and the level of engagement by NHRIs themselves matters. As an illustration, in Türkiye, through the Government's Strategic Plan for 2019-2023 and its reference to the need to carry out awareness-raising activities, the Human Rights and Equality Institution of Türkiye undertook many awareness raising activities, including with local government authorities, with a view to enhance awareness about its mandate and role. While thus the NHRI's activities greatly matter, they cannot replace the state's own role in increasing awareness about the NHRI, as this CM Recommendation also emphasizes by addressing Member States.

Naturally, even in countries where state authorities have overall good awareness of an NHRIs' mandate and role and cooperate well with them, it is still possible that some

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<sup>1</sup> See, amongst others: [European Commission, annual rule of law report 2020](#) (and subsequent annual rule of law reports); European Parliament, [Resolution on the Establishment of an EU Mechanism on Democracy, the Rule of Law and Fundamental Rights](#), voted in plenary in October 2020.

<sup>2</sup> European Commission, [annual rule of law report 2022](#).

state authorities do not. For example, in Bosnia and Herzegovina, the NHRI reports that further efforts are needed to enhance the awareness and cooperation in particular by the judicial authorities. In Greece, the NHRI calls especially for greater awareness and cooperation by parliamentarians in relation to ensuring timely consultation throughout relevant legislative processes (as further developed under CM Principles 8 and 3.5). As further developed under CM Principle 13, there are an important range of instances, however, where governmental authorities harass and otherwise undermine the independent and effective functioning of NHRIs. This is especially problematic in a wider context of shrinking civic space and challenges to democracy and the rule of law.

### Protection and Support Against Threats, Harassment and Intimidation (CM Principle 13)

CM Principle 13 provides strong regional standards for CoE Member States to protect NHRIs against threats and attacks and indicates that **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. Furthermore, it sets out that **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 be investigated, and the perpetrators brought to justice**.

It responds to the grave concerns shown by the Committee of Ministers, in the preamble of the Recommendation, that some European NHRIs work in challenging conditions and have faced pressure and attacks at the institutional, leadership and staff levels. Worryingly, **around half of European NHRIs reported having faced intimidation, harassment or threats between 2017 and 2021**, according to a OSCE-ODIHR [study](#) from 2022. This negative trend is confirmed by FRA, which [noted](#) that 14 NHRIs in the EU reported they had been subjected to threats and harassment in a one-year period. Also, in the baseline national reports, verbal attacks by governmental authorities on NHRIs and their leadership have been reported in some instances, as has been reported by the CoE Commissioner in relation to the NHRI in Georgia in 2021, or as has been reported by the NHRIs in North Macedonia and Slovenia.

Worryingly, some NHRIs also report obstruction of their work in some respect. For example, Slovak NHRI's staff members were the target of online harassment because of the NHRI's work on women and LGBTQ+ rights. Moreover, the NHRI from Poland reports on cases of obstruction by state authorities of its work carried out at the Polish-Belarusian border and during inspection in a prison in its capacity as National Preventive Mechanism. Most far reaching, ENNHRI's member from Sweden reports on a proposal from a political party to close the institution, which has not been rebutted by ruling

parties, thus posing a threat to the status and very existence of this newly established institution.

The sources above indicate that the **nature and origin of threats faced by NHRIs varies across Europe**. However, some general trends can be identified. First, governmental officials or members of ruling parties are often the primary source of verbal attacks against NHRIs. Such attacks often target the leadership of NHRIs, and in some countries this is combined with sexist remarks towards women who are Heads of NHRIs. Second, threats and attacks increasingly take place online. Third, NHRIs often face more threats when they work on specific issues, such as on the rights of ethnic and religious minorities, LGBTI people, migrants and refugees, gender rights, or rights of persons in detention. Fourth, there is a worrying trend of institutions or employees being targeted by lawsuits linked to functions performed *ex officio* as an attempts to exert pressure on the NHRI. In this respect, ENNHRI has [highlighted](#) that strategic litigation against public participation (SLAPPs) targeting NHRIs are incompatible with the UN Paris Principles.

The difficult environment that many European NHRIs face is **connected with a wider trend in relation to restrictive civic space and challenges for Human Rights Defenders** (HRDs) in Europe. Notably, [ENNHRI's annual reports on the rule of law](#) over the last four years indicate a continued worrying trend of shrinking civic space and challenges for human rights defenders, and [stressed](#) the role that NHRIs play both as HRDs themselves and in supporting other HRDs facing such challenges. This is also reflected and addressed further in [CM Recommendation 2018/11 on the need to strengthen the protection and promotion of civil society space in Europe](#).

As reflected in CM Principle 13, an important safeguard for protecting NHRIs against intimidation and attacks is through **ensuring functional immunity or, more broadly, protection from criminal and civil liability for official actions and decisions undertaken in good faith**. Such protections serve to enhance the NHRI's ability to engage in critical analysis and recommendations on human rights issues, as external parties may seek to influence the independent operation of an NHRI by initiating, or by threatening to initiate, legal or administrative proceedings against them. The SCA ([General Observation 2.3](#)) considers it preferable for these protections to be explicitly entrenched in NHRI legislation or another national law, but it acknowledges that such protection may also exist by virtue of the specific legal context in which the NHRI operates. In some European countries (such as Denmark) the concept of 'functional immunity' is not part of the legal culture for any public body, but legal tradition and relevant jurisprudence is considered to provide sufficient protection to the NHRI and its staff.

However, an analysis of the SCA recommendations received by NHRIs indicates that the lack of sufficient protection to NHRIs is an issue in several European countries. ENNHRI's baseline findings, as well as a [report](#) from FRA show that the leadership of around half of the NHRIs (especially ombuds-type NHRIs)<sup>3</sup> enjoy functional immunity, including in: Albania, Austria, Azerbaijan, Cyprus, Bulgaria, Belgium (FIRM), Czech Republic, Estonia, Georgia, Hungary, Kosovo\*, Moldova, Serbia, Slovenia, Spain, Portugal, United Kingdom (Great Britain) and Ukraine. On the other hand, functional immunity provided to all staff members is very limited. A good practice can be found in Kosovo\*, where both the head of institution and the institution's staff enjoy functional immunity as clearly set out in the Law, unless in cases of "intentional acts committed in bad faith or gross negligence". Functional immunity for the NHRI leadership and staff is also apparent in Austria and Belgium (FIRM).

Support to NHRIs when they face threats is still insufficient. Notably, it is **rare that threats are investigated and lead to prosecution**, even where NHRIs report cases to the police. In a challenging domestic context, especially when threats emerge from government, **support from international and regional counterparts can be important**. Accordingly, in line with its [guidelines on supporting NHRIs under threat](#), ENNHRI is stepping up its efforts to prevent and support threats to NHRIs, at their request, and in close cooperation with regional and international counterparts when relevant.

With regards the Council of Europe, European NHRIs report on the particular relevance of the support from the Council of Europe Commissioner for Human Rights. The CoE Commissioner has regularly spoken in support of NHRIs, both as a [collective](#) and in particular cases (for example, in support of the NHRIs in Bulgaria, Croatia, Estonia, Georgia, Hungary, Liechtenstein, Moldova, Poland, Romania, Sweden, and Ukraine).

At the same time, the **Council of Europe could step up its support to NHRIs under threat**, particularly in the current context. For example, further awareness-raising and activation of the Council of Europe [Secretary General's Private Office Procedure](#) could lead to stronger actions to address reprisals faced by HRDs, including NHRIs. This is relevant for challenges and threats faced by NHRIs as a consequence of their interaction with the Council of Europe, such as in the context of carrying out their NPM mandate and related engagement with the CPT. Notably, the CoE reprisal mechanism should be part of more systemic support from the CoE to HRDs and should be further interconnected with other initiatives aimed at preventing intimidation, harassment, and threats. Further exchange and cooperation between ENNHRI and different relevant actors at the CoE on effectively supporting NHRIs under threat could allow for

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<sup>3</sup> See in this sense also, the [Venice Principles](#) which require functional immunity for the ombuds, the deputies and the decision-making staff.



important progress in implementing CM Principle 13 and safeguarding NHRIs as key pillars for the promotion and protection of human rights, democracy and rule of law across the Council of Europe region.

### Protection of Confidential Information (CM Principle 14)

Under CM Principle 14, Member States should ensure that confidential information collected by NHRIs in the context of their mandate is privileged and is not unduly made public. NHRIs from Albania, Czech Republic, Georgia, Hungary, Ireland, Luxembourg, Kosovo\*, Montenegro and Portugal report on their **enabling law safeguarding confidential information**. In Ireland, for example, the NHRI is mandated to conduct inquiries and under its founding legislation all documents of the Commission relating to inquiries are absolutely privileged. Witnesses who provide information to the Commission in the course of an inquiry have the same immunities and privileges as a witness to proceedings in the High Court. In Germany, interestingly, the NHRI reports that the possibility for its staff to block access to their addresses in the public registry is applied in practice, especially by staff working on sensitive human rights issues.

**Only a few challenges have been reported** in relation to this recommendation.

Notably, a lack of protection of confidential information has been reported in relation to institutions carrying out their NPM mandate, as has been the case in the past in relation to Georgia and Andorra. As recalled in a [2020 joint statement](#) of ENNHRI, GANHRI, IOI and the UN Special Rapporteur on the Situation of Rights Defenders, actions of government not respecting confidentiality of information risk deteriorating a conducive environment for the NHRI to carry out its work effectively and independently, may put staff at risk, and could also have negative repercussions in terms of breaking the trust between individuals affected and the NHRI.