ENNHRI 10 YEARS

European Network of
National Human Rights Institutions

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

Strengthening of NHRIs

ENNHRI 10 YEARS European Network of National Human Rights Institutions

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

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

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

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

Strengthening of NHRIs

Broad Mandate to Protect and Promote Human Rights (CM Principle 3)

As indicated by the Paris Principles and the SCA General Observation 1.2, the requirement for NHRIs to be accorded with a broad mandate to promote and protect human rights is essential.

In line with the understanding of the SCA, 'promotion' includes those functions which seek to create a society where human rights are more broadly understood and respected, such as education, training, public outreach and advocacy. 'Protection' functions can be understood as those that address and seek to prevent or address actual human rights violations, such as monitoring, inquiring, investigating and reporting on human rights violations, and may include individual complaints handling.

Like the Paris Principles, the **CM Principle 3 lists a lot of specific functions that NHRIs should be able to perform within their broad mandate.** While such a list is illustrative of some of the key functions NHRIs perform, it should not be understood restrictively. As the SCA highlights: 'an NHRI's mandate should be interpreted in a broad, liberal and purposive manner to promote a progressive definition of human rights which includes all rights set out in international, regional and domestic instruments, including economic, social and cultural rights'. Fundamentally, and as flagged also by the EU Fundamental Rights Agency, NHRIs' enabling mandate should ensure that NHRIs have the independence and freedom to choose which functions and rights are exercised and prioritised.[1]

In view of their broad mandate, NHRIs are often multi-mandated institutions, being accorded additional, more specific or thematic human rights mandates, which often respond to requirements under international human rights conventions. From the country reports compiled in this baseline overview, it emerges that virtually all European NHRIs are multi-mandated bodies. In particular, the majority of European NHRIs are also accorded the mandate as Equality Body under the EU Equality Directives, or as National Monitoring Mechanism (NMM) under the UN Convention on the Rights of Persons with Disabilities, and as National Preventive Mechanism (NPM) under the UN Optional Protocol to the Convention against Torture. In addition, more recent mandates accorded to NHRIs include the whistle-blower protection mandate or the mandate to address trafficking in human beings.

In Europe, NHRIs' broad mandate to promote and protect all human rights distinguishes them from more specifically mandated thematic human rights bodies,

[1] See also: FRA (2020), p. 53.

such as Equality Bodies or Children Rights Commissions.[2] While the latter cannot be considered NHRIs per se, NHRIs do often carry multiple hats, including dedicated thematic mandates.

3.1. Monitor and Analyse the Human Rights Situation in the Country

The first paragraph of CM Principle 3 flags the need for NHRIs to be mandated to monitor and analyse the human rights situation in their country, to publish (annual) reports on these findings and address recommendations to public authorities, including in particular to parliament. CM Principle 3.1 thereby mirrors the Paris Principles, and the particular attention the SCA pays to assessing NHRIs' ability to develop annual reports on the human rights situation in a country and to provide a public account with recommendations to authorities.[3] NHRIs' monitoring and reporting function offers a key means by which they can exercise both their promotion and protection mandate, contributing to greater public awareness of the key human rights issues in a country, and providing findings and recommendations to public authorities on how to address key human rights challenges and violations.

From the country-specific analyses, it emerges that **relatively few challenges are reported** in respect to the implementation of this part of the Principle. Illustrative in this regard is ECRI's report on Germany (2019), stating that the members of Germany's Parliament's Committee on Human Rights and Humanitarian Aid informed ECRI that the NHRI's annual reports contribute substantially to better informing the public about the issue of discrimination. To the extent that challenges are reported, these mostly relate to the lack of institutionalised processes to ensure appropriate consideration by state authorities of NHRIs' reports and recommendations, which is addressed further under the analysis of CM Principle 9.

3.2. Freely Address Public Opinion, Raise Awareness and Provide Training and Education

CM Principle 3 also highlights the requirement for NHRIs' mandates to allow them to 'freely address public opinion, raise public awareness on human rights and carry out education and training programmes'. This excerpt of the CM Recommendation thereby flags specifically roles which relate to the promotional mandate of NHRIs.

Again, the **country-specific reports generally indicate compliance** with this recommendation across the Council of Europe region. Only in a few instances, indications of the need for potential progress are made. More specifically, SCA and ECRI recommended a small number of states to ensure that the NHRI's mandate

[2] Further: OHCHR, 'National Human Rights Institutions: History, Principles, Roles and Responsibilities', here.
[3] SCA General Observations 1.11 Annual Reports.

provides an explicit and complete mandate to promote human rights (such as in Armenia, Lithuania, Monaco, North Macedonia, and Slovakia). At the same time, even in the limited cases where such mandate is not made explicit, NHRIs do carry out promotional activities in practice, in line with a progressive interpretation of their broad human rights mandate, and as prescribed by the Paris Principles.

3.3 Mandate Allowing NHRIs to Fully Address all Alleged Human Rights Violations

In line with the CM Recommendation, states should ensure that NHRIs are able to fully address all alleged human rights violations by all administrative authorities, other relevant state authorities and, when applicable, private entities. This aspect of the CM Recommendation reflects similar requirements under the Paris Principles and SCA General Observations, with some deviation. For example, different to the CM Recommendation, SCA General Observation 1.2 more explicitly requires all NHRI mandates to extend to acts and omissions of both the public and private sectors and also expressly states that NHRIs should be authorised to carry out full investigations into all alleged human rights violations, including the military, police and security officers.

When it comes to this CM Principle, around one third of the CoE Member States face issues that require improvement (including: Albania, Armenia, Azerbaijan, Belgium, Bosnia I Herzegovina, Czech Republic, Ireland, Netherlands, Romania, Serbia, Slovenia, Türkiye, UK (Great Britain and Scotland)). In particular, challenges arise in relation to B-status accredited institutions, either on the basis of limitations to their human rights mandate or due to limitations found in respect of NHRIs addressing all human rights violations.

The Belgian institutions, for example, observe that none of their mandates allow to address all human rights matters. To illustrate: FIRM/IFDH has a human rights mandate limited to federal matters that are not covered by pre-existing bodies active in the field of human rights; Unia promotes equality and tackles discrimination while acting as NMM under the UN CRPD; the Combat Poverty Service approaches poverty and its eradication on the basis of human rights; and Myria analyses migration, defends the rights of foreigners, and combats human smuggling and trafficking.

3.4 Unfettered Access to all Relevant Premises and Individuals, Including Places of Deprivation of Liberty

To protect and promote human rights effectively, the CM Principle 3.4 highlights that NHRIs should have unfettered access to all relevant premises, including places of deprivation of liberty, and to all relevant individuals. This element of the Recommendation closely aligns to the fact that over half of the European NHRIs also

have the mandate as NPM under UN OPCAT, and is also reflected in the Paris Principles[4].

The baseline report shows that **in around one third of CoE Member States challenges persist** in relation to this (including: Andorra, Azerbaijan, Belgium, Bosnia and Herzegovina, Czech Republic, Croatia, Georgia, Germany, Slovenia and United Kingdom (Scotland, Great Britain)). Notably, challenges in law and practice concerning access to premises and individuals can be related particularly to sensitive issues NHRIs may address in-country, such as the condition of prisoners or the rights of migrants and asylum seekers. A notable illustration in this perspective is the situation in Croatia, where, as reported also by the CPT (2020), in the context of the NHRI's work on the treatment of irregular migrants, the Ministry of the Interior still continues to deny the Ombudswoman's direct access to data in their information system. This is in spite of some positive steps regarding access to information during the Croatian NHRIs' (announced and unannounced) visits to police stations.

3.5. Monitor Existing Draft Policies and Legislation with Human Rights Implications

In view of its interlinkage and overlap with CM Principle 8, the cross-regional analysis of 3.5 and 8 are taken together and can be found below.

3.6. Contribute to an Effective Justice System

The country-specific analyses indicate that **NHRIs across the CoE geography have mandates and roles which allow them to contribute significantly to an effective justice system. Yet, the ways in which NHRIs do so, is varied.**

Virtually all European NHRIs have an awareness-raising function in relation to access to justice for individuals. Approximately two thirds of NHRIs in the region have the competence to handle complaints submitted by individuals, which is a natural mandate for NHRIs of the ombuds-type, while being an optional function under the Paris Principles. For some NHRIs, complaints-handling is limited to specific mandates, such as the equality body mandate. A substantial number of NHRIs provide legal assistance to individuals (including: Albania, Armenia, Bosnia and Herzegovina, Bulgaria, Estonia, Ireland, Kosovo*, Latvia, Liechtenstein, Moldova, Montenegro, North Macedonia, Portugal, Slovakia, Türkiye, UK-Great Britain, UK-Northern Ireland, Ukraine).

Almost half of the NHRIs can undertake strategic litigation before courts (including: Belgium (Unia), Croatia, Estonia, Georgia, Greece, Hungary, Ireland, Kosovo*, Latvia, Liechtenstein, Moldova, Montenegro, the Netherlands, Slovenia, UK-Great Britain, UK-Northern Ireland, Ukraine). This mandate is expected to be introduced for more NHRIs with an Equality Body mandate, under the influence of the draft EU Directives on

[4] SCA General Observations 1.2 human rights mandate.

Equality Bodies. At the same time, the role to intervene before courts is regularly limited for NHRIs to specific mandates, such as the equality body mandate, as is the case in for example, Belgium (Unia), Croatia, Denmark and the Netherlands. In quite some countries, NHRIs are thus advocating to further expand the scope of this mandate.

NHRIs with the power to intervene before the constitutional Court to challenge the constitutionality of legal acts (such as in Albania, Austria, Armenia, Bulgaria, Estonia, Kosovo*, Latvia, Portugal and Poland) **can be viewed as particularly strong contributors to effective justice,** in regard of the country-wide impact of decisions of the highest Courts on law- and policy-making. Notably, such powers are recommended explicitly in the Venice Principles of the Venice Commission on ombuds-institutions.

The baseline report shows that CM Principle 3.6 is amongst the three best implemented Principles across the Council of Europe Member States. This finding is particularly noteworthy as contributing to access to justice is not an explicit requirement under the Paris Principles, and the complaints-handling function under the Paris Principles is optional. The concrete contributions of NHRIs to access to justice across CoE Member States is reflective of the key role NHRIs play in upholding the rule of law across the region. This key role has become squarely recognised by the Council of Europe and the EU, including through NHRIs' annual joint reporting on the rule of law in Europe.[5]

3.7 Encourage Ratification and Advance Implementation of International Human Rights Treaties

In line with the Paris Principles and SCA General Observations 1.3 and 1.4, the CM Recommendation highlights the role of NHRIs to encourage ratification of international human rights treaties and to contribute to the effective implementation of such treaties.

While this Principle is consistently looked into, including by the SCA, the cross-regional analysis of the country reports indicates that, **largely, implementation of this Principle is met.** Indeed, NHRIs across Europe actively engage in encouraging ratification of and accession to international human rights treaties and engage on their implementation. Still, for a considerable number of states, the SCA recommended to make this mandate explicit by making it part of the enabling legislation of the NHRI (Albania, Armenia, Belgium (Unia,), Bosnia and Herzegovina, Denmark, Estonia Ireland, Lithuania, Montenegro, Norway, Slovakia, Slovenia, Türkiye, Ukraine). At the same time, **even without specific reference to this function in NHRIs' mandates, they do carry out this role in practice.**

In relation to the Council of Europe in particular, it is worth noting that the preamble to CM Recommendation 2021/1 underlines 'the **great potential and impact** of independent NHRIs for the promotion and protection of human rights in Europe, **in**

[5] See, for example, ENNHRI State of the Rule of Law in 2022, here.

particular for the effective implementation of ECHR and including through third party interventions before the EctHR and NHRI communications with regard to the supervision of the execution of judgments under the ECHR'.[6] Such participation rights reflect the specific added value NHRIs and ENNHRI can bring to advance implementation of the CoE acquis through the provision of independent, evidence-based information.

ENNHRI, for example, is intervening as third party in the three milestone cases in relation to climate change before the Grand Chamber of the EctHR, bringing comparative information from NHRIs across the CoE. In relation to NHRI interventions in the execution of EctHR judgments before the CM, good practices emerge especially when interventions before the CM are part of wider dedicated cooperation between government authorities and their NHRI domestically. For example, in 2015, France committed, during the Brussels Conference, to closely associate its NHRI within the process for the execution of EctHR judgments. Since then, the Ministry of Foreign Affairs systematically refers to the NHRI, either to collect the NHRIs' observations on the execution reports that the government will submit to the Committee of Ministers, or to collect its recommendations on the planned execution plans.

As reflected in ENNHRI's input to the CoE Fourth Summit as well as in ENNHRI's reporting and capacity-building activities, the advancing of the implementation of EctHR judgments – including through further strengthening and supporting NHRIs' role in doing so – is a key strategic goal for ENNHRI's and NHRIs' engagement and cooperation with the Council of Europe. Furthermore, and as has been elaborated further (under CM Principle 17), NHRIs' engage across the wide variety of CoE independent monitoring bodies, providing independent domestic information and supporting the implementation of the recommendations of these CoE bodies nationally. Again, also in this respect, the role of NHRIs and dedicated information on how to engage could be significantly strengthened, as elaborated under CM Principle 17.

Selection and Appointment of NHRI Leadership (CM Principle 4)

CM Recommendation 2021/1 requires the selection and appointment of the leadership of an NHRI to be competence-based, transparent and participatory, and based on clear, pre-determined, objective and publicly accessible criteria. CM Principle 4 on selection and appointment thereby largely reflects the requirements outlined by the SCA in its General Observations 1.8.

As indicated by the SCA, the observance of this standard is key to ensure the independence and public confidence in the NHRI, and is crucial for an NHRI's ability to

[6] See in this respect also the CM high-level declarations adopted in the context of the Interlaken process.

effectively address human rights issues in a state.[7] The SCA clarifies that the formalization of a clear, transparent and participatory selection and appointment process should include requirements to publicise vacancies broadly, maximize the number of potential candidates from a wide range of societal groups, promote broad consultation and/or participation of actors such as civil society, and select members to serve in their own individual capacity. As an overall principle, the SCA flags that appointing authorities must have the independence and effectiveness of the NHRI in mind when selecting its leadership, rather than political considerations.

Despite its importance, CM Principle 4 on **selection and appointment appears to be the least well implemented from a regional comparative perspective**. This Baseline Study identifies that in the large majority of Council of Europe Member States this was found to be a challenge, and nearly 70% of accredited ENNHRI members received a recommendation from the SCA in relation to the selection and appointment process when they were last (re)accredited. While the degree of compliance varies significantly in the region, the selection and appointment process in virtually all countries could be improved in at least some aspects. At the same time, good practices also exist and can serve as inspiration across the region.

There are specific elements related to the selection and appointment of NHRI leadership that require specific attention across the Council of Europe region.

The first concerns the **constitutional or legal entrenchment of the selection and appointment process.** In view of its importance, and in line with CM Principle 1, it is preferable that key elements guaranteeing an independent selection and appointment of the NHRI leadership are included in the constitution. For example, in Poland such a constitutional entrenchment has proved to be an important safeguard against changes that could compromise the selection process.[8] In most countries, the key elements of the process are described in general terms in the constitution or legislation, and then specified in other regulations such as binding administrative guidelines. A recommendation regularly made by the SCA is to ensure the requirement for public advertisement of vacancies for NHRI leaders, including the merit-based criteria for the position, should be formalized either in the constitution, legislation or binding

[7] SCA General Observations 1.8 Selection and appointment of the decision-making body of NHRIs, Justification. Similarly also: Venice Commission, Venice Principles ; FRA report on NHRIs including an Opinion that: EU Member States should enhance the selection and appointment process of members (leaders) of NHRIs, ensuring greater transparency and processes open to the widest possible range of applicants" and that, as a good practice, such processes "could include independent expert committees and parliamentary involvement".

[8] See further: ENNHRI Statement: the independence and effectiveness of the Polish NHRI must be preserved, 15 April 2021, here.

administrative provisions, and that it does not suffice that vacancies are advertised in practice.

A further aspect concerns the **authority responsible for the selection and/or appointment**. In line with the requirements of transparency and participation of the selection and appointment of the NHRI leadership, the most prevalent selecting and appointing authority is the parliament rather than the executive.
Where the leadership of the NHRI is decided by parliamentary bodies, good practices call for the vote to be through a qualified majority or the involvement of different levels of the legislature, as made explicit by the Venice Commission with respect to ombuds-institutions specifically. This helps avoiding that the decision lies solely in the hands of a majority or governing party. In Poland, for instance, a candidate needs to have considerable support through qualified majorities at the level of the lower chamber as well as at the Senate, which then typically requires cross-party support for a candidate. Similarly, In Slovenia the Parliament appoints the Ombudsman with a two-thirds majority of all deputies for a term of six-years. the NHRI in Moldova received a recommendation from the SCA in support of legislative amendments that would require an absolute, rather than simple, majority in parliament for the selection and appointment of the Head of the NHRI.

While the majority of leaders of European NHRIs are appointed by parliament, some NHRI leaders are appointed by the executive. For such selection and appointment to live up to the international requirements included in the CM Recommendation, some special procedures would need to be set in place to ensure a merit-based, transparent and participatory selection and appointment. Models under which a pluralistic selection committee supports the selection and recommends candidate(s) to the appointing executive authority, which ultimately takes a decision, can be considered. In Ireland, for example, the leaders of the NHRI are recommended by the Public Appointments Service, an independent agency of the State, which creates an independent panel composed of individuals with relevant experience in human rights and public administration, out of which one is nominated by the Director of the EU FRA. The final recommendation of the Irish Public Appointments Service is binding on the Government. Another example can be found in the Netherlands, where the members of the Board of the Dutch Institute for Human Rights are appointed by the relevant Minister but only on the basis of an advice from the Advisory Council of the Institute, which is composed of independent members from various backgrounds. While the Minister can reject a nominated candidate by the Advisory Council, it cannot proceed with the appointment of an individual that has not been proposed by the Advisory Board.

An essential element, and one that requires improvement in the majority of Council of Europe Member States, concerns the **participatory nature** of the selection and

appointment process of NHRI leaders. The SCA has reiterated that such processes must ensure broad consultation and/or participation of civil society organisations and other actors – in fact, this is the most common recommendation issued by the SCA in the past years. Participation in the selection process promotes the public legitimacy of the NHRI as well as the transparency of the process.

There are various ways through which this principle can be respected in practice. Such involvement is most far-reaching when selection committees are composed of different strands of civil society that together develop a list with merit-based candidates from which relevant state authorities can appoint candidates. In contrast, the minimum required by the SCA appears to be the possibility for civil society actors to attend and participate in public hearings on the selection of an NHRI leaders, for instance before relevant parliamentary committees. A good practice example is in place in Bulgaria, where the Ombudsman Act explicitly allows not-for-profit organisations to nominate candidates for Ombudsperson and Deputy Ombudsperson, in addition to members of parliament and their parliamentary groups. This is further enhanced by the practice of the Bulgarian NHRI to publicly encourage nominations from civil society.

While not explicitly addressed in the CM Recommendation, it is important that **transitional arrangements** are foreseen in case relevant national authorities do not achieve timely selection and appointment. Independence, pluralism and effectiveness of an NHRI need to be respected at all times, including during such transitional period. Particular challenges in this regard are reported in the context of Poland and France. As an ENNHRI Opinion on the matter indicates, a common transitional arrangement in place is that the head of the NHRI continues in office until a new individual has been selected, appointed, and/or taken oath, as specified in the legislative foundation of the NHRI. Such transitional arrangements should be foreseen in the enabling laws of all NHRIs as they would ensure continuity of their work to promote and protect human rights while the leadership position is vacant.

Dismissal of NHRI Leadership (CM Principle 5)

In order to protect the independence of NHRIs and ensure a secure and stable mandate for its leadership, the enabling legislation of an NHRI must contain an **independent and objective dismissal process.** This is outlined in the CM Principle 5, which states that the dismissal process should ensure objectivity, with clearly defined terms in a constitutional or legislative text. Furthermore CM Principle 5 indicates the dismissal process should be impartial and be confined to only those actions which impact adversely on the capacity of leaders to fulfill their mandate. Thereby CM Principle 5 reflects SCA General Observation 2.1 which also indicates that the dismissal must be made in strict conformity with all the substantive and procedural requirements as prescribed by law

and, where appropriate, that the application of a particular ground must be supported by a decision of an independent body.

This baseline study finds that the **majority of European states have sufficient guarantees** in place to ensure an objective dismissal procedure of NHRI leadership. However, in some countries there is scope for improvement in relation to both the dismissal criteria and its process.

The **most common issues** in this regard are the existence **of too broadly-defined dismissal criteria, and the lack of formalisation of detailed procedures and criteria in the law or other binding provisions.** For example, in the United Kingdom, the Secretary of State may dismiss a Commissioner of the Equality and Human Rights Commission if, in their opinion, the Commissioner is "unable, unfit or unwilling to perform their functions". During its latest reaccreditation, the SCA expressed concern that this ground, without further qualification of this discretion, may impact adversely on the security of tenure of the NHRI leadership. Similarly, in Latvia, the Ombudsperson may be dismissed if they have "allowed a shameful act that is incompatible with his or her status", which the SCA has found to be insufficiently defined and may be open to misuse. The SCA had similar concerns regarding the situation in Bosnia and Herzegovina, where the Ombudspersons may be dismissed by the Parliamentary Assembly "on account of their inability to carry out their functions" while the relevant legislation did not provide sufficient details of the dismissal process.

It is equally important that the dismissal process contains sufficient safeguards to avoid its use for arbitrary or political reasons. For instance, where dismissal is done by parliament, it should require an absolute or qualified majority for the dismissal to be proposed and/or approved. A good practice can be found in Spain or Albania, where the Ombudsperson can only be dismissed after a qualified, three-fifths majority is reached before both the Congress of Deputies and the Senate, following a debate and prior hearing with the Ombudsperson. Another **good practice is to require a confirmation by an independent body or allow the possibility of an appeal before a relevant court.** For example in Estonia, the head of institution can be removed from office by a court judgment only, while in Germany the dismissal of the two members of the Board of Directors is subject to scrutiny by an independent labour court, which must take into account the requirements of the Paris Principles.

Adequate, Sufficient and Sustainable Resources to Carry Out NHRI Mandates (CM Principles 6, 7, and 10)

In order to function effectively, NHRIs must be provided with an **adequate level of funding to carry out their mandate, including financial and human resources, and must be able to freely determine its use in view of priorities and activities** (CM

Principle 6). Relatedly, CM Principle 10 indicates that **when Member States grant additional competences to NHRIs, they should be allocated additional resources** allowing to effectively discharge its functions, including having appropriately qualified and trained staff.

The UN Paris Principles and SCA General Observation 1.10 further clarify that not only the level of budget, but **also the way in which it is allocated is key to safeguarding and NHRIs' independent and effective functioning.** Accordingly, the SCA indicates that funding should be allocated to a **separate budget line** applicable only to the NHRI, and should be regularly released and in a manner that does not impact adversely on its functions, day-to-day management and retention of staff. While budgetary allocation processes can vary, the SCA also indicates that it is preferable for the budgetary process to be prescribed by law, including involvement of the NHRI.

As CM Principle 7 reflects, in terms of human resources, NHRIs should have the authority **to determine their staffing profile and recruit their own staff.** SCA General Observation 2.4 in this respect spells out that the NHRI should be legally empowered to determine the staffing structure and the skills required to fulfil the NHRI's mandate, and to set other appropriate criteria (for example, to increase specific expertise or diversity) while recruiting staff in accordance with national law. Staff should be recruited according to an open, transparent and merit-based selection process that ensures pluralism and a staff composition that possesses the skills required to fulfil the NHRI's mandate. If an NHRI is required to accept staff assigned or seconded from government or other actors, this should be significantly restricted and should not include personnel at the level of management or other sensitive positions, so as not to compromise its independence.

While CM Principles 6, 7 and 10 reinforce pre-existing international and regional standards on the matter (including also the Venice Commission's Venice Principles and ECRI General Policy Recommendation No 2), this baseline study finds that the CM Principles related to **adequate, sufficient and sustainable resources are the second least well implemented across the region.** Challenges were reported in more than two thirds of the CoE Member States. Such budgetary challenges relate to a variety of reasons including stagnation of NHRI funding in a wider context of inflation, general cuts in public funding with disproportionate cuts to NHRIs funds, and, - for a significant amount of NHRIs -, receiving additional mandates without sufficient additional resources. Notably, even in some countries where an increase in budget has been reported, this is considered insufficient in view of the additional responsibilities, as is the case in Austria, Albania, Armenia, France, Finland, Georgia, Greece, Ireland, Romania, Liechtenstein and Türkiye. In exceptional cases, budget cuts are so fundamental that they risk preventing the NHRI from carrying out its core mandate. This has been

indicated by the SCA in relation to the NHRI in Northern Ireland in its March 2023 session.

While SCA General Observation 1.10 on adequate funding of NHRIs acknowledges that the provision of 'adequate funding' can be impacted by the national financial climate, it also flags the duty of states to protect the most vulnerable members of society, who are often the victims of human rights violations, even in times of severe resource constraints. This therefore underlines the importance of **ensuring adequate funding for NHRIs in all circumstances.** Rather, the SCA indicates that to ensure an adequate level of funding for NHRIs, this includes a gradual increase of an NHRI's budget in line with the progressive realisation of human rights.

Good practices safeguarding an adequate budget for NHRIs in all circumstances include a **legal prohibition to cut an NHRI's budget** as is the case in Armenia and Kosovo*. More specifically, in Armenia, the Constitutional Law on the Armenian Human Rights Defender prohibits the reduction of the budget of the NHRI below the level of the previous year, except in cases of force majeure or extraordinary circumstances, and clarifies that this funding must be sufficient for it to carry out its functions and duties effectively and independently.

The process for budget determination should follow a transparent, pre-determined process, which ensures meaningful consultation with the NHRI concerned, all while respecting its financial autonomy and protecting it against an arbitrary determination of its budget. This is particularly important where national authorities are considering a funding reduction or deny a suggested increase in funding. Most European NHRIs propose and present their budget to either parliament or government, who are then the decisive authorities. A good practice is ensuring the involvement of an independent authority to assess the budgetary needs of the NHRI, and/or using objective benchmarks to determine an NHRI's budget, such as the resources allocated to comparable public institutions in the country.

Notably, in the context of the significant budget challenges faced by the NHRI in Northern Ireland, an external review was carried out with a specific focus on its budget and its ability to discharge its statutory duties. A 'challenge panel' was also set up, contributing to the result being an objective and independent assessment of the situation and indicating the significant budget needs for the NHRI to be able to carry out its core mandate.

Adequate Access to Information and to Policy-Makers and Legislators (CM Principles 8 and 3.5)

In order for NHRIs to be able to carry out their mandate effectively and independently, adequate access to information and to policy makers and legislators is fundamental.

This is also reflected in the Belgrade Principles on the relations between NHRIs and parliaments, developed and adopted during an expert seminar between NHRIs and parliamentarians organised by UN OHCHR in 2012.[9]

Positively, the vast majority of NHRIs across the Council of Europe report a **generally good access** to information, policy-makers and legislators. Access in practice is commendably also embedded as a **right in NHRIs' mandates across many countries** (including in: Armenia, Austria, Azerbaijan, Bulgaria, Croatia, Cyprus, Finland, France, Estonia, Kosovo*, Liechtenstein, Northern-Ireland, Portugal, Slovenia, Ukraine). Furthermore, access to policy makers and legislators has at times also been **institutionalised in relevant authorities' procedures.** This is the case in Armenia, for example, where the NHRI has the right to be present at sittings of the Armenian government and parliament, and to make interventions during such sittings when human rights issues are considered. The Armenian NHRI also has a right to present issues before Parliament when the executive does not take into consideration the NHRI's requests.

In **some countries, enforcement measures are even provided in cases of lack of cooperation with the NHRI,** such as in Estonia, Slovenia and Portugal. In Slovenia, the law prescribes that a failure by an official to submit to the NHRI the requested information constitutes a minor offence which may be the object of a sanction. The NHRI itself is granted the power to decide in such cases and impose a fine. So far, the NHRI has never used this possibility, although the institution reported that despite a strong legal framework there are still delays by the authorities in responding to the NHRI's investigations and recommendations.

While generally good access to information and policy-makers and legislators is reported, **some important challenges remain**. This is visible when NHRIs address **sensitive human rights issues.** For example, in the context of the Croatian NHRI's work on the treatment of irregular migrants, the Ministry of the Interior continues to deny the NHRI direct access to data in their information system. This is in spite of some positive steps regarding access to information during the Croatian NHRI's announced and unannounced visits to police stations.

A **more widespread challenge**, reported by around one third of European NHRIs, relates to the **quality and timeliness of consultation of NHRIs** in the context of legislative procedures and policy-making processes. State authorities often fail to consult in a timely and effective manner with NHRIs on legislative proposals and policy strategies with human rights implications. This challenge was further exacerbated during the COVID-19 pandemic and the ensuing policies and regulations adopted in the

[9] Report of the UN Secretary-General to the UN Human Rights Council, A/HRC/20/9 of 1 May 2012, Annex.

context of public emergencies.[10] **In a few countries**, worryingly, access to relevant parliamentary debates is even **dependent on a specific request from state authorities,** which limits the scope for legislative engagement of NHRIs significantly. While the German NHRI can only participate in parliamentary hearings on draft legislation when it is invited by a political party, the Romanian Institute for Human Rights (not yet accredited as an NHRI) may only submit opinions at the requests of Members of the parliament and parliamentary committees.

As highlighted in the **CM Principle 3.5, Member States should ensure that the mandate given to NHRIs allows them to advise the State about the impacts of policy measures and legislation on human rights and human rights defenders, before, during and after their adoption.** A few good practices can be pointed out, especially when state authorities ensure a 'right to access' for NHRIs and institutionalise consistent and timely consultation with NHRIs. The Austrian Ombudsman Act grants the NHRI a right to comment on any proposed draft legislation or ordinance. In Armenia, the NHRI has a constitutional right to submit its written opinions to relevant authorities on draft normative acts related to human rights, and to submit proposals for legislative amendments. In Liechtenstein, the institution reports to be informed about all legislative projects of the government via a newsletter, while in Norway, the NHRI informs that its legislative submissions are usually referred to in the final legislative proposal to parliament and thus made available for parliament in their decision-making process.

The CM Recommendation also specifically flags that **NHRIs should be consulted in a timely manner on draft legislations and policies that affect their own mandate, independence and operation.** This provision reflects the Belgrade Principles which highlight that parliaments should scrutinize such proposed amendments with a view to ensuring the independent and effective functioning of the NHRI in compliance with the UN Paris Principles. Timely consultation with the NHRI also enables the institution to seek information from relevant partners to ensure proposed amendments or draft laws are in compliance with the UN Paris Principles and other standards such as CM Recommendation 2021/1 of the Committee of Ministers.

Within the Council of Europe, NHRIs, at least of the ombuds-type, can ask the Venice Commission for an opinion on legislative proposals which affect their functioning. NHRIs in Europe also regularly reach out to ENNHRI for advice on the compatibility of draft laws with international standards on NHRIs. For example, ENNHRI's 2021 opinion on the proposed establishment of an ombudsman for entrepreneurs rights within the structure of the Moldovan NHRI, issued at the request of the Moldovan NHRI, made

[10] See further on this also: ENNHRI annual rule of law report 2021, and ENNHRI annual rule of law report 2022.

reference to various applicable international standards including the UN Paris Principles and CM Recommendation 2021/1.

Obligatory, Timely and Reasoned Follow-up by State Authorities to NHRI Recommendations (CM Principle 9)

The CM Recommendation encourages Member States **to make it a legal obligation** for all addressees of NHRI recommendations **to provide a reasoned reply within an appropriate timeframe, and 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.

This is an important complementary standard the Committee of Ministers adopted compared to the Paris Principles which are focused primarily on what NHRIs' rather than state authorities can do to facilitate follow-up to NHRIs' recommendations.[11] CM Principle 9 is crucial to advance the impact of NHRIs' work in Europe, especially in view of the general lack of binding decision-making power of NHRIs,[12] and the relevance of a strong mandate for NHRIs to engage with the three powers in a democratic state, as integral part of a country's checks and balances.[13]

From a comparative perspective, it appears that in 17 out of 40 CoE Member States with an ENNHRI member (Albania, Austria, Bosnia and Herzegovina, Bulgaria, Croatia, Estonia, Hungary, Kosovo*, Latvia, Lithuania, Montenegro, Poland, Portugal, Serbia, Slovenia, Spain and Türkiye), a legal obligation is included for state authorities to provide a reasoned reply or to follow-up to NHRI recommendations. Four NHRIs indicate explicitly in their national reports they would deem such obligation needed (Greece, Liechtenstein, Luxembourg, and Slovakia). While it can be relevant to have a legal obligation in place requiring state authorities to respond to or follow-up NHRI recommendations in a timely and reasoned fashion, this **appears not sufficient to ensure such follow-up in practice**. Notably, for a majority of states where a legal obligation applies, a serious lack of follow-up or the need for more effective follow-up mechanisms has been reported (Albania, Bosnia and Herzegovina, Bulgaria, Croatia, Kosovo*, North Macedonia, Poland, Serbia, Slovenia and Türkiye).

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[11] SCA General Observations 1.6 Recommendations by NHRIs: 'NHRIs, as part of their mandate to promote and protect human rights, should undertake follow up action on recommendations contained in these reports and should publicize detailed information on the measures taken or not taken by public authorities in implementing specific recommendations or decisions.'.

[12] Some limited exceptions are apparent in the context of NHRIs' individual complaints-handling function which may have binding outcomes. See in this regard also draft EU Directives on Equality Bodies which refers to this option as regards the mandates of equality bodies under EU law.

[13] Note in this respect also the explicit assessment by the European Commission of NHRIs as part of the checks and balances of a country in the context of its annual rule of law reporting.

As reflected in the Paris Principles and SCA General Observation 1.11, one of the key avenues to trigger follow-up to NHRIs' recommendations is the **annual report of NHRIs before parliament,** where they present their key findings and recommendations on addressing the human rights situation in a country. From the baseline country-reports, it emerges though that some states require improvements to fully implement this requirement, through including in an NHRI's enabling law a process of tabling and debating annual reports of the NHRI in parliament (Bosnia and Herzegovina, Finland, Türkiye, Sweden). While it is of key importance that parliament considers and engages in dialogue with the NHRI on its annual as well as thematic reports and recommendations, **challenges emerge in situations where the parliament votes on NHRI reports** and recommendations, as has been the case in Croatia and Kosovo*. Such approaches undermine the effectiveness of NHRI recommendations as a tool to promote and protect human rights.

Notably, in some countries, the **NHRI is accorded with a legal power to follow-up** the lack of response by state authorities (including: Austria, Estonia, Montenegro, Portugal, Serbia and Ukraine). In Portugal, for example, the NHRI 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.

In line with the scope and primary target audience of the CM Recommendation, CM Principle 9 also explicitly **encourages state authorities to develop processes to facilitate effective and timely follow-up** to NHRI recommendations. Follow-up processes beyond NHRIs' annual reporting to parliament and the ensuing parliamentary consideration can be found in some Member States across the region, such as in Albania, Austria, Bosnia and Herzegovina, Croatia, Estonia, Lithuania and North-Macedonia. The nature (including formality and regularity) of such processes diverge. In Estonia, be it exceptionally, parliament invites members of the government and other representatives of the executive power to report on topics, which may include recommendations of the NHRI in relation to those issues. In Bosnia and Herzegovina, the NHRI reports that in 2021, the Committee on Human Rights of the Parliamentary Assembly sent a memo to all public bodies that failed to comply with its 2020 recommendations and instructed them to provide a written submission concerning the above. The NHRI reports that this proved to be an efficient mechanism for advancing the implementation of its recommendations.

In Croatia, the government established in 2022 a multisectoral advisory body (composed of public administration representatives, the NHRI and civil society) which issued a Conclusion calling on public authorities to take appropriate measures and activities to implement the NHRIs' recommendations and to provide explanation if they

believe that a recommendation cannot be implemented in the proposed manner. The Conclusion also communicated about the necessity of the public authority bodies maintaining a constructive dialogue with the NHRI regarding the implementation of its recommendations, and envisages to hold thematic sessions on the NHRI recommendations' implementation, such as on the rights of the elderly. In Albania, a follow-up mechanism is set in place with parliament, yet the NHRI reports this needs substantial improvement to advance impacts. Interestingly, with support of the European Union, a twinning project is ongoing which includes support from the Austrian NHRI to advance follow-up to the Albanian NHRI's recommendations.