



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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**Baseline overview**



## About

ENNHRI's baseline study examines the implementation of the Council of Europe's Recommendation on NHRIs across the Council of Europe's Member States. Alongside cross-regional findings, there are country-specific analyses with good practices and recommendations for each Member State.

This overview document introduces the Recommendation, the purpose of the baseline, and the methodology behind it. It also outlines the aforementioned cross-regional findings. All individual country reports can be accessed [here](#).

## Title

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

## Disclaimer

The views expressed in this publication are the sole responsibility of ENNHRI.

## Acknowledgements

ENNHRI gratefully acknowledges the dedicated work of the consultant supporting ENNHRI's baseline report, a research team at Utrecht University, the Netherlands, led by Prof. Dr. Antoine Buyse, and including Dr. Claire Loven, connected to the Netherlands Institute of Human Rights (SIM) and the Montaigne Centre for Rule of Law and Administration of Justice.

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# ENNHRI Baseline on Council of Europe Committee of Ministers Recommendation on NHRIs (2021/1)

## 1. CM Recommendation 2021/1: A Golden Opportunity to Strengthen NHRIs at a Critical Time for Human Rights, Democracy and Rule of Law in Europe

After two years of pandemic, and in the context of the Russian Federation's armed attack on Ukraine, mass displacement of individuals, and a cost-of-living crisis, NHRIs across Europe, and their regional network, ENNHRI, remain pillars for the promotion and protection of human rights, democracy and rule of law. The Council of Europe Committee of Ministers Recommendation 2021/1 on NHRIs (the CM Recommendation) - adopted by state representatives of all Council of Europe Member States - recognises a such central role for NHRIs, and recommends all Council of Europe Member States establish and strengthen effective, pluralist and independent NHRIs.

As the CM Recommendation affirms, NHRIs are an important link between government and civil society, insofar as they help bridge the potential protection gap between the rights of individuals and the responsibilities of the State. Furthermore, the Recommendation indicates the great potential and impact of NHRIs, in particular for the effective implementation of the European Convention for Human Rights (ECHR), and encourages Council of Europe Member States to explore ways of developing a stronger role and meaningful participation of NHRIs and ENNHRI in the Council of Europe.

**CM Recommendation 2021/1 sets in place the golden standards for strong, pluralist and independent NHRIs in Europe and complements the global UN Paris Principles on NHRIs.** Beyond the standards taken up in the Paris Principles, the CM Recommendation indicates the need for states to foster awareness and cooperation with NHRIs, and to ensure adequate access to information and policy-makers, while involving NHRIs in all stages of legislation and policy making with human rights implications. Recognising the importance of a strong legal basis for NHRIs, the Recommendation indicates a preference for ingraining NHRIs in the constitution. Interestingly, the Recommendation also specifies requirements on the implementation of NHRI recommendations by state authorities. Last but not least, the Recommendation fleshes out the responsibility of states to protect NHRIs against threats and intimidation, and to respect confidential information collected by NHRIs.

The commitments of Member States in CM Recommendation 2021/1 build on those of the Committee of Ministers [2019 Helsinki Decision](#) and on [CM Recommendation 2018/11](#)

on the need to strengthen the protection and promotion of civil society space in Europe. Furthermore, the standard-setting at the Council of Europe takes place in a wider context of gradually stronger standard-setting on NHRIs, such as: the inclusion of the establishment of an NHRI in compliance with the UN Paris Principles as an indicator of [UN SDG 16 on 'peace, justice and strong institutions'](#); the recognition by the [European Commission](#) that a strong and independent NHRI is an indicator of healthy rule of law; and EU recommendations on NHRIs in the context of EU annual monitoring and (progress) reporting.

At its 131st session, the [Committee of Ministers decided](#) to include the implementation of Recommendation 2021/1 in the strategic framework of the Council of Europe. Furthermore, the **Council of Europe May 2023 Summit offers an opportunity to advance the embedding of NHRIs as key pillars for human rights, democracy and rule of law in the Council of Europe**. As the High-Level Reflection Group of the Council of Europe underlined in [its report](#) paving the way for the Summit: 'national human rights institutions [have a crucial role] in the national implementation of the Council of Europe acquis, not least the European Convention on Human Rights. This presupposes an effective involvement in and co-operation with the Council of Europe.' In the [Reykjavik Outcome Declaration of the CoE Summit](#), the heads of state in this vein 'call for a review and further reinforcement of the Organisation's outreach to, and meaningful engagement with, [...] national human rights institutions'. Accordingly, the next years offer a unique momentum to unlock the multiplier effects of strong, pluralistic and independent NHRIs for human rights, democracy and rule of law within each Council of Europe Member State and for the Council of Europe system as a whole.

## 2. Baseline Purpose: Instrument for Positive Change

ENNHRI's baseline report aims to provide reliable and authoritative information to advance the implementation of CM Recommendation 2021/1, and thereby ensure strong, independent and pluralistic NHRIs as pillars for human rights, democracy and rule of law across the Council of Europe (CoE). Accordingly, **ENNHRI's baseline responds to the aims set out in CM Recommendation 2021/1** to 'ensure that the principles set out are implemented in relevant domestic law and practice' and to 'evaluate on a regular basis the effectiveness of the measures taken, including through consultation and dialogue with NHRIs'.

While CoE Member States will review the implementation of Recommendation 2021/1 formally by 2025, ENNHRI's baseline **can serve as an 'independent parallel report' on the implementation of the CM Recommendation and instigate implementation and support for NHRIs at national and CoE level**. The baseline, notably, consists both of a cross-regional overview and country-specific reports for *each* CoE Member State with

key findings and recommendations to advance the implementation of CM Recommendation 2021/1.

Through offering an overview of **both the gaps in implementation of the CM Recommendation and good practices that exist across all CoE member states**, the ENNHRI baseline intends to be an instrument to trigger concrete positive change for NHRIs. Notably, each country report includes the identification of the key CM Principles that need to be addressed in the national context, as well as good practices in place in-country. Moreover, the comparative overview allows us to situate each NHRI in a larger regional context, and to learn from good practices in place across the Council of Europe region. We thus aspire that the CM assessment of NHRIs in Europe be more positive by 2025, and encourage further follow-up actions at national and Council of Europe level to start today.

**Initial follow-up initiatives can be discerned already.** Notably, in December 2022, the Council of Europe country office in Albania supported the NHRI's annual conference which included as a focus for discussion with state authorities and civil society how to advance the implementation of CM Recommendation 2021/1 in Albania. ENNHRI participated as an international expert to that meeting and the discussions. Such initiatives could be replicated across the Council of Europe and be informed by ENNHRI's cross-regional baseline findings and the national reports with recommendations. The Council of Europe, from its side, could strengthen more consistent support for NHRIs at national level, such as through cooperation programmes that would comprehensively support the implementation of CM Recommendation 2021(1) in each Council of Europe Member State. Such strategic support for a key domestic human rights actor could also contribute to making the Council of Europe more visible at national level.

**ENNHRI, from its side, remains strongly committed to further advancing the implementation of the CM Recommendation on NHRIs over the next years**, as reflected in our [Action Plan on the Recommendation](#). ENNHRI will further invest particularly in raising awareness about NHRIs across Europe and how they can be strengthened in line with international standards. ENNHRI aims to further foster impactful cooperation between NHRIs and the Council of Europe, and stands ready to provide technical support to state authorities and any other relevant actors for the establishment and strengthening of NHRIs. Our work will be informed by our expertise on international applicable standards on NHRIs and our unique comparative overview of good practices concerning NHRIs across Europe.

Reflecting the multiplier effects of strong, pluralistic and independent NHRIs, **ENNHRI's actions will be implemented through collaborative approaches including state authorities, civil society and the Council of Europe.** The outcomes of our actions are

also developed to benefit each of these actors, in addition to NHRIs themselves, and ultimately serve to benefit human rights, democracy and rule of law in our region.

### 3. Methodology: Triangulation of Sources

In CM Recommendation 2021/1, CoE Member States commit to ensure that the Principles developed in its appendix will be implemented in relevant domestic law and practice. ENNHRI's baseline study thus provides an overview of the implementation of the CM Recommendation Principles across all CoE Member States. The Principles in the Recommendation relate to (I) establishment of NHRIs, (II) strengthening of NHRIs, (III) securing and expanding a safe and enabling environment for NHRIs, and (IV) cooperation and support. Accordingly, this structure is also reflected in ENNHRI's baseline study.

**With a view to provide a reliable and authoritative source of information, this baseline provides an assessment of the implementation per country, on the basis of information from three sources:**

- 1) Information from ENNHRI members; namely, all NHRIs, and institutions which aspire to become internationally accredited NHRIs, across the Council of Europe.<sup>1</sup> For CoE Member States where no such institution exists yet, the ENNHRI Secretariat provided information from its work on establishment of NHRIs in those countries. The primary source of information are the national reports provided by NHRIs through [ENNHRI's 2022 rule of law reporting](#). This information has been complemented by NHRIs through an additional consultation by ENNHRI in March-April 2023.
- 2) Information from the international accreditation process of NHRIs. More specifically, the recommendations on NHRIs from the reports of the GANHRI Sub-Committee on Accreditation (SCA). While all A-status NHRIs are periodically reviewed every five years, B-status NHRIs are reviewed upon their request.<sup>2</sup> The baseline includes information from the SCA reports until its March 2023 session.
- 3) Information from the public reports with recommendations of key Council of Europe independent mechanisms, including the Commissioner for Human

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<sup>1</sup> All ENNHRI members, including institutions which are not yet internationally accredited, aspire to comply with the international standards on NHRIs laid down in the UN Paris Principles. ENNHRI has members in 40 out of 46 Council of Europe Member States. In view of the ongoing cooperation programmes of the CoE with Kosovo\*, the ENNHRI baseline also includes the institution in Kosovo\* which is an ENNHRI member. This designation of Kosovo\* is without prejudice to positions on status, and is in line with UNSC 1244 and the ICJ Opinion on the Kosovo Declaration of Independence.

<sup>2</sup> The overview of the international accreditation status of NHRIs is available on the webpage of the UN Office for the High Commissioner on Human Rights (OHCHR), [here](#).

Rights (CoE Commissioner), the European Commission against Racism and Intolerance (ECRI), the Venice Commission for Democracy through Law (Venice Commission) and the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT). CoE independent bodies' monitoring and reporting is based on each of the bodies' particular mandates, which generally focus on specific human rights themes, and national independent bodies addressing those rights. Due to NHRIs' broad mandate to address all human rights, and given virtually all NHRIs are multiple mandated bodies, NHRIs are regularly addressed in the CoE independent reports with recommendations to state authorities. Reports until end 2022 have been included in ENNHRI's data collection.

The combination of data gathered from these three authoritative sets of sources permits triangulation and therefore reliability of the findings of this ENNHRI baseline report. With the exception of the reports of the Council of Europe Commissioner for Human Rights, kindly provided by the Commissioner's Office, the data across all other CoE monitoring body reports have been collected through the ENNHRI Secretariat with the help of a consultant.<sup>3</sup> Any errors in the collection of the information and the analysis of the information is therefore to be attributed to ENNHRI.

CM Recommendation 2021/1 represents political commitments of CoE Member States on the development and strengthening of effective, pluralist and independent NHRIs. Accordingly, the scope of the baseline is focused on assessing what state authorities are doing and / or should do to enable effective, independent and pluralist NHRIs. The baseline does not focus or attempt to provide a description of all the initiatives NHRIs themselves are undertaking in this regard.

While the large majority of Principles (1-15) in CM Recommendation 2021/1 address the establishment and strengthening of NHRIs by state authorities at national level, Principles 16-17 address the cooperation and support at the level of the Council of Europe. Accordingly, the assessment of implementation of these last two Principles follows a different methodology, and is based on a specific ENNHRI survey shared across ENNHRI's membership from February to April 2023.

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<sup>3</sup> The consultant supporting ENNHRI's baseline report was a research team at Utrecht University, the Netherlands, led by prof. dr. Antoine Buyse, and including dr. Claire Loven, connected to the Netherlands Institute of Human Rights (SIM) and the Montaigne Centre for Rule of Law and Administration of Justice.



## 4. Key Findings on the Current Implementation of CM Recommendation 2021/1 across the Council of Europe

### 4.1 Key Positive Trends: Ever More and Better Known NHRIs, which Significantly Contribute to Effective Justice in CoE Member States

The key positive trend that emerges is the **ever growing family of NHRIs (CM Principle 1)**. In 40 out of 46 CoE Member States, internationally accredited NHRIs or institutions which intend to apply for accreditation are in place. In all six CoE Member States without such an institution (Iceland, Italy, Malta, Monaco, San Marino, and Switzerland), initiatives are ongoing or a political commitment has been indicated towards having in place such institution, albeit the prospect varies among the countries.

Not only the quantity, but also the quality of NHRIs is generally on the rise. This is indicated by an ever growing amount of NHRIs which are internationally accredited with A-status. Currently, 28 out of 46 CoE Member States have an NHRI accredited with A-status, 8 have NHRIs that are accredited with B-status and institutions in 4 Member States have not yet applied for accreditation but intend doing so.

Furthermore, **authorities have overall good awareness of NHRIs (CM Principle 12)** and generally provide them with **adequate access to information, policy-makers and legislators (CM Principle 8)**. To an extent, these findings can be conceived as a natural correlate of the ever growing establishment and gradually longer existence of NHRIs across CoE Member States.

Challenges persist though for a significant number of NHRIs as regards cooperation with national authorities in legislative and policy-making processes (CM Principles 8 and 3.5). State authorities often fail to consult in a timely and effectively manner with NHRIs on legislative proposals and policy strategies with human rights implications. This negative trend was further exacerbated during COVID-19 and the ensuing policies and regulations adopted.

A few good practices can be pointed out, especially when state authorities institutionalise consistent and timely consultation with NHRIs, and include participation rights for the NHRI, such as to relevant meetings of the parliament or executive. In Armenia, for example, 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. Moreover, the NHRI has a right to present issues before parliament when the executive does not take into consideration the NHRI's requests.

Interestingly, the country-specific analyses also indicate that NHRIs across the CoE region have mandates and roles which allow them **to contribute significantly to an effective justice system (CM Principle 3.6)**. However, 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 the NHRIs have the competence to handle complaints submitted by individuals, which is a natural mandate for NHRIs of the ombuds-type. For some NHRIs, complaints-handling is limited to specific mandates, such as the equality body mandate. Almost half of the NHRIs can undertake strategic litigation before courts, a mandate that is expected to be introduced for more NHRIs, under influence of the [draft EU Directives on Equality Bodies](#). Also in this respect, such role is regularly limited for NHRIs with regards specific mandates. For example, the NHRI in Croatia has a mandate to pursue strategic litigation only in cases concerning anti-discrimination and whistle blowers.

NHRIs with the power to intervene before the constitutional Court to challenge the constitutionality of legal acts (such as in Albania, Austria, Armenia, Bulgaria, Portugal, Poland and Slovenia) can be viewed as particularly strong contributors to effective justice, in regard to 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.

#### 4.2 Key Challenges: Leadership Selection & Appointment, Adequate Resources, and Follow-up to NHRI Recommendations

The standards on the **process of selection and appointment of NHRI leadership (CM Principle 4) appears to be the least well implemented from a comparative perspective**. The CM Principle stipulates that the process of selection and appointment should be competence based, transparent and participatory, and should be based on clear, predetermined, objective and publicly accessible criteria. As indicated by the SCA ([General Observation 1.8](#)), the observance of this Principle is key to ensure the independence and public confidence in the NHRI, and is crucial for an NHRI's ability to effectively address human rights issues in a state.

In view of requirements such as transparency and participation, parliament is generally deemed to be the more appropriate appointing authority, rather than the executive. Good practice examples include those requiring a special majority or other processes in parliament to ensure that the selection and appointment of NHRI leaders does not lie in the hands of the majority party alone. Appointment by the executive appears in line with the Paris Principles when procedures are developed to live up to the international standards, including transparency and participation. For example, this is the case when a pluralistically composed selection committee pre-selects the candidates the executive appoints, as in the case of Ireland or the Netherlands.

Independent of the appointing authority, challenges appear especially widespread in relation to the participatory nature of selection and appointment processes of NHRI

leadership. The minimum involvement by civil society the SCA requests in its national reports with recommendations is the possibility for civil society actors to be aware of and attend public hearings on the selection and appointment, and to ask questions to candidates which help assess their merits.

**The second least well implemented CM Principles are those stipulating that Member States should provide NHRIs with adequate, sufficient and sustainable resources to carry out their mandates (CM Principles 6, 7, and 10).** As the SCA clarifies ([SCA General Observation 1.10](#)), and in line with the Venice Commission and ECRI recommendations, adequate resources, including financial and human resources, are crucial to guarantee an NHRI's independence and its ability to freely determine its priorities and activities. It is not only the level of budget, however, but also the power to allocate the budget autonomously according to self-defined priorities that is crucial for an NHRIs' independence and effectiveness. In this sense, the SCA General Observations clarify that government funding should be allocated to a separate budget line applicable only to the NHRI. The SCA has indicated, therefore, that it is preferred for the budgetary allocation process, including involvement of the NHRI, to be prescribed by law.

Challenges are reported in more than two thirds of the CoE Member States, including in contexts of general cuts in public funding and inflation, as well as a significant number of NHRIs receiving additional mandates without sufficient additional resources. In exceptional cases (such as in Northern Ireland) significant budget cuts risk structurally preventing the NHRI from carrying out its mandate.

Good practices to ensure an adequate level of funding include a gradual increase of an NHRI's budget in line with the progressive realisation of human rights,<sup>4</sup> and a legal prohibition to cut an NHRI's budget as is the case in Armenia and Kosovo\*. Other good practices include the use of relevant national benchmarks to determine an NHRI's budget, such as the resources allocated to comparable independent public institutions. Accordingly, in a context of overall budget cuts in a country, an NHRIs' budget should not be disproportionately cut.<sup>5</sup>

**The third least implemented Principle is CM Principle 9 requiring obligatory, timely and reasoned follow-up by state authorities to NHRI recommendations.** More specifically, CM Principle 9 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

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<sup>4</sup> See further: [SCA General Observations](#) 1.10 Adequate funding of NHRIs, Justification.

<sup>5</sup> See in this regard also [FRA \(2020\)](#), Opinion 14.

NHRI recommendations, in a timely fashion, and include information thereon in their relevant documents and reports.

The Baseline Study shows that almost half of the CoE Member States have in place a legal obligation for state authorities to follow-up NHRI recommendations, while some NHRIs (in Greece, Luxembourg and Slovakia) deem such a legal obligation would be needed. While a legal obligation can be relevant, it also appears insufficient. Notably, in the majority of countries where such an obligation applies, a serious lack of follow-up or need for more effective follow-up processes is reported.

A key avenue to facilitate follow-up to NHRI recommendations is the dialogue on the NHRI annual report before parliament, where it presents its findings and recommendations. While it is crucial for parliament to consider the recommendations and engage in dialogue with the NHRI on advancing implementation, challenges emerge in some countries when parliament does not consider NHRI reports, or in countries where parliament votes on NHRI findings and recommendations. Such situations, notably, undermine the effectiveness of NHRI recommendations as tools to promote and protect human rights.

Other follow-up processes have been reported by NHRIs. In some countries (such as Austria, Estonia, Portugal and Ukraine), the NHRI has legal powers to follow-up the lack of response to recommendations by authorities. Other processes, set-up by state authorities, are also reported in some CoE Member States. Such processes though diverge widely with regards the level of formality and regularity. In Bosnia and Herzegovina, for example, the NHRI reports that a memo sent by the parliamentary human rights committee to authorities failing to follow-up its 2021 NHRI recommendations, instructing a written response, proved effective. In Croatia, the government established in 2022 a multisectoral advisory body (composed of public administration representatives, the NHRI and civil society) to, amongst other issues, advance follow-up to the NHRI's recommendations. In Albania, a follow-up mechanism is set in place with parliament, yet the NHRI reports this needs substantial improvement to advance impacts. Interestingly, a twinning project is ongoing with support from the EU which includes support from the Austrian NHRI to advance follow-up to the Albanian NHRI's recommendations.

#### **4.3 Key Findings in Respect of Stronger Cooperation with and Support for NHRIs at the Council of Europe**

While CM Recommendation 2021/1 is largely dedicated to fleshing out CM Principles on effective, pluralist and independent NHRIs across CoE Member States, the Recommendation also includes Principles which seek to advance CoE support for NHRIs (CM Principle 16), and the development of a stronger role and more meaningful participation of NHRIs and ENNHRI in the Council of Europe (CM Principle 17). While

this part of the Recommendation reflects former commitments of the Committee of Ministers, such as in the context of the [2019 Helsinki Decision](#), the CoE fourth Summit also presents important momentum to advance the role of NHRIs at the Council of Europe, and seizing the moment to reinforce the CoE's core mission to promote human rights, democracy and rule of law.<sup>6</sup> To assess the current implementation of this part of CM Recommendation 2021/1, ENNHRI developed a member survey which was circulated between February and April 2023.

**With regards CM Principle 16, on the provision of CoE cooperation programmes for NHRIs, it is apparent that only a limited amount of NHRIs have so far received such support** (around one-third of respondees). Such support appears largely focused on addressing specific human rights themes, such as combatting discrimination, supporting migrants' rights, Roma rights, or addressing sexual exploitation of children rather than support for the functioning of NHRIs and their contribution to the implementation of the CoE acquis more broadly.

The cross-regional evaluation of the implementation of CM Recommendation 2021/1 shows that no situation is perfect, and that each CoE Member State can learn from its peers. Good practices and challenges are apparent for each of the Principles of CM Recommendation 2021/1. Accordingly, the facilitation of peer exchange among CoE Member States and in-country support through technical and comparative expertise could significantly strengthen NHRIs' contributions to the implementation of the ECHR and other CoE instruments. A **comprehensive CoE programme dedicated to NHRIs**, possibly in cooperation with CoE Member States, the EU and ENNHRI, to facilitate in-country support and peer exchange amongst NHRIs (possibly through ENNHRI) could be greatly beneficial to ensuring strong and independent NHRIs across the region, including their contribution to the implementation of the ECHR and other instruments.

**CM Principle 17 encourages Member States to seek new ways and means to strengthen the role and meaningful participation of NHRIs and ENNHRI within the Council of Europe.**

This part of CM Recommendation 2021/1, notably, echoes the Committee of Ministers' [2019 Helsinki Decision](#).

Overall, responding NHRIs indicate they engage mostly in the context of country-specific monitoring visits of CoE bodies. NHRIs provide information independent from government to CoE bodies and follow-up on the outcomes of CoE procedures at domestic level, through engagement with state authorities and civil society, as well as broader awareness-raising activities. NHRIs appear to engage most, accordingly, with

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<sup>6</sup> See further: ENNHRI four key priorities for the CoE Fourth Summit, and related submissions, [here](#), as well as Reykjavik Outcome Declaration of the CoE Fourth Summit [here](#).

the European Commission against Racism and Intolerance (ECRI), the Committee for the Prevention of Torture (CPT) and the Council of Europe Commissioner for Human Rights.

Impressively, the ENNHRI survey shows NHRIs engage with at least 13 different CoE bodies.<sup>7</sup> ENNHRI, at the same time, engages with CoE bodies and procedures of a more cross-regional nature, representing the collective voice of NHRIs across the region. For example, [ENNHRI submits Third Party Interventions](#) before the European Court of Human Rights and represents NHRIs in its capacity as observer to the Steering Committee for Human Rights (CDDH) and its subordinate bodies.

Two CoE actors have developed dedicated and publicly available information for NHRIs since 2019 and have invested in regular information provision of NHRIs on how to engage with their Strasbourg-based procedures; the Council of Europe department for the execution of judgments and the Secretariat to the European Committee of Social Rights. Overall though, **NHRIs' responses indicate a general lack of transparency and information concerning their meaningful engagement across the CoE procedures.** While NHRIs report engagement with at least 13 different CoE bodies to some extent, the information on when and how to meaningfully engage is overall fragmented and not easily accessible.

While NHRIs are described by the CoE as 'pillars for fundamental rights, democracy and rule of law', no structural CoE approach is in place to facilitate meaningful engagement of NHRIs. Furthermore, it is reported by NHRIs that **some CoE bodies lack awareness** of the specific nature and mandate of NHRIs as independent state authorities, and the added value they can bring for advancing the implementation of CoE instruments. Another hurdle mentioned is the **lack of formal participation rights** for NHRIs and ENNHRI, including in particular at CoE decision-making bodies such as the Parliamentary Assembly and the Committee of Ministers.

The UN can serve as inspiration for the Council of Europe on how to further support meaningful participation of NHRIs and their effective contribution across the CoE. This could include the setting in place a **focal point and staff at the CoE Secretariat (DG I)** dedicated to facilitating NHRI participation, ensuring continuous and timely exchange of information, and advancing relevant participation rights for NHRIs and ENNHRI at the Council of Europe, with a view to advance human rights, democracy and rule of law across the Council of Europe.

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<sup>7</sup> Including (alphabetically): Commissioner for Human Rights, Committee of Ministers, CPT, ECRI, ECSR, European Court of Human Rights and department on execution of judgments, FCNM, GRECO, GRETA, GREVIO, Lanzarote Committee, Venice Commission, PACE.

#### 4.4 Interdependence Across Standards and Dependence on Rule of Law

While the cross-regional and country-specific analyses focus on assessing compliance with each of the specific Principles taken up in CM Recommendation 2021/1, the baseline also shows how the different parts of the Recommendation are intricately linked and depend on each other. NHRIs can be gradually strengthened (CM Recommendation part II.), once they are established (CM Recommendation part I). A clear and strong constitutional basis, for example, may boost awareness about an NHRIs' functions and mandate among state authorities, and may be conducive to the follow-up of NHRI requests and recommendations.

At the same time, NHRIs cannot truly be strong and effective, if they do not work in a wider safe and enabling environment (CM Recommendation part III). A broader culture of respect for human rights, democracy and rule of law is vital for formal 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 state authorities' decisions.

The goal of CM Recommendation 2022/1, for an NHRI to be an independent pillar upholding human rights, democracy and rule of law in a country, is seriously challenged in the absence of respect for rule of law and separations of powers in a Council of Europe Member State. Rightfully, thus, a strong and independent NHRI has become recognised as an indicator for healthy rule of law and plays a vital role in safeguarding and addressing challenges to the rule of law.<sup>8</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.

Last but not least, in a wider context of significant challenges to the enjoyment of human rights, democracy and rule of law across the Council of Europe region, cooperation and support across human rights defenders, including the CoE and NHRIs, is crucial (CM Recommendation Part IV).

### 5. Cross-Regional Analysis for Each Principle of CM Recommendation 2021/1

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

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<sup>8</sup> See further on this: European Commission annual rule of law report 2022, [here](#).

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](#).

## I. Establishment of NHRIs

### Establishment of an NHRI Accredited in Compliance with the Paris Principles (CM Principle 1)

CM Principle 1 encourages Member States to establish NHRIs and ensure that they are accredited and function in full compliance with the Paris Principles. This fundamental Principle is also taken up as the first Operational Paragraph of CM Recommendation 2021/1 which, quite forcefully, recommends that governments of Member States 'take all necessary measures to establish, and when established, maintain and strengthen an independent NHRI in accordance with the Paris Principles'. The Operational Paragraph adds that, in this context, States can draw on technical assistance such as that from ENNHRI, and other regional and international bodies to build on existing good practice.

The European NHRI landscape is the most diverse in the world, and NHRIs of different types exist, including ombuds-type NHRIs, commission-type NHRIs and institutions with a typical focus on delivering advice.<sup>9</sup> In many European countries, NHRIs are built on previously existing institutions such as equality bodies, or ombuds with a mere maladministration mandate. Accordingly, (and as further developed under CM Principle 3) virtually all NHRIs in Europe are multi-mandated institutions, with a broad mandate to promote and protect human rights ('NHRI mandate'), in addition to more specific mandates.

At regional level, there is an **overall positive trend** towards more and stronger NHRI established and accredited in Europe. Currently, 28 Council of Europe Member States have an NHRI accredited with A-status indicating full compliance with the Paris

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<sup>9</sup> Further: OHCHR, 'National Human Rights Institutions: History, Principles, Roles and Responsibilities', [here](#).



Principles and eight Member States (Azerbaijan, Belgium, Hungary, Montenegro, North Macedonia, Slovakia, Sweden and Türkiye) have NHRIs that are accredited with B-status, indicating partial compliance with the Paris Principles. Currently, ten states do not have an NHRI accredited in compliance with the Paris Principles (Andorra, Czech Republic, Iceland, Italy, Liechtenstein, Malta, Monaco, Romania, San Marino and Switzerland). In four of the ten countries without internationally accredited NHRI (Andorra, Czech Republic, Liechtenstein, and Romania), an institution is in place which is an ENNHRI member, indicating the intention of the institution to become internationally accredited. Indeed, currently **all CoE Member States indicate the intention to set up an NHRI** and concrete steps towards such establishment are visible in the large majority of CoE Member States.

Positive developments can be identified in a number of states. For example, several **existing institutions have applied for accreditation**. In Sweden, the Swedish Institute for Human Rights applied for accreditation in April 2023, while the Swedish Equality Ombudsman indicated that it wishes to relinquish its B-status accreditation status once the Institute is accredited. In addition, the Romanian Institute for Human Rights and the Romanian ombuds-institution have applied for accreditation. However, the Romanian Institute for Human Rights reports that there have been no significant legislative developments to its enabling legislation. Such a revision in the future could lead to stronger compliance of its institutional framework with the UN Paris Principles and facilitate the Institute's request for accreditation. In Liechtenstein, while the institution is not yet accredited, the enabling law foresees the Liechtenstein Association of Human Rights (LHRA) to be an NHRI in compliance with the Paris Principles, and the Board has decided to seek accreditation in the near future.

Additionally, states have taken steps to **strengthen existing institutions with a view to bringing them into closer compliance with the Paris Principles**, including in the context of ensuring future accreditation. This includes, for example, in Andorra, where national authorities have indicated a willingness to further develop the Ombudsman institution, including through strengthening its role and broadening its competences so that the institution's legislative functions and activities more closely resemble those of an NHRI (Venice Commission 2022). Further, in the Czech Republic, national authorities are acting to strengthen the functions of the Public Defender of Rights, through draft amendments aiming to bring the institution's enabling legislation into closer alignment with the Paris Principles. Importantly, the institution has been involved in and consulted in this process.

Moreover, in states **where no NHRI exists, national authorities have taken steps towards the establishment of an NHRI**. In Switzerland, in 2021, the National Council approved a bill on the establishment of an NHRI, which entered into force in January 2023. The Swiss Human Rights Institution had its [founding assembly](#) meeting on 23 May

2023, which approved its statutes and elected its first Board. The Swiss Institution is expected to become fully operational later in 2023. In addition, the Icelandic government has appointed a ministerial Working Group to explore possible avenues towards the establishment of an NHRI in Iceland and to work on a legislative proposal. At the end of 2021, the newly re-elected government included the establishment of an NHRI in its coalition agreement.

At the same time, while there is an overall trend towards more and stronger NHRIs being established and accredited across the region, **in some states, steps towards the establishment of an NHRI in compliance with the Paris Principles have been less substantive.** This includes in Italy and Malta, where proposals on the establishment of an NHRI have been discussed but remain pending over several years without adoption. In Monaco, an Ombuds-type institution exists; while ENNHRI has been in touch with the institution to gather more information about its work and intention to apply for accreditation, there have been no concrete developments in this regard. In San Marino, with regards to the recommendation of the UN Human Rights Committee which called on national authorities to establish an NHRI in conformity with the Paris Principles, the state indicated that it is exploring steps toward the creation of an NHRI in the country.

### **Strong Enabling Legislation, Preferably through Constitution (CM Principle 2)**

The requirement for an NHRI to be established by a strong legal basis serves as a safeguard for the institution's independence, the permanency of its mandate, and its effective functioning. Indeed, the Paris Principles call for NHRIs to be provided 'as broad a mandate as possible, which shall be clearly set forth in **a constitutional or legislative text**, specifying its composition and its sphere of competence'.

CM Principle 2 further encourages states to provide a firm legal basis for NHRIs including one which defines the mandates and functions of institutions, guarantees their independence, and provides them with the means necessary to accomplish their functions effectively. The CM Principle includes an **explicit preference for the legal basis to be entrenched at the constitutional level.** The additional emphasis on establishment at the constitutional level is echoed by the [Venice Principles](#).

The establishment of an institution through alternative means, for example, through an executive decree or regulation, can raise concerns. Unlike legislative or constitutional texts, instruments of the executive are open to modification or annulment without the need for legislative scrutiny, whereas it is important that any amendment to an NHRI's enabling legislation be reached through broad support and consent by the legislator. Therefore, the existence of a strong legislative or – preferably – constitutional basis, can act as a safeguard for the continuity of an NHRI's effective functioning and mandate. Moreover, it can contribute to preventing undue interference by the government and

the risk of the institution's mandate being undermined or amended without proper legislative consideration.

While all accredited NHRIs in the region are established by either a legislative or constitutional act, a **positive trend is that, in approximately half of the states covered by the baseline, NHRIs' legal basis is embedded in the constitution.** This includes in Albania, Armenia, Austria, Azerbaijan, Bosnia & Herzegovina, Bulgaria, Croatia, Estonia, Finland, Georgia, Hungary, Kosovo\*, Ireland, Lithuania, Moldova, Montenegro, North Macedonia, Poland, Portugal, Serbia, Spain and Ukraine.

In addition, in several states, guarantees of the NHRI's independence are explicitly included in the constitutional text. For example, in Poland, provisions ensuring independence in the selection and appointment of the head of institution are entrenched in the Constitution. In Croatia, the Constitution guarantees functional immunity for the head of institution. Further, the Armenian Constitutional Law on the Human Rights Defender includes provisions that prohibit reductions to the institution's budget, ensuring its independent and effective functioning.

Further, NHRIs themselves have called for the state to strengthen their regulatory framework, by entrenching the NHRI's role in the constitution. This includes for example, the NHRIs of Luxembourg and Latvia.

## II. 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.<sup>10</sup>

**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, such as Equality Bodies or Children Rights Commissions.<sup>11</sup> 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.<sup>12</sup> 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

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<sup>10</sup> See also: [FRA \(2020\)](#), p. 53.

<sup>11</sup> Further: OHCHR, 'National Human Rights Institutions: History, Principles, Roles and Responsibilities', [here](#).

<sup>12</sup> [SCA General Observations](#) 1.11 Annual Reports.

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 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<sup>13</sup>.

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.**

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<sup>13</sup> [SCA General Observations](#) 1.2 human rights mandate.

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 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.<sup>14</sup>

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<sup>14</sup> See, for example, ENNHRI State of the Rule of Law in 2022, [here](#).

### 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 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'.<sup>15</sup> 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.

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<sup>15</sup> See in this respect also the CM high-level declarations adopted in the context of the Interlaken process.



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 effectively address human rights issues in a state.<sup>16</sup> 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

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<sup>16</sup> [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".

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.<sup>17</sup> 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 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

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<sup>17</sup> See further: ENNHRI Statement: the independence and effectiveness of the Polish NHRI must be preserved, 15 April 2021, [here](#).

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, North Macedonia, 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.<sup>18</sup>

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.

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<sup>18</sup> Report of the UN Secretary-General to the UN Human Rights Council, A/HRC/20/9 of 1 May 2012, Annex.

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 context of public emergencies.<sup>19</sup> **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

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<sup>19</sup> See further on this also: [ENNHRI annual rule of law report 2021](#), and [ENNHRI annual rule of law report 2022](#).



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 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.<sup>20</sup> 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,<sup>21</sup> 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.<sup>22</sup>

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<sup>20</sup> [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.'

<sup>21</sup> 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.

<sup>22</sup> 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.

From a comparative perspective, it appears that in 18 out of 40 CoE Member States with an ENNHRI member (Albania, Armenia, 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).

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.

### III. 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>23</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>24</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**

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<sup>23</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>24</sup> European Commission, [annual rule of law report 2022](#).

**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 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>25</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

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<sup>25</sup> See in this sense also, the [Venice Principles](#) which require functional immunity for the ombuds, the deputies and the decision-making staff.

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 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.

## IV. Co-operation and Support

### Supporting NHRI Co-operation beyond State Authorities (CM Principle 15)

Beyond ensuring cooperation of various levels of state authorities and the administration with NHRIs (addressed in CM Principles 8,9,11), CM Principle 15 flags the importance for Member States to enable NHRI cooperation with other actors, including, in particular, cooperation with: NHRIs in third countries; civil society stakeholders; other human rights structures in-country (including specialised institutions at local and regional level); and international and regional organisations working in the human rights field.

**Cooperation of NHRIs with the wide spectrum of human rights actors at home and abroad is fundamental for NHRIs' functioning** as 'bridge-builders' between civil society and the state, and between domestic human rights realities and international human rights processes. As reflected in the [SCA General Observation 1.5](#) 'regular and constructive engagement with all relevant stakeholders is essential for NHRIs to effectively fulfil their mandates'.

Overall, such cooperation is understood as being part of NHRIs' broad mandate to promote and protect human rights, and a specific legal basis enabling such cooperation is not necessary for NHRIs to engage with such actors in practice. Still, a legislative stipulation in NHRIs' mandates can be conducive to encourage formalised relationships of NHRIs with such actors, and to reflect the key importance of such a relationship for NHRIs' effective functioning. The baseline report reflects a wide variety of countries where such legislative provisions are in place, including in Belgium, Bosnia and Herzegovina, Croatia, Finland, France, Greece, Luxembourg, North Macedonia, Poland, Slovenia, Serbia and the United Kingdom.

**NHRIs' cooperation with civil society deserves further attention, as this relates to the pluralistic nature of NHRIs** which is highlighted in the title of CM

Recommendation 2021/1. As the SCA ([General Observation 1.7](#)) highlights, pluralism facilitates the NHRIs' appreciation of, and capacity to engage on all human rights issues affecting the society in which it operates, and promotes the accessibility of the NHRI for all individuals. The SCA develops four avenues to ensure NHRIs' pluralism, including: pluralistic composition of the decision-making body of the NHRI; ensuring participation of civil society in appointment process of NHRI leadership; reflection of different

segments of society in NHRI staffing; as well as pluralism through procedures enabling effective cooperation with diverse societal groups.

In line with the last element to ensure pluralism, **many NHRIs in Europe have formalised their cooperation with a variety of civil society actors**, and especially human rights NGOs, including through the setting up of consultative councils. In Finland, for example, the NHRI's legal framework provides for the establishment of a Human Rights Delegation which serves as a forum for cooperation with human rights actors, including NGOs and human rights defenders, thereby institutionalizing cooperation. The Delegation deals with human rights matters that are of far-reaching significance and principal importance to the NHRI. In France and in Greece, legislation prescribes pluralistic and direct participation of a wide range of civil society organisations in the decision-making body of the NHRI, thereby enabling direct participation of such organisations in the NHRI's strategic decision-making.

NHRIs' **cooperation with 'other human rights structures'**, including 'regional, local and/ or specialised institutions' also deserves some further particular attention. In line with the SCA General Observations ([SCA General Observation 1.5](#)), NHRIs should develop, formalize and maintain working relationships, as appropriate, with other domestic institutions established for the promotion and protection of human rights, including sub-national statutory human rights institutions, and thematic institutions. As emerges from the baseline reports, and in line with the CM Principle 15, NHRIs cooperate with other human rights structures and they do so **in many different ways**. In some instances, such as in Croatia, such cooperation is prescribed in law. In other instances, such as in Finland, the cooperation is embedded through the composition of the consultative body ('Human Rights Delegation') which includes a representative of the various Finnish human rights structures.

In some country reports (eg. Finland and Moldova), it is flagged that the tendency to create new thematic human rights bodies and tasks without holistic and strategic analysis on impacts to existing structures **risk further fragmenting and complicating the human rights architecture**. In other instances (eg. Hungary), the merger of a specialised institution into a more broadly mandated NHRI has been met with criticism. A peculiar situation persists in Romania, where without clarification from the government which institution should be considered the NHRI, the accreditation applications of the Romanian Institute for Human Rights and the Romanian Ombuds are facing a stalemate.

As the CoE Commissioner has indicated; while governments have leeway to choose the institutional set-up of NHRIs and other human rights structures within their broader domestic context, they should while doing so respect the internationally applicable

standards, including on independence and effectiveness.<sup>26</sup> As addressed specifically in CM Principle 8, the CM requires that NHRIs should be consulted when legislative initiatives have an impact on their mandate, independence and operation.

### Development of Council of Europe Co-operation Programmes on NHRIs (CM Principle 16)

CM Principle 16 indicates that Member States should encourage and consider sponsoring the development of co-operation programmes of the Council of Europe for NHRIs, with a view to strengthen their contribution to the effective implementation of the ECHR and other relevant instruments.

From ENNHRI's membership survey, it is apparent that **only a limited number of NHRIs have so far received such support** (around one-third of respondees). Such support appears largely focused on addressing specific human rights themes, such as combatting discrimination, supporting migrants' rights, Roma rights, or addressing sexual exploitation of children, rather than support for the functioning of NHRIs and their contribution to the implementation of the CoE acquis more broadly.

In some cases (eg. for Azerbaijan and Türkiye), the CoE cooperation programmes are developed in cooperation with the EU, and interrelate with the EU's neighbourhood policy. One interesting example of a more dedicated CoE cooperation programme, including the strengthening of an NHRI and its contribution to the implementation of CoE instruments, is the 2015 project launched in support of the NHRI in Kosovo\* ["Support to the implementation of European Human Rights standards and the Reform of the Ombudsperson Institution"](#), co-financed by the governments of Norway and Switzerland. The NHRIs from Albania and Moldova also indicate to have received support from the CoE both for enhancing the functioning of their institution, as its work in relation to the implementation of CoE instruments.

The cross-regional evaluation of the implementation of CM Recommendation 2021/1 shows that no situation is perfect, and that each CoE Member State can learn from its peers. Good practices and challenges are apparent for each of the Principles of CM Recommendation 2021/1. Accordingly, the facilitation of peer exchange among CoE Member States and in-country support through technical and comparative expertise could significantly strengthen NHRIs' contributions to the implementation of the ECHR and other CoE instruments. A **comprehensive CoE programme dedicated to NHRIs**, possibly in cooperation with CoE Member States, the EU and ENNHRI, to facilitate in-country support (such as multi-stakeholder roundtables) and peer exchange amongst NHRIs (possibly through ENNHRI) could be greatly beneficial to ensure strong and

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<sup>26</sup> [CoE Commissioner for Human Rights Statement on Hungary, November 2020](#). For a further analysis: Human Rights and Equality Institutions in Europe: Balance between Centralisation and Fragmentation?', Finnish Human Rights Centre's publications 2/2022, available [here](#).

independent NHRIs across the region, and their contribution to the implementation of the ECHR and other instruments.

### **Strengthening the Role and Meaningful Participation of NHRIs and ENNHRI within the Council of Europe (CM Principle 17)**

CM Principle 17, as well as Operational Paragraph 6 of CM Recommendation 2021/1, recommends Member States seek **new ways and means to strengthen the role and meaningful participation of NHRIs and ENNHRI within the Council of Europe**. This recommendation, notably, echoes the Committee of Ministers' [2019 Helsinki Decision](#) as well as the [Reykjavik Outcome Declaration of the Summit](#).

From ENNHRI's membership survey, responding NHRIs indicate they engage mostly in the context of country-specific procedures of CoE bodies. NHRIs provide information independent from government to CoE bodies (in writing and/ or in the context of country visits) and follow-up on the outcomes of CoE procedures at domestic level, through engagement with state authorities and civil society, as well as broader awareness-raising activities. NHRIs appear to engage most, accordingly, with the European Commission against Racism and Intolerance (ECRI), the Committee for the Prevention of Torture (CPT) and the Council of Europe Commissioner for Human Rights. This is followed by engagement with the Group of Experts on Action against Violence against Women and Domestic Violence (GREVIO), with which two thirds of respondents indicate engagement. Around half of the respondents indicate they engage with the European Court of Human Rights, the European Committee of Social Rights<sup>i</sup>, and the Advisory Committee on the Framework Convention for the Protection of National Minorities (FCNM).

**Impressively, the ENNHRI survey shows that NHRIs engage with at least thirteen different CoE bodies.** Beyond those already mentioned, NHRIs also engage with: the Group of States against Corruption (GRECO), the Venice Commission, the Committee of the Parties to the Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse (Lanzarote Committee), the Parliamentary Assembly (PACE), the group of experts on action against trafficking in human beings (GRETA), and the Committee of Ministers (especially in the context of CM DH meetings).

**ENNHRI, from its side, engages with CoE bodies and procedures of a more cross-regional nature, representing the collective voice of NHRIs across the region.** For example, [ENNHRI submits Third Party Interventions](#) before the European Court of Human Rights and represents NHRIs in its capacity as observer to the Steering Committee for Human Rights (CDDH) and its subordinate groups. Accordingly, ENNHRI is engaging with the CoE on key human rights issues and is contributing to related standard-setting processes, such as in the area of [artificial intelligence](#) and [the right to a healthy environment](#).

Two CoE actors have developed dedicated and publicly available information for NHRIs, explaining how NHRIs can engage with the CoE process they are facilitating. The Council of Europe Department for the Execution of Judgments launched a [webpage](#) explaining how NHRIs can contribute to the execution of ECtHR judgments. The Secretariat to the European Committee of Social Rights, from its side, launched a [manual](#) on how NHRIs and equality bodies can engage in the Committee's periodic reporting process and complaints mechanism. Notably, both manuals have also been accompanied with dedicated awareness-raising meetings with NHRIs. While the Department for the Execution of Judgments co-organised a [capacity-building activity](#) for NHRIs with ENNHRI in 2021, the Secretariat to the European Committee of Social Rights sets up [regular webinars](#) with ENNHRI and NHRIs to update them on how they can contribute to the periodic reporting cycles. The survey responses from ENNHRI's members indicate the relevance of such targeted efforts of the CoE to inform and engage NHRIs. NHRIs rank participation to the European Committee of Social Rights through the development of independent reports amongst the most meaningful engagement opportunities at the Council of Europe. Work on the implementation of ECtHR judgments, on the other hand, ranks amongst the processes responding NHRIs wish to engage on further.

Overall though, **NHRIs indicate a general lack of transparency and information concerning their meaningful engagement across the CoE procedures.** While NHRIs report engagement with at least 13 different CoE bodies, the information on when and how to meaningfully engage is overall fragmented and not easily accessible. While NHRIs are described by the CoE as 'pillars for fundamental rights, democracy and rule of law', **no structural CoE approach is in place to facilitate meaningful engagement of NHRIs.** As reported by one NHRI who engages across a variety of CoE bodies, the NHRI 'is required to invest significant staff capacity in tracking the procedures, deadlines and announcements regarding upcoming reviews and visits [...], including due to the lack of a formal and consistent system for the notification of NHRIs about such updates by CoE Secretariats.'

Furthermore, it is reported by NHRIs that **some CoE bodies lack awareness** of the specific nature and mandate of NHRIs as independent state authorities, and the added value they can bring for advancing the implementation of CoE instruments. One member thus indicates that rather than being informed and invited to contribute to a country visit by the CoE body, it was invited through government, which raises concerns in view of its independence. Another hurdle mentioned is the **lack of formal participation rights** for NHRIs and ENNHRI, including in particular at CoE decision-making bodies such as the Parliamentary Assembly and the Committee of Ministers. In some instances, notably in the context of the execution of judgments, participation rights for NHRIs and ENNHRI are foreseen. Yet, as also [submitted by ENNHRI](#) in the

context of the CoE Summit, such participation could become strengthened and be more meaningful. For example, in the context of execution of ECtHR judgments, Member States could be required to respond to NHRIs' submissions, or NHRIs be given the right to orally intervene at CM DH.

The UN can serve as inspiration for the Council of Europe on how to further support meaningful participation of NHRIs; including by setting in place a focal point and staff at the CoE Secretariat (DG I), dedicated to facilitating NHRI participation, and launching a notification system, dedicated webpage and information bringing together engagement opportunities for NHRIs. Furthermore, to facilitate domestic follow-up by NHRIs of CoE country-specific judgments and recommendations, these could be pulled together in regularly updated CoE country-specific online databases. As is the practice already at the UN, moreover, and in line with NHRIs' independence, NHRIs' participation should be made possible through independent participation rights in CoE procedures, including the country-specific procedures at the level of the CM.

Beyond inspiring further development of meaningful participation for NHRIs and ENNHRI at the Council of Europe, the baseline overview also provides an interesting insight into how CoE independent bodies are supporting strong and independent NHRIs through their recommendations addressed to state authorities in their monitoring and reporting procedures. From the comparative overview, it emerges that ECRI most consistently develops recommendations to state authorities on NHRIs (31 of 40 countries), followed by the CPT (20 of 40 countries), the Council of Europe Commissioner for Human Rights (14 of 40 countries), and the Venice Commission (6 of 40 countries).

While to some extent, the discrepancy in numbers is related to the specific mandates of the various CoE bodies and NHRIs' multiple mandates, ENNHRI envisages that by providing reliable data through its baseline on challenges and good practices concerning the implementation of CM Recommendation 2021/1, this can **engender further consideration and support by the CoE independent monitoring bodies for NHRIs**. For example, in ENNHRI's survey for NHRIs, the relevance for the Venice Commission to allow for initiation of opinions by NHRIs, is flagged as important. By more consistently paying attention to and support the existence of strong and independent NHRIs in each CoE Member State, the CoE monitoring bodies also further contribute to the overall aim of the CoE to promote and protect human rights, democracy and rule of law in the Council of Europe.

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<sup>i</sup> The [European Committee of Social Rights](#) monitors States Parties' compliance with the European Social Charter. This European treaty contains an extensive catalogue of social and economic rights.



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